

DRAFT DATED 19 MAY 2006  
TEMPLATE AGREEMENT INTENDED AS A BASIS FOR NEGOTIATION

# Agreement relating to Transmission Infrastructure

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XXXXXXXXXX [Power lines company]

YYYYYYYYYYYY [Land owner]

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*[Will need updating]*

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Date:

**PARTIES**

Electricity Lines Company (XXXXXXXX)

Forest Owner (YYYYYYYYYY)

**BACKGROUND**

- A This Agreement between XXXXXXXX and YYYYYYYYYY has been developed after a process of consultation between XXXXXXXX and YYYYYYYYYY.
- B YYYYYYYYYY and its subsidiaries are owners and/or occupiers of Land which may be affected to some degree by the operation and upgrade of XXXXXXXX's Transmission Infrastructure.
- C The need for the Agreement arises out of:
  - (a) The absence of any agreement recording the rights and obligations of the parties regarding some Existing Transmission Lines;
  - (b) XXXXXXXX's business plan to operate and upgrade of XXXXXXXX's Transmission Infrastructure and install New Transmission Lines.
  - (c) The desire of the parties to establish a more certain and consistent contractual relationship in order to promote consistency of approach, minimisation of the risk of loss or damage to the parties, speed of resolution of any disputes and certainty of outcomes;
  - (d) Various matters arising from the operation and upgrade of XXXXXXXX's Transmission Infrastructure requiring resolution and agreement.

The parties have reached agreement on these matters.

- D The parties accept that this Agreement only relates to XXXXXXXX and YYYYYYYYYY and is not intended to form any precedent for dealings by either party with Land owned or occupied by third parties on which XXXXXXXX's Transmission Infrastructure is located.
- E The parties accept that this Agreement is intended to be legally binding.

## OPERATIVE PART

### 1 INTERPRETATION AND DEFINITIONS

- 1.1 For the purpose of the interpretation or construction of this Agreement, unless the context provides otherwise:
- (a) words importing the singular shall include the plural and vice versa;
  - (b) headings shall be ignored;
  - (c) references to clauses, schedules and appendices are references to clauses, schedules and appendices in this Agreement and references to parties are references to the parties to this Agreement;
  - (d) any reference in this Agreement to an enactment or any regulations is a reference to that enactment or those regulations as amended or to any enactment or regulations substituted for that enactment or those regulations;
  - (e) a reference to a party in this Agreement or in any other document includes permitted successors and assigns, subsidiary companies and, where the context permits, any person under that party's control or direction including its contractors, employees and agents;
  - (f) a "person" includes any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, Crown or any agency of the Crown in each case whether or not having separate legal personality;
  - (g) the invalidity of any part or provision of this Agreement shall not affect the enforceability of any other part or provision;
  - (h) *Accessway* means any agreed roads, access tracks, access routes or rights of way formed or to be formed on the Land and any part thereof identified in Appendix A, as modified from time to time by agreement in writing between the parties;
  - (i) *Crown Forestry Licence* means a Crown Forestry Licence granted to YYYYYYYYYY under the Crown Forest Assets Act 1989;

- (j) Commencement Date means the date on which this Agreement is executed;
- (k) *Easement Area* means the easement area identified in any Electricity Easement in favour of XXXXXXXX over the Land;
- (l) *Easement Template* means the template for use in registration of any New Electricity Easement as set out in Appendix D;
- (m) *Equipment* means any cables, lines, wires, cranes, drilling rigs, plant, tools and machinery and all material and items required for the purpose of exercising any of the XXXXXXXX's rights under this Agreement;
- (n) *Existing Electricity Easement* means any easement registered against the Land granting XXXXXXXX a right to convey electricity at the Commencement Date;
- (o) *Existing Transmission Lines* means any Works used or owned by XXXXXXXX at the Commencement Date;
- (p) *Land* means the land owned or occupied by YYYYYYYYYY or any of its subsidiaries under a lease or licence, including land held under a Crown Forestry Licence identified in Appendix A, as modified from time to time by agreement in writing between the parties;
- (q) *Legal Corridor* means the two-dimensional or three-dimensional corridor on either side of and/or below any Existing Transmission Line which is not subject to an Electricity Easement, determined as follows:
- (i) As agreed by the parties, whether under an existing agreement or by any new agreement; or
- (ii) In the absence of any agreement between the parties:
- Pending a determination in accordance with clause 6 of Schedule 1, the width of the Corridor will be as prescribed in clause 2.3 of that Schedule; and
  - As determined in accordance with clause 6 of Schedule 1;

- (r) *New Electricity Easement* means any easement registered against the Land granting XXXXXXXX a right to convey electricity after the Commencement Date;
- (s) *New Transmission Lines* means any new Works constructed by XXXXXXXX after the Commencement Date to form part of XXXXXXXX's Transmission Infrastructure;
- (t) *Physical Corridor* means the two-dimensional or three-dimensional corridor which is:
  - (i) within the Legal Corridor;
  - (ii) on either side of and/or below any Existing Transmission Line; and
  - (iii) not subject to an Electricity Easement.

The width of a Physical Corridor will be determined as follows:

- (iv) As agreed in writing by the parties, whether under an existing agreement or by any new agreement;
  - (v) In the absence of any written agreement between the parties, the distance between the closest rows of Trees that form the boundaries of the corridor at the time that the Existing Transmission Lines were constructed after the removal of Trees solely for the purpose of constructing the Existing Transmission Lines;
  - (vi) In the absence of any written agreement between the parties under sub-clause (iv) or record of the distance referred to in sub-clause (v), the width of the boundaries of the area within which YYYYYYYYYY has discontinued its plantation forestry operations and removed Trees as a consequence of the location of the Existing Transmission Lines.
- (u) *Transmission Lines* means Existing Transmission Lines and New Transmission Lines;
  - (v) *XXXXXXX Transmission Infrastructure* means the Works used or owned by XXXXXXXX from time to time for the purpose of conveying or transforming electricity and, for the avoidance of doubt, includes any Existing Transmission Lines and any New Transmission Lines;

- (w) *Trees* means any trees and other vegetation owned by YYYYYYYYYY and located on the Land;
- (x) *Vehicles* includes four wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, aircraft, excavation and earthmoving equipment, whether wheeled or tracked;
- (y) *Wilful or Deliberate Act* means any act or omission deliberately and intentionally committed, omitted or made with full knowledge and expectation of the resulting consequences. It excludes YYYYYYYYYY planting Trees in Corridors or Easement Areas;
- (z) *Working Day* means any day of the week excluding Saturday, Sunday, national statutory holidays and the anniversary days commonly observed in Wellington, Auckland and the locality in which the Land is situated; and
- (aa) *Works* means electrical and telecommunications works that are or will in the future be situated on the Land that are used or designed or intended for use in or in connection with the transmission, transformation or conveyance of electricity (including telecommunications services used exclusively for the purpose of conducting XXXXXXXX's business of transforming and conveying electricity) and includes all or any part of any cables (including fibre optic cables), wires, earthwires, conductors, other similar apparatus used or intended to be used for the transmission of electricity and associated telecommunications signals and includes pylons, towers, poles, insulators, foundations, tunnels and other similar structures, fixtures and Equipment which XXXXXXXX reasonably considers necessary or expedient for the support or protection of the Works or to assist in the efficient and proper use of the Works.

## 2 PURPOSE

- 2.1 This Agreement sets out the terms on which XXXXXXXX may install, operate and upgrade XXXXXXXX's Transmission Infrastructure. Upgrading will include increasing the capacity of XXXXXXXX's Transmission Infrastructure by any means, including the installation of New Transmission Lines or increasing the capacity of Existing Transmission Lines by running them at a higher temperature (known as "thermal upgrading").
- 2.2 The purpose of this Agreement is to:

- (a) establish a long-term working relationship between the parties;
- (b) identify areas of mutual benefit in order to achieve certainty of outcomes and fulfilment of due process in order to see delivered to affected landowners adequate information and transparency;
- (c) minimise the risk of loss or damage to the parties caused by the acts or omissions of the other party by setting procedures for governing the interface between XXXXXXXX's Transmission Infrastructure and the Land;
- (d) clarify the parties' rights and obligations in respect of Existing and New Transmission Lines;
- (e) set out procedures for upgrading XXXXXXXX's Transmission Infrastructure;
- (f) adopt a consistency in approach on all matters arising out of this Agreement; and
- (g) provide a fast-track dispute resolution process to avoid delay and reduce cost.

### **3 REVIEW**

- 3.1 This Agreement has been prepared by XXXXXXXX in consultation with YYYYYYYYYY.
- 3.2 This Agreement takes effect from Commencement Date.
- 3.3 This Agreement will remain operative in perpetuity, subject to the following:
  - (a) It will cease to apply to any Land that does not contain Transmission Lines or any other part of XXXXXXXX's Transmission Infrastructure;
  - (b) Should YYYYYYYYYY and its subsidiaries cease to be the owner or occupier of all of the Land, it will cease to be a party to and therefore will no longer be bound by the Agreement and clause 13.2 will apply; and
  - (c) Should YYYYYYYYYY and its subsidiaries cease to be the owner or occupier of part of the Land, the Agreement will cease to bind YYYYYYYYYY in relation to that part of the Land in the circumstances referred to in clause 13.3;

- (d) Should YYYYYYYYYY dispose of any subsidiary that owns or occupies all or part of the Land, the Agreement will cease to bind YYYYYYYYYY in relation to the interest held by that subsidiary. In that event the Agreement will only continue to bind YYYYYYYYYY to the extent that it or any of its remaining subsidiaries own or occupy the Land.

- 3.4 This Agreement will be reviewed by the parties on the first anniversary of the Commencement Date and then every subsequent period of 5 years, with a view to the parties negotiating mutually acceptable variations. This clause does not impose any obligation on either party to agree to any variation proposed by the other party and each party will be entitled to act in their own interests when participating in the review
- 3.5 Any agreed variations to this Agreement resulting from review will be recorded in writing, executed by the parties and attached to this Agreement or any replacement Agreement.

#### **4 STATUS**

- 4.1 This Agreement sets out protocols and understandings reached between XXXXXXXX and YYYYYYYYYY relating to the matters set out in this Agreement. The parties intend that this Agreement is a binding legal document.
- 4.2 XXXXXXXX and YYYYYYYYYY acknowledge and agree that YYYYYYYYYY cannot bind any owner of Land which is occupied by YYYYYYYYYY under a lease, forestry right or licence (including a Crown Forestry Licence). Where Land is occupied by YYYYYYYYYY under a lease, forestry right or licence (including a Crown Forestry Licence), XXXXXXXX and YYYYYYYYYY will use their reasonable endeavours to obtain the consent or agreement of the owner of the Land to any matters governed by this Agreement, where that consent or agreement is considered necessary by either party.
- 4.3 The parties agree that this Agreement is:
  - (a) intended to modify the provisions of sections 23 to 23D of the Electricity Act 1992 to the extent set out in this Agreement; and
  - (b) a "specified agreement" under regulation 41 of the Electricity (Hazards from Trees) Regulations 2003.

## **5 CONSULTATION**

- 5.1 XXXXXXXX will provide opportunities for YYYYYYYYYY to participate in decision-making relevant to XXXXXXXX's rights and obligations arising from this Agreement.
- 5.2 The following principles of consultation will apply with regard to matters arising out of and from this Agreement:
- (a) YYYYYYYYYY will be given clear information by XXXXXXXX concerning the purpose of the consultation and the scope of the decisions to be taken following consideration of views presented by both parties;
  - (b) YYYYYYYYYY shall be provided with a reasonable opportunity to present its views to XXXXXXXX; and
  - (c) XXXXXXXX shall receive the views of YYYYYYYYYY with an open mind and XXXXXXXX will give due consideration to those views.

### **Representatives and Consultants**

- 5.3 Each party will ensure that their respective employees and consultants are made aware of the parties' respective rights and obligations under this clause 5.

## **6 SPECIFIC RIGHTS, OBLIGATIONS AND PROCEDURES**

- 6.1 The parties agree to comply with the provisions of:
- (a) Schedule 1 in relation to the ongoing management of Existing Transmission Lines; and
  - (b) Schedule 2 in relation to the upgrade of any Works forming part of XXXXXXXX's Transmission Infrastructure or the construction of any New Transmission Lines.

## **7 EASEMENTS**

- 7.1 The parties agree that Electricity Easements will be registered against any computer freehold register that YYYYYYYYYY or its subsidiaries have in the Land, as follows:
- (a) For any Existing Transmission Lines located on the Land for which there is no applicable Electricity Easements, the parties will register Electricity Easements in accordance with the Easement Template as soon as practicable and within 3 years from the Commencement Date;

- (b) For any Existing Transmission Lines located on the Land which are subject to an upgrade, the parties will register Electricity Easements in accordance with the Easement Template prior to the commencement of that upgrade;
  - (c) For any New Transmission Lines that are to be constructed on the Land, the parties will register Electricity Easements in accordance with the Easement Template prior to the commencement of construction.
- 7.2 The parties agree that the terms of this Agreement will supersede the terms of any Existing Easement.
- 7.3 In the event that any provision of an Existing Electricity Easement conflicts with any provision of this Agreement, then subject to sub-clause 7.4 and as soon as is reasonably practicable, the parties will execute a variation to that easement or a replacement easement (using the Easement Template) to remove that conflict and make it consistent with the terms of this Agreement.
- 7.4 The Electricity Easements registered will be in the same form and content as the Easement Template except for any departures from the Easement Template which are agreed by XXXXXXXX and YYYYYYYYYY.
- 7.5 XXXXXXXX and YYYYYYYYYY will consult with each other with a view to agreeing the extent of the Easement Area, but XXXXXXXX may reasonably determine the extent of the Easement Area up to a maximum width of 100 metres centred on the mid-point of the Transmission Line.

## **8 LIABILITY AND INDEMNITIES**

- 8.1 The parties agree that YYYYYYYYYY and its related companies, agents, contractors and employees will not be liable to XXXXXXXX for the following losses suffered by XXXXXXXX:
- (a) any physical damage caused to the Works unless the damage is caused by the Wilful or Deliberate Act of YYYYYYYYYY or its agents, contractors or employees for which act YYYYYYYYYY is vicariously liable at law;
  - (b) any consequential loss to XXXXXXXX resulting from physical damage to the Works or from any disturbance to electricity supply caused by YYYYYYYYYY or its agents, contractors or employees; or
  - (c) any claim by a third party against XXXXXXXX.

YYYYYYYYYY's employees, agents and contractors will not be liable to XXXXXXXXX for these losses, except in relation to those referred to in subparagraph (a) caused by their own Wilful and Deliberate Acts.

8.2 YYYYYYYYYY indemnifies XXXXXXXXX against any loss, damage or injury relating to physical damage to the Works where that damage is caused by the Wilful or Deliberate Act of YYYYYYYYYY or its agents, contractors or employees, and for which act YYYYYYYYYY is vicariously liable at law, but excluding any losses, damage and costs where liability is excluded under clause 8.1.

8.3 XXXXXXXXX indemnifies YYYYYYYYYY against any:

- (a) loss, damage or injury to the Land or anything located or situated on the Land (including Trees);
- (b) disruption to the operations or business to YYYYYYYYYY and its subsidiaries; or
- (c) indirect or consequential, loss or damage (including financial, economic loss or damage) to YYYYYYYYYY or its subsidiaries,

where that loss or damage (including for the avoidance of doubt, damage by fire) is caused by:

- (d) any act or omission (where there is an obligation to act) of XXXXXXXXX or its agents, contractors or employees; or
- (e) any wilful, deliberate, wrongful or negligent act or omission of XXXXXXXXX, or its agents, contractors or employees, including any breach of this Agreement, any Electricity Easement, any statutory duty or any tortious duty;
- (f) XXXXXXXXX's Transmission Infrastructure, Equipment, Vehicles or Works or those of its agents, contractors or employees.

8.4 XXXXXXXXX indemnifies YYYYYYYYYY against any liability to a third party arising from or caused by:

- (a) Any act or omission of YYYYYYYYYY, its agents, employees and contractors, other than Wilful and Deliberate Act for which YYYYYYYYYY is vicariously liable at law; and
- (b) any of the matters referred to in clause 8.2;

## 9 COMPENSATION

9.1 XXXXXXXX will pay compensation to YYYYYYYYYY for the following:

- (a) The removal, damage or loss of quality of Trees in accordance with clauses 9.2 and 9.3;
- (b) Loss of use or value of or damage to any Land in accordance with clauses 9.4 and 9.5;
- (c) Losses, costs, fees and expenses caused by any disturbance to YYYYYYYYYY's business and operations or incurred by YYYYYYYYYY for any matters or disputes arising out of this Agreement in accordance with clause 9.6;
- (d) Costs, fees and expenses incurred by YYYYYYYYYY in relation to the Charging Area in accordance with clause 9.7;

unless and to the extent that XXXXXXXX has already compensated YYYYYYYYYY in full in relation to those losses, costs, fees and expenses as at the Commencement date.

9.2 XXXXXXXX will compensate YYYYYYYYYY for the market value of Trees:

- (a) removed from any area within a Legal Corridor that falls outside the boundaries of the applicable Physical Corridor, unless the Trees have been planted by or on behalf of YYYYYYYYYY within that area after it has been cleared of any Trees for the purpose of the Existing Transmission Line (as distinct from being cleared in the ordinary course of harvesting operations);
- (b) removed from within any Easement Area for any Existing Transmission Line unless the Trees have been planted by or on behalf of YYYYYYYYYY within that part of the Easement Area after it has been cleared of any Trees for the purpose of the Existing Transmission Line (as distinct from being cleared in the ordinary course of harvesting operations);
- (c) removed from any Easement Area for any upgraded Existing Transmission Line unless the Trees have been planted by or on behalf of YYYYYYYYYY after the Easement Area has been cleared of any Trees for the purpose of that upgrade (as distinct from being cleared in the ordinary course of harvesting operations);

- (d) removed from any Easement Area for any New Transmission Line unless the Trees have been planted by or on behalf of YYYYYYYYYY after the Easement Area has been cleared of any Trees for the purpose of the New Transmission Line (as distinct from being cleared in the ordinary course of harvesting operations);
- (e) removed from any Accessway unless the Trees have been planted by or on behalf of YYYYYYYYYY after the Accessway has been cleared of any Trees for the purpose of the Accessway (as distinct from being cleared in the ordinary course of harvesting operations);
- (f) removed from other parts of the Land as a consequence of XXXXXXXX carrying out activities on the land.

9.3 XXXXXXXX will compensate YYYYYYYYYY for:

- (a) the damage or loss of quality of Trees located outside the boundaries of but within close proximity to any Corridor, Easement Area or Accessway constructed or widened after the date of this Agreement where that loss of quality has been caused by the removal of Trees in the circumstances referred to in clause 9.2 or clause 4.6 of Schedule 1; and
- (b) the damage or loss of quality of Trees removed or damaged during the course of the removal of Trees in the circumstances referred to in clause 9.2 or clause 4.6 of Schedule 1 or during the course of XXXXXXXX carrying out activities on the Land.

9.4 XXXXXXXX will compensate YYYYYYYYYY for any damage or disturbance to or loss of market value or use of the following parts of the Land:

- (a) any part of a Legal Corridor that at the Commencement Date falls outside the boundaries the applicable Physical Corridor;
- (b) any part of an Easement Area in any Existing Electricity Easement which at the Commencement Date has not been cleared of Trees, for the purpose of the Existing Electricity Easement (as distinct from being cleared in the ordinary course of harvesting operations);
- (c) any Easement Area in any New Electricity Easement;

- (d) any Accessway constructed, widened or extended on the Land by XXXXXXXX or at its request in accordance with clauses 3.2 and 3.3 of Schedule 1 after the Commencement Date; and
- (e) any other part of the Land which, after the Commencement Date, is no longer practicably accessible or suitable for forestry, farming and other feasible operations as a consequence of XXXXXXXX's Transmission Infrastructure or any Easement Area being located on or in close proximity to that part of the Land.

9.5 XXXXXXXX will compensate YYYYYYYYYY for any damage, disturbance or reduction in the value of the balance of the Land caused by:

- (a) the creation of any new or widened Easement Area or any Corridor or Accessway;
- (b) XXXXXXXX carrying out any activities on the Land.

The parties acknowledge that the reduction in value of the balance of the Land will take into account:

- (c) damage to the Land;
- (d) the loss of quality of Trees located outside of but within close proximity to any Corridor, Easement Area or Accessway constructed, widened or extended after the date of this Agreement where that loss of quality has been caused by the removal of Trees in the circumstances referred to in clause 9.2 or clause 4.6 of Schedule 1; and
- (e) the permanent loss of access to parts of the Land for plantation forestry, for the purpose of the Accessway (as distinct from being cleared in the ordinary course of harvesting operations) provided that YYYYYYYYYY will provide reasonable evidence of the reasons for the permanent loss of access.

9.6 XXXXXXXX will compensate YYYYYYYYYY for:

- (a) any reasonable additional management costs incurred by YYYYYYYYYY as a consequence of XXXXXXXX constructing New Transmission Lines, including those arising from disruption to or a loss of efficiency in harvesting patterns and plans;

- (b) all costs, fees and expenses incurred as an immediate consequence of YYYYYYYYYY entering into this Agreement or any Easement Instrument (such as disputes, claims for compensation and action taken to mitigate losses or disruption to operations on the Land as a consequence of XXXXXXXX exercising its rights under this Agreement or any Easement Instrument), including reasonable legal, valuation, accounting, surveying and other professional fees and expenses;
- 9.7 XXXXXXXX will compensate YYYYYYYYYY for all reasonable costs, fees and expenses incurred by YYYYYYYYYY because it owns or occupies the Land within the Corridors, Easement Areas, and any Accessways requested or constructed by XXXXXXXX (together "the Charging Areas") and/or the removal of Trees in those Charging Areas, including:
  - (a) rates, Crown Forestry Licence fees, rental payments, bio-security costs, spraying costs, pest control levies, fire control costs and other costs incurred by YYYYYYYYYY;
  - (b) other costs imposed by local, regional or central government authority; and
  - (c) Any taxes or levy arising from the permanent deforestation of the Land imposed by the Crown or a local or regional authority, including any new taxes or levies imposed in the future.

Where the costs, fees and expenses are not separately rated or allocated to a Charging Area, XXXXXXXX will pay to YYYYYYYYYY a pro rata proportion of them, such proportion being fixed in accordance with the ratio that the Charging Area bears to the area of the Land that is subject to those costs, fees and expenses.

- 9.8 YYYYYYYYYY will provide copies of invoices to XXXXXXXX of the costs set out in clauses 9.6 and 9.7 along with any pro-rating formula used by YYYYYYYYYY under clause 9.7
- 9.9 The parties acknowledge and agree that they may each appoint separate registered valuers and other experts to determine the amounts payable by XXXXXXXX to YYYYYYYYYY under this clause 9. Instructions to valuers and other experts in assessing compensation must contain the features set out in this clause 9. YYYYYYYYYY and XXXXXXXX will exchange these valuations and other experts reports.

**10 COSTS**

- 10.1 XXXXXXXX will meet YYYYYYYYYY's actual external costs (including reasonable legal and valuation costs and other external consultancy costs) relating to the negotiation and execution of this Agreement, any Electricity Easements granted after the Commencement Date and any variations.

**11 LAND USE CHANGES**

- 11.1 Nothing in this Agreement will prevent or limit YYYYYYYYYY's ability to use, change the use of, dispose of or otherwise deal with:

- (a) its interests in the Land;
- (b) the interests of any of its subsidiaries that own or occupy the Land.

- 11.2 XXXXXXXX agrees to forego any rights that exist under the Resource Management Act 1991, to object to YYYYYYYYYY's activity on the Land and any adjacent land, including any change in land use, except for XXXXXXXX's rights to object to:

- (a) any resource consent application for subdivision or development of the Land within the Corridor or Easement Area for residential or lifestyle development purposes;
- (b) any resource consent application which could result in farming operations using central pivot irrigation impinging on a Corridor or Easement Area; and
- (c) any Land adjacent to the Corridor or Easement Area but with any such objection being limited to ensuring XXXXXXXX retains access to the Works and the Works can still be operated to their design limits.

**12 THIRD PARTY USE OF WORKS**

- 12.1 XXXXXXXX will not assign, transfer, sublet or licence its rights under this Agreement or any Electricity Easement.

- 12.2 XXXXXXXX will not:

- (a) allow any third party to:
  - (i) use all or any part of the Works on the Land;

- (ii) have the benefit of any of XXXXXXXX's Electricity Easements or statutory rights or rights under this Agreement; or
  - (iii) use any of XXXXXXXX's capacity in the Works (including telecommunications capacity);
- (b) exercise its rights under this Agreement or any Electricity Easement nor use XXXXXXXX's Transmission Infrastructure on the Land for any business other than the transformation and conveying of electricity,

without YYYYYYYYYY's prior written consent and the prior written consent of any owner of the Land (where the Land is not owned by YYYYYYYYYY).

### **13 ASSIGNMENT**

13.1 In the event that YYYYYYYYYY or any of its subsidiaries sells, transfers or otherwise disposes of all of its interests in all of Land (including by way of the sale of subsidiaries that own or occupy the Land) YYYYYYYYYY and XXXXXXXX will use their reasonable endeavours to have YYYYYYYYYY's rights and obligations under this Agreement novated to the purchaser or transferee of those interests or the YYYYYYYYYY subsidiaries. In the event that they are unsuccessful, the Agreement will be terminated on the completion of the sale, transfer or disposition;

13.2 In the event that YYYYYYYYYY or any of its subsidiaries sells, transfers or otherwise disposes of their interests in parts of the Land (including by way of the sale of subsidiaries that own or occupy the Land), the Agreement will cease to bind YYYYYYYYYY in relation to those parts of the Land that it no longer owns or occupies. In that event, XXXXXXXX will make a written offer to the purchaser, transferee or occupier of those parts of the Land (as the case may be) to enter into an agreement with XXXXXXXX on equivalent terms to this Agreement in relation to those parts of the Land.

### **14 CONTRACTS (PRIVITY) ACT**

14.1 In accordance with the Contracts (Privity) Act 1982, this Agreement is intended to confer benefits on (which are enforceable by):

- (a) the occupier of the Land if the occupier is not YYYYYYYYYY;
- (b) the owner of the land if the owner is not YYYYYYYYYY; and

- (c) the employees, agents and contractors of YYYYYYYYYY and the occupier.

## **15 DISPUTE RESOLUTION**

- 15.1 XXXXXXXX and YYYYYYYYYY commit to the expeditious resolution of any disputes arising out of entry, valuation or easement concerns and undertake that active consultation take place between them with a view to resolving the concerns themselves. If an issue or dispute arises under this Agreement the parties will first consult and negotiate in an attempt to resolve the issue or dispute amicably by agreement between them.
- 15.2 If the dispute is not resolved by negotiation or consultation within a reasonable period, any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within 5 Working Days of the date of service of the mediation notice. The mediator's costs are to be borne equally by the parties.
- 15.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President or his or her nominee for the time being of the New Zealand Law Society will appoint an independent arbitrator in the area. In the event that the President of the New Zealand Law Society fails or refuses to appoint an arbitrator, either party may request the High Court to make an appointment. The appointment decision of the High Court may not be appealed.
- 15.4 The arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the law of New Zealand. The parties will have rights of appeal on questions of law.
- 15.5 XXXXXXXX acknowledges that YYYYYYYYYY may take any complaint to the Electricity and Gas Complaints Commission provided that the complaint is within the jurisdiction of the Electricity and Gas Complaints Commission.

## **16 CONFIDENTIALITY**

- 16.1 The parties acknowledge and agree that any information provided by one party to the other pursuant to or concerning any matter,

dispute, right or obligation under this Agreement is strictly confidential to the parties and neither will disclose the contents of that information without the prior written consent of the other party.

*[The NZFOA advises land owners not to agree to this clause. It is not practicable having regard to the need to consult with other parties, including owners, occupiers, purchasers. Confidentiality improves the lines company's negotiating positions with other parties without reasonable justification]*

## **17 SEVERABILITY**

- 17.1 If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement.

## **18 NO WAIVER**

- 18.1 A waiver of any provision of this Agreement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.
- 18.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

## **19 GOVERNING LAW**

- 19.1 This Agreement shall be construed in accordance with New Zealand law.

## **SCHEDULE 1 – EXISTING TRANSMISSION LINES**

### **1 STATUS OF EXISTING TRANSMISSION LINES**

- 1.1 The parties acknowledge that at the date of this Agreement the Land set out in Appendix A is affected by Existing Transmission Lines. This Schedule 1 will apply to the Land affected by those Existing Transmission Lines. For the avoidance of doubt, the Land includes Land owned or occupied by any subsidiary company of the YYYYYYYYYY group of companies.

### **2 PROTECTION OF EXISTING TRANSMISSION LINES**

- 2.1 In respect of Existing Transmission Lines, YYYYYYYYYY agrees not to do or allow the following to be done without the prior written consent of XXXXXXXX (which will not be unreasonably withheld or delayed) on each occasion:
- (a) alter or disturb the grades and contours of the surface of the Land within the Physical Corridor or within any part of the Easement Area that has been cleared of Trees except in the course of normal farming, grazing, forestry and associated operations provided that YYYYYYYYYY complies with all legal obligations and restrictions, including any restriction set out in New Zealand Code of Practice for Electrical Safe Distances (NZECP34:2001) and any restrictions set out in this Agreement;
  - (b) erect any new building or other new structure within the physical Corridor or Easement Area;
  - (c) plant or permit the planting of any Trees within the Physical Corridor or any part of the Easement Area. Should YYYYYYYYYY plant or permit the planting of any Trees in breach of this clause, XXXXXXXX's sole remedy is to remove those Trees at its own cost;
  - (d) operate any Equipment or Vehicles within the Corridor or the Easement Area within a minimum clearance distance of 4 metres from any conductor or within any greater minimum clearance distance set out in New Zealand Code of Practice for Electrical Safe Distances (NZECP34:2001);
  - (e) excavate or deposit material on the physical Corridor or Easement Area;

- (f) unreasonably impede XXXXXXXX's access over Accessways, Corridors or Easement Areas; or
  - (g) light any fires or burn off vegetation on the Corridor or within 500 metres of the centre line of the Corridor.
- 2.2 If XXXXXXXX withholds its consent to any fire outside the Corridor, XXXXXXXX shall pay YYYYYYYYYY an amount equivalent to the extra cost incurred by YYYYYYYYYY in using a different method to achieve the purpose for which fire would have been used, such payment to be made on receipt by XXXXXXXX of an invoice and satisfactory evidence of the extra cost.
- 2.3 Until a Legal Corridor for each Existing Transmission Line is determined in accordance with clause 6 of this Schedule, the Legal Corridor for the purpose of clause 2.1 of this Schedule will be the width set out below and centred on the middle line of the Existing Transmission Lines:
- (a) For 220 kilovolt Works: 100 metres wide;
  - (b) For any Works less than 220 kilovolts: 80 metres wide; or
  - (c) The relevant growth limit zone as set out in the Electricity (Hazards from Trees) Regulations 2003 where the relevant growth limit zone is greater than the distance set out in sub-clause (a) or (b) above.
- 2.4 XXXXXXXX will ensure that all work undertaken on Existing Transmission Lines is performed in a proper and workmanlike manner, in accordance with best industry practice and all statutory requirements.

### **3 ACCESSING EXISTING TRANSMISSION LINES**

- 3.1 YYYYYYYYYY acknowledges that where any Existing Transmission Lines are located on the Land, XXXXXXXX has the right in common with YYYYYYYYYY (and any other authorised person) to enter and remain on the Land for a reasonable time only for those purposes connected with the exercise of XXXXXXXX's rights and obligations under its statutory rights and this Agreement. When using or transporting Vehicles or Equipment it will use all reasonable endeavours to keep within formed Accessways and the Easement Areas that have been cleared of Trees.
- 3.2 In exercising its rights of access, XXXXXXXX:
- (a) may use any Accessway situated on the Land;

- (b) may form, widen or extend an Accessway with the prior approval in writing of YYYYYYYYYY and any owner of the Land (where YYYYYYYYYY is not the owner of the Land) to the plans and specifications for such Accessway;
- (c) has the right to inspect, repair, maintain and renew any Accessway it constructs to an all-weather four wheel drive standard;
- (d) may install gates within fences located on the Accessway and inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of XXXXXXXX to the extent that XXXXXXXX reasonably considers necessary, provided that XXXXXXXX will obtain the consent in writing of YYYYYYYYYY (which shall not be unreasonably withheld or delayed) before exercising its rights under this clause 3.2(d) except for the right of use. XXXXXXXX will provide YYYYYYYYYY with reasonable numbers of keys to all gates reasonably requested by YYYYYYYYYY and will refrain from providing keys to third parties without YYYYYYYYYY's consent;
- (e) will keep plans showing the location of each Accessway and will provide copies of these to YYYYYYYYYY on request;
- (f) may clear and keep Accessways clear of vegetation (including Trees), structures, soil, earth, gravel and stone; and
- (g) may open up the soil of any Accessway and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Accessway to the extent reasonably necessary for XXXXXXXX to exercise its rights and obligations under this clause 3.2(b) and (c), provided that XXXXXXXX has no right to use excavated earth, soil, gravel or stone for the purpose of constructing or maintaining any Accessway or other Works without YYYYYYYYYY's consent.

3.3 The parties acknowledge and agree that:

- (a) YYYYYYYYYY is not obliged to maintain or repair any Accessway (subject to 3.3(d));
- (b) YYYYYYYYYY may use any Accessway on the Land including any Accessway constructed by XXXXXXXX;
- (c) Where XXXXXXXX is the sole user of an Accessway, XXXXXXXX will pay the whole cost of repairing and maintaining the Accessway;

- (d) If any repair or maintenance of an Accessway becomes necessary due to any act or omission of XXXXXXXX then it will repair the Accessway and is responsible for payment of all costs in undertaking the repair.
- (e) If YYYYYYYYYY damages an Accessway constructed by TP, then YYYYYYYYYY will restore it to the condition prior to the occurrence of that damage.
- (f) Where XXXXXXXX constructs, widens or extends an Accessway on the Land, XXXXXXXX will pay compensation to YYYYYYYYYY in accordance with clause 9 of the Agreement.

#### **4 NOTICE**

- 4.1 XXXXXXXX will give YYYYYYYYYY at least five (5) Working Days' notice (which may be given verbally, by telephone or in writing) of its intention to enter the Land for the purpose of operating or inspecting Work and such notice will advise which Accessway that XXXXXXXX wishes to use.
- 4.2 XXXXXXXX will give YYYYYYYYYY at least ten (10) Working Days' notice in writing of its intention to enter the Land for the purpose of exercising any rights and obligations under any statutory right or this Agreement, including construction of an Accessway, excluding inspection or operation of Works, and such notice will advise which Accessway that XXXXXXXX wishes to use.
- 4.3 If XXXXXXXX gives notice under clause 4.1 or 4.2 of this Schedule, YYYYYYYYYY may set reasonable conditions relating to:
  - (a) the timing of entry onto the Land;
  - (b) the Accessway to be used by XXXXXXXX; and
  - (c) construction of the Accessway and the maintenance standards that the Accessway must meet (if applicable)
- 4.4 The conditions imposed by YYYYYYYYYY under clause 4.3 of this Schedule must not:
  - (a) delay the entry by more than 15 Working Days;
  - (b) require monetary or other consideration, unless otherwise set out in this Agreement; or

(c) otherwise effectively defeat the ability of XXXXXXXXX to exercise its rights and obligations under any statutory rights or this Agreement.

4.5 XXXXXXXXX will comply with any reasonable conditions advised by YYYYYYYYYY pursuant to clause 4.3 of this Schedule 1.

4.6 In the case of emergencies (being where entry onto the Land is necessary in circumstances of probable danger to life or property or to maintain the continuity or safety of the supply and distribution of electricity), XXXXXXXXX may enter onto the Land without giving prior notice to YYYYYYYYYY but will give notice to YYYYYYYYYY as soon as possible and, in any event, within five (5) Working Days following the entry onto the Land. In accessing the Works in emergencies, XXXXXXXXX will comply with the restrictions and obligations in this Agreement as far as reasonably possible in the circumstances.

## **5 MITIGATING RISK OF FIRE**

5.1 XXXXXXXXX covenants with YYYYYYYYYY that XXXXXXXXX will take all reasonable steps to safeguard against any damage by fire to trees and other improvements situated on the Land from time to time (and is to comply with the reasonable requirements of YYYYYYYYYY in this respect notified to XXXXXXXXX) including but not limited to ensuring that :

(a) all Transmission Lines, Works and other parts of XXXXXXXXX's Electricity Infrastructure are designed, constructed, maintained and operated to good industry practice to reasonably minimise the risk of harm to YYYYYYYYYY's Trees and other improvements situated on the Land from fire;

(b) all Vehicles and Equipment brought onto the Land are fitted with safe and effective means of preventing escape of dangerous sparks or flames from the exhaust and that such means are properly maintained and operational; and

(c) XXXXXXXXX's employees and contractors bring a properly maintained and operational fire extinguisher onto the Land when accessing the Works.

## **6 TREES AND EXISTING TRANSMISSION LINES**

6.1 XXXXXXXXX will, after the date of signing of this Agreement, and in consultation with YYYYYYYYYY review the proximity of Trees to the Existing Transmission Lines with a view to agreeing the boundaries

of the Physical Corridor and setting the Legal Corridor for each Existing Transmission Line within 3 years of the Commencement Date. YYYYYYYYYY will provide reasonable assistance to XXXXXXXX to progress the review.

- 6.2 In undertaking the review, XXXXXXXX may have regard to any matters relevant to the safety and security of the Existing Transmission Lines, including:
- (a) the species, age, estimated height at maturity and general state of the Trees;
  - (b) the nature of the Works (including the voltage of the Works and height and type of supports and the length of each span);
  - (c) the nature of the Land; and
  - (d) the provisions of the Electricity (Hazards from Trees) Regulations 2003.
- 6.3 After undertaking the review, XXXXXXXX will consult with YYYYYYYYYY to agree the width of the Physical Corridors. In addition XXXXXXXX will nominate the width of the Legal Corridors which XXXXXXXX considers to be sufficiently wide to mitigate the risk of damage to the Existing Transmission Lines from the Trees. In the absence of any objection from YYYYYYYYYY the widths nominated by XXXXXXXX will apply to the Legal Corridors up to a width of 100 metres centred on the middle lines of the Existing Transmission Line.
- 6.4 XXXXXXXX and YYYYYYYYYY will agree a programme for removing any Trees located in each Legal Corridor.
- 6.5 The parties will agree which party will be responsible for removing any Trees growing within each Legal Corridor during the review.
- 6.6 All costs of removing Trees in the Legal Corridor will be met by XXXXXXXX.
- 6.7 XXXXXXXX will not pay any compensation to YYYYYYYYYY for the removal of Trees on any part of the land falling within the Physical Corridor .
- 6.8 XXXXXXXX will pay compensation to YYYYYYYYYY (including for Trees removed or for any reduction in the value of the Land resulting from the definition of the Legal Corridor) as set out in clause 9 of the Agreement.

- 6.9 YYYYYYYYYY will not plant or permit the planting of any Trees within the Legal Corridor after the Commencement Date. XXXXXXXX may at its own cost remove any Trees planted within the Legal Corridor after the Commencement Date, which will be its sole remedy for a breach of this clause.
- 6.10 XXXXXXXX will at its cost manage all vegetation located in the Corridors.

## **7 TEMPORARY CESSATION OF ELECTRICITY SUPPLY**

- 7.1 YYYYYYYYYY may request that XXXXXXXX temporarily cease the exercise of its rights and obligations under any statutory rights or this Agreement for a specified period to enable YYYYYYYYYY to undertake harvesting or other production operations within the vicinity of the Works.
- 7.2 The parties agree that XXXXXXXX is not obliged to agree to any request made by YYYYYYYYYY under clause 7.1 of this Schedule but will in good faith consider whether it is able to comply with the request.
- 7.3 XXXXXXXX will re-route its lines on a temporary basis or make other reasonable provision for YYYYYYYYYY to harvest Trees in close proximity to Physical Corridors of inadequate width to allow them to be harvested in a safe manner.
- 7.4 Should XXXXXXXX withhold its consent to any request made by YYYYYYYYYY under clause 7.1 or is unable to make reasonable provision under clause 7.3 of this Schedule, it will compensate YYYYYYYYYY for any damages, losses, costs and expenses YYYYYYYYYY incurs as a consequence.

## **8 HEALTH AND SAFETY**

- 8.1 XXXXXXXX will comply with all obligations imposed on XXXXXXXX at law as the person who controls a place of work and will be responsible for the health and safety of any person who enters the Land at the request of XXXXXXXX.
- 8.2 YYYYYYYYYY will comply with all obligations imposed on YYYYYYYYYY at law relating to the health and safety of persons on the Land.
- 8.3 YYYYYYYYYY will ensure that its health and safety management plans and hazard identification procedures specifically include reference to the Existing Transmission Lines and the risks relating to working near the Existing Transmission Lines including:

- (a) the safety of persons;
  - (b) fire and other damage to the Land;
  - (c) damage to the Works; and
  - (d) electricity outages to significant numbers of end-consumers.
- 8.4 YYYYYYYYYY will provide to XXXXXXXX upon request YYYYYYYYYY's rules and procedures regarding the health and safety of persons on the Land (including the Corridor) and the identification and mitigation of hazards.
- 8.5 XXXXXXXX will comply with any reasonable obligations imposed by YYYYYYYYYY regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

**SCHEDULE 2 – UPGRADES AND NEW TRANSMISSION LINES****1 PRIOR CONSULTATION**

1.1 Where XXXXXXXX proposes to:

- (a) upgrade any Works (whether those Works are Existing Transmission Lines or Works constructed after the date of this Agreement) which are located on, over or under the Land; or
- (b) construct any New Transmission Line on, over or under the Land,

the following provisions will apply:

- (c) XXXXXXXX will give notice to YYYYYYYYYY of the proposal at an early stage and will consult with YYYYYYYYYY as to the likely effects on YYYYYYYYYY of the proposed works;
- (d) In the case of a New Transmission Line, this will be subject to YYYYYYYYYY's consent, which will not be unreasonably withheld;
- (e) Subject to YYYYYYYYYY consenting to the proposed New Transmission Line, YYYYYYYYYY will allow XXXXXXXX to enter onto the Land to inspect and investigate the Works and/or the Land;
- (f) YYYYYYYYYY will advise XXXXXXXX in accordance with the Partnering Concept of anything that YYYYYYYYYY is aware of that could affect or restrict XXXXXXXX's proposed works;
- (g) Where XXXXXXXX proposes to construct a New Transmission Line, XXXXXXXX will take into account any advice given by YYYYYYYYYY or any proposals made by YYYYYYYYYY as to the proposed location of the New Transmission Line or any part of it;
- (h) XXXXXXXX and YYYYYYYYYY will identify and agree any departures from the Easement Template which are considered necessary by either XXXXXXXX or YYYYYYYYYY;
- (i) XXXXXXXX and YYYYYYYYYY will identify and agree any routes to give XXXXXXXX access to the Works; and
- (j) XXXXXXXX and YYYYYYYYYY will consult with each other with a view to agreeing the extent of the Easement Area.

- 1.2 YYYYYYYYYY acknowledges that it consents to the location of the proposed upgrade to the Blenheim – Stoke Transmission Line as described in Appendix E.

## **2 GRANT OF EASEMENT**

- 2.1 Subject to YYYYYYYYYY agreeing to grant an Electricity Easement for the Easement Area and on the location requested by XXXXXXXX:

- (a) Where YYYYYYYYYY owns the Land, YYYYYYYYYY will grant to XXXXXXXX an Electricity Easement in the same form and content as the Easement Template, along with any departures from the Easement Template agreed by XXXXXXXX and YYYYYYYYYY over the area of the Land nominated by XXXXXXXX.
- (b) Where YYYYYYYYYY is the lessee or licensee of the Land (including under a Crown Forestry Licence), YYYYYYYYYY will provide reasonable assistance to XXXXXXXX in obtaining the agreement of the owner of the Land to the grant of an Electricity Easement and will consent to the grant and registration of the Electricity Easement provided that the Electricity Easement is in the same or similar form and content as the Easement Template, along with:
- (i) any departures from the Easement Template agreed by XXXXXXXX and YYYYYYYYYY;
- (ii) any departures from the Easement Template required by the owner of the Land; and
- (iii) any departures reasonably required by the Crown (where the Crown is the landowner) which accord with its usual practices.

- 2.2 YYYYYYYYYY will provide reasonable assistance in having the survey plan and Electricity Easement instrument registered at Land Information New Zealand and will promptly sign all documents necessary for that registration.

## **3 COMPENSATION**

- 3.1 XXXXXXXX will pay compensation to YYYYYYYYYY for the grant of the Electricity Easement in accordance with clause 9 of the Agreement;
- 3.2 Should XXXXXXXX agree or be required by law to pay a fee to other land owners or occupiers for XXXXXXXX Transmission

Infrastructure located on their land, YYYYYYYYYY may require XXXXXXXX to pay a fee for any new Electricity Easement as a condition of granting the easement.

#### **4 TERMS OF ELECTRICITY EASEMENT TO TAKE PRECEDENCE**

- 4.1 The parties agree that all matters relating to the Works and the Easement Area will be set out in the registered Electricity Easement instrument. Where any provision of any New Electricity Easement conflicts with any provision of this Heads of Agreement, the provision in the Electricity Easement will prevail.

**EXECUTION**

**Signed** by YYYYYYYYYY by its attorney  
**[Name of Attorney]**

in the presence of:

.....  
[Name of Attorney]

.....  
Witness signature

.....  
Full name (please print)

.....  
Occupation (please print)

.....  
Address (please print)

**Signed** by XXXXXXXXX **New Zealand Limited** by its attorney **[Name of Attorney]** in the presence of:

.....  
[Name of Attorney]

.....  
Witness signature

.....  
Full name (please print)

.....  
Occupation (please print)

.....  
Address (please print)

**APPENDIX A – LAND AFFECTED BY EXISTING TRANSMISSION LINES**

**APPENDIX B – CHARTER**

**APPENDIX C – CONTACTS**

**YYYYYYYYYY:**

Contact:

Postal:

Street:

Phone:

Fax:

Mobile:

Email:

**XXXXXXXXX:**

Contact:

Postal:

Street:

Phone:

Fax:

Mobile:

Email:

**APPENDIX D – EASEMENT TEMPLATE**

Approved by Registrar-General of Land under No. 2002/0355

**Easement instrument to grant easement or profit à prendre, or create land covenant**

Sections 80A and 80F, Land Transfer Act 1952

Land registration district  
 \_\_\_\_\_



BARCODE  
 \_\_\_\_\_

**Grantor** *Surname(s) must be underlined or in CAPITALS.*

Carter Holt Harvey Limited (or name of other owner of the Land)

**Grantee** *Surname(s) must be underlined or in CAPITALS.*

Transpower New Zealand Limited

**Grant of easement or profit à prendre or creation of covenant**

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or profit(s) à prendre set out in Schedule A, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**Attestation**

	<b>Signed in my presence by the Grantor</b>
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>
	<b>Witness name</b>
	<b>Occupation</b>
	<b>Address</b>
<b>Signature (common seal) of Grantor</b>	

	<b>Signed in my presence by the Grantee</b>
	_____ <i>Signature of witness</i>
	<i>Witness to complete in BLOCK letters (unless legibly printed)</i>
	<b>Witness name</b>
	<b>Occupation</b>
	<b>Address</b>
<b>Signature (common seal) of Grantee</b>	

Certified correct for the purposes of the Land Transfer Act 1952.

\_\_\_\_\_  
 Solicitor for the Grantee

If the consent of any person is required for the grant, the specified consent form must be used.

REF: 400 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/6056  
**Annexure Schedule 1**



Easement instrument Dated [ ] Page [ ] of [ ] pages

**Schedule A** (Continue in additional Annexure Schedules if required.)

Purpose (nature and extent) of easement, profit, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or In gross)
Right to convey electricity	Area * on DP [ ]	[Insert identifier of land]	In gross

**Easements or profits à prendre rights and powers (including terms, covenants, and conditions)**

Delete phrases in [ ] and insert memorandum number as required.  
 Continue in additional Annexure Schedules if required.

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.  
 The implied rights and powers are [varied] [negated] [added to] or [substituted] by:  
 [Memorandum number] registered under section 155A of the Land Transfer Act 1952.  
 [the provisions set out in Annexure Schedule 2]

**Covenant provisions**

Delete phrases in [ ] and insert memorandum number as required.  
 Continue in additional Annexure Schedules if required

The provisions applying to the specified covenants are those set out in:  
 [Memorandum number] registered under section 155A of the Land Transfer Act 1952.  
 [Annexure Schedule 2]

**All signing parties and either their witnesses or solicitors must sign or initial in this box**

**ANNEXURE SCHEDULE 2:****EASEMENT RIGHTS AND POWERS****1 GRANTEE'S RIGHTS**

1.1 The Grantee shall have the following rights and powers:

- (a) to build, construct, install, lay, remove, inspect, use, operate, repair, maintain, renew or replace the Works or any part of the Works on the Easement Area provided that the Grantee must not increase the nominal operating electricity voltage of the Works beyond the Maximum Design Specifications; *[To be specifically defined for each easement.]*
- (b) to alter, upgrade, add to and modify the Works or any part of the Works on the Easement Area with the prior written consent of the Grantor and the occupier, provided that the Grantee must not increase the nominal operating electricity voltage of the Works beyond the Maximum Design Specifications;
- (c) to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and associated telecommunications signals used exclusively in the Grantee's business of transforming and conveying electricity by means of the Works provided that in using the Works for electricity purposes the Grantee will not exceed the limits set out in the Maximum Design Specifications;
- (d) to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement Instrument;
- (e) to enter and remain on the Easement Area from the Accessways with or without Vehicles, machinery or Equipment for a reasonable time for the purposes of exercising the Grantee's rights under this Easement Instrument. When using or transporting Vehicles or Equipment it will use all reasonable endeavours to keep within Accessways and the Easement Area;
- (f) to build, construct, inspect, use, repair, maintain, renew, alter, remove and modify Accessways and to modify adjacent fences on the Land at the cost of the Grantee to the extent that the Grantee reasonably considers necessary

in order to exercise its rights under this Easement Instrument, provided that the Grantee will obtain the consent of the Grantor (which shall not be unreasonably withheld or delayed) before exercising its rights under this clause (except for the right of use);

- (g) to install gates within fences located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that the Grantee reasonably considers necessary in order to exercise its rights under this Easement Instrument, provided that the Grantee will obtain the consent of the Grantor (which shall not be unreasonably withheld or delayed) before exercising its rights under this clause (except for the right of use) but the Grantor is not able to require any payment as a condition of giving its consent, beyond the compensation payable under clause 9. The Grantee will provide the Grantor and the occupier with reasonable numbers of keys to all gates as reasonably requested and will refrain from providing keys to third parties (other than the Grantee's contractors) without the Grantor's and the occupier's consent;
- (h) to clear and keep the Easement Area clear of trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone, and to keep the Easement Area clear of any structure or vegetation which is or is likely to be, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works; and
- (i) to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement Instrument, provided that the Grantee has no right to use excavated earth, soil, gravel or stone for the purpose of constructing or maintaining Accessways or other Works.

## **2 ACCESSING TRANSMISSION LINES**

2.1 In exercising its rights of access, the Grantee:

- (a) may use any Accessway situated on the Land;
- (b) may form, widen or extend an Accessway with the prior approval in writing of the Grantor and any occupier of the Land to the plans and specifications for such Accessway;

- (c) has the right to inspect, repair, maintain or renew any Accessway it constructs to an all-weather four wheel drive standard;
- (d) may install gates within fences located on any Accessway and inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that the Grantee reasonably considers necessary, provided that the Grantee will obtain the consent in writing of the Grantor and any occupier (which shall not be unreasonably withheld or delayed) before exercising its rights under this clause 2.1(d) except for the right of use. The Grantee will provide the Grantor or the occupier with the quantities of keys to all gates reasonably requested by them and will refrain from providing keys to third parties without their consent;
- (e) will keep plans showing the location of each Accessway and will provide copies of these to the Grantor and any occupier of the Land on request;
- (f) may clear and keep the Accessway clear of vegetation (including Trees), structures, soil, earth, gravel and stone; and
- (g) may open up the soil of any Accessway and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Accessway to the extent reasonably necessary for the Grantee to exercise its rights and obligations under sub-clauses 2.1(b) and (c), provided that the Grantee has no right to use excavated earth, soil, gravel or stone for the purpose of constructing or maintaining any Accessway or other Works without the Grantors consent.

2.2 The Grantee acknowledges and agrees that:

- (a) the Grantor is not obliged to maintain or repair any Accessway; and
- (b) the Grantor and any occupier of the Land may use any Accessway on the Land including any Accessway constructed by the Grantee.
- (c) Where the Grantee is the sole user of an Accessway, the Grantee will pay the whole cost of repairing and maintaining the Accessway.

- (d) If any repair or maintenance of an Accessway becomes necessary due to any act or omission of the Grantee, then it will repair the Accessway and is responsible for payment of all costs in undertaking the repair.
- (e) Where the Grantee constructs, widens or extends an Accessway on the Land, the Grantee will pay compensation to the Grantor for any loss suffered by the Grantor as a result of the construction in accordance with clause 9 of this Easement Instrument.

### **3 GRANTOR'S OBLIGATIONS**

- 3.1 The Grantor will not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do or allow the following to be done:
  - (a) alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming, grazing, forestry and associated operations provided that the Grantor complies with the all legal obligations and restrictions, including any restriction set out in New Zealand Code of Practice for Electrical Safe Distances (NZECP34:2001) and any restrictions set out in this Easement Instrument;
  - (b) excavate or deposit material, erect any building or other structure or plant any vegetation within the Easement Area. Should the Grantor or the occupier plant any vegetation (including Trees) in breach of this clause, the Grantee's sole remedy is to remove that vegetation at its own cost;
  - (c) operate any Equipment or Vehicles on the Corridor or the Easement Area within a minimum clearance distance of 4 metres from any conductor or within any greater minimum clearance distance set out in New Zealand Code of Practice for Electrical Safe Distances (NZECP34:2001);
  - (d) unreasonably impede the Grantee's access over the Easement Area;
  - (e) light any fires or burn off vegetation within the Easement Area or within 500 metres of the Easement Area.
- 3.2 If the Grantee withholds its consent to any fire outside the Easement Area, the Grantee shall pay the Grantor an amount equivalent to the extra cost incurred by the Grantor in using a different method to achieve the purpose for which fire would have

been used, such payment to be made on receipt by the Grantee of an invoice and satisfactory evidence of the extra cost.

#### **4 GRANTEE'S OBLIGATIONS**

- 4.1 The Grantee will cause as little disturbance as reasonably possible to the surface of the Land and the Easement Area, will restore the surface of the Easement Area and any other part of the Land which is disturbed by the Grantee to as close as reasonably possible to its condition before the exercise by the Grantee of its rights under this Easement Instrument and will make good any other direct physical damage caused by the exercise of the Grantee's rights.
- 4.2 The Grantee will bear the costs of managing vegetation on the Easement Area including removing Trees (including removing any vegetation which is planted by the Grantor in breach of this Easement Instrument) and other vegetation and controlling weeds to the requirements of any relevant statute, regulation, legally binding standard or code of practice or any competent authority (including district and regional councils).
- 4.3 The Grantee will ensure that all work undertaken on Transmission Lines is performed in a proper and workmanlike manner, in accordance with best industry practice and all statutory requirements.

#### **5 NOTICE**

- 5.1 The Grantee will give the Grantor (or the occupier of the Land if the Grantor has advised the Grantee previously to do so) at least five (5) Working Days' notice (which may be given verbally, by telephone or in writing) of its intention to enter the Land for the purpose of operating or inspecting Work and such notice will advise which Accessway that the Grantee wishes to use.
- 5.2 The Grantee will give the Grantor (or the occupier of the Land if the Grantor has advised the Grantee previously to do so) at least ten (10) Working Days' notice in writing of its intention to enter the Land for the purpose of exercising any rights and obligations under any statutory right or this Easement Instrument, including construction of an Accessway, excluding inspection or operation of Works, and such notice will advise which Accessway that the Grantee wishes to use.
- 5.3 If the Grantee gives notice under clauses 5.1 or 5.2 of this Easement Instrument, the Grantor or the occupier may set reasonable conditions relating to:

- (a) the timing of entry onto the Land;
  - (b) the Accessway to be used by the Grantee; and
  - (c) construction of the Accessway and the maintenance standards that the Accessway must meet (if applicable)
- 5.4 The conditions imposed by the Grantor or the occupier under clause 5.3 of this Easement Instrument must not:
- (a) delay the entry by more than 15 Working Days;
  - (b) require monetary or other consideration, unless otherwise set out in this Easement Instrument; or
  - (c) otherwise effectively defeat the ability of the Grantee to exercise its rights and obligations under any statutory rights or this Easement Instrument.
- 5.5 The Grantee will comply with any reasonable conditions advised by the Grantor or the occupier pursuant to clause 5.3 of this Easement Instrument.
- 5.6 In the case of emergencies (being where entry onto the Land is necessary in circumstances of probable danger to life or property or to maintain the continuity or safety of the supply and distribution of electricity), the Grantee may enter onto the Land without giving prior notice to the Grantor or occupier but will give notice to them as soon as possible and, in any event, within five (5) Working Days following the entry onto the Land. In accessing the Works in emergencies, the Grantee will comply with the restrictions and obligations in this Easement Instrument as far as reasonably possible in the circumstances. In accordance with clause 9 of this Easement Instrument, the Grantee will pay compensation to the Grantor or occupier for any damage to the Trees, Land or other property owned or occupied by the Grantor or occupier as a consequence of the Grantee exercising this right.

## **6 MITIGATING RISK OF FIRE**

- 6.1 The Grantee will take all reasonable steps to safeguard against any damage by fire to trees and other improvements situated on the Land from time to time and will comply with the reasonable requirements of the Grantor or the occupier of the Land notified to the Grantee in this respect including but not limited to:
- (a) ensuring that all Transmission Lines, Works and other parts of the Grantee's Electricity Infrastructure are designed,

constructed, maintained and operated to good industry practice to reasonable minimise the risk of harm to YYYYYYYYYY's Trees and other improvements situated on the Land from fire;

- (b) ensuring all Vehicles and Equipment brought onto the Land are fitted with safe and effective means of preventing escape of dangerous sparks or flames from the exhaust and that such means are properly maintained and operational; and
- (c) ensuring that the Grantee's employees and contractors bring a properly maintained and operational fire extinguisher onto the Land when accessing the Works.

## **7 TEMPORARY CESSATION OF ELECTRICITY SUPPLY**

- 7.1 The Grantor or any occupier of the Land may request that the Grantee temporarily cease the exercise of its statutory rights or its rights and obligations under this Easement Instrument for a specified period to enable the Grantor or the occupier of the Land to undertake forestry harvesting or other production operations within the vicinity of the Works.
- 7.2 The Grantee is not obliged to agree to any request made under clause 7.1 but will in good faith consider whether it is able to comply with the request.
- 7.3 XXXXXXXX will re-route its lines on a temporary basis or make other reasonable provision for YYYYYYYYYY to harvest Trees in close proximity to Physical Corridors of inadequate width to allow them to be harvested in a safe manner.
- 7.4 Should XXXXXXXX withhold its consent to any request made by YYYYYYYYYY under clause 7.1 or is unable to make reasonable provision under clause 7.3 of this Schedule, it will compensate YYYYYYYYYY for any damages, losses, costs and expenses YYYYYYYYYY incurs as a consequence.

## **8 LIABILITY AND INDEMNITIES**

- 8.1 The parties agree that the Grantor and the occupier, their respective related companies, agents, contractors and employees will not be liable to the Grantee for the following losses suffered by the Grantee:
  - (a) any physical damage caused to the Works unless the damage is caused by the Wilful or Deliberate Act of the

Grantor or the occupier (as the case may be) or their respective agents, contractors and employees for which act the Grantor or the occupier are vicariously liable at law;

- (b) any consequential loss to the Grantee resulting from physical damage to the Works or from any disturbance to electricity supply caused by the Grantor or the occupier (as the case may be) or their respective agents, contractors and employees; or
- (c) any claim by a third party against the Grantee.

The Grantor's and the occupier's employees, agents and contractors will not be liable to the Grantee for these losses, except in relation to those referred to in subparagraph (a) caused by their own wilful and deliberate acts.

*[Insert Grantor's indemnity.]*

- 8.2 If the Grantor or the occupier wilfully or deliberately causes or permits any breach of the obligations set out in this Easement Instrument, the Grantee shall be entitled to take all reasonable steps to remedy the breach, with the direct costs of remedying the breach recoverable by the Grantee from the Grantor or the occupier (as the case may be) as a debt. Where the Grantee considers it reasonable in the circumstances, prior to remedying the breach, the Grantee will give notice of the breach to the Grantor or the occupier (as the case may be) and allow a reasonable period for it to remedy the breach.
- 8.3 The Grantee indemnifies the Grantor and the occupier against any:
- (a) loss, damage or injury to the Land or anything located or situated on the Land;
  - (b) disruption to their operations or business; and
  - (c) financial, economic, indirect or consequential loss or damage,

where that loss or damage (including for the avoidance of doubt, damage by fire) is caused by:

- (d) any act or omission (where there is an obligation to act) of the Grantee or its agents, contractors or employees when entering the Land;

- (e) any wilful, deliberate, wrongful or negligent act or omission of the Grantee, or its agents, contractors or employees including any breach of this Easement Instrument or any statutory or tortious duty; or
- (f) the Grantee's Transmission Infrastructure, Equipment, Vehicles or Works or those of its agents, contractors or employees.

8.4 If the Grantee wilfully or with wilful disregard causes or permits any breach of the obligations set out in this Easement Instrument, the Grantor or the occupier shall be entitled to take all reasonable steps to remedy the breach, with the direct costs of remedying the breach recoverable by the Grantor or the occupier (as the case may be) and the occupier from the Grantee as a debt, provided that in no circumstances shall the Grantor and the occupier interfere with the Works in any way whatsoever. Where the Grantor or the occupier considers it reasonable in the circumstances, prior to remedying the breach, they will give notice of the breach to the Grantee and allow the Grantee a reasonable period to remedy the breach.

8.5 The Grantee indemnifies the Grantor and the occupier against any liability to a third party arising from or caused by:

- (a) any act or omission of the Grantor or the occupier, their respective related companies, agents, contractors and employees, other than wilful and deliberate acts or omissions of their related companies, agents, contractors and employees for which actions or omissions the Grantor or occupier are vicariously liable at law;
- (b) any of the matters referred to in clauses 8.3 of this Easement Instrument;

## **9 COMPENSATION**

9.1 The Grantee will pay compensation to the Grantor and/or the occupier for the following:

- (a) The removal, damage or loss of quality of Trees in accordance with clauses 9.2 and 9.3 of this Easement Instrument;
- (b) Loss of use or value of or damage to any Land in accordance with clauses 9.4 and 9.5 of this Easement Instrument ;

- (c) Losses, costs, fees and expenses caused by any disturbance to business and operations of the Grantor or the occupier or incurred by Grantor or occupier for any matters or disputes arising out of this Easement Instrument in accordance with clause 9.6;
- (d) Costs and expenses incurred by the Grantor or the occupier in relation to the Charging Area in accordance with clause 9.7 of this Easement Instrument;

unless and to the extent the Grantee has already paid compensation to the Grantor or the occupier in full in relation to those losses, costs, fees and expenses as at the date of this Easement Instrument.

- 9.2 The Grantee will compensate the Grantor or the occupier for the market value of Trees:
- (a) removed from any Easement Area unless the Trees have been planted by or on behalf of the Grantor or the occupier after the Easement Area has been cleared of any Trees for the purpose of the construction of a New Transmission Line;
  - (b) removed from any Accessway constructed, widened or extended on the Land by the Grantee or at its request unless the Trees have been planted by or on behalf of the Grantor or the occupier after the Accessway has been cleared of any Trees for the purpose of the Accessway.
- 9.3 The Grantee will compensate the Grantor or the occupier for:
- (a) the damage or loss of quality of Trees located outside of but within close proximity to any Easement Area or any Accessway constructed, widened or extended on the Land by the Grantee or at its request; and
  - (b) the damage or loss of quality of Trees removed or damaged during the course of the removal of Trees in the circumstances referred to in clause 9.3 of this Easement Instrument or in the course of the Grantee carrying out any activity on the Land.
- 9.4 The Grantee will compensate the Grantor or the occupier for any damage to or disturbance to or loss of market value or use of the following parts of the Land:
- (a) the Easement Area;

- (b) any Accessway constructed, widened or extended on the Land by the Grantee or at its request;
- (c) any other part of the Land which is no longer practicably accessible or suitable for forestry, farming and other feasible operations on the Land as a consequence of the Grantor's Transmission Infrastructure or any Easement Area or Accessway being located on or in close proximity to that part of the Land.

9.5 The Grantee will compensate the Grantor or the occupier for any disturbance or reduction in the value of the balance of the Land caused by:

- (a) the creation of the Easement Area or any Accessway constructed, widened or extended on the Land by the Grantee or at its request;
- (b) Any activity of the Grantee on the Land.

The parties acknowledge that the reduction in value of the balance of the Land will take into account:

- (c) damage to the Land;
- (d) the loss of quality of Trees located outside of but within close proximity to the Easement Area or any Accessway constructed, widened or extended on the Land by the Grantee or at its request; and
- (e) the permanent loss of access to parts of the Land for plantation forestry, farming and other feasible operations on the Land provided that the Grantor or the occupier will provide reasonable evidence of the reasons for the permanent loss of access.

9.6 The Grantee will compensate the Grantor or the occupier for:

- (a) any reasonable additional management and operating losses, damages, costs and expenses incurred as a consequence of the Grantor executing this Easement Instrument and the Grantee constructing New Transmission Lines, including those arising from disruption to or a loss of efficiency in harvesting patterns and plans; and
- (b) all costs, fees and expenses incurred as a consequence of the Grantor executing this Easement Instrument (such as disputes, claims for compensation and action taken to

mitigate losses or disruption to operations on the Land as a consequence of the Grantee exercising its rights under this Easement Instrument), including reasonable legal, valuation, accounting, surveying and other professional fees and expenses;

- 9.7 The Grantee will compensate the Grantor and the occupier for all reasonable costs, fees and expenses they incur resulting from their ownership or occupation of the Land within the Easement Area and any Accessway constructed, widened or extended on the Land by the Grantee or at its request (together "the Charging Areas") and/or the removal of Trees in the Charging Areas, including:
- (a) rates, Crown Forestry Licence fees, rental payments, bio-security costs, spraying costs, pest control levies, fire control costs and other costs incurred by the Grantor or the occupier;
  - (b) other costs imposed by local, regional or central government authority; and
  - (c) Any taxes or levy arising from the permanent deforestation of the Land imposed by the Crown or a local, regional or central government authority, including any new taxes or levies imposed in the future..

Where the costs, fees and expenses are not separately rated or allocated to a Charging Area, the Grantee will pay to the Grantor and/or the occupier (as the case may be) a pro-rate proportion of them, such proportion being fixed in accordance with the ratio that the Charging Area bears to the area of the Land that is subject to those costs, fees and expenses.

- 9.8 The Grantor or the occupier will provide copies of invoices to the Grantee of the costs set out in clauses 9.6 and 9.7 along with any pro-rating formula used by them.
- 9.9 The parties acknowledge and agree that they may each appoint separate registered valuers and other experts to determine the compensation payable by the Grantee to the Grantor or the occupier under this clause 9. Instructions to valuers and other experts in assessing compensation must contain the features set out in this clause 9. The Grantee, the Grantor and the occupier will exchange these valuations and other experts reports.

## **10 COSTS**

- 10.1 The Grantee will meet the Grantor's and occupiers actual external costs (including reasonable legal, valuation costs and not other external consultancy costs) relating to the negotiation and execution of this Easement Instrument and any variation.

## **11 LAND USE CHANGES**

- 11.1 Nothing in this Easement Instrument will prevent or limit the Grantor's and the owner's ability to use, change the use, dispose of or otherwise deal with its interests in the Land.
- 11.2 The Grantee agrees to forego any rights that exist under the Resource Management Act 1991, Historic Places Act or other statutes to object to the Grantor's and occupier's activities on the Land and any adjacent land, including any change in land use, except for the Grantee's rights to object to:
- (a) any resource consent application for subdivision or development of the Land within the Easement Area for residential or lifestyle development purposes;
  - (b) any resource consent application which could result in farming operations using central pivot irrigation impinging on the Easement Area; and
  - (c) any Land adjacent to the Easement Area but with any such objection being limited to ensuring the Grantee retains access to the Works and the Works can still be operated to their design limits.

## **12 HEALTH AND SAFETY**

- 12.1 The Grantee will comply with all obligations imposed on the Grantee at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Land at the request of the Grantee.
- 12.2 The Grantor will comply with all obligations imposed on the Grantor at law as owner of the Land relating to the health and safety of persons on the Land.
- 12.3 The Grantor will ensure that its health and safety management plans and hazard identification procedures specifically include reference to the Works and the risks relating to working near the Works including:

- (a) the safety of persons;
- (b) fire and other damage to the Land;
- (c) damage to the Works; and
- (d) electricity outages to significant numbers of end-consumers.

12.4 The Grantor will provide to the Grantee upon request the Grantor's rules and procedures regarding the health and safety of persons on the Land (including the Easement Area) and the identification and mitigation of hazards.

12.5 The Grantee will comply with any reasonable obligations imposed by the Grantor regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

### **13 OWNERSHIP**

13.1 The Works, Equipment and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor.

### **14 NO POWER TO TERMINATE**

14.1 The Easement Instrument will remain operative until the Grantee's Transmission Infrastructure has been permanently removed from the Easement Area.

14.2 There is no power in this Easement Instrument for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement Instrument or for any reason, it being the intention of the parties that the rights in this Easement Instrument for as long as the Grantee's Transmission Infrastructure is situated on the Easement Area.

### **15 ASSIGNMENT AND THIRD PARTY USE OF WORKS**

15.1 The Grantee will not assign, transfer, sublet or licence its rights under this Easement Instrument to any third party;

15.2 The Grantee will not:

- (a) allow any third party to:
  - (i) use all or any part of the Works on the Land;

- (ii) have the benefit of any of the Grantee's rights and interests under this Easement Instrument or statutory rights; or
  - (iii) use any of the Grantee's capacity in the Works (including telecommunications capacity);
- (b) will not exercise its rights under this Easement Instrument nor use the Grantee's Transmission Infrastructure on the Land for any business other than the transformation and conveying of electricity,

without the Grantors prior written consent and the prior written consent of any occupier of the Land (where the forest situated on the Land is not owned by the Grantor).

## **16 COMPLIANCE WITH LAWS**

16.1 Both parties will at all times comply with all statutes, bylaws, regulations and legally binding codes of practice and other lawful requirements relating to this Easement Instrument, the Land and the Works which place an obligation on the relevant party and with all notices, orders, consents, conditions or requirements which may be validly given or required by any competent authority.

## **17 DISPUTE RESOLUTION**

17.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement Instrument, the parties will enter into negotiations to resolve the dispute themselves or through any informal dispute process they mutually agree upon.

17.2 If the dispute is not resolved by negotiation or consultation within a reasonable period any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within 5 Working Days of the date of service of the mediation notice. The mediator's costs are to be borne equally by the parties.

17.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice was served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President or his or her nominee for the time being of the New Zealand Law Society will appoint an

independent arbitrator in the area. In the event that the President of the New Zealand Law Society fails or refuses to appoint an arbitrator, either party may request the High Court to make an appointment. The appointment decision of the High Court may not be appealed.

- 17.4 The arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

## **18 CONTRACTS (PRIVITY) ACT**

- 18.1 In accordance with the Contracts (Privity) Act 1982, this Easement Instrument is intended to confer benefits on (which are enforceable by):

- (a) the occupier of the Land if the occupier is not the Grantor;  
and
- (b) the employees, agents and contractors of the Grantor and the occupier.

## **19 SEVERABILITY**

- 19.1 If any part of this Easement Instrument is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Easement Instrument.

## **20 GOVERNING LAW**

- 20.1 This Easement Instrument shall be construed in accordance with New Zealand law.

## **21 NO WAIVER**

- 21.1 A waiver of any provision of this Easement Instrument shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.
- 21.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

## **22 CONFIDENTIALITY**

- 22.1 The parties acknowledge and agree that any information provided by one party to the other pursuant concerning any matter, dispute

or right or obligation under this Agreement is strictly confidential to the parties and neither will disclose the contents of that information without the prior written consent of the other party.

## **23 ELECTRICITY (HAZARDS FROM TREES) REGULATIONS 2003**

23.1 This agreement is and shall be considered a "Specified Agreement" for the purposes of the Electricity (Hazards from Trees) Regulations 2003.

## **24 DEFINITIONS**

24.1 In this Easement Instrument unless the context requires otherwise:

- (a) "Accessway" means any agreed roads, access tracks, access routes or rights of way formed or to be formed on the Land and any part thereof identified in the map annexed as Appendix A, as modified from time to time by agreement in writing between the parties;
- (b) "Easement Area" means that part of the Land shown in Schedule A of this Easement Instrument;
- (c) "Equipment" includes cables, lines, wires, cranes, drilling rigs, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement Instrument;
- (d) "*Transmission Lines*" means any Works used or owned by the Grantee at the Commencement Date;
- (e) "*Grantee's Transmission Infrastructure*" means the means the Works used or owned by the Grantee from time to time for the purpose of conveying or transforming electricity and, for the avoidance of doubt, includes any Existing Transmission Lines and any New Transmission Lines;
- (f) "Land" means the Servient Tenement identified in Schedule A of this Easement Instrument;
- (g) "Maximum Design Specifications" means the specifications of the Works as set out in this Easement Instrument and if none are specified means a double-circuit electricity transmission line with a nominal operating voltage of 400 kilovolts (kV);
- (h) "*Tree*" means any trees and other vegetation owned by the Grantor or the occupier and located on the Land;

- (i) "Vehicles" includes four wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, aircraft, excavation and earthmoving equipment, whether wheeled or tracked;
- (j) "*Wilful or deliberate act*" means any act or omission or representation deliberately and intentionally committed omitted or made with full knowledge and expectation of the resulting consequences. It excludes the Grantor or the occupier planting Trees in Corridors or Easement Areas;
- (k) "Working Day" means any day of the week excluding Saturday, Sunday, national statutory holidays and the anniversary days commonly observed in Wellington and the locality in which the Land is situated; and
- (l) "Works" means electrical and telecommunications works that are or will in the future be situated on the Land that are used or designed or intended for use in or in connection with the transformation or conveyance of electricity (including telecommunications services used exclusively in the Grantee's business of transforming and conveying electricity) and includes all or any part of any cables (including fibre optic cables), wires, earthwires, conductors, other similar apparatus used or intended to be used for the transmission of electricity and associated telecommunications signals and includes pylons, towers, poles, insulators, foundations, tunnels and other similar structures, fixtures and Equipment which the Grantee reasonably considers necessary or expedient for the support or protection of the Works or to assist in the efficient and proper use of the Works and extends to include all or any roads, access tracks and gates if required and permitted under this Easement Instrument in order to give full effect to the Grantee's rights arising under this Easement Instrument.

## **25 INTERPRETATION**

25.1 In this Easement Instrument, unless inconsistent with the context:

- (a) singular includes plural and vice versa;
- (b) references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;

- (c) references to the Grantor and Grantee include their permitted successors and assigns and, where appropriate, their lessees and licensees, employees, contractors, surveyors, engineers, invitees and inspectors;
- (d) references to statutes, regulations or other instruments are deemed to be references to the statute, regulation or instrument as from time to time amended or re-enacted or any substitute provisions and, in relation to any statute, any regulations or instruments made and in force under that statute;
- (e) headings in this instrument are inserted for convenience only and are to be ignored when determining the meaning of a clause; and
- (f) derivations of defined terms have similar meanings to the defined terms.