

SCHEME IMPLEMENTATION AGREEMENT FOR THE ACQUISITION OF MANAWA ENERGY LIMITED

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Dated

11 September 2024

Parties

MANAWA ENERGY LIMITED a company incorporated in New Zealand (New Zealand company number: 565426) (“**Target**”)

CONTACT ENERGY LIMITED a company incorporated in New Zealand (New Zealand company number: 660760) (“**Bidder**”)

Introduction

- A. The Target and the Bidder have agreed that the Bidder will acquire all of the Scheme Shares by means of the Scheme.
 - B. The parties have agreed to implement the Scheme on the terms and subject to the conditions set out in this Agreement.
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Agreement

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

“**Adverse Circumstance**” has the meaning given to that term in clause 3.10(a).

“**Agreed Retentions**” means the employee retentions disclosed in the Target Disclosure Letter.

“**Associate**” has the meaning given to that term in the Takeovers Code.

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

“**Bidder’s DRP**” means the Bidder’s dividend reinvestment plan governed by its offer document dated 30 March 2021.

“**Bidder Data Room Index**” means the index of written materials and information referred to in sub-clause (b) of the definition of Bidder Due Diligence Material, as attached to the Bidder Disclosure Letter.

“**Bidder Disclosure Letter**” means a letter agreed between the Bidder and the Target prior to the entry into of this Agreement, together with the attachments to that letter, which:

- (a) discloses facts, matters and circumstances that may be inconsistent with the Bidder Warranties; and
- (b) contains certain agreements between the Bidder and the Target regarding certain disclosures or other matters.

“Bidder Due Diligence Material” means:

- (a) the Bidder Disclosure Letter;
- (b) the written materials and information made available on or before 1.30pm on 10 September 2024 to the Target Group and its Representatives in the electronic data room established by or on behalf of the Bidder in relation to the Transaction, as listed in the Bidder Data Room Index, but excluding the ‘data book’ (document 01.03.02 “Lazard – Edmonton – Contact High Level Driver Data Book 14-08-24” in the Bidder Data Room Index); and
- (c) the written answers by or on behalf of the Bidder in response to written questions by the Target Group and its Representatives, which were asked and responded to on or before 1.30pm on 10 September through the electronic data room established by or on behalf of the Bidder in relation to the Transaction.

“Bidder Forward Looking Information” means:

- (a) any information about the future performance, future prospects, future financial condition, future results of operations, or future results of the strategy and plans of the Bidder Group; and
- (b) any other information about the future, including any budget, forecast, outlook about the future, scenario about the future, projection, prediction, estimate, opinion or other forward-looking statement.

“Bidder Fundamental Warranties” means the Bidder Warranties set out in clauses 1 to 6 and clauses 12, 13, 14, 15(c) and 15(d) of Schedule Four.

“Bidder Group” means the Bidder and its Subsidiaries (but excluding members of the Target Group).

“Bidder Indemnified Persons” means each member of the Bidder Group and each of their respective directors, officers, employees and other Representatives.

“Bidder Information” means all information provided by the Bidder to the Target for inclusion in the Scheme Booklet including:

- (a) any information concerning the Bidder, its Related Companies, financing, risks, business, Bidder Forward Looking Information, dealings in Shares and the New Bidder Shares;
- (b) any information regarding the Merged Group (including pro forma capital structure, pro forma financial information), other than any information regarding the Target Group provided by the Target; and
- (c) information relating to the Scrip Consideration.

“Bidder Initial Announcement” means an announcement to be released by the Bidder about the entry into of this Agreement in the form agreed by the parties in writing.

“**Bidder Material Adverse Change**” means any event or circumstance that occurs (or a series of events or circumstances that occur) on or after the date of this Agreement (each a “**Bidder Specified Event**”), together with any other Bidder Specified Event which occurs on or after the date of this Agreement, which reduces or is reasonably likely to reduce the value of the consolidated net tangible assets of the Bidder Group by more than \$500 million compared to what it would have reasonably been expected to have been but for the Bidder Specified Event or Bidder Specified Events, determined after excluding:

- (a) the effect of the payment of any Bidder Permitted Dividend;
- (b) unrealised gains or losses under foreign exchange, interest rate, electricity or other derivative contracts;
- (c) the impact of revaluing any asset of the Bidder Group or its business as may be required by law or generally accepted accounting principles;
- (d) matters, events or circumstances:
 - (i) done or not done at the written request or with the written approval of the Target, or resulting from compliance with the terms of, or the taking or omission of any action expressly required by, this Agreement, and any reasonably foreseeable consequences arising as a result of the relevant action or omission;
 - (ii) to the extent fairly disclosed:
 - (A) to the Target in the Bidder Due Diligence Material;
 - (B) by the Bidder through the NZX market announcement platform in the 12 month period ending two Business Days before the date of this Agreement;
 - (iii) resulting from legal or regulatory requirements generally affecting the electricity generation industry or the electricity retail industry; and
 - (iv) resulting from any change:
 - (A) to generally accepted accounting principles or the interpretation or enforcement of them by a court of competent jurisdiction or relevant Government Agency;
 - (B) to the accounting policies of any member of the Bidder Group that is required by law;
 - (C) in general economic conditions (including changes in foreign exchange rates, interest rates or commodity prices) or general political conditions; or
 - (D) in securities, equity, credit, financial or other capital markets conditions,

provided that, in relation to the exclusions in sub-clauses (d)(iii) and (iv) above, the effects of such matter, event or circumstance are not materially disproportionately adverse to the Bidder Group as compared to the effects of such matter, event or circumstance on entities in the industry in which the relevant member of the Bidder Group operates.

“**Bidder Permitted Dividend**” has the meaning given to that term in clause 6.4(a).

“**Bidder Prescribed Occurrence**” means the occurrence of any of the events listed in Schedule Two other than an event agreed to by the Target in writing.

“**Bidder Share**” means a fully paid ordinary share in the capital of the Bidder.

“**Bidder Share Schemes**” means:

- (a) Bidder’s “Equity Scheme” (comprising performance share rights and deferred share rights);
- (b) Bidder’s “Contact Share” employee share ownership plan; and
- (c) any other new share-based compensation schemes for directors and/or employees adopted from time to time in accordance with NZX Listing Rule 4.6.

“**Bidder Warranties**” means the warranties set out in Schedule Four.

“**Board**” means the board of Directors of the Target and, as applicable, includes any committee of the Board that has been delegated the powers of the Board in respect of certain matters.

“**Break Fee**” means \$18,621,894 million (including GST, if any).

“**Break Fee Arrangements**” has the meaning given to that term in clause 15.8(a).

“**Business**” means the business carried on by the Target Group as at the date of this Agreement.

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland and Wellington, New Zealand and excluding any day between 24 December 2024 and 10 January 2025 (both dates inclusive).

“**Cash Consideration**” means, in respect of each Scheme Share held by a Scheme Shareholder, \$1.16 less the amount per Scheme Share of any Target Permitted Dividend (for the avoidance of doubt, such amount being calculated prior to the deduction of any withholding tax from the dividend).

“**Change of Control Consent or Notification**” has the meaning given to that term in clause 9.10(a).

“**Cleansing Notice**” has the meaning given to that term in clause 5.2(c).

“**Commerce Act**” means the Commerce Act 1986.

“**Communication and Information Sharing Protocols**” means the Communication and Information Sharing Protocol signed by the Bidder and the Target dated 21 March 2024 and the Second Communication and Information Sharing Protocol signed by the Bidder and the Target dated 8 August 2024.

“**Companies Act**” means the Companies Act 1993.

“**Competing Proposal**” means any proposed:

- (a) full or partial takeover under the Takeovers Code in respect of the Target;
- (b) scheme of arrangement for the acquisition of all or a majority of the Shares;
- (c) transfer or issue of equity securities of the Target to a Third Party where Shareholder approval is required under the Takeovers Code;

- (d) sale of assets of any Target Group member or equity securities of any Target Group member other than the Target, where such sale constitutes a material part of the Business (excluding any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the Target Group that, individually or collectively, contributes less than 20% of the consolidated EBITDAF of the Target Group or which represents less than 20% of the total consolidated gross assets of the Target Group); or
- (e) transfer or issue of equity securities, strategic alliance, joint venture, partnership, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party directly or indirectly:
 - (i) having beneficial ownership or voting control over more than 20% of the Shares; or
 - (ii) obtaining control of or economic ownership of assets of any Target Group member or equity securities of any Target Group member other than the Target, where such sale constitutes a material part of the Business (excluding any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the Target Group that, individually or collectively, contributes less than 20% of the consolidated EBITDAF of the Target Group or which represents less than 20% of the total consolidated gross assets of the Target Group),

or any other proposed transaction (however structured) the implementation of which would require the Target to abandon or fail to proceed with the Transaction, and for the purposes of this definition of Competing Proposal:

- (f) any such proposal may be indicative, conditional or otherwise non-binding;
- (g) without limiting clause 9.4(f)(vii), the entry into of electricity supply arrangements or electricity hedging arrangements, in each case, in the ordinary course of business will not be the sale, transfer or disposal of control or economic ownership of assets of, or any part of the Business of, the Target Group;
- (h) sub-clauses (c) to (e) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is implemented through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of sub-clauses (c) to (e); and
- (i) Third Party means a Third Party together with its Associates.

“Computershare” means Computershare Investor Services Limited.

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

“Confidentiality Agreement” means the confidentiality agreement entered into between the Bidder and the Target dated 21 March 2024, as amended on 7 August 2024.

“Consideration” means, for each Scheme Share held by a Scheme Shareholder:

- (a) the Cash Consideration; and
- (b) the Scrip Consideration.

“**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 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 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.

“**Cost Recovery Provisions**” means clauses 7.4(b)(ii) (Appeal Costs), 9.12 (Electricity Industry Act costs), and 10.2(b) (Financing Assistance Costs).

“**Counter Proposal**” has the meaning given to that term in clause 14.6(b).

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Court Guidance**” has the meaning given to that term in clause 7.3(a).

“**D&O Run-off Policy**” has the meaning given to that term in clause 13.1(a).

“**Decision**” has the meaning given to that term in clause 7.4.

“**Deed Poll**” means the deed poll which (as applicable) is to be entered into, or has been entered into, by the Bidder in favour of the Scheme Shareholders in the form set out in Schedule Seven (or in the form otherwise agreed in writing by the parties).

“**Director**” means a director of the Target, from time to time.

“**Director Recommendation**” has the meaning given to that term in clause 8.1(a).

“**Duty**” means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge.

“**EBITDAF**” means earnings before interest, tax, depreciation, amortisation, fair value movements of financial instruments, impairments of property, plant and equipment and gain/loss on sale of assets, calculated in accordance with the usual practice of the Target as at the date of this Agreement, in respect of the EBITDAF of the Target Group, or the Bidder as at the date of this Agreement, in respect of the EBITDAF of the Bidder Group.

“**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 (and any other conditions in the Scheme Plan) having been satisfied or, if capable of waiver, waived in accordance with this Agreement and the Scheme.

“**Encumbrance**” means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) 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, and any agreement to create any of the foregoing.

“End Date” means:

- (a) the date that is nine months following the date of this Agreement, subject to extension under clause 3.9(a), 3.9(b) or 7.4; or
- (b) any other date agreed in writing by the parties.

“Escrow Agreement” means the escrow agreement to be entered into between the Target, the Bidder and Computershare in the form set out in Schedule Eight or in such other form as the parties agree in writing.

“Escrow Payment Date” means 5.00pm on the Business Day before the Implementation Date.

“Exchange Ratio” means:

- (a) subject to sub-paragraph (b) below, 0.5719; or
- (b) if the record date for any Bidder Permitted Dividend is on or after the date of this Agreement but prior to implementation of the Scheme, the amount determined by the following formula (rounded to four decimal places):

$$A = \frac{B}{(C-D)}$$

where:

A = the Exchange Ratio;

B = \$ 4.79;

C = \$8.3755; and

D = the amount per Bidder Share of any Bidder Permitted Dividend(s) (for the avoidance of doubt, such amount being calculated prior to the deduction of any withholding tax from the dividend).

“Excluded Matter” means:

- (a) a Competing Proposal;
- (b) the actual or purported termination of this Agreement; or
- (c) any claim under, or disagreement or dispute between the parties in respect of, this Agreement, any other Transaction Document, or the Transaction.

“Exclusivity Period” means the period starting on the date of this Agreement and ending on the first to occur of:

- (a) the end of the Exclusivity Period under clause 14.9(d);
- (b) the termination of this Agreement;
- (c) if the Bidder formally purports to terminate this Agreement, the date of such purported termination (whether or not that purported termination is ultimately agreed, or determined, to be legally effective);

- (d) the Implementation Date; and
- (e) the End Date.

“**Final Orders**” means orders of the Court, on application of the Target, that the Scheme be binding on the Target, the Bidder, Scheme Shareholders and 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 granted by the Court.

“**FMCA**” means the Financial Markets Conduct Act 2013.

“**FMCR**” means the Financial Markets Conduct Regulations 2014.

“**Forward Looking Information**” means:

- (a) in relation to the Bidder, the Bidder Forward Looking Information; and
- (b) in relation to the Target, the Target Forward Looking Information.

“**Funding Arrangements**” has the meaning given to that term in clause 10.3(b).

“**Government Agency**” means, in respect of New Zealand or any other jurisdiction, any:

- (a) court of competent jurisdiction;
- (b) government or any department, officer, ministry or minister of any government; and
- (c) governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity.

“**GST**” means goods and services tax charged or levied under the GST Act, and includes any GST Default Amounts.

“**GST Act**” means the Goods and Services Tax Act 1985.

“**GST Default Amounts**” means any penalties, additional tax or interest payable in respect of goods and services tax.

“**GST Exclusive Consideration**” has the meaning given to that term in clause 19.2.

“**IAR Information**” has the meaning given to that term in clause 5.6.

“**Implementation Date**” means the day on which the Scheme is to be implemented, being two Business Days after the Record Date, or such other date as may be agreed between the parties in writing.

“**Independent Adviser**” means the person appointed by the Target 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, stating the Independent Adviser’s opinion on the merits of the Transaction.

“Ineligible Overseas Shareholder” means a Scheme Shareholder whose address, as shown on the Register as at the Record Date, is in a place outside of, or who otherwise is ordinarily resident at the relevant time outside of, or who is holding Scheme Shares on behalf of another person who resides outside of:

- (a) Australia;
- (b) New Zealand; and
- (c) any other jurisdiction as may be agreed in writing by the Bidder and the Target (each acting reasonably),

provided that a Scheme Shareholder holding Scheme Shares on behalf of another person is only an Ineligible Overseas Shareholder in respect of Scheme Shares held for persons outside of Australia, New Zealand and any other jurisdiction as may be agreed in writing by the Bidder and the Target (each acting reasonably).

“Initial Orders” means orders by the Court, on application by the Target, for the purposes of section 236(2) of the Companies Act in respect of the Scheme Meeting and other matters relating to the implementation of the Scheme.

“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) an application or an order is made, or a resolution is passed, for the person’s dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in, and in accordance with section 287 of, 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 with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of a substantial portion of its property;
- (e) 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;
- (f) any resolution is passed, or any proceeding is commenced, for the liquidation or dissolution of that person; and
- (g) anything analogous to anything referred to in the above sub-clauses, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law.

“Letter of Intention” means a letter from the Takeovers Panel stating that it:

- (a) intends to provide a No-objection Statement; and
- (b) does not intend to appear at the Court in respect of the application for Initial Orders.

“**Loss**” means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties will 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).

“**Matching Period**” has the meaning given to that term in clause 14.6(a)(vi).

“**Merged Group**” means the combination of the Bidder Group and the Target Group, as comprised by the Bidder and its Subsidiaries (including the Target Group) upon the implementation of the Scheme.

“**MUFG**” means MUFG Pension & Market Services.

“**New Bidder Shares**” means a new Bidder Share to be issued under the Scheme.

“**No-objection Statement**” means a written 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.

“**NZCC**” means the New Zealand Commerce Commission.

“**NZCC Application**” means the Bidder’s application under the Commerce Act for clearance or authorisation to implement the Scheme.

“**NZCC Condition**” means the Condition set out in clause 3.1(a).

“**NZ RegCo**” means NZX Regulation Limited.

“**NZX**” means NZX Limited and, where the context requires, the main board financial market that it operates.

“**Pandemic**” means a widespread occurrence of an infectious disease or health incident that is declared by the World Health Organization as a pandemic.

“**Payment Obligations**” has the meaning given to that term in clause 10.3(a).

“**Permitted Encumbrances**” means in respect of the Target Group’s assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into to secure the unpaid balance of purchase money for property supplied to a member of the Target Group in the ordinary course of business;
- (b) a right of set-off or combination 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 provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings; and
- (d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation.

“**Record Date**” means 5.00pm on the date which is four Business Days after Final Orders Date 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 the Reserve Bank of New Zealand website (or any successor page) at or about 10.45am 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 register of Shares maintained by Computershare on behalf of the Target.

“**Registrar**” has the meaning given to that term in the Companies Act.

“**Related Company**”:

- (a) in respect of the Bidder, has the meaning given to that term in section 2(3) of the Companies Act, read as if a reference to a company was a reference to a body corporate wherever incorporated; and
- (b) in respect of the Target, means each member of the Target Group.

“**Related Party**” has the meaning given in the NZX Listing Rules.

“**Relevant Competing Proposal**” has the meaning given in clause 14.11(c).

“**Relevant Interest**” has the meaning given in section 235(1) of the FMCA.

“**Representative**” 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 or any Related Company of that person.

“**Responsible Party**” has the meaning given to that term in clause 3.3(a).

“**Reverse Break Fee**” means \$18,621,894 million including GST, if any.

“**Sale Agent**” has the meaning given to that term in the Scheme Plan.

“**Scheme**” means a scheme of arrangement under Part 15 of the Companies Act under which:

- (a) all of the Scheme Shares held by Scheme Shareholders will be transferred to the Bidder; and
- (b) the Scheme Shareholders will receive the Consideration,

in the form of the Scheme Plan.

“**Scheme Booklet**” means the booklet which, as applicable:

- (a) is to be prepared, or has been prepared, in accordance with this Agreement in connection with the Scheme Meeting and Scheme Resolution (including the notice of meeting, explanatory materials and disclosures and proxy form);
- (b) is to be, or has been, approved by the Court under the Initial Orders; and
- (c) is to be, or has been, sent to Shareholders in advance of the Scheme Meeting,

and includes, where applicable, any supplement, addendum or other update or change to that booklet after it has been sent to Shareholders.

“**Scheme Meeting**” means the meeting of Shareholders which, as applicable, is to be, or has been, ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment or rescheduling of that meeting.

“**Scheme Plan**” means the scheme plan in the form set out in Schedule Six (or in any other form the parties agree in writing) which, as applicable, is to be, or has been, approved by the Court under section 236(1) of the Companies Act by way of the Final Orders.

“**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 as at the Record Date.

“**Scheme Shares**” means all of the Shares on issue at 5.00pm on the Record Date, and “**Scheme Share**” means any such Share.

“**Schemes Guidance Note**” means the guidance note issued by the Takeovers Panel regarding schemes of arrangement, published on 31 July 2024 (as may be amended, modified, revised or replaced from time to time), as available on the Takeovers Panel website.

“**Scrip Consideration**” means, for each Scheme Share held by a Scheme Shareholder, the Exchange Ratio of New Bidder Shares for each Scheme Share (with any fractional entitlements rounded to the nearest whole number).

“**Second Court Date**” means:

- (a) if no hearing is held in respect of the Final Orders, the day on which the Final Orders are granted by the Court; 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 capital of the Target.

“**Share Issue Approvals**” has the meaning given to that term in clause 12 of Schedule Four.

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

“**Subsidiary**” has the meaning given to that term in section 5 of the Companies Act, read as if the reference to “company” in that section includes any body corporate or entity, wherever incorporated.

“**Superior Proposal**” means a written bona fide Competing Proposal for all of the Shares (other than Shares held or controlled by (i) the person making the Competing Proposal and (ii) Associates of that person) or all or substantially all of the Target Group’s assets received by the Target after the date of this Agreement that:

- (a) does not result from a breach by the Target of any of its obligations under clause 14, or from any act by a member of the Target Group or its Representatives which, if done by the Target, would constitute a breach of clause 14 by the Target; and
- (b) the Board determines, acting in good faith and after having received written advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent (including, for clarity, the likelihood of satisfying those conditions), timing considerations, the identity and financial capacity of the proponent and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms;
 - (ii) would, if completed substantially in accordance with its terms, result in a transaction that would be more favourable to Shareholders (as a whole) than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 14.6(b)), taking into account all the terms and conditions of the Competing Proposal (including consideration, form of consideration, conditionality, funding, certainty and timing) and the Scheme and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms; and
 - (iii) in clauses 6.1(a), 8.1(a) and 8.2(b), means a Competing Proposal in respect of which the Board has made the determination contemplated by clause 14.6(a)(iv) and, if applicable, 14.6(a)(vii)(B).

“**Surviving Clauses**” means the Cost Recovery Provisions and clause 1 (Definitions and interpretation), clause 11 (Warranties), clause 12 (Releases), clause 15 (Break Fee and Reverse Break Fee), clause 16.16 (Effect of termination), clause 17 (Announcements), clause 19 (GST), clause 20 (Notices), clause 21 (General) (other than clause 21.8 (Further assurances)), and clause 22 (Governing law and dispute resolution).

“**Takeovers Code**” means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR2000/210), as amended by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

“**Takeovers Panel**” means the Takeovers Panel as constituted under the Takeovers Act 1993.

“**Target Data Room Index**” means the index of written materials and information referred to in sub-clause (b) of the definition of Target Due Diligence Material, as attached to the Target Disclosure Letter.

“**Target Disclosure Letter**” means a letter agreed between the Target and the Bidder prior to the entry into of this Agreement, together with the attachments to that letter, which:

- (a) discloses facts, matters and circumstances that may be inconsistent with the Target Warranties; and
- (b) contains certain agreements between the Target and the Bidder regarding certain disclosures or other matters.

“Target Due Diligence Material” means:

- (a) the Target Disclosure Letter;
- (b) the written materials and information made available on or before 1.30pm on 10 September 2024 to the Bidder Group and its Representatives in the electronic data room established by or on behalf of the Target in relation to the Transaction, as listed in the Target Data Room Index; and
- (c) the written answers by or on behalf of the Target in response to written questions by the Bidder Group and its Representatives, which were asked and responded to on or before 1.30pm on 10 September 2024 through the electronic data room established by or on behalf of the Target in relation to the Transaction.

“Target Forward Looking Information” means:

- (a) any information about the future performance, future prospects, future financial condition, future results of operations, or future results of the strategy and plans of the Target Group; and
- (b) any other information about the future, including any budget, forecast, outlook about the future, scenario about the future, projection, prediction, estimate, opinion or other forward-looking statement.

“Target Fundamental Warranties” means the Target Warranties set out in clauses 1 to 6 of Schedule Three.

“Target Material Adverse Change” means any event or circumstance that occurs (or a series of events or circumstances that occur) on or after the date of this Agreement (each a **“Target Specified Event”**), together with any other Target Specified Event which occurs on after the date of this Agreement, which reduces or is reasonably likely to reduce:

- (a) the value of the consolidated net tangible assets of the Target Group by more than \$150 million compared to what it would have reasonably been expected to have been but for the Target Specified Event or Target Specified Events; or
- (b) the consolidated EBITDAF of the Target Group for the financial year ending 31 March 2025 to less than \$62.5 million,

determined after disregarding transaction costs incurred by the Target Group in connection with the Transaction to the extent such costs, in aggregate, do not exceed the total estimated amount of those costs set out in the Target Disclosure Letter and excluding:

- (c) the effect of the payment of any Target Permitted Dividend;
- (d) unrealised gains or losses under foreign exchange, interest rate, electricity or other derivative contracts;
- (e) the impact of revaluing any asset of the Target Group or the Business as may be required by law or generally accepted accounting principles;
- (f) matters, events or circumstances:

- (i) done or not done at the written request or with the written approval of the Bidder, or resulting from compliance with the terms of, or the taking or omission of any action expressly required by, this Agreement, and any reasonably foreseeable consequences arising as a result of the relevant action or omission;
- (ii) to the extent fairly disclosed:
 - (A) to the Bidder in the Target Due Diligence Material (other than relating to the actual or anticipated change of control of the Target contemplated by this Agreement);
 - (B) by the Target through the NZX market announcement platform in the 12 month period ending two Business Days before the date of this Agreement;
- (iii) resulting from legal or regulatory requirements generally affecting the electricity generation industry; and
- (iv) resulting from any change:
 - (A) to generally accepted accounting principles or the interpretation or enforcement of them by a court of competent jurisdiction or relevant Government Agency;
 - (B) to the accounting policies of any member of the Target Group that is required by law;
 - (C) in general economic conditions (including changes in foreign exchange rates, interest rates or commodity prices) or general political conditions; or
 - (D) in securities, equity, credit, financial or other capital markets conditions,

provided that, in relation to the exclusions in sub-clauses (f)(iii) and (iv) above, the effects of such matter, event or circumstance are not materially disproportionately adverse to the Target Group as compared to the effects of such matter, event or circumstance on entities in the industry in which the relevant member of the Target Group operates.

“**Target Certificate**” has the meaning given to that term in clause 5.4(a).

“**Target Group**” means the Target and its Subsidiaries.

“**Target Indemnified Persons**” means each member of the Target Group and each of their respective directors, officers, employees and other Representatives.

“**Target Information**” means all information included in the Scheme Booklet other than the Bidder Information and the Independent Adviser’s Report.

“**Target Initial Announcement**” means an announcement to be released by the Target about the entry into of this Agreement in the form agreed by the parties in writing.

“**Target Permitted Dividend**” has the meaning given to that term in clause 6.3(a).

“**Target Prescribed Occurrence**” means the occurrence of any of the events listed in Schedule One other than an event agreed to by the Bidder in writing.

“**Target Warranties**” means the warranties set out in Schedule Three.

“**Tax**” means a tax, levy, charge, impost, fee, deduction, withholding, Duty or rates or other statutory government or local government impositions of any nature, whether imposed in New Zealand or elsewhere, including income tax, ancillary tax, withholding tax, approved issuer levy, fringe benefit tax, customs and excise Duty, gift Duty, regional or local taxes, municipal taxes, accident compensation levies, KiwiSaver employer contributions, stamp and transaction Duty or GST, value added tax or consumption tax, which is imposed or collected by a Government Agency and any interest, fine, penalty, charge, fee or other amount imposed on the non, late or underpayment of any such taxes.

“**Tax Claim**” has the meaning given to that term in clause 9.14.

“**Third Party**” means a person other than a member of the Bidder Group.

“**Timetable**” means the timetable set out in Schedule Five, or such other timetable as the Target and the Bidder agree in writing, subject to any amendments made in accordance with, or changes or delays expressly permitted by, this Agreement (and, as applicable, the Timetable includes the Final Orders Date, the Record Date and the Implementation Date).

“**Trading Halt Date**” means the date which is two Business Days after the Final Orders Date or such other date as the Target and the Bidder agree in writing.

“**Transaction**” means the acquisition by the Bidder of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this Agreement.

“**Transaction Documents**” means each of the following:

- (a) this Agreement;
- (b) the Deed Poll;
- (c) the Escrow Agreement;
- (d) the arrangements between the Bidder and the Sale Agent;
- (e) the Initial Orders granted by the Court;
- (f) the Final Orders granted by the Court; and
- (g) the Scheme Plan approved by the Court.

“**Treasury Policy**” means the Target’s treasury policy as set out in document 04.05.02 of the Target Data Room Index.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires, or specifically stated otherwise:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this Agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and

- (iii) any subordinate legislation made before or after execution of this Agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
- (b) a reference to the NZX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Agreement (and the schedules and annexes form part of this Agreement);
- (f) subject to clause 21.2, references to a party to this Agreement include the successors or assigns (immediate or otherwise) of that party;
- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) a reference to “**law**” includes statutes, regulations, and the binding order or direction of any Government Agency of competent jurisdiction; and
- (o) the headings do not affect interpretation.

1.3 **Target’s knowledge:**

- (a) Where any Target Warranty is qualified by the expression “so far as the Target is aware” or any similar expression or with a similar qualification as to the Target’s awareness or knowledge, and in respect of the reference to the Target’s awareness in clause 5.4, the Target’s awareness or knowledge, is limited to, and deemed to include, only those facts, matters or circumstances of which any of Clayton Delmarter, Todd Mead, Matthew James, Phil Wiltshire, Karl Wansbone and Richard Spearman (“**Knowledge Group Members**”) is (A) actually aware or (B) would have been aware had the relevant individual made such enquiries, as were reasonable in the circumstances, of: the other Knowledge Group Members; Jim Pearson, Deborah Sinclair and

Shane Adams; and of the internal information of the Target Group which is reasonably available to the relevant individual (having regard to applicable confidentiality restrictions):

- (i) in respect of any relevant Target Warranty, as at the date of this Agreement; and
 - (ii) in respect of a Target Certificate, as at the date the certificate is given.
- (b) Other than as contemplated by clause 1.3(a), the knowledge, belief or awareness of any person will not be imputed to the Target.
- (c) For the avoidance of doubt, and without limiting clauses 5.4(c)(ii) and 12.1, none of the individuals referred to in clause 1.3(a) has any personal liability in respect of the Target Warranties or any Target Certificate.
- 1.4 **Business Days:** Unless otherwise indicated, if the day on or by 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.
- 1.5 **Contra proferentem excluded:** No term or condition of this Agreement or any document contemplated by this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or a provision of it.
- 1.6 **Independent Adviser's conclusion:** For the avoidance of doubt, for the purposes of this Agreement:
- (a) the Independent Adviser's Report will not be treated as having concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares; and
 - (b) the Independent Adviser's Report will be treated as having concluded that the Consideration is below the Independent Adviser's valuation range for the Shares,
- if, after the finalisation of the initial Independent Adviser's Report but prior to the date of the Scheme Meeting, the Independent Adviser issues an updated, replacement or supplementary report containing a revised valuation range for the Shares and the Consideration is below the revised valuation range (and, for clarity, such update, replacement or supplementary report, or any subsequent update, replacement or supplementary report, is not superseded by a further update, replacement or supplementary report prior to the date of the Scheme Meeting containing a revised valuation range for the Shares and the Consideration is within or above the revised valuation range for the Shares).
- 1.7 **Consents:** If under this Agreement the doing of any act, matter or thing is subject to the consent or approval of a party, then unless expressly specified otherwise in this Agreement, that consent or approval may be given (on a conditional or unconditional basis) or withheld in the party's absolute discretion.
- 1.8 **Fair disclosure:**
- (a) A reference to information or a matter or circumstance being "**fairly disclosed**" to the Bidder means disclosure in writing in a manner such that the information, matter 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 Target Group and the Business, in sufficient detail such that a purchaser with

experience in transactions of the nature of the Transaction and with businesses of the nature of the Business can reasonably be expected to understand the relevance and importance of the information, matter or circumstance.

- (b) A reference to information or a matter or circumstance being “**fairly disclosed**” to the Target means disclosure in writing:
 - (i) in a manner such that the information, matter or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable person, or any of its Representatives; and
 - (ii) in sufficient detail such that a person with experience with businesses of the nature of the Business can reasonably be expected to understand the relevance and importance of the information, matter or circumstance.

2. AGREEMENT TO IMPLEMENT THE SCHEME

2.1 **Target to propose Scheme:** The Target must propose and, subject to the Scheme becoming Effective, implement the Scheme on the terms set out in this Agreement.

2.2 **Bidder to assist:** The Bidder must co-operate with the Target and assist the Target to propose and implement the Scheme on the terms set out in this Agreement.

2.3 **Bidder to provide Consideration:** In consideration for, and simultaneously with, the transfer to the Bidder of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, the Bidder undertakes in favour of the Target, in its own right and on behalf of each Scheme Shareholder, to provide, or procure the provision of, the Consideration to each Scheme Shareholder in respect of each Scheme Share held by that Scheme Shareholder in accordance with this Agreement, the Scheme and the Deed Poll.

2.4 **General implementation obligations:** Each party must do everything reasonably necessary, including by procuring 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 laws applicable to the Scheme.

2.5 **Timetable:**

- (a) Subject to clauses 2.5(b) and 2.5(d), the parties must use their reasonable endeavours to propose and implement the Transaction in accordance with the Timetable, as soon as reasonably practicable, and before the End Date.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.5(a) to the extent that such failure is due to circumstances outside that party’s control and such party otherwise has used reasonable endeavours to meet the Timetable.
- (c) Each party must keep the other reasonably 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) To the extent that any of the dates or timeframes set out in the Timetable become unachievable, the parties will consult in good faith with a view to agreeing any necessary extension or variation

to the Timetable to ensure such matters are completed, and the Scheme is implemented, within the shortest practicable timeframe and before the End Date.

- (e) For clarity, clause 2.5(a) does not limit the Target’s ability to:
 - (i) deal with a Competing Proposal to the extent permitted by clause 14; or
 - (ii) adjourn or reschedule the Scheme Meeting or otherwise delay any element of the Timetable in accordance with the express provisions of this Agreement.

2.6 **No amendment to Scheme without Bidder’s consent:** The Target must not promote or consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any other Government Agency of any condition to the Scheme, without:

- (a) the Bidder’s counsel’s consent, where a modification or amendment is made, imposed or requested at a Court hearing (and the Bidder must procure that such consent is not unreasonably withheld or delayed); or
- (b) the Bidder’s prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld or delayed).

3. CONDITIONS PRECEDENT

3.1 **Conditions:** The Scheme will not become Effective and the obligations of the Bidder under clause 2.3 do not become binding unless and until each of the conditions set out in the “Condition” column of the following table has been satisfied or waived in accordance with this clause 3:

CONDITION	RESPONSIBILITY	WAIVER
(a) (NZCC Clearance) clearance has been given, or an authorisation granted, to the Bidder under the Commerce Act for implementation of the Scheme on terms or conditions acceptable to the Bidder, acting reasonably, provided that the Bidder may not withhold its approval to terms or conditions of any such clearance or authorisation if the terms or conditions imposed are consistent in all material respects with undertakings given to the NZCC, specified in, or specified in writing by the Bidder in connection with, the Bidder’s application for clearance or authorisation under the Commerce Act;	Bidder	None
(b) (Independent Adviser) the Independent Adviser provides an Independent Adviser’s Report to Shareholders which concludes that the Consideration is within or above the Independent Adviser’s valuation range for the Shares and, pursuant to clause 1.6, if the Independent Adviser issues an updated, replacement or	Target	Target

CONDITION	RESPONSIBILITY	WAIVER
supplementary report prior to the date of the Scheme Meeting that the Consideration continues to be within or above the Independent Adviser's revised valuation range for the Shares;		
(c) (Shareholder approval) Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Target	None
(d) (Court approval) subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Target	None
(e) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Bidder and the Target	Bidder and the Target
(f) (No Target Prescribed Occurrence) no Target Prescribed Occurrence occurs during the period commencing on the date of this Agreement and ending at 8.00am on the Implementation Date;	Target	Bidder
(g) (No Bidder Prescribed Occurrence) no Bidder Prescribed Occurrence occurs during the period commencing on the date of this Agreement and ending at 8.00am on the Implementation Date;	Bidder	Target
(h) (No Target Material Adverse Change) no Target Material Adverse Change occurs during the period commencing on the date of this Agreement and ending at 8.00am on the Implementation Date; and	None	Bidder
(i) (No Bidder Material Adverse Change) no Bidder Material Adverse Change occurs during the period commencing on the date of this Agreement and ending at 8.00am on the Implementation Date.	None	Target

- 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 form of Scheme Plan attached as Schedule Six, then each such term or condition must be approved in writing by the Target and the Bidder (both acting reasonably) prior to the Court granting the Final Orders.
- 3.3 **Satisfaction of Conditions:** In respect of each Condition:
- (a) Each party specified in the “Responsibility” column of the table in clause 3.1 opposite that Condition (the “**Responsible Party**”) must use reasonable endeavours to apply for, seek, or procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(d), as soon as practicable and in any event before the End Date; and
 - (ii) in the case of the Conditions in clauses 3.1(e) to 3.1(i), at all times before 8.00am on the Implementation Date.
 - (b) The other party must:
 - (i) co-operate with the Responsible Party towards satisfying each Condition; and
 - (ii) subject to applicable laws relating to the exchange of information and the Communication and Information Sharing Protocols, promptly provide all information and other assistance reasonably required by the Responsible Party for the purposes of procuring the satisfaction of the Condition.
 - (c) Each party must not, directly or indirectly, take any action for the purpose of deliberately hindering, subverting, undermining or preventing the satisfaction of the Condition, except to the extent that such action is required by law.
 - (d) No party will be in breach of its obligations under clause 3.3(b) or 3.3(c) to the extent that it takes an action or omits to take an action that is expressly required or expressly permitted to be done, or expressly permitted not to be done, under or in accordance with this Agreement.
 - (e) The Target will not be in breach of its obligations under clause 3.3(b) or 3.3(c) if it takes, or omits to take, an action in response to a Competing Proposal to the extent permitted by clause 14.
 - (f) Nothing in this clause 3.3 will require any party to incur any additional costs (other than customary adviser costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (including in relation to the NZCC Condition any undertakings to dispose of any business or assets of either the Target Group or the Bidder Group).
- 3.4 **Specific obligations relating to NZCC Condition:** Without limiting clauses 3.3 and 3.5, in respect of the NZCC Condition:
- (a) the Bidder must, subject to clause 3.4(b):
 - (i) provide the Target with a draft of the NZCC Application and take any reasonable comments made by the Target into account in good faith before finalising the NZCC Application;

- (ii) submit the draft NZCC Application to the NZCC soon as practicable and, in any event, by no later than the date specified in the Timetable;
 - (iii) as soon as practical after the form of the NZCC Application has been finalised with the NZCC, register the NZCC Application with the NZCC for the purpose of fulfilling the NZCC Condition;
 - (iv) promptly and diligently progress the NZCC Application so as to expedite satisfaction of the NZCC Condition;
 - (v) use its reasonable endeavours to provide all notices, information and documents requested by the NZCC to the NZCC promptly, and in any event within the timeframes set by the NZCC;
 - (vi) consult with the Target in advance of all material communications (written or oral) with the NZCC relating to the NZCC Application or the Transaction and take any reasonable comments made by the Target into account in good faith before finalising the relevant communication;
 - (vii) provide the Target with copies of any material written communications sent to or received from the NZCC, and written summaries of any material conversations with the NZCC, in relation to the NZCC Application or the Transaction, promptly on sending or receipt or after conclusion of the conversation (as the case may be);
 - (viii) allow the Target's external legal counsel the opportunity to be present at any meetings (including remote meetings) with the NZCC, where the Target's external legal counsel's presence is acceptable to the NZCC;
 - (ix) not resile from or change, with a consequence that may be adverse to the prospects of satisfying the NZCC Condition, any of the assurances or commitments provided by the Bidder to the NZCC in connection with the NZCC Application; and
 - (x) other than on termination of this Agreement, once the NZCC Application have been submitted to the NZCC, not (without the Target's prior written consent):
 - (A) withdraw or procure the withdrawal of the NZCC Application; or
 - (B) amend the NZCC Application in any manner that may be adverse to the prospects of satisfying the NZCC Condition;
- (b) the Bidder may, prior to providing any application, communication, document or information to the Target under clause 3.4(a), redact any information that the Bidder, acting reasonably and in good faith, considers to be competitively or commercially sensitive or personal information;
- (c) the Target must, subject to clause 3.4(d):
- (i) use its reasonable endeavours to provide all notices, information and documents requested by the NZCC to the NZCC promptly, and in any event within the timeframes set by the NZCC;

- (ii) consult with the Bidder in advance of all material communications (written or oral) with the NZCC relating to the NZCC Application or the Transaction and take any reasonable comments made by the Bidder into account in good faith before finalising the relevant communication; and
 - (iii) provide the Bidder with copies of any material written communications sent to or received from the NZCC, and written summaries of any material conversations with the NZCC, in relation to the NZCC Application or the Transaction, promptly on sending or receipt or after conclusion of the conversation (as the case may be); and
 - (iv) allow the Bidder's external legal counsel the opportunity to be present at any meetings (including remote meetings) that Target has with the NZCC in connection with the Transaction, where the Bidder's external legal counsel presence is acceptable to the NZCC;
- (d) the Target may, prior to providing any application, communication, document or information to the Bidder under clause 3.4(c), redact any information that the Target, acting reasonably and in good faith, considers to be information that relates to an Excluded Matter, competitively or commercially sensitive information or personal information; and
- (e) in sharing information under this clause 3.4 or otherwise taking action as contemplated by this clause 3.4 (including by way of external legal counsel being present at any meeting with the NZCC under clause 3.4(a)(viii) or 3.4(c)(iv)), each party shall observe the terms of the Communication and Information Sharing Protocols and otherwise act in accordance with the Commerce Act.

3.5 Notifications:

- (a) Each party will keep the other parties fully informed as to the progress made towards procuring the satisfaction of the Conditions.
- (b) If it becomes known that:
 - (i) a Condition has become incapable of satisfaction;
 - (ii) any event or change of circumstances occurs that is reasonably likely to prevent any Condition in any of clauses 3.1(a), 3.1(c) and 3.1(d) being satisfied by 5.00pm on the date that is 10 Business Days before the End Date; or
 - (iii) any event or change of circumstances occurs that is reasonably likely to cause the Condition in any of clauses 3.1(e), 3.1(f) and 3.1(g) to not be satisfied as at 8.00am on the Implementation Date,

the party with that knowledge will promptly inform the other parties in writing, and in any event within two Business Days after the relevant fact having become known to that party.
- (c) Each party must notify the other parties 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.

- (d) The parties agree that clause 8.5 applies in respect of the Condition in clause 3.1(b) and clauses 3.10 and 3.11 apply in respect of the Conditions in clause 3.1(h) and clause 3.1(i).

3.6 **Waiver of Conditions:** Where the “Waiver” column of the table in clause 3.1 opposite a Condition states “none”, that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the “Waiver” column of the table in clause 3.1 opposite that Condition, that party; or
- (b) if both the Target and the Bidder are specified in the “Waiver” column of the table in clause 3.1 opposite that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

3.7 **Method of waiver:** Where a Condition may be waived by:

- (a) the Target, the Target may only waive the Condition by giving notice to the Bidder; and
- (b) the Bidder, the Bidder may only waive the Condition by giving notice to the Target.

Where a Condition may only be waived by both the Target and the Bidder, those parties may only waive the Condition by agreeing in writing to do so.

3.8 **Effect of waiver:** If a party waives or joins in the waiver of 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.

3.9 **Delay in satisfaction of Conditions:**

- (a) If a party gives notice under clause 3.5(b)(ii) or 3.5(b)(iii) then, without limiting clause 2.5(d), the parties must:
 - (i) if a change to the Timetable or an extension of the End Date would, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, consult in good faith about whether to change the Timetable and/or extend the End Date; or
 - (ii) if a change of the Timetable or an extension to the End Date would not, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, consult in good faith about whether the Transaction may proceed by way of alternative means or methods.
- (b) If the NZCC Condition is satisfied on or after the date that is 50 Business Days before the End Date, the End Date is automatically extended (without the need for any action by any party) to the date which is 50 Business Days after the date the NZCC Condition is satisfied.

- (c) For the avoidance of doubt, if the End Date is extended under this Agreement or by agreement between the parties, this clause 3.9 will apply in respect of each successive End Date.

3.10 Notice of Adverse Circumstances:

- (a) If, prior to 8.00am on the Implementation Date, the Target or the Bidder becomes aware of an event or circumstance that it considers in good faith will give rise to, or there is a reasonable possibility that it will give rise to, a Target Material Adverse Change or a Bidder Material Adverse Change (in each case, an “**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 3.10).
- (b) After notice of Adverse Circumstance is given under clause 3.10(a), the parties must consult in good faith for at least five 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.
- (c) If a party gives notice of an Adverse Circumstance under clause 3.10(a) after the date that is five Business Days prior to the Implementation Date, the parties must consult in good faith about whether to extend the Implementation Date with a view to providing the parties with at least five Business Days to consult under clause 3.10(b). For clarity, this clause 3.10(c) does not oblige a party to agree to any extension to the Implementation Date.

3.11 Additional MAC requirements:

- (a) If either party gives notice of an Adverse Circumstance under clause 3.10(a), then that notice must also include all material details of the relevant Adverse Circumstance to the extent actually known by the party at the time, including, to the extent reasonably practicable in the circumstances (including having regard to timing and the nature and extent of the damage or destruction), the party’s good faith quantification of the estimated financial impact of the Adverse Circumstance and copies of workings and relevant materials used to calculate such financial impact.
- (b) If either party receives notice from the other party of an Adverse Circumstance under clause 3.10(a), then, provided that the party who gave the notice included in its notice details of the Adverse Circumstance in compliance with clause 3.11(a), the party who received the notice must respond in writing to the other party within three Business Days after receiving that notice (or, if shorter, by no later than 5.00pm on the day prior to the Implementation Date) setting out all material details of the relevant Adverse Circumstance to the extent actually known by the party at the time, including, to the extent reasonably practicable in the circumstances (including having regard to timing and the nature and extent of the damage or destruction), the party’s good faith quantification of the estimated financial impact of the Adverse Circumstance and copies of workings and relevant materials used to calculate such financial impact.
- (c) For clarity, clause 3.11(b) will not apply if a party gives notice of an Adverse Circumstance under clause 3.10(a) after 5.00pm on the day prior to the Implementation Date (unless the Implementation Date is extended by agreement between the parties).

3.12 **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 16.

4. SCHEME BOOKLET

4.1 **Target's obligations:** Without limiting clause 2, the Target must:

- (a) subject to clause 4.3(a), prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Schemes Guidance Note, the Companies Act and any other applicable laws;
 - (ii) all information requested or required by the Takeovers Panel in order for the Target to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement;
 - (iii) the responsibility statements referred to in clause 4.5; and
 - (iv) unless there has been a change of recommendation, and subject to the Independent Adviser in the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares, the Director Recommendation,

on the understanding that the Bidder will rely (including as contemplated by clause 4.6) on the Target Information for the purposes of preparing the Bidder Information for inclusion in the Scheme Booklet;
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment) and:
 - (i) provide all assistance and information that is reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report; and
 - (ii) in respect of information provided by the Target to the Independent Adviser, provide that information in good faith and in accordance with clause 5.6 and on the understanding that the Independent Adviser will rely on that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet;
- (c) subject to clause 4.2(c), when it considers in good faith that the draft Scheme Booklet is sufficiently advanced and suitable for review, provide successive drafts of the Scheme Booklet to the Bidder;
- (d) subject to clause 4.2(c), provide the Bidder with a reasonable opportunity to review the drafts of the Scheme Booklet provided under clause 4.1(c) and consider in good faith the reasonable comments of the Bidder and its Representatives when preparing revised drafts of the Scheme Booklet;
- (e) subject to clause 4.2(c), 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 the Bidder with a request for the Bidder's consent and confirmation referred to in clauses 4.3(e) and 4.3(i);

- (f) after receipt of the consent and confirmation from the Bidder referred to in clauses 4.3(e) and 4.3(i) and in accordance with the Timetable, provide the Takeovers Panel with the draft Scheme Booklet together with an application for a Letter of Intention (as contemplated by clause 5.1(a));
- (g) keep the Bidder reasonably informed of any matters raised by the Takeovers Panel in relation to the Scheme Booklet (other than matters that relate to an Excluded Matter or to the Independent Adviser's Report) and consult with the Bidder to resolve any such issues expeditiously (provided that, where such issues relate to the Bidder Information, the Target will not take any steps to address them without the Bidder's written consent, not to be unreasonably withheld);
- (h) after:
 - (i) the Takeovers Panel has completed its review of the Scheme Booklet; and
 - (ii) the Takeovers Panel has provided the Letter of Intention contemplated by clause 5.1(a), and in accordance with the Timetable the Target must comply with clause 5.1(d) (which provides for the Target to apply to the Court for Initial Orders and provide the draft Scheme Booklet to the Court);
- (i) after:
 - (i) the Court has granted the Initial Orders;
 - (ii) the NZCC Condition has been satisfied;
 - (iii) the Bidder has provided the second confirmation referred to in clause 4.3(i); and
 - (iv) the Bidder has issued a Cleansing Notice under clause 5.2(c),
comply with clauses 5.1(e) and (f) (which provide for the Scheme Booklet to be sent to Shareholders and to the NZX); and
- (j) prior to the Scheme Booklet being publicly released, the Target must:
 - (i) keep the Target Information in the Scheme Booklet updated so that it complies with clause 4.1(a), including by:
 - (A) incorporating any new information of which the Target becomes aware which should be included in the Scheme Booklet under clause 4.1(a)(i); and
 - (B) addressing any matter in the Target Information which the Target considers may be misleading or deceptive in any material respect, including by omission;
 - (ii) provide the Bidder with a reasonable opportunity to consider any amendment to the Scheme Booklet proposed to be made under sub-clause (i) and consider in good faith the reasonable comments of the Bidder and its Representatives in respect of the amendment;
 - (iii) comply with clause 4.6(d) in respect of any amendments to the Scheme Booklet made under clause 4.1(j)(i);
 - (iv) continue to comply with clause 4.1(b) in respect of the provision of information and assistance to the Independent Adviser,

- (v) if:
 - (A) the Target amends the Target Information under clause 4.1(j)(i);
 - (B) the Bidder amends the Bidder Information under clause 4.3(f)(i); or
 - (C) the Independent Adviser amends the Independent Adviser's Report,
 take one or more of the following actions if the Target considers it necessary or appropriate in the circumstances (for example, where the Takeovers Panel has previously completed its review of the Scheme Booklet or the Court has granted Initial Orders):
 - (D) engage with the Takeovers Panel regarding updates to the Scheme Booklet and any implications of that disclosure for the Letter of Intention or No-objection Statement; and
 - (E) seek the Court's guidance in respect of such updates to the Scheme Booklet; and
- (k) after the Scheme Booklet has been publicly released, notify the Bidder if the Target becomes aware either:
 - (i) of new information (other than information relating to an Excluded Matter) which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under clause 4.1(a)(i); or
 - (ii) that any part of the Scheme Booklet is misleading or deceptive in any material respect, including by omission (except in respect of information relating to an Excluded Matter),
 and, if in either case the Target becomes aware, or if the Target receives a notification from the Bidder under clause 4.3(f):
 - (iii) between the date the Scheme Booklet is publicly released and the date of the Scheme Meeting, then, if considered by the Target that supplementary disclosure is required, the Target will:
 - (A) provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with the Bidder in good faith as to the content and presentation of that supplementary disclosure and taking into account the Bidder's reasonable comments; and
 - (B) if the Target, in its discretion, considers it necessary or appropriate, take one or more of the following actions: (x) engage with the Takeovers Panel regarding the supplementary disclosure and any implications of that disclosure for the Letter of Intention or No-objection Statement; (y) seek the Court's guidance in respect of such supplementary disclosure; and (z) adjourn or reschedule the Scheme Meeting to the earliest possible date that will allow Shareholders to consider the supplementary disclosure or any other date ordered by the Court or required by the Takeovers Panel in order for the Target to maintain the Letter of Intention or obtain from the Takeovers Panel a No-objection Statement; and

(iv) between the date of the Scheme Meeting and the Second Court Date, if considered by the Target, in its discretion, that supplementary disclosure is required, take one or more of the following actions:

- (A) engage with the Takeovers Panel regarding the supplementary disclosure and any implications of that disclosure for the Letter of Intention or No-objection Statement; and
- (B) apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme,

after consulting with the Bidder in good faith and taking into account the Bidder's reasonable comments.

4.2 **Independent Adviser's Report:**

- (a) The Bidder acknowledges and agrees that it is the Independent Adviser, and not the Target, that determines (in the Independent Adviser's absolute discretion) when, and in what form, the draft Independent Adviser's Report (or extracts from that report) is to be provided to the Bidder.
- (b) Subject to clauses 4.2(a) and 4.2(d), the Target will use reasonable endeavours to obtain the Independent Adviser's consent to provide the Bidder:
 - (i) extracts of the Independent Adviser's Report that refer to factual information about the Bidder Group before the Target applies to the Takeovers Panel for the Letter of Intention under clause 5.1(a), for the purposes of allowing the Bidder to provide comments on that factual information; and
 - (ii) a copy of the Independent Adviser's Report that is provided to the Court with the application for Initial Orders under clause 5.1(d), at the same time it is provided to the Court.
- (c) The Bidder agrees that references in clauses 4.1(c), 4.1(d) and 4.1(e) to the Scheme Booklet excludes the Independent Adviser's Report and that the Target is not required to provide the Bidder with the Independent Adviser's Report in connection with the provision of draft Court documents under clause 7.1.
- (d) The Target is not required to take any action in respect of the Independent Adviser's Report that may be inconsistent with the Schemes Guidance Note or that may compromise the Takeovers Panel's approval of the Independent Adviser or result of the Takeovers Panel withdrawing that approval.

4.3 **Bidder's obligations:** Without limiting clause 2, the Bidder must:

- (a) prepare and provide the Target, for inclusion in the Scheme Booklet:
 - (i) information:
 - (A) about the Bidder Group; and

- (B) equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required under the Schemes Guidance Note, the Companies Act and any other applicable laws or as requested or required by the Takeovers Panel in order for the Target to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement; and

- (ii) without limiting sub-clause (i), information:

- (A) concerning the Bidder Group's financing, risks, business, dealings in Shares and the New Bidder Shares;

- (B) regarding the Merged Group (including pro forma capital structure, pro forma financial information); and

- (C) relating to the Scrip Consideration,

that the Bidder, acting reasonably and in good faith and in consultation with the Target, determines is appropriate to include in the Scheme Booklet as a result of the Scrip Consideration forming part of the Consideration,

on the understanding that the Target will rely (including as contemplated by clause 4.6) on the Bidder Information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme. If the Target, acting reasonably and in good faith, notifies the Bidder that the Target considers that the Bidder Information is insufficient to ensure that Shareholders are able to make an appropriately informed voting decision on the Scheme Resolution, the following provisions will apply:

- (D) the parties will consult, in good faith and acting reasonably, to resolve that concern and, pending agreement between the parties in writing or resolution in accordance with sub-clause (E), the Target is not required to take any action contemplated by clause 4.1(f), 4.1(h) or 4.1(i); and

- (E) if after the parties have consulted in good faith and acting reasonably in accordance with sub-clause (D) and are unable to reach agreement on the relevant matter within a reasonable period, then the following will apply:

- (aa) if the relevant information must be included in the Scheme Booklet in order for the Scheme Booklet to comply with the Schemes Guidance Note, the Companies Act or any other applicable laws or in order for the Target to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement, then the relevant matter must be included in the Scheme Booklet; or

- (bb) if sub-clause (aa) does not apply, then the Bidder's position on the relevant matter will prevail;

- (b) when it considers in good faith that the draft of the information referred to in clause 4.3(a) is sufficiently advanced and suitable for review, provide the Target with successive drafts of that

information in a timely manner, provide a reasonable opportunity to the Target to review those drafts, and consider in good faith the reasonable comments of the Target and its Representatives when preparing revised drafts of that information;

- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report and, in respect of information provided by the Bidder to the Independent Adviser, provide that information in accordance with clause 5.6 and on the understanding that the Independent Adviser will rely on that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from the Target, review and promptly provide comments on that draft;
- (e) promptly following request by the Target, and before the Target provides the Scheme Booklet to the Takeovers Panel in accordance with clauses 4.1(f) and 5.1(a), deliver to the Target written consent from the Bidder to the inclusion of the Bidder Information in the Scheme Booklet in the form and context it appears;
- (f) prior to the Scheme Booklet being publicly released, the Bidder must:
 - (i) keep the Bidder Information in the Scheme Booklet updated, by notifying the Target of any such update, so that it complies with clause 4.3(a), including by:
 - (A) incorporating any new information of which the Bidder becomes aware and which should be included in the Scheme Booklet under clause 4.3(a); and
 - (B) addressing any matter in the Bidder Information which the Bidder considers may be misleading or deceptive in any material respect, including by omission;
 - (ii) provide the Target with a reasonable opportunity to consider any amendment proposed to be made under clause 4.3(f)(i) and consider in good faith the reasonable comments of the Target and its Representatives in respect of the amendment;
 - (iii) comply with clause 4.6(a) in respect of any amendments to the Scheme Booklet made under clause 4.3(f)(i); and
 - (iv) continue to comply with clause 4.3(c) in respect of the provision of information and assistance to the Independent Adviser;
- (g) after the Scheme Booklet has been publicly released, promptly notify the Target if the Bidder becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Bidder Information under any applicable law, the Schemes Guidance Note or any Takeovers Panel requirement in connection with the Letter of Intention contemplated by clause 5.1(a) or the No-objection Statement contemplated by clause 5.1(g); or
 - (ii) that any part of the Scheme Booklet is misleading or deceptive in a material respect, including by omission,

and if the Bidder provides such notification, the Target will consider whether to take any steps under clause 4.1(j);

- (h) procure that it is represented by counsel at any Court hearings convened for the purposes of considering the Initial Orders and the Final Orders (on the basis that clause 7 applies in respect of such hearings); and
- (i) promptly following request by the Target, and before a draft of the Scheme Booklet is provided to the Takeovers Panel by the Target, and again before the Scheme Booklet is sent to Shareholders, confirm in writing to the Target the accuracy and completeness of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.

4.4 **Bidder confirmations and approvals:** If the Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent under clause 4.3(e) or the confirmation under clause 4.3(i) then:

- (a) if the Target 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 Target must make such changes to the Bidder Information as the Bidder reasonably requires.

4.5 **Responsibility statements:** Without limiting clause 5.6 in relation to sub-clause (c) below, the Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) the Target has provided, and is responsible for, the Target Information in the Scheme Booklet, and that none of the Bidder, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Target Information;
- (b) the Bidder has provided, and is responsible for, the Bidder Information, and that none of the Target, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Bidder Information; and
- (c) the Independent Adviser has provided and is responsible for the Independent Adviser's Report and none of the Bidder, the Target, or their respective Related Companies or Representatives assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

4.6 **Verification and reliance:**

- (a) The Bidder agrees that, prior to providing the second confirmation contemplated by clause 4.3(i), it must, acting reasonably and in good faith, undertake and complete a due diligence and verification exercise:
 - (i) in respect of the Bidder Information to ensure that the Bidder Information does not contravene Part 2 of the FMCA or any other equivalent laws in Australia; and

- (ii) to ensure that the Bidder satisfies the requirements for reliance on the exclusion set out in clause 19 of schedule 1 of the FMCA, including the requirements set out in clauses 19 to 21 of schedule 8 of the FMCR, in respect of the Scrip Consideration (“**Relevant Provisions**”).
- (b) The Bidder agrees that:
 - (i) it is reasonable for the Target and the Directors to rely on the Bidder Information, including for the purposes of section 503 of the FMCA; and
 - (ii) the intention of sub-clause (a), taken together with clauses 4.3(i), 5.2(c), 5.2(d), 5.2(f) and the Bidder Warranties in clauses 10, 12 and 15 of Schedule Four, is to demonstrate that the Target has, and the Directors have, taken all reasonable steps to ensure the Bidder Information complies with Part 2 of the FMCA and that the Target and the Directors took all reasonable steps to ensure that the Bidder complied with the Relevant Provisions.
- (c) For the avoidance of doubt, sub-clause (b)(ii) does not limit clause 4.5. The Bidder acknowledges that it is solely responsible for the Bidder Information.
- (d) The Target agrees that, prior to sending the Scheme Booklet to Shareholders and NZX under clauses 5.1(e) and 5.1(f), it must, acting reasonably and in good faith, undertake and complete a due diligence and verification exercise in respect of the Target Information to ensure that the Target Information does not contravene Part 2 of the FMCA or any other equivalent laws in any other applicable jurisdiction.
- (e) The Target agrees that:
 - (i) it is reasonable for the Bidder to rely on the Target Information, including for the purposes of section 503 of the FMCA; and
 - (ii) the intention of sub-clause (d) is to demonstrate that the Bidder has taken all reasonable steps to ensure the Target Information complies with Part 2 of the FMCA.
- (f) For the avoidance of doubt, sub-clause (e)(ii) does not limit clause 4.5. The Target acknowledges that it is solely responsible for the Target Information.

4.7 **Other documents:** If, at any time, either party proposes to send any document or information to, or engage with as part of an in-bound or out-bound call regime, Shareholders generally (and not to a Shareholder, or a limited number of Shareholders, on a select basis) in connection with the Scheme, other than by way of sending the Scheme Booklet, the parties, acting reasonably and in good faith, will agree whether, and the extent to which, clause 4.6 will apply (with all necessary modifications) to that document or information or, in the case of an in-bound or out-bound call regime, the factual parts of the relevant script.

5. SCHEME IMPLEMENTATION STEPS

5.1 **Target’s obligations:** Without limiting clause 2, the Target must:

- (a) before applying to the Court for Initial Orders convening a Scheme Meeting, apply to the Takeovers Panel for a Letter of Intention;

- (b) prior to sending any material correspondence to the Takeovers Panel relating to the Scheme (other than correspondence relating to an Excluded Matter or, before the Target applies to the Court for Initial Orders, the Independent Adviser's Report), provide the Bidder with a draft of that correspondence and consider in good faith all of the reasonable comments of the Bidder on that correspondence;
- (c) promptly provide the Bidder with a copy of all material correspondence to and from the Takeovers Panel relating to the Scheme (other than correspondence relating to an Excluded Matter or, before the Target applies to the Court for Initial Orders, the Independent Adviser's Report);
- (d) after the Takeovers Panel has provided the Letter of Intention contemplated by clause 5.1(a), apply to the Court for Initial Orders convening the Scheme Meeting (including by providing the Court with the draft Scheme Booklet);
- (e) if the Court grants Initial Orders:
 - (i) release of a copy of the sealed Initial Orders through the NZX market announcement platform promptly after receipt of those sealed orders;
 - (ii) deliver a copy of the sealed Initial Orders to the Registrar for registration under section 236(4) of the Companies Act promptly after receipt of those sealed orders and by no later than 10 Business Days after the date the Initial Orders are granted;
 - (iii) subject to the Bidder issuing a Cleansing Notice under clause 5.2(c), in accordance with the Timetable, send the Scheme Booklet to Shareholders as soon as reasonably practicable following the date the NZCC Condition is satisfied and in accordance with the Initial Orders; and
 - (iv) in accordance with the Timetable, hold the Scheme Meeting and, at the Scheme Meeting, put the Scheme Resolution to Shareholders for a vote, in accordance with, and otherwise complying in all respects with, the Initial Orders;
- (f) on or before the Scheme Booklet is sent to Scheme Shareholders, subject to the Bidder issuing a Cleansing Notice under clause 5.2(c), release a copy of that Scheme Booklet through the NZX market announcement platform;
- (g) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act (and, if applicable, the Initial Orders):
 - (i) enter into, and use reasonable endeavours to procure that Computershare enters into, the Escrow Agreement before making the applications contemplated by clause 5.1(g)(ii); and
 - (ii) promptly apply to:
 - (A) the Takeovers Panel for a No-objection Statement; and
 - (B) the Court, after the Takeovers Panel has provided the No-objection Statement contemplated by clause 5.1(g)(ii)(A), for the Final Orders (on the basis that those

orders, if granted, will be subject to satisfaction or, if capable of waiver, waiver of the then-outstanding Conditions);

(iii) promptly apply to NZX to:

- (A) suspend trading in the Shares from the close of trading on the date that is two Business Days after the Final Orders Date, or such other date as may be agreed between the parties in writing;
- (B) cease quotation of the Shares, with effect from close of trading on the Implementation Date;
- (C) delist the Target with effect from close of trading on the Implementation Date, except to the extent that listing of the Target is required to be maintained in connection with the continued quotation after the Implementation Date of any quoted debt securities of the Target that is requested in writing to the Target by the Bidder; and
- (D) release the NZX bond applicable to the quotation of Shares and any related Encumbrances with effect from implementation of the Scheme,

and the Bidder acknowledges that:

- (E) NZX may not approve any such application until such time that the Final Orders are granted and the definitive dates for suspension, cessation of quotation and delisting are known; and
- (F) NZX may impose conditions on the release of the NZX bond and related Encumbrances, including payment of all outstanding amounts due to NZX;

(iv) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;

(h) prior to sending any material correspondence to NZX under clause 5.1(g)(iii), provide the Bidder with a draft of that correspondence (except to the extent such correspondence relates to an Excluded Matter) and consider in good faith all of the reasonable comments of the Bidder on that correspondence;

(i) in respect of the Target's application to NZX under clause 5.1(g)(iii):

- (i) promptly provide the Bidder with a copy of all material correspondence to and from NZX; and
- (ii) keep the Bidder reasonably informed of any matters raised by NZX and consult with the Bidder to resolve any such issues expeditiously,

provided that the Target is not required to provide the Bidder with any document or information to the extent it relates to an Excluded Matter;

(j) if the Court grants the Final Orders:

- (i) deliver to the Registrar for registration a copy of the sealed Final Orders for registration

in accordance with section 236(4) of the Companies Act promptly after receipt of the sealed orders and by no later than 10 Business Days after the date the Final Orders are granted; and

- (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration; and
- (k) if the Scheme becomes Effective:
 - (i) subject to the Bidder satisfying its obligations under clause 5.2(i), give effect to the transfer of the Scheme Shares to the Bidder in accordance with the Scheme on the Implementation Date; and
 - (ii) do all other things contemplated of it under the Scheme for the implementation of the Transaction in accordance with the Scheme Plan and the Final Orders.

5.2 **Bidder's obligations:** Without limiting clause 2, the Bidder must:

- (a) on the date of this Agreement, deliver to the Target the Deed Poll executed by the Bidder;
- (b) prior to providing the second confirmation contemplated by clause 4.3(i) appoint, for brokerage which is reasonable, a person which is an NZX Trading and Advising Participant as the Sale Agent on terms as are necessary to ensure compliance with the Scheme Plan and any waiver granted by NZ RegCo to the Bidder in respect of the Ineligible Overseas Shareholders;
- (c) immediately prior to the Target sending the Scheme Booklet to Scheme Shareholders and NZX under clauses 5.1(e) and 5.1(f), provide a notice to NZX that complies in all respects with clause 20 of schedule 8 of the FMCR ("**Cleansing Notice**");
- (d) comply with clause 21 of schedule 8 of the FMCR if the Bidder becomes aware that the Cleansing Notice is "defective" (as that term is defined in clause 21(3) of schedule 8 of the FMCR);
- (e) in respect of each Scheme Shareholder who does not have a New Zealand address on the Register but who is not an Ineligible Overseas Shareholder, do all things necessary to ensure that the Scrip Consideration may be offered and issued to that Scheme Shareholder in compliance with the applicable laws of that jurisdiction;
- (f) do all things reasonably necessary to obtain the quotation of the New Bidder Shares on the NZX and ASX, with effect from the open of trading on the first Business Day after the Implementation Date (or such later date as NZX or ASX may require, as applicable);
- (g) where the Target or its Representatives provides any document, communication or other information to the Bidder or its Representatives for review or comment under or in connection with this Agreement, promptly undertake that review in good faith and promptly respond to the Target;
- (h) promptly after being requested to do so by the Target (and, in any event, before the Target files the application for Final Orders with the Court) and subject to the Scheme Resolution having been passed at the Scheme Meeting, deliver to the Target a copy of the Escrow Agreement executed by the Bidder;

- (i) pay, so that it is received in cleared and immediately available funds by no later than the Escrow Payment Date, the aggregate amount of the Cash Consideration payable to Scheme Shareholders to a New Zealand dollar denominated trust account operated by Computershare, in accordance with the Scheme Plan, the Deed Poll and the Escrow Agreement;
- (j) if the Scheme becomes Effective:
 - (i) provide an “Unconditional Notice” (as defined in the Escrow Agreement) to Computershare (as escrow agent) under the Escrow Agreement, promptly after 8.00am and, in any event, before 9.00am on the Implementation Date;
 - (ii) on the Implementation Date:
 - (A) accept a transfer of the Scheme Shares;
 - (B) pay, or procure the payment of, the Cash Consideration to each Scheme Shareholder in accordance with clause 2.3, the Scheme Plan and the Deed Poll; and
 - (C) issue the Scrip Consideration to each Scheme Shareholder in accordance with clause 2.3, the Scheme Plan and the Deed Poll; and
 - (iii) do all other things contemplated of it under the Scheme for the implementation of the Scheme and the Transaction in accordance with this Agreement, the Scheme Plan and the Final Orders.

5.3 **Lowest Price:** For the purposes of the financial arrangements rules in the Income Tax Act 2007:

- (a) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Scheme Share, on the date this Agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being the Scheme Shares) was transferred, and is the value of each such Scheme Share;
- (b) the Bidder Share price that has been used to determine the number of New Bidder Shares to be issued for each Scheme Share as the Scrip Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the issue of each New Bidder Share to the Scheme Shareholders, on the date this Agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being the New Bidder Shares) was transferred, and is the value of each such New Bidder Share; and
- (c) the Bidder agrees that it will compute its taxable income for the relevant period on the basis that the Consideration for the Scheme Shares and the consideration for the New Bidder Shares (as described in paragraph (b)) include no capitalised interest and will file its Tax returns accordingly.

5.4 **Target Conditions certificate:**

- (a) Subject to clause 5.4(b):
 - (i) between 8.00am and midday on the day that is one Business Day after the later of:

- (A) the Final Orders Date; and
- (B) the date on which the Bidder has notified the Target that the NZCC Condition is satisfied;
- (ii) between 8.00am and midday on the day before the Implementation Date; and
- (iii) between 6.00am and 7.00am on the Implementation Date,

the Target must give the Bidder a certificate from the Target signed by the Target Group CEO and CFO (or any alternative signatories who are approved by the Bidder in writing (such approval not to be unreasonably withheld or delayed)) stating that, so far as the Target is aware:

- (iv) except to the extent previously waived, the Conditions in clauses 3.1(e), 3.1(f) and 3.1(h) would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to the Bidder and the Target is not aware of anything that would prevent those Conditions being satisfied;
- (v) it is not in breach of clause 9.4 or 11.1; and
- (vi) there has not been any breach of any other provision of this Agreement by the Target which might reasonably be expected to entitle the Bidder to terminate under clause 16,

(“**Target Certificate**”).

- (b) If any of the statements referred to in clause 5.4(a) would be inaccurate, the Target must provide a qualified Target Certificate setting out reasonable details of the matters which cause or are likely to cause that certificate not to be accurate.
- (c) For the avoidance of doubt
 - (i) a Target Certificate is signed by the Target Group CEO and CFO (or any other signatory approved by the Bidder in writing) in his or her capacity as an officer of the Target, and in no other capacity; and
 - (ii) no personal liability will be assumed by the Target Group CEO or CFO (or any other signatory approved by the Bidder in writing) as a result of the statements in the Target Certificate.

5.5 **Bidder Conditions certificate:**

- (a) Subject to clause 5.5(b):
 - (i) between 8.00am and midday on the day that is one Business Day after the later of:
 - (A) the Final Orders Date; and
 - (B) the date on which the Bidder has notified the Target that the NZCC Condition is satisfied;
 - (ii) between 8.00am and midday on the day before the Implementation Date; and
 - (iii) between 6.00am and 7.00am on the Implementation Date,

the Bidder must give the Target a certificate from the Bidder signed by the Bidder Group CEO and CFO (or any alternative signatories who are approved by the Target in writing (such approval not to be unreasonably withheld or delayed)) stating that, so far as the Bidder is aware:

- (iv) except to the extent previously waived, the Conditions in clauses 3.1(e), 3.1(g) and 3.1(i) would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to the Target and the Bidder is not aware of anything that would prevent those Conditions being satisfied; and
- (v) there has not been any breach of any other provision of this Agreement by the Bidder which might reasonably be expected to entitle the Target to terminate under clause 16, (“**Bidder Certificate**”).

(b) If any of the statements referred to in clause 5.5(a) would be inaccurate, the Bidder must provide a qualified Bidder Certificate setting out reasonable details of the matters which cause or are likely to cause that certificate not to be accurate.

(c) For the avoidance of doubt:

- (i) a Bidder Certificate is signed by the Bidder Group CEO and CFO (or any other signatory approved by the Target in writing) in his or her capacity as an officer of the Bidder, and in no other capacity; and
- (ii) no personal liability will be assumed by the Bidder Group CEO or CFO (or any other signatory approved by the Target in writing) as a result of the statements in the Bidder Certificate.

5.6 **Provision of information to the Independent Adviser:** Each party must, in relation to any information that it or any of its Representatives provides to the Independent Adviser in connection with the preparation of the Independent Adviser’s Report (“**IAR Information**”):

- (a) prepare and provide that IAR Information to the Independent Adviser in good faith (including by having regard to material risks, opportunities and adverse circumstances);
- (b) to the extent any IAR Information contains any Forward Looking Information, prior to that Forward Looking Information being provided to the Independent Adviser, ensure that:
 - (i) the provision of that Forward Looking Information to the Independent Adviser has been approved, in respect of the Target by the Board and in respect of the Bidder by the board of the Bidder;
 - (ii) the IAR Information has been prepared with the same level of care and diligence that the Target or the Bidder (as applicable) would apply to the preparation of the financial model in relation to its impairment testing;
 - (iii) the IAR Information and the assumptions on which it is prepared are reasonable and appropriately balances any relevant risks and opportunities; and
 - (iv) any development projects or other new business opportunities for the Target Group (in respect of the Business) or the Bidder Group (in respect of its business) set out in the IAR

Information are commercially realistic, having regard to factors relevant to the particular stage at which such development project or business opportunity is at; and

- (c) any information that may be adverse in any material respect to the financial performance, position or prospects of the Target Group which is known by any Director or Senior Manager (as defined in the NZX Listing Rules) at any time prior to the Scheme Meeting, but which had not previously been provided to the Independent Adviser, is promptly provided to the Independent Adviser.

5.7 **Obligation on becoming a Shareholder:** If, prior to the date of the Scheme Meeting, the Bidder or any Associate of the Bidder acquires, legal and/or beneficial ownership of any Shares, the Bidder must (or must procure such Associate to, as the case may be) as soon as reasonably practicable enter into a deed poll in the form set out in the Schemes Guidance Note, in favour of the Takeovers Panel, under which the Bidder (or such Associate, as the case may be) agrees to vote the relevant Shares in favour of the Scheme Resolution at the Scheme Meeting. Nothing in this clause 5.7, represents a waiver of, or variation to, clause 7.1 of the Confidentiality Agreement (which deals with prohibitions on insider trading).

6. OTHER TRANSACTION OBLIGATIONS

6.1 Promotion of Transaction:

- (a) During the Exclusivity Period, subject to:
 - (i) there being no Superior Proposal; and
 - (ii) the Independent Adviser concluding in the Independent Adviser's Report that the Consideration is within or above the Independent Adviser's valuation range for the Shares and, pursuant to clause 1.6, the Independent Adviser continuing to conclude in any updated, replacement or supplementary report issued prior to the date of the Scheme Meeting that the Consideration is within or above the Independent Adviser's revised valuation range for the Shares,

the Target will, subject to clause 4.7 (to the extent applicable in the circumstances), use reasonable endeavours to promote, and will provide reasonable cooperation to the Bidder in promoting, the merits of the Transaction to Shareholders, including by:

- (iii) complying with any reasonable request by the Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and provide the information obtained as a result of requiring such disclosure to the Bidder;
- (iv) providing, subject to the Target's statutory or contractual obligations, such information within the possession or control of the Target Group regarding Shareholders and their holdings as the Bidder reasonably requests;
- (v) procuring that Computershare provides to the Bidder, in the form reasonably requested by the Bidder, details of the Register to facilitate the canvassing of Shareholders by the Bidder (provided that such canvassing complies with clause 6.1(d)) or the payment by the

Bidder of the Consideration in accordance with this Agreement, the Scheme and the Deed Poll;

- (vi) retaining the services of a proxy solicitation firm approved by the Bidder to, following the despatch of the Scheme Booklet to Shareholders, subject to clause 4.7 (to the extent applicable in the circumstances), actively solicit affirmative proxies for the Scheme and, following the sending of the Scheme Booklet to Shareholders, provide the Bidder with daily proxy updates in respect of the Scheme Meeting (including an aggregate tally of votes received by the Target in respect of the Scheme);
- (vii) promptly reporting to the Bidder any information the Target becomes aware of regarding opposition to the Scheme by the Shareholders (excluding unsubstantiated rumours or similar information or opposition by any individual shareholder holding an immaterial number of shares);
- (viii) subject to clause 4.7 (to the extent applicable in the circumstances), procuring that senior executives of the Target Group are available on reasonable notice to:
 - (A) meet (in person or remotely, as reasonably request by the Bidder) with key Shareholders if reasonably requested to do so by the Bidder; and
 - (B) communicate with the employees, joint venture partners (if any) and key suppliers of the Target Group if reasonably requested to do so by the Bidder,in each case to discuss and promote the Transaction with such persons; and
- (ix) undertaking, in co-operation with the Bidder, subject to clause 4.7 (to the extent applicable in the circumstances), other reasonable actions to promote the affirmative vote of Shareholders for the Transaction, as reasonably requested by the Bidder.

(b) Clauses 9.3(a) to 9.3(g) will apply to clause 6.1(a) with all necessary modifications.

(c) The Target and the Bidder will use reasonable endeavours to agree, as soon as practicable after the date of this Agreement, key messaging and principles to govern all communications between the Bidder (or any representative of the Bidder) and Shareholders (“**Communication Principles**”), which will apply throughout the period that the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme.

(d) During the period the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, the Bidder must not, directly or indirectly:

- (i) send information or correspondence to Shareholders;
- (ii) call Shareholders as part of an outbound call programme or other similar communication; or
- (iii) otherwise engage in proxy solicitation or other programme of canvassing of Shareholders,

in connection with the Scheme (together, the “**Bidder Shareholder Communications**”), without first providing the Target with a draft of the Bidder Shareholder Communication in a

timely manner and so that the Target has a reasonable opportunity to review and comment on that draft, and consider in good faith the reasonable comments of the Target and its Representatives when preparing a revised draft of the relevant Bidder Shareholder Communication. Nothing in this clause 6.1(d) will apply in the case of an unscheduled in-bound call received by the Bidder or its Representatives from any Shareholder or any out-bound call made by Bidder or its Representatives to one or a small number of Shareholders (rather than Shareholders generally) on a discrete or ad hoc basis, provided that the Bidder will act, and will ensure that its Representatives act, consistently with the Communications Principles (once agreed pursuant to 6.1(c)) in conducting any such calls.

- (e) Without limiting clause 6.1(d), the Bidder must ensure that any information and correspondence provided to, and call scripts used to call Shareholders (and the calls themselves):
 - (i) are verified on the basis contemplated by clause 4.7;
 - (ii) comply with all applicable laws, including the FMCA and the Fair Trading Act 1986;
 - (iii) are not misleading or deceptive, including by omission; and
 - (iv) during the period that the Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, comply with the Communication Principles (once agreed pursuant to clause 6.1(c)).

6.2 **Board changes:** Subject to the Consideration having been provided to Shareholders and the Bidder providing evidence to the Directors of this (including an updated share register of the Target showing the issue of the Scrip Consideration to the Scheme Shareholders):

- (a) the Target must procure that:
 - (i) such persons as the Bidder nominates (by notice to the Target no later than five Business Days before the Implementation Date) and who are legally entitled to be appointed and who have provided to the Target a signed consent to act by that time are appointed as directors of the Target on the Implementation Date (by no later than 5.00pm); and
 - (ii) unless otherwise agreed by the Bidder in writing, each Director and, if requested by the Bidder, any director of the other Target Group members, other than those appointed in accordance with clause 6.2(a)(i), resigns as a director of each relevant member of the Target Group 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 Target Group other than for accrued but unpaid directors fees and expenses (or, in respect of any executive directors, any accrued employee remuneration). For clarity, an acknowledgement provided under this clause 6.2(a) does not limit that person's right to make a claim under any applicable indemnity or insurance policy; and
- (b) for continuity and to support integration with the Target Group business and assets, and growth of the combined business, the Bidder will ensure that Deion Campbell is appointed as a director of the Bidder on the Implementation Date (by no later than 5.00pm) under clause 46.2 of the Bidder's constitution, provided that:

- (i) Deion Campbell has provided to the Bidder a signed consent to act by that time; and
- (ii) such appointment right would not result in any Shareholder or Shareholders forming part of a separate interest class (as referred to in section 236A(4) of the Companies Act) for the purposes of voting on the Scheme Resolution.

6.3 **Target Permitted Dividend:**

- (a) Prior to the Implementation Date, but subject to compliance with all relevant laws, the Target may authorise and pay a dividend (which may carry imputation credits as provided by this clause) together with any related supplementary dividend (as defined in s YA 1 of the Income Tax Act 2007) (such dividend being the “**Target Permitted Dividend**”), provided the quantum of such Target Permitted Dividend is consistent with the Target’s normal practice.
- (b) The Target may attach imputation credits to the Target Permitted Dividend, provided that:
 - (i) the imputation credits attached to the Target Permitted Dividend must not exceed the Target’s imputation credit balance on the date of this Agreement (subject to any adjustment after the date of this Agreement for income tax payments, income tax refunds and other transactions that may affect the imputation credit account, in each case as reasonably expected prior to the Implementation Date);
 - (ii) in any event, the Target’s imputation credit account must not be in a debit position following the payment of the Target Permitted Dividend (taking into account income tax payments, income tax refunds and other transactions that may affect the imputation credit account, in each case as reasonably expected after payment of the Target Permitted Dividend and prior to the Implementation Date); and
 - (iii) the Target must provide the Bidder at least five Business Days’ prior notice of its intention to authorise the Target Permitted Dividend, which notice must:
 - (A) set out the proposed amount of the Target Permitted Dividend, the extent to which the Target proposes to impute the Target Permitted Dividend and details of any proposed supplementary dividend; and
 - (B) be accompanied by the Target’s calculation of the imputation credit account balance (including a reconciled imputation credit account summary setting out the Target’s forecast imputation credit balance after payment of the Target Permitted Dividend) and reasonable supporting evidence for that calculation.
- (c) The Target must not pre-pay income tax for the purpose of increasing the Target’s imputation credit account balance, or for any other reason.

6.4 **Bidder Permitted Dividend:**

- (a) Prior to the Implementation Date, but subject to compliance with all relevant laws, the Bidder may authorise and pay a dividend (which may carry imputation credits as provided by this clause) together with any related supplementary dividend (as defined in s YA 1 of the Income Tax Act 2007) (such dividend being the “**Bidder Permitted Dividend**”), provided that the quantum of such Bidder Permitted Dividend is consistent with the Bidder’s normal practice.

- (b) The Bidder may attach imputation credits to the Bidder Permitted Dividend, provided that:
 - (i) the imputation credits attached to the Bidder Permitted Dividend must not exceed the Bidder's imputation credit balance on the date of this Agreement (subject to any adjustment after the date of this Agreement for income tax payments, income tax refunds and other transactions that may affect the imputation credit account, in each case as reasonably expected prior to the Implementation Date);
 - (ii) in any event, the Bidder's imputation credit account must not be in a debit position following the payment of the Bidder Permitted Dividend (taking into account income tax payments, income tax refunds and other transactions that may affect the imputation credit account, in each case as reasonably expected after payment of the Bidder Permitted Dividend and prior to the Implementation Date); and
 - (iii) the Bidder must provide the Target at least five Business Days' prior notice of its intention to authorise the Bidder Permitted Dividend, which notice must:
 - (A) set out the proposed amount of the Bidder Permitted Dividend, the extent to which the Bidder proposes to impute the Bidder Permitted Dividend and details of any proposed supplementary dividend; and
 - (B) be accompanied by the Bidder's calculation of the imputation credit account balance (including a reconciled imputation credit account summary setting out the Bidder's forecast imputation credit balance after payment of the Bidder Permitted Dividend) and reasonable supporting evidence for that calculation.
- (c) The Bidder must not pre-pay income tax for the purpose of increasing the Bidder's imputation credit account balance, or for any other reason.

6.5 Acceleration of LTI entitlements: The Target must ensure that, in respect of the Target's "Long Term Incentive Plans" for the 2022, 2023 and 2024 financial years ("**LTI Plans**"):

- (a) the rights of each "Specified Employee" under the LTI Plans to any "Bonus" are accelerated in accordance with clause 5.3 of the applicable LTI Plan rules (including that eligibility for and the amount of any "Bonus" be calculated, and any such "Bonus" be paid in cash (net of all applicable taxes and other required withholdings) to the relevant "Specified Employee", on or following the date on which the Scheme Resolution is passed and on or before the Implementation Date);
- (b) on or immediately following the action contemplated by sub-clause (a), the LTI Plans are terminated or have otherwise lapsed with no amounts owing or capable of becoming owing under them; and
- (c) no action is taken by the Target or any Director in respect of the LTI Plans which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236A(4) of the Companies Act) of votes at the Scheme Meeting.

7. COURT PROCEEDINGS

7.1 Court documents:

- (a) In respect of the Court applications made in relation to the Scheme during the Exclusivity Period, including any appeal, the Target must, subject to clause 4.2, provide the Bidder with drafts of all documents required to be provided by the Target 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, not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of the Bidder on those documents. Notwithstanding the previous sentence, unless required by law, the Target is not required to provide to the Bidder any document, or any part of a document, that relates to an Excluded Matter.
- (b) The Target 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, relating to the approval or implementation of the Transaction (or procedural matters relating to the Transaction) without the Bidder having approved (acting reasonably) such documents being submitted to the Court or such changes being consented to.
- (c) Except for a notice of appearance (and any related memorandum of counsel) or in relation to any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction, the Bidder's counsel will only prepare and make submissions to the Court if required by the Court or requested by the Target. Any Bidder submissions to the Court must support the Target's application for orders, including the Initial Orders and the Final Orders. The Bidder must provide the Target with drafts of all documents to be provided by the Bidder to the Court a reasonable time before they are due to be submitted to the Court (and, in any event, not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of the Target on those documents. Notwithstanding the previous sentence, unless required by law, the Bidder is not required to provide to the Target any document, or any part of a document, that relates to any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction.
- (d) Nothing in clause 7.1(a) or 7.1(c) restricts the other party's right to make any claim under or in respect of a Transaction Document or the Transaction in accordance with the terms of the Transaction Documents.
- (e) The Bidder must not, in any event or at any time, oppose the granting of Initial Orders or Final Orders without the Target's prior written consent (such consent not to be unreasonably withheld).
- (f) If requested by the Target, the Bidder will promptly provide an affidavit in support of any originating or interlocutory application made by the Target in connection with the Target's application:
 - (i) for Initial Orders or Final Orders (as applicable); or
 - (ii) to supplement to any existing Initial Orders or Final Orders,

that:

- (iii) is sworn or affirmed by a director or senior executive of the Bidder; and
- (iv) confirms relevant information related to the Bidder, including:
 - (A) the Bidder's shareholding structure;
 - (B) the accuracy and completeness of the Bidder Information in the Scheme Booklet;
 - (C) the Bidder's ability to fund the payment of the Consideration and to issue the New Bidder Shares in compliance with all applicable laws, waivers and listing rule requirements (including the Relevant Provisions);
 - (D) the entry into of the arrangements with the Sale Agent contemplated by clause 5.2(b); and
 - (E) agreement to be bound by the Final Orders.

7.2 **Representation:** In respect of the Court applications made in relation to the Scheme, including any appeal:

- (a) the Target consents to the separate representation of the Bidder by counsel; and
- (b) the Bidder may appear and be represented in relation to the Court applications and, as contemplated by clause 4.3(h), must be represented by counsel at the Court hearing for the purposes of the Initial Orders and Final Orders.

7.3 **Court proceedings and conditionality:**

- (a) If the Court declines to make the orders sought by the Target under clause 5.1(d) or 5.1(g)(ii)(B) due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of or, if capable of waiver, waiver of any Condition, the Target must promptly make a further application for new Initial Orders or Final Orders (as applicable) or to supplement to any existing Initial Orders or Final Orders, as soon as practicable after 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 or vary the Initial Orders or Final Orders (as the case may be) ("**Court Guidance**").
- (b) The Target will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.
- (c) If this clause 7.3 applies, the parties must consult in good faith about agreeing any changes to the Timetable that are necessary or desirable in the circumstances.

7.4 **Appeal if orders not made:** If the Court does not make any order sought by the Target under clause 5 (the "**Decision**") and clause 7.3 does not apply:

- (a) the Target and the Bidder must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and

- (b) if, within 10 Business Days after the Decision, the Target and the Bidder agree to appeal the Decision or either of those parties 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 Target 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:
 - (A) if the Target and the Bidder agreed to appeal the Decision, equally between the parties; or
 - (B) if the Target and the Bidder 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 automatically extended (without the need for any action by any party) to the date that is 20 Business Days after the appeal from the Decision is finally determined; and
 - (iv) if the appeal is successful and the relevant order is made, then the End Date will be further automatically extended (without the need for action by any party, excluding any deferral under clause 7.4(b)(iii)) by the number of Business Days contemplated by the Timetable between the Final Orders Date and the Implementation Date (inclusive),
- provided that in no circumstances may the End Date be extended under sub-clauses (iii) or (iv) to a date which is later than 8 September 2025 without the consent of the Bidder.

8. RECOMMENDATION AND VOTING INTENTIONS

8.1 Recommendation and voting intentions of Directors:

- (a) The Target must ensure that the Target Initial Announcement includes a statement that:
- (i) each Director recommends that Shareholders vote in favour of the Scheme; and
 - (ii) each Director intends to vote all Shares held or controlled by him or her in favour of the Scheme,
- subject to:
- (iii) there being no Superior Proposal; and
 - (iv) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares,
- (the "**Director Recommendation**").
- (b) Unless there has been a change to the Director Recommendation after the Target Initial Announcement in accordance with the terms of this Agreement, 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, the Target must ensure that the Director Recommendation is included in the Scheme Booklet.

- (c) For the purposes of the Director Recommendation, no Director who is associated with, or who represents, Infratil Limited or TECT Community Trust (or any entity owned or controlled by Infratil Limited or TECT Community Trust) will be deemed to control, or be treated as controlling, any Shares which are held or controlled by Infratil Limited or TECT Community Trust (or any entity owned or controlled by Infratil Limited or TECT Community Trust).

8.2 **Change to recommendation or voting intentions:** Subject to clause 8.3, during the Exclusivity Period, the Target will use its best endeavours to ensure that no Director changes, qualifies or withdraws, or makes any statement inconsistent with, the Director Recommendation unless:

- (a) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares; or
- (b) the Target receives a Superior Proposal and the Target has complied with clause 14.6 and 14.7.

8.3 **Permitted actions:** The:

- (a) public disclosure of the Independent Adviser's Report (or any update of, or any revision, amendment or supplement to, that report);
- (b) taking by the Target of any action permitted by clause 14.6(c)(i); and
- (c) making of an announcement to NZX under clause 14.5(c) or 14.6(c)(ii), provided such announcement is, as applicable, limited to any or all of:
 - (i) advising of the receipt and details of a Competing Proposal and the fact that the Bidder is assessing the Competing Proposal;
 - (ii) the fact that the Bidder has an opportunity to provide a Counter Proposal to the Competing Proposal during the Matching Period;
 - (iii) advising of the fact that the Target will inform Shareholders if the Board determines that the Competing Proposal is a Superior Proposal; and
 - (iv) if applicable, advising of any associated delay in the Timetable,

provided that in that announcement the Target confirms the Directors have not changed or withdrawn their recommendation,

will not constitute a change of, qualification to, withdrawal of, or statement inconsistent with, the Director Recommendation.

8.4 **Conflicted director may abstain:** Notwithstanding any other provision of this Agreement, if a Director, acting in good faith, abstains from providing the recommendation referred to in clause 8.1 because he or she determines (acting reasonably and in good faith) that they have a conflict of interest in relation to giving such recommendation, then such abstention will not be considered to be a qualification, withdrawal or adverse modification of the recommendation referred to in clause 8.1 or the making of a statement inconsistent with that recommendation, and shall not give rise to a termination right under clause 16.1(c) or constitute a circumstance which would give rise to payment of the Break Fee under clause 15.2(a)(ii).

8.5 **Notification of new circumstances:** Without limiting clauses 8.1, 8.2 or 14, if prior to the Scheme Meeting (provided that the Exclusivity Period has not expired):

- (a) the Target receives, or expects to receive, an Independent Adviser's Report in which the Independent Adviser concludes that the Consideration is below the Independent Adviser's valuation range for the Shares (including either the initial Independent Adviser's Report or any update of, or any revision, amendment or supplement to, that report); or
- (b) a Director notifies the Target that that Director intends to, or the Target otherwise becomes aware that a Director is reasonably likely to change, qualify, withdraw or make a statement inconsistent with the Director Recommendation except as expressly permitted by clause 8.2(b) or 8.3,

then the Target must:

- (c) immediately notify the Bidder of this fact and, as soon as reasonably practicable, provide the Bidder with a draft of any public statement the Board intends to make if such event occurs; and
- (d) if it has notified circumstances referred to in clause 8.5(b), consult with the Bidder in good faith for two Business Days after the date on which the notice under clause 8.5(c) is given to consider and determine whether there are any steps that can be taken to avoid such a change, qualification, withdrawal, modification or inconsistent statement,

provided that clauses 8.5(c) and 8.5(d) do not prevent the Target from making an announcement in accordance with clause 17.2(e).

8.6 **Further rights and obligations:** If the Target is required to consult with the Bidder under clause 8.5(d) then:

- (a) during the consultation period the Target will continue to ensure that the Director Recommendation is not changed, qualified, withdrawn or modified or becomes the subject of an inconsistent statement by a Director; and
- (b) notwithstanding any other provision of this Agreement, the Target may, in its discretion, delay any action contemplated by the Timetable (including adjourning or rescheduling the Scheme Meeting) to allow that consultation to occur.

9. ACCESS, INFORMATION AND CONDUCT OF BUSINESS

9.1 **Access and information:** Subject to clause 9.3, from the date of this Agreement until and including the Implementation Date, the Target must procure that the Bidder and its Representatives are given reasonable access to:

- (a) the properties, books and records and senior executives of the Target Group, during normal business hours at mutually convenient times, on reasonable notice to the Target; and
- (b) information about the Business reasonably requested by the Bidder or its Representatives,

for the purposes of:

- (c) implementing the Scheme and enabling the Bidder to prepare for the transition of ownership of the Target Group to the Bidder;

- (d) permitting the Bidder the opportunity for consultation and review with respect to a Tax Claim contemplated in clause 9.14; and
- (e) any other purpose agreed between the Target and the Bidder in writing.

9.2 **Material developments:** Subject to clause 9.3, from the date of this Agreement until and including the Implementation Date:

- (a) the Target must:
 - (i) keep the Bidder updated on all material developments in its Business (including the Target Group's financial position and prospects and any material health and safety or cyber security incidents);
 - (ii) procure that senior executives of the Target Group meet with Representatives of the Bidder on a regular basis (either in person or remotely), to discuss and consult in good faith with the Bidder in respect of material developments relating to any material matters which the Bidder may reasonably raise from time to time relating to the Business;
 - (iii) provide the Bidder with a copy of each paper provided to the Board (including, to the extent provided to the Board, monthly management accounts and board and audit and risk committee papers and minutes for the Target Group) within one Business Day after they are provided to Directors;
 - (iv) provide the Bidder with a copy of any notification received by the Target pursuant to clause 4.6 of the 19 June 2021 Agreement for Sale and Purchase of Retail Business of Trustpower Limited; and
 - (v) provide the Bidder with any information or documentation received from the date of this Agreement:
 - (A) reasonably requested by the Bidder, including copies where applicable, relating to the Tax affairs of the Target; and
 - (B) arising out of any Inland Revenue risk review of the Target in relation to the Tax returns for any income year or out of any Tax Claim;
 - (vi) provide the Bidder with any information or documentation reasonably requested by the Bidder if the Bidder (in good faith) believes that the Bidder may be entitled to exercise a termination right under this Agreement provided, however, that:
 - (A) the Bidder's request outlines the reasons for the Bidder's request by reference to the relevant termination right under this Agreement that the Bidder believes it may be entitled to exercise and the reason that the Bidder believes that it may be entitled to exercise that termination right;
 - (B) the information or documentation requested by the Bidder relates to the Bidder's claim or potential claim; and
 - (C) the Bidder is, to the extent practicable, specific in its request as to the information or documentation requested,

provided, however, that nothing in clause 9.2(a)(i) or (a)(ii) requires Bidder approval to any matter that is consulted on; and

- (b) the Bidder must provide the Target with any information or documentation reasonably requested by the Target if the Target (in good faith) believes that the Target may be entitled to exercise a termination right under this Agreement provided, however, that:
 - (i) the Target's request outlines the reasons for the Target's request by reference to the relevant termination right under this Agreement that the Target believes it may be entitled to exercise and the reason that the Target believes that it may be entitled to exercise that termination right;
 - (ii) the information or documentation requested by the Target relates to the Target's claim or potential claim; and
 - (iii) the Target is, to the extent practicable, specific in its request as to the information or documentation requested.

9.3 **Requirements for access:** The Target's obligations to provide access or information to the Bidder under clause 9 are subject to the following:

- (a) such access and provision of information will occur:
 - (i) in such manner as the Target reasonably determines to be appropriate to comply with applicable law; and
 - (ii) subject at all times to the parties observing the obligations in the Communication and Information Sharing Protocols and otherwise acting in accordance with the Commerce Act;
- (b) the Target Group is not required to provide information or access to the extent that doing so would breach any applicable law or any confidentiality obligations owed by any member of the Target Group to Third Parties, provided that Target must, subject to the remainder of this clause 9.3, take such steps as may reasonably be required (including seeking the consent of any relevant third party) to permit the disclosure of information or documents to the Bidder pursuant to clause 9.2 and 9.4(e);
- (c) all requests for such access must be directed to the Target's Chief Executive Officer or such other persons as the Target may designate in writing from time to time (collectively, the "**Designated Contacts**");
- (d) without limiting the Confidentiality Agreement:
 - (i) other than the Designated Contacts, the Bidder is not authorised to and must not (and will cause its Representatives and Related Companies not to) contact any director, officer, employee, customer, supplier, distributor, landlord, lender, or other material business relation of the Business in connection with the Transaction prior to the Scheme becoming Effective without the prior written consent of the Target; and
 - (ii) the Bidder must not meet with, correspond with, or otherwise engage with, senior executives of the Target Group regarding their continued employment or the terms of

their continued employment after the Implementation Date without the Target's prior written consent (which consent must be provided by a Director);

- (e) the Bidder must focus on issues that it considers to be material and reasonably necessary;
- (f) the Target is not required to provide access or information under clause 9 to the extent that such provision:
 - (i) will, in the opinion of the Target (acting reasonably), result in unreasonable disruptions to the Business; or
 - (ii) will require the Target to make disclosure to any Government Agency or other person; and
- (g) nothing in clause 9 will require the Target to provide access or information:
 - (i) that would compromise (subject to reasonable precautions being taken) the Target Group's legal professional or tax privilege;
 - (ii) which concerns the consideration of the Scheme or any Competing Proposal by the Target or its Representatives; or
 - (iii) concerning any other Excluded Matter,

but, for the avoidance of doubt, this clause 9.3 does not limit the Target's obligations under clause 14.

9.4 **Conduct of Target Business:** From the date of this Agreement until and including the Implementation Date, the Target must, subject at all times to the parties observing the obligations in the Communication and Information Sharing Protocols and otherwise acting in accordance with the Commerce Act, ensure that it and each other member of the Target Group:

- (a) carries on its business as a going concern in the ordinary course and in substantially the same manner as conducted on 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) uses reasonable endeavours to maintain insurance in respect of the Target Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the Target 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) uses reasonable endeavours to ensure that all material Authorisations necessary for the Target Group to conduct the Business as it is presently being conducted are held by the relevant Target Group member, including by making such applications for new, additional, renewed, replacement, extended or varied Authorisations as may be reasonably necessary within the timeframes required to ensure the Target Group has the continued benefit of such Authorisations, provided that the Target must also take reasonable steps to procure that the terms and conditions of such Authorisations are not materially more onerous than those applicable under those comparable Authorisations as are in place as at the date of this Agreement;

- (d) uses reasonable endeavours to:
 - (i) keep available the services of the senior executives of the Target; and
 - (ii) preserve its relationships with Government Agencies and customers, suppliers, licensors, licensees, tangata whenua and others with which it has material business dealings;
- (e) to the extent permitted by law and (for the avoidance of doubt) subject to clauses 9.3(b) and 9.3(g), notifies the Bidder of, and keeps the Bidder 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 Target Group, or any current director or employee in connection with their role as a director or employee (as applicable) of any member of the Target Group which the Target (acting in good faith) considers will or is reasonably likely to have more than minor financial or reputational consequences for the Business;
 - (ii) any actual or threatened enquiry or investigation by a Government Agency of any member of the Target Group that is notified in writing to a member of the Target Group regarding an alleged or potential breach of law; and
 - (iii) without limiting clauses 9.4(e)(i) or 9.4(e)(ii) above, any actual or potential action, proceeding or investigation involving or concerning the Target Group and relating to:
 - (A) the payment or potential payment of Tax;
 - (B) the Resource Management Act 1991, any applicable Water Conservation Order or other environmental law or regulation; or
 - (C) the Fair Trading Act 1986, Consumer Guarantees Act 1993 or other consumer protection law or regulation,
 which the Target (acting in good faith) considers will or is reasonably likely to have more than minor financial or reputational consequences for the Business, and including the status of any engagement with relevant regulators or Government Agencies in respect of such matters;
- (f) does not:
 - (i) create or incur any liability (whether contingent or otherwise) or indebtedness in excess of \$2,000,000 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 business), provided that the Target must consult with the Bidder prior to the Target incurring any normal liabilities or indebtedness in the ordinary course of the Business (under this subclause (i)) where the value of such liability (or related series of liabilities) exceeds \$500,000 and the incurring of such liability is not otherwise permitted by clause 9.5;
 - (ii) incur or commit to new capital expenditure:

- (A) that would result in capital expenditure for FY25 being greater than \$2,000,000 more than the total capital expenditure set out in the Target's Board approved FY25 F1 forecast (document 05.03.10 in the Target Data Room Index); and
- (B) that would result in estimated capital expenditure for FY26 being greater than \$42,500,000 (being the total included in document 05.07.01 in the Target Data Room Index),

it being:

- (C) agreed that the Target will progress the key asset refurbishment projects (including, Coleridge G1/2/3, Matahina and Highbank unit upgrades) as far as practicable in line with the program disclosed for those projects in document 05.07.01 in the Target Data Room Index; and
 - (D) acknowledged by the Bidder that capital expenditure in relation to projects (other than those in (C) above) are to be progressed in a manner generally consistent with the Target Group's ordinary course of business and current approach to asset management planning;
- (iii) create or otherwise permit to arise any Encumbrance except a Permitted Encumbrance;
 - (iv) acquire or dispose of any shares or other securities in any body corporate (except for the acquisition of shares or securities in an entity which, at the time of the acquisition, was a wholly owned member of the Target Group) or any units in any trust;
 - (v) acquire or dispose of any assets (excluding shares or other securities, which are addressed in clause 9.4(f)(iv)), other than assets acquired or disposed of in the ordinary course of the Business or from or to members of the Target Group and with an acquisition price or book value of less than \$100,000;
 - (vi) increase the Target Group's financial indebtedness above the aggregate credit or facility limits available to the Target Group disclosed in the Target Due Diligence Material;
 - (vii) enter into a power purchase agreement (including an agreement in the nature of a contract for difference, whether for purchase or sale, and including any contract for the sale of electricity to commercial and industrial customers):
 - (A) with a term continuing beyond the end of the 2030 calendar year; or
 - (B) which (in respect of any one such power purchase agreement or related series of power purchase agreements) is for an amount of electricity in excess of 100 GWh per annum; or
 - (C) which, when considered in aggregate with the Target Group's other contracted electricity supply commitments, would result in the Target Group contracting in excess of its typically contracted load limits (being the load limits adopted or operated within by the Target Group in the ordinary course of its Business during the 24 months prior to the date of this Agreement);

- (viii) 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:
- (A) may require annual expenditure by, or result in a reduction in annual revenues to, the relevant member of the Target Group in excess of \$2,000,000;
 - (B) may require aggregate expenditure by the relevant member of the Target Group over the term of the contract, commitment or arrangement in excess of \$2,000,000 in aggregate;
 - (C) is considered by the Target otherwise to be of material importance to the business of the Target Group; or
 - (D) restrains any member of the Target Group or any person who controls the Target from engaging in or competing with any business in any place,
- except that subclauses 9.4(f)(viii)(A) to 9.4(f)(viii)(C) do not apply in respect of such actions which are expressly contemplated by and permitted under any other subclause of this clause 9.4(f);
- (ix) without limiting sub-clause (viii) 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 Target Group member is reasonably able to do so), except:
- (A) to the extent the relevant party is contractually committed to take such action (without the exercise of further discretion by the Target Group) and such action has been disclosed to Bidder in the Target Due Diligence Material; or
 - (B) 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:
 - does not require the Target Group to pay fees (or incur costs) of more than \$500,000 per annum (individually or in aggregate with other related options); and
 - is terminable: (1) at any time by the Target 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));
- (x) make any amendments to the “General Conditions” for supply which apply as at the date of this Agreement other than those of an immaterial nature or in the ordinary course of

business where the amendment is not materially adverse to the relevant member of the Target Group;

- (xi) enter into any contract, commitment or arrangement to make a payment or provide a benefit to, or make any payment to, any director or employee of the Target Group other than:
 - (A) for the payment of director remuneration to Directors in accordance with the remuneration approved by Shareholders prior to the date of this Agreement;
 - (B) in accordance with the relevant director or employee's constitutional rights, statutory entitlements or contractual entitlements (in respect of an arrangement entered into before the date of this Agreement or after the date of this Agreement in compliance with this Agreement);
 - (C) a discretionary payment under a short-term incentive arrangement fairly disclosed in the Target Due Diligence Material and or entered into after the date of this Agreement in compliance with this Agreement, provided in each case that the relevant discretion is exercised reasonably, the relevant payment does not exceed the maximum amount contemplated by the applicable arrangement and the total amount of any such payments made during the period from the date of this Agreement until and including the Implementation Date does not exceed the amount set out in the Target Disclosure Letter;
 - (D) to settle any employment dispute for a payment of \$50,000 or less; or
 - (E) under the Agreed Retentions;
- (xii) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Target Group, other than the provision of indemnities to directors and employees of the Target Group in compliance with applicable law;
- (xiii) grant any equity or equity-based awards to, increase the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment or engagement in any material respect of, any Director or employee of any member of the Target Group, except:
 - (A) as contemplated by clause 6.5 or any of clauses 9.4(f)(xi)(A) to 9.4(f)(xi)(E); or
 - (B) for salary increases and bonuses in the normal course and consistent with the Target Group's past practice and usual remuneration policies;
- (xiv) terminate (other than for "cause", as determined consistent with past practice) the employment of any employee, hire any new employee or contractor for personal services, or promote (except for a temporary or acting promotion to fill a vacant role) any existing employee of any member of the Target Group:
 - (A) with an aggregate annual remuneration package that exceeds \$250,000; or
 - (B) who is a Senior Manager (as defined in the NZX Listing Rules);

- (xv) make or forgive any loans to any current or former employees or contractors for personal services of any member of the Target Group;
- (xvi) amend or terminate any bonus, benefit or incentive plan sponsored or maintained by the Target Group for any one or more director, employee or independent contractor for personal services (whether short term or long term, and whether cash-based or share-based) (except for administrative amendments to or annual renewals of such plans in the ordinary course of business and consistent with past practice, or to the extent required to comply with clause 6.5), or establish, adopt, or enter into any new such arrangement;
- (xvii) enter (or commit to enter) into, amend, terminate or extend any collective bargaining agreement or other agreement with a labour union, works council or similar organisation (or enter into negotiations to do any of the foregoing) or recognise or certify any labour union, works council or similar organisation or group of employees of any member of the Target Group as the bargaining representative for any employees of any member of the Target Group;
- (xviii) waive the restrictive covenant obligations of any employee or contractor for personal services;
- (xix) do anything which might reasonably be expected to give rise to a material breach of a material law or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification, expiry, lapse or non-renewal of any material Authorisation held by it;
- (xx) commence, compromise or settle any litigation or similar proceedings, except as permitted by clause 9.4(f)(xi)(D) or debt recovery litigation or proceedings in the ordinary course;
- (xxi) make any material change in accounting methods, principles or practices used by it (except if required by law or a change in International Financial Reporting Standards or any New Zealand equivalent to those standards);
- (xxii) enter into, amend or close out any foreign exchange or interest rate swap, derivative or hedge, other than in the ordinary course of business including compliance with the Target's Treasury Policy or management of existing foreign exchange exposure relating to existing or budgeted capital commitments as at the date of this Agreement (and, for the avoidance of doubt, this clause 9.4(f)(xxii) does not apply to, or restrict the Target Group's conduct in respect of, electricity derivatives);
- (xxiii) make any material Tax election (other than an election in the ordinary course of business consistent with past practice), settle, compromise or prejudice any material Tax liability, make any voluntary disclosure in respect of a material Tax liability or initiate or engage in any disputes procedures or challenge proceedings relating to Tax, unless permitted to do so following completion of the procedures contemplated in clause 9.14; or
- (xxiv) agree, conditionally or otherwise, to do any of the things referred to in the preceding sub-clauses of this clause 9.4(f), or announce or represent to any person that any of those things will be done.

For the avoidance of doubt, where a sub-clause of clause 9.4(f) sets out a list of exceptions separated by “or”, the Target may rely on all or any combination of the exceptions in that sub-clause, and may do so more than once, in each case in accordance with the terms of that exception.

9.5 **Exceptions to conduct of Target Business provisions:** Any member of the Target Group may do anything referred to in clause 9.4(f), or not do anything required to be done under clauses 9.4(a) to 9.4(c):

- (a) with the prior written consent of the Bidder (such consent not to be unreasonably withheld, conditioned or delayed);
- (b) to the extent the relevant act or omission is necessary to perform or comply with its contractual obligations which were:
 - (i) fairly disclosed to the Bidder in the Target Due Diligence Material;
 - (ii) disclosed to NZX in the 24-month period before the date of this Agreement; or
 - (iii) entered into after the date of this Agreement in accordance with, or in a manner which is not prohibited by, clause 9.4;
- (c) to the extent that the relevant act or omission has been fairly disclosed in the Target Due Diligence Material (and, for the avoidance of doubt, any express reference in clause 9.4(f) to a document in the Target Data Room Index does not limit the generality of this sub-clause (c));
- (d) to the extent the relevant act or omission is necessary to comply with or ensure that there is no breach of:
 - (i) any law (including the payment of Tax (other than “deferrable tax” as defined in section 3 of the Tax Administration Act 1994) as required by applicable law) or other regulatory requirement (including the NZX Listing Rules); or
 - (ii) generally accepted accounting principles; or
 - (iii) without limiting clause 9.5(d)(i), the Communication and Information Sharing Protocols or the Commerce Act;
- (e) to the extent the relevant act or omission is reasonably necessary to respond to any emergency or other disaster;
- (f) to the extent the relevant act or omission is reasonably necessary to comply with any requirements, recommendations or laws made or imposed by a Government Agency in relation to any Pandemic;
- (g) to the extent it is expressly required to do, permitted to do, or is permitted not to do, the relevant act or omission under or in accordance with this Agreement; or
- (h) that is an act or omission it undertakes in response to a Competing Proposal, but only to the extent that the act or omission is permitted under clause 14; or
- (i) to the extent that the relevant act is considered by the Board to be reasonably necessary to refinance any debt facilities that are due to expire after the date of this Agreement and before

the Implementation Date (provided that following any such refinancing, the amount of any refinanced debt facilities (by reference to either facility limit or principal amount (as applicable)) do not increase following the refinancing, and provided further that the terms of such refinanced debt facilities provide the applicable Target Group member with the right to pre-pay such debt facilities on not more than 20 business days' notice and without premium or penalty (such as make whole payments) other than customary break costs, and provided further that the refinancing does not involve the issue of any new bonds),

and in the case of the situations described in sub-clauses (d), (e) and (f) above, provided that, except to the extent prohibited by law in relation to sub-clauses (d)(i), (d)(iii) and (f) only, the Target informs the Bidder as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by the Bidder as to the proposed course of action.

- 9.6 **Conduct of Bidder business:** From the date of this Agreement until and including the Implementation Date, the Bidder must, subject at all times to the parties observing the obligations in the Communication and Information Sharing Protocols and otherwise acting in accordance with the Commerce Act, ensure that it and each other member of the Bidder Group:
- (a) carries on its business as a going concern in the ordinary course and in substantially the same manner as conducted on the date of this Agreement and does not make any significant change to the nature of its business;
 - (b) use reasonable endeavours to:
 - (i) maintain the value of its businesses and material assets in the ordinary course and consistent with past practice; and
 - (ii) preserve its relationships with Government Agencies and customers, suppliers, licensors, licensees, tangata whenua and others with which it has material business dealings; and
 - (c) keep the Target updated on all material developments in its business.

- 9.7 **Exceptions to conduct of Bidder business provisions:** Any member of the Bidder Group may not do anything required to be done under clauses 9.6(a) and 9.6(b):
- (a) with the prior written consent of the Target (such consent not to be unreasonably withheld, conditioned or delayed);
 - (b) to the extent the relevant act or omission is necessary to perform or comply with its contractual obligations which were disclosed to NZX in the 24-month period before the date of this Agreement;
 - (c) to the extent that the relevant act or omission has been fairly disclosed in the Bidder Due Diligence Material;
 - (d) to the extent the relevant act or omission is necessary to comply with or ensure that there is no breach of:
 - (i) any law (including the payment of Tax (other than “deferrable tax” as defined in section 3 of the Tax Administration Act 1994) as required by applicable law) or other regulatory requirement (including the NZX Listing Rules);

- (ii) generally accepted accounting principles; or
- (iii) without limiting clause 9.6, the Communication and Information Sharing Protocols or the Commerce Act;
- (e) to the extent the relevant act or omission is reasonably necessary to respond to any emergency or other disaster;
- (f) to the extent the relevant act or omission is reasonably necessary to comply with any requirements, recommendations or laws made or imposed by a Government Agency in relation to any Pandemic; or
- (g) to the extent it is expressly required to do, permitted to do, or is permitted not to do, the relevant act or omission under or in accordance with this Agreement,

and in the case of the situations described in sub-clauses (d), (e) and (f) above, provided that, except to the extent prohibited by law in relation to sub-clauses (d)(i), (d)(iii) and (f) only, the Bidder informs the Target as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by the Target as to the proposed course of action.

9.8 **Consents:** If the a party seeks the other party’s written consent or approval under clause 9.5(a) or clause 9.7(a) then, unless the party seeking the consent or approval receives a written response within 10 Business Days, the other party is deemed to have granted the written consent or written approval sought by the party. Where a party does grant an express consent or approval, it will apply in accordance with its terms.

9.9 **Application of exceptions:** For the avoidance of doubt, if the Target Group takes an action expressly permitted under any sub-clause of clause 9.4(f), then that action will not breach any other sub-clause of clause 9.4(f) (unless the relevant sub-clause of clause 9.4(f) under which the relevant action is permitted is expressly stated to be subject to, or not to limit the operation of, any other sub-clause or clauses of clause 9.4(f)).

9.10 **Consents to change of control:**

- (a) The parties acknowledge that the Target Group’s material contracts (including any joint venture agreement, partnership agreement or similar) may contain provisions requiring:
 - (i) the consent of the counterparty to that contract to a change of control, deemed assignment or similar that arises under the terms of that contract as a result of the Transaction;
 - (ii) notification of a change of control to a Government Agency; or
 - (iii) a waiver from the counterparty to that contract of any pre-emptive rights, breach or termination or cancellation right which may arise or otherwise be enforceable under the terms of that contract as a result of the Transaction,
 (each a “**Change of Control Consent or Notification**”).
- (b) Subject to clause 9.10(c), during the Exclusivity Period:

- (i) the Target will, and will procure that each member of the Target Group will, use reasonable endeavours to obtain or make each Change of Control Consent or Notification that the Bidder (with the Target's reasonable assistance) identifies and requests that the Target obtain or make; and
 - (ii) the Bidder must cooperate with and use its reasonable endeavours to assist the Target to obtain or make each required Change of Control Consent or Notification (but without contacting any contractual counterparties or Government Agencies directly without the Target's consent).
- (c) Nothing in this clause 9.10 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person or otherwise be contrary to the interests of either party, as the case may be.
- (d) The parties agree that:
- (i) the Scheme is not conditional on the Target making or obtaining any required Change of Control Consents or Notifications;
 - (ii) the implementation of the Scheme will not be delayed if all or any required Change of Control Consents or Notifications have not been obtained or issued on or before the Implementation Date; and
 - (iii) failure by a member of the Target Group to obtain any Change of Control Consent or Notification or any other consent or confirmation from any person (other than as required by the NZCC Condition) in connection with the Scheme, or the exercise by a contractual counterparty of a termination right or any other contractual rights in connection with the Scheme:
 - (A) will not affect the parties' obligations to implement the Scheme;
 - (B) will not constitute a breach of this Agreement by the Target; and
 - (C) together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Agreement.

9.11 **Transition Committee:**

- (a) As soon as practicable, and in any event within one week after the date of this Agreement, the Target and the Bidder shall form a transition committee ("**Transition Committee**") in accordance with this clause 9.11. The Transition Committee will, subject to this Agreement, establish its terms of reference, meeting schedules, information sharing protocols and escalation methodologies.
- (b) The Transition Committee shall comprise two representatives of each of the Target and the Bidder. A party may appoint, replace or nominate a representative by giving written notice to the other party.
- (c) The Transition Committee will, subject at all times to observing the obligations in the Communication and Information Sharing Protocols and the requirements of the Commerce Act:

- (i) co-ordinate implementation of the Scheme between the parties;
 - (ii) co-ordinate preparation for the transition of ownership of the Target to the Bidder;
 - (iii) discuss and resolve matters arising in relation to this agreement or the Transaction within its terms of reference; and
 - (iv) undertake any other matters reasonably requested by a party that are material in connection with the Transaction.
- (d) The representatives of the Bidder on the Transition Committee will have authority to provide consent in writing on behalf of the Bidder for the purposes of clause 9.5(a).
- (e) The representatives of the Target on the Transition Committee will have authority to provide consent in writing on behalf of the Target to any actions of the Bidder that would otherwise be restricted under this Agreement.

9.12 **Electricity Industry Act 2010:** The Target agrees, during the Exclusivity Period, to provide, and ensure that the Target Group and its Representatives provide, any information, co-operation or assistance reasonably requested by the Bidder in connection with:

- (a) any application to the Electricity Authority under section 90 of the Electricity Industry Act 2010 the Bidder may (in its sole discretion) wish to make, or may (in its sole discretion) wish a member of the Target Group to make (including jointly with Bidder); and/or
- (b) any analysis, engagement with the Electricity Authority or other action the Bidder may wish to undertake in connection with electricity lines owned by the Target Group,

in each case to assist the Bidder and the Target in maintaining compliance with Part 3 of that Act on and after the Implementation Date. The Bidder must promptly reimburse the Target for all reasonable out-of-pocket costs incurred by the Target in connection with providing co-operation under this clause 9.12.

9.13 **Tax returns:** The Target agrees, during the Exclusivity Period, to:

- (a) provide the Bidder with draft copies of any income tax return of a Target Group member that is required to be filed in the Exclusivity Period (together with corresponding workpapers), with such documents to be provided at least 20 Business Days prior to the due date for filing the relevant return; and
- (b) take into account all reasonable comments provided by the Bidder on the content of such income tax returns and associated documents prior to those documents being filed.

9.14 **Tax disputes:** Notwithstanding anything else in this clause 9, the Target agrees that with respect to any actual or potential action, proceeding or investigation referred to in clause 9.4(e)(iii)(A) relating to the payment or potential payment of Tax by the Target Group (a “**Tax Claim**”), the Target will:

- (a) ensure that no settlement of, payment (except to the extent required by law) or admission of liability in respect of the Tax Claim is made or other steps are taken which may in any way prejudice any rejection of, any challenge to or any defence to that Tax Claim without the prior written consent of the Bidder, which consent is not to be unreasonably withheld or delayed;

- (b) consult with the Bidder about any steps to be taken (or not to be taken) in relation to the conduct, progress, challenge or defence of any Tax Claim and take into account reasonable comments made and concerns raised by the Bidder; and
- (c) provide the Bidder with adequate opportunity to review and comment on any proposed correspondence, notices or statements with any Government Agency or any court or tribunal in connection with the Tax Claim and take into account all reasonable comments made and concerns raised by the Bidder.

10. FINANCING

10.1 Target to provide assistance with financing: The Target agrees, during the Exclusivity Period, to provide, and ensure that the Target Group and its Representatives provide, any co-operation or assistance reasonably requested by the Bidder in connection with:

- (a) the termination or continuation (at the election of the Bidder) of the Target Group's existing financing arrangements on and from the Implementation Date, including by (if directed by the Bidder), seeking the consent of some or all of the Target Group's existing bank financiers to accept a conditional prepayment notice and/or reduced prepayment periods and/or waivers of break costs;
- (b) in respect of any bank guarantees, letters of credit, performance bonds or similar instruments issued on behalf of the Target Group, seeking to obtain any necessary consents (or agreeing any necessary amendments) required from any applicable issuing banks required for such instruments to remain outstanding following the Implementation Date;
- (c) in respect of any interest rate or currency hedging arrangements to which a member of the Target Group is a party (at request of and as determined by the Bidder):
 - (i) seeking to obtain any necessary or desirable consents, approvals or amendments required for the continuation of any such existing hedging agreements or transactions; and
 - (ii) seeking the novation of such agreements or transactions to the Bidder; and
- (d) the arrangement or syndication or provision of any debt financing by any Bidder Group member for the purposes of funding the Consideration or funding the refinancing of any of the indebtedness of the Target Group;

and including in each case (to the extent applicable):

- (e) facilitating liaison between the Bidder and the Target's existing financiers, as may be reasonably requested by the Bidder;
- (f) providing the Bidder with financial and other relevant information regarding the Target Group as may be reasonably requested by the Bidder (including providing any consent required under the Confidentiality Agreement to such disclosure, subject to such financiers entering into confidentiality arrangements which are reasonably required by the Target);
- (g) if the Scheme Resolution has been approved by Shareholders at the Scheme Meeting and the NZCC Condition has been satisfied, executing and delivering any customary

prepayment/cancellation notices and any other similar customary notices reasonably requested by the Bidder, in each case that are expressed to be subject to (and only effective on) the Scheme being implemented, relating to the repayment of the Target's existing indebtedness identified by the Bidder and/or the release on the Implementation Date of all related Encumbrances;

- (h) using reasonable endeavours to assist the Bidder Group with the identification and release of, and granting and perfection of, any Encumbrances over the assets of the Target Group subject to, and with effect from, implementation of the Scheme; and
- (i) providing as promptly as reasonably practicable such customary "know your customer" information as is reasonably requested in writing by the Bidder (or any of its financiers) at least 20 Business Days prior to the Implementation Date.

10.2 **Requirements for Target financing assistance:** The Target's obligations under clause 10.1 are subject to the following:

- (a) no Target Group member or any of its Representatives will be required to:
 - (i) enter into or sign any agreements or arrangements in respect of any debt financing and any related Encumbrances (including the release of existing Encumbrances) or any other matter contemplated by clause 10.1 (except as contemplated by clause 10.1(g) and 10.1(i)); or
 - (ii) assume any obligation or liability of any nature in respect of any debt financing and any related Encumbrances (including the release of existing Encumbrances) or any other matter contemplated by clause 10.1;
- (b) the Bidder must promptly reimburse the Target for all reasonable out-of-pocket costs incurred by the Target in connection with providing co-operation under clause 10.1; and
- (c) clauses 9.3(a) to 9.3(g) will apply to clause 10.1 with all necessary modifications.

10.3 **Bidder's financing requirements:**

- (a) The Bidder must do, and must procure that the Bidder Group does, all reasonable things that are reasonably necessary and which are within the control of the Bidder Group to arrange, obtain, maintain and complete debt financing at least sufficient to fund the aggregate Cash Consideration, such that the Bidder is able to satisfy its obligations to pay the Cash Consideration under clauses 2.3, 5.2(i), 5.2(j)(ii)(B), the Deed Poll and the Scheme Plan ("**Payment Obligations**").
- (b) Without limiting clause 10.3(a), the Bidder must:
 - (i) use its reasonable endeavours to satisfy, and procure that the Bidder Group satisfies, by the date for such satisfaction any conditions and applicable obligations under its debt financing arrangements for the Transaction (the "**Funding Arrangements**");
 - (ii) not, and procure that the Bidder Group does not, amend or waive any provision of any Funding Arrangement in a manner that will, or is reasonably likely to, prejudice the Bidder's ability to satisfy the Payment Obligations; and

- (iii) use its reasonable endeavours not to, and to procure that the Bidder Group does not, do, or permit, any act, matter or thing that will, or is reasonably likely to, result in the avoidance or termination of any Funding Arrangements or the Bidder's inability to perform its Payment Obligations.

10.4 **No financing conditions:** The Bidder's obligations under this Agreement, the Deed Poll and the Scheme Plan are not conditional on, or otherwise subject to:

- (a) the Bidder's entry into or completion of the Funding Arrangements; or
- (b) the arranging, availability or receipt of any funds or financing by the Bidder.

11. WARRANTIES

11.1 Target Warranties:

- (a) The Target warrants to the Bidder that each of the Target Warranties is true, accurate and not misleading as at:

- (i) the date of this Agreement;
- (ii) the date that the Scheme Booklet is sent to Shareholders;
- (iii) the Second Court Date; and
- (iv) 8.00am on the Implementation Date,

except that a Target Warranty that refers to only one of those dates is given solely as at that date and the Target Warranty 25 of Schedule Three is not given on the date of this Agreement.

- (b) The Target Warranties (including the Target Fundamental Warranty set out in clause 6 of Schedule Three to the extent that it relates to Subsidiaries King Country Energy Limited and Lochindorb Wind GP Limited not being wholly-owned members of the Target Group, but excluding the other Target Fundamental Warranties) are given subject to, are qualified by, and no person will have a claim for breach of a Target Warranty in respect of, any matter:

- (i) expressly provided for in this Agreement;
- (ii) fairly disclosed in the Target Due Diligence Material;
- (iii) fairly disclosed to NZX in the 36-month period ending on the day before the date of this Agreement;
- (iv) recorded, as at the date two Business Days prior to the date of this Agreement, in the name of a Target Group member in a register or in the records held by the New Zealand Companies Office, the Intellectual Property Office of New Zealand, the High Court of New Zealand, the Personal Property Securities Register and Land Information New Zealand; or
- (v) relating to anything done or omitted to be done at the written request, or with the written approval, of the Bidder.

- (c) No warranty or representation is given by or on behalf of the Target, and the Bidder may not bring any claim of any nature under this Agreement or in connection with the Transaction, with respect to any Target Forward Looking Information, in each case whether contained in the Target Due Diligence Material, the Scheme Booklet or otherwise. Without limiting the foregoing, none of the Target Warranties address, or are given in respect of, any Target Forward Looking Information.

11.2 **Bidder Warranties:**

- (a) The Bidder warrants to the Target that each of the Bidder Warranties is true, accurate and not misleading as at:
 - (i) the date of this Agreement;
 - (ii) the date that the Scheme Booklet is sent to Shareholders;
 - (iii) the Second Court Date; and
 - (iv) 8.00am on the Implementation Date,except that Bidder Warranty 10 of Schedule Four is not given on the date of this Agreement.
- (b) The Bidder Warranties (except for the Bidder Fundamental Warranties) are given subject to, are qualified by, and no person will have a claim for breach of a Bidder Warranty in respect of, any matter:
 - (i) expressly provided for in this Agreement;
 - (ii) fairly disclosed in the Bidder Due Diligence Material;
 - (iii) fairly disclosed to NZX in the 36-month period ending on the day before the date of this Agreement; or
 - (iv) relating to anything done or omitted to be done at the written request, or with the written approval, of the Target.
- (c) No warranty or representation is given by or on behalf of the Bidder, and the Target may not bring any claim of any nature under this Agreement or in connection with the Transaction, with respect to any Bidder Forward Looking Information, in each case whether contained in the Bidder Due Diligence Material, the Scheme Booklet or otherwise. Without limiting the foregoing, none of the Bidder Warranties address, or are given in respect of, any Bidder Forward Looking Information.

11.3 **Indemnity by Target:** Subject to clause 15.6, the Target indemnifies the Bidder against, and must pay to the Bidder on demand an amount equal to, all Losses directly incurred or suffered by the Bidder Indemnified Persons arising out of or in connection with any matter or circumstance that results in any of the Target Warranties being untrue, inaccurate or misleading when given.

11.4 **Indemnity by Bidder:** Subject to clause 15.7, the Bidder indemnifies the Target against, and must pay to the Target on demand an amount equal to, all Losses directly incurred or suffered by the Target Indemnified Persons arising out of or in connection with any matter or circumstance that results in any of the Bidder Warranties being untrue, inaccurate or misleading when given.

11.5 **No other warranties, representations or additional rights:**

- (a) Each party acknowledges and agrees that, except for the express warranties in this Agreement and the Deed Poll and the other express provisions of this Agreement:
 - (i) it has entered into this Agreement in reliance solely on its own judgment and not in reliance on any warranties, representations, promises, assurances or collateral arrangements of any party or any other person;
 - (ii) all other representations or warranties, whether express or implied, are expressly excluded to the maximum extent permitted by law; and
 - (iii) except for the warranties in clauses 8, 9, 23 and 25 of Schedule Three and clauses 10 and 16 of Schedule Four but without limiting clauses 11.1(c) and 11.2(c), no party and no other person gives or makes any warranty or representation as to the accuracy, content, completeness, value or otherwise of, nor has or accepts any liability in respect of, any information (written, oral or otherwise) directly or indirectly provided or made available to or used by any other party in connection with the Transaction.
- (b) The Target Warranty in clause 9 of Schedule Three is subject to the terms of any express disclaimer which is contained in any particular document or information in the Target Due Diligence Material (each, a “**Target Disclaimer**”). The Bidder will not have any claim in respect of the Target Warranty in clause 9 of Schedule Three or under the indemnity in clause 11.3 to the extent such claim is precluded or disclaimed by the relevant Target Disclaimer.
- (c) The Bidder Warranty in clause in clause 16 of Schedule Four is subject to the terms of any express disclaimer which is contained in any particular document or information in the Bidder Due Diligence Material (each, a “**Bidder Disclaimer**”). The Target will not have any claim in respect of the Bidder Warranty in clause 16 of Schedule Four or under the indemnity in clause 11.4 to the extent such claim is precluded or disclaimed by the relevant Bidder Disclaimer.
- (d) The Bidder will have no claim against the Target Group (including a claim for breach of Target Warranty or for breach of any other provision of this Agreement) or right to terminate this Agreement, and the Target Group will have no liability under or in connection with this Agreement, in respect of any loss incurred or suffered by any person as a result of the disclosure of any confidential document or confidential information in the Target Due Diligence Material.
- (e) The Target will have no claim against the Bidder Group (including a claim for breach of Bidder Warranty or for breach of any other provision of this Agreement) or right to terminate this Agreement, and the Bidder Group will have no liability under or in connection with this Agreement, in respect of any loss incurred or suffered by any person as a result of the disclosure of any confidential document or confidential information in the Bidder Due Diligence Material.
- (f) To the maximum extent permitted by law, other than a party’s right to bring a claim for:
 - (i) breach of an express warranty or express obligation set out in this Agreement; or
 - (ii) fraud or wilful misconduct by another party,

each party agrees that it is not entitled to, must not bring, encourage or facilitate, and irrevocably waives any right to bring, any other or separate claim, complaint, proceeding or cause of action for damages or other relief of any nature (including under the Takeovers Code, the Takeovers Act 1993, the FMCA or the Fair Trading Act 1986 or any corresponding or equivalent legislation in any relevant jurisdiction) arising from any alleged misrepresentation or breach of warranty in connection with this Agreement or the Transaction.

- (g) The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993:
- (i) the Scheme Shares are being acquired in trade;
 - (ii) the parties are all in trade;
 - (iii) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement or to any matters, information, representations or circumstances covered by this Agreement;
 - (iv) it is fair and reasonable that the parties are bound by this clause 11.5; and
 - (v) each party has been able to fully negotiate the terms of this Agreement and has been represented by and received advice from a lawyer during the negotiations leading to this Agreement.

11.6 **Status of warranties and indemnities:** Each warranty and indemnity made or given under this clause 11 is severable and survives termination of this Agreement and each warranty and indemnity given in this clause 11 is a continuing obligation.

12. RELEASES

12.1 Release and indemnification of Target Indemnified Persons:

- (a) Without limiting clause 11.5, the Bidder waives and releases, and must procure that each member of the Bidder Group (which, for the purposes of this clause 12.1, will include each member of the Target Group after implementation of the Scheme) waives and releases, all rights and claims which it may have against any Target Indemnified Person (other than the Target) in respect of:
- (i) any misrepresentation, inaccuracy or omission in or from any information or advice given by that Target Indemnified Person;
 - (ii) the preparation of the Target Information;
 - (iii) any breach of any warranty or obligation of the Target under this Agreement;
 - (iv) any statement which is false or misleading, whether in content or by omission, in connection with the Transaction; or
 - (v) any other act or omission in connection with this Agreement or the Transaction,
- except to the extent the Target Indemnified Person has engaged in wilful misconduct or fraud.

- (b) The Bidder indemnifies each Target Indemnified Person against, and must pay to each Target Indemnified Person on demand, an amount equal to all losses, damages, costs, expenses, charges or other liabilities directly or indirectly incurred or suffered by the Target Indemnified Person arising out of or in connection with any failure or alleged failure by the Bidder to comply with the FMCA, FMCR, the NZX Listing Rules or any other applicable law or requirements in any jurisdiction in respect of the offer and issue of the Scrip Consideration under the Scheme, except to the extent the losses, damages, costs, expenses, charges or other liabilities arise due to:
 - (i) the breach of any warranty or obligation of the Target under this Agreement;
 - (ii) the wilful misconduct or fraud of the Target Indemnified Person; or
 - (iii) the Bidder's reliance on Target Information.
- (c) The parties acknowledge and agree that:
 - (i) the Target has sought and obtained the waiver and release and indemnity in this clause 12.1 as agent for and on behalf of each Target Indemnified Person and may enforce the provisions of this clause 12.1 on behalf of any Target Indemnified Person;
 - (ii) any Target Indemnified Person may plead this clause 12.1 in response to any claim made by any member of the Bidder Group against them; and
 - (iii) the undertakings contained in this clause 12.1 are given for the benefit of each Target Indemnified Person and are intended to be enforceable against the Bidder by each Target Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

12.2 Release of Bidder Indemnified Persons:

- (a) Without limiting clause 11.5, the Target waives and releases, and must procure that each member of the Target Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than the Bidder) in respect of:
 - (i) any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person;
 - (ii) the preparation of the Bidder Information;
 - (iii) any breach of any warranty or obligation of the Bidder under this Agreement;
 - (iv) any statement which is false or misleading, whether in content or by omission, in connection with the Transaction; or
 - (v) any other act or omission in connection with this Agreement or the Transaction,except to the extent the Bidder Indemnified Person has engaged in wilful misconduct or fraud.
- (b) The parties acknowledge and agree that:
 - (i) the Bidder has sought and obtained the waiver and release in this clause 12.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 12.2 on behalf of any Bidder Indemnified Person;

- (ii) any Bidder Indemnified Person may plead this clause 12.2 in response to any claim made by any member of the Target Group against them; and
- (iii) the undertakings contained in this clause 12.2 are given for the benefit of each Bidder Indemnified Person and are intended to be enforceable against the Target by each Bidder Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

13. POST IMPLEMENTATION

13.1 Insurance policies:

- (a) The Bidder agrees that, subject to clauses 13.1(b) to 13.1(d), the Target may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy for a period of seven years after implementation of the Scheme in respect of any director or officer of any entity within the Target Group ("**D&O Run-off Policy**") and pay all premiums required.
- (b) The Target shall request its insurance broker to obtain the D&O Run-off Policy by exercising the exposure change provisions of the Target's existing directors' and officers' liability insurance policies to extend those policies for a seven-year period after implementation of the Scheme.
- (c) The D&O Run-off Policy shall:
 - (i) have the same amount of coverage;
 - (ii) have the same deductible or excess; and
 - (iii) otherwise be on terms that are no less favourable to the current directors or officers of the Target Group than the Target Group's directors' and officers' liability insurance in force at the date of this Agreement (other than for the seven year period of the policy).
- (d) The Target must keep the Bidder reasonably informed of all material developments in the process of obtaining its D&O Run-off Policy.
- (e) Provided the Target has complied with clauses 13.1(b) to 13.1(d), the Bidder agrees that the Target entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this Agreement.
- (f) After the Implementation Date, the Bidder must not, and must procure that its Related Companies do not, vary or cancel any directors' and officers' insurance obtained prior to the Implementation Date (including the D&O Run-off Policy) or do any act, matter or thing (or fail or omit to do any act, matter or thing) that is reasonably likely to result in any directors' and officers' insurance obtained prior to the Implementation Date (including the D&O Run-off Policy) being terminated or becoming voidable.

13.2 Indemnities continue:

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of the Target and each director, officer or employee of a member of the Target Group that the Bidder and its Related Companies will:

- (i) for a period of seven years from the Implementation Date, ensure that the constitutional documents of the Target and each other member of the Target Group contain such rules as are contained in their constitutional documents at the date of this Agreement that provide for each entity to indemnify each of its directors, officers and employees against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director, officer or employee of the entity (“**Constitutional Protections**”);
 - (ii) procure that the Target and each member of the Target Group complies with:
 - (A) the Constitutional Protections; and
 - (B) any provisions in any deeds of indemnity (provided that clause 13.1 will apply in respect of the run-off directors’ and officers’ liability insurance, rather than the terms of the relevant deed of indemnity) made by them in favour of their respective directors and officers from time to time and which was fairly disclosed in the Target Due Diligence Material (“**Existing Indemnities**”); and
 - (iii) ensure that, if the member of the Target Group which has provided a Constitutional Protection referred to in sub-clause (i) or an indemnity referred to in sub-clause (ii) is wound-up, liquidated, has a receiver or other insolvency official appointed to it or over its assets, or de-registered or is otherwise unable to meet its obligations under the relevant Constitutional Protection or indemnity due to a restructuring of the assets of the relevant company, the Bidder Group meets the relevant obligations.
- (b) The undertakings contained in clause 13.2(a) are subject to any Companies Act restriction, or any restriction in the law of a jurisdiction in which a Target Group member is incorporated, and will apply to the maximum extent permitted by any such restriction.
- (c) The undertakings contained in clause 13.2(a) are given until the earlier of the end of the relevant period specified in the relevant clause or the relevant Target Group member ceasing to be part of the Bidder Group, provided that:
- (i) this clause 13.2(c) will not adversely affect any indemnities which continue in accordance with their terms;
 - (ii) sub-clause 13.2(a)(iii) will continue to apply in respect of any relevant Target Group member which ceases to be a member of the Bidder Group as a result of being wound-up, liquidated or de-registered; and
 - (iii) if:
 - (A) the Target ceases to be a member of the Bidder Group as a result of the sale or other disposition of shares in the Target; and
 - (B) the Target fails to meet its obligations under an Existing Indemnity after that sale or disposition,

the Bidder will ensure that the Bidder Group meets any obligations under the Existing Indemnities after that sale or disposition.

13.3 **Sale of the Target:** Clause 13.2(c)(iii) will not apply to a beneficiary of an Existing Indemnity if the beneficiary has approved the basis on which a purchaser of shares in the Target will ensure ongoing compliance with the Existing Indemnity, such approval not to be unreasonably withheld or delayed.

13.4 **Benefit of clauses 13.1 and 13.2:**

- (a) In clauses 13.1 and 13.2, a reference to a director, officer or employee of the Target Group includes a current or former director, officer or employee of the Target Group.
- (b) Clauses 13.1 and 13.2 are for the benefit of each person who is a current or former director, officer or employee of any member of the Target Group and are intended to be enforceable by each of them in accordance with Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

14. EXCLUSIVITY AND MATCHING RIGHTS

14.1 **No shop restriction:** Subject to clause 14.11, during the Exclusivity Period, the Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage, 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 purposes 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 14.4 and clause 14.11, during the Exclusivity Period, the Target must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, any 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, initiated or otherwise procured by the Target or any of its Representatives, was received before the date of this Agreement and/or has been publicly announced.

14.3 **No due diligence restriction:** Subject to clause 14.4 and clause 14.11, but without limiting clause 14.2, during the Exclusivity Period, the Target must not, and must procure that each of its 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 Target 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 14.3(a) on its behalf.

14.4 **Fiduciary exceptions to no talk and no due diligence restrictions:** The restrictions in clauses 14.2 and 14.3 do not apply in respect of a bona fide Competing Proposal (which was not solicited, invited, encouraged, initiated or otherwise procured in contravention of clause 14.1 or clause 14.2) if the following requirements are satisfied:

- (a) the Board has determined, acting in good faith and after taking advice from its external financial and legal advisers, that the Competing Proposal is, or is reasonably likely to become, a Superior Proposal;
- (b) the Board has determined, acting in good faith and after having obtained advice from its external legal advisers, that failing to respond to such Competing Proposal would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board;
- (c) prior to the Target disclosing any non-public information to the Third Party, the Third Party has entered into a written agreement in favour of the Target 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 which the Target reasonably considers (acting in good faith) to be no more favourable in any material respect to the Third Party than those in the Confidentiality Agreement (provided that, the agreement with the Third Party is not required to include provisions which are equivalent to the definition of “Representative” in, and clauses 6.5 and 12, of the Confidentiality Agreement); and
- (d) to the extent that any non-public information made available to the Third Party is material and has not previously been provided to the Bidder (or differs in any material respect from any information previously provided to the Bidder), the Target provides or makes that information available to the Bidder at the same time as it is provided to the Third Party or promptly thereafter, provided that the Target is not required to provide any information to the Bidder where to do so would be inconsistent with the Communications and Information Sharing Protocols or may give rise to a breach of the Commerce Act.

The requirements in clauses 14.4(c) and 14.4(d) only apply where the Target intends to rely on this clause 14.4 in respect of clause 14.3. Those requirements do not apply where the Target intends to rely on this clause 14.4 in respect of clause 14.2.

14.5 **General notification obligation:**

- (a) During the Exclusivity Period, the Target must promptly and, in any event, within 24 hours notify the Bidder if:
 - (i) the Target or any of its Representatives receives 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 request for the Target to take any action contemplated by clause 14.2(a) or 14.3(a);

- (ii) the Target or any of its Representatives receives any request for information relating to the Target Group or its Business or any request for access to any non-public information of any member of the Target Group in connection with a current or future Competing Proposal; or
 - (iii) the Target proposes to, or does, take any action in reliance on the exception in clause 14.4.
- (b) A notice given under clause 14.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
- (i) the identity of the person who provided the Competing Proposal or made the relevant inquiry or approach to initiate discussions or to whom any information is proposed to be provided as referred to in clause 14.5(a);
 - (ii) all material terms and conditions of any 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 (to the extent known);
 - (iii) whether or not the Target intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or whether, acting in good faith, the Target has not yet been able to make such a decision); and
 - (iv) the nature of the information and access requested and/or provided or action proposed to be taken.
- (c) If the Target gives a notification under clause 14.5(a), the Target may make any announcement to NZX that the Target, acting in good faith, considers appropriate in the circumstances to ensure (but is limited to ensuring) that it complies with applicable law and the NZX Listing Rules. For clarity, any such announcement may contain the information and statements contemplated by clause 8.3(c).
- (d) Without limiting the Target's other obligations under this clause 14.5, the Target shall keep the Bidder reasonably informed on a prompt and timely basis of the status and any developments regarding any Competing Proposal which the Target (acting reasonably) considers are material, within 24 hours after receipt or delivery thereof (including, if a notice given under clause 14.5(a) states, in accordance with clause 14.5(b)(iii) that the Target has not yet decided whether it intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or similar statement), updating the Bidder on a prompt and timely basis when it makes such a decision).

14.6 Matching rights:

- (a) Without limiting clause 14.1 or clause 14.2, during the Exclusivity Period, the Target:
- (i) must not, and must procure that each of its Representatives (other than Representatives which are professional firms, to the extent those firms are not acting on behalf of, or on the instructions or at the direction of, the Target) does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;

- (ii) must procure that no Director changes, qualifies or withdraws his or her Director Recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
- (iii) must not make, and ensure that no Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:

- (iv) the Board has determined, acting in good faith and after having obtained advice from its external financial and legal advisers, that the Competing Proposal is a Superior Proposal and failing to take one or more of the actions prohibited by clause 14.6(a)(i) to (iii) would be reasonably likely to constitute a breach of the fiduciary or statutory duties of any member of the Board;
 - (v) the Target has, as soon as reasonably practicable after the Board has determined that the Competing Proposal is a Superior Proposal and that failing to take one or more of the actions prohibited by clause 14.6(a)(i) to (iii) would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board, given the Bidder:
 - (A) a notice setting out all material terms of the Competing Proposal in accordance with clause 14.5 and a written explanation as to why the Board considers the Competing Proposal is a Superior Proposal; and
 - (B) at the same time, to the extent not already provided under clause 14.4(d), provide any information that is required to be provided to the Bidder under clause 14.4(d);
 - (vi) the Target has given the Bidder five Business Days after the date that the Target gives the notice to the Bidder under clause 14.6(a)(v)(A) (including all of the information required to be provided under that clause) in respect of the Competing Proposal in which to provide a Counter Proposal in accordance with clause 14.6(a)(vii) (“**Matching Period**”); and
 - (vii) upon expiry of the Matching Period:
 - (A) the Bidder has not provided a Counter Proposal under clause 14.6(b); or
 - (B) if the Bidder has provided a Counter Proposal under clause 14.6(b) and the Target, having complied with clause 14.7, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that (1) the Competing Proposal remains a Superior Proposal (taking into account the Counter Proposal); and (2) failing to respond to such Competing Proposal would continue to be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Board.
- (b) During the Matching Period, the Bidder may (but is not required to) make an irrevocable written offer to the Target or Shareholders (in a form which, if accepted by the Target, will be legally binding on the Bidder) to amend the terms of the Scheme and this Agreement, which the

Bidder in good faith believes will provide a no less favourable outcome, taken as a whole, for Shareholders compared to the terms and conditions offered under the relevant Superior Proposal (a “**Counter Proposal**”).

- (c) If the Target gives notice to the Bidder under clause 14.6(a)(v)(A) then the Target may:
 - (i) in its discretion, delay any action contemplated by the Timetable (including adjourning or rescheduling the Scheme Meeting) to allow the Matching Period to be exhausted and, if applicable, to agree a Counter Proposal under clause 14.7; and
 - (ii) make any announcement to NZX that the Target, acting in good faith, considers appropriate in the circumstances to ensure that it complies with applicable law and the NZX Listing Rules. For clarity, any such announcement may contain the information and statements contemplated by clause 8.3(c).

14.7 **Target’s response to Counter Proposal:** If, during the Matching Period, the Bidder makes a Counter Proposal:

- (a) the Target must procure that the Board considers the Counter Proposal in good faith;
- (b) if the Board determines that the terms and conditions of the Counter Proposal, taken as a whole, are less favourable to Shareholders than those in the relevant Superior Proposal, then the Target must, for a period of not less than 48 hours, consult with the Bidder as to the relative merits of the Counter Proposal and the Superior Proposal; and
- (c) 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 Superior 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 Target must, subject to clause 8.4, procure that each Director makes a public statement recommending the Counter Proposal to Shareholders (which recommendation may be expressed to be subject to there being no further Superior Proposal and the Independent Adviser concluding that the consideration contemplated by the Counter Proposal is within or above the Independent Adviser’s valuation range for the Shares).

14.8 **Changes to proposals:** Any material change to a Competing Proposal, including any material change to the matters notified under clause 14.6(a)(v)(A), will be taken to constitute a new Competing Proposal in respect of which the Target must separately comply with its obligations under clauses 14.5 to 14.7.

14.9 **No matching:** If:

- (a) the Target has complied with clause 14.6 and, if applicable, clause 14.7 in relation to a Competing Proposal; and
- (b) clause 14.6(a)(vii) applies,

then:

- (c) clause 14 (other than this clause 14.9) will cease to apply;
 - (d) the Exclusivity Period will end;
 - (e) the Target may enter into a binding implementation agreement or similar binding arrangement to implement, and the Target and the Board may take any action in respect of, any Competing Proposal; and
 - (f) either party may terminate this agreement by notice to the other party.
- 14.10 **Return of confidential information:** If the Target 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 Bidder Group in connection with a Competing Proposal, the Target must, except to the extent that the Board considers it necessary to provide access to due diligence under clause 14.4 or 14.11, promptly request in writing the immediate return or destruction by that person of such confidential information.
- 14.11 **General exceptions to exclusivity provisions:** Nothing in this clause 14 prevents the Target or its Representatives from:
- (a) making normal presentations to, or responding to bona fide enquiries from, brokers, portfolio investors and analysts in accordance with usual investor relations practice or for the purposes of promoting the Scheme;
 - (b) disclosing information required to be provided by law, any court of competent jurisdiction, or the NZX Listing Rules or as may be requested or required by any Government Agency;
 - (c) taking any action required by law in response to an unsolicited takeover notice given under rule 41 of the Takeovers Code in respect of, or takeover offer made under the Takeovers Code for, equity securities of the Target (including complying with clause 15 of Schedule 2 to the Takeovers Code) provided that, subject to clause 14.11(d), for the avoidance of doubt, in respect of a Competing Proposal that is the subject of the takeover notice or takeover offer (the **“Relevant Competing Proposal”**):
 - (i) the Target must comply with clauses 14.2 and 14.3 (each subject to clause 14.4) in respect of the Relevant Competing Proposal; and
 - (ii) the Target must comply with clauses 14.6, to 14.8 before any Director recommends that Shareholders accept the Relevant Competing Proposal; or
 - (d) in respect of a takeover notice or takeover offer of the type referred to in clause 14.11(c),
 - (i) providing non-public information to;
 - (ii) entering into a confidentiality agreement with; or
 - (iii) having discussions with,

the offeror who gives the takeover notice or makes the takeover offer, to the extent such steps are reasonably required to comply with the Takeovers Code to ensure that the Target does not, and Directors do not, breach the Takeovers Code (including the prohibition on defensive tactics in Rule 38 of the Takeovers Code).

14.12 **Standstill arrangements with other parties:** During the Exclusivity Period, except with the prior written consent of the Bidder, the Target must not amend or waive (which, for clarity, includes communicating any intention not to enforce) the terms of any standstill agreement or arrangement between the Target and any person other than a member of the Bidder Group.

15. BREAK FEE AND REVERSE BREAK FEE

15.1 **Acknowledgement and agreement:** The Target (on the one hand) and the Bidder (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 in 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 liquidated damages based on a genuine and reasonable estimate of the 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 15 in this Agreement and would not have entered into this Agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 15 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or the Reverse Break Fee (as applicable) in the circumstances described in clauses 15.2 or 15.3 (as applicable) in order to secure the other party's entry into this Agreement.

15.2 **Circumstances where Break Fee payable:**

- (a) Subject to clause 15.5 and clause 15.6, the Target must pay the Break Fee to the Bidder if:
 - (i) at any time before this Agreement is terminated (except for termination under clause 16.2 or 16.12), a Competing Proposal is publicly announced and 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, within 15 months after the date of that announcement, a Competing Proposal (whether or not completed Competing Proposal is the same as or different to the Competing Proposal that was originally announced);
 - (ii) subject to clause 8.4, any Director:
 - (A) fails to give the Director Recommendation in the Target Initial Announcement;
 - (B) fails to make the Director Recommendation in the Scheme Booklet; or

(C) subject to clause 8.3, adversely changes, qualifies or withdraws, or make any statement inconsistent with, the Director Recommendation,

except as a result of one or more of the following:

(D) subject to clause 15.2(b), the Independent Adviser issuing 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

(E) the Target receiving a Superior Proposal, subject to the Target's compliance with clause 14.6 and 14.7;

(iii) the Bidder terminates this Agreement as permitted under clauses 16.1 or 16.11;

(iv) either party terminates this Agreement under clause 16.4(a); or

(v) the Bidder terminates this Agreement under clause 16.4(b).

(b) If the exception in clause 15.2(a)(ii)(D) applies, the Break Fee will nonetheless be payable by the Target to the Bidder if, prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within or above the Independent Adviser's valuation range, a Competing Proposal is received by the Target or made public and within 15 months after the date that Competing Proposal is received or becomes public, the person making the Competing Proposal or one or more persons that Control, are under the Control of, or are Associated with, that person completes a Competing Proposal (whether or not the completed Competing Proposal is the same as or different to the Competing Proposal that was originally received or made public).

15.3 **Circumstances where Reverse Break Fee payable:** Subject to clause 15.5 and clause 15.7, the Bidder must pay the Reverse Break Fee to the Target if the Target terminates this Agreement as permitted under clause 16.2 or clause 16.12.

15.4 **Payment of Break Fee or Reverse Break Fee:** If the Break Fee or Reverse Break Fee (as applicable) become payable under this Agreement, the Target or the Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party. The obligation to make the payment described in the preceding sentence will be satisfied by the payment of the relevant amount in immediately available funds to the recipient's nominated account. For the avoidance of doubt, if only a portion of the Break Fee or the Reverse Break Fee is held by a Court to be enforceable, that portion which is payable must be paid within 10 Business Days after the relevant determination.

15.5 **Break Fee or Reverse Break Fee not payable:**

(a) Notwithstanding anything else in this Agreement:

(i) the Break Fee or the Reverse Break Fee (as the case may be) is only payable if this Agreement is terminated;

(ii) neither the Break Fee nor the Reverse Break Fee (as the case may be) is payable if the Scheme becomes Effective; and

- (iii) each of the Break Fee and the Reverse Break Fee (as the case may be) is payable only once.
- (b) The Break Fee is not payable under clause 15.2(a)(i) in respect of a Competing Proposal if the Competing Proposal:
 - (i) is a proposal of the nature referred to in sub-clause (e)(ii) of the definition of Competing Proposal and which does not fall within any other sub-clause of the definition of Competing Proposal;
 - (ii) did not result from a breach of clause 14 by the Target;
 - (iii) was not agreed to, approved by, or consented to by a member of the Target Group; and
 - (iv) was not approved by Shareholders under the Companies Act, Takeovers Code, NZX Listing Rules or the Target's constitution.

15.6 Exclusive remedy available to the Bidder and cap on the Target's liability:

- (a) Subject to clauses 15.6(c) and 15.9, the Bidder acknowledges and agrees that:
 - (i) payment of the Break Fee is the sole and exclusive remedy available to the Bidder in connection with any event or occurrence referred to in clause 15.2; and
 - (ii) the Target is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay the Bidder the Break Fee under this clause 15.
- (b) Notwithstanding any other provision of this Agreement but subject to clauses 15.6(c) and 15.9:
 - (i) the Target's maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Break Fee;
 - (ii) if the Break Fee has been demanded by the Bidder and paid by the Target, the Target will have no further liability to the Bidder under or in connection with this Agreement or the Transaction; and
 - (iii) the amount of the Break Fee payable to the Bidder under this clause 15 shall be reduced by the amount of any loss or damages recovered by the Bidder in relation to a breach of any clause of this Agreement.
- (c) Nothing in this clause 15.6 limits the Target's liability for fraud.

15.7 Target exclusive remedy and Bidder liability cap:

- (a) Subject to clauses 15.7(c) and 15.9, the Target acknowledges and agrees that:
 - (i) payment of the Reverse Break Fee is the sole and exclusive remedy available to the Target in connection with any event or occurrence referred to in clause 15.3; and

- (ii) the Bidder is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay the Target the Reverse Break Fee under this clause 15.
- (b) Notwithstanding any other provision of this Agreement but subject to clauses 15.7(c) and 15.9:
- (i) the Bidder's maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Reverse Break Fee;
 - (ii) if the Reverse Break Fee has been demanded by the Target and paid by the Bidder, the Bidder will have no further liability to the Target under or in connection with this Agreement or the Transaction; and
 - (iii) the amount of the Reverse Break Fee payable to the Target under this clause 15 shall be reduced by the amount of any loss or damages recovered by the Target in relation to a breach of any clause of this Agreement.
- (c) Nothing in this clause 15.7 limits the Bidder's liability for fraud.

15.8 **Amendments to Break Fee Arrangements:** If:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or the Reverse Break Fee or the circumstances in which either of them is to be paid (the "**Break Fee Arrangements**") as a condition of granting a Letter of Intention or No-objection Statement or not otherwise opposing the Scheme; or
- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders in connection with the Scheme,

then the parties must amend this clause 15 to the extent required to give effect to the requirements of the Takeovers Panel or the Court, as the case may be, and in the circumstances referred to in clause 15.8(b) must give any required undertakings.

15.9 **Specific performance and equitable relief:**

- (a) Subject to clauses 15.9(b) and 15.9(c), the Target and the Bidder are each entitled to bring, and nothing in this Agreement precludes the Target or the Bidder from bringing, proceedings against the other party for specific performance or other equitable relief in connection with any Transaction Document.
- (b) The Bidder's right to receive the Break Fee will not limit or otherwise affect the Bidder's right to seek specific performance or other equitable relief as provided in this clause 15.9, provided that in no event will the Bidder 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.

- (c) The Target's right to receive the Reverse Break Fee will not limit or otherwise affect the Target's right to seek specific performance as provided in this clause 15.9, provided that in no event will the Target 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.
- 15.10 **Deemed loss:** The Bidder agrees that if the Target seeks damages from the Bidder in connection with breach of a Transaction Document, any loss suffered by Shareholders as a result of a breach of that Transaction Document by the Bidder will be deemed to be suffered by the Target (except to the extent that the Bidder pays damages directly to Shareholders on account of any loss suffered due to the applicable breach).
- 15.11 **Deed Poll:** Subject to clause 15.7, nothing in this Agreement limits Shareholders' rights, or the Target's rights as attorney and agent for Shareholders, under the Deed Poll.
- 16. TERMINATION**
- 16.1 **Events affecting the Target Group:** The Bidder may terminate this Agreement by giving notice to the Target in accordance with clause 16.3 if at any time after the date of this Agreement and before 8.00am on the Implementation Date:
 - (a) the Target breaches any Target Warranty (other than a Target Fundamental Warranty) or other obligation of the Target under this Agreement, where the consequences of that breach are material in the context of the Scheme taken as a whole;
 - (b) the Target breaches a Target Fundamental Warranty; or
 - (c) the Target breaches clause 8.1 or 8.2.
- 16.2 **Events affecting Bidder:** The Target may terminate this Agreement by giving notice to the Bidder in accordance with clause 16.3 if at any time after the date of this Agreement and before 8.00am on the Implementation Date:
 - (a) the Bidder breaches the Deed Poll, any Bidder Warranty (other than a Bidder Fundamental Warranty) or any other obligation of the Bidder under this Agreement where the consequences of that breach are material in the context of the Scheme taken as a whole; or
 - (b) the Bidder breaches a Bidder Fundamental Warranty.
- 16.3 **Notice of termination:** A party may only exercise a right of termination under clause 16.1 or 16.2 if:
 - (a) the party wishing to terminate has given notice to the other party promptly after becoming aware of the circumstances that it believes permit it to terminate this Agreement and in any event before 8.00am on the Implementation Date, which notice must state those circumstances and its intention to terminate this Agreement;
 - (b) the relevant circumstances have not been remedied within 15 Business Days after the time that the notice is given or any shorter period ending at 8.00am on the Implementation Date; and

- (c) the party wishing to terminate does so by notice before the earlier to occur of 20 Business Days after the time that the notice is given under clause 16.3(a) and 8.00am on the Implementation Date.
- 16.4 **Counter Proposal:**
- (a) Either party may, by notice to the other party, terminate this Agreement in accordance with clause 14.9(f) at any time before 8.00am on the Implementation Date.
- (b) The Bidder may, by notice to the Target given at any time before 8.00am on the Implementation Date, terminate this Agreement if the Target or any other Target Group company enters into a definitive agreement to implement a Competing Proposal.
- 16.5 **Condition failure:** Subject to any waiver of a Condition under clause 3.6 (in respect of a Condition which is capable of waiver), this Agreement may be terminated for breach or non-satisfaction of a Condition in accordance with clauses 16.6 to 16.14 (inclusive).
- 16.6 **Condition 3.1(a) - NZCC Condition:** If the NZCC Condition becomes incapable of satisfaction by the End Date and:
- (a) the Bidder has delivered notice to that effect to the Target under clause 3.5(b)(ii); and
- (b) the parties have not reached agreement to extend the End Date under clause 3.9(a) by 8.00am on the End Date,
- then either party may terminate this Agreement by notice to the other before 8.00am on the End Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3.4 in respect of the NZCC Condition.
- 16.7 **Condition 3.1(b) - Independent Adviser's Report:** The Target may terminate this Agreement by notice to the Bidder at any time before the Scheme Meeting if the Independent Adviser's Report concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares.
- 16.8 **Condition 3.1(c) - Scheme Resolution not passed:** If:
- (a) 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; and
- (b) the parties do not agree, by the earlier of 5.00pm on the date that is five Business Days after the Scheme Meeting and the End Date, to hold another Scheme Meeting,
- then either party may terminate this Agreement by notice to the other before:
- (c) 8.00am on the Implementation Date; or
- (d) if the Implementation Date cannot be determined, 8.00am on the End Date,
- provided that the terminating party has complied in all material respects with its obligations in respect of the Scheme Meeting and the Scheme Resolution.

16.9 **Condition 3.1(d) - Court determines not to grant the Final Orders:**

- (a) If:
 - (i) the Court determines not to grant the Final Orders;
 - (ii) the Target is not required to make a further application for Final Orders under clause 7.3(a); and
 - (iii) the parties have not reached agreement under clause 7.4(b) to appeal that determination or the determination is not required to be appealed under clause 7.4(b) within 10 Business Days after the determination,

then either party may terminate this Agreement by notice to the other before 8.00am on the End Date, provided that the terminating party has complied in all material respects with its obligations under this Agreement that are relevant to seeking or obtaining the Final Orders.

- (b) If an appeal under clause 7.4(b) is unsuccessful or is withdrawn, then either party may terminate this Agreement by notice to the other before 8.00am on the End Date.

16.10 **Condition 3.1(e) – No restraints:** If the Condition in clause 3.1(e) is not satisfied at 8.00am on the Implementation Date, then either party may terminate this Agreement by notice to the other at any time before 9.00am on the Implementation Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3.3 in respect of the Condition in clause 3.1(e), including, to the extent applicable, clauses 3.5(b)(iii) and 3.9.

16.11 **Condition 3.1(f) – Target Prescribed Occurrences:** If a Target Prescribed Occurrence occurs on or after the date of this Agreement and before 8.00am on the Implementation Date, the Bidder may terminate this Agreement by notice to the Target before:

- (a) 8.00am on the Implementation Date; or
- (b) if the Implementation Date cannot be determined, 8.00am on the End Date.

16.12 **Condition 3.1(g) – Bidder Prescribed Occurrences:**

- (a) Subject to sub-clause (b), if a Bidder Prescribed Occurrence occurs on or after the date of this Agreement and before 8.00am on the Implementation Date, the Target may terminate this Agreement by notice to the Bidder before:
 - (i) 8.00am on the Implementation Date; or
 - (ii) if the Implementation Date cannot be determined, 8.00am on the End Date.
- (b) If the Bidder seeks the Target's consent in writing under clause 2 of Schedule Two to the issuance of any shares, or the granting of any option or right to subscribe for shares or securities that convert into shares, and the Target does not provide that consent (and deemed consent is not provided under clause 2 of Schedule Two), then the Target can only terminate this Agreement for a breach of the Bidder Prescribed Occurrence set out in clause 2 of Schedule Two in respect of that issuance or grant if it gives notice to the Bidder terminating this Agreement before 5.00pm on date which is 10 Business Days after the date on which that Bidder Prescribed Occurrence occurred.

- 16.13 **Condition 3.1(h) – Target Material Adverse Change:** The Bidder may terminate this Agreement before:
- (a) 8.00am on the Implementation Date; or
 - (b) if the Implementation Date cannot be determined, 8.00am on the End Date,
- by notice to the Target if each of the following is satisfied:
- (c) a Target Material Adverse Change occurs between (and including) the date of this Agreement and 8.00am on the Implementation Date; and
 - (d) the Bidder has complied with its obligations under clause 3.10(b) and, to the extent applicable, clauses 3.10(c) and 3.11(a).
- 16.14 **Condition 3.1(i) – Bidder Material Adverse Change:** The Target may terminate this Agreement before:
- (a) 8.00am on the Implementation Date; or
 - (b) if the Implementation Date cannot be determined, 8.00am on the End Date,
- by notice to the Bidder if each of the following is satisfied:
- (c) a Bidder Material Adverse Change occurs between (and including) the date of this Agreement and 8.00am on the Implementation Date; and
 - (d) the Target has complied with its obligations under clause 3.10(b) and, to the extent applicable, clauses 3.10(c) and 3.11(a).
- 16.15 **End Date:** Either the Target or the Bidder may terminate this Agreement by giving notice to the other if the Scheme has not become Effective by 8.00am on the End Date, provided that, if relevant, the parties have complied with their obligations under in all material respects with its obligations under clause 3, 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.
- 16.16 **Effect of termination:** If this Agreement is terminated under this clause 16, then:
- (a) except as provided in clause 16.16(b) and 16.16(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 16.16 and each of the Surviving Clauses survive termination of this Agreement.
- 16.17 **No other termination rights:**
- (a) This clause 16 sets out the only rights for the parties to cancel, rescind, avoid, or terminate this Agreement. No party has any right to cancel, rescind, avoid, or terminate this Agreement whether before or after the implementation of the Scheme on any other basis (as a result of any matter, information or circumstance), including:

- (i) for misrepresentation;
 - (ii) for repudiation, anticipatory breach or breach of this Agreement (including a breach of warranty); or
 - (iii) in respect of any matter giving rise to, or the subject of, a claim arising out of or in connection with this Agreement (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise).
- (b) The parties agree that sections 35 to 49 of the Contract and Commercial Law Act 2017 do not apply to this Agreement.
 - (c) This Agreement cannot be terminated after implementation of the Scheme.

17. ANNOUNCEMENTS

17.1 **Initial announcements:** As soon as reasonably practicable after this Agreement is signed:

- (a) the Target must release the Target Initial Announcement, which must include the Director Recommendation, through the NZX market announcement platform; and
- (b) the Bidder must release the Bidder Initial Announcement, through the NZX and Australian Securities Exchange market announcement platforms.

17.2 **Other announcements:** Neither party may make, and each party must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this Agreement other than:

- (a) the Target Initial Announcement and the Bidder Initial Announcement in accordance with clause 17.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed;
- (c) in accordance with clause 14.5(c) or 14.6(c)(ii);
- (d) an announcement by the Target which provides an update or progress of the Scheme or administrative information in relation to Shareholders approving the Scheme at the Scheme Meeting;
- (e) if requested or required by a Government Agency or if required by law, the NZX Listing Rules, or the rules of any other recognised stock exchange, 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, if practicable and lawful, co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

17.3 **Permitted communications:** Clause 17.2 will not prevent the announcing party from:

- (a) merely referring to the other party by name;

- (b) repeating any material or information from an announcement which has previously been released or approved by, or agreed with the other party (in which case, where practicable, the announcing party will give the other party advance notice);
- (c) 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 clauses 17.2 and 17.3; or
- (d) making disclosures regarding:
 - (i) the actual or purported termination of this Agreement; or
 - (ii) any claim, disagreement or dispute under or in connection with this Agreement, any other Transaction Document or the Transaction.

18. PAYMENTS

18.1 **Manner of payment:** 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, without set-off or withholding (except as required by law). 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 or any other Transaction Document binding on that party, 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) at an annual rate of 10% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

18.3 **Scrip consideration:** For the avoidance of doubt, a failure by the Bidder to issue Scrip Consideration when such issue is required under a Transaction Document binding on the Bidder will constitute a failure to pay a sum equal to the value attributed to the Scrip Consideration in the Target Initial Announcement for the purpose of clause 18.2.

18.4 **Consideration for issue of the New Bidder Shares:** For the avoidance of doubt, the total amount of consideration that the Bidder will receive for the issue of the New Bidder Shares to each Scheme Shareholder is an amount equal to the value attributed to the portion of the Scheme Shares to be acquired by the Bidder from that Shareholder in consideration for its provision of the total Scrip Consideration to that Shareholder.

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 the avoidance of doubt, the parties agree that the supply of Shares pursuant to this Agreement is an exempt or zero-rated supply of a financial service and therefore not subject to GST, a supply not made in the course of a GST taxable activity or a supply not made by a GST registered person. Except for the Break Fee, the Reverse Break Fee and any damages payments under this Agreement (which are inclusive of GST, if any), all other stated amounts payable or consideration to be provided under or in connection with this Agreement do not include GST (“**GST Exclusive Consideration**”).
- 19.3 **Payment of GST:** If GST is chargeable on any supply made under or in connection with this Agreement (except for a supply the consideration for which is the Break Fee, Reverse Break Fee and any damages paid under this Agreement), the recipient must pay to the party that has made or will make the supply (the “**Supplier**”), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the “**Additional Amount**”). The recipient not being a Scheme Shareholder must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:
- (a) to pay the Additional Amount unless and until the Supplier has issued or provided taxable supply information under clause 19.4; or
 - (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.
- 19.4 **Taxable supply information:** For any supply to which clause 19.3 applies, the Supplier must issue or provide taxable supply information that complies with the GST Act. The Supplier must issue or provide the taxable supply information 20 Business Days after receipt of a request for the taxable supply information from the other party.
- 19.5 **Adjustments:** If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment, supply correction information will be provided as required by the GST Act and an appropriate payment will be made between the parties. The Supplier must provide supply correction information within 20 Business Days after receipt of a request for supply correction information from the other party.
- 19.6 **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. For the avoidance of doubt, this clause 19.6 does not apply to adjust the Break Fee or Reverse Break Fee.
- 19.7 **GST information:** If requested to do so by the Target, the Bidder must promptly notify the Target of the Bidder’s tax resident status, GST registration status and whether the Bidder makes more than 75% taxable supplies over total supplies.

20. NOTICES

20.1 **Manner of giving notice:** Any notice or other communication to be given under this Agreement must be in writing (which includes email) and may be delivered or sent by email to the party to be served as follows:

(a) to the Target at:

Address: 93 Cameron Road,
Tauranga, New Zealand

Email: clayton.delmarter@manawaenergy.co.nz

For the attention of: Clayton Delmarter

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

Address: Harmos Horton Lusk, Level 33, Vero Centre, 48 Shortland Street,
Auckland, New Zealand

Email: nathanael.starrenburg@hhl.co.nz
annie.steel@hhl.co.nz

For the attention of: Nathanael Starrenburg, Annie Steel

(b) to the Bidder at:

Address: Level 2, Harbour City Tower
29 Brandon Street
Wellington, New Zealand

Email: kirsten.clayton@contactenergy.co.nz

For the attention of: Kirsten Clayton

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

Email: amon.nunns@bellgully.com
james.cooney@bellgully.com

For the attention of: Amon Nunns and James Cooney

or at any such other address or email address notified for this purpose to the other parties under this clause.

20.2 **When notice given:** Any notice or other communication is deemed to have been given:

(a) if delivered, on the date of delivery; or

(b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to have been received after 5.00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

- 20.3 **Email notice required:** If at the time a notice is to be given under this Agreement there is a public emergency, which materially restricts movement within New Zealand, any notice given under this Agreement must be given by email (except to the extent that the notice is required by law to be given by another means, in which case it must also be provided by email).
- 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 e-mail 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 e-mail system, as the case may be.
- 20.5 **Documents relating to legal proceedings:** This clause 20 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

21. GENERAL

21.1 Amendments:

- (a) This Agreement may only be amended prior to 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) Subject to clause 21.1(b), this Agreement may be varied by the parties to it without the approval of any Shareholder, any Target Indemnified Person, any Bidder Indemnified Person or any director, officer or employee of the Target or of any other member of the Target Group.

21.2 **Assignments:** None of the rights or obligations of a party under this Agreement may be assigned, provided as security, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

21.3 **Costs:** Except as otherwise expressly provided 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, the Scheme and the Deed Poll.

21.4 Confidentiality:

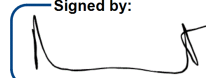
- (a) The Target agrees:
 - (i) that it remains bound by the Confidentiality Agreement; and
 - (ii) that all information provided by or on behalf of the Bidder under this Agreement is "Contact Confidential Information" for the purposes of the Confidentiality Agreement.
- (b) The Bidder agrees:
 - (i) that it remains bound by the Confidentiality Agreement; and

- (ii) that all information provided by or on behalf of the Target under this Agreement is “Confidential Information” for the purposes of the Confidentiality Agreement.
 - (c) This Agreement will prevail to the extent of any inconsistency between the Confidentiality Agreement and this Agreement. The Communications and Information Sharing Protocols will prevail to the extent of any inconsistency between those protocols and this Agreement.
 - (d) Subject to clause 21.4(c), this Agreement does not limit, modify or terminate the obligations of any person under the Confidentiality Agreement or the Communication and Information Sharing Protocols if any such person is a party to or otherwise bound by the Confidentiality Agreement or the Communication and Information Sharing Protocols.
 - (e) The rights and obligations of the parties under the Confidentiality Agreement survive the termination of this Agreement.
- 21.5 **Entire agreement:** This Agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement and the Communication and Information Sharing Protocols.
- 21.6 **Execution in counterparts:** This Agreement may be executed in any number of counterparts, each of which is to be an original, but all of which taken together are to constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this Agreement by executing a counterpart. Scanned signatures are taken to be valid, sufficient and binding to the same extent as original signatures.
- 21.7 **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.
- 21.8 **Further assurances:** Each party must execute and deliver any documents and do all things as may reasonably be required by the other party to give full effect to this Agreement.
- 21.9 **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, provided that where any provision of this Agreement offends any law applicable to it and the offending clause can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result.
- 22. GOVERNING LAW AND JURISDICTION**
- 22.1 **Governing law:** This Agreement and the Deed Poll and any non-contractual obligations arising out of or in connection with either of those documents are governed by New Zealand law.

22.2 **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 or the Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with either of those documents) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

Signatures

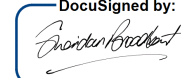
MANAWA ENERGY LIMITED by:

Signed by:

04E473FD31024C8...

Signature of director

Deion Campbell

Name of director

DocuSigned by:

C6D21B2B9877473...

Signature of director

Sheridan Broadbent

Name of director

CONTACT ENERGY LIMITED in the presence
of:

Signature of witness

Name of witness

Occupation

City/town of residence

Signature of authorised signatory

Name of authorised signatory

Signatures

MANAWA ENERGY LIMITED by:


Signature of director

Signature of director

Name of director

Name of director

CONTACT ENERGY LIMITED in the presence
of:



Signature of witness

JENNIFER HEWITT


Name of witness

SENIOR LEGAL COUNSEL

Occupation

WELLINGTON, NZ

City/town of residence



Signature of authorised signatory

MICHAEL FUGE

Name of authorised signatory

Schedule One

Target Prescribed Occurrences

1. **Distributions:** The Target or any other Target Group member 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), in each case other than the Target Permitted Dividend or a distribution by a member of the Target Group to the Target or a wholly owned subsidiary of the Target.
2. **Securities:** Any Target Group member issues, agrees to issue, or grants, or agrees to grant, 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 issue of shares by a wholly owned subsidiary of the Target to the Target or another wholly owned subsidiary of the Target;
 - (b) the entry into, and variation of, electricity derivatives in the ordinary course of business; or
 - (c) the entry into, and variation of, foreign exchange or interest rate derivatives in the ordinary course of business in accordance with clause 9.4(f)(xxii).
3. **Reclassification or buyback:** The Target or any other Target Group member:
 - (a) alters the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any other member of the Target Group;
 - (b) converts 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. **Constitution:** Any alteration to the constitutional documents of any Target Group member (except as required by law or the NZX Listing Rules).
5. **Insolvency Event:** An Insolvency Event occurs in respect of any member of the Target Group (other than of a non-trading entity) which has not been resolved to the Bidder's reasonable satisfaction by the earlier of 5.00pm on the day that is five Business Days after the Insolvency Event and 8.00am on the Implementation Date.
6. **Amalgamations:** A resolution is passed for any amalgamation of any member of the Target 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 Target and/or one or more wholly owned subsidiaries of the Target).
7. **Termination payments:** A member of the Target 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 Target Group becoming a subsidiary of the Bidder or under the Bidder's control (except as fairly disclosed in the Target Due Diligence Material or as approved in writing by the Bidder).
8. **Delisting:** 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 implementation of the Scheme).
 9. **Employee remuneration:** A member of the Target Group increases:
 - (a) the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses) any of its directors;
 - (b) 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 Senior Managers (as defined in the NZX Listing Rules) or employees with a remuneration of over \$250,000 per annum, other than:
 - (i) within the exceptions provided in clauses 9.4(f)(xvi), 9.4(f)(xiv) and 9.4(f)(xiii);
 - (ii) as permitted by clause 9.5.
 10. **Acceleration of rights:** A member of the Target Group accelerates the rights of any of its directors, officers, employees or independent contractors for personal services to benefits of any kind, except as contemplated by clause 6.5.
 11. **Related party transactions:** A member of the Target Group enters into a transaction with a Related Party (other than a Related Party that is also a member of the Target Group) that is material to the Target Group taken as a whole.
 12. **Financial adviser arrangements:** A member of the Target Group amends (or agrees to amend) in a material respect any agreement or arrangement with any financial adviser in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial adviser, in respect of the Transaction or a Competing Proposal.
 13. **Disposal:** A member of the Target Group:
 - (a) disposes, or agrees to dispose, of; or
 - (b) grants any person any Encumbrance, other than a Permitted Encumbrance, over, the whole or a substantial part of the Target Group's business or property.
 14. **Resolutions:** The board or shareholders of any Target Group member pass a resolution to do or authorise the doing of any act or matter referred to in any of the preceding clauses of this Schedule One.
 15. **Proceedings / determinations:** Any:
 - (a) enforcement action, investigation, inquiry or audit is announced or commenced, or there is a material development in relation to any action, investigation, inquiry or audit by a Government Agency; or
 - (b) decision, determination or ruling by a Government Agency; or

(c) action, claim, litigation, arbitration or prosecution by any party (including by a Government Agency) is notified or commenced,

against or involving a member of the Target Group which is, or is reasonably likely to be, materially adverse to the Target Group taken as a whole.

Schedule Two

Bidder Prescribed Occurrences

1. **Distributions:** The Bidder or any other Bidder Group member 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), in each case other than the Bidder Permitted Dividend or a distribution by a member of the Bidder Group to the Bidder or a wholly owned subsidiary of the Bidder.
2. **Securities:** The Bidder issues, agrees to issue, or grants, or agrees to grant, an option or right to subscribe for, shares or securities that convert into shares other than:
 - (a) the issue of Bidder Shares under the Bidder's DRP (including any underwriting of the Bidder's DRP) or any Bidder Share Scheme;
 - (b) the issue of Scrip Consideration under the Transaction Documents; or
 - (c) for an issue or grant:
 - (i) in respect of which the Bidder has agreed to make an appropriate increase in the number of New Bidder Shares that Scheme Shareholders will receive in respect of the Scrip Consideration (if the issue or grant will result in a dilution of value of the Scrip Consideration to Scheme Shareholders); and
 - (ii) which has been consented to in writing of the Target prior to the issue or grant (such consent not to be unreasonably withheld), provided that the issue price must be no less than the per-share price set out at "C" of paragraph (b) in the definition of Exchange Ratio.

For the purposes of sub-clause (c), if the Bidder seeks consent in writing and the Target does not respond to that request in writing within 5 Business Days after receiving that request, then the Target will be deemed to have provided its consent. Any such request by the Bidder must be accompanied by a summary of the key terms of the proposed issuance or grant.
3. **Reclassification or buyback:** The Bidder:
 - (a) alters the rights, privileges, benefits, entitlements or restrictions attaching to the Bidder Shares; or
 - (b) converts all or any of the Bidder Shares into a larger or smaller number unless an appropriate adjustment is made to the number of New Bidder Shares that Scheme Shareholders will receive in respect of the Scrip Consideration; or
 - (c) buys back (or agrees to buy back) any Bidder Shares without the consent of the Target.
4. **Constitution:** Any alteration to the constitutional documents of the Bidder (except as required by law or the NZX Listing Rules).

5. **Insolvency Event:** An Insolvency Event occurs in respect of the Bidder which has not been resolved to the Target's reasonable satisfaction by the earlier of 5.00pm on the day that is five Business Days after the Insolvency Event and 8.00am on the Implementation Date.
6. **Amalgamations:** A resolution is passed for any amalgamation of any member of the Bidder 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 Bidder and/or one or more wholly owned subsidiaries of the Bidder).
7. **Delisting:** The Bidder 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 implementation of the Scheme).
8. **Disposals:** A member of the Bidder Group disposes, or agrees to dispose, of the whole or a substantial part of the Bidder Group's business or property. For the purpose of this clause, "substantial" shall mean disposing of assets which either (a) have a net book value of more than \$500 million; or (b) contributed more than 20% of EBITDAF of the Bidder Group as set out in its financial statements for the year ended 30 June 2024.
9. **NZCC:** A member of the Target Group acquires, or enters into an agreement to acquire, a business or assets which is reasonably likely to prevent the satisfaction of the NZCC Condition.
10. **Sale Agent:** The Bidder terminates the arrangements with the Sale Agent contemplated by clause 5.2(b).
11. **Resolutions:** The board or shareholders of any Bidder Group member pass a resolution to do or authorise the doing of any act or matter referred to in any of the preceding clauses of this Schedule Two.
12. **Share Issue Approvals:** The board of directors of the Bidder revoke any Share Issue Approval or amend the Share Issue Approval without the Target's prior written consent.
13. **Proceedings / determinations:** Any:
 - (a) enforcement action, investigation, inquiry or audit is announced or commenced, or there is a material development in relation to any action, investigation, inquiry or audit by a Government Agency; or
 - (b) decision, determination or ruling by a Government Agency; or
 - (c) action, claim, litigation, arbitration or prosecution by any party (including by a Government Agency) is notified or commenced,against or involving a member of the Bidder Group which occurs in the period commencing immediately after the Scheme Meeting and ending at 8.00am on the Implementation Date and which is, or is reasonably likely to be, materially adverse to the Bidder Group taken as a whole.

Schedule Three

Target Warranties

1. **Existence:** Each member of the Target Group is a company or limited partnership duly incorporated or registered and validly existing under the laws of New Zealand.
2. **Capacity:** The Target has the power to execute this Agreement and to perform its obligations under this Agreement and the Scheme, and has taken all necessary corporate action to authorise such execution.
3. **Binding effect:** The Target's obligations under this Agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **No conflicts:** The execution by the Target of this Agreement and the performance of its obligations under this Agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) any agreement or instrument to which the Target is a party;
 - (b) its constitution; or
 - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which the Target is bound and which would prevent it from entering into and performing its obligations under this Agreement.
5. **Compliance:**
 - (a) Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by the Target for the Target to execute and perform this Agreement.
 - (b) At the date of this Agreement, the Target is not aware of any action by a Government Agency that would prevent or restrict the Target's ability to perform its obligations under this Agreement.
6. **Share capital:**
 - (a) As at the date of this Agreement:
 - (i) the entire share capital of the Target is 312,973,000 Shares;
 - (ii) except for:
 - (A) the Shares referred to in paragraph 6(a)(i) of this Schedule Three; and
 - (B) ordinary shares that have been issued by Subsidiaries of the Target to other members of the Target Group,

there are no other equity securities (including shares and options to subscribe for shares) or other securities or instruments which are convertible into or exchangeable for equity securities in a member of the Target Group ("**Target Equity Securities**") on issue; and

- (iii) no member of the Target Group has offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any Target Equity Securities.
 - (b) As at 8.00am on the Implementation Date, there will be on issue no Target Equity Securities other than as contemplated by paragraphs 6(a)(ii)(A) and 6(a)(ii)(B) of this Schedule Three.
7. **Corporate structure:** Except as disclosed in the Target Due Diligence Material, no member of the Target Group:
- (a) has any subsidiaries and no member of the Target Group 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 Target 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).
8. **Disclosure:**
- (a) The Target 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 Target Due Diligence Material; and
 - (ii) for the details and existence of the Transaction,the Target 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.
9. **Target Due Diligence Material:** The Target Due Diligence Material was prepared and provided in good faith and, as far as the Target is aware, on the date that they were prepared, the items comprising the Target Due Diligence Material were true and accurate in all material respects and were not, when given, false or misleading in any material respect (including by omission).
10. **Material Contracts:** The Target Due Diligence Material contains each contract pursuant to which a member of the Target 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 Target Group, if any;
 - (b) involves outstanding indebtedness for borrowed money in excess of \$5,000,000 (excluding intra-group indebtedness owed between members of the Target Group);
 - (c) involves any settlement arrangement under which the Target Group is required to make outstanding payments in excess of \$2,000,000 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 or to the Target Group (whether in respect of the Target's Commercial and Industrial electricity supply business, any Power Purchase Agreements or other relevant contractual arrangements, and whether in respect of physical or financial supply);
- (e) is material to the irrigation business of the Target Group;
- (f) relates to operational expenditure in excess of \$2,000,000 per annum or is otherwise material to the operation of the Business; or
- (g) relates to capital expenditure in excess of \$2,000,000 or is otherwise material to the Target Group's current or planned development projects or other new business opportunities, or to the Target Group's asset management, renovation and enhancement projects,

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

11. **Asset management plan:** As at the date of this Agreement, the asset management plan and other information fairly disclosed in the Target Due Diligence Material that relates to the condition of the Target Group's assets provides, based on information available to the Target Group at the date of the Agreement, a sufficient and materially accurate view of dam safety compliance and the status, condition and generating capacity of the Target Group's assets.
12. **No undisclosed liabilities or contingent liabilities:** At the date of this Agreement, no member of the Target Group has any non-ordinary course liability which exceeds \$5,000,000 or, as far as the Target is aware, non-ordinary course contingent liability the value of which exceeds \$5,000,000 except, in either case:
 - (a) for all liabilities reflected in the Target's financial statements and notes thereto for the year ended 31 March 2024 or otherwise fairly disclosed in the Target Due Diligence Material; and
 - (b) for contingent liabilities expressly set out in the Target's financial statements and notes thereto for the year ended 31 March 2024 or otherwise fairly disclosed in the Target Due Diligence Material.
13. **No default:**
 - (a) No Target 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 Target 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 Target Group of more than \$5,000,000; 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 Target Group (as a whole).
14. **Adverse rights:** Except as fairly disclosed in the Target 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 Target Group is a party or under which any member of the Target 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 Target Group; or
 - (c) so far as the Target is aware, be likely to cause any material supplier or customer of any member of the Target Group to discontinue or substantially reduce its business with the Target 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 Target Group to be acquired by another person, or cancelled, terminated or lost or materially adversely qualified or impaired.
15. **No onerous contracts:** Except as disclosed in the Target Due Diligence Material, at the date of this Agreement, no member of the Target Group is party to any material contract, commitment or arrangement which the Target is aware and considers to be unusual, abnormal or onerous.
16. **Payments outside of the ordinary course:** Except as disclosed in the Target Due Diligence Material, no member of the Target 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 Target Group taken as a whole, except as permitted by clause 9.5.
17. **Land:** No Target Group member has a material legal interest or material equitable interest in land that has not been disclosed in the Target Due Diligence Material that gives rise to any material liability for the Target Group.
18. **Authorisations:**
- (a) Each member of the Target Group has complied and is in compliance in all material respects with all material New Zealand and material foreign laws and regulations applicable to it (including those in relation to Tax).
 - (b) Except as fairly disclosed in the Target Due Diligence Material, at the date of this Agreement, each member of the Target Group has all material Authorisations necessary for it to conduct the Business as presently being conducted.
 - (c) No member of the Target Group is in material breach of any material Authorisation held by it.
 - (d) At the date of this Agreement, as far as the Target is aware, no member of the Target Group is under investigation with respect to the violation of any applicable material laws or material Authorisations.
19. **Competing Proposals:** The Target is not, as at the date of this Agreement, in negotiations or discussions with any Third Party relating to any Competing Proposal.
20. **Disputes:** Except as fairly disclosed in the Target Due Diligence Material, at the date of this Agreement, there is:
- (a) no current, or

- (b) so far as the Target 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:
- (c) an award, settlement, fine, penalty, order, loss or other liability to the Target Group of more than \$2,000,000; or
- (d) reputational damage which is material to the Target Group (taken as a whole).
21. **No claims:** On the date of this Agreement, the Target is not aware of any circumstances which are reasonably likely to give rise to a breach of any Target Warranty.
22. **No Target Material Adverse Change:** As at the date of this Agreement, so far as the Target is aware, there is no matter, event or circumstance which constitutes or is likely to constitute a Target Material Adverse Change.
23. **No other material information:** As at the date of this Agreement, the Target is not aware of any material circumstance which has not been disclosed in the Target Due Diligence Material which the Target, 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.
24. **No Target Prescribed Occurrences:** As at the date of this Agreement, so far as the Target is aware, there is no matter, event or circumstance which is reasonably likely to constitute a Target Prescribed Occurrence.
25. **Scheme Booklet and Independent Adviser's Report:**
- (a) On the date on which the Scheme Booklet was sent to Shareholders, the Target Information:
- (i) was true and accurate in all material respects and not false or misleading in any material respect (including by omission); and
- (ii) complied with the Companies Act, FMCA and all other applicable New Zealand laws.
- (b) All information provided by the Target to the Independent Adviser for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet was, when provided, provided in good faith (including by having regard to material risks, opportunities and adverse circumstances), true and accurate in all material respects and not false or misleading in any material respect (including by omission).
26. **Outstanding financing:** At the date of this Agreement, the Target Group does not have any material outstanding financing that is not reflected in its financial statements and notes thereto for the year ended 31 March 2024. Between 31 March 2024 and the date of this Agreement, no member of the Target Group has engaged in any material financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.

Schedule Four

Bidder Warranties

1. **Existence:** The Bidder is a company duly incorporated and validly existing under the laws of New Zealand.
2. **Capacity:** The Bidder has the power to execute and deliver and to perform its obligations under this Agreement and the Deed Poll and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
3. **Binding effect:** The obligations of the Bidder under this Agreement are, and the obligations of the Bidder under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **No conflicts:** The execution and delivery by the Bidder of this Agreement and the execution and, in due course, delivery by the Bidder of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) any agreement or instrument to which the Bidder is a party;
 - (b) the constitution of the Bidder; or
 - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which the Bidder is bound and which would prevent it from entering into and performing its obligations under this Agreement.
5. **No restrictions:** At the date of this Agreement, the Bidder is not aware of any action by a Government Agency that would prevent or restrict the Bidder's ability to perform its obligations under this Agreement.
6. **Compliance:**
 - (a) Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by the Bidder for the Bidder to execute and perform this Agreement.
 - (b) Without limiting paragraph (a), the Bidder 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.
 - (c) The Bidder does not require the approval of its shareholders to enter into the Transaction Documents and perform the Transaction (including in respect of the offer and issue of the Scrip Consideration).
7. **Financing:**
 - (a) As of the date of this Agreement, the Bidder believes, and has a reasonable basis to believe, that it will have available to it by the Escrow Payment Date sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including debt) to satisfy the Payment Obligations.

- (b) As of the date of this Agreement, the Bidder believes, and has a reasonable basis to believe, that it will be able to satisfy on a timely basis all conditions and applicable obligations to be satisfied by it under the Funding Arrangements on or prior to the Escrow Payment Date.
8. **Shares:** None of the Bidder Group members has a Relevant Interest in any Shares (other than as may be created by this Agreement or any voting agreement entered into in connection with the Transaction).
9. **Collateral arrangements:** No member of the Bidder Group or any of their Associates has provided or agreed to provide any consideration or other benefit to any Scheme Shareholder in connection with implementation of the Scheme, other than the Consideration.
10. **Scheme Booklet and Independent Adviser's Report:**
- (a) On the date on which the Scheme Booklet was sent to Shareholders, the Bidder Information:
- (i) was true and accurate in all material respects and not false or misleading in any material respect (including by omission); and
- (ii) complied with the Companies Act, FMCA and all other applicable New Zealand laws.
- (b) All information provided by the Bidder Group to the Independent Adviser for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet was, when provided, true and accurate in all material respects and not false or misleading in any material respect (including by omission).
11. **OIO:** The Bidder is not, and on the Implementation Date will not be, an "overseas person" or an "associate" of an "overseas person" under the Overseas Investment Act 2005 (as those terms are defined in that Act).
12. **New Bidder Shares:**
- (a) Before the entry into of this Agreement, the board of directors validly authorised the issue of the Scrip Consideration under the Transaction Documents in accordance with sections 42 and 47 of the Companies Act, the Bidder's constitution, the NZX Listing Rules and the ASX Listing Rules (together, the "**Share Issue Approvals**").
- (b) The Share Issue Approvals have not been revoked, nor have they been varied without the prior written consent of the Target.
- (c) The New Bidder Shares, when issued, will be duly authorised and validly issued or transferred, fully paid, free of all Encumbrances and will rank equally with all other the Bidder Shares then on issue.
13. **Share capital:** On the date of this Agreement there are:
- (a) 789,117,208 Bidder Shares on issue; and
- (b) no other equity securities (including shares and options to subscribe for shares) or other securities or instruments which are convertible into or exchangeable for equity securities in the Bidder on issue,

in each case other than any rights to be issued Bidder Shares under:

- (c) the Bidder's DRP (including any underwriting of the Bidder's DRP); or
 - (d) any Bidder Share Scheme.
14. **Implementation share capital:** On the Implementation Date immediately after issuing the New Bidder Shares, there will be:
- (a) no more than 789,117,208 Bidder Shares on issue; and
 - (b) no other equity securities (including shares and options to subscribe for shares) or other securities or instruments which are convertible into or exchangeable for equity securities in the Bidder on issue,
- in each case other than for the issue of New Bidder Shares under the Scheme and any Bidder Shares issued, or rights to be issued Bidder Shares:
- (c) under the Bidder's DRP (including any underwriting of the Bidder's DRP);
 - (d) under any Bidder Share Scheme; or
 - (e) with the consent in writing (or deemed consent under clause 2 of Schedule Two) of the Target.
15. **Continuous disclosure and securities law compliance:**
- (a) The Bidder is in compliance with its continuous and periodic disclosure obligations under the NZX Listing Rules.
 - (b) At the Agreement Date, except:
 - (i) as fairly disclosed in the Bidder Due Diligence Material; and
 - (ii) for the details and existence of the Transaction (including the issuance of the New Bidder Shares),

the Bidder 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.
 - (c) The Bidder will be entitled to:
 - (i) offer the Scrip Consideration as at the date the Scheme Booklet is publicly released; and
 - (ii) issue the New Bidder Shares on the Implementation Date,

to Shareholders who have an address in the Register in, or who are ordinarily resident in, New Zealand in reliance on clause 19(1) of Schedule 1 to the FMCA.
 - (d) Without limiting sub-clause (c), none of the factors set out in clause 46(2) of Schedule 8 to the FMCR apply to the Bidder or to the offer the Scrip Consideration and issue the New Bidder Shares.
 - (e) The Bidder will be entitled to offer the Scrip Consideration and issue the New Bidder Shares to Shareholders who have an address in the Register in, or who are ordinarily resident in, Australia in reliance on ASIC Corporations (Compromises or Arrangements) Instrument 2015/358.

- (f) If the Bidder offers Scrip Consideration and issues New Bidder Shares to Shareholders who have an address in the Register in, or who are ordinarily resident in, a jurisdiction outside of New Zealand or Australian in accordance with paragraph (c) of the definition of Ineligible Overseas Shareholder, the Bidder will be entitled to do so in accordance with the laws of each applicable jurisdiction.
16. **Bidder Due Diligence Material:** The Bidder Due Diligence Material has been prepared and provided in good faith and, as far as the Bidder is aware, on the date that they were prepared, the items comprising the Bidder Due Diligence Material were true and accurate in all material respects and were not, when given, false or misleading in any material respect (including by omission).
17. **No undisclosed liabilities or contingent liabilities:** At the date of this Agreement, no member of the Bidder Group has any non-ordinary course liability which exceeds \$20 million or, as far as the Bidder is aware, non-ordinary course contingent liability which exceeds \$20 million, except, in either case, for all liabilities or contingent liabilities reflected in the Bidder's financial statements and notes thereto for the year ended 30 June 2024 or otherwise fairly disclosed in the Bidder Due Diligence Material.
18. **Disputes:** Except as fairly disclosed in the Bidder Due Diligence Material, at the date of this Agreement, there is:
- (a) no current, or
 - (b) so far as the Bidder 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:
 - (c) an award, settlement, fine, penalty, order, loss or other liability to the Bidder Group of more than \$10,000,000; or
 - (d) reputational damage which is material to the Bidder Group (taken as a whole).
19. **No claims:** On the date of this Agreement, the Bidder is not aware of any circumstances which are reasonably likely to give rise to a breach of any Bidder Warranty.
20. **No Bidder Material Adverse Change:** As at the date of this Agreement, so far as the Bidder is aware, there is no matter, event or circumstance which constitutes or is likely to constitute a Bidder Material Adverse Change.
21. **No Bidder Prescribed Occurrences:** As at the date of this Agreement, so far as the Bidder is aware, there is no matter, event or circumstance which is reasonably likely to constitute a Bidder Prescribed Occurrence.
22. **Insolvency Event:** No member of the Target Group (other than the Target) is the subject of an Insolvency Event.

Schedule Five

Timetable

Indicative timing	Event
Q4 2024	<ul style="list-style-type: none">• Bidder submits draft NZCC Application within one Business Day after the date of the Agreement• Bidder submits final NZCC Application as soon as practicable after receiving final comments from the NZCC on the draft NZCC Application• Target engages Independent Adviser• Target and Bidder progress the preparation of the Scheme Booklet as soon as practicable
H1 2025	<ul style="list-style-type: none">• NZCC Condition satisfied• Scheme Booklet sent to Shareholders• Scheme Meeting• Final Orders Date• Record Date• Implementation Date

1. The parties, acting reasonably and in good faith, will agree the Timetable for the Target to apply to the Takeovers Panel for a Letter of Intention and to the Court for Initial Orders, having regard to the progress towards satisfaction of the NZCC Condition.
2. Following satisfaction of the NZCC Condition, the parties, acting reasonably and in good faith, will agree the Timetable for the remaining Scheme steps, with the intention that:
 - (a) the Scheme Booklet be sent to Shareholders as soon as practicable after the NZCC Condition is satisfied (and, in any event, within 10 Business Days after the date on which the NZCC Condition is satisfied); and
 - (b) the Scheme Meeting be held 20 working days after the Scheme Booklet is sent to Shareholders.
3. For the avoidance of doubt, paragraphs 1 and 2 above are subject to clause 2.5.

Schedule Six

Scheme Plan

SCHEME PLAN

SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

Parties

MANAWA ENERGY LIMITED (“Target”)

CONTACT ENERGY LIMITED (“Bidder”)

Each person who is registered in the Register as the holder of one or more Scheme Shares (together, the “Scheme Shareholders”)

[COMPUTERSHARE INVESTOR SERVICES LIMITED] (“Computershare”)

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Scheme Plan:

“**Bidder Register**” means the register of Bidder Shares maintained by MUFG on behalf of the Bidder.

“**Companies Act**” means the Companies Act 1993.

[“Computershare” means Computershare Investor Services Limited.]

“**Conditions**” means the conditions precedent set out in the first column of the table of clause 3.1 of the Scheme Implementation Agreement.

“**Consideration**” means, for each Scheme Share held by a Scheme Shareholder:

- (a) the Cash Consideration; and
- (b) the Scrip Consideration,

or as increased by notice in writing by the Bidder to the Target in accordance with clause 7.1.

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Deed Poll**” means the deed poll entered into by the Bidder in favour of the Scheme Shareholders dated [].

“**Escrow Agreement**” means the escrow agreement dated [] between the Bidder, the Target and Computershare.

“**Escrow Payment Date**” means 5.00pm on the Business Day before the Implementation Date.

“**Final Orders**” means orders of the Court on application of the Target, that the Scheme be binding on the Target, the Bidder, the Scheme Shareholders and 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 granted by the Court.

“**Government Agency**” means, in respect of New Zealand or any other jurisdiction, any:

- (a) court of competent jurisdiction;
- (b) government or any department, officer, ministry or minister of any government; and
- (c) governmental, semi-governmental, regulatory, self regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity.

“**Gross Proceeds**” has the meaning given to that term in clause 5.3(a)(ii).

“**Implementation Date**” means the date on which the Scheme is to be implemented, being two Business Days after the Record Date, or such other date as agreed between the parties in writing.

“**NZX**” means NZX Limited and, where the context requires, the main board financial market that it operates.

“**Record Date**” means 5.00pm on the date which is four Business Days after the Final Orders Date or such other date as the Target and the Bidder agree in writing.

“**Register**” means the register of Shares maintained by Computershare on behalf of the Target.

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

“**Registrar**” has the meaning given to that term in the Companies Act.

“**Sale Agent**” means a nominee appointed by the Bidder to sell the New Bidder Shares that are to be issued under clause 5.3(a)(i).

“**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 Bidder, and the Target in writing.

“**Scheme Implementation Agreement**” means the scheme implementation agreement between the Bidder and the Target dated [].

“**Scheme Shareholder**” means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date.

“**Scheme Shares**” means all of the Shares on issue at 5.00pm on the Record Date, and “**Scheme Share**” means any such Share.

“**Share**” means a fully paid ordinary share in the capital of the Target.

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

“**Trading Halt Date**” means the date which is two Business Days after the Final Orders Date or such other date as the Target and the Bidder agree in writing.

“**Trust Account**” has the meaning given to that term in clause 3.1.

“**Unconditional**” means the satisfaction or, if capable of waiver, waiver of each of the conditions in clause 2.

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

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this Scheme Plan;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this Scheme Plan under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
- (b) a reference to the NZX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Scheme Plan (and the schedules and annexes form part of this Scheme Plan);
- (f) subject to clause 21.2 of the Scheme Implementation Agreement, references to a party to this Scheme Plan include the successors or assigns (immediate or otherwise) of that party;
- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;

- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
 - (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
 - (n) a reference to “**law**” includes statutes, regulations, and the binding order or direction of a Government Agency of competent jurisdiction; and
 - (o) the headings do not affect interpretation.
- 1.3 **Business Days:** Unless otherwise indicated, if the day on or by 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.
- 1.4 **Contra proferentem excluded:** No term or condition of this Scheme Plan will be construed adversely to a party solely on the ground that the 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

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

- (a) all of the Conditions having been satisfied or, if capable of waiver, waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by the Target and the Bidder 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 respective terms before 8.00am on the Implementation Date.

3. PAYMENT OF CASH CONSIDERATION INTO TRUST ACCOUNT

3.1 **Obligation to pay Cash 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) to 3.1(i) of the Scheme Implementation Agreement),

the Bidder must deposit, or procure the deposit of, in immediately available cleared funds an amount equal to the aggregate amount of the Cash Consideration payable to the Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare recorded in the Escrow Agreement (that account being, the “**Trust Account**”), by no later than the Escrow Payment Date.

3.2 **Trust Account:**

- (a) The Trust Account will be established and operated by Computershare in accordance with the Escrow Agreement.
- (b) Prior to payment of the Cash Consideration in accordance with clause 4.1(d)(i) and clause 5, Computershare will hold all amounts deposited by the Bidder into the Trust Account on trust for the Bidder under the Escrow Agreement.

3.3 **Interest:** Any interest earned on the amounts deposited by the Bidder into the Trust Account is payable to the Bidder, less any bank fees or other third party costs or withholdings or deductions required by law, in accordance with the Bidder's written instructions to Computershare.

3.4 **Scheme not implemented: If:**

- (a) the Scheme is not implemented for any reason by 5.00pm on the Implementation Date; or
- (b) the Scheme becomes void under clause 7.5,

Computershare must, on request by the Bidder in accordance with the Escrow Agreement, 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 the Bidder in accordance with the Bidder's written instructions to Computershare.

4. IMPLEMENTATION OF THE SCHEME

4.1 **Implementation obligations:** Subject to:

- (a) the Target and the Bidder providing Computershare with written notice that the Scheme is Unconditional in accordance with the Escrow Agreement; and
- (b) the Cash Consideration having been deposited into the Trust Account in accordance with clause 3.1 and Computershare confirming in writing to the Target and the Bidder that this has occurred,

commencing at 9.00am on the Implementation Date the following steps will occur sequentially:

- (c) first, 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 the Bidder and the Target must enter, or procure that Computershare enters, the name of the Bidder in the Register in respect of all of the Scheme Shares;
- (d) second, subject to compliance in full with clause 4.1(c), the Bidder:
 - (i) is deemed to have irrevocably authorised and instructed Computershare to pay, and Computershare must pay, from the Trust Account the Cash 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; and
 - (ii) will, subject to clauses 5.2, 5.3, 5.4 and 5.8:

- (A) issue the Scrip 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; and
- (B) enter, or procure that MUFG enters, the name of each Scheme Shareholder in the Bidder Register in respect of those New Bidder Shares.

5. PAYMENT OF THE CONSIDERATION

5.1 **Method of payment:** The payment under clause 4.1(d)(i) and clause 5.3(a)(iii) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable Computershare to make payments of New Zealand dollars by electronic funds transfer, Computershare must make the relevant payment 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 has not, prior to the Record Date, provided bank account details to enable Computershare to make payments of New Zealand dollars by electronic funds transfer, the following provisions and clause 5.9 will apply:
 - (i) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable Computershare to make payments of Australian dollars by electronic funds transfer, Computershare must make the relevant payment (less any applicable costs, exchange rate spreads and fees) in Australian dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder; and
 - (ii) where a Scheme Shareholder with a Registered Address outside of New Zealand and Australia has, prior to the Record Date, provided sufficient written instructions (to Computershare's satisfaction) to enable Computershare to make payment in a currency other than New Zealand dollars or Australian dollars (and Computershare is able to make payment in that currency), Computershare must make the relevant payment (less any applicable costs, exchange rate spreads and fees) to the Scheme Shareholder, in the currency nominated by the Scheme Shareholder, by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder; and
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) or 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) Computershare must retain the relevant amount owed to that Scheme Shareholder in the Trust Account. Any such retained amount may be claimed by that Scheme Shareholder in accordance with clause 5.7.

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

5.3 **Ineligible Overseas Shareholders:**

- (a) The Bidder will be under no obligation to issue any New Bidder Shares to any Ineligible Overseas Shareholder under this Scheme and instead:
 - (i) subject to clauses 5.4 and 5.8, the Bidder must, on the Implementation Date, issue the New Bidder Shares which would otherwise be required to be issued to the Ineligible Overseas Shareholders under this Scheme to the Sale Agent;
 - (ii) the Bidder must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with the Bidder, sells or procures the sale of all the New Bidder Shares issued to the Sale Agent and remits to Computershare to hold on trust for the Ineligible Overseas Shareholders the proceeds of the sale (less any applicable brokerage or withholdings or deductions required by law) (“**Gross Proceeds**”);
 - (iii) promptly after receiving the Gross Proceeds in respect of the sale of all of the New Bidder Shares referred to in clause 5.3(a)(i), Computershare must pay to each Ineligible Overseas Shareholder of the amount ‘A’ calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

B = the number of New Bidder Shares that would otherwise have been issued to that Ineligible Overseas Shareholder had it not been an Ineligible Overseas Shareholder and which were instead issued to the Sale Agent;

C = the total number of New Bidder Shares issued to the Sale Agent under clause 5.3(a)(i); and

D = the Gross Proceeds.

- (b) None of the Bidder, the Target, Computershare or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.3(a).
- (c) The Target must make, or procure the making by Computershare of, payments to Ineligible Overseas Shareholders under clause 5.3(a)(iii) in accordance with clause 5.1. Payment of the amount ‘A’ calculated in accordance with clause 5.3(a)(iii) to an Ineligible Overseas Shareholder

in accordance with this clause satisfies in full the Ineligible Overseas Shareholder's right to Scrip Consideration.

- (d) If the Target or Computershare receives professional advice that any withholding or other tax is required by law or by a Government Agency to be withheld from a payment to an Ineligible Overseas Shareholder, the Target is entitled to direct Computershare to withhold the relevant amount before making payment to the Ineligible Overseas Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 5.3(c)). The Target or Computershare on behalf of the Target must pay any amount so withheld to the relevant taxation authorities within the time permitted by law and, if requested in writing by the relevant Ineligible Overseas Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Overseas Shareholder.

5.4 **Fractional entitlements and splitting:**

- (a) Where the calculation of the number of New Bidder Shares to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a New Bidder Share, the fractional entitlement will be rounded to the nearest whole number of New Bidder Shares as follows:
 - (i) if the relevant fractional entitlement to New Bidder Shares is below 0.5, then such fractional entitlement will be rounded down to the nearest whole number of New Bidder Shares; and
 - (ii) if the relevant fractional entitlement to New Bidder Shares is equal to or greater than 0.5, then such fractional entitlement will be rounded up to the nearest whole number of New Bidder Shares.
- (b) Any cash amount payable to a Scheme Shareholder under this Scheme must be rounded to the nearest whole cent (but only after applying the Scheme Shareholder's entitlement (prior to rounding) to its entire holding of Scheme Shares).
- (c) If the Bidder is of the opinion, formed reasonably, that several Scheme Shareholders, each of which holds a holding of Scheme Shares have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scrip Consideration, the Bidder may direct the Target to, and the Target may, give notice to those Scheme Shareholders:
 - (i) setting out the names and Registered Addresses of all of them;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice will be taken to hold all those Scheme Shares and each of the other Scheme Shareholders who names are set out in the notice will be taken to hold no Scheme Shares.

- 5.5 **Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4.1(d), there is a surplus in the Trust Account, Computershare must pay that surplus, less:
- (a) any amount retained under clause 5.1(c) or 5.8(b); and
 - (b) any bank fees or other third party costs or withholdings or deductions required by law,
- to the Bidder in accordance with the Bidder's written instructions to Computershare.
- 5.6 **Holding on trust:**
- (a) The Target must, in respect of any monies retained by Computershare pursuant to clauses 5.1(c) or 5.8(b), instruct Computershare to hold, and Computershare must hold, such monies in the Trust Account on trust for the relevant Scheme Shareholders ("**Unpaid Shareholders**") for a period of 24 months after the Implementation Date and thereafter, without the requirement for any further action but subject to clause 5.7, to pay, and Computershare must pay, any remaining money in the Trust Account to the Target ("**Remaining Money**").
 - (b) Once the Remaining Money (if any) has been paid to the Target under clause 5.6(a), the Target is permitted to use the Remaining Money for the benefit of the Target (and to comingle the Remaining Money with its other funds) provided, however, that:
 - (i) subject to clause 5.6(b)(ii), each Unpaid Shareholder retains a claim against the Target, as an unsecured creditor, for the Cash Consideration that was payable to such Unpaid Shareholder under clause 4.1(d); and
 - (ii) nothing in this clause 5.6(b) prevents the Target from dealing with the Remaining Money (or any part of it) in accordance with the Unclaimed Money Act 1971.
- 5.7 **Unclaimed monies:** During the period of 24 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Cash Consideration in accordance with clause 5.1(a) or 5.1(b), Computershare 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 Cash 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 Computershare and agreed to by that Scheme Shareholder).
- 5.8 **Orders of a Government Agency:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to the Target or to the Bidder on or prior to the Record Date of an order or direction made by a Government Agency, or of any applicable law, that:
- (a) requires Consideration to be provided to a person in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder in accordance with clause 4.1(d)(i), 4.1(d)(ii) or 5.3(a)(iii), the Target or the Bidder (as applicable) will be entitled to procure, and the Bidder or the Target (as applicable) will be deemed to have instructed Computershare or MUFG (as applicable) to ensure, that provision of that Consideration is made in accordance with that order or direction or law; or

(b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(d)(i), 4.1(d)(ii) or 5.3(a)(iii), the Target or the Bidder will be entitled (as applicable);

(i) to retain, subject to clause 5.6, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Cash Consideration) in the Trust Account; and

(ii) not to issue such number of the New Bidder Shares that Scheme Shareholder as that Scheme Shareholder would otherwise have been entitled under clause 4.1(d),

until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(d) or clause 5.7 (as applicable) 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 the Bidder's and Computershare's obligations under clause 4.1(d) or 5.3(a)(iii) with respect to the amount so provided or retained.

5.9 **Exchange rate:** If a Scheme Shareholder elects to be paid in Australian dollars (as contemplated by clause 5.1(b)(i)) or in a currency other than New Zealand dollars or Australian dollars (as contemplated by clause 5.1(b)(ii)), the conversion of any payment from New Zealand dollars into the relevant currency will be undertaken in a manner and at an exchange rate determined by Computershare (in Computershare's discretion) and neither the Bidder or the Target will be responsible for, or have any liability of any nature, in connection with that conversion (including for the exchange rate at which the relevant conversion occurs).

5.10 **Status of New Bidder Shares:** Subject to this Scheme becoming Effective, the Bidder must:

(a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each New Bidder Share will:

(i) rank equally in all respects with all other Bidder Shares on issue; and

(ii) be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of the Bidder Shares on and from the Implementation Date;

(b) do all things reasonably necessary to obtain the quotation of the New Bidder Shares issued as Scrip Consideration the NZX Main Board and ASX with effect from the first Business Day after the Implementation Date (or such later date as NZX or ASX may require, as applicable); and

(c) ensure that each New Bidder Share is duly and validly issued in accordance with all applicable laws and the constitution of the Bidder, fully paid and free from any Encumbrance.

5.11 **Lowest Price:** For the purposes of the financial arrangements rules in the Income Tax Act 2007:

(a) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Scheme Share, on the date this agreement was entered into, if payment had been required in full at the time the first right in the

contracted property (being the Scheme Shares) was transferred, and is the value of each such Scheme Share;

- (b) the Bidder Share price that has been used to determine the number of New Bidder Shares to be issued for each Scheme Share as the Scrip Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the issue of each New Bidder Share to the Scheme Shareholders, on the date this agreement was entered into, if payment had been required in full at the time the first right in the contracted property (being the New Bidder Shares) was transferred, and is the value of each such New Bidder Share; and
- (c) to the extent they are subject to the financial arrangements rules in the Income Tax Act 2007, the parties will compute their taxable income for the relevant period on the basis that the Consideration for the Scheme Shares and the consideration for the New Bidder Shares (as described in paragraph (b)) include no capitalised interest and (where applicable) will file their New Zealand tax returns accordingly.

6. DEALING IN SHARES

6.1 Recognition of dealings:

- (a) Following the granting of the Final Orders, the Target 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 Target must not accept for registration, nor recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme Plan and any subsequent transfer by the Bidder or its successors in title), any Share transfer or Share transmission application or other similar request received after 5.00pm on the Record Date or received prior to such time but not in registrable or actionable forms.

6.2 Register:

- (a) The Target must register registrable transmission applications or registrable transfers of the Scheme 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 Target to register a transfer that relates to a transfer of Shares on which the Target has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or attempt or agree to dispose of, any Scheme Shares or any interest in them, after 5.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and the Target, the Bidder and Computershare are entitled to disregard any such disposal.

- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, the Target must maintain the Register in accordance with the provisions of this clause 6.2 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 Consideration in respect of the Shares relating to that entry. This clause 6.2(d) does not apply to the entry of the Bidder on the Register under clause 4.1(c) or to any subsequent transfer by the Bidder or its successors in title.
- (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 Target must make available to the Bidder in the form the Bidder reasonably requires, details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7. GENERAL PROVISIONS

7.1 **Amendments to Consideration:** The Bidder may increase the Consideration by written notice at any time to the Target prior to the Escrow Payment Date, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to that date.

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 the Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is deemed to have warranted to the Bidder 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, and that the Scheme Shareholder has full power and capacity to transfer the Scheme Shareholder's Shares to the Bidder together with any rights and entitlements attaching to those Shares.

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

- (a) on and from the Final Orders Date irrevocably appoints the Target as the Scheme Shareholder's attorney and agent for the purpose of enforcing the Scheme and the Deed Poll against the Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Scheme and the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Target as the Scheme Shareholder's 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 Target accepts each such appointment. The Target, as attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of the Target's directors or senior executives.

7.4 **Binding effect of Scheme:**

- (a) The Scheme binds:
 - (i) the Target;
 - (ii) the Bidder;
 - (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); and
 - (iv) **[Computershare.]**
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of the Target.

7.5 **When the Scheme becomes void:** If the Scheme has not become Unconditional on or before 8.00am on 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 clauses 3.3, 3.4 and 7.6).

7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers, employees or advisers of the Target or the Bidder will be liable for anything done or omitted to be done in the performance of the Scheme (including under clause 7.3) in good faith.

7.7 **Governing law:** This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

7.8 **Jurisdiction:** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan). Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

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

Schedule Seven

Deed Poll

DEED POLL

SCHEME OF ARRANGEMENT RELATING TO MANAWA ENERGY LIMITED

Dated

2024

BY:

CONTACT ENERGY LIMITED (“Bidder”)

IN FAVOUR OF:

SCHEME SHAREHOLDERS (as defined below)

Introduction

- A. Manawa Energy Limited (“**Target**”) and the Bidder are parties to the Scheme Implementation Agreement.
 - B. The Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between the Target, the Bidder and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to the Bidder and the Bidder will provide or procure the provision of the Consideration to the Scheme Shareholders.
 - C. The Bidder is entering into this Deed Poll for the purpose of undertaking in favour of the Scheme Shareholders to provide the Consideration to the Scheme Shareholders in accordance with the terms of the Scheme Plan.
-

This Deed Records

1. DEFINITIONS AND INTERPRETATION

1.1 Defined terms: In this Deed, unless the context requires otherwise:

“**Escrow Payment Date**” means 5.00pm on the Business Day before the Implementation Date.

“**Final Orders**” means orders of the Court on application of the Target, that the Scheme is binding on the Target, the Bidder the Scheme Shareholders and/or such other 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 between the Target, the Bidder dated [] .

“**Scheme Plan**” means the scheme plan attached as Schedule Five to the Scheme Implementation Agreement (or in any other form agreed in writing by the parties to that agreement) which (as applicable) is to be, or has been, approved by the Court under section 236(1) of the Companies Act 1993.

“**Scheme Shareholder**” means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date.

“**Unconditional**” means the satisfaction or, if capable of waiver, waiver of each of the conditions in clause 2 of the Scheme Plan.

1.2 **Other defined terms:** 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.

1.3 **Interpretation:** 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”.

2. NATURE OF THIS DEED POLL

2.1 **Third party rights and appointment of attorney:** The Bidder acknowledges and agrees that:

- (a) this Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on 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 this Deed Poll; and
- (b) under the Scheme Plan each Scheme Shareholder appoints the Target as the Scheme Shareholder’s attorney and agent to enforce this Deed Poll against the Bidder with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder’s right to itself enforce this Deed Poll).

Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by agreement between the Target, the Bidder in accordance with clause 8.3 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) the Bidder has fully performed its obligations under it; or
- (b) it is terminated under clause 3.2.

3. CONDITION AND TERMINATION

3.1 **Condition:** This Deed Poll is conditional on the satisfaction of the requirements set out in clauses 4.1(a) and 4.1(b).

3.2 **Termination:** The obligations of the Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional unless the Bidder and the Target otherwise agree in writing.

3.3 **Consequences of termination:** If this Deed Poll is terminated under clause 3.2, then the Bidder is released from its obligations to further perform this Deed Poll.

4. SCHEME CONSIDERATION

4.1 **Deposit of Cash Consideration:** Subject to:

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

the Bidder undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later the Escrow Payment Date, an amount equal to the aggregate amount of the Cash 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 Computershare in accordance with the Scheme Plan and the Escrow Agreement.

4.2 **Payment of Cash Consideration and issue of Scrip Consideration:** The Bidder irrevocably acknowledges and agrees that, subject to and conditional on:

- (a) the Scheme becoming Unconditional; and
- (b) compliance in full by the Target with its obligations under clause 4.1(c) of the Scheme Plan,

the Cash Consideration deposited into the Trust Account referred to in clause 4.1 must be, and will be, paid in accordance with clauses 4.1(d)(i) and 5 of the Scheme Plan, and the Scrip Consideration will be issued in accordance with clauses 4.1(d)(ii) and 5 of the Scheme Plan, in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

4.3 **Quotation:** The Bidder will do all things reasonably necessary to obtain the quotation of the New Bidder Shares issued as Scrip Consideration on the NZX and ASX, with effect from the open of trading on the first Business Day after the Implementation Date (or such later date as NZX or ASX may require, as applicable).

5. **BIDDER SHARES TO RANK EQUALLY**

5.1 **Terms of issue:** The Bidder undertakes and warrants in favour of each Scheme Shareholder that the New Bidder Shares which are issued to each Scheme Shareholder in accordance with the Scheme Plan will, when issued:

- (a) rank equally with all other Bidder Shares on issue as set out in clause 5.10(a) of the Scheme Plan; and
- (b) be issued fully paid and free from all Encumbrances and restrictions on transfer of any kind.

5.2 **Warranty and undertaking:**

- (a) The Bidder warrants in favour of each Scheme Shareholder that, before the entry into of the Scheme Implementation Agreement, the board of directors of the Bidder validly authorised the issue of the Scrip Consideration in accordance with sections 42 and 47 of the Companies Act, the Bidder's constitution, the NZX Listing Rules and the ASX Listing Rules (together, the "**Share Issue Approvals**").
- (b) The Bidder undertakes to each Scheme Shareholder that it will not revoke the Share Issue Approvals or vary them without the Target's prior written consent.

6. WARRANTIES

6.1 The Bidder warrants in favour of each Scheme Shareholder that:

- (a) it is a company or other body corporate validly incorporated 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 prior to the Implementation Date 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.

7. MAXIMUM LIABILITY

7.1 Notwithstanding any other provision of this Deed Poll but without limiting clause 15.9 of the Scheme Implementation Agreement (which provides that the Target may bring proceedings for specific performance), the maximum aggregate liability of the Bidder to:

- (a) all Scheme Shareholders under this Deed and the Scheme Implementation Agreement; and
- (b) the Target under the Scheme Implementation Agreement,

or at law (including negligence), under any statute or regulation, in equity or otherwise, in respect of any or all breaches of this Deed Poll and/or the Scheme Implementation Agreement, will not exceed, in aggregate, the amount of the Reverse Break Fee (inclusive of GST, if any).

8. GENERAL

8.1 **Notices:** 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).

8.2 **Waiver:**

- (a) The Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 8.2(a):
 - (i) conduct includes a delay in exercising 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.

8.3 **Variation:**

- (a) Subject to clauses 8.3(b) and 8.3(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 the Bidder and the Target, in which event the Bidder 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 the Bidder enters into a new deed poll which has the effect of reversing any variation under clause 8.3(b), then, if the Bidder so agrees, the Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

8.4 **Cumulative rights:** The rights, powers and remedies of the Bidder 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.

8.5 **Assignment:** The rights and obligations of the Bidder 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 8.5 is invalid. However, nothing in this clause 8.5 prevents a Scheme Shareholder which holds Scheme Shares as a bare trustee (including as a nominee or custodian) (“**Trustee**”) for a beneficial owner of those Scheme Shares (“**Beneficiary**”) from enforcing this Deed on behalf of the Beneficiary or assigning the Trustee’s rights under this Deed to the Beneficiary in respect of the Beneficiary’s Scheme Shares.

8.6 **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 the Bidder irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with this Deed Poll, and irrevocably waives any objection to the venue of any legal process in those courts on the basis that the proceeding has been brought in an inconvenient forum.

Executed and delivered as a deed poll:

CONTACT ENERGY LIMITED in the presence
of:

Signature of authorised signatory

Signature of witness

Name of authorised signatory

Name of witness

Occupation

City/town of residence

Schedule Eight

Escrow Agreement

[Date]

TO: **CONTACT ENERGY LIMITED (“Bidder”)**

AND TO: **MANAWA ENERGY LIMITED (“Target”)**

Acquisition of shares in the Target by the Bidder by way of court-approved scheme of arrangement under Part 15 of the Companies Act 1993 (the “Scheme”)

The parties acknowledge that the Scheme will be implemented pursuant to the Scheme Plan attached as Schedule 1 to this letter or is in such other form as agreed in writing between the Bidder and the Target and the Court approves under section 236(1) of the Companies Act (the “**Scheme Plan**”). Computershare agrees to be bound by the Scheme Plan approved by the Court. Capitalised terms not otherwise defined in this letter have the meaning given to them in the Scheme Plan.

Computershare agrees to arrange a “ring fenced” bank account (“**Account**”) with [ANZ Bank New Zealand Limited] (“**Bank**”) which will be used for the sole purpose of paying the Cash Consideration to Scheme Shareholders on the Implementation Date.

The details of the Account that will be set up are as follows:

Full Name:	COMPUTERSHARE INVESTOR SERVICES LIMITED O/A MANAWA ENERGY LIMITED
Account (System/Account):	[]
SWIFT:	[]

The terms on which Computershare will manage the Account are as follows:

Status of the Account

1. Computershare will manage the Account on behalf of the Bidder and the Target in accordance with this letter and the Scheme Plan.
2. This letter is the Escrow Agreement referred to in the Scheme Plan. The Account will be the Trust Account referred to in the Scheme Plan. The Bidder acknowledges that this letter records the Trust Account for the purposes of clause 3.1 of the Scheme Plan.

Pre-implementation

3. The Bidder and the Target will provide Computershare prior written notice of the Record Date and the Implementation Date.
4. Computershare will prepare the Register as at 5.00pm NZT on the Record Date, recording the Scheme Shareholders and the number of Scheme Shares held by each Scheme Shareholder at that time.

Computershare will provide a copy of the Register to the Bidder and the Target promptly after it has been prepared.

5. Computershare will comply with clause 6.1(b) of the Scheme Plan and will not register any transfer of Shares after 5.00pm on the Record Date (except a transfer to Bidder pursuant to the Scheme Plan and any subsequent transfer by Bidder or its successors in title).

Payment and holding of Cash Consideration

6. The Bidder will pay an amount equal to the aggregate amount of the Cash Consideration payable to all Scheme Shareholders into the Account in accordance with clause 3.1 of the Scheme Plan.
Computershare will provide written confirmation to the Bidder and the Target as soon as practicable after Computershare has received those funds.
7. Computershare will receive, and hold, all funds paid into the Account on trust for the Bidder.
Computershare will only pay funds out of the Account in accordance with this letter, unless otherwise:
 - (a) jointly instructed in writing by the Bidder and the Target; or
 - (b) instructed by the Court.
8. Computershare will not grant an Encumbrance over any funds in the Account and, within five Business Days after establishing the Account, Computershare will provide to the Bidder and the Target a written confirmation from the Bank that:
 - (a) the Account that is managed by Computershare on behalf of the Bidder and the Target will not be included in any set off arrangement between the Bank and Computershare; and
 - (b) all funds in the Account will be held independently from all other Computershare funds and accounts.
9. The Bidder will be solely entitled to receive all interest accrued on any amounts paid into the Account and Computershare must pay such interest (less bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by the Bidder.

Implementation

10. If, after 8.00am on the Implementation Date, the Bidder and the Target give written notice to Computershare that the Scheme is Unconditional (“**Unconditional Notice**”), Computershare will, starting at 9.00am on the Implementation Date, in the following order:
 - (a) register the transfer of all of the Scheme Shares to the Bidder; and
 - (b) after complying with paragraph (a),
 - (i) subject to paragraph 11, pay from the Account, in accordance with the Scheme Plan, to each Scheme Shareholder the Cash Consideration multiplied by the Scheme Shareholder’s Scheme Shares; and
 - (ii) pending payment of the Cash Consideration to a Scheme Shareholder (including in the circumstances contemplated by clause 5.1(c) of the Scheme Plan), hold an amount equal

to the Cash Consideration multiplied by the Scheme Shareholder's Scheme Shares on trust for that Scheme Shareholder.

11. If, prior to the Implementation Date, the Target gives written notice to Computershare that Cash Consideration payable to a Scheme Shareholder must:
- (a) be provided to a third party under clause 5.8(a) of the Scheme Plan; or
 - (b) not be provided to a Scheme Shareholder as contemplated by clause 5.8(b) of the Scheme Plan, then, as applicable, Computershare will pay or hold the Cash Consideration in accordance with clause 5.8 of the Scheme Plan.

Post-implementation

12. As required by clause 5.5 of the Scheme Plan, if, following the payment of the Cash Consideration under paragraph 10(b)(i), there is any surplus in the Trust Account (including as a result of any accrued interest), Computershare must pay that surplus, less:
- (a) any amount retained in the Account under paragraphs 10(b)(ii) and/or 11(b); and
 - (b) any bank fees or other third party costs or withholdings or deductions required by law,
- to an account nominated in writing by the Bidder.
13. Computershare must hold any amount retained in the Account under paragraphs 10(b)(ii) and/or 11(b) on trust for each relevant Scheme Shareholder for a period of 24 months ("**Trust Period**"). During the Trust Period, Computershare must comply with clause 5.6 of the Scheme Plan in respect of amounts of the Cash Consideration that are held in the Account.
14. At the end of the Trust Period, Computershare must pay any remaining money in the Account to the Target.

Condition failure

15. If the Scheme has not been implemented for any reason by 5.00pm on the Implementation Date or the Scheme becomes void under clause 7.5 of the Scheme Plan, Computershare must, on written request by the Bidder, pay all of the funds in the Account (less bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by the Bidder.

Yours sincerely

[]

Computershare Investor Services Limited

This letter is acknowledged, accepted and agreed by:

CONTACT ENERGY LIMITED by:

Authorised signatory

Name

MANAWA ENERGY LIMITED by:

Authorised signatory

Name

SCHEDULE 1
SCHEME PLAN
(attached)