

MERIDIAN ENERGY LIMITED
NEW ZEALAND ALUMINIUM SMELTERS LIMITED

ELECTRICITY AGREEMENT
CONFORMED AS AT MARCH 2016

As restated on 31 July 2015 and amended by
Letters dated 22 March 2016

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AGREEMENT dated 1 October 2007

PARTIES

MERIDIAN ENERGY LIMITED ("Meridian")

NEW ZEALAND ALUMINIUM SMELTERS LIMITED ("NZAS")

INTRODUCTION

- A. Meridian is a generator and retailer of electricity in New Zealand.
- B. NZAS purchases electricity in order to produce aluminium at the Smelter.
- C. The parties have previously entered into agreements under which Meridian supplies electricity to RTA Power NZ Limited and NZAS guarantees RTA Power NZ Limited's performance of its obligations ("**1993 Agreements**"). The 1993 Agreements are due to expire on 31 December 2012 and the parties have agreed to enter this agreement as a replacement for those agreements.
- D. Under this agreement, Meridian and NZAS agree to hedge the price of electricity that NZAS purchases from the wholesale electricity market and Meridian agrees to provide certain grid security services to facilitate NZAS taking electricity at the Smelter.
- E. As a result of entering into this agreement, Meridian intends to further pursue projects to build new renewable generation capacity in the South Island.
- F. NZAS recognises the benefit to climate change that renewable generation provides and has therefore assessed the Strike Price as being sufficient to justify economic renewable generation equivalent to 80 MW of baseload generation.
- G. The rebate in section 6 of this agreement reflects the core commercial terms of this agreement, in particular the base load 24 hour, 7 days a week demand at TWI located close to Meridian's generation assets, for significant quantities of electricity, over the Term, as well as Meridian's ability to call a Smelter Demand Response.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this agreement unless the context otherwise requires:

"400 MW Date" means the date that NZAS' notice under clause 2.5 becomes effective.

"1993 Agreements" has the meaning in paragraph C of the introduction to this agreement.

"Aluminium Business" means a business that:

- (a) has an expected remaining operating life of at least ten years or is insured against physical loss or damage to a level and extent of coverage that is prudent for a smelter that is proposing to continue in business beyond any NZAS Force Majeure Event;

- (b) purchases alumina, electricity and other goods and resources;
- (c) processes alumina into aluminium at a smelter that it owns; and
- (d) sells the aluminium it produces.

"Base Contract Quantity" has the meaning in clause 5.4.

"Base Urgent Restoration Measures" has the meaning given to it in the definition of Urgent Restoration Measures.

"Base Profile" has the meaning in clause 6.6.

"BEN" means the Benmore 220 kV bus which has the HVDC Pole 2 injection or offtake connected to it.

"BEN Spot Price" has the meaning in the definition of "3yr aveSpot" in subclause 5.2(a).

"Best Endeavours" means:

- (a) in relation to an NZAS Major Force Majeure Event and an NZAS Terminal Force Majeure Event, the endeavours that would be applied by NZAS acting without reference to aluminium prices or electricity prices and as a Best Practice Aluminium Business, doing everything which NZAS could reasonably and safely be expected to do so acting and as such, as soon as it is possible to do so, in order to restore the actual physical capacity of the Smelter to Consume at or above the Profile (but excluding the reduction in the Profile resulting from the applicable NZAS Force Majeure Event); or
- (b) in relation to clause 10.4, the endeavours that would be applied by NZAS acting without reference to aluminium prices or electricity prices and as a Best Practice Aluminium Business, doing everything which NZAS could reasonably and safely be expected to do so acting and as such, as soon as it is possible to do so, in order to restore its ability to perform its obligations under section 4 (Smelter Demand Response); or
- (c) in relation to Meridian, the endeavours that would be applied by Meridian acting without reference to electricity prices and as a Best Practice Generation Business, doing everything which Meridian could reasonably and safely be expected to do so acting and as such, as soon as it is possible to do so, in order to restore its ability to perform its relevant obligations under this agreement.

"Best Endeavours Restoration Costs" means the costs that would be incurred by NZAS if it used Best Endeavours to restore following the occurrence of the NZAS Force Majeure Event.

"Best Practice Aluminium Business" means an Aluminium Business whose standard of performance and operation (including as to safety) is equal to or better than that generally recognised by businesses operating elsewhere in the world as best practice for Aluminium Businesses comparable to the Smelter (as if the Smelter operated as an Aluminium Business and without recognising any detriment in the Smelter's standard of performance and operation compared to its standards at the date of execution of this agreement).

"Best Practice Generation Business" means a hydro-electric generation business ("**Generation Business**") whose standard of performance and operation (including as to

safety) is equal to or better than that generally recognised by businesses operating elsewhere in the world as best practice for Generation Businesses comparable to the Manapouri Power Station (without recognising any detriment in the Manapouri Power Station's standard of performance and operation compared to its standards at the date of execution of this agreement).

"Business Day" means any day other than a Saturday, Sunday or a statutory public holiday in Wellington or Invercargill, New Zealand.

"CFD Payment" means the net payment resulting from payments set out in subclause 7.1(a) and subclauses 7.2(a) and (b) after the application of clauses 7.3 and 7.4.

"Clearing Manager" has the meaning under the EGRs.

"Claims" has the meaning in clause 11.1.

"Commencement Date" means the beginning of 1 January 2013.

"Consume" means consumption of electricity at TWI by NZAS or an NZAS Participant in connection with the smelting of alumina and for related purposes (including the production and processing of aluminium and related products) and **"Consumption"** shall be construed accordingly.

"Consumers Price Index (All Groups)" means the index published from time to time by the Government Statistician as the "Consumers Price Index (All Groups)", currently identified as series reference "SE9A", and otherwise as described in clauses 1.3 to 1.6.

"Consumption Value Rebate" has the meaning in clause 6.1.

"Contract Quantity" has the meaning in clause 5.4.

"Core Assumptions" has the meaning in Schedule A.

"CPI" means, in respect of any period, the Consumers Price Index (All Groups) index number for that period.

"Decommission" means:

- (a) in relation to NZAS, the cessation of operation of the Smelter such that the Consumption is not more than 5 MWh per Half Hour either permanently or for an expected period of at least five Years; or
- (b) in relation to Meridian, the cessation of operation of the Manapouri Power Station such that the station will not generate more than 7 GWh per month either permanently or for an expected period of at least five Years.

"Default Rate" means the Non-default Rate plus 2% per annum.

"Dispatch Instruction" means a dispatch instruction that Meridian is required to comply with under the EGRs.

"Dry Year Trigger Level" has the meaning in Schedule A.

"EGRs" means the electricity governance regulations and rules established pursuant to the Electricity Act 1992.

"Electricity Commission" means the Board under the EGRs.

"Escalator" has the meaning in subclause 5.2(a).

"Existing NZAS Participants' Guarantees" means the Deeds of Guarantee and Indemnity granted by Pacific Aluminium (New Zealand) Limited (formerly Rio Tinto Alcan (New Zealand) Limited) and Sumitomo Chemical Company, Limited originally dated, respectively, 1 October 2007 and 19 December 2007 and replaced on 7 August 2013 and again on or about the date of this amending agreement (of which this agreement forms schedule 1);

"Expert" means a person independent from the parties who:

- (a) in respect of a determination under paragraph (d) of the definition of Period 2 Surety or under section 24, is a senior accountant from a reputable New Zealand accounting firm appointed to act as an expert in accordance with paragraphs 4 to 7 of Schedule G;
- (b) in respect of a determination under Schedule B, is qualified in the operation of the New Zealand electricity system (including management of hydro and thermal fuel reserves) and of the New Zealand electricity market appointed to act as an expert in accordance with paragraphs 6 to 8 of Schedule B; or
- (c) in respect of a determination under Schedule C, is an expert in aluminium smelting appointed to act as an expert in accordance with paragraphs 5 to 8 of Schedule C.

"Expiry Date" means the earliest of:

- (a) 31 December 2030;
- (b) the date on which NZAS completes any physical rampdown in accordance with this agreement during a Rampdown Period;
- (c) the date which is six Years after Meridian's receipt of a notice given by NZAS under clause 12.5 (NZAS early termination rights);
- (d) any of the termination dates under clauses 12.5A, 12.5B or 12.5C (NZAS early termination rights);
- (e) the date which is four Years after NZAS' receipt of a notice given by Meridian under clause 12.6 (Meridian early termination rights);
- (f) the date of NZAS' receipt of a notice given by Meridian under clause 12.7 (Manapouri Interruption or Waitaki Interruption);
- (g) the date specified in a notice given by one party to the other under clause 12.8 (NZAS Terminal Force Majeure Event);
- (h) any of the termination dates under clause 12.8A (Meridian's right to terminate during Period 2 and Reduced Consumption Period 2); and
- (i) the date on which a notice of termination given by one party to the other under clause 12.1 (general right to suspend or terminate) is received.

"First Payer Invoice" means that invoice issued by the Clearing Manager that is referred to in clause 7.9B(a) or, if the Clearing Manager issues only one invoice for the electricity NZAS purchases at TWI in an invoicing period, that invoice.

"Full Guarantee Period" means the period from the commencement of Period 1 until the date which is 12 months prior to the expiry of Period 1.

"Government Statistician" has the meaning set out in section 13 of the Statistics Act 1975.

"Grid" has the meaning under the EGRs.

"GST" means goods and services tax payable pursuant to the Goods and Services Tax Act 1985 (or any similar tax levied in substitution).

"Guaranteed Amount" means NZAS' obligations to pay the Strike Price for the Contract Quantity, to repay the Consumption Value Rebate, and to indemnify Meridian under clause 25.2, under and in accordance with this agreement, without regard to any dispute or objection NZAS may make under this agreement as to the amount owing by NZAS.

"Guidelines" means:

- (a) the "Operating Guidelines for Levels of Lakes Manapouri and Te Anau" promulgated pursuant to the Manapouri-Te Anau Development Act 1963, which Guidelines most recently appeared in The New Zealand Gazette on 21 November 2002, as those Guidelines are amended or re-promulgated from time to time; and
- (b) the gate opening and closing procedures agreed between Meridian and the Guardians of Lakes Manapouri and Te Anau (as appointed under the Conservation Act 1987) or any replacement procedures agreed between those parties from time to time, which replacement procedures Meridian shall copy to NZAS as soon as practicable after such agreement.

"Half Hour" means any period of 30 consecutive minutes commencing on the hour or at 30 minutes past the hour and **"Half Hourly"** shall be construed accordingly.

"Incremental Urgency Cost" means the cost that would be incurred by NZAS if it took the Base Urgent Restoration Measures minus the Best Endeavours Restoration Costs.

"Initial Period" means the period from the Commencement Date until 30 June 2013.

"Law" means any rule of common law, principle of equity, national and local law, statute, regulation, rule, proclamation, ordinance, by-law or code.

"Manapouri Interruption" means the Manapouri Power Station during a period of at least 12 months has not generated more than 2,500 GWh per annum for reasons (excluding Meridian's purely commercial reasons) related to a Meridian Force Majeure Event other than a lack of inflows into Lakes Manapouri and Te Anau. A Manapouri Interruption ceases when the Manapouri Power Station can again generate more than 2,500 GWh per annum (excluding any consideration of lack of inflows).

"Manapouri Power Station" means Meridian's power station located within the Fiordland National Park.

"Manapouri Resource Consents" means Meridian's resource consents relating to the Manapouri Power Station and the associated:

- (a) tail race tunnels;
- (b) control structures;

- (c) weirs;
- (d) hydrological recording stations;
- (e) fish pass;
- (f) roading infrastructure; and
- (g) secondary infrastructure,

each as held or amended from time to time.

"Market" means the electricity market operated under the EGRs.

"Measurement Date" means, with respect to any entity, each annual or interim balance date of that entity.

"Meridian Force Majeure Event" means any event or circumstance that is beyond the reasonable control of Meridian.

"Meridian Price Separation Period" means a period of time during which the BEN Spot Price is less than 85% of the Spot Price for reasons (excluding Meridian's purely commercial reasons) related to a Meridian Force Majeure Event, excluding any event or circumstance affecting only Meridian's Manapouri or Waitaki generation facilities, or both of those facilities, and excluding the first two hours of such a period; and provided Meridian:

- (a) gives seven days' notice to NZAS that it may wish to nominate a future period as a Meridian Price Separation Period (unless it does not reasonably anticipate that it will wish to so nominate in which case it has no obligation to give this notice);
- (b) nominates (at any time during or after the period but no later than seven days after the publication or republication under the EGRs of final prices for each Half Hour in that period) the period of time as a Meridian Price Separation Period; and
- (c) has not already given notice to NZAS that it will not be nominating the period as a Meridian Price Separation Period.

"Meridian's Southland Generation" means any generation assets owned or leased by Meridian or its Related Companies which connect directly to the Southland Network, or are embedded in local distribution networks that themselves connect to the Southland Network.

"Meter Information" has the meaning that "consumption information" has under the EGRs as such meaning relates to NZAS at TWI.

"Metering Installation" has the meaning under the EGRs as such meaning relates to TWI.

"Metering Standards" has the meaning under the EGRs as such meaning relates to TWI.

"Minimum Zone" has the meaning in Schedule A.

"Model" has the meaning in Schedule A.

"Non-default Rate" means, on any date, the average bid rate for the purchase of bank accepted bills of exchange having a tenor of 90 days as displayed at or about 10.45am on that date on page BKBM (or its successor page) of the Reuters Monitor Screen.

"Normal Consumption" means the average Consumption of the Smelter over the 365 continuous days which elapsed most recently prior to commencement of the period for which NZAS asserts there has occurred an NZAS Force Majeure Event (whether Minor, Major or Terminal), provided that, if during those 365 days:

- (a) an NZAS Force Majeure Event, ROCR, Smelter Demand Response or a Smelter discretionary load reduction under subclause 6.6(l) has occurred, the Consumption shall be determined as the electricity that would have been consumed but for that event;
- (b) the 400 MW Date has occurred, the Consumption prior to the 400 MW Date shall be determined as 200 MWh per Half Hour; and
- (c) if both subclauses (a) and (b) apply in respect of any Half Hour, Consumption shall be determined as the lowest amount resulting from the application of those subclauses.

"NZAS Force Majeure Event" means an NZAS Major Force Majeure Event, an NZAS Minor Force Majeure Event or an NZAS Terminal Force Majeure Event.

"NZAS Force Majeure Period" means a period of time during which the physical capacity to Consume is reduced for reasons (excluding NZAS' purely commercial reasons) related to an NZAS Force Majeure Event until the earliest time at which the physical capacity to Consume could again be at or above the Profile (but excluding the reduction in the Profile resulting from the applicable NZAS Force Majeure Event) if immediately upon becoming aware of the event or circumstance and at all times thereafter NZAS had used the Restoration Measures to so restore.

"NZAS Major Force Majeure Event" means any event or circumstance that is beyond the reasonable control of NZAS and the NZAS Participants which would have the actual consequence of reducing the physical capacity of the Smelter to Consume by at least 1,600 GWh below its Normal Consumption over a period of 365 or fewer continuous days.

"NZAS Minor Force Majeure Event" means any event or circumstance that is beyond the reasonable control of NZAS and the NZAS Participants which would have the actual consequence of reducing the physical capacity of the Smelter to Consume by less than 1,600 GWh below its Normal Consumption over a period of 365 or fewer continuous days.

"NZAS Participants" means any person for whom NZAS at any time processes alumina into aluminium at the Smelter, being, as at 1 October 2007, Pacific Aluminium (New Zealand) Limited (formerly Rio Tinto Alcan (New Zealand) Limited) and Sumitomo Chemical Company, Limited.

"NZAS Terminal Force Majeure Event" means any event or circumstance that is beyond the reasonable control of NZAS and the NZAS Participants which would have the actual consequence of reducing the physical capacity of the Smelter to Consume by at least 5,000 GWh (if the 400 MW Date has not occurred) or 3,500 GWh (on and from the 400 MW Date) below its Normal Consumption over a period of 547 or fewer continuous days.

"Period 1" means the period from 1 July 2013 to 31 December 2016.

"Period 1 Surety" means one or more of the following sureties to provide credit support in respect of NZAS failing during Period 1 and (where NZAS has procured that a Period 1 Surety remain in place during Period 2 and Reduced Consumption Period 2 and until released under clause 24.8) during Period 2 and Reduced Consumption Period 2 to pay any amount due under subclauses 7.1(a) or 7.1(b) or demanded under clause 25.2 by the due date for payment (whether or not that amount is disputed) and failing to remedy that failure within 20 Business Days after receiving written notice from Meridian requiring the failure to be remedied:

- (a) an irrevocable, independent, documentary standby letter of credit provided by a major trading bank or financial institution having a long term unsecured credit rating of not less than A (Standard and Poor's) or A2 (Moody's)), able to be drawn in New Zealand immediately upon default by NZAS and failure to remedy as aforesaid;
- (b) an unconditional, irrevocable, unsubordinated bank guarantee from a bank or institution referred to in paragraph (a) on terms acceptable to Meridian, acting reasonably;
- (c) a pledge over a cash account from a person, and on terms, acceptable to Meridian and under which Meridian has a first ranking security interest over the funds in the account; or
- (d) an unconditional, irrevocable, unsubordinated guarantee or guarantees in the form in Schedule H from the shareholders of NZAS (or from a parent company of a shareholder) in proportion to their respective interests in NZAS, provided that, unless such guarantee is provided by Sumitomo Chemical Company, Limited, the guarantee may only be provided by a person that is acceptable to Meridian and, in making its decision, Meridian shall have regard to whether that person, at its most recent Reporting Date has met, and continues to meet, financial criteria that Meridian, acting reasonably, believes are appropriate to determine whether that person is capable of performing the obligations under the Period 1 Surety,

each to be governed by New Zealand law or another law acceptable to Meridian, and be limited to a maximum aggregate amount (across all Period 1 Sureties) as specified in clauses 24.11 and 24.12. In fulfilling NZAS' obligation to provide a Period 1 Surety or Period 1 Sureties under clause 24.1, NZAS (or the shareholders of NZAS) may provide a mix of Period 1 Sureties at any one time. Where any Period 1 Surety is provided by, or on behalf of, a shareholder of NZAS, that Surety will be given on a several basis and will be limited in all circumstances to the percentage of NZAS' liability to Meridian for the guaranteed obligations that is equal to the percentage of the relevant shareholder's shareholding in NZAS as at the date of this amending agreement (of which this agreement forms schedule 1) and such amended percentage as consented to by Meridian on the same terms as clause 10 of Schedule H.

"Period 2" means, if the 400 MW Date has not occurred on or before 1 January 2017, the period from 1 January 2017 until the earlier of:

- (a) the 400 MW Date (if the 400 MW Date occurs after 1 January 2017); or
- (b) the end of the Term,

(If the 400 MW Date occurs on or before 1 January 2017 there is no Period 2 and only a Reduced Consumption Period 2).

"Period 2 Surety" means one or more of the following sureties to provide credit support in respect of NZAS failing during Period 2 or Reduced Consumption Period 2 to pay any

undisputed amount due under subclauses 7.1(a) or 7.1(b) or demanded under clause 25.2 by the due date for payment and failing to remedy that failure within 20 Business Days after receiving written notice from Meridian requiring the failure to be remedied:

- (a) an irrevocable, independent, documentary standby letter of credit provided by a major trading bank or financial institution having a long term unsecured credit rating of not less than A (Standard and Poor's) or A2 (Moody's), able to be drawn in New Zealand immediately upon default by NZAS and failure to remedy as aforesaid;
- (b) an unconditional, irrevocable, unsubordinated bank guarantee from a bank or institution referred to in paragraph (a) on terms acceptable to Meridian, acting reasonably;
- (c) a pledge over a cash account from a person, and on terms, acceptable to Meridian and under which Meridian has a first ranking security interest over the funds in the account; or
- (d) an unconditional, irrevocable, unsubordinated guarantee or guarantees in the form in Schedule I from the shareholders of NZAS (or from a parent company of a shareholder) in proportion to their respective interests in NZAS, provided that, unless such guarantee is provided by a subsidiary of Rio Tinto Limited that is acceptable to Meridian or by Sumitomo Chemical Company, Limited, the guarantee may only be provided by a person that, at its most recent Reporting Date, has met, and continues to meet, the following financial criteria as shown in financial accounts audited in accordance with international financial reporting standards by one of the top four worldwide accounting firms (currently known in New Zealand as Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers):
 - (i) it has a minimum net cash inflow from operating activities (after payments for tax and interest) of \$100 million in the preceding 12 months;
 - (ii) it has minimum net equity of \$1 billion;
 - (iii) it meets each of following ratios:

$$A. \quad \frac{\text{EBITDAF}}{\text{Interest}} > 5.0$$

where:

"EBITDAF" means earnings before interest and taxation, depreciation and amortisation and fair value adjustments; and

"Interest" means interest paid on interest-bearing debt.

$$B. \quad \frac{\text{Net Debt}}{(\text{Net Debt} + \text{equity})} < 35\%$$

where:

"Net Debt" means interest-bearing debt less cash,

each measured at the most recent Measurement Date for which the relevant Reporting Date has occurred and reported to Meridian no later than that Reporting Date;

- (iv) if any amount in paragraph (d) is measured in a currency other than New Zealand dollars, using the New Zealand dollar equivalent of the amount determined using the Average Exchange Rate for such currency over the period to which the amount relates,

where:

"Average Exchange Rate" means, in relation to a period, for a specified currency, the average (rounded to 4 decimal places) of the BFIX Rate for the specified currency for each day of the period in respect of which either:

- (a) a BFIX Rate for that day is displayed on the Bloomberg FX Fixing Page for conversion between NZD and that specified currency; or
- (b) no BFIX Rate for that day is displayed on the Bloomberg FX Fixing Page for conversion between NZD and that specified currency but commercial banks and foreign exchange markets settle payments generally in both New York and New Zealand.

"BFIX Rate" means, in relation to a day, for a specified currency:

- (a) the mid-rate for the NZD and that specified currency displayed on the Bloomberg FX Fixing Page for NZD and that specified currency at or about 2pm (New Zealand time) on that day; or
- (b) if the BFIX Rate cannot be determined in accordance with paragraph (a), the mid-rate for the NZD and that specified currency at or about 11:10am (New Zealand time) for that day published by the Reserve Bank of New Zealand in its B1 Exchange Rate series,

provided that if the BFIX Rate cannot be determined in accordance with either paragraph (a) or (b), the parties shall agree a substitute method of determining an exchange rate for conversion between NZD and that specified currency for a day that most closely reflects the average of the spot mid-rate of exchange provided by 3 major New Zealand trading banks selected by the parties for New Zealand foreign exchange market transactions in NZD and that specified currency at or about 2pm on the relevant day; and

- (v) at the request of either party, adjusted for unusual or non-recurrent items to the extent that a credit rating agency would make such an adjustment (if the parties cannot agree on the adjustment, section 20 (dispute resolution) shall apply and that dispute shall be referred to an Expert in accordance with Schedule G and not to arbitration),

each such Period 2 Surety to be governed by New Zealand law or another law acceptable to Meridian and be limited to a maximum aggregate amount as specified in clauses 24.11 and 24.12. In fulfilling NZAS' obligation to provide a Period 2 Surety or Period 2 Sureties under clause 24.2, NZAS (or the shareholders of NZAS) may provide a mix of Period 2 Sureties at any one time. Where any Period 2 Surety is provided by, or on behalf of, a shareholder of NZAS, that Surety will be given on a several basis and will be limited in all circumstances to the percentage of NZAS' liability to Meridian for the guaranteed obligations that is equal to the percentage of the relevant shareholder's shareholding in NZAS as at the date of this amending agreement (of which this agreement forms schedule 1) and such amended percentage as consented to by Meridian on the same terms as clause 10 of Schedule I.

"Profile" has the meaning in clause 6.6.

"Rampdown Period" means the date that is twelve months after Meridian's receipt of a notice given by NZAS under clause 12.5 (NZAS early termination rights) until (and

including) the date that is six Years after Meridian's receipt of NZAS' early termination notice under clause 12.5.

"Rare Operational Consumption Reduction" and **"ROCR"** means a reduction in the physical ability of the Smelter to Consume for reasons (excluding NZAS' purely commercial reasons) related to a rare operational event at the Smelter in circumstances where the event would not qualify as an NZAS Force Majeure Event, provided that an event which was caused by the negligence of NZAS or an NZAS Participant shall not be a Rare Operational Consumption Reduction.

"Reconciled Quantity" has the meaning in the EGRs.

"Reconciliation Manager" has the meaning under the EGRs.

"Reduced Consumption Period 2" means:

- (a) the period commencing on 1 January 2017 until the end of the Term, if the 400 MW Date is before 1 January 2017; or
- (b) otherwise, the period commencing on the 400 MW Date until the end of the Term.

"Reduced Guarantee Period" means the period from the end of the Full Guarantee Period until the Expiry Date.

"Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993 and includes any entity which would be a related company within that definition if incorporated as a company in New Zealand.

"Relevant Hydro Storage" has the meaning in Schedule A.

"Remaining Payments" means those payments referred to in subclauses 7.1(b), (c) and (d) and subclauses 7.2(c), (d) and (e).

"Reporting Date" means, with respect to any Measurement Date of an entity, the earlier of:

- (a) seven days after publication of that entity's annual or interim financial statements; and
- (b) 90 days after such Measurement Date.

"Required Reduction" means a reduction in Consumption of:

- (a) 250 GWh if the 400 MW Date has not occurred; or
- (b) 125 GWh on and from the 400 MW Date,

each measured in accordance with subclause 4.6(a).

"Restoration Time" means the time from the end of the relevant event or circumstance until the earliest time at which the physical capacity to Consume could again be at or above the Profile (but excluding the reduction in the Profile resulting from the applicable event or circumstance) if NZAS had restored Consumption as soon as physically possible using best endeavours to do so.

"Restoration Measures":

- (a) in the case of a Rare Operational Consumption Reduction or an NZAS Minor Force Majeure Event, means the Urgent Restoration Measures;
- (b) in the case of an NZAS Major Force Majeure Event or an NZAS Terminal Force Majeure Event, means Best Endeavours.

"ROCR Period" means a period of time from the start of a Rare Operational Consumption Reduction until the earliest time at which the physical capacity to Consume could again be at or above the Profile (but excluding the reduction in the Profile resulting from the applicable ROCR) if immediately upon becoming aware of the event or circumstances and at all times thereafter NZAS had used the Restoration Measures to so restore.

"Smelter" means the aluminium smelter and associated facilities (as may from time to time exist) located on the Tiwai Peninsula, New Zealand, currently owned and operated by NZAS.

"Smelter Demand Response" means a reduction in Consumption required by Meridian under clause 4.2.

"Smelter Demand Response Date" means the date specified by Meridian, in accordance with clause 4.3, in a notice given to NZAS under clause 4.2.

"Southland Network" means the transmission network (which, at 1 October 2007, is owned and operated by Transpower New Zealand Limited), interconnecting, and including, all or any of the substations at Roxburgh, Halfway Bush, Three Mile Hill, South Dunedin, Palmerston, Berwick, Balclutha, Gore, Brydon, Edendale, North Makarewa, Invercargill, Tiwai and Manapouri (being the substations existing as at 1 October 2007) and includes any other substation or transmission line asset that, after 1 October 2007, the parties agree is part of the Southland Network or which is wholly or partly located in the Southland region, as defined in The Local Government (Southland Region) Reorganisation Order 1989, as amended from time to time.

"Specified Mvars" means a number of Mvars specified by NZAS giving at least one month's notice to Meridian but if such number is greater than:

- (a) while winter transmission circuit ratings apply, 139 Mvars, it shall be deemed to be 139 Mvars; or
- (b) while summer transmission circuit ratings apply, 103 Mvars, it shall be deemed to be 103 Mvars,

provided that at any time on and from the 400 MW Date, for 130 days from a Smelter Demand Response Date, Specified Mvars shall be zero Mvars.

"Specified MW" means a number of MW specified by NZAS giving at least one month's notice to Meridian but if such number is greater than:

- (a) while winter transmission circuit ratings apply, 175 MW, it shall be deemed to be 175 MW; or
- (b) while summer transmission circuit ratings apply, 285 MW, it shall be deemed to be 285 MW,

provided that at any time on and from the 400 MW Date, for 130 days from a Smelter Demand Response Date, Specified MW shall be zero MW.

"**Spot Price**" has the meaning in clause 5.3.

"**Strike Price**" has the meaning in clause 5.2.

"**Surety**" means a Period 1 Surety or a Period 2 Surety, as relevant.

"**Tax**" means any present or future forms of taxation (whether direct or indirect), levies, imposts, duties, charges, rates, assessments, fees or other governmental impositions of whatever nature (including interest, penalties and additions thereto), imposed in New Zealand or elsewhere other than GST and resident withholding tax imposed under subpart NF of the Income Tax Act 2004.

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Invoice**" means an invoice issued pursuant to section 24 of the Goods and Services Tax Act 1985.

"**Taxable Supply**" has the meaning given to it in section 2(1) of the Goods and Services Tax Act 1985.

"**Term**" means the period on and from the Commencement Date until the Expiry Date.

"**TWI**" means the TWI2201 node under the EGRs.

"**Urgent Restoration Measures**" means all measures which NZAS is able to take, as soon as it is possible to do so, in order to restore the actual physical capacity of the Smelter to Consume at or above the Profile (but excluding the reduction in the Profile resulting from the applicable NZAS Force Majeure Event or ROCR). For these purposes, whether NZAS is able to take a measure, and the earliest time at which it is possible to do so, shall be determined as if NZAS operated as an Aluminium Business, without reference to whether it is economically or commercially desirable for NZAS that the measure be taken at that time and without reference to aluminium prices or electricity prices ("**Base Urgent Restoration Measures**"), provided however that NZAS will not be required to:

- (a) incur an Incremental Urgency Cost to the extent that it is greater than the lesser of:
 - (i) the benefit to Meridian of restoration of Consumption to the Profile (but excluding the reduction in the Profile resulting from the applicable NZAS Force Majeure Event or ROCR) earlier than if NZAS incurred only the Best Endeavours Restoration Costs ("**early Consumption**"); and
 - (ii) an extreme increment above the Best Endeavours Restoration Costs; or
- (b) carry out Urgent Restoration Measures in a manner which is not consistent with its safety policy but, for the avoidance of doubt, if that safety policy could be complied with by incurring additional costs, NZAS shall incur those costs (subject always to subclause (a)).

"**Waitaki Interruption**" means the Tekapo A, Tekapo B, Ohau A, Ohau B, Ohau C, Benmore, Aviemore and Waitaki Power Stations during a period of at least 12 months have not generated, in aggregate, more than 3,750 GWh per annum for reasons (excluding Meridian's purely commercial reasons) related to a Meridian Force Majeure Event (provided that no act or omission of any owner or operator of Tekapo A and/or Tekapo B and no other event or circumstances affecting Tekapo A and/or Tekapo B or

affecting any owner or operator of Tekapo A and/or Tekapo B shall constitute a Meridian Force Majeure Event, except to the extent that such act, omission, event or circumstance would have been a Meridian Force Majeure Event if it had been acting as Meridian under this agreement (as owner of Tekapo A and Tekapo B)) other than a lack of inflows into Lakes Tekapo, Ohau, Pukaki, Benmore, Aviemore and Waitaki. A Waitaki Interruption ceases when those power stations can again generate, in aggregate, more than 3,750 GWh per annum (excluding any consideration of lack of inflows).

"Waitaki Power Scheme" means the Tekapo A, Tekapo B, Ohau A, Ohau B, Ohau C, Benmore, Aviemore and Waitaki Power Stations.

"Year" means a period of 12 consecutive months.

Interpretation

1.2 In the construction of this agreement unless the context otherwise requires:

- (a) **Clauses, paragraphs and schedules:** a reference to a clause or a schedule is to a clause or schedule of this agreement, and a reference in a schedule to a clause or a paragraph is a reference to a clause or a paragraph in that schedule;
- (b) **Currency:** a reference to any monetary amount is to New Zealand currency;
- (c) **Defined terms:** words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;
- (d) **Documents:** a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;
- (e) **Headings:** headings appear as a matter of convenience and do not affect the construction of this agreement;
- (f) **Laws:** references to any Law or any provision of any Law includes that Law or provision as from time to time amended, re-enacted or substituted and, unless otherwise specifically stated, refers to New Zealand legislation and provisions;
- (g) **Parties and bodies:** a reference to a party to this agreement or any other document or to a body (whether corporate or not) includes that party's or body's personal representatives, successors and permitted assigns;
- (h) **Related terms:** where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (i) **Schedules:** the schedules form part of this agreement;
- (j) **Singular and plural:** the singular includes the plural and vice versa;
- (k) **Time:** a reference to time is to New Zealand statutory time (that is, including adjustments for New Zealand daylight savings time);
- (l) **Writing:** a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and

- (m) **Agreements to be in writing:** Where this agreement requires the parties to agree a certain matter, that agreement shall be in writing.

Cessation of publication of Consumers Price Index (All Groups)

- 1.3 If, at any time, the Government Statistician ceases to publish a single index as the "Consumers Price Index (All Groups)", the parties shall seek to determine an index, and provide the method of calculation used in doing so, measuring the price change of goods and services purchased by private households in New Zealand and which closely approximates the composition and quality of the Consumers Price Index (All Groups) immediately before such cessation of publication. If the parties have not determined such an index and method of calculation within 60 Business Days of such cessation of publication, either party may notify the other that it requires the parties to engage the Government Statistician to determine such an index, and method of calculation. If the Government Statistician is unwilling or unable to determine such an index and method of calculation, then the index and the method of calculation shall be resolved as a Dispute under section 20 (dispute resolution).

Linking to rebased Consumers Price Index (All Groups)

- 1.4 If, at any time, the then-existing Consumers Price Index (All Groups) ("**Old Index**") is rebased, or is otherwise amended, such that the movement in CPI between any period in Old Index and any period in the rebased or amended Old Index ("**New Index**") does not accurately reflect the underlying rate of price change between those periods, then Old Index and New Index shall be linked as set out below, so that references in this agreement to CPI shall, with respect to any period:
- (a) prior to the Link Period, be a reference to CPI of Old Index for that period multiplied by the Link Factor; and
 - (b) from and after the Link Period, be a reference to CPI of New Index for that period,

where:

Link Period	=	the latest period for which both Old Index was published and New Index was published;
Old CPI	=	the CPI of Old Index for the Link Period;
New CPI	=	the CPI of New Index for the Link Period; and
Link Factor	=	$\frac{\text{NewCPI}}{\text{OldCPI}}$ (expressed to 5 decimal places).

- 1.5 If a Link Period cannot be determined under clause 1.4 then a method of linking Old Index and New Index, so that the movement in CPI between any period in Old Index and any period in New Index accurately reflects the underlying rate of price change between those periods, shall be resolved as a Dispute under section 20 (dispute resolution), and that method shall be applied in interpreting references to CPI under this agreement.

Revisions to CPI

- 1.6 If, at any time, the Government Statistician publishes a revision to any CPI that would, had that revised CPI been available at the time of calculation of the relevant invoice, have resulted in a different amount being payable from any amount already invoiced under this agreement then Meridian shall advise NZAS of the amount of that difference and the identity of the party required to pay that difference to the other by giving a

statement under clause 7.7. The party obliged to make the payment shall then pay that amount within five Business Days of such notification.

2. TERM

- 2.1 This agreement, other than sections 9 (changes in circumstances) and 20 (dispute resolution), shall commence on the Commencement Date and shall continue until the Expiry Date.

Intentions post Expiry Date

- 2.2 At any time from 1 January 2018, either party may request that the parties meet to discuss in good faith their respective intentions with respect to the subject matter of this agreement after the Expiry Date, and the parties shall meet at least once prior to 31 December 2020.

Intentions during term

- 2.3 If NZAS has not given notice under clause 2.5 (400 MW Date notice), at least once during the month of December 2023 and at any time thereafter that NZAS' most recent notice under this clause does not accurately reflect its current opinion, NZAS shall notify Meridian in good faith whether it intends that Consumption will continue at or above 270 MWh per Half Hour each Year during the period from the date of the notice to 31 December 2028 and, if Consumption is not intended to be at that level, the level at which it is intended to be.

Extension of Period 1

- 2.4 At any time during Period 1, NZAS may request that the end of Period 1 be extended to 31 December 2017. If Meridian agrees (which it may do or decline to do at its sole discretion), the parties shall amend this agreement in accordance with section 13 (Amendment) to reflect the new end date for Period 1 and the new start date for Period 2 or Reduced Consumption Period 2.

400 MW Date notice

- 2.5 Subject to clause 12.5A, NZAS may at any time between 1 January 2014 and 29 July 2016, or at any time on or from 30 April 2017, give Meridian 12 months' notice that it elects the Base Contract Quantity with respect to a Half Hour to reduce to 200 MWh.

3. GRID SECURITY SERVICES

Acknowledgement of sensitivity

- 3.1 Meridian acknowledges the Smelter's sensitivity to interruption in the supply of electricity. However, the only obligations that Meridian undertakes as a result of its acknowledgement of that sensitivity are those expressly and exclusively set out in this section 3 and that acknowledgement shall not be given any effect in interpreting Meridian's obligations under this agreement.

Availability to dispatch

- 3.2 Subject to clauses 3.3 and 3.4, Meridian shall in respect of each Half Hour:

- (a) offer for dispatch at the grid injection point for the Manapouri Power Station electricity not less than the Specified MW, and comply with any Dispatch Instruction relating to such offer; and
- (b) if required by a Dispatch Instruction, inject a number of Mvars not less than the Specified Mvars at the grid injection point for the Manapouri Power Station.

3.3 Meridian's obligation under clause 3.2 shall reduce to the extent that:

- (a) compliance with clause 3.2 would breach any Law or the Guidelines, provided such breach is beyond the reasonable control of Meridian;
- (b) planned maintenance occurs on the Manapouri Power Station or the plant or equipment used to monitor, control or permit the operation of that station that prevents Meridian from complying with clause 3.2, provided that:
 - (i) Meridian plans that maintenance such that it takes account of any expected outages and constraints in electricity generation and transmission; and
 - (ii) NZAS has given its prior written consent (such consent not to be unreasonably withheld) for that maintenance to occur;
- (c) unplanned maintenance occurs at the Manapouri Power Station or the plant or equipment used to monitor, control or permit the operation of that station that prevents Meridian from complying with clause 3.2, to the extent that Meridian:
 - (i) restores its ability to perform its obligations under clause 3.2 as soon as physically possible using Best Endeavours to do so; and
 - (ii) uses its best endeavours to perform its obligations under clause 3.2 despite the unplanned maintenance.

3.4 Meridian may at any time satisfy all or part of its obligations under clause 3.2 from any of Meridian's Southland Generation (rather than at the grid injection point for the Manapouri Power Station).

Consequence of not meeting grid security obligations

3.5 If Meridian does not perform under clause 3.2 as a result of its need to comply with the Guidelines or the Manapouri Resource Consents (and any statute or law requiring them to be observed) and, as a result, the Smelter is unable to Consume a quantity of electricity that it would have Consumed but for Meridian's non-performance, Meridian shall compensate NZAS in accordance with the following formula, subject to the liability limitations set out in clause 11.1 and provided that clause 11.3 does not apply:

$$\text{Payment} = \$5,000,000 \times (1 + \text{Escalator}) + \left(t \times \frac{\text{LME}}{\text{XR}} \right) - t \times \left[\left(2 \times \frac{13\% \text{ of LME}}{\text{XR}} \right) + (14.5 \times \text{Strike Price}) + \left(0.36 \times \frac{\text{Coke}}{\text{XR}} + 0.09 \times \frac{\text{Pitch}}{\text{XR}} \right) \right]$$

Provided that, if $t = \text{zero}$, Payment = zero.

Where:

t = tonnes of aluminium which would have been produced at the Smelter but for Meridian's non-performance, provided such lost production is attributable only to the Smelter being unable to Consume:

- (a) the lesser of 315 MWh per Half Hour and the quantity (in MWh) Consumed in the Half Hour completed immediately prior to Meridian's non-performance; minus
- (b) the maximum quantity (in MWh) the Smelter remains able to Consume per Half Hour despite Meridian's non-performance,

provided that if (a) minus (b) > 45 MWh per Half Hour, it shall be deemed 45 MWh per Half Hour and if (a) minus (b) < zero, it shall be deemed to be zero.

LME = the official price per tonne, in US dollars and rounded to two decimal places, as recorded at the end of the second ring of the aluminium metal in the first session of the London Metal Exchange for the cash seller and settlement price on the last day the exchange was open immediately before the Reduction Day (or, in the event that the London Metal Exchange no longer exists or the time at which the official price is recorded changes, the official price per tonne of aluminium determined in accordance with such mechanism as most closely reflects the price determined as aforesaid).

XR = the daily US/NZ exchange rate (rounded to five decimal places) published by the Reserve Bank of New Zealand (or any successor regulator of the New Zealand financial system) immediately before the Reduction Day or, if the Reserve Bank or any successor regulator does not publish such a rate, the average of the midpoint for buy/sell transactions of the four largest New Zealand registered banks on the day before the Reduction Day.

Coke = the price of coke as used in the production of anodes for aluminium smelting, in US dollars per tonne and rounded to two decimal places, as determined by NZAS with reference to an international commodity market price on the last day that market was open immediately before the Reduction Day or, failing the existence of an observable market, then the arms-length price per tonne paid by NZAS for its last coke delivery immediately before the Reduction Day (NZAS to provide Meridian with reasonable evidence of price paid).

Pitch = the price of pitch as used in production of anodes for aluminium smelting, in US dollars per tonne and rounded to two decimal places, as determined by NZAS with reference to an international commodity market price on the last day that market was open immediately before the Reduction Day or, failing the existence of an observable market, then the arms-length price per tonne paid by NZAS for its last pitch delivery immediately before the Reduction Day (NZAS to provide Meridian with reasonable evidence of price paid).

Strike Price = the Strike Price prevailing on the day immediately before the Smelter's reduction in Consumption.

Reduction Day = the day on which the Smelter reduced its Consumption as a result of Meridian's non-performance.

The parties acknowledge that any payment payable under this clause 3.5 does not constitute a penalty.

- 3.6 For the purposes of clauses 3.5 and 3.7, whether Meridian had a need to comply with the Guidelines or the Manapouri Resource Consents shall be determined at Meridian's sole discretion, provided that Meridian may not assert that it had a need to so comply in relation to a particular Half Hour unless it has reasonably determined, at any point in the previous four days, that there was a risk, in the four days following that determination, of not complying with the Guidelines or the Manapouri Resource Consents and Lakes

Manapouri and Te Anau were, during that Half Hour, in their respective Low Operating Ranges (as that term is used in the Guidelines).

- 3.7 The consequences set out in clause 3.5 are the only consequences of Meridian not performing under clause 3.2 as a result of its need to comply with the Guidelines or the Manapouri Resource Consents (and any statute or law requiring them to be observed). Any other failure by Meridian to comply with clause 3.2 shall, except to the extent that such obligation is reduced by clause 3.3, be treated as a breach of this agreement and shall be subject to the liability regime set out in section 11, provided that Meridian shall be liable only for the consequences of the Smelter being unable to Consume:

- (a) the lesser of 315 MWh per Half Hour and the quantity (in MWh) Consumed in the Half Hour completed immediately prior to Meridian's breach; minus
- (b) the maximum quantity (in MWh) the Smelter remains able to Consume per Half Hour despite Meridian's breach,

provided that if (a) minus (b) > 45 MWh per Half Hour, it shall be deemed 45 MWh per Half Hour and if (a) minus (b) < zero, it shall be deemed to be zero.

Charges for grid security service

- 3.8 In consideration for Meridian's obligations under this section 3, NZAS shall pay to Meridian each month the sum of:

- (a) for the Specified MW, an amount equal to:

$$\left(\frac{\sum \text{Specified MW}_{\text{for each Half Hour in the month}}}{\text{Number of Half Hour periods in the month}} \right)^2 \times \$5.5766$$

- (b) for the Specified Mvars, an amount equal to:

$$\left(\frac{\sum \text{Specified Mvar}_{\text{for each Half Hour in the month}}}{\text{Number of Half Hour periods in the month}} \right) \times \$263$$

provided that each dollar amount in subclauses (a) and (b) shall be escalated (rounded to five decimal places) each Year commencing 1 April in accordance with the following formula and is payable in accordance with section 7:

$$\text{Price}_n = \text{BP} + \text{BP} \times \text{Escalator}$$

Where:

n = the relevant Year commencing 1 April in respect of which the escalation is being calculated;

BP = the relevant dollar amount in subclause (a) or (b) above.

4. SMELTER DEMAND RESPONSE

- 4.1 Notwithstanding the Smelter's sensitivity to interruption (to the extent recorded in and limited in its effect on the interpretation of this agreement by clause 3.1), NZAS has agreed, on the basis outlined in this section 4, that during the Term it will reduce Consumption subject to and in accordance with this section 4.

Meridian's right to require a Smelter Demand Response

- 4.2 Subject to clauses 4.2A, 4.4 and 4.5, at any time during the Term that the Relevant Hydro Storage is less than the Dry Year Trigger Level, Meridian may give written notice to NZAS requiring NZAS to manage Consumption in accordance with this section 4 (each such management of Consumption being a Smelter Demand Response).
- 4.2A Meridian shall not be entitled to give notice under clause 4.2 unless, at least seven days before the day on which NZAS receives Meridian's notice under clause 4.2 ("**SDR Notice Date**"), Meridian has notified NZAS that it is considering giving notice under clause 4.2.
- 4.3 Meridian's notice under clause 4.2 shall include the date by which Consumption must start reducing (if required), such date to be no greater than 40 days and no less than fourteen days from NZAS' receipt of Meridian's notice unless clause 4.5 is applicable, in which case such date shall be no greater than 40 days and no less than five days from NZAS' receipt of Meridian's notice. A notice given under clause 4.2 shall be irrevocable once the Smelter Demand Response Date specified in that notice has occurred.

Limitations on calling a Smelter Demand Response

- 4.4 Meridian shall not be entitled to give notice under clause 4.2:
- (a) during a Rampdown Period;
 - (b) if a Smelter Demand Response has already occurred five times during the Term; or
 - (c) if:
 - (i) the most recent Smelter Demand Response Date has occurred within one Year of that notice; or
 - (ii) giving notice under clause 4.2 would result in Smelter Demand Response Dates occurring more than three times in six years or more than twice in three years,

and, provided early restoration has not occurred in accordance with clause 4.11, NZAS complied with clause 4.6 on that occasion or each of those occasions.
- 4.5 Subject to clause 4.4, Meridian shall be entitled to give a notice ("**new notice**") under clause 4.2 at any time regardless of when it has last given a notice under clause 4.2, provided that, if the most recent Smelter Demand Response Date has occurred (and NZAS complied with clause 4.6 on that occasion and early restoration did not occur in accordance with clause 4.11):
- (a) within two Years of that new notice, then Meridian may only give a notice under clause 4.2 if the Relevant Hydro Storage is less than the Minimum Zone; or
 - (b) within three Years of that new notice and subclause 4.5(a) is not applicable, then Meridian may only give a notice under clause 4.2 if the Relevant Hydro Storage is less than the Minimum Zone.

Reduction in consumption

- 4.6 Subject to clause 4.7, upon receipt by NZAS of a notice from Meridian under clause 4.2, NZAS shall:

- (a) manage Consumption to achieve the Required Reduction during the period of 130 days from the Smelter Demand Response Date, with the Required Reduction to commence no later than the Smelter Demand Response Date. NZAS' reduction in Consumption shall be measured as follows:

If the 400 MW Date has not occurred:

$$\sum (286 \text{ MWh} - C)_{\text{all Half Hours in 130 Day period}} \geq \text{Required Reduction}$$

where C = the lesser of 286 MWh and actual Consumption

On and from the 400 MW Date:

$$\sum (C_{\text{prior}} - C)_{\text{all Half Hours in 130 Day period}} \geq \text{Required Reduction}$$

where

C_{prior} = the greater of 200 MWh and the average of the Half Hourly Consumption during the 672 consecutive Half Hours ending at 9:00am on the SDR Notice Date;

C = actual Consumption for that Half Hour

- (b) ensure that in delivering the Required Reduction all material reductions in MW load at the Smelter occur during the period commencing on the SDR Notice Date and ending on the date that is seven days after the Smelter Demand Response Date.

- 4.7 NZAS' obligation under clause 4.6 shall reduce to the extent that compliance with that obligation would breach any Law, provided such breach is beyond the reasonable control of NZAS.

Reduction profile

- 4.8 NZAS shall advise Meridian of the intended profile of the Required Reduction prior to making any material reductions in Consumption at the Smelter and no later than seven days after the SDR Notice Date. Such reduction profile shall ensure that the Required Reduction is able to be achieved. NZAS shall be entitled to deviate from that profile, provided the Required Reduction is still able to be achieved and provided it gives Meridian prior notice of any material deviation if possible (and, if not, as soon as practicable thereafter).

Rebate and cost sharing

- 4.9 If a Smelter Demand Response is called by Meridian under clause 4.2, and NZAS manages Consumption to achieve the Required Reduction, Meridian shall pay NZAS a rebate, as a contribution to NZAS' costs, calculated as at the Smelter Demand Response Date as follows:

- (a) if subclause 4.5(a) is applicable:

If the 400 MW Date has not occurred:

$$\text{Rebate} = \$10,000,000 + \$10,000,000 \times \text{Escalator}$$

On and from the 400 MW Date:

$$\text{Rebate} = \$5,000,000 + \$5,000,000 \times \text{Escalator}$$

- (b) if subclause 4.5(b) is applicable:

If the 400 MW Date has not occurred:

$$\text{Rebate} = \$7,500,000 + \$7,500,000 \times \text{Escalator}$$

On and from the 400 MW Date:

$$\text{Rebate} = \$3,750,000 + \$3,750,000 \times \text{Escalator}$$

- (c) in all other instances where clause 4.5 is not applicable:

If the 400 MW Date has not occurred:

$$\text{Rebate} = \$5,000,000 + \$5,000,000 \times \text{Escalator}$$

On and from the 400 MW Date:

$$\text{Rebate} = \$2,500,000 + \$2,500,000 \times \text{Escalator}$$

The rebate shall be paid to NZAS in accordance with section 7.

- 4.10 In addition to the rebate under clause 4.9, if Meridian receives a contribution, incentive or other payment ("**contribution**") from a third party as a result of exercising its rights under clause 4.2 and NZAS incurs a tax, levy or charge that seeks to recover from NZAS, as a consumer of electricity, that contribution (in full or in part), Meridian shall (notwithstanding clause 7.22) compensate NZAS for the full amount of such tax, levy or charge to NZAS up to the value of that contribution.

Early restoration

- 4.11 If a Smelter Demand Response Date has occurred, the parties may agree that the obligations under clauses 4.6 to 4.8 shall cease to apply with respect to that Smelter Demand Response.

5. CONTRACT FOR DIFFERENCE PAYMENT

- 5.1 For each Half Hour:

- (a) NZAS shall pay to Meridian the Strike Price for the Contract Quantity; and
(b) Meridian shall pay to NZAS the Spot Price for the Contract Quantity.

- 5.2 "**Strike Price**" is a price per MWh (rounded to five decimal places) and means:

- (a) during the Initial Period and during Period 1, unless subclause 5.2(b) applies:

$$\text{Strike Price}_n = \text{BP} + \text{BP} \times \text{Escalator}$$

Where:

n = the relevant Year commencing 1 April in respect of which the Strike Price is being calculated.

BP = \$; and

$$\text{Escalator} = \frac{1}{3} \left\{ \left(1.025^n - 1 \right) + \left(\frac{3\text{yr aveLME}}{1800} - 1 \right) + \left(\frac{3\text{yr aveSpot}}{60} - 1 \right) \right\}$$

Where:

t = the number of full consecutive Years that have elapsed since and including 1 April 2006;

3yr aveLME = the average, in US dollars and rounded to two decimal places, of the LME Price calculated for each of the three Years commencing 1 April immediately prior to year_n, where "LME Price" is the official price per tonne recorded at the end of the second ring of the aluminium metal in the first session of the London Metal Exchange for the cash seller and settlement price on each day the exchange is open (or, in the event that the London Metal Exchange no longer exists or the time at which the official price is recorded changes, the official price per tonne of aluminium determined in accordance with such mechanism as most closely reflects the price determined as aforesaid). The average for a Year commencing 1 April is the average of the cash seller and settlement price for each day the metal is traded in that Year (rounded to five decimal places); and

3yr aveSpot = the average, in NZ dollars and rounded to two decimal places, of the BEN Spot Price calculated for each of the three Years commencing 1 April immediately prior to year_n, where "BEN Spot Price" is the final price per MWh for electricity at BEN determined under the EGRs for each Half Hour. The average for a Year is the average of the BEN Spot Price for each Half Hour in that Year (rounded to five decimal places).

Provided that if during a month in Period 1:

Aluminium Price > (\$4,000 + \$4,000 x CPI Escalator_m), then

Strike Price_n = (BP + BP x Escalator) + Clawback

Where:

m = the month in respect of which the relevant price is being calculated;

Clawback means:

$$\text{MIN}(\$5 + \$5 \times \text{CPI Escalator}_m, \frac{\text{Clawback Fund}}{\sum_{\text{Half Hours in } m} \text{Contract Quantity}})$$

Clawback Fund means:

- (a) a notional \$ energy price (escalated using the CPI Escalator_m applicable for price calculations in respect of the relevant month) in respect of Half Hours in the months in Period 1 up to but excluding the month in respect of which the Strike Price is being calculated ("**Prior Months in Period 1**") calculated as follows:

$$\sum_{\substack{\text{Half Hours in} \\ \text{Prior Months in Period 1}}} (\$ + \$ \times \text{CPI Escalator}_m) \times \text{Contract Quantity}$$

Less:

- (b) the amounts paid by NZAS (or set off under clause 7.4) in respect of Half Hours in Prior Months in Period 1 under subclause 7.1(a) (Strike Price) less the amounts paid by Meridian (or set off under clause 7.4) under subclause 7.2(b) (Consumption Value Rebate) calculated as follows:

$$\sum_{\substack{\text{Half Hours in} \\ \text{Prior Months in Period 1}}} (\text{Strike Price} - \text{Consumption Value Rebate}) \times \text{Contract Quantity}$$

Aluminium Price and CPI Escalator_m have the meaning given to those terms in subclause 5.2(e).

(b) during Period 1, on and from the earliest of:

- (i) 1 April following the date that is twelve months after Meridian's receipt of a notice given by NZAS under clause 12.5 (NZAS early termination rights); or
- (ii) 1 April following the date that is twelve months after NZAS' receipt of a notice given by Meridian under clause 12.6 (Meridian early termination rights):

$$\text{Strike Price}_n = \text{Strike Price}_{n-1}$$

Where n = the relevant Year commencing 1 April in respect of which the Strike Price is being calculated.

(c) during Period 2:

$$\text{Strike Price}_m = \text{Energy Price}_m$$

Where:

m = the month in respect of which the relevant price is being calculated;

"**Energy Price_m**" means, in relation to month *m*, the price expressed in NZ dollars (rounded to 2 decimal places) determined in accordance with the formula that is set out opposite the range in the table below in which the NZ Dollar Equivalent of the Aluminium Price for the immediately preceding month fell:

NZ Dollar Equivalent of Aluminium Price	Energy Price
≤ (\$3,000 + \$3,000 x CPI Escalator _m)	\$ + \$ x CPI Escalator _m
> (\$3,000 + \$3,000 x CPI Escalator _m) but ≤ (\$4,000 + \$4,000 x CPI Escalator _m)	\$ + \$ x CPI Escalator _m
> (\$4,000 + \$4,000 x CPI Escalator _m)	\$ + \$ x CPI Escalator _m

(d) during Reduced Consumption Period 2:

$$\text{Strike Price}_m = \text{Energy Price}_m$$

Where:

m = the month in respect of which the relevant price is being calculated;

"**Energy Price_m**" means, in relation to month *m*, the price expressed in NZ dollars (rounded to 2 decimal places) determined in accordance with the formula that is set out opposite the range in the table below in which the NZ Dollar Equivalent of the Aluminium Price for the immediately preceding month fell:

NZ Dollar Equivalent of Aluminium Price	Energy Price
$\leq (\$3,000 + \$3,000 \times \text{CPI Escalator}_m)$	$\$ \quad + \$ \quad \times \text{CPI Escalator}_m$
$> (\$3,000 + \$3,000 \times \text{CPI Escalator}_m)$ but $\leq (\$4,000 + \$4,000 \times \text{CPI Escalator}_m)$	$\$ \quad + \$ \quad \times \text{CPI Escalator}_m$
$> (\$4,000 + \$4,000 \times \text{CPI Escalator}_m)$	$\$ \quad + \$ \quad \times \text{CPI Escalator}_m$

(e) The following definitions apply in respect of clauses 5.2(c) and (d):

"Aluminium Price" means, in relation to a month, the average expressed in US dollars per tonne (rounded to 5 decimal places) of the LME Price for each day of the month on which the London Metal Exchange was open for trading.

"Average Monthly BFIX Rate" means, in relation to a month, the average (rounded to 4 decimal places) of the BFIX Rate for each day of the month in respect of which either:

- (a) a BFIX Rate for that day is displayed on the Bloomberg FX Fixing Page for conversion between NZD and USD; or
- (b) no BFIX Rate for that day is displayed on the Bloomberg FX Fixing Page for conversion between NZD and USD but commercial banks and foreign exchange markets settle payments generally in both New York and New Zealand.

"BFIX Rate" means, in relation to a day:

- (a) the mid-rate for NZD/USD displayed on the Bloomberg FX Fixing Page for conversion between NZD and USD at or about 2pm (New Zealand time) on that day; or
- (b) if the BFIX Rate cannot be determined in accordance with paragraph (a), the NZD/USD mid-rate at or about 11:10am (New Zealand time) for that day published by the Reserve Bank of New Zealand in its B1 Exchange Rate series,

provided that if the BFIX Rate cannot be determined in accordance with either paragraph (a) or (b), the parties shall agree a substitute method of determining an exchange rate for conversion between NZD and USD for a day that most closely reflects the average of the spot mid-rate of exchange provided by 3 major New Zealand trading banks selected by the parties for New Zealand foreign exchange market transactions in NZD/USD at or about 2pm on the relevant day.

"CPI Escalator_m" means an escalator applying from 1 July 2014, in accordance with the formula:
$$\frac{\text{Reference CPI}_m - 1}{\text{Base CPI}}$$

Where:

Reference CPI_m = CPI most recently published in respect of Reference Period_m;

Base CPI = CPI most recently published in respect of the period ending 31 March 2013;

Reference Period_m is the period ending on the 31 March that falls during the Year ending on June 30 immediately preceding month m; provided that if, at the date of calculation, CPI has not been published in respect of Reference Period_m, then:

- (a) CPI Escalator_m shall be calculated by substituting for such Reference Period_m the first period immediately preceding such Reference Period_m for which CPI has been published; and
- (b) any subsequent publication of CPI for such Reference Period_m shall be treated as a revision of the relevant CPI under clause 1.6.

"**LME Price**" means, in relation to a day:

- (a) the official price per tonne recorded at the end of the second ring of the aluminium metal in the first session of the London Metal Exchange for the cash seller and settlement price on that day; or
- (b) in the event that the London Metal Exchange no longer exists or the time at which the official price is recorded changes, the official price per tonne of aluminium determined in accordance with such mechanism as most closely reflects the price determined as aforesaid.

"**NZ Dollar Equivalent**" means, in relation to an amount denominated in US dollars, the NZ dollar equivalent of the amount determined using the Average Monthly BFIX Rate.

5.3 "**Spot Price**" means, in respect to a Half Hour, the final price per MWh for electricity at TWI determined under the EGRs for that Half Hour.

5.4 "**Contract Quantity**", with respect to a Half Hour, means:

- (a) 286 MWh; or
- (b) on and from the 400 MW Date, 200 MWh,

("Base Contract Quantity"), provided that:

- (c) **NZAS force majeure:** during any NZAS Force Majeure Period of longer than two hours, the Contract Quantity is the lesser of the Base Contract Quantity and the greatest quantity of electricity that could be Consumed in that Half Hour if NZAS had, subject to clause 10.12, used its best endeavours to Consume as much as possible despite the NZAS Force Majeure Event (and ignoring the effect on Consumption of any other event or circumstance) and, during the immediately succeeding period of up to 30 days, the Contract Quantity is actual Consumption until the Consumption in any Half Hour is or exceeds the Base Contract Quantity;
- (d) **Meridian Price Separation:** during a Meridian Price Separation Period, the Contract Quantity is equal to the lesser of the Base Contract Quantity and the Reconciled Quantity of generation from Meridian's Southland Generation for the relevant Half Hour;
- (e) **Manapouri Interruption:** if a Manapouri Interruption has occurred and Meridian:
 - (i) has given notice to NZAS at least once during the preceding 24 months that it reasonably believed that that Manapouri Interruption might occur, specifying the nature of that Manapouri Interruption and possible timing of its occurrence; and

- (ii) has given notice to NZAS no earlier than 11 months after the date of Meridian's notice under subclause (i), that the Manapouri Interruption referred to in that notice has occurred and, in Meridian's opinion, will continue beyond the date of Meridian's notice to NZAS under this subclause (ii),

then on and from the date of NZAS' receipt of Meridian's notice under subclause (ii) until the Manapouri Interruption ceases plus any associated Restoration Time:

- (iii) the Contract Quantity may, at Meridian's option (to be exercised in Meridian's notice under subclause (ii)), reduce to the lesser of the Base Contract Quantity and the Reconciled Quantity of generation from the Manapouri Power Station; or
- (iv) unless Meridian has terminated this agreement pursuant to subclause 12.7(a), the Contract Quantity may, at NZAS' option (to be exercised by NZAS giving written notice to Meridian with effect not earlier than 12 months after NZAS' receipt of Meridian's notice under subclause (ii)), reduce to the lesser of the Reconciled Quantity of generation from the Manapouri Power Station and actual Consumption;

(f) **Waitaki Interruption:** if a Waitaki Interruption has occurred and Meridian:

- (i) has given notice to NZAS at least once during the preceding 24 months that it reasonably believed that that Waitaki Interruption might occur, specifying the nature of that Waitaki Interruption and possible timing of its occurrence; and
- (ii) has given notice to NZAS no earlier than 11 months after the date of Meridian's notice under subclause (i), that the Waitaki Interruption referred to in that notice has occurred and, in Meridian's opinion, will continue beyond the date of Meridian's notice to NZAS under this subclause (ii),

then, on and from the date of NZAS' receipt of Meridian's notice under subclause (ii) until the Waitaki Interruption ceases, the Contract Quantity may, at Meridian's option (to be exercised in Meridian's notice under subclause (ii)), be equal to:

- (iii) if the 400 MW Date has not occurred:
 - A. for a Half Hour in the 12 months beginning 12 months after the date of NZAS' receipt of Meridian's notice under subclause (ii), 191 MWh;
 - B. for a Half Hour in the 12 months beginning 24 months after the date of NZAS' receipt of Meridian's notice under subclause (ii), 96 MWh or, at NZAS' election by giving three months' notice to Meridian, zero MWh; and
 - C. for each Half Hour in any month beginning 36 months after the date of NZAS' receipt of Meridian's notice under subclause (ii), zero MWh; or
- (iv) if the Waitaki Interruption occurs on or after the 400 MW Date, for each Half Hour in any month beginning 12 months after the date of NZAS' receipt of Meridian's notice under subclause (ii), zero MWh,

and upon cessation of the Waitaki Interruption, the Contract Quantity is actual Consumption until the Consumption in any Half Hour is or exceeds the Base Contract Quantity;

- (g) **Meridian early termination:** if Meridian gives notice to NZAS under clause 12.6 (Meridian early termination rights):

- (i) if the 400 MW Date has not occurred, the Contract Quantity shall be:
- A. for a Half Hour in the 12 months beginning 24 months after NZAS' receipt of Meridian's notice, 191 MWh;
 - B. for a Half Hour in the 12 months beginning 36 months after NZAS' receipt of Meridian's notice, 96 MWh or, at NZAS' election by giving three months' notice to Meridian, zero MWh; and
 - C. for a Half Hour from the Expiry Date, zero MWh;
- (ii) on or after the 400 MW Date, the Contract Quantity for a Half Hour from 12 months after NZAS' receipt of Meridian's notice shall be zero MWh;

- (h) **NZAS early termination:** If NZAS gives notice to Meridian under clause 12.5 (NZAS early termination rights), the Contract Quantity for the period beginning 12 months after Meridian's receipt of that notice until the Expiry Date shall be the lesser of the Base Contract Quantity and the Consumption for that Half Hour;

- (i) **Smelter demand response:** from the SDR Notice Date:

- (i) if the 400 MW Date has not occurred, for each Half Hour until the earlier of:
- A. the time at which Consumption is first restored to the Base Contract Quantity, after NZAS has complied with clause 4.6; and
 - B. 200 days after the Smelter Demand Response Date,

the Contract Quantity shall be the lesser of Base Contract Quantity and actual Consumption for that Half Hour.

- (ii) on and from the 400 MW Date, for each Half Hour until the earlier of:
- A. the time at which Consumption is first restored to C_{prior} , after NZAS has complied with clause 4.6; and
 - B. 200 days after the Smelter Demand Response Date, the Contract Quantity shall be calculated as follows:

$$(200 - (C_{prior} - C_{SDR})) \text{ MWh}$$

where

C_{prior} = the greater of 200 MWh and the average of the Half Hourly Consumption during the 672 consecutive Half Hours ending at 9:00am on the SDR Notice Date

C_{SDR} = the lesser of C_{prior} and actual Consumption for that Half Hour

- (j) **Termination during Period 2 or Reduced Consumption Period 2:** if NZAS gives a valid notice under clauses 12.5A, 12.5B or 12.5C or Meridian gives a valid notice under clause 12.8A, the Contract Quantity shall be zero MWh with effect from the Expiry Date.

5.5 If, in respect of any Half Hour, two or more subclauses of clause 5.4 apply, the Contract Quantity is the lowest amount resulting from the application of those subclauses provided that if:

- (a) two or more events or circumstances occur to which subclause 5.4(c) applies, the reductions to Contract Quantity provided for in that subclause are added to each other; and
- (b) two or more events or circumstances occur to which subclause 5.4(c) applies and one or more further subclauses of clause 5.4 also apply, the Contract Quantity is the lowest amount resulting from adding together the reductions to Contract Quantity provided for in subclause 5.4(c) or from the application of the other applicable subclause(s).

6. CONSUMPTION VALUE REBATE

Rebate

6.1 Meridian shall pay to NZAS a rebate calculated in accordance with clause 6.1A ("**Consumption Value Rebate**") for each MWh of electricity Consumed in a Half Hour up to the Contract Quantity, provided that:

- (a) the average of the Half Hourly Consumption during the Quarter is greater than or equal to the average of the Profile during the same Quarter, where "Quarter" means the relevant Half Hour and the prior 4,319 Half Hours (or if that Quarter would include a Half Hour prior to the Commencement Date, then the period since the Commencement Date); and
- (b) if the Half Hour is during a Rampdown Period occurring during Period 1, the average of the Half Hourly Consumption:
- (i) during the Year (with the first such Year commencing at the start of the Rampdown Period) in which that Half Hour falls ("**Measurement Year**") is greater than or equal to:
- A. the average of the Half Hourly Consumption during the immediately preceding Year ("**Reference Year**"); minus
- B. 105 MWh; and
- (ii) during the month (with the first such month being the first month commencing at the start of the Rampdown Period) in which that Half Hour falls ("**Measurement Month**") is less than or equal to the sum of:
- A. the average of the Half Hourly Consumption during the immediately preceding month ("**Reference Month**"); plus
- B. 10 MWh.

6.1A The Consumption Value Rebate is:

- (a) during the Initial Period, 15% of the Strike Price; and
- (b) during Period 1, an amount per MWh (rounded to five decimal places) equal to:

$$\text{Consumption Value Rebate}_m = \text{Strike Price}_n - \text{Energy Price}_m$$

Where:

m = the month in respect of which the relevant price is being calculated;

Strike Price_n has the meaning in subclause 5.2(a), excluding the proviso to that subclause; and

Energy Price_m has the meaning in subclause 5.2(d).

6.1B There is no Consumption Value Rebate during Period 2 or Reduced Consumption Period 2.

6.2 For the purposes of measuring the average of the Half Hourly Consumption in a Measurement Year or a Measurement Month under subclause 6.1(b), if a reduction in Consumption is allowable under subclauses 6.6(c) (NZAS force majeure), (d) (Meridian price separation), (e) (Manapouri Interruption), (f) (Waitaki Interruption), (k) (Smelter demand response), (o) (Rare Operational Consumption Reduction) or (q) (Compliance with Law) (each an "**event**") occurs during a Half Hour within that Measurement Year or Measurement Month, the Consumption in that Half Hour shall be deemed to be the electricity that would have been Consumed but for that event.

6.3 For the purposes of measuring the average of the Half Hourly Consumption in a Reference Year or a Reference Month under subclause 6.1(b):

- (a) if that Year or month ends prior to the start of the Rampdown Period, and a reduction in Consumption falling within subclauses 6.6(c) (NZAS force majeure), (d) (Meridian price separation), (k) (Smelter demand response), (l) (Smelter discretionary load reduction), (m) (Smelter major planned work), (n) (Smelter minor work), (o) (Rare Operational Consumption Reduction) or (q) (Compliance with Law) (each an "**event**") occurred during a Half Hour in that Reference Year or Reference Month, the Consumption in that Half Hour shall be deemed to be the electricity that would have been Consumed but for that event; or
- (b) if that Year or month is during a Rampdown Period, if a reduction in Consumption falling within subclauses 6.6(c) (NZAS force majeure), (d) (Meridian price separation), (k) (Smelter demand response), (o) (Rare Operational Consumption Reduction) or (q) (Compliance with Law) (each an "**event**") occurred during a Half Hour within that Reference Year or Reference Month, the Consumption in that Half Hour shall be deemed to be the electricity that would have been Consumed but for that event.

Repayment of rebate

6.4 If:

- (a) in relation to any Half Hour in Period 1, the criterion in clause 6.1(a) has not been met or the criteria in clause 6.1(b) have not been met; or

- (b) NZAS gives a valid notice to Meridian under clause 12.5 (NZAS early termination rights) and the electricity Consumed in any Half Hour on:
 - (i) the day that is six Years after Meridian's receipt of NZAS' early termination notice; and
 - (ii) each day during the five years after the date the Smelter is first Decommissioned,
 is greater than 5 MWh; or
 - (c) at any time it becomes clear without doubt that, in relation to any Half Hour in Period 1 the criterion in clause 6.1(a) or the criteria in clause 6.1(b) will not be met,
- then:
- (d) NZAS shall repay to Meridian the total amount of the Consumption Value Rebate paid by Meridian:
 - (i) if NZAS has given a notice of termination under clause 12.5 (NZAS early termination rights), during the three Years preceding the date of that notice; or
 - (ii) during the three Years preceding the date upon which it first becomes clear that Consumption has, or will in the remainder of the Term be, as described in subclauses 6.4(a) to (c); and
 - (e) NZAS shall not be entitled to any further Consumption Value Rebates for the remainder of the Term.

6.5 For the avoidance of doubt, the parties acknowledge that:

- (a) NZAS does not have an obligation to consume electricity, whether in accordance with the Profile, the Consumption described in clause 6.1 or other than as described in subclauses 6.4(a) to (c) or otherwise;
- (b) NZAS may consume or not consume electricity; and
- (c) any repayment which may become due under subclause 6.4(d) and any disentitlement to further Consumption Value Rebate under subclause 6.4(e):
 - (i) are consequences agreed to by NZAS in consideration of the obligations undertaken by Meridian under this agreement; and
 - (ii) the consequences set out in subclauses 6.4(d) and (e) are the only consequences of electricity being Consumed other than in the way described in clause 6.1 or as specified in subclauses 6.4(b) to (c) and NZAS shall not, in addition, have any liability therefor under section 11.

Profile

6.6 "Profile" is measured in MWh and, with respect to a Half Hour, means:

- (a) 270 MWh; or
- (b) on and from the 400 MW Date, 185 MWh,

("Base Profile") provided that:

- (c) **NZAS force majeure:** during any NZAS Force Majeure Period and during the immediately succeeding period of 30 days, the Profile is the lesser of the Base Profile and the greatest quantity of electricity that could be Consumed in that Half Hour if NZAS had, subject to clause 10.12, used its best endeavours to Consume as much electricity as possible despite the NZAS Force Majeure Event (and ignoring the effect on Consumption of any other event or circumstance) less 15 MWh;
- (d) **Meridian price separation:**
 - (i) during any Meridian Price Separation Period plus any Restoration Time, the Profile is the lesser of:
 - A. the Base Profile; and
 - B. the actual generation from Meridian's Southland Generation (as determined in accordance with clause 8.7) less 15 MWh; or
 - (ii) where NZAS has reduced Consumption in reasonable anticipation of a Meridian Price Separation Period occurring and continuing (and not for other reasons), then regardless of whether that Meridian Price Separation Period actually occurs or not, until completion of the Restoration Time (for the purposes of the definition of Restoration Time, the end of the relevant event or circumstance is either the end of the Meridian Price Separation Period or, if a Meridian Price Separation Period does not occur, the point in time when a Meridian Price Separation Period is no longer reasonably anticipated), the Profile is the lesser of:
 - (aa) the Base Profile; and
 - (bb) actual Consumption; and
 - (iii) NZAS shall not reasonably anticipate a Meridian Price Separation Period occurring and continuing unless, at the time NZAS starts reducing Consumption:
 - (aa) the BEN Spot Price is less than 90% of the Spot Price, based on real time prices (as that term is used in the EGRs);
 - (bb) NZAS has identified some possibility of an event that may be a Meridian Force Majeure Event which may result in Meridian nominating a period as a Meridian Price Separation Period; and
 - (cc) NZAS has not received notice that Meridian will not be nominating a period as a Meridian Price Separation Period.
- (e) **Manapouri Interruption:** if a Manapouri Interruption occurs and Meridian has elected in accordance with subclause 5.4(e) that the Contract Quantity is equal to actual generation at the Manapouri Power Station, then, from the date of NZAS' receipt of Meridian's notice under subclause 5.4(e)(ii) until the time at which the Manapouri Interruption ceases plus any associated Restoration Time, the Profile is the lesser of:

- (i) the Base Profile; and
 - (ii) either:
 - A. the actual generation from the Manapouri Power Station (as determined in accordance with clause 8.7) less 15 MWh; or
 - B. if NZAS has given notice under subclause 5.4(e)(iv), the lesser of that actual generation and actual Consumption;
- (f) **Waitaki Interruption:** if a Waitaki Interruption occurs and Meridian has elected in accordance with subclause 5.4(f) that the Contract Quantity is as set out in subclauses 5.4(f)(iii)A to C or subclause 5.4(f)(iv), then, from the date of NZAS' receipt of Meridian's notice under subclause 5.4(f)(ii) until the time at which the Waitaki Interruption ceases plus any associated Restoration Time, the Profile is the lesser of:
- (i) the Base Profile; and
 - (ii) actual Consumption;
- (g) **NZAS early termination:** if NZAS gives a valid notice to Meridian to terminate this agreement under:
- (i) clause 12.5 (NZAS early termination rights), beginning 12 months after Meridian's receipt of NZAS' notice; or
 - (ii) clauses 12.1 (general right to suspend or terminate) or 12.8 (NZAS Terminal Force Majeure Event), beginning immediately upon Meridian's receipt of NZAS' notice,
- the Profile shall be zero MWh;
- (h) **Meridian early termination:** if Meridian gives a valid notice to NZAS to terminate this agreement under:
- (i) clause 12.6 (Meridian early termination rights), from the date that is 12 months after NZAS' receipt of Meridian's notice; or
 - (ii) clauses 12.1 (general right to suspend or terminate) or 12.8 (NZAS Terminal Force Majeure Event), beginning immediately upon NZAS' receipt of Meridian's notice,
- the Profile shall be zero MWh;
- (i) **NZAS suspension:** if NZAS gives a valid notice to Meridian to suspend this agreement under clause 12.1 (general right to suspend or terminate), beginning immediately upon Meridian's receipt of NZAS' notice under clause 12.1 until NZAS gives a valid notice to Meridian lifting the suspension under clause 12.2, the Profile shall be zero MWh until the earliest time at which the physical capacity to Consume could again be at or above the Profile (but excluding the reduction in the Profile resulting from the suspension) if NZAS had restored Consumption as soon as physically possible using best endeavours to do so, plus a further period of 12 months after that time;
- (j) **Meridian suspension:** if Meridian gives a valid notice to NZAS to suspend this agreement under clause 12.1 (general right to suspend or terminate), beginning immediately upon NZAS' receipt of Meridian's notice under clause

12.1 until Meridian gives a valid notice to NZAS lifting the suspension under clause 12.2 plus the period until the earliest time at which the physical capacity to Consume could again be at or above the Profile (but excluding the reduction in the Profile resulting from the suspension) if NZAS had restored Consumption as soon as physically possible using best endeavours to do so, the Profile shall be zero MWh;

(k) **Smelter demand response:**

- (i) if the 400 MW Date has not occurred, from the SDR Notice Date until the date that is 100 days from a Smelter Demand Response Date the Profile shall be 220 MWh, and for each day thereafter until and including the day that is 200 days from a Smelter Demand Response Date the Profile shall increase above 220 MWh by 0.5 MWh;
- (ii) on and from the 400 MW Date, from the SDR Notice Date until the date that is 100 days from a Smelter Demand Response Date the Profile shall be the Contract Quantity less 15 MWh, and for each day thereafter until and including the day that is 200 days from a Smelter Demand Response Date the Profile shall increase by 0.5MWh until the Profile is equal to the Base Profile;

(l) **Smelter discretionary load reduction:** if NZAS gives Meridian at least two months' notice, the Profile may reduce to 230 MWh (if the 400 MW Date has not occurred) or 150 MWh (on and from the 400 MW Date) for a period specified in NZAS' notice, provided that:

- (i) the period of reduction must not exceed 12 months; and
- (ii) a notice given under this subclause 6.6(l) is not valid if NZAS has given a notice under this subclause 6.6(l) in the five Years preceding Meridian's receipt of the current notice and NZAS reduced Consumption as a result of that notice;

(m) **Smelter major planned work:** if Meridian gives its prior written consent (such consent not to be unreasonably withheld), the Profile may reduce to allow NZAS to undertake planned work on the Smelter, provided that:

- (i) all reductions (including any associated Restoration Time) under this subclause 6.6(m) are not more than 250 GWh (if the 400 MW Date has not occurred) or 125 GWh (on and from the 400 MW Date) in any 12 month period (measured as a reduction from a base of 286 MWh (if the 400 MW Date has not occurred) or 200 MWh (on and from the 400 MW Date) per Half Hour); and
- (ii) the work is planned such that it takes account of any expected outages and constraints in electricity generation and transmission;

(n) **Smelter minor work:** the Profile may reduce to allow NZAS to undertake minor work on the Smelter, provided that:

- (i) NZAS gives Meridian notice of the work no later than seven Business Days after the end of the month in which it occurred; and
- (ii) NZAS restores Consumption to the Profile (but excluding the reduction in the Profile resulting from the applicable minor work) no later than two hours after Consumption first reduced below the Profile in accordance with this subclause 6.6(n);

- (o) **Rare Operational Consumption Reduction:** during any ROCR Period, the Profile is the lesser of the Base Profile and the greatest quantity of electricity that could be Consumed in that Half Hour if NZAS had used its best endeavours to Consume as much electricity as possible despite the Rare Operational Consumption Reduction (and ignoring the effect on Consumption of any other event or circumstance);
- (p) **By agreement:** the parties may amend the Profile at any time by agreement in writing; and
- (q) **Compliance with Law:** the Profile may reduce to the extent that compliance with it would breach any Law, provided such breach of Law is beyond the reasonable control of NZAS.

6.7 If, in respect of any Half Hour, two or more subclauses of clause 6.6 apply:

- (a) if subclauses 6.6(d), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (p) apply, the Profile is the lowest amount resulting from the application of those subclauses; unless
- (b) if subclauses 6.6(c), (n), (o) or (q) apply, the reduction to the Profile provided for in those subclauses is added to the reduction to that profile provided for in any other applicable subclause.

7. PAYMENT

Monthly payments

7.1 Subject to clause 7.3, NZAS shall pay to Meridian each month the sum of:

- (a) the amount payable by NZAS to Meridian for the previous month under subclause 5.1(a) (contract for difference payment);
- (b) any Consumption Value Rebate that has become repayable by NZAS to Meridian under clause 6.4;
- (c) the charges for grid security services for the previous month, calculated in accordance with clause 3.8; and
- (d) any other charges payable by NZAS under this agreement.

7.2 Subject to clauses 7.3 and 7.9D(b), Meridian shall pay to NZAS each month the sum of:

- (a) the amount payable by Meridian to NZAS for the previous month under subclause 5.1(b) (contract for difference payment);
- (b) any Consumption Value Rebate payable under clause 6.1 in respect of the previous month;
- (c) any compensation that has become payable by Meridian to NZAS under clause 3.5 for not meeting grid security obligations;
- (d) any Smelter Demand Response rebate or compensation that has become payable by Meridian to NZAS under clauses 4.9 or 4.10; and
- (e) any other charges payable by Meridian under this agreement.

Conditions precedent to payment

7.3 Each obligation under:

- (a) clause 7.1 is subject to:
 - (i) the condition precedent that no failure by Meridian to comply with its payment obligations under clause 7.2 has occurred and is continuing; and
 - (ii) the condition precedent that no default under subclauses 12.4(a), (d), (e), (f), (g), (h) or (i) with respect to Meridian has occurred and is continuing;
- (b) clause 7.2 is subject to:
 - (i) the condition precedent that no failure by NZAS to comply with its payment obligations under clause 7.1 has occurred and is continuing; and
 - (ii) the condition precedent that no default under subclauses 12.4(a), (b), (d), (e), (f), (g), (h) or (i) with respect to NZAS has occurred and is continuing.

Netting of payments

7.4 If on any date amounts would otherwise be payable (including any outstanding amounts as at that date) by each party to the other under this agreement then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

Monthly statements for CFD Payments

7.5 As soon as practicable, but no later than 10 Business Days, after the end of each month Meridian shall provide to NZAS a statement of all CFD Payments payable under this agreement in respect of that month. Each statement shall include such details of the inputs to the calculations of the amount payable as are reasonably necessary to enable NZAS to check their accuracy.

Monthly statements

7.6 As soon as practicable, but no later than 10 Business Days, after the end of each month Meridian shall provide to NZAS:

- (a) a statement of all Remaining Payments payable under this agreement in respect of that month. Each statement shall include such details of the inputs to the calculations of the amount payable as are reasonably necessary to enable NZAS to check their accuracy; and
- (b) a summary statement that includes details of:
 - (i) all the net amounts payable by NZAS to Meridian in respect of that month and their due dates for payment;

- (ii) all the net amounts payable by Meridian to NZAS in respect of that month and their due dates for payment; and
- (iii) the amount payable by Meridian to the Clearing Manager in respect of that month pursuant to clauses 7.9D(b) or 7.9E(b), and its due date for payment.

Correcting statements

- 7.7 If at any time a statement given under clauses 7.5 or 7.6 is found by Meridian not to accurately reflect the amounts payable under this agreement, Meridian shall issue a correcting statement as soon as practicable.

Unavailability of prices

- 7.8 If, by the 10th Business Day of a month, the Spot Price or the Strike Price for any Half Hour or the LME Price for any day in the preceding month is not available, then:

- (a) Meridian shall calculate the amount payable by the relevant party and give a statement under clauses 7.5 and/or 7.6 (as applicable) on the basis of:

- (i) where a price for electricity is not available, a provisional price for electricity determined under section V of Part G of the EGRs for that Half Hour or, if there is no such provisional price, determined by Meridian acting in good faith; or
- (ii) where a price for aluminium is not available, the most recent LME Price that was available for the most recent preceding day,

(the amount payable by one party to the other being the "**Provisional Amount**"), and the parties shall perform their obligations under this section 7 on the basis of the Provisional Amount; and

- (b) once the Spot Price, the Strike Price, or the LME Price for the relevant Half Hour is available, Meridian shall calculate the actual amount payable by the relevant party for that Half Hour ("**Actual Amount**"), and if the Actual Amount is different from the Provisional Amount Meridian shall advise NZAS of the extent of that difference and the identity of the party required to pay that difference to the other by giving a statement under clause 7.7. The party obliged to make the payment shall then pay that amount within five Business Days of such notification, together with interest at the Non-default Rate, calculated from (and including) the relevant due date for payment to (but excluding) the date of actual payment,

provided that, in each case, if, in relation to any Half Hour, a Disconnected Price Situation (as defined in the EGRs) exists or is continuing in relation to TWI or BEN (as applicable) so that the software used to determine the price for electricity at that node for that Half Hour substitutes an arbitrary (non-cost related) model variable for the Spot Price or the BEN Spot Price (as applicable), the Spot Price or the BEN Spot Price shall instead be the price for electricity determined for the unaffected Grid Exit Point (as defined in the EGRs) nearest to TWI or BEN (as applicable) as reasonably determined by Meridian.

Time of payment of CFD Payment

- 7.9 The CFD Payment shall be payable on the earliest date on which payment for electricity purchased from the Clearing Manager would be due under the EGRs in respect of any

Half Hour to which a statement relates. If that date is prior to the date of the statement, the CFD Payment shall be payable within 10 Business Days of receipt of the statement.

7.9A Clauses 7.9B to 7.9E and clause 25.1 apply:

- (a) from a date agreed between the parties that is as soon as practicable after the Clearing Manager confirms in writing that:
 - (i) it will provide the two invoices referred to in clause 7.9B; and
 - (ii) it agrees to the matters referred to in clause 25.1; and
- (b) until the date on which Meridian terminates its obligations under those clauses, which Meridian may do by notice to NZAS if NZAS breaches clauses 7.9D(a) or 7.9E(a) or fails to pay any undisputed amount demanded by Meridian under clause 25.2 within one Business Day of NZAS' receipt of Meridian's demand,

provided that if the Clearing Manager or the Electricity Authority subsequently determines that the provisions of clauses 7.9B to 7.9E and clause 25 will not meet the prudential requirements applicable to NZAS under the EGRs in respect of Consumption of the first amount of electricity purchased at TWI by NZAS in each Half Hour as a "direct consumer" under the EGRs up to the Contract Quantity for that Half Hour, then the parties shall use best endeavours to agree such substitute arrangements as best approximate those envisaged by this agreement and that do meet the EGRs' requirements. If the parties cannot reach agreement, section 20 (dispute resolution) shall apply.

7.9B NZAS shall procure the Clearing Manager to provide it with two invoices for the electricity NZAS purchases at TWI under the EGRs in any month:

- (a) one invoice to relate to the first amount of electricity purchased at TWI in each Half Hour to which the invoice relates up to the Contract Quantity for that Half Hour, plus any other charges and GST that relates to that electricity; and
- (b) another invoice to relate to the remainder of the amount owing by NZAS to the Clearing Manager in respect of the relevant month.

7.9C NZAS shall, within two Business Days of receipt of a First Payer Invoice from the Clearing Manager, provide a copy of that invoice to Meridian.

7.9D If a statement provided under clause 7.5 shows that Meridian has an obligation to pay the CFD Payment to NZAS (rather than NZAS having an obligation to pay Meridian), then in respect of the First Payer Invoice relating to the same period as that statement:

- (a) NZAS shall pay to Meridian one Business Day prior to the date on which payment under that First Payer Invoice is due the following amount (without deduction, withholding or set-off):

Amount due under that First Payer Invoice (including GST if any) - Amount of the CFD Payment owing by Meridian as specified in that statement.

- (b) provided NZAS has complied with subclause (a), Meridian shall pay to the Clearing Manager, on behalf of NZAS, on the date on which payment under that First Payer Invoice is due, the aggregate of:

- (i) the amount of that CFD Payment owing by Meridian as specified in that statement; plus
 - (ii) the amount of cleared funds received by Meridian from NZAS under subclause (a) in relation to that period; minus
 - (iii) any amounts received by the Clearing Manager from the prudential security provided by Meridian and referred to in clause 25.1; and
- (c) Meridian shall have no obligation to make that CFD Payment to NZAS, provided that, if the prudential security provided by Meridian under clause 25.1 is called on by the Clearing Manager, then Meridian's obligation to make the CFD Payment to NZAS is reinstated but is reduced by the aggregate of:
- (i) the amounts received by the Clearing Manager from the prudential security; less
 - (ii) any unconditional and irrevocable payment Meridian receives from NZAS pursuant to the indemnity under clause 25.2 or from a Surety counterparty in respect of that indemnity obligation.

7.9E If a statement provided under clause 7.5 shows that NZAS has an obligation to pay the CFD Payment to Meridian (rather than Meridian having an obligation to pay NZAS), then in respect of the First Payer Invoice relating to the same period as that statement:

- (a) NZAS shall pay to Meridian one Business Day prior to the date on which payment under that First Payer Invoice is due the amount of that First Payer Invoice including GST if any (without deduction, withholding or set-off) plus the amount showing on the statement provided under clause 7.5;
- (b) provided NZAS has complied with subclause (a), Meridian shall pay to the Clearing Manager, on behalf of NZAS, on the date on which payment under that First Payer Invoice is due, the aggregate of:
 - (i) the amount of cleared funds received by Meridian from NZAS under subclause (a) in relation to that period; minus
 - (ii) the amount showing on the statement provided under clause 7.5 in relation to that period; minus
 - (iii) the amounts received by the Clearing Manager from the prudential security provided by Meridian and referred to in clause 25.1.

Change to EGR Billing Period

7.10 If at any time the EGRs adopt a process of billing for electricity purchased from the Clearing Manager which includes a billing period other than monthly with payment due by the 20th day of the following month, either party may, by notice, require this section 7 to be varied such that it provides for statements for CFD Payments to be issued, and CFD Payments to be payable, within an agreed timeframe before payment for electricity purchased from the Clearing Manager is due under the EGRs in respect of each billing period. If the parties cannot, within 20 Business Days of the notice referred to in this clause being received by the relevant party, agree the dates for issue of the statement or payment, section 20 (dispute resolution) shall apply.

Time of payment of Remaining Payments

- 7.11 The Remaining Payments shall be payable not later than the 20th day of the month in which a statement for Remaining Payments is received or, where that day is not a Business Day then the first Business Day following that day. However, in the event that a statement for Remaining Payments was not received by the relevant party until after the 10th Day of the Month, payment shall be made within 10 Business Days of receipt of such statement.

Method of payment

- 7.12 Payments under this agreement shall be made in freely transferable funds to the account nominated by the party to which payment is owed giving at least five Business Days' notice to the party obliged to make the payment.

Dispute regarding statements

- 7.13 If NZAS at any time disputes the accuracy of any statement given under clauses 7.5, 7.6 or 7.7 or considers that a statement does not fully reflect all amounts payable under clauses 7.1 and 7.2 (in this clause 7.13 and clause 7.14, a "**dispute**"):
 - (a) NZAS shall notify Meridian of the dispute as soon as practicable and section 20 (dispute resolution) shall apply. If the dispute arises before the due date for payment, the party obliged to make the payment shall pay the undisputed amount owing in accordance with clauses 7.9 or 7.11; and
 - (b) if clause 7.14 does not apply, on resolution of the dispute, the party obliged to make the payment shall pay to the other party any outstanding balance of the statement together with interest on that balance at the Non-default Rate, calculated daily and compounding monthly from (and including) the relevant due date for payment to (but excluding) the date of actual payment.

Disputes where invoice already paid

- 7.14 If a party pays any amount notwithstanding that it has raised a dispute in respect of that amount, or if a dispute arises in connection with a statement after payment, then to the extent that the dispute is resolved in favour of that party, the amount which has been overpaid shall be deducted from the next statement given under clauses 7.5, 7.6 or 7.7 after the dispute is resolved (or, if no such statement is being provided in the month following resolution of the dispute, then that amount shall be paid to that party by the 20th day of the following month or, where that day is not a Business Day then the first Business Day following that day).

Default interest

- 7.15 Subject to clause 7.13 if a party defaults in the performance of any payment obligation, it shall pay interest (before as well as after judgment) on the overdue amount to the other party on demand for the period from (and including) the original due date for payment to (but excluding) the date of actual payment at the Default Rate, calculated and compounding daily.

Interest on deferred payments

- 7.16 If a party does not pay any amount that, but for clause 7.3, would have been payable, it will pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) for the period from (and including) the date the amount would, but for clause 7.3, have been payable to (but excluding) the

date the amount actually becomes payable at the Non-default Rate, calculated daily and compounding monthly.

No delivery of electricity

- 7.17 Each party's obligations under sections 5 and 6 will be settled by way of payment, and neither party shall be required or obliged (in any circumstances) to provide delivery of electricity.

Payments to be without prejudice

- 7.18 Payment of any amount under this agreement shall be without prejudice to any other remedy either party may have.

GST treatment

- 7.19 The parties agree that for GST purposes each of them will, subject to clause 7.20, characterise the payments under this agreement on the following basis:
- (a) the following amounts will not be consideration for a Taxable Supply:
 - (i) the amounts payable by either party under section 5;
 - (ii) the Consumption Value Rebate payable by Meridian or repayable by NZAS under section 6;
 - (iii) any Smelter Demand Response rebate or compensation payable by Meridian under section 4; and
 - (iv) any compensation payable by Meridian to NZAS under clause 3.5 for not meeting grid security obligations;
 - (b) the grid security services charges payable by NZAS under section 3 will be consideration for a Taxable Supply.

Consideration does not include GST

- 7.20 Except with respect to any GST component of a First Payer Invoice payable by NZAS under clauses 7.9D(a) or 7.9E(a), the amounts payable under this agreement do not include GST. Notwithstanding clause 7.19, if a supply under this agreement is or becomes a Taxable Supply, the recipient of the supply shall pay, in addition to the amount otherwise payable under this agreement, an amount equal to the GST chargeable on that supply.

GST invoice

- 7.21 In respect of any Taxable Supply made under this agreement, the supplier shall provide the recipient promptly, and in any event five Business Days prior to the date payment is required under clauses 7.9 or 7.11, a Tax Invoice.

Tax gross-up

- 7.22 All payments under this agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable Law then in effect. If:

- (a) a party ("**Party 1**") under this agreement is so required by Law to make any deduction, withholding or payment of Tax from any amount paid or payable by it to another party ("**Party 2**") under this agreement; or
- (b) Party 2 is so required by Law to make any payment of Tax (other than Tax on its overall net income), on or in relation to any amount received or receivable by it from Party 1 under this agreement as a result of Party 1 failing to make any deduction, withholding or payment of Tax from any amount paid or payable by it to Party 2,

then:

- (c) the relevant party will promptly notify the other party of such requirement and will pay the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against that party (and will provide an official receipt evidencing such payment to the other party); and
- (d) the amount paid or payable to, or received or receivable by, Party 2 shall be increased to the extent necessary to ensure that, after making the deduction, withholding or payment for Tax, Party 2 receives and retains (free of any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount that Party 2 would have received and retained had no such deduction, withholding or payment for Tax been made.

7.23 If Party 1 makes a payment under subclause 7.22(d) ("**Tax Payment**") and Party 2 determines in its absolute discretion that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) Party 2 has obtained, utilised and retained that Tax Credit,

Party 2 shall pay an amount to Party 1 which Party 2 (acting reasonably) determines will leave it (after that payment) in the same after-tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by Party 1. Party 2 shall, upon request, provide Party 1 with details of its calculations but nothing in this clause 7.23 obliges Party 2 to provide any confidential information to Party 1.

Tax residence

7.24 Each of Meridian and NZAS represents that it is, and undertakes that it will immediately inform the other party if it ceases to be:

- (a) incorporated in New Zealand; and
- (b) resident in New Zealand for the purposes of the Income Tax Act 2004,

and, if such a change in residency occurs, the parties will meet to agree such amendments to this agreement as are necessary to preserve the parties' relative positions.

Resident withholding tax

7.25 Each of Meridian and NZAS represents that it holds a valid certificate of exemption issued pursuant to section NF 9 of the Income Tax Act 2004, and each of Meridian and NZAS undertakes to maintain a certificate of exemption during the Term provided it is lawfully able to do so.

8. OPERATIONAL ARRANGEMENTS

Appointment of Representatives

- 8.1 Each party shall by notice in writing to the other appoint a representative and an alternative representative who will be responsible for:
- (a) managing the relationship, and facilitating liaison, between the parties with regard to the general operation and administration of this agreement; and
 - (b) meeting at least annually, or more frequently if agreed between the parties, to monitor and review the performance by the parties of their respective obligations under this agreement.
- 8.2 The alternative representative of each party shall act only when the representative is absent or unavailable.
- 8.3 Either party may change the identity of its representative, or alternative representative, by giving notice to the other party.

Policies

- 8.4 The parties may agree operational policies, including, without limitation, policies dealing with reduction line removals and restoration, emergency preparedness and black-start capabilities. Nothing in such policies or their implementation shall override the express provisions of this agreement. No policy is legally binding on the parties unless that policy provides that it is so.
- 8.5 The parties shall endeavour to assist each other with respect to their respective obligations under any operational policies in place, and to ensure that obstacles to compliance with those operational policies are identified at an early stage and effective steps taken to address and resolve them.

Operational relationship team

- 8.6 The parties may establish an operational relationship team to review operational matters, improvements, and suggested operational policies. If an operational relationship team is established, the parties shall agree on the number of members of that team, the roles and responsibilities of those members and the location and timing of meetings.

Real time generation information

- 8.7 Meridian shall establish and maintain systems to provide NZAS, at no cost, with real time information as to:
- (a) aggregated generation from Meridian's Southland Generation; and
 - (b) if Meridian has given notice under subclause 5.4(e)(i), the actual generation from the Manapouri Power Station,

and provide such information to NZAS at no cost for the duration of the Term. Meridian shall ensure that such real time information is at least as accurate and available as that which Meridian predominantly uses for its own purposes. For the purposes of clause 6.6, NZAS shall be entitled to rely on the average of the last full Half Hour of available information received by NZAS' information system (as that term is used in the Electronic Transactions Act 2002) or, if the information is or appears to be manifestly incorrect, on oral advice from Meridian's generation control centre as to the average of the Half

Hourly figures for the immediately preceding Half Hour. NZAS shall be responsible for the transmission of information from Meridian's information system to NZAS' information system (as that term is used in the Electronic Transactions Act 2002).

Real time consumption information

- 8.8 NZAS shall establish and maintain systems to provide Meridian, at no cost, with NZAS' real time Consumption information, and provide such information to Meridian at no cost for the duration of the Term. NZAS shall ensure that such real time information is at least as accurate and available as that which NZAS predominantly uses for its own purposes. Meridian shall be responsible for the transmission of information from NZAS' information system to Meridian's information system (as that term is used in the Electronic Transactions Act 2002).

Metering

- 8.9 NZAS shall have and maintain meters and a system to measure Consumption ("**check meters**"), which it shall check, and compare with the Meter Information, at least once a month. NZAS shall provide to Meridian as soon as practicable after the end of each month the Meter Information and the information from the check meters in respect of each Half Hour of the previous month.
- 8.10 Consumption shall, subject to clauses 8.11 to 8.13, be measured in accordance with the Meter Information, provided that if at any time the existence of load that is not Consumption causes the Meter Information to differ from Consumption:
- (a) NZAS shall procure that such additional load is measured by a metering installation, or metering installations, that complies with the highest level of Metering Standards applicable to any part of the Metering Installation so as to enable the accurate measurement of Consumption; and
 - (b) such metering installation or metering installations shall be considered part of the Metering Installation for the purposes of clauses 8.11 to 8.13.
- 8.11 If, through monitoring of its check meters referred to in clause 8.9, NZAS believes that the Metering Installation may not meet the relevant Metering Standards, it shall seek a test of the Metering Installation.
- 8.12 If Meridian requests NZAS to seek a test of the Metering Installation, NZAS shall promptly use its reasonable endeavours to arrange for that Metering Installation to be tested in accordance with the EGRs. If Meridian has requested the test and, as a result, NZAS incurs any reasonable cost, Meridian shall reimburse NZAS for that reasonable cost.
- 8.13 If the Metering Installation does not meet the standards required by the EGRs then Meridian shall (unless otherwise agreed or determined under section 20 (dispute resolution)) issue a correcting statement under clause 7.7 to correct any statement that is found to be incorrect.
- 8.14 No adjustment to Consumption resulting from inaccuracy in the Metering Installation shall have the effect of causing Consumption to be at or below the Profile for the purposes of section 6.

9. CHANGES IN CIRCUMSTANCES

Change in market or industry structure

- 9.1 If any of the events set out in clauses 9.2 to 9.9 occur, either party may, by notice to the other, require the parties to enter into negotiations to agree amendments to this agreement such that the relevant provision of this agreement reflects the principle or outcome recorded below. Any failure to agree amendments may be resolved as a Dispute under section 20 (dispute resolution).

TWI

- 9.2 If TWI changes its name under the EGRs, the definition of TWI shall be amended to reflect that change.
- 9.3 If the Smelter takes electricity at TWI and at another node or nodes under the EGRs ("**new node**"):
 - (a) the reference in the definition of the Spot Price in clause 5.3 to the final price per MWh for electricity at TWI shall be replaced with a reference to the average of the final price per MWh for electricity at TWI and the new node (weighted by Consumption at the Smelter taken at each node); and
 - (b) the reference in the definition of Consumption, in clause 7.8 (unavailability of prices) and in this section 9 to TWI shall be replaced with a reference to TWI and the new node.
- 9.4 If the Smelter takes electricity at another node or nodes under the EGRs ("**replacement node**") instead of at TWI, all references to TWI shall be replaced with references to the replacement node.

BEN

- 9.5 If there is no Pole 2 injection or offtake connected to BEN, then the definition of BEN shall be amended to refer to the first indexed Benmore 220 kV node under the EGRs.
- 9.6 If:
 - (a) BEN is disconnected from the Grid; or
 - (b) the quantity of electricity transmitted through BEN significantly reduces from 1 October 2007 (or the last time this clause applied) and if there is no longer a high degree of correlation between the Market price at BEN and the Market price at other nodes in the Waitaki Valley region having the same or higher voltage as BEN,

the definition of BEN shall be amended to refer to:

- (c) the closest node under the EGRs to BEN that has a Market price and has the same or higher voltage as BEN at or through which at least the same quantity of electricity is transferred as was transferred through BEN as at 1 October 2007 (or the last time this clause applied);
- (d) if there is no such node in the South Island, the closest nodes under the EGRs to BEN that have Market prices at or through which at least the same quantity of electricity is in aggregate transferred as was transferred through BEN as at 1 October 2007 (or the last time this clause applied). If this subclause (d) applies, the reference in the definition of "3yr aveSpot" in subclause 5.2(a) to

the final price per MWh for electricity at BEN determined under the EGRs shall be replaced with a reference to the average of the final price per MWh for electricity at BEN determined under the EGRs.

Trading periods

9.7 If the trading periods under the EGRs are other than half hours, references to Half Hours in:

- (a) section 3 (grid security services) in relation to dispatch shall be replaced with references to the periodicity of Dispatch Instructions;
- (b) sections 2 (term), 4 (smelter demand response), 5 (contract for difference payment) and 7 (payment) shall be replaced with references to trading periods under the EGRs; and
- (c) sections 6 (consumption value rebate) and 8 (operational arrangements) shall remain unchanged,

and the agreement shall, where necessary, be consequentially amended so that the relationship expressed in the agreement between MW or Mvars or MWh (as the case may be) and Half Hour periods is preserved.

Spot Price and BEN Spot Price

9.8 If the quantity of electricity sold to the Market is less than 60% of the total quantity of electricity injected into the Grid, the Spot Price and the BEN Spot Price shall be replaced with a single method of calculating prices at the two nodes to which those prices relate that reflects:

- (a) the average price paid for wholesale electricity (excluding, for the avoidance of doubt, any transmission connection and interconnection charges); and
- (b) prices paid for spot delivery of electricity on an electricity market or electricity markets in New Zealand through which there is sold at least 60% of the total quantity of electricity injected into the Grid, whether or not such prices are published and whether or not the market has a central clearing point.

Metering

9.9 If the EGRs change such that the quantities of electricity Consumed at TWI are no longer measured by reference to quantities of electricity actually consumed, then clauses 8.9 to 8.14 shall be amended as necessary to ensure that Consumption is and can be measured using the quantities actually consumed at TWI.

Prospective events

9.10 Clause 9.1 shall also apply to a prospective event, provided that any agreement by the parties or determination under section 20 shall be conditional on that prospective event coming into force.

Severability

9.11 If any provision of this agreement is or becomes illegal, void or unenforceable, then, unless this agreement through that or another provision expressly sets out a consequence as a particular result of the occurrence of the relevant event or circumstance, and unless clause 9.12 (frustration) applies, it shall be severed from this

agreement without affecting the enforceability, legality, validity or application of any other provision of this agreement.

Frustration

- 9.12 If this agreement as a whole or substantially the whole of section 3 (grid security services), section 4 (smelter demand response) or sections 5 and 6 (contract for difference payment and consumption value rebate) becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then unless this agreement expressly sets out a particular consequence as a result of the occurrence of the relevant event or circumstance, either party may, by notice to the other, require the parties to enter into negotiations to agree amendments to this agreement to ensure that the relative benefits of and burdens on each party arising out of this agreement are preserved as they were prior to occurrence of the impossibility or frustration. Any failure to agree amendments may be resolved as a Dispute under section 20 (dispute resolution).

10. FORCE MAJEURE

Grid security force majeure events

- 10.1 Meridian shall not be liable for any default or delay in the performance of its obligations under section 3 (grid security services), other than any liability to pay any money due under that section, where that default or delay is related to a Meridian Force Majeure Event (other than defaults or delays related to Meridian's purely commercial decisions or to a lack of inflows into Lakes Manapouri and Te Anau), to the extent that Meridian:
- (a) restores its ability to perform its obligations under section 3 (grid security services) as soon as physically possible using Best Endeavours to do so; and
 - (b) uses its best endeavours to perform its obligations under section 3 (grid security services) despite the Meridian Force Majeure Event.

Meridian to give notice

- 10.2 As soon as is reasonably practicable after:
- (a) the occurrence or likely occurrence of a Meridian Force Majeure Event; or
 - (b) Meridian determines that an event is in the nature of a Meridian Force Majeure Event and is likely to affect the ability of Meridian to observe or perform any of its obligations under section 3 (grid security services),
- Meridian shall notify NZAS of:
- (c) the nature of the Meridian Force Majeure Event upon which it relies;
 - (d) the way in which Meridian has been, or is likely to be, affected, including details of the obligation that cannot be performed;
 - (e) the time by which it expects it could restore its ability to perform if it complied with subclause 10.1(a) above; and
 - (f) the time by which it expects to have restored its ability to perform.

- 10.3 During the period Meridian is unable to perform its obligations under section 3 because of a Meridian Force Majeure Event, Meridian shall keep NZAS informed of any changes in respect of the matters in subclauses 10.2(c) to 10.2(f) above.

NZAS force majeure events

- 10.4 NZAS shall not be liable for any default or delay in the performance of its obligations under section 4 (Smelter Demand Response) where that default or delay is related to an event or circumstance beyond the reasonable control of NZAS (other than defaults or delays related to NZAS' purely commercial decisions), to the extent that NZAS:
- (a) restores its ability to perform its obligations under section 4 (Smelter Demand Response) as soon as physically possible using Best Endeavours to do so; and
 - (b) uses its best endeavours to perform its obligations under section 4 (Smelter Demand Response) despite that event or circumstance.

NZAS to give notice

- 10.5 As soon as is reasonably practicable after:
- (a) the occurrence or likely occurrence of an NZAS Force Majeure Event or an event or circumstance to which clause 10.4 applies; or
 - (b) NZAS determines that an event is in the nature of an NZAS Force Majeure Event or an event or circumstance to which clause 10.4 applies,

NZAS shall notify Meridian of:

- (c) the nature of the event or circumstance upon which it relies;
 - (d) the way in which NZAS has been, or is likely to be, affected; and
 - (e) the time at which it expects the NZAS Force Majeure Period or the effect of the event or circumstance to which clause 10.4 applies to end.
- 10.6 While Consumption is less than the Base Profile for reasons relating to an NZAS Force Majeure Event and while NZAS is not performing its obligations under section 4, NZAS shall keep Meridian informed of any changes in respect of the matters in subclauses 10.5(c) to 10.5(e) above.
- 10.7 If an NZAS Force Majeure Event or a Rare Operational Consumption Reduction occurs, NZAS shall:
- (a) if NZAS expects the ROCR Period or the NZAS Force Majeure Period to be greater than 30 days, as soon as practicable, but not later than 30 days after the start of the ROCR Period or the NZAS Force Majeure Period, provide Meridian with a start-up plan describing how NZAS plans to restore the actual physical capacity of the Smelter to Consume at or above the Profile (but excluding the reduction in the Profile resulting from the applicable event, circumstance or ROCR);
 - (b) during the ROCR Period or the NZAS Force Majeure Period, consult with Meridian as to the progress of implementation of and any amendments made to the start-up plan;

- (c) when preparing the start up plan and when considering any amendments, take into account the benefit to Meridian of early Consumption; and
- (d) if Urgent Restoration Measures apply, and NZAS considers that there are restoration options available that would result in NZAS incurring a cost that is an extreme increment above the Best Endeavours Restoration Costs, provide a detailed explanation of why such cost is an extreme increment above the Best Endeavours Restoration Costs.

Interpretation of NZAS Force Majeure Event

- 10.8 The period of 365 continuous days required to calculate whether an NZAS Major or Minor Force Majeure Event has occurred, and the period of 547 continuous days required to calculate whether an NZAS Terminal Force Majeure Event has occurred, shall be measured from midnight at the beginning of the first day of the period of reduced physical capacity to Consume which is asserted by NZAS as the actual direct consequence of the relevant event or circumstance and ending at the time when Consumption would have been physically possible at the Profile (but excluding the reduction in the Profile resulting from the applicable event or circumstance) if, immediately upon becoming aware of the occurrence of the event or circumstances and at all times thereafter NZAS had used the applicable Restoration Measures to restore Consumption.
- 10.9 For the purposes of clause 10.8 above, the applicable Restoration Measures shall be determined according to the following:
- (a) if the parties have notified each other under subclause 10.11(c)(i) or (ii) that they consider the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, then the applicable Restoration Measures shall be Urgent Restoration Measures;
 - (b) if the parties have notified each other under subclause 10.11(c)(i) or (ii) that they consider the NZAS Force Majeure Event is an NZAS Major Force Majeure Event, then the applicable Restoration Measures shall be Best Endeavours;
 - (c) if the parties have notified each other under subclause 10.11(c)(i) or (ii) that they consider the NZAS Force Majeure Event is an NZAS Terminal Force Majeure Event, then the applicable Restoration Measures shall be Best Endeavours;
 - (d) if one party has notified the other under subclause 10.11(c)(i) or (ii) that it considers the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, and the other party has notified that it considers that the NZAS Force Majeure Event is an NZAS Major Force Majeure Event (and vice versa), then the applicable Restoration Measures shall be the Urgent Restoration Measures;
 - (e) if one party has notified the other under subclause 10.11(c)(i) or (ii) that it considers the NZAS Force Majeure Event is an NZAS Major Force Majeure Event, and the other party has notified that it considers that the NZAS Force Majeure Event is an NZAS Terminal Force Majeure Event (and vice versa), then the applicable Restoration Measures shall be Best Endeavours; or
 - (f) if one party has notified the other under subclause 10.11(c)(i) or (ii) that it considers the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, and the other party has notified that it considers that the NZAS Force Majeure Event is an NZAS Terminal Force Majeure Event (and vice versa),

then the applicable Restoration Measures shall be the Urgent Restoration Measures.

- 10.10 For the purposes of the definition of Urgent Restoration Measures, Meridian shall notify NZAS of its reasonable estimate of the cost which it will incur as a result of reduced Consumption caused by a ROCR or an NZAS Force Majeure Event promptly after receiving a request from NZAS, and shall, if requested by NZAS, provide NZAS with a detailed explanation supporting that cost estimate. Meridian may provide a revised notice of that cost and the benefit to Meridian of early Consumption at any time (accompanied, if requested by NZAS, by a detailed explanation supporting that revised cost estimate), in which case, from the date on which NZAS receives the updated notice, that cost estimate shall become Meridian's estimate of the cost which it will incur as a result of the reduced Consumption, provided that any steps or measures taken under a different Meridian notification before that date shall be taken into account in assessing the Urgent Restoration Measures in light of that revised cost estimate.

Classification of NZAS Force Majeure Events

- 10.11 Every NZAS Force Majeure Event shall be deemed to be:

- (a) an NZAS Minor Force Majeure Event (so that restoration in accordance with Urgent Restoration Measures applies) if the molten aluminium in up to and including 208 reduction cells at the Smelter has solidified; or
- (b) an NZAS Major Force Majeure Event (so that restoration in accordance with Best Endeavours applies) if the molten aluminium in more than 208 reduction cells at the Smelter has solidified,

until:

- (c) if:
 - (i) no later than seven days after NZAS has notified Meridian in accordance with clause 10.5 of the occurrence or likely occurrence of the NZAS Force Majeure Event, NZAS or Meridian has given notice to the other ("**FM classification notice**") that the notifying party considers the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, NZAS Major Force Majeure Event or NZAS Terminal Force Majeure Event, as the case may be. The party receiving the FM classification notice shall respond to that notice within seven days of receipt of that notice stating whether it considers the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, NZAS Major Force Majeure Event or NZAS Terminal Force Majeure Event; and
 - (ii) not later than 21 days after an FM classification notice has been given the parties have agreed in writing that the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, NZAS Major Force Majeure Event or an NZAS Terminal Force Majeure Event, as the case may be; or
- (d) if the parties have not reached agreement under subclause 10.11(c) above and the Expert has determined that the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, an NZAS Major Force Majeure Event or an NZAS Terminal Force Majeure Event, as the case may be,

then, from the date on which the parties agree, or the Expert has so determined, the applicable Restoration Measure shall be that agreed or determined under subclauses 10.11(c) or (d) and any steps or measures taken under a different Restoration Measure

before that date shall be treated as having satisfied the applicable Restoration Measure up until that time.

Strike

- 10.12 Nothing in this section 10 or in subclauses 5.4(c) or 6.6(c) shall be construed to require either party to settle a strike by acceding against its reasonable judgment to the demands of opposing parties.

11. LIABILITY

Maximum liability limit

- 11.1 Subject to clauses 24.11, 24.12(b)(iii), 24.12(b)(vi) and 24.12(c)(iii), the maximum aggregate liability of a party in respect of claims in connection with this agreement in contract, tort (including negligence) or otherwise (each a "**Claim**"), shall be limited to:

- (a) \$20 million for any one event or circumstance or series of related events or circumstances; and
- (b) \$45 million in the aggregate in respect of all events and circumstances occurring in any 12 month period,

provided that the figures in subclauses (a) and (b) above shall be escalated each Year commencing 1 April in accordance with the following formula:

$$\text{Liability limit}_{n} = LL + LL \times \text{Escalator}$$

Where:

- n = the relevant Year commencing 1 April in respect of which the escalation is being calculated;
- LL = the relevant liability limit in subclause (a) or (b) above.

General exclusions from liability

- 11.2 In no event shall a party be liable in connection with a Claim for any indirect loss or damage or for any consequential loss or damage, for any loss of profits or revenues (other than, in the case of NZAS and the NZAS Participants, any loss of profits arising from lost aluminium production or lost aluminium sales and, in the case of Meridian, any loss suffered under other customer contracts that arises from the price of electricity in the Market being a higher price than it otherwise would have been), or for any loss of opportunity, use or anticipated savings and damages, howsoever arising and whether or not any of the foregoing loss or damage ought to have been known or anticipated by the party in breach.

Unlimited liability

- 11.3 Subject to clauses 24.11 and 24.12, the limitation on liability set out in clause 11.1 shall not apply to:
- (a) any Claims with respect to any payment obligation of either party under this agreement;
 - (b) any Claims arising out of NZAS' failure to comply with its obligations under clause 11.7 (NZAS Participants); or

- (c) any Claims arising out of an act or omission to act committed, or allowed to occur, with, at the time, the knowledge or intent that it is in breach of this agreement.

NZAS Participants' benefits

- 11.4 Meridian acknowledges NZAS' advice that its business is to process alumina into aluminium at the Smelter, for and on behalf of the NZAS Participants with the NZAS Participants reimbursing NZAS for its costs and expenses, and that, as such, NZAS does not directly and in its own right own or sell any aluminium.
- 11.5 NZAS may sue Meridian and recover from Meridian any amount that an NZAS Participant is entitled to recover from Meridian. For the avoidance of doubt, such amount can only be recovered once.
- 11.6 The benefit of clauses 3.2, 3.5, 3.7, 4.2, 4.4, 4.5 and 24.12, and this section 11, are intended to extend to the NZAS Participants and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

NZAS Participants

- 11.7 NZAS shall, prior to commencing the processing of alumina at the Smelter for any other NZAS Participant, have that NZAS Participant execute and deliver an undertaking in the form set out in Part B of Schedule D.

Third party claims indemnity

- 11.8 Subject to clause 11.9, Meridian indemnifies NZAS against and shall hold NZAS harmless from any and all liability, costs and expenses (including all reasonable legal expenses on a full indemnity basis) incurred by NZAS in connection with any Claim made by any person who at any time purchases (or would have purchased) electricity from or has an electricity market hedge with Meridian, other than any Claim to which subclause 11.3(c) (unlimited liability) applies.
- 11.9 The indemnity under clause 11.8 is subject to NZAS:
 - (a) notifying Meridian immediately upon becoming aware of any actual or threatened actions, proceedings, claims or demands, or any facts or circumstances likely to give rise to a Claim for which NZAS may be entitled to the indemnity;
 - (b) fully consulting with Meridian on the steps to be taken, if any, in defending a Claim and taking into account its views;
 - (c) using its reasonable endeavours to do all things that Meridian reasonably considers are necessary to enable NZAS to fully defend such Claim, provided that NZAS may also take into account its own reasonable considerations;
 - (d) giving Meridian and its insurers and its representatives (including legal representatives) such information and assistance and co-operation as may reasonably be required (such assistance to be provided at NZAS' expense), having regard to the interests of Meridian, NZAS and Meridian's insurers; or
 - (e) to the extent practicable, consulting with Meridian in a timely manner prior to taking any significant steps in relation to the defence of a Claim and taking into account its views.

- 11.10 NZAS may (subject to clause 11.9) conduct its own defence of any Claim, but must not make any settlement or compromise of a Claim to which the indemnity in clause 11.8 applies without first obtaining Meridian's written consent, such consent not to be unreasonably withheld. Meridian will not be liable under the indemnity in clause 11.8 for any settlements or compromises to which it has not given its written consent.
- 11.11 Meridian shall, upon demand, pay to NZAS all amounts due from it under the indemnity in clause 11.8.

Officers, employees etc

- 11.12 In this section 11, a reference to a party includes a reference to its directors, officers, employees, and any person who works for that party as a contractor or agent. The benefit of this section 11 is intended to extend to the officers, employees, and such contractors and agents of Meridian and NZAS and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

Equitable remedies

- 11.13 Notwithstanding any other provision of this section 11, each party acknowledges that:
- (a) damages may not be an adequate remedy for a breach of this agreement; and
 - (b) in addition to all other remedies available a party is entitled to seek (but not necessarily be granted by a court) injunctive relief and specific performance of the obligations of the party in breach,

provided that nothing in this clause 11.13 limits the right of a party to assert that damages are an adequate remedy in the particular circumstances.

12. TERMINATION

General right to suspend or terminate

- 12.1 Either party may suspend or terminate this agreement by written notice to the other if the other party is in default as specified in clause 12.4, with effect from receipt of that notice.
- 12.2 At any time after a party gives a suspension notice under clause 12.1 and until the date that is six months after the date of the other party's receipt of that notice, that party may, by notice to the other party, lift that suspension from the date (which date shall be specified in the notice) being not earlier than 20 Business Days after the other party has received that notice. If the suspension has not been lifted by the expiry of that six month period, then that other party shall be deemed to have received, at 5pm on that last day of that period, a notice of termination under clause 12.1 and this agreement shall terminate with effect from that time.
- 12.3 Any suspension of the agreement under clause 12.1 shall mean that all of the parties' rights and obligations under this agreement are suspended and are not enforceable, provided that it shall not prevent either party exercising any right to terminate this agreement during the period of suspension and nor shall it prevent either party from exercising its rights under section 20 (dispute resolution) (in which case the parties shall continue to have rights and obligations under that section).

Default

- 12.4 A party shall be in default under this agreement if:

- (a) that party fails to pay any undisputed amount due under this agreement by the due date for payment and fails to remedy that failure within 20 Business Days after receiving written notice (inclusive of the date of receipt) from the other party requiring the failure to be remedied;
- (b) where NZAS is the party, NZAS breaches clauses 7.9D(a) or 7.9E(a) or fails to pay any undisputed amount demanded by Meridian under clause 25.2 within one Business Day of NZAS' receipt of Meridian's demand;
- (c) that party assigns in breach of section 14 (assignment) and, if that breach is of a nature that it is able to be remedied, fails to remedy the breach within 20 Business Days after receiving written notice (inclusive of the date of receipt) from the other party requiring the failure to be remedied;
- (d) that party:
 - (i) has a receiver, receiver and manager, administrator, trustee and manager (or either of them), or similar official appointed in respect of all or any of its property; or
 - (ii) is declared insolvent, is unable to pay its debts as they fall due, or is presumed to be unable to pay its debts as they fall due, in terms of section 287 of the Companies Act 1993 (whether that party is incorporated under that Act or not); or
 - (iii) enters into dealings with, or for the benefit of, any of its creditors with a view to avoiding, or in expectation of, insolvency, or makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors generally, or stops or threatens to stop payments generally; or
 - (iv) any step is taken to appoint, or with a view to appointing a statutory manager (including the making of any recommendation in that regard by the Securities Commission) under the Corporations (Investigation and Management) Act 1989 in respect of that party or that party or any associated person (as that term is defined in that Act) of it is declared at risk pursuant to the provisions of that Act; or
- (e) any resolution is passed or any proceeding is commenced for the winding up or liquidation of that party (whether on a voluntary or involuntary basis); or
- (f) a distress, attachment or other execution for a sum exceeding \$10,000,000 (or its equivalent in other currencies) is enforced upon any asset of that party and is not discharged or stayed within 20 Business Days, or a judgment for a sum exceeding \$10,000,000 (or its equivalent in other currencies) is obtained against that party and is not satisfied, stayed or discharged within 20 Business Days except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings; or
- (g) any event which is analogous to those listed in subclauses (d) to (f) occurs; or
- (h) any security over any asset of the party with a value exceeding \$10,000,000 (or its equivalent in other currencies) is enforced as a result of default by the party due to insolvency or inability to pay, subject to any legitimate dispute by that party that the security has become enforceable; or
- (i) in relation to that party:

- (i) any of its indebtedness in excess in aggregate of \$10,000,000 (or its equivalent in other currencies) is not, subject to any legitimate dispute by that party as to any obligation to pay the indebtedness, paid when due or within any applicable grace period in any document relating to such indebtedness, or becomes (or becomes capable of being rendered) due and payable prior to its stated maturity by reason of an event of default, cancellation event, prepayment event or similar event (whatever called); or
- (ii) any indebtedness or obligation if able to be quantified, in excess in aggregate of \$10,000,000 (or its equivalent in other currencies) of that party arising under any risk management or derivative transaction of any nature is not, subject to any legitimate dispute by that party as to any obligation to pay the indebtedness, paid or performed on its due date or within any applicable grace period in any document relating to such indebtedness or obligation or becomes capable of being rendered) due and payable or to be performed prior to its stated maturity by reason of a performance prior to its stated maturity by reason of a prepayment event or an event of default, cancellation, termination or similar event (whatever called).

NZAS early termination rights

- 12.5 If NZAS is to Decommission the Smelter, it may terminate this agreement by giving, not earlier than 1 January 2015, notice to Meridian of its intention to do so, provided that NZAS has first consulted with Meridian as to NZAS' intentions during the three month period preceding such notice.
- 12.5A If NZAS has not given notice under clause 2.5 (400 MW Date notice), NZAS may terminate this agreement with effect on or after 1 January 2018 by giving notice to Meridian specifying a termination date which must be not less than 12 months after the date on which notice is given under this clause 12.5A. If NZAS gives a notice under this clause 12.5A, it is not entitled to give a notice under clause 2.5 (400 MW Date notice).
- 12.5B If the 400 MW Date has occurred, NZAS may terminate this agreement by giving 12 months' notice to Meridian, such notice to be given not earlier than 1 January 2017.
- 12.5C If, prior to 31 December 2015, there is any change to an existing New Zealand statute, regulation, by-law, ordinance or code ("**law**"), or any new New Zealand law is enacted, promulgated or adopted, that:
- (a) is discriminatory against NZAS or the NZAS Participants; and
 - (b) will or is likely to have, within 12 months after the law is enacted, promulgated or adopted, a substantial adverse financial effect on NZAS or the NZAS Participants that is substantially and disproportionately different from the effect that law will have on other persons generally in New Zealand,

NZAS may terminate this agreement by giving 12 months' notice to Meridian.

Meridian early termination rights

- 12.6 If Meridian is to Decommission the Manapouri Power Station it may terminate this agreement by giving, not earlier than 1 January 2015, 12 months' notice to NZAS of its intention to do so, provided that Meridian has first consulted with NZAS as to Meridian's intentions during the three month period preceding such notice. If Meridian gives a valid notice to NZAS under this clause 12.6, on the date that is four Years after NZAS' receipt of Meridian's early termination notice and during the five years after the date the

Manapouri Power Station is first Decommissioned, the actual generation at Manapouri Power Station must be no more than 7 GWh per month, otherwise Meridian will be in breach of this agreement.

12.7 If:

- (a) 12 months after NZAS' receipt of Meridian's notice under subclause 5.4(e)(ii) (Manapouri Interruption), the Manapouri Interruption is continuing; or
- (b) 36 months after NZAS' receipt of Meridian's notice under subclause 5.4(f)(ii) (Waitaki Interruption), the Waitaki Interruption is continuing,

then, provided Meridian has used its best endeavours, acting as a Best Practice Generation Business, to do everything it could reasonably and safely be expected to do to mitigate the cause of that interruption as soon as possible, Meridian may, by notice to NZAS, terminate the agreement with effect from no earlier than the date of NZAS' receipt of Meridian's notice. In any event, Meridian shall give NZAS a separate advisory notice as soon as it believes that termination under this clause 12.7 is reasonably likely to occur.

Right to terminate following NZAS Terminal Force Majeure Event

12.8 If the parties have agreed in writing that an NZAS Force Majeure Event is an NZAS Terminal Force Majeure Event, or the Expert has so determined under subclause 10.11(d), then either party may give the other party notice that it wishes to terminate this agreement with effect from a specified date, such date to be no earlier than three months from the other party's receipt of that notice. Such termination shall be without prejudice to any previously accrued rights or obligations of either party.

Meridian's right to terminate during Period 2 and Reduced Consumption Period 2

12.8A If an event in clause 12.8B occurs, Meridian may terminate this agreement by giving NZAS 12 months' notice provided such notice is given within one month of that event occurring (or, in the case of an event referred to in subclause 12.8B(d), within one month of Meridian discovering the event). If Meridian gives a termination notice under this clause 12.8A, it may at any time terminate this agreement sooner by giving NZAS a further notice in which case this agreement will terminate seven days after NZAS' receipt of Meridian's further notice. If Meridian does not give a further notice, this agreement will terminate on the expiry of the 12 month notice period.

12.8B Each of the following events is an event to which clause 12.8A applies provided it occurs during Period 2 or Reduced Consumption Period 2:

- (a) NZAS fails to pay any undisputed amount due under subclause 7.1(a) by the due date for payment and fails to remedy that failure within 20 Business Days after receiving written notice (inclusive of the date of receipt) from Meridian requiring the failure to be remedied;
- (b) the Consumption in a Half Hour in Period 2 or Reduced Consumption Period 2, when averaged with the Half Hourly Consumption during the Quarter in which that Half Hour falls, is less than or equal to the average of the Profile during the same Quarter, where "Quarter" means the relevant Half Hour and the prior 4,319 Half Hours;
- (c) NZAS is in breach of clauses 24.1, 24.2, 24.3 or 24.5 (Surety) and fails to remedy that breach within 60 days after receiving written notice from Meridian requiring the breach to be remedied;

- (d) one of the events in subclause 12.4(d) to (i) applies to a counterparty to a Surety provided under clauses 24.1, 24.2, 24.3 or 24.5 (as if reference in subclause 12.4(d) to (i) to a "party" were reference to that counterparty) and NZAS fails to provide a replacement surety that meets the requirements of section 24, as relevant, within 60 days after receiving written notice from Meridian requiring a replacement surety; or
- (e) NZAS is in breach of clause 24.10 (audit certificate) and fails to remedy that breach within 10 Business Days after receiving written notice from Meridian requiring that breach to be remedied.

Effect of expiry or termination

12.9 From the Expiry Date:

- (a) all unpaid amounts owing by one party to the other become immediately due and payable and clause 7.4 shall apply, where "unpaid amounts" owing to any party means the aggregate of the amounts that became payable (or that would have become payable but for clause 7.3 (conditions precedent to payment)) to such party under clauses 7.1 or 7.2 (as applicable) on or prior to the Expiry Date and which remain unpaid as at the Expiry Date, together with any amount of interest accrued in respect of that amount under clause 7.16 (interest on deferred payments);
- (b) all further obligations of each party under this agreement shall cease except as specified in clause 12.10;
- (c) expiry or termination shall be without prejudice to the rights and remedies of either party arising out of or in connection with any breach of this agreement occurring prior to the Expiry Date, or to the rights of either party which have accrued prior to, or which arise out of or in connection with, such expiry or termination.

12.10 The parties agree that sections 7 (payment), 11 (liability), 15 (confidentiality), 16 (announcements), 18 (notices) and 20 (dispute resolution), clauses 4.9 (rebate), 4.10 (cost sharing), 6.4 (repayment of rebate), 12.6 (Meridian early termination rights) and 12.9 (Effect of expiry or termination), this clause 12.10 and clauses 24.11, 24.12 and 25.2 shall survive the termination or expiry of this agreement.

13. AMENDMENT

Amendment

13.1 This agreement shall be amended only by means of a formal variation document executed by both of the parties through their authorised signatory or signatories. Such authorised signatory or authorised signatories shall be:

- (a) a director or directors of the party;
- (b) a person with power of attorney, with a certificate of non-revocation of that power of attorney to be provided to the other party; or
- (c) a person or persons, whose authority shall be evidenced and such evidence provided to the other party,

provided that Schedule A may be amended in the manner set out in Schedule B.

14. ASSIGNMENT

Assignment/asset disposal

- 14.1 Subject to subclause 14.4(a), neither party ("**assigning party**") may, without the prior written consent of the other party ("**consenting party**"), such consent not to be unreasonably withheld:
- (a) assign any of its rights or obligations under this agreement; or
 - (b) sell, in the case of NZAS, the Smelter and, in the case of Meridian, the Manapouri Power Station and the Waitaki Power Scheme ("**Relevant Assets**").
- 14.2 When considering whether to give consent under clause 14.1 in relation to the Smelter and the Manapouri Power Station, a consenting party shall be entitled to take into account only:
- (a) whether the proposed assignee/purchaser has sufficient capability to fulfil the assigning party's obligations under this agreement, which shall include consideration of the proposed assignee's/purchaser's financial capability and technical expertise;
 - (b) whether the proposed assignee/purchaser has a history of not performing its obligations under contracts such that the consenting party is not reasonably satisfied that such assignee/purchaser is likely to fulfil its obligations under this agreement; and
 - (c) where NZAS is the consenting party whether, as a result of the assignment, the proposed assignee/purchaser would be a major competitor of NZAS or any of the NZAS Participants (or their Related Companies) in the aluminium sector, or has introduced, or is proposing to introduce, new electricity load on the New Zealand electricity network (net of any new generation introduced by that assignee/purchaser) in excess of 2,500 GWh per annum.
- 14.3 When considering whether to give consent under clause 14.1 in relation to the Waitaki Power Scheme a consenting party may take into account only:
- (a) if the proposed purchaser is also purchasing the Manapouri Power Station and taking an assignment (or similar transfer) of this agreement, whether the proposed assignee/purchaser has sufficient capability to fulfil the assigning party's obligations under this agreement, which shall include consideration of the proposed assignee/purchaser's financial capability and technical expertise; or
 - (b) if the proposed purchaser is not taking an assignment (or similar transfer) of this agreement nor purchasing the Manapouri Power Station, consideration of any change in the selling party's financial capability.

Permissible assignments/sale

- 14.4 Subject to clauses 14.5 and 14.6, a party may assign all (but not part) of its rights and transfer all (but not part) of its obligations under this agreement or sell any of its Relevant Assets, provided:
- (a) the assignment or sale is to a wholly-owned subsidiary (as that term is defined in the Companies Act 1993); or

- (b) the assignment or sale has been consented to by the other party in accordance with clause 14.1.

14.5 In no event shall a party be entitled to assign this agreement without also transferring its Relevant Assets to the same person, or be entitled to sell those Relevant Assets without also assigning this agreement to the same person, provided that Meridian may, with NZAS' consent in accordance with clause 14.1, sell all or part of the Waitaki Power Scheme without assigning this agreement to the same person.

Valid and binding undertaking required

14.6 No assignment of this agreement shall be effective unless the assigning party delivers to the other party a binding undertaking executed by the assignee (in a form acceptable to that other party, acting reasonably) in favour of the other party that such entity agrees to observe and be bound by this agreement as if it had executed this agreement as the assigning party.

No release

14.7 No assignment or sale pursuant to subclause 14.4(a) shall release a party from any of its obligations under this agreement unless the other party has consented to such release. Any assignment or sale that has been consented to by the other party in accordance with clause 14.1 shall release a party from its obligations under this agreement, provided the assigning party has complied with clause 14.6.

15. CONFIDENTIALITY

Confidentiality

15.1 Each party shall treat:

- (a) the terms of this agreement, any undertaking entered into in accordance with clause 2.1 of the amending agreement (of which this agreement forms schedule 1) or section 11, and any Surety, letter of comfort or similar arrangement in relation to this agreement entered into by an NZAS Participant or a Related Company of NZAS;
- (b) any information relating to the business or operations of the other party or its Related Companies received from the other in connection with the negotiation or implementation of this agreement; and
- (c) all other information made available by or on behalf of or at the request of the other party in connection with this agreement,

("Confidential Information") as strictly private and confidential, and shall not without the prior written consent of the other party use or disclose that information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by that party's own disclosure;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this agreement;
- (g) disclosure is to:

- (i) a Related Company of the disclosing party; or
- (ii) in the case of NZAS, to an NZAS Participant,

and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 15.1 (amended so that the recipient is the disclosing party);

- (h) disclosure is to the disclosing party's shareholder, or to the disclosing party's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant, on a need to know basis and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 15.1 (amended so that the recipient is the disclosing party);
- (i) disclosure is to a proposed assignee of the disclosing party, provided the other party's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the disclosing party, or by a shareholder or parent company of the disclosing party, provided:
 - (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
 - (ii) the other party is consulted on the extent of disclosure and its views are taken into account;
 - (iii) on receipt of a reasonable request from the other party, the disclosing party shall endeavour to obtain, on terms reasonably acceptable to both parties, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information, provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown; and
 - (iv) with respect to an offering of securities in Meridian by the Crown, the parties will request that the Crown apply for, and diligently seek, such exemption in relation to the prices under this agreement with the parties acknowledging that the granting of any such exemption is at the discretion of the Financial Markets Authority. From the date any such exemption is granted, Meridian will abide by that exemption. Each party confirms that it will comply with this clause 15.1 pending the outcome of any exemption application.

Disclosure required by law

15.2 Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request ("**OIA request**"), it shall:

- (a) promptly notify NZAS of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise NZAS of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord NZAS a reasonable period of time in which to consider the required disclosure;

- (c) where prior to disclosure NZAS notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and
 - (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify NZAS of that fact.
- 15.3 NZAS acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under clause 15.2 having regard to those timeframes.
- 15.4 Meridian acknowledges that nothing in this section 15 prevents NZAS from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

16. ANNOUNCEMENTS

No public or media announcements without consultation

- 16.1 Without derogating from section 15, neither party shall (except as may be required by law) make any public announcement, distribute any publicity about, or make any media disclosure regarding this agreement or its subject matter without having first consulted with the other party.

17. NO WAIVER

- 17.1 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.
- 17.2 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.

18. NOTICES

Notices must be in writing and addressed correctly

- 18.1 Any notice or other communication to be given under this agreement must be in writing addressed to the recipient at the address, facsimile number or email from time to time notified by that party in writing to the other party. Until a change is so notified, the address, facsimile number or email of each party is as follows:

- (a) Meridian: Meridian Energy Limited
33 Customhouse Quay
Wellington
Facsimile: (04) 381 1201
Attention: Commercial Manager, Markets and Production
email: NZAS.notices@meridianenergy.co.nz
- (b) NZAS: New Zealand Aluminium Smelters Limited
Tiwai Road,

11 RD
Invercargill 9877

Postal Address:
Private Bag 90110
Invercargill 9840

Attention: Commercial Manager

Facsimile: (03) 218 5479
email: meridian.notices@pacificaluminium.com.au

- 18.2 Notices to Meridian shall also be copied simultaneously to:

Meridian Energy Limited
33 Customhouse Quay
Wellington
Facsimile: (04) 381 1287
Attention: General Counsel
email: generalcounsel@meridianenergy.co.nz

- 18.3 Notices to NZAS shall also be copied simultaneously to:

Pacific Aluminium (New Zealand) Limited
Level 6
109 Featherston Street
Wellington 6011

Postal Address:
GPO Box 1665
Wellington 6140

Attention: Company Secretary
email: meridian.notices@pacificaluminium.com.au

Delivery

- 18.4 Delivery may be effected by hand, by post with postage prepaid, by facsimile or by email. A notice or other communication will be deemed to have been received:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post, on the second Business Day after posting;
- (c) in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) in the case of delivery by email, on the sender's receipt of confirmation (by return email) from the recipient.

- 18.5 However, if a notice or other communication is received or deemed to have been received after 5 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

19. ENTIRE AGREEMENT

- 19.1 This agreement is the entire agreement between the parties from the Commencement Date on the subject matter of this agreement; it replaces all earlier agreements, whether oral or written, between the parties relating to the subject matter of this agreement.

20. DISPUTE RESOLUTION

Amicable resolution

- 20.1 Without limiting their rights to require an arbitration under this section 20, the parties:
- (a) acknowledge their desire that all questions, disputes or differences arising out of this agreement ("**Dispute**") be resolved amicably by bona fide discussion between the parties; and
 - (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.
- 20.2 Either party may initiate the dispute resolution procedures in subclause 20.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the Dispute.
- 20.3 Subject to clause 20.4, if:
- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 20.2; or
 - (b) the party receiving notice under clause 20.2 does not name a representative within three Business Days of receipt of the initiating party's notice,
- then either party may refer the Dispute to arbitration in accordance with clause 20.5.

Matters not subject to arbitration

- 20.4 The following matters shall not be referred to arbitration under this section 20:
- (a) a Dispute in respect of which this agreement expressly provides for resolution by expert or other determination; and
 - (b) any failure to agree:
 - (i) other substations or transmission line assets to be included in the definition of Southland Network;
 - (ii) their respective intentions with respect to the subject matter of this agreement after the Expiry Date under clause 2.2;
 - (iii) an early restoration of Consumption under clause 4.11;

- (iv) the frequency of meetings under subclause 8.1(b);
- (v) an operational policy under clause 8.4;
- (vi) establishment of an operational relationship team under clause 8.6;
- (vii) the period for resolving disputes under clause 20.3,

and neither party shall be entitled to apply to any court, tribunal or other like body for relief in relation to such failure to agree.

Arbitration

- 20.5 Where clause 20.3 applies, either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.
- 20.6 The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 20.5, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).
- 20.7 The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.
- 20.8 Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

Continuation of performance

- 20.9 While following the procedures in this section 20 to resolve the Dispute, neither party is relieved from its obligations under this agreement, except:
- (a) as provided in section 7 (payment); and
 - (b) that any suspension or termination under section 12 (termination) is effective unless and until the parties agree or the arbitrator determines otherwise. For the avoidance of doubt this clause 20.9 shall not prevent a party from claiming any remedy for recovery of damage or loss suffered as a result of any wrongful suspension or termination.

Interlocutory steps

- 20.10 Nothing in section 11 (liability) or in this section 20 shall limit the right of a party to enforce the terms of this agreement by seeking relief by way of injunction and/or summary judgment.

21. GOVERNING LAW

- 21.1 This agreement shall be governed by and construed in accordance with New Zealand law and the parties accordingly submit to the non-exclusive jurisdiction of the New Zealand courts.

22. CONTRACTS (PRIVITY) ACT

No third party rights

- 22.1 Except where expressly provided for in this agreement, this agreement shall not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this agreement.

23. COUNTERPARTS

- 23.1 This agreement may be executed in two counterparts. Once both parties have executed a counterpart, and both have received an original copy of the other signed counterpart (allowing each party to have an original execution copy of this agreement), each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by both parties.

24. SURETY

Period 1 Surety

- 24.1 Upon commencement of Period 1, NZAS shall procure and provide to Meridian Sureties that meet the definition of the "Period 1 Surety", together with a legal opinion or legal opinions satisfactory to Meridian (acting reasonably) confirming the due execution and enforceability of each such Surety. The Period 1 Sureties shall remain in force until released by Meridian in accordance with clause 24.8.

Period 2 Surety

- 24.2 At least one month prior to the end of Period 1, NZAS shall procure and provide to Meridian Sureties that meet the definition of "Period 2 Surety", together with a legal opinion or legal opinions satisfactory to Meridian (acting reasonably) confirming the due execution and enforceability of each such Surety. The Period 2 Sureties shall remain in force until released by Meridian in accordance with clause 24.8. NZAS may satisfy its obligations under this clause by procuring that the Period 1 Sureties remain in place during Period 2 and Reduced Consumption Period 2 and until released by Meridian in accordance with clause 24.8.

Replacement Sureties

- 24.3 NZAS shall, as a continuing obligation, ensure that:
- (a) the Sureties provided under clause 24.1 continue to meet the definition of "Period 1 Surety" until released by Meridian in accordance with clause 24.8; and
 - (b) the Sureties provided under clause 24.2 continue during Period 2 and Reduced Consumption Period 2 to meet the definition of "Period 2 Surety".
- 24.4 NZAS may from time to time offer to Meridian a replacement Surety, provided that:
- (a) any replacement Surety continues to meet the relevant definition of Period 1 Surety or Period 2 Surety, as the case may be; and
 - (b) NZAS provides with that replacement Surety a legal opinion or legal opinions satisfactory to Meridian (acting reasonably) confirming the due execution and enforceability of that Surety.

- 24.5 If at any time a Surety provided under clauses 24.1 or 24.2 no longer meets the definition of "Period 1 Surety" or "Period 2 Surety" (as relevant), NZAS shall immediately procure and provide to Meridian a replacement surety that meets the relevant definition of "Period 1 Surety" or "Period 2 Surety", together with a legal opinion or legal opinions satisfactory to Meridian (acting reasonably) confirming the due execution and enforceability of that Surety.
- 24.6 Within 10 Business Days of Meridian's receipt of a Surety under clauses 24.1, 24.2, 24.4 or 24.5, Meridian shall:
- (a) notify NZAS that such Surety, in Meridian's opinion, meets the requirements of the relevant clause and is therefore accepted as a replacement Surety; or
 - (b) notify NZAS that such Surety does not, in Meridian's opinion, meet the requirements of the relevant clause, and specify the reasons for such opinion.
- 24.7 If NZAS does not agree with Meridian's notice under clause 24.6, section 20 (dispute resolution) shall apply. A dispute in relation to a Meridian notice under clause 24.6 shall be referred to an Expert in accordance with Schedule G and not to arbitration.

Release of Sureties

- 24.8 If Meridian accepts under subclause 24.6(a) a Surety provided under clauses 24.2, 24.4 or 24.5 as a replacement for an earlier Surety ("**Replaced Surety**"), it shall (subject to clause 24.9) sign and deliver a full release of that Replaced Surety once it is reasonably satisfied that:
- (a) Meridian has received all amounts owing under that Replaced Surety; and
 - (b) no payment received, or to be received, by Meridian under that Replaced Surety may be avoided, or required to be repaid by Meridian, whether under any law relating to insolvency or otherwise.

A dispute as to whether Meridian is required to be reasonably satisfied under this clause may be resolved as a Dispute under section 20 (dispute resolution).

Reinstatement

- 24.9 If any payment received or recovered by Meridian, or any other person on behalf of Meridian, under that Replaced Surety is or may be avoided, whether by law or otherwise, then:
- (a) such payment shall be deemed not to have affected or discharged the liability of the counterparty under that Replaced Surety or any other security given by that counterparty in favour of Meridian, and Meridian and the counterparty shall be restored to the position in which each would have been if such payment had not been received or recovered; and
 - (b) Meridian shall be entitled to exercise all its rights under that Replaced Surety which it would have been entitled to exercise if such payment had not been received or recovered,

notwithstanding that Meridian may have signed a release pursuant to this agreement.

Audit certificates

- 24.10 Where a Surety is accepted by Meridian under subclause 24.6(a) from a guarantor that is required by paragraph (d) of the definition of "Period 1 Surety" or "Period 2 Surety" to

meet the financial criteria set out or referred to in that paragraph, NZAS shall procure that such guarantor provides to Meridian no later than the Reporting Date for each of its Measurement Dates a certificate from its auditors that all the financial criteria in the definition of "Period 1 Surety" or "Period 2 Surety" (as applicable) have been met or exceeded as at that balance date.

Limitation of liability

24.11 Subject to subclauses 24.12(b)(iii), 24.12(b)(vi) and 24.12(c)(iii), NZAS' liability under this agreement to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate, each following notice by Meridian under clause 12.4(a) and capped at the amount specified in that notice, that arises during the Reduced Guarantee Period is limited to an aggregate amount of:

- (a) the lesser of:
 - (i) \$100 million; and
 - (ii) \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from the Period 1 Surety counterparties under the Period 1 Sureties for any Guaranteed Amount that arises during the Full Guarantee Period; less
- (b) the aggregate amount unconditionally and irrevocably received under the Period 1 Sureties or Period 2 Sureties during the Reduced Guarantee Period that relates to NZAS' obligations to pay the Strike Price for the Contract Quantity or to repay the Consumption Value Rebate.

24.12 Meridian agrees that the liability:

- (a) of the Period 1 Surety counterparties under the Period 1 Sureties for any Guaranteed Amount that arises during the Full Guarantee Period is limited in aggregate to an amount of \$230 million; and
- (b) of:
 - (i) the Period 1 Surety counterparties under the Period 1 Sureties for NZAS' obligations to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate;
 - (ii) the Period 2 Surety counterparties under the Period 2 Sureties for NZAS' obligations to pay the Strike Price for the Contract Quantity;
 - (iii) NZAS under this agreement following notice by Meridian under clause 12.4(a) requiring NZAS to pay the Strike Price for the Contract Quantity, or to repay the Consumption Value Rebate, within 20 Business Days and capped at the amount specified in that notice; and
 - (iv) the NZAS Participants under the Existing NZAS Participants' Guarantees relating to NZAS' obligation to repay the Consumption Value Rebate,

that arises during the Reduced Guarantee Period and/or of:

- (v) the Period 1 Surety counterparties under the Period 1 Sureties for NZAS' obligation to indemnify Meridian under clause 25.2; and

- (vi) NZAS under this agreement following notice by Meridian under clause 12.4(a) requiring NZAS to pay an amount under clause 25.2 within 20 Business Days and capped at the amount specified in that notice,

that arises during the 12 months prior to the end of Period 1 is limited in aggregate to an amount of the lesser of:

- (vii) \$100 million; and
- (viii) \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from the Period 1 Surety counterparties under the Period 1 Sureties for any Guaranteed Amount that arises during the Full Guarantee Period; and

(c) of:

- (i) the Period 1 Surety counterparties under the Period 1 Sureties for NZAS' obligation to indemnify Meridian under clause 25.2;
- (ii) the Period 2 Surety counterparties under the Period 2 Sureties for NZAS' obligation to indemnify Meridian under clause 25.2; and
- (iii) NZAS under this agreement following notice by Meridian under clause 12.4(a) requiring NZAS to pay an amount under clause 25.2 within 20 Business Days and capped at the amount specified in that notice,

that arises during:

- (iv) Period 2 is limited to an aggregate amount of \$39 million; or
- (v) Reduced Consumption Period 2 is limited to an aggregate amount of \$24 million less the aggregate of amounts received by Meridian in relation to NZAS' obligation to indemnify Meridian under clause 25.2 arising during Period 2 as referred to in clauses 24.12(c)(i) to (iii),

(provided that if the EGRs provide for weekly settlement of payment obligations under the EGRs, those amounts will reduce proportionately).

24.13 Meridian agrees that the liability of:

- (a) the Period 1 Surety counterparties under the Period 1 Sureties; and
- (b) the Period 2 Surety counterparties under the Period 2 Sureties,

that arises (whether during Period 1, Period 2 or Reduced Consumption Period 2) in respect of NZAS' obligation to pay the Strike Price for the Contract Quantity is limited to and can never be more than the amount of the total net payment that would be required to be paid by NZAS after the application of clause 7.4.

25. PRUDENTIAL SURETY UNDER THE EGRS

Meridian to provide prudential security

25.1 From the date agreed under clause 7.9A, Meridian will satisfy NZAS' prudential security obligations under the EGRs for:

- (a) the first quantity of electricity that NZAS purchases in a Half Hour as a "direct consumer" under the EGRs up to the Contract Quantity for that Half Hour;
- (b) ancillary services charges under the EGRs that relate to the electricity referred to in subclause (a) (as the term "ancillary services" is defined in the EGRs);
- (c) any other amounts payable under the EGRs that relate to the electricity referred to in subclause (a) (but excluding amounts relating to "FTRs", "hedge settlement agreements" and "under-frequency events" as those terms are defined in the EGRs; and
- (d) GST and any other taxes on the amounts referred to in subclauses (a), (b) and (c),

("Secured Obligations"), for so long as the Clearing Manager agrees to a form of prudential security that requires the Clearing Manager to, following a failure by NZAS to pay an amount owing under the Code for the Secured Obligation, to satisfy Meridian's obligations under that prudential security by first deducting that amount from amounts owing by the Clearing Manager to Meridian.

Indemnity

25.2 NZAS indemnifies Meridian against and shall hold Meridian harmless from any and all liability, losses, costs and expenses (including all reasonable legal expenses on a full indemnity basis) incurred directly by Meridian as a result of:

- (a) the prudential security referred to in clause 25.1 being called upon as a result of an event of default (as that term is defined in the EGRs) of or in relation to NZAS; or
- (b) Meridian prepaying amounts to the Clearing Manager to avoid the prudential security referred to in clause 25.1 being called upon or to avoid an event of default occurring by or in relation to NZAS.

SIGNATURES

MERIDIAN ENERGY LIMITED by:

Signature of authorised person

Name of authorised person

**NEW ZEALAND ALUMINIUM
SMELTERS LIMITED** by:

Signature of director

Name of director

Signature of director

Name of director

SCHEDULE A
Dry Year Trigger Level, Minimum Zone and Relevant Hydro Storage
 (clause 1.1)

"Core Assumptions" means the assumptions on which the Minimum Zone will be based relating to:

- (a) either a 60 year return period drought (of any duration) or the worst recorded hydro inflow sequences in each case for, where the Minimum Zone is based on New Zealand hydro storage, the Manapouri, Clutha, Waitaki and Waikato hydro schemes or, where the Minimum Zone is based on South Island hydro storage, the Manapouri, Clutha and Waitaki hydro schemes, where the "worst recorded hydro inflow sequences" means the sequence for a single year that is the worst sequence in aggregate for all of the relevant hydro schemes;
- (b) electricity demand;
- (c) thermal fuel reserves and thermal plant availability;
- (d) contribution from non-hydro generation, hydro schemes not included under paragraph (a) above, and embedded generation not included under paragraph (b) above; and
- (e) transmission system capacity and system operating policies,

and the phrase **"based on the Core Assumptions"** means the reduction in the Relevant Hydro Storage that would occur over a year applying paragraphs (a) to (e) above.

"Dry Year Trigger Level", in relation to a day, means a level in Potential GWh that is:

- (a) the level for that day set out in Annex One to this Schedule A; or
- (b) if a Proposed Minimum Zone becomes the Minimum Zone in accordance with Schedule B, the Minimum Zone for that day plus the Margin for that day.

"Included Hydro Schemes" means the Manapouri, Clutha, Waitaki and Waikato hydro schemes or, if a Proposed Minimum Zone has become the Minimum Zone in accordance with Schedule B, the hydro power stations and hydro storage reservoirs used in calculating the Minimum Zone in relation to the relevant day.

"Margin", in relation to a day, means the second largest reduction in the Relevant Hydro Storage that would occur over a four week period starting at that day:

- (a) assuming historical hydro inflow sequences into the Included Hydro Schemes (as recorded in the Model and expressed in Potential GWh) over the four weeks starting on that day; and
- (b) applying paragraphs (b) to (e) of the Core Assumptions as used in the Minimum Zone for that four week period, in the way specified in the Model,

and calculated using the Model. If no reduction would occur, the Margin is deemed to be zero.

"Minimum Zone", in relation to a day, means the minimum zone for that day set out in Annex One to this Schedule A or, if a Proposed Minimum Zone becomes the Minimum Zone in accordance with Schedule B, that Minimum Zone for that day.

"Model" means the model recorded in the excel spreadsheet attached as Annex Two to this Schedule A or such other model as agreed between the parties from time to time.

"Potential GWh" means the potential GWh as taken from the COMIT Hydro system operated by The Marketplace Company Limited or, if COMIT Hydro is no longer available (by subscription or otherwise), the level or levels as measured and converted into potential GWh in a manner and using data substantially the same as the manner and data used by the COMIT Hydro system.

"Relevant Hydro Storage", in relation to a day, means the water in storage in the Included Hydro Schemes expressed in Potential GWh.

ANNEX ONE TO SCHEDULE A
Dry Year Trigger Level and Minimum Zone

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
1-Jan	291		291	
2-Jan	305		305	
3-Jan	319		319	
4-Jan	333		333	
5-Jan	347		347	
6-Jan	361		361	
7-Jan	375		375	
8-Jan	389		389	
9-Jan	403		403	
10-Jan	417		417	
11-Jan	432		432	
12-Jan	446		446	
13-Jan	460		460	
14-Jan	474		474	
15-Jan	489		488	
16-Jan	504		502	
17-Jan	519		516	
18-Jan	534		530	
19-Jan	549		544	
20-Jan	565		558	
21-Jan	581		572	
22-Jan	602		586	
23-Jan	615		600	
24-Jan	629		614	
25-Jan	643		628	
26-Jan	657		642	
27-Jan	673		656	
28-Jan	690		670	
29-Jan	707		684	
30-Jan	727		698	
31-Jan	736		713	
1-Feb	745		727	
2-Feb	769		742	
3-Feb	804		757	
4-Feb	840		772	
5-Feb	868		788	
6-Feb	877		803	
7-Feb	887		818	
8-Feb	896		833	
9-Feb	914		849	
10-Feb	924		864	
11-Feb	934		879	
12-Feb	945		895	
13-Feb	955		910	
14-Feb	968		925	
15-Feb	997		940	
16-Feb	1,026		956	
17-Feb	1,055		971	
18-Feb	1,080		986	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
19-Feb	1,109		1,001	
20-Feb	1,134		1,017	
21-Feb	1,160		1,032	
22-Feb	1,185		1,047	
23-Feb	1,192		1,062	
24-Feb	1,196		1,078	
25-Feb	1,205		1,093	
26-Feb	1,224		1,108	
27-Feb	1,231		1,123	
28-Feb	1,241		1,139	
29-Feb	1,260		1,155	
1-Mar	1,279		1,172	
2-Mar	1,288		1,173	
3-Mar	1,303		1,173	
4-Mar	1,318		1,174	
5-Mar	1,334		1,174	
6-Mar	1,332		1,175	
7-Mar	1,332		1,175	
8-Mar	1,329		1,176	
9-Mar	1,334		1,177	
10-Mar	1,348		1,177	
11-Mar	1,363		1,178	
12-Mar	1,377		1,178	
13-Mar	1,379		1,179	
14-Mar	1,402		1,180	
15-Mar	1,424		1,180	
16-Mar	1,446		1,181	
17-Mar	1,462		1,181	
18-Mar	1,471		1,182	
19-Mar	1,480		1,182	
20-Mar	1,481		1,183	
21-Mar	1,487		1,184	
22-Mar	1,492		1,184	
23-Mar	1,493		1,185	
24-Mar	1,496		1,185	
25-Mar	1,480		1,186	
26-Mar	1,476		1,187	
27-Mar	1,466		1,187	
28-Mar	1,455		1,188	
29-Mar	1,462		1,188	
30-Mar	1,468		1,189	
31-Mar	1,474		1,189	
1-Apr	1,477		1,190	
2-Apr	1,486		1,196	
3-Apr	1,500		1,202	
4-Apr	1,511		1,208	
5-Apr	1,522		1,214	
6-Apr	1,533		1,220	
7-Apr	1,543		1,226	
8-Apr	1,550		1,232	
9-Apr	1,557		1,237	
10-Apr	1,551		1,243	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
11-Apr	1,554		1,249	
12-Apr	1,560		1,255	
13-Apr	1,563		1,261	
14-Apr	1,567		1,267	
15-Apr	1,574		1,273	
16-Apr	1,591		1,279	
17-Apr	1,591		1,285	
18-Apr	1,586		1,291	
19-Apr	1,582		1,297	
20-Apr	1,587		1,303	
21-Apr	1,588		1,309	
22-Apr	1,590		1,315	
23-Apr	1,591		1,321	
24-Apr	1,585		1,326	
25-Apr	1,580		1,332	
26-Apr	1,586		1,338	
27-Apr	1,592		1,344	
28-Apr	1,599		1,350	
29-Apr	1,643		1,356	
30-Apr	1,634		1,362	
1-May	1,626		1,370	
2-May	1,627		1,368	
3-May	1,632		1,367	
4-May	1,638		1,365	
5-May	1,644		1,363	
6-May	1,648		1,361	
7-May	1,652		1,359	
8-May	1,643		1,357	
9-May	1,634		1,355	
10-May	1,652		1,353	
11-May	1,669		1,352	
12-May	1,686		1,350	
13-May	1,697		1,348	
14-May	1,694		1,346	
15-May	1,687		1,344	
16-May	1,689		1,342	
17-May	1,696		1,340	
18-May	1,704		1,339	
19-May	1,711		1,337	
20-May	1,718		1,335	
21-May	1,720		1,333	
22-May	1,713		1,331	
23-May	1,701		1,329	
24-May	1,689		1,327	
25-May	1,678		1,325	
26-May	1,686		1,324	
27-May	1,685		1,322	
28-May	1,679		1,320	
29-May	1,677		1,318	
30-May	1,676		1,316	
31-May	1,676		1,314	
1-Jun	1,673		1,312	

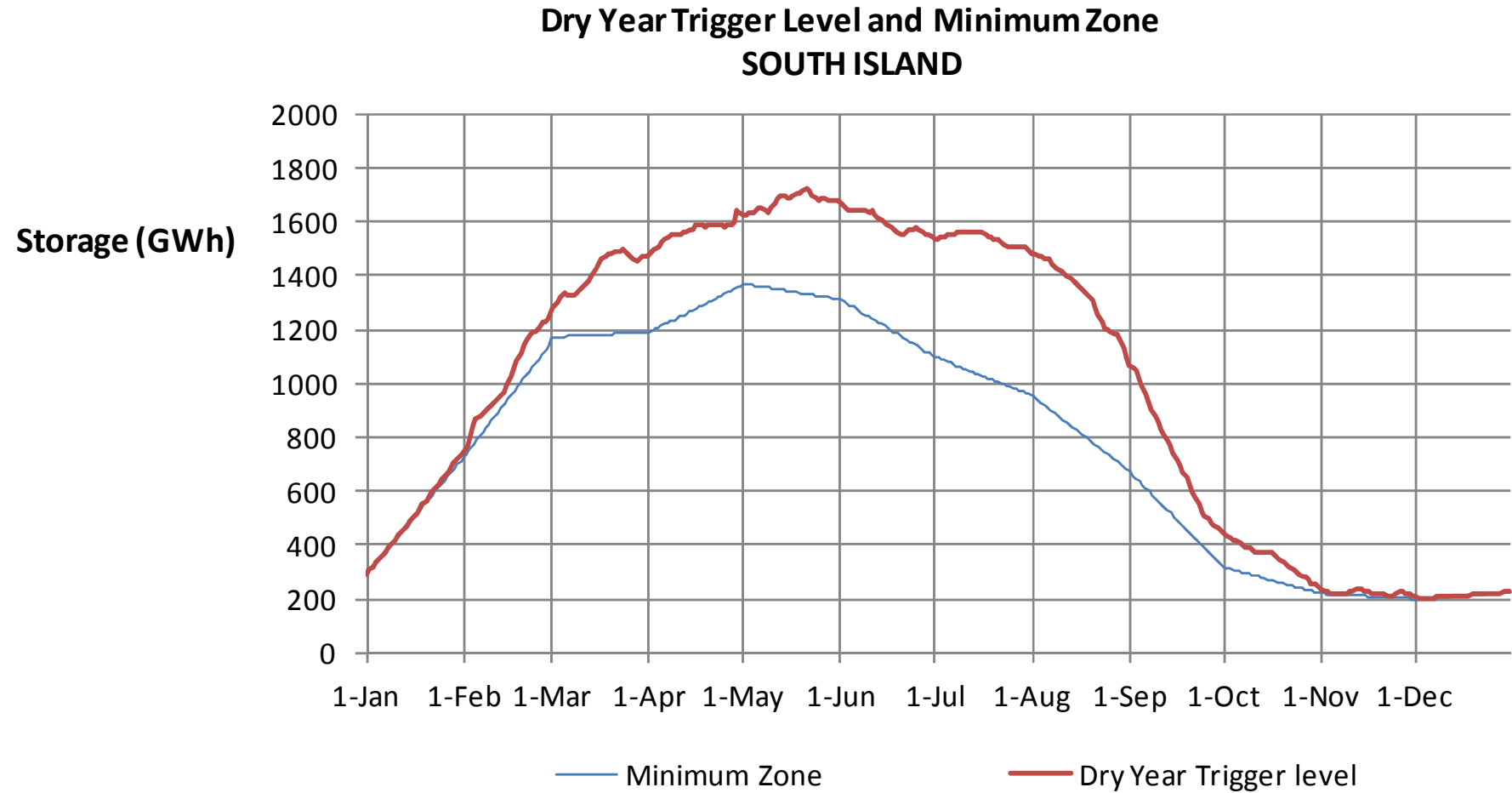
Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
2-Jun	1,661		1,305	
3-Jun	1,647		1,298	
4-Jun	1,642		1,291	
5-Jun	1,645		1,284	
6-Jun	1,647		1,277	
7-Jun	1,645		1,270	
8-Jun	1,643		1,263	
9-Jun	1,642		1,255	
10-Jun	1,638		1,248	
11-Jun	1,639		1,241	
12-Jun	1,624		1,234	
13-Jun	1,615		1,227	
14-Jun	1,605		1,220	
15-Jun	1,596		1,213	
16-Jun	1,587		1,206	
17-Jun	1,577		1,198	
18-Jun	1,568		1,191	
19-Jun	1,558		1,184	
20-Jun	1,551		1,177	
21-Jun	1,557		1,170	
22-Jun	1,562		1,163	
23-Jun	1,567		1,156	
24-Jun	1,572		1,149	
25-Jun	1,578		1,141	
26-Jun	1,571		1,134	
27-Jun	1,564		1,127	
28-Jun	1,557		1,120	
29-Jun	1,550		1,113	
30-Jun	1,543		1,106	
1-Jul	1,533		1,099	
2-Jul	1,538		1,094	
3-Jul	1,541		1,089	
4-Jul	1,545		1,085	
5-Jul	1,549		1,080	
6-Jul	1,553		1,076	
7-Jul	1,557		1,071	
8-Jul	1,561		1,066	
9-Jul	1,565		1,062	
10-Jul	1,563		1,057	
11-Jul	1,563		1,052	
12-Jul	1,563		1,048	
13-Jul	1,562		1,043	
14-Jul	1,562		1,038	
15-Jul	1,562		1,034	
16-Jul	1,561		1,029	
17-Jul	1,553		1,024	
18-Jul	1,545		1,020	
19-Jul	1,541		1,015	
20-Jul	1,538		1,011	
21-Jul	1,535		1,006	
22-Jul	1,528		1,001	
23-Jul	1,521		997	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
24-Jul	1,507		992	
25-Jul	1,507		987	
26-Jul	1,506		983	
27-Jul	1,507		978	
28-Jul	1,508		973	
29-Jul	1,506		969	
30-Jul	1,504		964	
31-Jul	1,486		959	
1-Aug	1,485		955	
2-Aug	1,480		946	
3-Aug	1,475		936	
4-Aug	1,470		927	
5-Aug	1,465		918	
6-Aug	1,459		909	
7-Aug	1,449		900	
8-Aug	1,440		891	
9-Aug	1,431		881	
10-Aug	1,422		872	
11-Aug	1,412		863	
12-Aug	1,403		854	
13-Aug	1,394		845	
14-Aug	1,382		835	
15-Aug	1,371		826	
16-Aug	1,359		817	
17-Aug	1,348		808	
18-Aug	1,336		799	
19-Aug	1,325		789	
20-Aug	1,313		780	
21-Aug	1,284		771	
22-Aug	1,255		762	
23-Aug	1,226		753	
24-Aug	1,205		744	
25-Aug	1,199		734	
26-Aug	1,193		725	
27-Aug	1,186		716	
28-Aug	1,180		707	
29-Aug	1,164		698	
30-Aug	1,130		688	
31-Aug	1,097		679	
1-Sep	1,068		670	
2-Sep	1,058		658	
3-Sep	1,048		647	
4-Sep	1,019		635	
5-Sep	990		623	
6-Sep	961		611	
7-Sep	932		599	
8-Sep	902		588	
9-Sep	876		576	
10-Sep	860		564	
11-Sep	836		552	
12-Sep	813		541	
13-Sep	789		529	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
14-Sep	766		517	
15-Sep	742		505	
16-Sep	718		494	
17-Sep	695		482	
18-Sep	671		470	
19-Sep	648		458	
20-Sep	624		447	
21-Sep	601		435	
22-Sep	577		423	
23-Sep	554		411	
24-Sep	530		399	
25-Sep	511		388	
26-Sep	495		376	
27-Sep	484		364	
28-Sep	474		352	
29-Sep	464		341	
30-Sep	453		329	
1-Oct	443		317	
2-Oct	436		314	
3-Oct	429		311	
4-Oct	421		308	
5-Oct	414		305	
6-Oct	407		301	
7-Oct	400		298	
8-Oct	393		295	
9-Oct	387		292	
10-Oct	382		289	
11-Oct	377		286	
12-Oct	372		283	
13-Oct	368		279	
14-Oct	371		276	
15-Oct	376		273	
16-Oct	371		270	
17-Oct	366		267	
18-Oct	357		264	
19-Oct	347		261	
20-Oct	338		258	
21-Oct	328		254	
22-Oct	319		251	
23-Oct	310		248	
24-Oct	301		245	
25-Oct	293		242	
26-Oct	284		239	
27-Oct	282		236	
28-Oct	270		232	
29-Oct	259		229	
30-Oct	251		226	
31-Oct	244		223	
1-Nov	236		220	
2-Nov	232		219	
3-Nov	227		219	
4-Nov	222		218	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
5-Nov	217		217	
6-Nov	217		217	
7-Nov	216		216	
8-Nov	215		215	
9-Nov	221		215	
10-Nov	226		214	
11-Nov	232		213	
12-Nov	238		213	
13-Nov	235		212	
14-Nov	233		211	
15-Nov	230		211	
16-Nov	227		210	
17-Nov	223		209	
18-Nov	219		209	
19-Nov	215		208	
20-Nov	217		207	
21-Nov	216		207	
22-Nov	214		206	
23-Nov	211		205	
24-Nov	209		205	
25-Nov	220		204	
26-Nov	229		203	
27-Nov	225		203	
28-Nov	220		202	
29-Nov	216		201	
30-Nov	212		201	
1-Dec	207		200	
2-Dec	205		201	
3-Dec	202		202	
4-Dec	203		203	
5-Dec	203		203	
6-Dec	204		204	
7-Dec	205		205	
8-Dec	206		206	
9-Dec	207		207	
10-Dec	208		208	
11-Dec	209		209	
12-Dec	209		209	
13-Dec	210		210	
14-Dec	211		211	
15-Dec	212		212	
16-Dec	213		213	
17-Dec	214		214	
18-Dec	215		215	
19-Dec	215		215	
20-Dec	216		216	
21-Dec	217		217	
22-Dec	218		218	
23-Dec	219		219	
24-Dec	220		220	
25-Dec	221		221	
26-Dec	221		221	

Assessment date	Dry Year Trigger Level		Minimum Zone	
	South Island	New Zealand	South Island	New Zealand
27-Dec	222		222	
28-Dec	223		223	
29-Dec	224		224	
30-Dec	225		225	
31-Dec	226		226	



ANNEX TWO TO SCHEDULE A
Model

SCHEDULE B
Expert determination of Minimum Zone Dispute and Model Dispute
 (clause 1.1 and section 4)

Proposed minimum zone and proposed model amendment

1. At any time on or before 1 January 2026, either party may, by way of notice to the other party, nominate:
 - (a) a proposed Minimum Zone ("**Proposed Minimum Zone**") and a proposed Margin ("**Proposed Margin**"); and/or
 - (b) an amendment to the Model ("**Proposed Model Amendment**").
2. Any notice under paragraph 1 that nominates a Proposed Minimum Zone and a Proposed Margin must include:
 - (a) the Proposed Minimum Zone, which shall be specified for each day of a year, including 29 February;
 - (b) the Proposed Margin, which shall be specified for each day of a year including 29 February, and a detailed description of how that Proposed Margin would comply with the definition of Margin set out in Schedule A if the Proposed Minimum Zone becomes the Minimum Zone;
 - (c) whether the Proposed Minimum Zone is the "minzone" most recently published by the Electricity Commission;
 - (d) whether, and a detailed description of why, the Proposed Minimum Zone is based on the Core Assumptions; and
 - (e) if the Proposed Minimum Zone is not the "minzone" most recently published by the Electricity Commission, a detailed description of the method, and the detailed assumptions, used to calculate the Proposed Minimum Zone and how the Proposed Minimum Zone:
 - (i) is conceptually equivalent to the "minzone" most recently published by the Electricity Commission that was based on the Core Assumptions; and
 - (ii) incorporates values in respect of each of the Core Assumptions that are determined on a reasonable basis.
3. Any notice under paragraph 1 that nominates a Proposed Model Amendment must include:
 - (a) the Proposed Model Amendment;
 - (b) a detailed description of why the Model contains an Error and how the Proposed Model Amendment corrects that Error (where "Error" has the meaning in paragraph 15).

Response

4. The party receiving a notice under paragraph 1 that nominates a Proposed Minimum Zone and a Proposed Margin shall, within 20 Business Days of receiving the notice, give notice to the other party acknowledging receipt of the first party's notice and:

- (a) accepting both the Proposed Minimum Zone and the Proposed Margin, in which case the Proposed Minimum Zone will become the Minimum Zone and the Proposed Margin will become the Margin and Schedule A shall be deemed to be amended accordingly;
 - (b) accepting the Proposed Minimum Zone and disputing the Proposed Margin, in which case the Proposed Minimum Zone will become the Minimum Zone and Schedule A shall be deemed to be amended accordingly and the Proposed Margin dispute shall be treated as if it is a Model Dispute (and the Proposed Margin is a Proposed Model Amendment) under paragraph 5;
 - (c) disputing the Proposed Minimum Zone ("**Minimum Zone Dispute**") and accepting the Proposed Margin, in which case the parties agree to immediately refer the Proposed Minimum Zone to an Expert for determination in accordance with the process set out in this Schedule B and the Proposed Margin will become the Margin and Schedule A shall be deemed to be amended accordingly; or
 - (d) disputing the Proposed Minimum Zone ("**Minimum Zone Dispute**") and the Proposed Margin, in which case the parties agree to immediately refer the Proposed Minimum Zone to an Expert for determination in accordance with the process set out in this Schedule B and the Proposed Margin dispute shall be treated as if it is a Model Dispute (and the Proposed Margin is a Proposed Model Amendment) under paragraph 5.
5. The party receiving a notice under paragraph 1 that nominates a Proposed Model Amendment shall, within 20 Business Days of receiving the notice, give notice to the other party acknowledging receipt of the first party's notice and either:
- (a) accepting the Proposed Model Amendment, in which case the Proposed Model Amendment will amend the Model and Schedule A shall be deemed to be amended accordingly; or
 - (b) disputing the Proposed Model Amendment ("**Model Dispute**"), in which case the parties agree to immediately refer the Proposed Model Amendment to an Expert for determination in accordance with the process set out in this Schedule B.

Appointment and replacement of Expert

6. If a Minimum Zone Dispute and/or a Model Dispute ("**SDR Dispute**") arises NZAS and Meridian shall, by agreement, appoint an Expert. If NZAS and Meridian are unable to agree on the appointment of an Expert within 10 Business Days, then on the application of either NZAS or Meridian the President of the New Zealand Law Society or his or her nominee shall appoint an expert (or, if the President or nominee fails to make such an appointment within 10 Business Days, then the Expert shall be appointed by the High Court on the application of either party). Such President or nominee shall appoint an Expert with urgency taking into account:
- (a) the qualifications that such Expert is required to have;
 - (b) the need for such Expert to be independent;
 - (c) the determination such Expert is required to make under paragraph 12; and
 - (d) one written submission made by each party as to who is an appropriate Expert, provided that such submission is received by that President or nominee within one Business Day of the application to the President or nominee under this

paragraph 6 and neither party shall be entitled to make any submission in reply.

7. If the Expert fails to act, or withdraws his or her agreement to act, as the Expert or becomes incapable of acting as the Expert, a replacement Expert shall be appointed in accordance with the procedure set out in paragraph 6.
8. If, at any time, the Expert becomes aware of any matter or circumstance that might affect the Expert's ability to act impartially, the Expert shall immediately inform the parties. The Expert shall continue to act unless, within three Business Days of being informed, either party issues a written notice to the Expert and the other party requiring that the Expert be replaced. The provisions of paragraph 6 shall then apply as if the Expert had become incapable of acting as the Expert.

Procedure

9. The Expert shall determine the SDR Dispute in such manner and according to such directions and rules as the Expert considers appropriate having regard to the parties' intention that the SDR Dispute be determined promptly and efficiently, provided that:
 - (a) time is of the essence;
 - (b) each party may submit a position statement within two Business Days of the appointment of the Expert;
 - (c) in response, each party may submit a position statement in reply within five Business Days of receipt of the other party's position statement. The position statement in reply shall be limited to matters and issues in reply to the other party's position statement and must not refer to or raise other matters;
 - (d) the Expert may, in writing:
 - (i) require either party to provide clarification of, or further information in relation to, any issue arising from a position statement submitted by either party ("**Clarification**"). Any request for Clarification must be copied to the other party; and
 - (ii) fix the period within which that party must provide the Clarification, which must be in writing and provided to the other party;
 - (e) the other party shall have a right to respond to any Clarification within three Business Days of receiving the Clarification;
 - (f) following the receipt of the position papers and any Clarification sought, the Expert may, at the Expert's sole discretion, convene a meeting with the parties to determine whether the SDR Dispute can be resolved by agreement;
 - (g) if the SDR Dispute is not resolved by agreement, the Expert shall determine the SDR Dispute in accordance with paragraph 12;
 - (h) the position papers and any Clarification provided for in this paragraph 9 must be in writing and sent to the Expert and the other party contemporaneously; and
 - (i) the Expert shall take into account any position statements, Clarifications, responses to Clarifications and oral or written submissions made at any meeting that comply with this paragraph 9.

10. If:
- (a) a dispute arises as to the procedure set out in paragraph 9, the Expert shall determine such dispute; and
 - (b) a party fails to comply with the procedure set out in paragraph 9, the Expert shall determine the dispute in accordance with paragraph 12 and shall not consider any information received from that party other than in accordance with paragraph 9.
11. The parties agree that in all circumstances, other than fraud by the Expert, the process adopted by the Expert shall be binding on the parties and the parties shall not be entitled to object to:
- (a) the process set out in paragraph 9; or
 - (b) any irregularity or decision by the Expert in relation to such process.

Determination

12. As soon as is possible after the conclusion of the procedure set out in paragraph 9, and no later than 20 Business Days after his or her appointment under paragraph 6, the Expert shall issue a written determination (without reasons) advising whether he or she considers that:
- (a) in relation to a Minimum Zone Dispute:
 - (i) the Electricity Commission is publishing a "minzone" (where "publishing" has the meaning in paragraph 14);
 - (ii) if the Electricity Commission is publishing a "minzone" (where "publishing" has the meaning in paragraph 14):
 - A. that "minzone" is based on the Core Assumptions; and
 - B. the Proposed Minimum Zone is the "minzone" most recently published by the Electricity Commission;
 - (iii) if the Electricity Commission is not publishing a "minzone" or is publishing a "minzone" but the "minzone" most recently published by the Electricity Commission is not based on the Core Assumptions (where "publishing" has the meaning in paragraph 14), the Proposed Minimum Zone:
 - A. is based on the Core Assumptions;
 - B. is conceptually equivalent to the "minzone" most recently published by the Electricity Commission that was based on the Core Assumptions; and
 - C. incorporates values in respect of each of the Core Assumptions that are determined on a reasonable basis; and/or
 - (b) in relation to a Model Dispute:
 - (i) the Model contains an Error; and

- (ii) the Proposed Model Amendment corrects that Error and correctly calculates the Margin,

where "Error" has the meaning in paragraph 15 and "calculates the Margin" has the meaning in paragraph 16.

13. If the Expert considers that the Proposed Minimum Zone is based on the Core Assumptions and:

- (a) where the Electricity Commission is publishing a "minzone" (where "publishing" has the meaning in paragraph 14), that Proposed Minimum Zone is the "minzone" most recently published by the Electricity Commission; or
- (b) where the Electricity Commission is not publishing a "minzone" or is publishing a "minzone" but the "minzone" most recently published by the Electricity Commission is not based on the Core Assumptions (where "publishing" has the meaning in paragraph 14), that Proposed Minimum Zone is conceptually equivalent to the "minzone" most recently published by the Electricity Commission that was based on the Core Assumptions and incorporates values in respect of each of the Core Assumptions that are determined on a reasonable basis,

then the Proposed Minimum Zone becomes the Minimum Zone and Schedule A is deemed to be amended accordingly and, unless the Proposed Margin is treated as a Model Dispute in accordance with paragraphs 4(b) or (d), the Proposed Margin becomes the Margin and Schedule A is deemed to be amended accordingly.

14. For the purposes of paragraphs 12 and 13, "publishing" means the Electricity Commission has published a "minzone" in the last 18 months.

- (a) If the Electricity Commission publishes a "minzone" for part of a year ("**partial minzone**"), a Proposed Minimum Zone is the "minzone" most recently published by the Electricity Commission if it consists of the partial minzone (for those days for which that partial minzone applies) and, in respect of the remaining days of the year, the "minzone" most recently published by the Electricity Commission in relation to those days.
- (b) If the Electricity Commission publishes a "minzone" that defines a minimum zone for 28 February but not for 29 February, a Proposed Minimum Zone is the "minzone" most recently published by the Electricity Commission if it incorporates a minimum zone for 29 February that is the same as the minimum zone for 28 February.

15. If the Expert considers that the Model contains an Error and the Proposed Model Amendment corrects that Error and correctly calculates the Margin (where "calculates the Margin" has the meaning in paragraph 16), the Proposed Model Amendment will amend the Model and Schedule A shall be deemed to be amended accordingly. For the purposes of paragraphs 3(b) and 12(b) and this paragraph 15, "Error" means:

- (a) an error or bug in the programming of the Model;
- (b) the Model does not correctly incorporate or is unable to incorporate values for a Core Assumption used in the Minimum Zone or a Proposed Minimum Zone;
- (c) the Model does not (or will not, if a Proposed Minimum Zone becomes the Minimum Zone) accurately reflect the calculation of the Potential GWh (as defined in Schedule A); or

- (d) the Model does not contain all available historical inflow data for the Included Hydro Schemes or for the hydro schemes that will become the Included Hydro Schemes if a Proposed Minimum Zone becomes the Minimum Zone, beginning in 1932,

provided that no Proposed Model Amendment relating to a Proposed Minimum Zone shall be made unless and until the Proposed Minimum Zone becomes the Minimum Zone.

- 16. For the purposes of paragraphs 12(b) and 15, "calculates the Margin", in relation to a day, means calculates the reduction in the Relevant Hydro Storage that would occur over a four week period starting at that day:

- (a) assuming the second worst historical hydro inflow sequence (as expressed in Potential GWh) into the Included Hydro Schemes over the four weeks starting on that day; and
- (b) applying paragraphs (b) to (e) of the Core Assumptions as used in the Minimum Zone or the Proposed Minimum Zone for that four week period,

provided that if no reduction would occur, the Margin is deemed to be zero and provided that a finding that a Proposed Model Amendment relating to a Proposed Minimum Zone correctly calculates the Margin is conditional upon that Proposed Minimum Zone becoming the Minimum Zone.

No interim relief

- 17. Notwithstanding each party's right to bring an action with respect to this Schedule B, neither party shall be entitled to seek or obtain interim injunctive relief to prevent the Expert determination process in this Schedule being initiated or completed.

No right to appeal

- 18. The determination of the Expert shall be final and binding on the parties and the parties have no right to any form of appeal or review.

Costs

- 19. The costs and expenses of the Expert shall be met by the parties equally, unless determined otherwise by the Expert.
- 20. Subject to paragraph 19, each party shall bear its own costs in connection with a determination under this Schedule B.

Confidential information

- 21. On or before his or her appointment, the Expert shall be required to enter into a confidentiality deed in favour of NZAS and Meridian in the form set out in Schedule E.

Liability of Expert

- 22. Except in the case of fraud on the part of the Expert, the Expert will not be liable to any party for any act or omission by the Expert in the performance of the Expert's obligations under this agreement.

Not a reference or agreement to arbitration

23. Referral of an SDR Dispute to the Expert shall not be an arbitration agreement or a submission to arbitration for the purposes of the arbitration statutes of New Zealand and the provisions of such statutes shall not apply to, or govern, the determination of an SDR Dispute.
24. In determining an SDR Dispute, the Expert shall act as an expert and not as an arbitrator.

SCHEDULE C
Expert determination of nature of NZAS Force Majeure Event
 (clause 10.11)

Scope of Expert determination

1. If the parties have not reached agreement as to the nature of an NZAS Force Majeure Event under subclause 10.11(c), an Expert shall be appointed in accordance with this Schedule C to determine the quantum of the interruption to Consumption arising from that NZAS Force Majeure Event.
2. The scope of the Expert's determination shall be limited solely to:
 - (a) if one party has notified the other under subclause 10.11(c) that it considers the NZAS Force Majeure Event is an NZAS Minor Force Majeure Event, and the other party has notified that it considers that the NZAS Force Majeure Event is either an NZAS Major Force Majeure Event or an NZAS Terminal Force Majeure Event (or vice versa):

Determining, based on Urgent Restoration Measures, whether the NZAS Force Majeure Event would have the actual consequence of reducing the physical capacity of the Smelter to Consume by less than 1,600 GWh below its Normal Consumption over a period of 365 or fewer continuous days.
 - (b) if one party has notified the other under subclause 10.11(c) that it considers the NZAS Force Majeure Event is an NZAS Major Force Majeure Event, and the other party has notified that it considers that the NZAS Force Majeure Event is an NZAS Terminal Force Majeure Event (or vice versa):

Determining, based on Best Endeavours, whether the NZAS Force Majeure Event would have the actual consequence of reducing the physical capacity of the Smelter to Consume by at least 5,000 GWh below its Normal Consumption over a period of 547 or fewer continuous days.
3. The Expert shall have no regard to the Restoration Measures being undertaken by NZAS prior to his or her determination as to the quantum of the interruption to Consumption arising from an NZAS Force Majeure Event, nor shall the Expert's determination as to the same have any effect for the purposes of determining the actions NZAS must take when employing the Restoration Measures.
4. For the avoidance of doubt, the Expert shall not be given a copy of this agreement, and shall not know of the consequences of his or her determination outlined above.

Appointment and replacement of Expert

5. If the parties have not reached agreement as to the nature of an NZAS Force Majeure Event under subclause 10.11(c) within 21 days after an FM classification notice has been given, NZAS and Meridian shall, by agreement, appoint an Expert.
6. If NZAS and Meridian are unable to agree on the appointment of an Expert within five Business Days, then they shall immediately ask the President of the Institute of Professional Engineers Australia (or his or her nominee should the President not be available and independent) to appoint an Expert with urgency, taking into account:
 - (a) the qualifications of that Expert, ensuring that the Expert has international experience and knowledge in aluminium smelting;

- (b) the need for such Expert to be independent;
- (c) the need for such Expert not to be, and not to be associated with, a business competitor of NZAS or an NZAS Participant; and
- (d) the determination such Expert is required to make under paragraph 12.

If the President or nominee fails to make such an appointment within 10 Business Days, then the Expert shall be appointed by the High Court on the application of either party.

7. If the Expert fails to act, or withdraws his or her agreement to act, as the Expert or becomes incapable of acting as the Expert, a replacement Expert shall be appointed in accordance with the procedure set out in paragraphs 5 and 6.
8. If, at any time, the Expert becomes aware of any matter or circumstance that might affect the Expert's ability to act impartially and independently, the Expert shall immediately inform the parties. The Expert shall continue to act unless, within three Business Days of being informed, either party issues a written notice to the Expert and the other party requiring that the Expert be replaced. The provisions of paragraphs 5 and 6 shall then apply as if the Expert had become incapable of acting as the Expert.

Procedure

9. The Expert shall determine the nature of the NZAS Force Majeure Event in such manner and according to such directions and rules as the Expert considers appropriate having regard to the parties' intention that the nature of the event be determined promptly and efficiently, provided that:
 - (a) time is of the essence;
 - (b) the parties together brief the Expert and each submit a written position statement supported by any relevant materials within two Business Days of appointment (in the case of Meridian, if relevant, the materials provided shall include its reasonable estimate of the cost which it will incur as a result of reduced Consumption caused by an NZAS Force Majeure Event and, if requested by NZAS, a certificate from an appropriately qualified independent electricity sector expert verifying the reasonableness and accuracy of that cost estimate);
 - (c) if the parties wish, they may submit a position statement in reply within five Business Days of the appointment of the Expert;
 - (d) following the receipt of the parties' position papers, the Expert shall provide the parties with:
 - (i) an outline of the scope of the determination to be made under paragraphs 11 and 12;
 - (ii) the process that will be followed and the information that will be taken into account in making that determination; and
 - (iii) notice of any additional requirements that the Expert may have in order to make that determination in a timely manner;
 - (e) if either party wishes, it may request that the Expert convene a meeting to discuss any of the factors provided to the parties in accordance with paragraph 9(d) above, and may at that meeting provide the Expert with any new material or information that may be relevant to those factors;

- (f) at any stage the Expert may, in writing:
 - (i) require either party to provide clarification of, or further information in relation to, any issue arising from a position statement submitted by either party ("**clarification**"). Any request for clarification must be copied to the other party; and
 - (ii) fix the period within which that party must provide the clarification, which must be in writing and provided to the other party;
 - (g) following the receipt of the draft determination under paragraph 11, the Expert shall provide the parties with an opportunity to discuss that draft and its conclusion, and if a party provides the Expert with any new material or information that may be relevant to the determination, must consider that new material or information with an open mind; and
 - (h) the position papers and any materials or clarification provided for in this paragraph 9 must be in writing and sent to the Expert and the other party contemporaneously.
10. The parties agree that in all circumstances, other than fraud by the Expert, the process adopted by the Expert shall be binding on the parties and the parties shall not be entitled to object to:
- (a) the process set out in paragraph 9; or
 - (b) any irregularity or decision by the Expert in relation to such process.

Determination

11. As soon as is possible after the conclusion of the procedure set out in paragraph 9, but no later than 15 days after his or her appointment under paragraphs 5 or 6, the Expert shall issue a draft determination (without reasons) advising whether or not he or she considers that the quantum of the interruption to Consumption arising from the NZAS Force Majeure Event in question would be (as applicable):
- (a) less than 1,600 GWh below its Normal Consumption over a period of 365 or fewer continuous days; or
 - (b) at least 5,000 GWh below its Normal Consumption over a period of 547 or fewer continuous days.
12. As soon as is possible after the issuance of the draft determination in paragraph 11 and any consideration required under paragraph 9(g), but no later than 20 days after his or her appointment under paragraphs 5 or 6, the Expert shall issue a written determination (without reasons) advising whether or not he or she considers that the quantum of the interruption to Consumption arising from the NZAS Force Majeure Event in question would be (as applicable):
- (a) less than 1,600 GWh below its Normal Consumption over a period of 365 or fewer continuous days; or
 - (b) at least 5,000 GWh below its Normal Consumption over a period of 547 or fewer continuous days.
13. For the avoidance of doubt, the Expert's determination under paragraphs 11 and 12 shall be limited to a finding in the positive or the negative.

No interim relief

14. Notwithstanding a party's right to bring an action with respect to this Schedule C, neither party shall be entitled to seek or obtain interim injunctive relief to prevent the Expert determination process in this Schedule being initiated or completed.

No right to appeal

15. The determination of the Expert shall be final and binding on the parties and the parties have no right to any form of appeal or review.

Costs

16. The costs and expenses of the Expert shall be met by the parties equally unless otherwise determined by the Expert.
17. Subject to paragraph 16, each party shall bear its own costs in connection with a determination under this Schedule C.

Confidential information

18. On or before his or her appointment, the Expert shall be required to enter into a confidentiality deed in favour of NZAS and Meridian in the form set out in Schedule E.

Liability of Expert

19. The Expert will not be liable to any party for any act or omission by the Expert in the performance of the Expert's obligations under this agreement.

Not a reference or agreement to arbitration

20. Referral of the question as to the nature of an NZAS Force Majeure Event to the Expert shall not be an arbitration agreement or a submission to arbitration for the purposes of the arbitration statutes of New Zealand and the provisions of such statutes shall not apply to, or govern, such a determination.
21. In determining the nature of an NZAS Force Majeure Event, the Expert shall act as an expert and not as an arbitrator.

SCHEDULE D
NZAS Participants' Undertakings
 (clause 2.1 of the amending agreement and clause 11.7)

Part A: Undertaking by Pacific Aluminium (New Zealand) Limited and Sumitomo Chemical Company, Limited

DEED dated 2015

PARTIES

PACIFIC ALUMINIUM (NEW ZEALAND) LIMITED ("RTANZ")

SUMITOMO CHEMICAL COMPANY, LIMITED ("Sumitomo")

MERIDIAN ENERGY LIMITED ("Meridian")

INTRODUCTION

- A. RTANZ and Sumitomo are:
- (a) the shareholders of NZAS;
 - (b) the parties to a tolling agreement with NZAS;
 - (c) the companies to which NZAS provides its services and goods; and
 - (d) the parties which own the alumina processed by, and all the aluminium produced by, NZAS at the smelter at Tiwai Point, Southland, New Zealand ("**Smelter**").
- B. Meridian and NZAS are parties to an electricity agreement dated 1 October 2007 ("**Electricity Agreement**") as amended by an Electricity Amendment Agreement dated 7 August 2013 and a letter dated 15 August 2013.
- C. By a further Electricity Amendment Agreement dated on or about the date of this deed ("**Electricity Amendment Agreement**"), Meridian and NZAS have again agreed to amend the Electricity Agreement, in the manner set out in that Electricity Amendment Agreement.
- D. Meridian is entering into the Electricity Amendment Agreement in reliance upon RTANZ and Sumitomo and their groups of companies being bound by the provisions in this deed.

COVENANTS

1. DEFINITIONS

- 1.1 In this deed unless the context otherwise requires:

"**Claim**" means any claim against Meridian in connection with the Electricity Agreement, this deed or any other deed substantially in the form set out in Part B of Schedule D of the Electricity Agreement in contract, tort (including negligence) or otherwise.

"Claim Pool Amount" means, in respect of any Claim other than a Claim of the type referred to in clause 2.3:

- (a) \$20 million for any one event or circumstance or series of related events or circumstances; and
- (b) \$45 million in the aggregate in respect of all events and circumstances occurring in any 12 month period,

provided that the figures in (a) and (b) above shall be escalated each year commencing 1 April in accordance with the following formula:

$$\text{Liability limit}_n = LL + LL \times \text{Escalator}$$

Where:

n = the relevant year commencing 1 April in respect of which the escalation is being calculated;

LL = the relevant liability limit in (a) or (b) above; and

Escalator = the defined term under the Electricity Agreement.

"Indemnity Group" means NZAS, RTANZ, Sumitomo, the New Participants, the NZAS Group, the Sumitomo Group, the RTANZ Group and the New Participants' Groups.

"New Participants" means each person who becomes an NZAS Participant (as that term is defined in the Electricity Agreement) other than RTANZ and Sumitomo.

"New Participants' Groups" means all Related Companies of each New Participant.

"NZAS" means New Zealand Aluminium Smelters Limited.

"NZAS Group" means all Related Companies of NZAS.

"Participating Interests" means, in the case of RTANZ, its 79.36 percent participating interest in NZAS and in the Smelter, and, in the case of Sumitomo, its 20.64 percent participating interest in NZAS and in the Smelter, and includes such varied participating interests to which Meridian has given its written consent in accordance with section 4.

"Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993 and includes any entity which would be a related company within that definition if incorporated as a company in New Zealand.

"RTANZ Group" means all Related Companies of RTANZ.

"Sumitomo Group" means all Related Companies of Sumitomo.

1A. REPLACEMENT

- 1A.1 If the Electricity Amendment Agreement becomes unconditional, this deed replaces the Deed of Undertaking Relating to Electricity Agreement between the parties dated 7 August 2013 with effect from 1 July 2015. If the Electricity Amendment Agreement does not become unconditional, this deed will be void and of no effect.

2. LIABILITY

Maximum liability

- 2.1 The maximum aggregate liability of Meridian to the Indemnity Group in respect of Claims made by Indemnity Group members shall be the Claim Pool Amount.

Liability for grid security services

- 2.2 In no event shall Meridian be liable in connection with a Claim arising out of clause 3.5 (consequences for not meeting grid security obligations) of the Electricity Agreement in contract, tort (including negligence) or otherwise (other than pursuant to that clause 3.5 itself).

Unlimited liability

- 2.3 The limitation on liability set out in clause 2.1 shall not apply to any Claims with respect to any payment arising out of an obligation of Meridian under clauses 4.9 and 4.10 (rebate and cost sharing) or sections 5 (contract for difference payment) or 6 (consumption value rebate) of the Electricity Agreement or any Claim to which subclause 11.3(c) (unlimited liability) of the Electricity Agreement applies.

No acceptance of liability

- 2.4 Nothing in this deed shall be construed as an acknowledgement by Meridian of any liability to any person.

Officers, employees etc

- 2.5 In this section 2, a reference to Meridian includes a reference to its directors, officers, employees, and any person who works for Meridian as a contractor or agent. The benefit of this section 2 is intended to extend to the officers, employees, and such contractors and agents of Meridian and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

3. INDEMNITY

- 3.1 Subject to this deed, RTANZ and Sumitomo severally indemnify Meridian, in proportion to their respective Participating Interests, against and shall hold Meridian harmless from any and all liability, costs and expenses (including all reasonable legal expenses on a full indemnity basis) incurred by Meridian in connection with:
- (a) any Claim made by any person who at any time acquires, or would have acquired, aluminium which at any time was or would have been owned by or processed on behalf of a member of the Indemnity Group, other than any Claim to which subclause 11.3(c) (unlimited liability) of the Electricity Agreement applies; and
 - (b) any Claim by a member of the Indemnity Group in excess of the Claim Pool Amount and, without derogating from that indemnity, shall itself forego any Claim against Meridian (other than a Claim of the type referred to in clause 2.3), to the extent that the aggregate of all such Claims by Indemnity Group members (other than Claims of the type referred to in clause 2.3) exceeds the Claim Pool Amount.

3.2 The indemnity under clause 3.1 is subject to Meridian:

- (a) notifying RTANZ and Sumitomo immediately upon becoming aware of any actual or threatened actions, proceedings, claims or demands, or any facts or circumstances likely to give rise to a Claim for which Meridian may be entitled to the indemnity;
- (b) fully consulting with RTANZ and Sumitomo on the steps to be taken, if any, in defending a Claim and taking into account their views;
- (c) using its reasonable endeavours to do all things that RTANZ and Sumitomo reasonably consider are necessary to enable Meridian to fully defend such Claim, provided that Meridian may also take into account its own reasonable considerations;
- (d) giving RTANZ and Sumitomo and their insurers and their respective representatives (including legal representatives) such information and assistance and co-operation as may reasonably be required (such assistance to be provided at Meridian's expense), having regard to the interests of Meridian, RTANZ, Sumitomo and RTANZ's and Sumitomo's insurers; or
- (e) to the extent practicable, consulting with RTANZ and Sumitomo in a timely manner prior to taking any significant steps in relation to the defence of a Claim and taking into account their views.

3.3 Meridian may (subject to clause 3.2) conduct its own defence of any Claim, but must not make any settlement or compromise of a Claim to which the indemnity in clause 3.1 applies without first obtaining RTANZ's and Sumitomo's written consent, such consent not to be unreasonably withheld. RTANZ and Sumitomo will not be liable under the indemnity in clause 3.1 for any settlements or compromises to which they have not given their written consent.

3.4 RTANZ and Sumitomo shall each, upon demand, pay to Meridian all amounts due from them respectively under the indemnity in clause 3.1.

4. CHANGE IN PARTICIPATING INTEREST

4.1 In the event that RTANZ or Sumitomo (each a "**Transferring Party**") sells or otherwise transfers all or part of its Participating Interest, the Transferring Party shall procure that the purchaser or assignee of that Participating Interest (or part of it) enters into a deed on the same terms as this deed, to the extent of the Participating Interest (or part of it) so acquired. The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.

4.2 Upon execution and delivery of such new deed, Meridian shall provide its written consent to the Transferring Party (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed if it is satisfied as to the financial capability of the purchaser or assignee to meet its obligations under the new deed, and that the new deed will be binding on and enforceable against such purchaser or assignee.

5. GOVERNING LAW

5.1 This deed shall be governed by the laws of New Zealand, and Meridian, RTANZ and Sumitomo shall submit to the non-exclusive jurisdiction of the New Zealand courts.

- 5.2 Each of RTANZ and Sumitomo acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Electricity Agreement and hereby covenant that they shall not apply for a permanent stay (or similar order) restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

6. SEVERABILITY AND FRUSTRATION

- 6.1 If any provision of this deed is or becomes illegal, void or unenforceable, then unless clause 6.2 applies, it shall be severed from this deed without affecting the enforceability, legality, validity or application of any other provision of this deed.
- 6.2 If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then any party may, by notice to the other parties, require the parties to enter into negotiations to agree amendments to this deed to ensure that the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or frustration. Any failure to agree amendments may be resolved as a Dispute under section 7 (dispute resolution).

7. DISPUTE RESOLUTION

Amicable resolution

- 7.1 Without limiting their rights to require an arbitration under this section 7, the parties:
- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed ("**Dispute**") be resolved amicably by bona fide discussion between the parties; and
 - (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.
- 7.2 Either party may initiate the dispute resolution procedures in subclause 7.1(b) by giving written notice to the other parties, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other parties. Each party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other parties naming its representative in the negotiations. As soon as possible after all parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the Dispute.
- 7.3 Subject to clause 7.4, if:
- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of all parties being advised of each other's representatives under clause 7.2; or
 - (b) a party receiving notice under clause 7.2 does not name a representative within three Business Days of receipt of the initiating party's notice,
- then any party may refer the Dispute to arbitration in accordance with clause 7.5.

Matters not subject to arbitration

- 7.4 Any failure to agree the period for resolving disputes under clause 7.3 shall not be referred to arbitration under this section 7 and no party shall be entitled to apply to any court, tribunal or other like body for relief in relation to such failure to agree.

Arbitration

- 7.5 Where clause 7.3 applies, any party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other parties written notice stating that party's desire to have the matter referred to arbitration.
- 7.6 The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 7.5, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of any party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).
- 7.7 The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.
- 7.8 Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this deed and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

Continuation of performance

- 7.9 While following the procedures in this section 7 to resolve the Dispute, neither party is relieved from its obligations under this deed.

Interlocutory steps

- 7.9 Nothing in this deed shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

8. CONFIDENTIALITY

- 8.1 Each party ("**Recipient**") shall treat:
- (a) the terms of this deed, the Electricity Agreement, and any arrangement related to the Electricity Agreement to which Meridian, NZAS or a Related Company of NZAS is a party;
 - (b) any information relating to the business or operations of the other party or parties, as the case may be, or their Related Companies, received from that party or those parties in connection with this deed; and
 - (c) all other information made available by or on behalf of or at the request of the Recipient, as the case may be, in connection with this deed,

("Confidential Information") as strictly private and confidential, and shall not without the prior written consent of the party providing the information ("**Provider**") use or disclose that Confidential Information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by the Recipient's own disclosure of that Confidential Information;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to a Related Company of the Recipient, NZAS or a member of the Indemnity Group and the Recipient has taken reasonable steps to ensure that the person receiving that information complies with the terms of this clause 8.1;
- (h) disclosure is to the Recipient's shareholder, or to the Recipient's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant ("**third party**"), on a need to know basis and the Recipient has taken reasonable steps to ensure that the third party complies with the terms of this clause 8.1 (amended so that the third party is the Recipient); or
- (i) disclosure is to a proposed assignee of the Recipient, provided the Provider's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the Recipient, or by a shareholder or parent company of the Recipient, provided:
 - (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
 - (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
 - (iii) on receipt of a reasonable request from the Provider, the Recipient shall endeavour to obtain, on terms reasonably acceptable to the Provider and the Recipient, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information, provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

Disclosure required by law

8.2 Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request ("**OIA request**"), it shall:

- (a) promptly notify the party or parties that will be affected by the disclosure ("**Affected Party**") of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Affected Party of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord the Affected Party a reasonable period of time in which to consider the required disclosure;
- (c) where prior to disclosure, the Affected Party notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and

- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Affected Party of that fact.

8.3 RTANZ and Sumitomo acknowledge that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under this deed having regard to those timeframes.

8.4 Meridian acknowledges that nothing in this deed prevents RTANZ and Sumitomo from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

9. COUNTERPARTS

9.1 This deed is deemed to be executed by a party if that party has signed or attached that party's signatures to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy;

and if each party has signed or attached that party's signatures to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

SIGNED AS A DEED

**PACIFIC ALUMINIUM (NEW ZEALAND)
LIMITED** for itself and for and on behalf of
all members of the RTANZ Group by:

Signature of director

Signature of director

Name of director

Name of director

**SUMITOMO CHEMICAL COMPANY,
LIMITED** for itself and for and on behalf of
all members of the Sumitomo Group by:

Signature of director

Signature of director

Name of director

Name of director

MERIDIAN ENERGY LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

Part B: Undertaking by other NZAS Participants

DEED dated

20[]

PARTIES

[FULL NAME OF NEW PARTICIPANT] ("Participant")

MERIDIAN ENERGY LIMITED ("Meridian")

INTRODUCTION

- A. The Participant, along with **[add names of other NZAS Participants]** are:
- (a) the shareholders of NZAS;
 - (b) the parties to a tolling agreement with NZAS;
 - (c) the companies to which NZAS provides its services and goods; and
 - (d) the parties which own the alumina processed by, and all the aluminium produced by, NZAS at the smelter at Tiwai Point, Southland, New Zealand ("**Smelter**").
- B. Meridian and NZAS have entered into an electricity agreement dated 1 October 2007, as amended from time to time, under which Meridian and NZAS agree to hedge the price of electricity that NZAS purchases from the wholesale electricity market and Meridian and NZAS agree to certain other obligations ("**Electricity Agreement**").
- C. Meridian entered into the Electricity Agreement in reliance upon any New Participants and their groups of companies being bound by the provisions in this deed.

COVENANTS

1. DEFINITIONS

- 1.1 In this deed unless the context otherwise requires:

"**Claim**" means any claim against Meridian in connection with the Electricity Agreement, this deed or any other deed substantially in the form set out in Parts A or B of Schedule D of the Electricity Agreement in contract, tort (including negligence) or otherwise.

"**Claim Pool Amount**" means, in respect of any Claim other than a Claim of the type referred to in clause 2.3:

- (a) \$20 million for any one event or circumstance or series of related events or circumstances; and
- (b) \$45 million in the aggregate in respect of all events and circumstances occurring in any 12 month period,

provided that the figures in (a) and (b) above shall be escalated each year commencing 1 April in accordance with the following formula:

$$\text{Liability limit}_n = \text{LL} + \text{LL} \times \text{Escalator}$$

Where:

- n = the relevant year commencing 1 April in respect of which the escalation is being calculated;
- LL = the relevant liability limit in (a) or (b) above; and
- Escalator = the defined term under the Electricity Agreement.

"Indemnity Group" means NZAS, the Participant, **[RTANZ, Sumitomo,]** the New Participants, the NZAS Group, the Participant Group, **[the Sumitomo Group, the RTANZ Group]** and the New Participants' Groups. **[Note: References to RTANZ or Sumitomo and their group can be removed if that company is neither an NZAS Participant nor a shareholder of NZAS.]**

"New Participants" means each person who becomes an NZAS Participant (as that term is defined in the Electricity Agreement) other than RTANZ and Sumitomo.

"New Participants' Groups" means all Related Companies of each New Participant.

"NZAS" means New Zealand Aluminium Smelters Limited.

"NZAS Group" means all Related Companies of NZAS.

"Participant Group" means all Related Companies of the Participant.

"Participating Interest" means the Participant's **[to complete]** percent participating interest in NZAS and in the Smelter and includes such varied participating interest to which Meridian has given its written consent in accordance with section 4.

"Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993 and includes any entity which would be a related company within that definition if incorporated as a company in New Zealand.

["RTANZ" means Pacific Aluminium (New Zealand) Limited (formerly Rio Tinto Alcan (New Zealand) Limited).]

"RTANZ Group" means all Related Companies of RTANZ.

"Sumitomo" means Sumitomo Chemical Company, Limited.

"Sumitomo Group" means all Related Companies of Sumitomo.] **[Note: Any term not used in the final deed may be deleted.]**

2. LIABILITY

Maximum liability

- 2.1 The maximum aggregate liability of Meridian to the Indemnity Group in respect of Claims made by Indemnity Group members shall be the Claim Pool Amount.

Liability for grid security services

- 2.2 In no event shall Meridian be liable in connection with a Claim arising out of clause 3.5 (consequences for not meeting grid security obligations) of the Electricity Agreement in

contract, tort (including negligence) or otherwise (other than pursuant to that clause 3.5 itself).

Unlimited liability

- 2.3 The limitation on liability set out in clause 2.1 shall not apply to any Claims with respect to any payment arising out of an obligation of Meridian under clauses 4.9 or 4.10 (rebate and cost sharing) or sections 5 (contract for difference payment) or 6 (consumption value rebate) of the Electricity Agreement or any Claim to which subclause 11.3(c) (unlimited liability) of the Electricity Agreement applies.

No acceptance of liability

- 2.4 Nothing in this deed shall be construed as an acknowledgement by Meridian of any liability to any person.

Officers, employees etc

- 2.5 In this section 2, a reference to Meridian includes a reference to its directors, officers, employees, and any person who works for Meridian as a contractor or agent. The benefit of this section 2 is intended to extend to the officers, employees, and such contractors and agents of Meridian and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

3. INDEMNITY

- 3.1 Subject to this deed, the Participant indemnifies Meridian, in proportion to its Participating Interest, against and shall hold Meridian harmless from any and all liability, costs and expenses (including all reasonable legal expenses on a full indemnity basis) incurred by Meridian in connection with:
- (a) any Claim made by any person who at any time acquires, or would have acquired, aluminium which at any time was or would have been owned by or processed on behalf of a member of the Indemnity Group, other than any Claim to which subclause 11.3(c) (unlimited liability) of the Electricity Agreement applies; and
 - (b) any Claim by a member of the Indemnity Group in excess of the Claim Pool Amount and, without derogating from that indemnity, shall itself forego any Claim against Meridian (other than a Claim of the type referred to in clause 2.3), to the extent that the aggregate of all such Claims by Indemnity Group members (other than Claims of the type referred to in clause 2.3) exceeds the Claim Pool Amount.
- 3.2 The indemnity under clause 3.1 is subject to Meridian:
- (a) notifying the Participant immediately upon becoming aware of any actual or threatened actions, proceedings, claims or demands, or any facts or circumstances likely to give rise to a Claim for which Meridian may be entitled to the indemnity;
 - (b) fully consulting with the Participant on the steps to be taken, if any, in defending a Claim and taking into account their views;
 - (c) using its reasonable endeavours to do all things that the Participant reasonably consider are necessary to enable Meridian to fully defend such Claim, provided that Meridian may also take into account its own reasonable considerations;

- (d) giving the Participant and its insurers and representatives (including legal representatives) such information and assistance and co-operation as may reasonably be required (such assistance to be provided at Meridian's expense), having regard to the interests of Meridian, the Participant and the Participant's insurers; or
 - (e) to the extent practicable, consulting with the Participant in a timely manner prior to taking any significant steps in relation to the defence of a Claim and taking into account their views.
- 3.3 Meridian may (subject to clause 3.2) conduct its own defence of any Claim, but must not make any settlement or compromise of a Claim to which the indemnity in clause 3.1 applies without first obtaining the Participant's written consent, such consent not to be unreasonably withheld. The Participant will not be liable under the indemnity in clause 3.1 for any settlements or compromises to which it has not given its written consent.
- 3.4 The Participant shall, upon demand, pay to Meridian all amounts due from it under the indemnity in clause 3.1.

4. CHANGE IN PARTICIPATING INTEREST

- 4.1 In the event that the Participant sells or otherwise transfers all or part of its Participating Interest, the Participant shall procure that the purchaser or assignee of that Participating Interest (or part of it) enters into a deed on the same terms as this deed, to the extent of the Participating Interest (or part of it) so acquired. The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.
- 4.2 Upon execution and delivery of such new deed, Meridian shall provide its written consent to the Participant (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed if it is satisfied as to the financial capability of the purchaser or assignee to meet its obligations under the new deed, and that the new deed will be binding on and enforceable against such purchaser or assignee.

5. GOVERNING LAW

- 5.1 This deed shall be governed by the laws of New Zealand, and Meridian and the Participant shall submit to the non-exclusive jurisdiction of the New Zealand courts.
- 5.2 The Participant acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Electricity Agreement and hereby covenant that it shall not apply for a permanent stay (or similar order) restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

6. SEVERABILITY AND FRUSTRATION

- 6.1 If any provision of this deed is or becomes illegal, void or unenforceable, then unless clause 6.2 applies, it shall be severed from this deed without affecting the enforceability, legality, validity or application of any other provision of this deed.
- 6.2 If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then either party may, by notice to the other party, require the parties to enter into negotiations to agree amendments to this deed to ensure that

the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or frustration. Any failure to agree amendments may be resolved as a Dispute under section 7 (dispute resolution).

7. DISPUTE RESOLUTION

Amicable resolution

7.1 Without limiting their rights to require an arbitration under this section 7, the parties:

- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed ("**Dispute**") be resolved amicably by bona fide discussion between the parties; and
- (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.

7.2 Either party may initiate the dispute resolution procedures in subclause 7.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the Dispute.

7.3 Subject to clause 7.4, if:

- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 7.2; or
- (b) the party receiving notice under clause 7.2 does not name a representative within three Business Days of receipt of the initiating party's notice,

then either party may refer the Dispute to arbitration in accordance with clause 7.5.

Matters not subject to arbitration

7.4 Any failure to agree the period for resolving disputes under clause 7.3 shall not be referred to arbitration under this section 7 and neither party shall be entitled to apply to any court, tribunal or other like body for relief in relation to such failure to agree.

Arbitration

7.5 Where clause 7.3 applies, either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.

7.6 The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 7.5, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).

- 7.7 The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.
- 7.8 Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this deed and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

Continuation of performance

- 7.9 While following the procedures in this section 7 to resolve the Dispute, neither party is relieved from its obligations under this deed.

Interlocutory steps

- 7.9 Nothing in this deed shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

8. CONFIDENTIALITY

- 8.1 Each party ("**Recipient**") shall treat:

- (a) the terms of this deed, the Electricity Agreement, and any arrangement related to the Electricity Agreement to which Meridian, NZAS or a Related Company of NZAS is a party;
- (b) any information relating to the business or operations of the other party or its Related Companies, received from that party or those parties in connection with this deed; and
- (c) all other information made available by or on behalf of or at the request of the Recipient in connection with this deed,

("Confidential Information") as strictly private and confidential, and shall not without the prior written consent of the party providing the information ("**Provider**") use or disclose that Confidential Information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by the Recipient's own disclosure of that Confidential Information;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to a Related Company of the Recipient, NZAS or a member of the Indemnity Group and the Recipient has taken reasonable steps to ensure that the person receiving that information complies with the terms of this clause 8.1;
- (h) disclosure is to the Recipient's shareholder, or to the Recipient's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant ("**third party**"), on a need to know basis and the Recipient has taken reasonable steps to ensure that the third party complies with the terms of this clause 8.1 (amended so that the third party is the Recipient); or
- (i) disclosure is to a proposed assignee of the Recipient, provided the Provider's prior written consent has first been obtained, such consent not to be unreasonably withheld; or

- (j) disclosure is made in the context of a planned offering of securities to the public by the Recipient, or by a shareholder or parent company of the Recipient, provided:
 - (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
 - (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
 - (iii) on receipt of a reasonable request from the Provider, the Recipient shall endeavour to obtain, on terms reasonably acceptable to the Provider and the Recipient, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information, provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

Disclosure required by law

8.2 Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request ("**OIA request**"), it shall:

- (a) promptly notify the Participant of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Participant of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord the Participant a reasonable period of time in which to consider the required disclosure;
- (c) where prior to disclosure, the Participant notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and
- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Participant of that fact.

8.3 The Participant acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under this deed having regard to those timeframes.

8.4 Meridian acknowledges that nothing in this deed prevents the Participant from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

9. COUNTERPARTS

9.1 This deed is deemed to be executed by a party if that party has signed or attached that party's signatures to any of the following formats of this deed:

- (a) an original; or

- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy;

and if each party has signed or attached that party's signatures to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

SIGNED AS A DEED

[FULL NAME OF NEW PARTICIPANT]

for itself and for and on behalf of all members of the Participant Group by:

Signature of director

Signature of director

Name of director

Name of director

MERIDIAN ENERGY LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

SCHEDULE E
Expert Confidentiality Deed
 (Paragraph 21 of Schedule B, paragraph 18 of Schedule C and
 paragraph 16 of Schedule G)

DEED dated []

PARTIES

[FULL NAME OF EXPERT] ("Expert")

NEW ZEALAND ALUMINIUM SMELTERS LIMITED ("NZAS")

MERIDIAN ENERGY LIMITED ("Meridian")

INTRODUCTION

- A. Meridian and NZAS have entered into an electricity agreement dated 1 October 2007 ("**Electricity Agreement**"), as amended from time to time.
- B. If a dispute arises in relation to **[a Proposed Minimum Zone or a Proposed Model Amendment under Schedule B of the Electricity Agreement] [the nature of an NZAS Force Majeure Event under subclause 10.11(c) of the Electricity Agreement] [whether a surety meets the requirements of clause 24.1, 24.2, 24.4 or 24.5 (as the case may be)] [any adjustment, in respect of an amount under clause (d)(i), (ii), or (iii) of the definition of "Period 2 Surety", for unusual or non-recurrent items to the extent that a credit rating agency would make such an adjustment] ("Dispute")**, an Expert will be appointed in accordance with Schedule **[B][C][G]** of the Electricity Agreement.
- C. During the course of the Dispute, Meridian or NZAS may disclose Confidential Information to the Expert.
- D. The Expert agrees that any Confidential Information will be received on, and subject to, the terms of this deed.

COVENANTS

Confidentiality

- 1. The Expert shall treat:
 - (a) the terms of this deed and the Electricity Agreement;
 - (b) any information relating to the business or operations of Meridian, NZAS or their respective Related Companies; and
 - (c) all other information made available by or on behalf of or at the request of the Expert in connection with the determination of the Dispute,

("Confidential Information") as strictly private and confidential, and shall not without the prior written consent of the provider of the Confidential Information use or disclose that information, except to the extent that:

 - (d) the Expert may use the Confidential Information to the extent necessary to perform its obligations to determine the Dispute;

- (e) the information becomes public knowledge otherwise than by the Expert's own disclosure;
- (f) disclosure is required by any order of a competent court or by law;
- (g) disclosure is permitted by this deed;
- (h) disclosure is to the Expert's professional advisor, on a need to know basis, and that the professional advisor has executed a deed on the same terms as this deed.

Undertaking and covenant

2. The Expert irrevocably undertakes and covenants that:

Confidential Information remains property of Meridian or NZAS

- (a) the Confidential Information shall be and shall remain at all times the property of Meridian or NZAS, as the case may be;

No Copies to be made

- (b) the Expert shall not, except as necessary for the determination of the Dispute, copy or store any Confidential Information without the prior written consent of Meridian or NZAS, as the case may be;

Destruction of Confidential Information

- (c) the Expert shall, upon demand by Meridian or NZAS, as the case may be, destroy all the Confidential Information in the possession or control of the Expert, provided that, in respect of Confidential Information in electronic form, the Expert shall not be required to incur a cost in doing so that is greater than the equivalent of ten hours of the Expert's information technology helpdesk's time; and

Acknowledgement of responsibility

- (d) in disclosing any part of the Confidential Information to a professional advisor as permitted by clause 1(h), the Expert is agreeing to be responsible for any act or omission of that advisor which would constitute a breach of this deed if the advisor were a party to it instead of the Expert.

Miscellaneous Provisions

Severability

3. If any portion of this deed is found to be illegal, void or unenforceable the remaining portions thereof shall be binding on the Expert and shall be enforceable with the same effect as though the void and unenforceable portions were deleted.

Operation of deed

4. This deed shall operate until such time as all of the Confidential Information has fallen into the public domain otherwise than as a result of any breach of this deed and, in particular, shall survive the determination of the Dispute.

Remedies

5. The Expert acknowledges that damages alone would be an inadequate remedy for the breach of the Expert's obligations under this deed and that the appropriate remedies for such a breach or threatened breach shall include, at the election of Meridian or NZAS, orders for specific performance and injunctive relief.

No Waiver

6. No failure, delay or indulgence by Meridian or NZAS in exercising any power or right under this deed shall operate as a waiver of that power or right. Nor shall a single or partial exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this deed.

Counterparts

7. This deed is deemed to be executed by a party if that party has signed or attached that party's signature or signatures (as the case may be) to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy;

and if each party has signed or attached that party's signature or signatures to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

Governing law

8. This deed shall be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any dispute or proceeding arising out of this deed.

SIGNED AS A DEED

[FULL NAME OF EXPERT] in the presence of:

[FULL NAME OF EXPERT]

Signature of witness

Occupation

City/town of residence

MERIDIAN ENERGY LIMITED by:

Signature of authorised person

Name of authorised person

**NEW ZEALAND ALUMINIUM
SMELTERS LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director

SCHEDULE F
NZAS Participants' Guarantees
(clause 2.1 of the amending agreement)

Part A: Guarantee by Pacific Aluminium (New Zealand) Limited

Deed of Guarantee and Indemnity

Pacific Aluminium (New Zealand) Limited

Meridian Energy Limited

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Date:

PARTIES

Pacific Aluminium (New Zealand) Limited (the *Guarantor*)

Meridian Energy Limited (*Meridian*)

BACKGROUND

- A Meridian and New Zealand Aluminium Smelters Limited (NZAS) are the parties to an Electricity Agreement dated 1 October 2007, as amended by an Electricity Amendment Agreement dated 7 August 2013 and a letter dated 15 August 2013 (*the Agreement*).
- B By a further Electricity Amendment Agreement dated on or about the date of this deed (*Electricity Amendment Agreement*), Meridian and NZAS agreed again to amend the Electricity Agreement, in the manner set out in that Electricity Amendment Agreement.
- C The Guarantor and Sumitomo Chemical Company, Limited (*Sumitomo*) are the shareholders of NZAS.
- D The Guarantor has agreed severally to guarantee NZAS' repayment obligations in respect of Consumption Value Rebate under the Agreement, to the extent of its Participating Interest in NZAS and otherwise on the terms of this deed.
- E Sumitomo is separately providing a several guarantee to Meridian on exactly the same terms as this deed.

BY THIS DEED the parties agree as follows:

1 INTERPRETATION AND DEFINITIONS

In this deed, unless the context otherwise requires, terms that are defined in the Agreement have the meanings assigned to them in the Agreement. In addition:

Participating Interest means the Guarantor's 79.36 per cent participating interest in NZAS and in the Smelter, and includes such varied participating interest to which Meridian has given its written consent in accordance with clause 10.2;

Period 1 means Period 1, as defined in the Agreement, subject to any extension under clause 2.4 of the Agreement;

Principal Debt means NZAS' obligation to repay the Consumption Value Rebate, under and in accordance with the Agreement (as amended from time to time);

this guarantee means the guarantee and indemnity constituted by this deed.

2 REPLACEMENT

If the Electricity Amendment Agreement becomes unconditional, this deed replaces, and is in substitution for, the Deed of Guarantee and Indemnity between the parties dated 7 August

2013 (*2013 Guarantee*) with effect from 1 July 2015 and Meridian absolutely releases and discharges Guarantor from any and all obligations and liability under the 2013 Guarantee. If the Electricity Amendment Agreement does not become unconditional, this deed will be void and of no effect.

3 **GUARANTEE**

The Guarantor severally guarantees the due and punctual repayment by NZAS of the Principal Debt, to the extent (and only to the extent) of its Participating Interest. The Guarantor:

- 3.1 accepts that this guarantee is unconditional, irrevocable and continuing;
- 3.2 agrees to allow Meridian to have priority over it in any recourse against NZAS;
- 3.3 shall be liable as a principal obligor to the extent of its Participating Interest;
- 3.4 will always have the same liability to Meridian, and Meridian's rights under this guarantee shall not be affected, despite any matter or thing which, but for the operation of this clause, might operate to affect or discharge the liability of, or otherwise provide a defence to, the Guarantor, including (without limitation) any change in status of NZAS, any variation or amendment to the Agreement or to any of the obligations of any party under the Agreement, any variation or amendment to any guarantee given by another NZAS Participant or any waiver or indulgence;
- 3.5 must pay Meridian on demand all amounts owing by that Guarantor under this guarantee, provided that Meridian may not make a demand until all legitimate disputes by NZAS as to any obligation to pay the Principal Debt have been resolved;
- 3.6 agrees that this guarantee will not at any time during the period for which it remains in force be deemed to be discharged or wholly or partly satisfied by the payment, liquidation, settlement or compromise of any monies or the whole or partial performance of any term, covenant or obligation of this guarantee from time to time during that period payable or to be performed respectively by NZAS or the Guarantor;
- 3.7 agrees that the liability of the Guarantor will not be affected or avoided by any agreement or arrangement made between Meridian and NZAS or between Meridian and another NZAS Participant (whether with or without the consent of the Guarantor or notice being given to the Guarantor);
- 3.8 agrees that Meridian may without notice to the Guarantor make any credit arrangement with, take and deal with any security given by NZAS or assent to any deed of assignment by, or arrangement or composition of NZAS, without affecting the liability of the Guarantor under this guarantee;
- 3.9 agrees that this guarantee is independent of and additional to any other right or security Meridian may now hold or may at any time obtain from NZAS or any other person.

4 **INDEMNITY**

As a separate and independent obligation, the Guarantor indemnifies Meridian, to the extent (and only to the extent) of its Participating Interest, against:

- 4.1 all claims, liabilities, damages, losses and payments; and
- 4.2 all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by Meridian at any time as a direct or indirect consequence of any Principal Debt not being recoverable from the Guarantor under the guarantee given in clause 3.

5 **LIMITATION ON GUARANTOR'S LIABILITY**

Notwithstanding that this guarantee applies in respect of the whole of the Principal Debt, the Guarantor's liability to Meridian under this deed, in relation to a claim made against the Guarantor in respect of the Principal Debt, is limited to:

- 5.1 its Participating Interest share of that claim at any given time; and
- 5.2 in the case of any Principal Debt arising during the period from the end of the Full Guarantee Period until the Expiry Date (the *Reduced Guarantee Period*), the lesser of:

- (a) its Participating Interest share of \$100 million; and
- (b) its Participating Interest share of \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of Sumitomo) for any Guaranteed Amount that arises during the period (the *Full Guarantee Period*) up to the date which is 12 months prior to the expiry of Period 1,

less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of NZAS' obligations to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate, under and in accordance with the Agreement, arising during the Reduced Guarantee Period:

- (c) from the Guarantor under this deed;
 - (d) from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of Sumitomo); and
 - (e) from NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay the Strike Price for the Contract Quantity, or to repay the Consumption Value Rebate, within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice.
- 5.3 In this clause 5, reference to Sumitomo includes any entity that acquires at any time after the date of this deed the whole or any part of Sumitomo's participating interest (as that term is used in Sumitomo's guarantee that is on the same terms as this deed).

6 OBLIGATIONS OF THE GUARANTOR

6.1 Payment

If NZAS does not pay the Principal Debt by its due date (plus any applicable grace period), the Guarantor shall immediately be liable, following the resolution of any legitimate dispute by NZAS as to any obligation to pay the Principal Debt, to pay that amount to Meridian (whether or not demand for payment has been made on NZAS or any other person), in accordance with clause 9.3, to the extent (and only to the extent) of its Participating Interest.

6.2 No competition

The Guarantor shall not:

- (a) take, accept or continue to hold any security from NZAS for any Principal Debt;
- (b) exercise any right of subrogation or contribution, or require marshalling, or claim the benefit of any security now or in the future held by Meridian for the payment of any Principal Debt;
- (c) take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise or enforce rights, in respect of any amount due (whether actually or contingently) from NZAS to the Guarantor; or
- (d) claim or prove in the dissolution of NZAS in competition with Meridian unless required to do so by Meridian.

6.3 Guarantor to account

If, notwithstanding, and in breach of, clause 6.2, the Guarantor:

- (a) takes, accepts or continues to hold any such security, money or other property from NZAS for any Principal Debt; or
- (b) proves in the Guarantor's own name in the dissolution of NZAS for any Principal Debt (whether or not Meridian has required the Guarantor to do so, or has consented to the Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from NZAS to the Guarantor,

the Guarantor shall immediately pay or transfer to Meridian such security, money or other property or other amounts received by the Guarantor in relation to any such proof, and all interest accruing thereon, and, until that payment or transfer is made, shall hold such security, money or other property, or the benefit of that proof, and all interest thereon, on trust for Meridian, provided that in no event shall the Guarantor be required under this clause 6.3 to transfer to Meridian any security, money or property, or pay over to Meridian any other amount received, in an amount exceeding 79.36 per cent of the Principal Debt (or such other percentage which Meridian has consented to under clause 10), and subject to the limitations expressed in clause 5.

7 MERIDIAN'S RIGHTS

7.1 Discretions

Meridian may at any time:

- (a) determine whether or not to enforce this deed or any other security or right;
- (b) subject to clause 6.1, enforce this deed without first taking steps or proceedings against NZAS or any other person;
- (c) make any arrangement or compromise with NZAS or any other person which Meridian thinks fit; and
- (d) retain, carry to a suspense account, and appropriate at Meridian's discretion, any amount received by Meridian under this deed.

7.2 No prejudice

Meridian's rights under this deed are without prejudice to any other right to which Meridian is at any time entitled (whether under this deed or by law, contract or otherwise), and may be exercised by Meridian without prior notice to the Guarantor, NZAS or any other person.

8 REPRESENTATIONS

8.1 The Guarantor represents and warrants that:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of New Zealand;
- (b) **Power and authority:** it has the power to enter into, and exercise its rights and perform and comply with its obligations under, this deed;
- (c) **Enforceable obligations:** this deed constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

9 DEMANDS AND PAYMENT

9.1 Address for demands

The Guarantor's address for the purposes of this deed, including for demands for payment or performance and notices, (unless and until notified in writing otherwise) is Level 6, Gen-i Tower, 109 Featherston Street, Wellington.

9.2 Making of Demands

Meridian may make demands under this deed by any means permitted at law, including by notice to the Guarantor's address for demands, and (without limiting any other provision of this deed) the Guarantor hereby waives any defence available to Guarantor with respect to the making of demands.

9.3 Method of Payment

The Guarantor shall pay Meridian any payment due by it under this deed within five Business Days of a demand by Meridian in cleared funds without any deduction, withholding on account of any tax, set-off (legal or equitable) or counterclaim whatsoever.

10 CHANGE IN PARTICIPATING INTEREST

10.1 In the event that the Guarantor sells or otherwise transfers all or part of its Participating Interest, the Guarantor shall procure that the purchaser or assignee of that Participating Interest (or part of it) enters into a guarantee in favour of Meridian on the same terms as this deed to the extent of the Participating Interest (or part of it) so acquired. The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.

10.2 Upon execution and delivery of such new guarantee, Meridian shall provide its written consent to the Guarantor (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed if it is satisfied as to the financial capability of the proposed new Guarantor for the purposes of this guarantee.

11 SUCCESSORS AND ASSIGNS

The Guarantor agrees that the covenants of the Guarantor under this deed bind the assigns and successors of the Guarantor.

12 GOVERNING LAW

12.1 This deed shall be governed by the laws of New Zealand, and the Guarantor and Meridian shall submit to the non-exclusive jurisdiction of the New Zealand courts.

12.2 The Guarantor acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Agreement and hereby covenant that they shall not apply for a permanent stay (or similar order) restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

13 SEVERABILITY AND FRUSTRATION

13.1 Severability

If any provision of this deed is or becomes illegal, void or unenforceable, then unless clause 13.2 applies, it shall be severed from this deed without affecting the enforceability, legality, validity or application of any other provision of this deed.

13.2 Frustration

If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then any party may, by notice to the other parties, require the parties to enter into negotiations to agree amendments to this deed to ensure that the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or

frustration. Any failure to agree amendments may be resolved as a dispute under clause 15.

14 CONFIDENTIALITY

14.1 Confidentiality obligation

Each party shall treat:

- (a) the terms of this deed, the Agreement, the Existing NZAS Participants' Guarantee, the undertaking entered into by the Guarantor or a Related Company of the Guarantor in accordance with clause 11 of the Agreement, and any other Surety;
- (b) any information relating to the business or operations of the other party or its Related Companies received from the other in connection with the negotiation or implementation of this deed or the Agreement; and
- (c) all other information made available by or on behalf of or at the request of the other party in connection with this deed or the Agreement,

(*Confidential Information*) as strictly private and confidential, and shall not without the prior written consent of the other party use or disclose that information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by that party's own disclosure;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to:
 - (i) a Related Company of the disclosing party; or
 - (ii) in the case of the Guarantor, to any other NZAS Participant,
 and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party);
- (h) disclosure is to the disclosing party's shareholder, or to the disclosing party's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant, on a need to know basis and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party); or
- (i) disclosure is to a proposed assignee of the disclosing party, provided the other party's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the disclosing party, or by a shareholder or parent company of the disclosing party, provided:

- (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
- (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
- (iii) on receipt of a reasonable request from the other party, the disclosing party shall endeavour to obtain, on terms reasonably acceptable to both parties, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

14.2 **Disclosure required by law**

Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request (*OIA request*), it shall:

- (a) promptly notify the Guarantor of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Guarantor of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord the Guarantor a reasonable period of time in which to consider the required disclosure;
- (c) where prior to disclosure the Guarantor notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and
- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Guarantor of that fact.

14.3 **Official Information Act**

The Guarantor acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under clause 14.2 having regard to those timeframes.

14.4 **Acknowledgement**

Meridian acknowledges that nothing in this clause 14 prevents the Guarantor from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

15 DISPUTE RESOLUTION

15.1 Amicable resolution

Without limiting their rights to require an arbitration under this clause 15, the parties:

- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed (*Dispute*) be resolved amicably by bona fide discussion between the parties; and
- (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.

15.2 Initiating dispute and naming representative

Either party may initiate the dispute resolution procedures in clause 15.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each others' representatives, the representatives must enter into negotiations to try to resolve the Dispute.

15.3 Reference to arbitration

Subject to clause 15.4 if:

- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 15.2; or
- (b) the party receiving notice under clause 15.2 does not name a representative within three Business Days of receipt of the initiating party's notice,

then either party may refer the Dispute to arbitration in accordance with clause 15.4.

15.4 Arbitration

Where clause 15.3 applies, either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.

15.5 Appointment of arbitrator

The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 15.4, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).

15.6 **Place of arbitration**

The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.

15.7 **Application of Second Schedule**

Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

15.8 **Continuation of Performance**

While following the procedures in this clause 15 to resolve the Dispute neither party is relieved from its obligations under this deed.

15.9 **Interlocutory Steps**

Nothing in this clause 15 shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

16 **COUNTERPARTS**

This deed is deemed to be executed by a party if that party has signed or attached that party's signature or signatures (as the case may be) to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy,

and if each party has signed or attached that party's signature (or signatures) to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding deed between the parties.

EXECUTION

Executed as a deed

Pacific Aluminium (New Zealand) Limited

by:

Director

Director

Meridian Energy Limited by:

Director

Director

Part B: Guarantee by Sumitomo Chemical Company, Limited

Deed of Guarantee and Indemnity

Sumitomo Chemical Company, Limited

Meridian Energy Limited

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Date:

PARTIES

Sumitomo Chemical Company, Limited (the *Guarantor*)

Meridian Energy Limited (*Meridian*)

BACKGROUND

- A Meridian and New Zealand Aluminium Smelters Limited (NZAS) are the parties to an Electricity Agreement dated 1 October 2007, as amended by an Electricity Amendment Agreement dated 7 August 2013 and a letter dated 15 August 2013 (*the Agreement*).
- B By a further Electricity Amendment Agreement dated on or about the date of this deed (*Electricity Amendment Agreement*), Meridian and NZAS agreed again to amend the Electricity Agreement, in the manner set out in that Electricity Amendment Agreement.
- C The Guarantor and Pacific Aluminium (New Zealand) Limited (*Pacific Aluminium*) are the shareholders of NZAS.
- D The Guarantor has agreed severally to guarantee NZAS' repayment obligations in respect of Consumption Value Rebate under the Agreement, to the extent of its Participating Interest in NZAS and otherwise on the terms of this deed.
- E Pacific Aluminium is separately providing a several guarantee to Meridian on exactly the same terms as this deed.

BY THIS DEED the parties agree as follows:

1 INTERPRETATION AND DEFINITIONS

In this deed, unless the context otherwise requires, terms that are defined in the Agreement have the meanings assigned to them in the Agreement. In addition:

Participating Interest means the Guarantor's 20.64 per cent participating interest in NZAS and in the Smelter, and includes such varied participating interest to which Meridian has given its written consent in accordance with clause 10.2;

Period 1 means Period 1, as defined in the Agreement, subject to any extension under clause 2.4 of the Agreement;

Principal Debt means NZAS' obligation to repay the Consumption Value Rebate, under and in accordance with the Agreement (as amended from time to time);

this guarantee means the guarantee and indemnity constituted by this deed.

2 REPLACEMENT

If the Electricity Amendment Agreement becomes unconditional, this deed replaces, and is in substitution for, the Deed of Guarantee and Indemnity between the parties dated 7 August

2013 (*2013 Guarantee*) with effect from 1 July 2015 and Meridian absolutely releases and discharges Guarantor from any and all obligations and liability under the 2013 Guarantee. If the Electricity Amendment Agreement does not become unconditional, this deed will be void and of no effect.

3 **GUARANTEE**

The Guarantor severally guarantees the due and punctual repayment by NZAS of the Principal Debt, to the extent (and only to the extent) of its Participating Interest. The Guarantor:

- 3.1 accepts that this guarantee is unconditional, irrevocable and continuing;
- 3.2 agrees to allow Meridian to have priority over it in any recourse against NZAS;
- 3.3 shall be liable as a principal obligor to the extent of its Participating Interest;
- 3.4 will always have the same liability to Meridian, and Meridian's rights under this guarantee shall not be affected, despite any matter or thing which, but for the operation of this clause, might operate to affect or discharge the liability of, or otherwise provide a defence to, the Guarantor, including (without limitation) any change in status of NZAS, any variation or amendment to the Agreement or to any of the obligations of any party under the Agreement, any variation or amendment to any guarantee given by another NZAS Participant or any waiver or indulgence;
- 3.5 must pay Meridian on demand all amounts owing by that Guarantor under this guarantee, provided that Meridian may not make a demand until all legitimate disputes by NZAS as to any obligation to pay the Principal Debt have been resolved;
- 3.6 agrees that this guarantee will not at any time during the period for which it remains in force be deemed to be discharged or wholly or partly satisfied by the payment, liquidation, settlement or compromise of any monies or the whole or partial performance of any term, covenant or obligation of this guarantee from time to time during that period payable or to be performed respectively by NZAS or the Guarantor;
- 3.7 agrees that the liability of the Guarantor will not be affected or avoided by any agreement or arrangement made between Meridian and NZAS or between Meridian and another NZAS Participant (whether with or without the consent of the Guarantor or notice being given to the Guarantor);
- 3.8 agrees that Meridian may without notice to the Guarantor make any credit arrangement with, take and deal with any security given by NZAS or assent to any deed of assignment by, or arrangement or composition of NZAS, without affecting the liability of the Guarantor under this guarantee;
- 3.9 agrees that this guarantee is independent of and additional to any other right or security Meridian may now hold or may at any time obtain from NZAS or any other person.

4 **INDEMNITY**

As a separate and independent obligation, the Guarantor indemnifies Meridian, to the extent (and only to the extent) of its Participating Interest, against:

- 4.1 all claims, liabilities, damages, losses and payments; and
- 4.2 all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by Meridian at any time as a direct or indirect consequence of any Principal Debt not being recoverable from the Guarantor under the guarantee given in clause 3.

5 **LIMITATION ON GUARANTOR'S LIABILITY**

Notwithstanding that this guarantee applies in respect of the whole of the Principal Debt, the Guarantor's liability to Meridian under this deed, in relation to a claim made against the Guarantor in respect of the Principal Debt, is limited to:

- 5.1 its Participating Interest share of that claim at any given time; and
- 5.2 in the case of any Principal Debt arising during the period from the end of the Full Guarantee Period until the Expiry Date (the *Reduced Guarantee Period*), the lesser of:

- (a) its Participating Interest share of \$100 million; and
- (b) its Participating Interest share of \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of Pacific Aluminium or a parent company of Pacific Aluminium) for any Guaranteed Amount that arises during the period (the *Full Guarantee Period*) up to the date which is 12 months prior to the expiry of Period 1,

less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of NZAS' obligations to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate, under and in accordance with the Agreement, arising during the Reduced Guarantee Period:

- (c) from the Guarantor under this deed;
 - (d) from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of Pacific Aluminium or a parent company of Pacific Aluminium); and
 - (e) from NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay the Strike Price for the Contract Quantity, or to repay the Consumption Value Rebate, within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice.
- 5.3 In this clause 5, reference to Pacific Aluminium includes any entity that acquires at any time after the date of this deed the whole or any part of Pacific Aluminium's participating interest (as that term is used in Pacific Aluminium's guarantee that is on the same terms as this deed).

6 OBLIGATIONS OF THE GUARANTOR

6.1 Payment

If NZAS does not pay the Principal Debt by its due date (plus any applicable grace period), the Guarantor shall immediately be liable, following the resolution of any legitimate dispute by NZAS as to any obligation to pay the Principal Debt, to pay that amount to Meridian (whether or not demand for payment has been made on NZAS or any other person), in accordance with clause 9.3, to the extent (and only to the extent) of its Participating Interest.

6.2 No competition

The Guarantor shall not:

- (a) take, accept or continue to hold any security from NZAS for any Principal Debt;
- (b) exercise any right of subrogation or contribution, or require marshalling, or claim the benefit of any security now or in the future held by Meridian for the payment of any Principal Debt;
- (c) take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise or enforce rights, in respect of any amount due (whether actually or contingently) from NZAS to the Guarantor; or
- (d) claim or prove in the dissolution of NZAS in competition with Meridian unless required to do so by Meridian.

6.3 Guarantor to account

If, notwithstanding, and in breach of, clause 6.2, the Guarantor:

- (a) takes, accepts or continues to hold any such security, money or other property from NZAS for any Principal Debt; or
- (b) proves in the Guarantor's own name in the dissolution of NZAS for any Principal Debt (whether or not Meridian has required the Guarantor to do so, or has consented to the Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from NZAS to the Guarantor,

the Guarantor shall immediately pay or transfer to Meridian such security, money or other property or other amounts received by the Guarantor in relation to any such proof, and all interest accruing thereon, and, until that payment or transfer is made, shall hold such security, money or other property, or the benefit of that proof, and all interest thereon, on trust for Meridian, provided that in no event shall the Guarantor be required under this clause 6.3 to transfer to Meridian any security, money or property, or pay over to Meridian any other amount received, in an amount exceeding 20.64 per cent of the Principal Debt (or such other percentage which Meridian has consented to under clause 10), and subject to the limitations expressed in clause 5.

7 **MERIDIAN'S RIGHTS**

7.1 **Discretions**

Meridian may at any time:

- (a) determine whether or not to enforce this deed or any other security or right;
- (b) subject to clause 6.1, enforce this deed without first taking steps or proceedings against NZAS or any other person;
- (c) make any arrangement or compromise with NZAS or any other person which Meridian thinks fit; and
- (d) retain, carry to a suspense account, and appropriate at Meridian's discretion, any amount received by Meridian under this deed.

7.2 **No prejudice**

Meridian's rights under this deed are without prejudice to any other right to which Meridian is at any time entitled (whether under this deed or by law, contract or otherwise), and may be exercised by Meridian without prior notice to the Guarantor, NZAS or any other person.

8 **REPRESENTATIONS**

The Guarantor represents and warrants that:

- 8.1 **Status:** it is a company duly incorporated and validly existing under the laws of Japan;
- 8.2 **Power and authority:** it has the power to enter into, and exercise its rights and perform and comply with its obligations under, this deed;
- 8.3 **Enforceable obligations:** this deed constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

9 **DEMANDS AND PAYMENT**

9.1 **Address for demands**

The Guarantor's address for the purposes of this deed, including for demands for payment or performance and notices, (unless and until notified in writing otherwise) is Level 6, Gen-i Tower, 109 Featherston Street, Wellington.

9.2 **Making of Demands**

Meridian may make demands under this deed by any means permitted at law, including by notice to the Guarantor's address for demands, and (without limiting any other provision of this deed) the Guarantor hereby waives any defence available to Guarantor with respect to the making of demands.

9.3 Method of Payment

The Guarantor shall pay Meridian any payment due by it under this deed within five Business Days of a demand by Meridian in cleared funds without any deduction, withholding on account of any tax, set-off (legal or equitable) or counterclaim whatsoever.

10 CHANGE IN PARTICIPATING INTEREST

10.1 In the event that the Guarantor sells or otherwise transfers all or part of its Participating Interest, the Guarantor shall procure that the purchaser or assignee of that Participating Interest (or part of it) enters into a guarantee in favour of Meridian on the same terms as this deed to the extent of the Participating Interest (or part of it) so acquired. The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.

10.2 Upon execution and delivery of such new guarantee, Meridian shall provide its written consent to the Guarantor (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed if it is satisfied as to the financial capability of the proposed new Guarantor for the purposes of this guarantee.

11 SUCCESSORS AND ASSIGNS

The Guarantor agrees that the covenants of the Guarantor under this deed bind the assigns and successors of the Guarantor.

12 GOVERNING LAW

12.1 This deed shall be governed by the laws of New Zealand, and the Guarantor and Meridian shall submit to the non-exclusive jurisdiction of the New Zealand courts.

12.2 The Guarantor acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Agreement and hereby covenant that they shall not apply for a permanent stay (or similar order) restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

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13.1 Severability

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13.2 Frustration

If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then any party may, by notice to the other parties, require the parties to enter into negotiations to agree amendments to this deed to ensure that the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or

frustration. Any failure to agree amendments may be resolved as a dispute under clause 15.

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14.1 Confidentiality obligation

Each party shall treat:

- (a) the terms of this deed, the Agreement, the Existing NZAS Participants' Guarantee, the undertaking entered into by the Guarantor or a Related Company of the Guarantor in accordance with clause 11 of the Agreement, and any other Surety;
- (b) any information relating to the business or operations of the other party or its Related Companies received from the other in connection with the negotiation or implementation of this deed or the Agreement; and
- (c) all other information made available by or on behalf of or at the request of the other party in connection with this deed or the Agreement,

(*Confidential Information*) as strictly private and confidential, and shall not without the prior written consent of the other party use or disclose that information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by that party's own disclosure;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to:
 - (i) a Related Company of the disclosing party; or
 - (ii) in the case of the Guarantor, to any other NZAS Participant,
 and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party);
- (h) disclosure is to the disclosing party's shareholder, or to the disclosing party's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant, on a need to know basis and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party); or
- (i) disclosure is to a proposed assignee of the disclosing party, provided the other party's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the disclosing party, or by a shareholder or parent company of the disclosing party, provided:

- (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
- (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
- (iii) on receipt of a reasonable request from the other party, the disclosing party shall endeavour to obtain, on terms reasonably acceptable to both parties, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

14.2 **Disclosure required by law**

Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request (*OIA request*), it shall:

- (a) promptly notify the Guarantor of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Guarantor of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord the Guarantor a reasonable period of time in which to consider the required disclosure;
- (c) where prior to disclosure the Guarantor notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and
- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Guarantor of that fact.

14.3 **Official Information Act**

The Guarantor acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under clause 14.2 having regard to those timeframes.

14.4 **Acknowledgement**

Meridian acknowledges that nothing in this clause 14 prevents the Guarantor from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

15 DISPUTE RESOLUTION

15.1 Amicable resolution

Without limiting their rights to require an arbitration under this clause 15, the parties:

- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed (Dispute) be resolved amicably by bona fide discussion between the parties; and
- (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.

15.2 Initiating dispute and naming representative

Either party may initiate the dispute resolution procedures in clause 15.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each others' representatives, the representatives must enter into negotiations to try to resolve the Dispute.

15.3 Reference to arbitration

Subject to clause 15.4 if:

- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 15.2; or
- (b) the party receiving notice under clause 15.2 does not name a representative within three Business Days of receipt of the initiating party's notice,

then either party may refer the Dispute to arbitration in accordance with clause 15.4.

15.4 Arbitration

Where clause 15.3 applies, either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.

15.5 Appointment of arbitrator

The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 15.4, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).

15.6 **Place of arbitration**

The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.

15.7 **Application of Second Schedule**

Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

15.8 **Continuation of Performance**

While following the procedures in this clause 15 to resolve the Dispute neither party is relieved from its obligations under this deed.

15.9 **Interlocutory Steps**

Nothing in this clause 15 shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

16 **COUNTERPARTS**

This deed is deemed to be executed by a party if that party has signed or attached that party's signature or signatures (as the case may be) to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy,

and if each party has signed or attached that party's signature (or signatures) to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding deed between the parties.

EXECUTION

Executed as a deed

Sumitomo Chemical Company, Limited by:

Director

Director

Meridian Energy Limited by:

Director

Director

SCHEDULE G
Expert determination in relation to Surety
(clauses 1.1 and 24.7)

Scope of Expert determination

1. If either:
 - (a) NZAS does not agree with Meridian's notice under subclause 24.6(a) ("**Surety Requirements Dispute**"); or
 - (b) in respect of any amount under clause (d)(i), (ii) or (iii) of the definition of "**Period 2 Surety**" ("**Disputed Amount**"), the parties have not reached agreement as to any adjustment to be made under clause (d)(v) ("**Adjustment Dispute**"), ("**Surety Dispute**"), an Expert shall be appointed in accordance with this Schedule G to determine:
 - (c) in the case of a Surety Requirements Dispute, whether the relevant surety meets the requirements of clause 24.1, 24.2, 24.4 or 24.5 (as the case may be) and the definition of "Period 1 Surety" or "Period 2 Surety" (as the case may be); or
 - (d) in the case of an Adjustment Dispute, any adjustment to such Disputed Amount for unusual or non-recurrent items to the extent that a credit rating agency would make such an adjustment.
2. The scope of the Expert's determination shall be limited solely to determining the matter set out in paragraph 1(c) or 1(d), as applicable.
3. For the avoidance of doubt, the Expert shall not be given a copy of this agreement, and shall not know of the consequences of his or her determination outlined above.

Appointment and replacement of Expert

4. If the parties have not reached agreement as to a matter referred to in paragraph 1 within five Business Days after one party has given notice to the other under clause 20.2, NZAS and Meridian shall, by agreement, appoint an Expert.
5. If NZAS and Meridian are unable to agree on the appointment of an Expert within five Business Days after notice referring the Surety Dispute to Expert Determination has been given under paragraph 4, then on the application of either NZAS or Meridian the President of the New Zealand Law Society or his or her nominee shall appoint an expert (or, if the President or nominee fails to make such an appointment within 10 Business Days, then the Expert shall be appointed by the High Court on the application of either party). Such President or nominee shall appoint an Expert with urgency taking into account:
 - (a) the qualifications that such Expert is required to have;
 - (b) the need for such Expert to be independent;
 - (c) the determination such Expert is required to make under paragraph 12; and
 - (d) one written submission made by each party as to who is an appropriate Expert, provided that such submission is received by that President or nominee within one Business Day of the application to the President or nominee under this

paragraph 5 and neither party shall be entitled to make any submission in reply.

6. If the Expert fails to act, or withdraws his or her agreement to act, as the Expert or becomes incapable of acting as the Expert, a replacement Expert shall be appointed in accordance with the procedure set out in paragraph 5.
7. If, at any time, the Expert becomes aware of any matter or circumstance that might affect the Expert's ability to act impartially, the Expert shall immediately inform the parties. The Expert shall continue to act unless, within three Business Days of being informed, either party issues a written notice to the Expert and the other party requiring that the Expert be replaced. The provisions of paragraph 5 shall then apply as if the Expert had become incapable of acting as the Expert.

Procedure

8. The Expert shall determine the Surety Dispute in such manner and according to such directions and rules as the Expert considers appropriate having regard to the parties' intention that the Surety Dispute be determined promptly and efficiently, provided that:
 - (a) time is of the essence;
 - (b) each party may submit a position statement within two Business Days of the appointment of the Expert;
 - (c) in response, each party may submit a position statement in reply within five Business Days of receipt of the other party's position statement. The position statement in reply shall be limited to matters and issues in reply to the other party's position statement and must not refer to or raise other matters;
 - (d) the Expert may, in writing:
 - (i) require either party to provide clarification of, or further information in relation to, any issue arising from a position statement submitted by either party ("**Clarification**"). Any request for Clarification must be copied to the other party; and
 - (ii) fix the period within which that party must provide the Clarification, which must be in writing and provided to the other party;
 - (e) the other party shall have a right to respond to any Clarification within three Business Days of receiving the Clarification;
 - (f) following the receipt of the position papers and any Clarification sought, the Expert may, at the Expert's sole discretion, convene a meeting with the parties to determine whether the Surety Dispute can be resolved by agreement;
 - (g) if the Surety Dispute is not resolved by agreement, the Expert shall determine the Surety Dispute in accordance with paragraph 12;
 - (h) the position papers and any Clarification provided for in this paragraph 9 must be in writing and sent to the Expert and the other party contemporaneously; and
 - (i) the Expert shall take into account any position statements, Clarifications, responses to Clarifications and oral or written submissions made at any meeting that comply with this paragraph 9.

9. If:
- (a) a dispute arises as to the procedure set out in paragraph 9, the Expert shall determine such dispute; and
 - (b) a party fails to comply with the procedure set out in paragraph 9, the Expert shall determine the dispute in accordance with paragraph 12 and shall not consider any information received from that party other than in accordance with paragraph 9.
10. The parties agree that in all circumstances, other than fraud by the Expert, the process adopted by the Expert shall be binding on the parties and the parties shall not be entitled to object to:
- (a) the process set out in paragraph 9; or
 - (b) any irregularity or decision by the Expert in relation to such process.

Determination

11. As soon as is possible after the conclusion of the procedure set out in paragraph 9, and no later than 20 Business Days after his or her appointment under paragraph 6, the Expert shall issue a written determination (without reasons) advising:
- (a) in the case of a Surety Requirements Dispute, whether or not the relevant surety meets the requirements of clause 24.1, 24.2, 24.4 or 24.5 (as the case may be) and the definition of "Period 1 Surety" or "Period 2 Surety" (as the case may be); or
 - (b) in the case of an Adjustment Dispute, the amount of any adjustment to such Disputed Amount for unusual or non-recurrent items to the extent that a credit rating agency would make such an adjustment.

No interim relief

12. Notwithstanding each party's right to bring an action with respect to this Schedule G, neither party shall be entitled to seek or obtain interim injunctive relief to prevent the Expert determination process in this Schedule being initiated or completed.

No right to appeal

13. The determination of the Expert shall be final and binding on the parties and the parties have no right to any form of appeal or review.

Costs

14. The costs and expenses of the Expert shall be met by the parties equally, unless determined otherwise by the Expert.
15. Subject to paragraph 19, each party shall bear its own costs in connection with a determination under this Schedule G.

Confidential information

16. On or before his or her appointment, the Expert shall be required to enter into a confidentiality deed in favour of NZAS and Meridian in the form set out in Schedule E.

Liability of Expert

17. Except in the case of fraud on the part of the Expert, the Expert will not be liable to any party for any act or omission by the Expert in the performance of the Expert's obligations under this agreement.

Not a reference or agreement to arbitration

18. Referral of a Surety Dispute to the Expert shall not be an arbitration agreement or a submission to arbitration for the purposes of the arbitration statutes of New Zealand and the provisions of such statutes shall not apply to, or govern, the determination of a Surety Dispute.
19. In determining a Surety Dispute, the Expert shall act as an expert and not as an arbitrator.

SCHEDULE H
Form of Guarantee - Period 1 Surety
(clause 1.1)

Deed of Guarantee and Indemnity beginning in Period 1

[Name of counterparty]

Meridian Energy Limited

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Date:

PARTIES

[Name of counterparty] (the *Guarantor*)

Meridian Energy Limited (*Meridian*)

BACKGROUND

- A Meridian and New Zealand Aluminium Smelters Limited (NZAS) are the parties to an Electricity Agreement dated 1 October 2007, as amended by an Electricity Amendment Agreement dated 7 August 2013 and a letter dated 15 August 2013 (the *Electricity Agreement*).
- B By a further Electricity Amendment Agreement dated on or about the date of this Deed **[replace with date if that agreement is signed before this Deed is signed]** (*Electricity Amendment Agreement*), Meridian and NZAS have agreed to amend the Electricity Agreement, in the manner set out in that Electricity Amendment Agreement.
- C The Guarantor and **[name of other shareholder]** (*Other Shareholder*) are the direct or indirect shareholders of NZAS.
- D The Guarantor has agreed severally to guarantee NZAS' obligations beginning in Period 1 in respect of payment of the Strike Price for the Contract Quantity and repayment of the Consumption Value Rebate under the Agreement, to the extent of its Participating Interest in NZAS and otherwise on the terms of this deed.
- E The Other Shareholder is separately providing a surety to Meridian as required under the Agreement.

BY THIS DEED the parties agree as follows:

1 INTERPRETATION AND DEFINITIONS

In this deed, unless the context otherwise requires, terms that are defined in the Agreement have the meanings assigned to them in the Agreement. In addition:

Agreement means the Electricity Agreement, as amended by the Electricity Amendment Agreement, and as otherwise amended in writing from time to time;

Existing NZAS Participants' Guarantee means the Deed of Guarantee and Indemnity granted by **[to be completed]** dated **[on or about the date of this deed]**/**[date]**;

Guaranteed Money means all amounts which the Guarantor is, or may at any time become, liable to pay Meridian under this deed, and a reference to Guaranteed Money includes any part of it;

Participating Interest means the Guarantor's direct or indirect [**insert Participating Interest percentage**] per cent participating interest in NZAS and in the Smelter (whether held directly or through Related Companies of the Guarantor), and includes such varied participating interest to which Meridian has given its written consent in accordance with clause 10.2;

Period 1 means Period 1, as defined in the Agreement, subject to any extension under clause 2.4 of the Agreement;

Principal Debt means NZAS' obligations to pay the Strike Price for the Contract Quantity, to repay the Consumption Value Rebate, and to indemnify Meridian under clause 25.2 of the Agreement, under and in accordance with the Agreement without regard to any dispute or objection NZAS may make under the Agreement as to the amount owing by NZAS;

this guarantee means the guarantee and indemnity constituted by this deed.

2 **GUARANTEE**

The Guarantor severally guarantees the due and punctual payment by NZAS of the Principal Debt, to the extent (and only to the extent) of its Participating Interest. The Guarantor:

- 2.1 accepts that this guarantee is unconditional, irrevocable and continuing;
- 2.2 agrees to allow Meridian to have priority over it in any recourse against NZAS;
- 2.3 shall be liable as a principal obligor to the extent of its Participating Interest;
- 2.4 will always have the same liability to Meridian, and Meridian's rights under this guarantee shall not be affected, despite any matter or thing which, but for the operation of this clause, might operate to affect or discharge the liability of, or otherwise provide a defence to, the Guarantor, including (without limitation) any change in status of NZAS, any variation or amendment to the Agreement or to any of the obligations of any party under the Agreement, any variation or amendment to any guarantee given by another NZAS Participant or any waiver or indulgence;
- 2.5 must pay Meridian immediately on demand all amounts owing by the Guarantor under this guarantee, despite any dispute or objection NZAS may make under the Agreement as to the amount owing under the Agreement (absent manifest error);
- 2.6 agrees that this guarantee will not at any time during the period for which it remains in force be deemed to be discharged or wholly or partly satisfied by the payment, liquidation, settlement or compromise of any monies or the whole or partial performance of any term, covenant or obligation of this guarantee from time to time during that period payable or to be performed respectively by NZAS or the Guarantor;
- 2.7 agrees that the liability of the Guarantor will not be affected or avoided by any agreement or arrangement made between Meridian and NZAS or between Meridian and another NZAS Participant (whether with or without the consent of the Guarantor or notice being given to the Guarantor);
- 2.8 agrees that Meridian may without notice to the Guarantor make any credit arrangement with, take and deal with any security given by NZAS or assent to any

deed of assignment by, or arrangement or composition of NZAS, without affecting the liability of the Guarantor under this guarantee;

- 2.9 agrees that this guarantee is independent of and additional to any other right or security Meridian may now hold or may at any time obtain from NZAS or any other person.

3 INDEMNITY

As a separate and independent obligation, the Guarantor indemnifies Meridian, to the extent (and only to the extent) of its Participating Interest, against:

- 3.1 all claims, liabilities, damages, losses and payments; and
- 3.2 all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by Meridian at any time as a direct or indirect consequence of any Principal Debt not being recoverable from the Guarantor under the guarantee given in clause 2 including as a result of the obligation to pay the Principal Debt becoming void, voidable or unenforceable.

4 LIMITATION ON GUARANTOR'S LIABILITY

Notwithstanding that this guarantee applies in respect of the whole of the Principal Debt, the Guarantor's liability to Meridian under this deed, in relation to a claim made against the Guarantor in respect of the Principal Debt, is limited to its Participating Interest share of that claim at any given time and:

- 4.1 in the case of any Principal Debt arising during the period (the *Full Guarantee Period*) up to the date which is 12 months prior to the expiry of Period 1, its Participating Interest share of \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of any Principal Debt arising during the Full Guarantee Period from the Guarantor under this deed and from any other Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder and excluding amounts repaid by Meridian under clause 8.4);
- 4.2 in the case of any Principal Debt relating to:
- (a) NZAS' obligation to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate arising during the period from the end of the Full Guarantee Period until the Expiry Date (the *Reduced Guarantee Period*); or
 - (b) NZAS' obligation to indemnify Meridian under clause 25.2 of the Agreement arising during the 12 months prior to the end of Period 1,

the lesser of:

- (c) its Participating Interest share of \$100 million; and
- (d) its Participating Interest share of \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from the Guarantor under

this deed and from any other Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder and excluding amounts repaid by Meridian under clause 8.4) for any Guaranteed Amount that arises during the Full Guarantee Period,

less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of any Principal Debt relating to:

- (e) NZAS' obligation to pay the Strike Price for the Contract Quantity or to repay the Consumption Value Rebate arising during the Reduced Guarantee Period; or
- (f) NZAS' obligation to indemnify Meridian under clause 25.2 of the Agreement arising during the 12 months prior to the end of Period 1,

from:

- (g) the Guarantor under this deed, from any other Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder and excluding amounts repaid by Meridian under clause 8.4); and
- (h) the NZAS Participant that is the Guarantor or is a Related Company of the Guarantor under that NZAS Participant's Existing NZAS Participants' Guarantee; and
- (i) NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay the Strike Price for the Contract Quantity, to repay the Consumption Value Rebate or to pay an amount in respect of the indemnity in clause 25.2 of the Agreement, within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice; and

4.3 in the case of any Principal Debt relating to NZAS' obligation to indemnify Meridian under clause 25.2 of the Agreement arising during:

- (a) Period 2, \$39 million; or
- (b) Reduced Consumption Period 2, \$24 million,

(each a *Relevant Period*), provided that if the EGRs provide for weekly settlement of payment obligations under the EGRs, those amounts will reduce proportionately, less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of any Principal Debt relating to NZAS' obligations to indemnify Meridian under clause 25.2 of the Agreement arising during, where Period 2 is the Relevant Period, that Period 2 or, where Reduced Consumption Period 2 is the Relevant Period, during both Period 2 and Reduced Consumption Period 2:

- (c) from the Guarantor under this deed, from any other Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf

of the Other Shareholder and excluding amounts repaid by Meridian under clause 8.4); and

- (d) from NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay an amount in respect of the indemnity in clause 25.2 of the Agreement within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice.

4.4 In this clause 4, reference to the Other Shareholder includes any entity that acquires at any time after the date of this deed the whole or any part of the Other Shareholder's participating interest (as that term is used in the Other Shareholder's guarantee that is on the same terms as this deed).

5 OBLIGATIONS OF THE GUARANTOR

5.1 Payment

If NZAS does not pay the Principal Debt by its due date (plus any applicable grace period), the Guarantor shall immediately pay that amount to Meridian (whether or not demand for payment has been made on NZAS or any other person and despite any dispute or objection NZAS may make under the Agreement as to the amount owing under the Agreement, absent manifest error), in accordance with clause 8.3, to the extent (and only to the extent) of its Participating Interest, and subject to the other limitations expressed in clauses 4.1 to 4.3.

5.2 No competition

The Guarantor shall not:

- (a) take, accept or continue to hold any security from NZAS for any Principal Debt;
- (b) exercise any right of subrogation or contribution, or require marshalling, or claim the benefit of any security now or in the future held by Meridian for the payment of any Principal Debt;
- (c) take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise or enforce rights, in respect of any amount due (whether actually or contingently) from NZAS to the Guarantor; or
- (d) claim or prove in the dissolution of NZAS in competition with Meridian unless required to do so by Meridian.

5.3 Guarantor to account

If, notwithstanding, and in breach of, clause 5.2, the Guarantor:

- (a) takes, accepts or continues to hold any such security, money or other property from NZAS for any Principal Debt; or
- (b) proves in the Guarantor's own name in the dissolution of NZAS for any Principal Debt (whether or not Meridian has required the Guarantor to do so, or has consented to the Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from NZAS to the Guarantor,

the Guarantor shall immediately pay or transfer to Meridian such security, money or other property or other amounts received by the Guarantor in relation to any such proof, and all interest accruing thereon, and, until that payment or transfer is made, shall hold such security, money or other property, or the benefit of that proof, and all interest thereon, on trust for Meridian, provided that in no event shall the Guarantor be required under this clause 5.3 to transfer to Meridian any security, money or property, or pay over to Meridian any other amount received, in an amount exceeding **[to complete]** per cent of the Principal Debt (or such other percentage which Meridian has consented to under clause 10), and subject to the other limitations expressed in clauses 4.1 to 4.3.

6 MERIDIAN'S RIGHTS

6.1 Discretions

Meridian may at any time:

- (a) determine whether or not to enforce this deed or any other security or right;
- (b) enforce this deed without first taking steps or proceedings against NZAS or any other person;
- (c) make any arrangement or compromise with NZAS or any other person which Meridian thinks fit; and
- (d) retain, carry to a suspense account, and appropriate at Meridian's discretion, any amount received by Meridian under this deed.

6.2 No prejudice

Meridian's rights under this deed are without prejudice to any other right to which Meridian is at any time entitled (whether under this deed or by law, contract or otherwise), and may be exercised by Meridian without prior notice to the Guarantor, NZAS or any other person.

7 REPRESENTATIONS AND ACKNOWLEDGEMENTS

7.1 Representations

The Guarantor represents and warrants that:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of [];
- (b) **Power and authority:** it has the power to enter into, and exercise its rights and perform and comply with its obligations under, this deed;
- (c) **Enforceable obligations:** this deed constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

7.2 Repetition

The Guarantor shall be deemed to repeat the representations and warranties in clause 7.1 on the first day of each month until the Guarantor is released from its obligations under this deed.

7.3 Acknowledgements

Each party acknowledges that:

- (a) as at the date of this deed, it:
 - (i) intends the Agreement and this deed to be enforceable; and
 - (ii) considers the Agreement and this deed are enforceable; and
- (b) Meridian is relying on the Guarantor making the acknowledgements in clause 7.3(a) in agreeing to enter into the Electricity Amendment Agreement.

8 DEMANDS AND PAYMENT

8.1 Address for demands

The Guarantor's address for the purposes of this deed, including for demands for payment or performance and notices, (unless and until notified in writing otherwise) is **[insert Guarantor's registered office]**.

8.2 Making of Demands

Meridian's calculation of the Principal Debt shall be binding on the Guarantor (absent manifest error) until clause 8.4 applies. Meridian may make demands under this deed by any means permitted at law, including by notice to the Guarantor's address for demands, and (without limiting any other provision of this deed) the Guarantor hereby waives any defence available to the Guarantor with respect to the making of demands.

8.3 Method of Payment

The Guarantor shall pay Meridian any payment due by it under this deed within five Business Days of a demand by Meridian in cleared funds free and clear of any restriction or condition and without any deduction, withholding on account of any tax, set-off (legal or equitable) or counterclaim whatsoever. Any Guaranteed Money received by Meridian shall not satisfy the Guarantor's obligation to pay such amount until it is cleared and immediately available to Meridian.

8.4 Disputed Payment

If the Guarantor makes a payment due under this deed, in circumstances where NZAS has disputed all or part of the same payment claimed by Meridian under the Agreement, and that dispute is subsequently resolved wholly or partly in favour of NZAS such that clause 7.13(b) of the Agreement applies, then Meridian shall, within 2 Business Days of the dispute being so resolved, repay to the Guarantor such part of the amount paid under this deed as is resolved to be owing to NZAS, together with interest thereon for the period from the date of the Guarantor's payment to the date of the repayment, calculated at the Non-default Rate.

8.5 Currency of Payment

Any amount which the Guarantor is required to pay under this deed in respect of the Principal Debt shall be paid in the currency in which NZAS is obliged to pay the relevant amount as specified in the Agreement.

8.6 **Extent of satisfaction of Guarantor's obligation**

If any Guaranteed Money is received by Meridian in a currency ("**first currency**") other than the currency ("**second currency**") in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received shall only satisfy the Guarantor's obligation to pay such amount to the extent of the amount in the second currency which Meridian is able, in accordance with reasonable practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first date upon which it is practicable to do so).

8.7 **Indemnity**

The Guarantor indemnifies Meridian against:

- (a) any loss sustained by Meridian as a result of the amount purchased by Meridian in the second currency pursuant to clause 8.6 being less than the amount due; and
- (b) all costs and expenses incurred by Meridian in purchasing the second currency.

9 **RELEASE AND REINSTATEMENT**

9.1 **Release**

Meridian shall sign or deliver a release of this deed once it is reasonably satisfied that:

- (a) Meridian has received all the Guaranteed Money; and
- (b) no payment received, or to be received, by Meridian may be avoided, or required to be repaid by Meridian, whether under any law relating to insolvency or otherwise.

A dispute as to whether Meridian is required to be reasonably satisfied under this clause 9.1 may be resolved as a Dispute under clause 15.

9.2 **Reinstatement**

If any payment received or recovered by Meridian, or any other person on behalf of Meridian, is or may be avoided, whether by law or otherwise, then:

- (a) such payment shall be deemed not to have affected or discharged the liability of the Guarantor under this deed or any other security given by the Guarantor in favour of Meridian, and Meridian and the Guarantor shall be restored to the position in which each would have been if such payment had not been received or recovered; and
- (b) Meridian shall be entitled to exercise all its rights under this deed which it would have been entitled to exercise if such payment had not been received or recovered,

notwithstanding that Meridian may have signed a release pursuant to this deed.

10 CHANGE IN PARTICIPATING INTEREST

10.1 In the event that the Guarantor or any entity related to the Guarantor sells or otherwise transfers all or part of its Participating Interest, the Guarantor shall procure that the purchaser or assignee of that Participating Interest (or part of it):

- (a) enters into a guarantee in favour of Meridian on the same terms as this deed to the extent of the Participating Interest (or part of it) so acquired or on such other terms as Meridian agrees; and
- (b) provides a legal opinion satisfactory to Meridian confirming the due execution and enforceability of that guarantee.

The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.

10.2 Upon execution and delivery of such new guarantee and legal opinion and provided that Meridian is satisfied:

- (a) that there is no Guaranteed Money owing by the Guarantor under this guarantee (other than contingently); and
- (b) as to the financial capability of the proposed new guarantor for the purposes of this guarantee,

Meridian shall provide its written consent to the Guarantor (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed.

11 SUCCESSORS AND ASSIGNS

The Guarantor agrees that the covenants of the Guarantor under this deed bind the assigns and successors of the Guarantor.

12 GOVERNING LAW AND JURISDICTION

12.1 This deed shall be governed by the laws of New Zealand, and the Guarantor and Meridian shall submit to the non-exclusive jurisdiction of the New Zealand courts.

12.2 The Guarantor acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Agreement and hereby covenant that they shall not apply for a permanent stay (or similar order) restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

12.3 Process agent

For the purpose of this clause 12, the Guarantor irrevocably appoints **[Insert]** as its agent for the service of process in relation to any proceedings in New Zealand.

12.4 Service of process

The Guarantor irrevocably agrees that any writ, judgment or other notice of process will be sufficiently and effectively served on it in connection with proceedings in New

Zealand if addressed to **[insert]** and delivered to it at its address designated for the purposes of this deed or if served in any other manner permitted by law.

13 SEVERABILITY AND FRUSTRATION

13.1 Severability

If any provision of this deed is or becomes illegal, void or unenforceable, then unless clause 13.2 applies, it shall be severed from this deed without affecting the enforceability, legality, validity or application of any other provision of this deed.

13.2 Frustration

If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then any party may, by notice to the other parties, require the parties to enter into negotiations to agree amendments to this deed to ensure that the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or frustration. Any failure to agree amendments may be resolved as a dispute under clause 15.

14 CONFIDENTIALITY

14.1 Confidentiality Obligation

Each party shall treat:

- (a) the terms of this deed, the Agreement, the undertaking entered into by the Guarantor or a Related Company of the Guarantor in accordance with clause 11.7 of the Agreement, and any other Surety;
- (b) any information relating to the business or operations of the other party or its Related Companies received from the other in connection with the negotiation or implementation of this deed or the Agreement; and
- (c) all other information made available by or on behalf of or at the request of the other party in connection with this deed or the Agreement,

(*Confidential Information*) as strictly private and confidential, and shall not without the prior written consent of the other party use or disclose that information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by that party's own disclosure;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to:
 - (i) a Related Company of the disclosing party; or
 - (ii) in the case of the Guarantor, to any other NZAS Participant,

and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party);

- (h) disclosure is to the disclosing party's shareholder, or to the disclosing party's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant, on a need to know basis and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party); or
- (i) disclosure is to a proposed assignee of the disclosing party, provided the other party's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the disclosing party, or by a shareholder or parent company of the disclosing party, provided:
 - (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
 - (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
 - (iii) on receipt of a reasonable request from the other party, the disclosing party shall endeavour to obtain, on terms reasonably acceptable to both parties, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

14.2 **Disclosure required by law**

Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request (*OIA request*), it shall:

- (a) promptly notify the Guarantor of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Guarantor of the Confidential Information covered by the request and when that information would need to be disclosed, early enough so as to accord the Guarantor a reasonable period of time in which to consider the required disclosure;
- (c) where prior to disclosure the Guarantor notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and

- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Guarantor of that fact.

14.3 **Official Information Act**

The Guarantor acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under clause 14.2 having regard to those timeframes.

14.4 **Acknowledgment**

Meridian acknowledges that nothing in this clause 14 prevents the Guarantor from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

15 **DISPUTE RESOLUTION**

15.1 **Amicable resolution**

Without limiting their rights to require an arbitration under this clause 15, the parties:

- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed (*Dispute*) be resolved amicably by bona fide discussion between the parties; and
- (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.

15.2 **Initiating dispute and naming representative**

Either party may initiate the dispute resolution procedures in clause 15.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the Dispute.

15.3 **Reference to arbitration**

Subject to clause 15.4, if:

- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 15.2; or
- (b) the party receiving notice under clause 15.2 does not name a representative within three Business Days of receipt of the initiating party's notice,

then either party may refer the Dispute to arbitration in accordance with clause 15.4.

15.4 **Arbitration**

Where clause 15.3 applies, either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.

15.5 **Appointment of arbitrator**

The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 15.4, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).

15.6 **Place of arbitration**

The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.

15.7 **Application of Second Schedule**

Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

15.8 **Continuation of performance**

While following the procedures in this clause 15 to resolve the Dispute neither party is relieved from its obligations under this deed.

15.9 **Interlocutory steps**

Nothing in this clause 15 shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

16 **COUNTERPARTS**

This deed is deemed to be executed by a party if that party has signed or attached that party's signature or signatures (as the case may be) to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy,

and if each party has signed or attached that party's signature (or signatures) to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding deed between the parties.

EXECUTION

Executed as a deed.

[Name of counterparty] by:

Director

Director

Meridian Energy Limited by:

Director

Director

SCHEDULE I
Form of Guarantee - Period 2 Surety
(clause 1.1)

Deed of Guarantee and Indemnity relating to Period 2

[Name of counterparty]

Meridian Energy Limited

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Date:

PARTIES

[Name of counterparty] (the *Guarantor*)

Meridian Energy Limited (*Meridian*)

BACKGROUND

- A Meridian and New Zealand Aluminium Smelters Limited (NZAS) are the parties to an Electricity Agreement dated 1 October 2007 (the *Electricity Agreement*).
- B By an Electricity Amendment Agreement dated on or about the date of this Deed **[replace with date if that agreement is signed before this Deed is signed]** (*Electricity Amendment Agreement*), Meridian and NZAS agreed to amend the Electricity Agreement, in the manner set out in that Electricity Amendment Agreement.
- C The Guarantor and **[name of other shareholder]** (*Other Shareholder*) are the direct or indirect shareholders of NZAS.
- D The Guarantor has agreed severally to guarantee NZAS' obligations during Period 2 and Reduced Consumption Period 2 in respect of payment of the Strike Price for the Contract Quantity and the indemnity in clause 25.2 of the Agreement, to the extent of its Participating Interest in NZAS and otherwise on the terms of this deed.
- E The Other Shareholder is separately providing a surety to Meridian as required under the Agreement.

BY THIS DEED the parties agree as follows:

1 INTERPRETATION AND DEFINITIONS

In this deed, unless the context otherwise requires, terms that are defined in the Agreement have the meanings assigned to them in the Agreement. In addition:

Agreement means the Electricity Agreement, as amended by the Electricity Amendment Agreement, and as otherwise amended in writing from time to time;

Existing NZAS Participants' Guarantee means the Deed of Guarantee and Indemnity granted by **[to be completed]** dated **[to be completed]**;

Guaranteed Money means all amounts which the Guarantor is, or may at any time become, liable to pay Meridian under this deed, and a reference to Guaranteed Money includes any part of it;

Participating Interest means the Guarantor's direct or indirect **[insert Participating Interest percentage]** per cent participating interest in NZAS and in the Smelter (whether

held directly or through Related Companies of the Guarantor), and includes such varied participating interest to which Meridian has given its written consent in accordance with clause 10.2;

Period 1 means Period 1, as defined in the Agreement, subject to any extension under clause 2.4 of the Agreement;

Principal Debt means NZAS' obligations to pay the Strike Price for the Contract Quantity, and to indemnify Meridian under clause 25.2 of the Agreement, under and in accordance with the Agreement;

this guarantee means the guarantee and indemnity constituted by this deed.

2 **GUARANTEE**

The Guarantor severally guarantees the due and punctual payment by NZAS of the Principal Debt, to the extent (and only to the extent) of its Participating Interest. The Guarantor:

- 2.1 accepts that this guarantee is unconditional, irrevocable and continuing;
- 2.2 agrees to allow Meridian to have priority over it in any recourse against NZAS;
- 2.3 shall be liable as a principal obligor to the extent of its Participating Interest;
- 2.4 will always have the same liability to Meridian, and Meridian's rights under this guarantee shall not be affected, despite any matter or thing which, but for the operation of this clause, might operate to affect or discharge the liability of, or otherwise provide a defence to, the Guarantor, including (without limitation) any change in status of NZAS, any variation or amendment to the Agreement or to any of the obligations of any party under the Agreement, any variation or amendment to any guarantee given by another NZAS Participant or any waiver or indulgence;
- 2.5 must pay Meridian immediately on demand all amounts owing by the Guarantor under this guarantee, provided that Meridian may not make a demand until all legitimate disputes by NZAS as to any obligation to pay the Principal Debt have been resolved;
- 2.6 agrees that this guarantee will not at any time during the period for which it remains in force be deemed to be discharged or wholly or partly satisfied by the payment, liquidation, settlement or compromise of any monies or the whole or partial performance of any term, covenant or obligation of this guarantee from time to time during that period payable or to be performed respectively by NZAS or the Guarantor;
- 2.7 agrees that the liability of the Guarantor will not be affected or avoided by any agreement or arrangement made between Meridian and NZAS or between Meridian and another NZAS Participant (whether with or without the consent of the Guarantor or notice being given to the Guarantor);
- 2.8 agrees that Meridian may without notice to the Guarantor make any credit arrangement with, take and deal with any security given by NZAS or assent to any deed of assignment by, or arrangement or composition of NZAS, without affecting the liability of the Guarantor under this guarantee;

- 2.9 agrees that this guarantee is independent of and additional to any other right or security Meridian may now hold or may at any time obtain from NZAS or any other person.

3 INDEMNITY

As a separate and independent obligation, the Guarantor indemnifies Meridian, to the extent (and only to the extent) of its Participating Interest, against:

- 3.1 all claims, liabilities, damages, losses and payments; and
- 3.2 all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by Meridian at any time as a direct or indirect consequence of any Principal Debt not being recoverable from the Guarantor under the guarantee given in clause 2 including as a result of the obligation to pay the Principal Debt becoming void, voidable or unenforceable.

4 LIMITATION ON GUARANTOR'S LIABILITY

Notwithstanding that this guarantee applies in respect of the whole of the Principal Debt, the Guarantor's liability to Meridian under this deed, in relation to a claim made against the Guarantor in respect of the Principal Debt, is limited to:

- 4.1 its Participating Interest share of that claim at any given time; and
- 4.2 in the case of any Principal Debt relating to NZAS' obligations to pay the Strike Price for the Contract Quantity arising during Period 2 and/or Reduced Consumption Period 2, the lesser of:
- (a) its Participating Interest share of \$100 million; and
 - (b) its Participating Interest share of \$230 million less the aggregate of amounts unconditionally and irrevocably received by Meridian from the Guarantor under this deed and from any other Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder) for any Guaranteed Amount that arises during the period (the *Full Guarantee Period*) up to the date which is 12 months prior to the expiry of Period 1,

less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of NZAS' obligations to pay the Strike Price for the Contract Quantity and to repay the Consumption Value Rebate arising during the Reduced Guarantee Period:

- (c) from the Guarantor under this deed, from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any other Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder); and
- (d) from the NZAS Participant that is the Guarantor or is a Related Company of the Guarantor under that NZAS Participant's Existing NZAS Participants' Guarantee; and

- (e) from NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay the Strike Price for the Contract Quantity, or to repay the Consumption Value Rebate, within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice; and
- 4.3 in the case of any Principal Debt relating to NZAS' obligation to indemnify Meridian under clause 25.2 of the Agreement arising during:
- (a) Period 2, \$39 million; or
 - (b) Reduced Consumption Period 2, \$24 million,
- (each a *Relevant Period*), provided that if the EGRs provide for weekly settlement of payment obligations under the EGRs, those amounts will reduce proportionately, less the aggregate of amounts unconditionally and irrevocably received by Meridian in respect of any Principal Debt relating to NZAS' obligations to indemnify Meridian under clause 25.2 of the Agreement arising during, where Period 2 is the Relevant Period that Period 2 or, where Reduced Consumption Period 2 is the Relevant Period, during both Period 2 and Reduced Consumption Period 2:
- (c) from the Guarantor under this deed, from any Period 1 Surety counterparty under a Period 1 Surety procured by or on behalf of the Guarantor and from any other Period 2 Surety counterparty under a Period 2 Surety procured by or on behalf of the Guarantor (but excluding amounts received from or on behalf of the Other Shareholder and excluding amounts repaid by Meridian under clause 8.4); and
 - (d) from NZAS following a notice by Meridian under clause 12.4(a) of the Agreement requiring NZAS to pay an amount in respect of the indemnity in clause 25.2 of the Agreement within 20 Business Days, capped at an amount equal to the Guarantor's Participating Interest share of the amount specified in Meridian's notice.
- 4.4 In this clause 4, reference to the Other Shareholder includes any entity that acquires at any time after the date of this deed the whole or any part of the Other Shareholder's participating interest (as that term is used in the Other Shareholder's guarantee that is on the same terms as this deed or that is a Period 1 Surety).

5 OBLIGATIONS OF THE GUARANTOR

5.1 Payment

If NZAS does not pay the Principal Debt by its due date (plus any applicable grace period), the Guarantor shall immediately pay that amount to Meridian following resolution of any legitimate dispute by NZAS as to any obligation to pay the Principal Debt (whether or not demand for payment has been made on NZAS or any other person), in accordance with clause 8.3, to the extent (and only to the extent) of its Participating Interest, and subject to the other limitations expressed in clauses 4.2 and 4.3.

5.2 No competition

The Guarantor shall not:

- (a) take, accept or continue to hold any security from NZAS for any Principal Debt;
- (b) exercise any right of subrogation or contribution, or require marshalling, or claim the benefit of any security now or in the future held by Meridian for the payment of any Principal Debt;
- (c) take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise or enforce rights, in respect of any amount due (whether actually or contingently) from NZAS to the Guarantor; or
- (d) claim or prove in the dissolution of NZAS in competition with Meridian unless required to do so by Meridian.

5.3 Guarantor to account

If, notwithstanding, and in breach of, clause 5.2, the Guarantor:

- (a) takes, accepts or continues to hold any such security, money or other property from NZAS for any Principal Debt; or
- (b) proves in the Guarantor's own name in the dissolution of NZAS for any Principal Debt (whether or not Meridian has required the Guarantor to do so, or has consented to the Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from NZAS to the Guarantor,

the Guarantor shall immediately pay or transfer to Meridian such security, money or other property or other amounts received by the Guarantor in relation to any such proof, and all interest accruing thereon, and, until that payment or transfer is made, shall hold such security, money or other property, or the benefit of that proof, and all interest thereon, on trust for Meridian, provided that in no event shall the Guarantor be required under this clause 5.3 to transfer to Meridian any security, money or property, or pay over to Meridian any other amount received, in an amount exceeding **[to complete]** per cent of the Principal Debt (or such other percentage which Meridian has consented to under clause 10), and subject to the other limitations expressed in clauses 4.2 and 4.3.

6 MERIDIAN'S RIGHTS

6.1 Discretions

Meridian may at any time:

- (a) determine whether or not to enforce this deed or any other security or right;
- (b) subject to clause 5.1, enforce this deed without first taking steps or proceedings against NZAS or any other person;
- (c) make any arrangement or compromise with NZAS or any other person which Meridian thinks fit; and
- (d) retain, carry to a suspense account, and appropriate at Meridian's discretion, any amount received by Meridian under this deed.

6.2 No prejudice

Meridian's rights under this deed are without prejudice to any other right to which Meridian is at any time entitled (whether under this deed or by law, contract or otherwise), and may be exercised by Meridian without prior notice to the Guarantor, NZAS or any other person.

7 REPRESENTATIONS AND ACKNOWLEDGEMENTS

7.1 Representations

The Guarantor represents and warrants that:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of [];
- (b) **Power and authority:** it has the power to enter into, and exercise its rights and perform and comply with its obligations under, this deed;
- (c) **Enforceable obligations:** this deed constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

7.2 Repetition

The Guarantor shall be deemed to repeat the representations and warranties in clause 7.1 on the first day of each month until the Guarantor is released from its obligations under this deed.

7.3 Acknowledgements

Each party acknowledges that:

- (a) as at the date of this deed, it:
 - (i) intends the Agreement and this deed to be enforceable; and
 - (ii) considers the Agreement and this deed are enforceable; and
- (b) Meridian is relying on the Guarantor making the acknowledgements in clause 7.3(a) in agreeing to enter into the Electricity Amendment Agreement.

8 DEMANDS AND PAYMENT

8.1 Address for demands

The Guarantor's address for the purposes of this deed, including for demands for payment or performance and notices, (unless and until notified in writing otherwise) is [*insert Guarantor's registered office*].

8.2 Making of Demands

Meridian may make demands under this deed by any means permitted at law, including by notice to the Guarantor's address for demands, and (without limiting any other provision of this deed) the Guarantor hereby waives any defence available to the Guarantor with respect to the making of demands.

8.3 Method of Payment

The Guarantor shall pay Meridian any payment due by it under this deed within five Business Days of a demand by Meridian in cleared funds free and clear of any restriction or condition and without any deduction, withholding on account of any tax, set-off (legal or equitable) or counterclaim whatsoever. Any Guaranteed Money received by Meridian shall not satisfy the Guarantor's obligation to pay such amount until it is cleared and immediately available to Meridian.

8.4 Currency of Payment

Any amount which the Guarantor is required to pay under this deed in respect of the Principal Debt shall be paid in the currency in which NZAS is obliged to pay the relevant amount as specified in the Agreement.

8.5 Extent of satisfaction of Guarantor's obligation

If any Guaranteed Money is received by Meridian in a currency ("**first currency**") other than the currency ("**second currency**") in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received shall only satisfy the Guarantor's obligation to pay such amount to the extent of the amount in the second currency which Meridian is able, in accordance with reasonable practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first date upon which it is practicable to do so).

8.6 Indemnity

The Guarantor indemnifies Meridian against:

- (a) any loss sustained by Meridian as a result of the amount purchased by Meridian in the second currency pursuant to clause 8.5 being less than the amount due; and
- (b) all costs and expenses incurred by Meridian in purchasing the second currency.

9 RELEASE AND REINSTATEMENT

9.1 Release

Meridian shall sign or deliver a release of this deed once it is reasonably satisfied that:

- (a) Meridian has received all the Guaranteed Money; and
- (b) no payment received, or to be received, by Meridian may be avoided, or required to be repaid by Meridian, whether under any law relating to insolvency or otherwise.

A dispute as to whether Meridian is required to be reasonably satisfied under this clause 9.1 may be resolved as a Dispute under clause 15.

9.2 Reinstatement

If any payment received or recovered by Meridian, or any other person on behalf of Meridian, is or may be avoided, whether by law or otherwise, then:

- (a) such payment shall be deemed not to have affected or discharged the liability of the Guarantor under this deed or any other security given by the Guarantor in favour of Meridian, and Meridian and the Guarantor shall be restored to the position in which each would have been if such payment had not been received or recovered; and
- (b) Meridian shall be entitled to exercise all its rights under this deed which it would have been entitled to exercise if such payment had not been received or recovered,

notwithstanding that Meridian may have signed a release pursuant to this deed.

10 CHANGE IN PARTICIPATING INTEREST

10.1 In the event that the Guarantor or any entity related to the Guarantor sells or otherwise transfers all or part of its Participating Interest, the Guarantor shall procure that the purchaser or assignee of that Participating Interest (or part of it):

- (a) enters into a guarantee in favour of Meridian on the same terms as this deed to the extent of the Participating Interest (or part of it) so acquired or on such other terms as Meridian agrees; and
- (b) provides a legal opinion satisfactory to Meridian confirming the due execution and enforceability of that guarantee.

The same shall apply to any subsequent purchaser or transferee of all or part of that Participating Interest.

10.2 Upon execution and delivery of such new guarantee and legal opinion and provided that Meridian is satisfied:

- (a) that there is no Guaranteed Money owing by the Guarantor under this guarantee (other than contingently); and
- (b) as to the financial capability of the proposed new guarantor for the purposes of this guarantee,

Meridian shall provide its written consent to the Guarantor (or such other NZAS Participant), as the case may be, being released, to the extent of the Participating Interest (or part of it) so transferred, from its obligations under this deed.

11 SUCCESSORS AND ASSIGNS

The Guarantor agrees that the covenants of the Guarantor under this deed bind the assigns and successors of the Guarantor.

12 GOVERNING LAW AND JURISDICTION

12.1 This deed shall be governed by the laws of New Zealand, and the Guarantor and Meridian shall submit to the non-exclusive jurisdiction of the New Zealand courts.

12.2 The Guarantor acknowledges that the New Zealand courts are a convenient forum for the conduct of any proceedings relating to or arising from this deed or the Agreement and hereby covenant that they shall not apply for a permanent stay (or similar order)

restraining any proceedings in a New Zealand court on the basis of forum non conveniens.

12.3 **Process agent**

For the purpose of this clause 12, the Guarantor irrevocably appoints **[Insert]** as its agent for the service of process in relation to any proceedings in New Zealand.

12.4 **Service of process**

The Guarantor irrevocably agrees that any writ, judgment or other notice of process will be sufficiently and effectively served on it in connection with proceedings in New Zealand if addressed to **[insert]** and delivered to it at its address designated for the purposes of this deed or if served in any other manner permitted by law.

13 **SEVERABILITY AND FRUSTRATION**

13.1 **Severability**

If any provision of this deed is or becomes illegal, void or unenforceable, then unless clause 13.2 applies, it shall be severed from this deed without affecting the enforceability, legality, validity or application of any other provision of this deed.

13.2 **Frustration**

If this deed becomes or would, but for this clause, become impossible of performance or frustrated such that it would be discharged at common law (or any statute that codifies or replaces that common law), then any party may, by notice to the other parties, require the parties to enter into negotiations to agree amendments to this deed to ensure that the relative benefits of and burdens on each party arising out of this deed are preserved as they were prior to occurrence of the impossibility or frustration. Any failure to agree amendments may be resolved as a dispute under clause 15.

14 **CONFIDENTIALITY**

14.1 **Confidentiality Obligation**

Each party shall treat:

- (a) the terms of this deed, the Agreement, the undertaking entered into by the Guarantor or a Related Company of the Guarantor in accordance with clause 11.7 of the Agreement, and any other Surety;
- (b) any information relating to the business or operations of the other party or its Related Companies received from the other in connection with the negotiation or implementation of this deed or the Agreement; and
- (c) all other information made available by or on behalf of or at the request of the other party in connection with this deed or the Agreement,

(*Confidential Information*) as strictly private and confidential, and shall not without the prior written consent of the other party use or disclose that information, except to the extent that:

- (d) the information becomes public knowledge otherwise than by that party's own disclosure;
- (e) disclosure is required by any order of a competent court or by law;
- (f) disclosure is permitted by this deed;
- (g) disclosure is to:
 - (i) a Related Company of the disclosing party; or
 - (ii) in the case of the Guarantor, to any other NZAS Participant,
 and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party);
- (h) disclosure is to the disclosing party's shareholder, or to the disclosing party's or its shareholder's professional advisor, actual or potential funder, financing agency or its consultant, on a need to know basis and the disclosing party has taken reasonable steps to ensure that the recipient complies with the terms of this clause 14.1 (amended so that the recipient is the disclosing party); or
- (i) disclosure is to a proposed assignee of the disclosing party, provided the other party's prior written consent has first been obtained, such consent not to be unreasonably withheld; or
- (j) disclosure is made in the context of a planned offering of securities to the public by the disclosing party, or by a shareholder or parent company of the disclosing party, provided:
 - (i) such disclosure is limited to the extent required to comply with relevant securities law or to prepare for such offering;
 - (ii) the other party is consulted on the extent of disclosure and its views are taken into account; and
 - (iii) on receipt of a reasonable request from the other party, the disclosing party shall endeavour to obtain, on terms reasonably acceptable to both parties, any exception to or exemption from relevant securities law to avoid or limit the disclosure of Confidential Information provided this subclause (iii) does not apply to an offering of securities in Meridian by the Crown.

14.2 Disclosure required by law

Where Meridian is required pursuant to the Official Information Act 1982 to disclose Confidential Information in response to an Official Information Act request (*OIA request*), it shall:

- (a) promptly notify the Guarantor of the fact of receipt, and the details, of the OIA request;
- (b) prior to releasing information in response to the OIA request, advise the Guarantor of the Confidential Information covered by the request and when that

information would need to be disclosed, early enough so as to accord the Guarantor a reasonable period of time in which to consider the required disclosure;

- (c) where prior to disclosure the Guarantor notifies Meridian that it considers that the Confidential Information to be disclosed is commercially sensitive or disclosure can be resisted on other grounds provided for by the Official Information Act 1982, give due consideration to the same in deciding whether to disclose the relevant information; and
- (d) in the event of the person requesting the Confidential Information appealing to the Office of the Ombudsman about a decision made by Meridian not to disclose the relevant information, notify the Guarantor of that fact.

14.3 **Official Information Act**

The Guarantor acknowledges that the Official Information Act 1982 provides for responses to be made to requests for information within stipulated timeframes and agrees to communicate and respond under clause 14.2 having regard to those timeframes.

14.4 **Acknowledgment**

Meridian acknowledges that nothing in this clause 14 prevents the Guarantor from providing the Office of the Ombudsman with its views on whether there are grounds to withhold the Confidential Information.

15 **DISPUTE RESOLUTION**

15.1 **Amicable resolution**

Without limiting their rights to require an arbitration under this clause 15, the parties:

- (a) acknowledge their desire that all questions, disputes or differences arising out of this deed (*Dispute*) be resolved amicably by bona fide discussion between the parties; and
- (b) accordingly agree that a Dispute will be referred in the first instance to a senior representative of each party, with ability and authority to bind that party, for resolution by mutual agreement.

15.2 **Initiating dispute and naming representative**

Either party may initiate the dispute resolution procedures in clause 15.1(b) by giving written notice to the other party, stating the subject matter and details of the Dispute. The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. The party receiving such written notice must then, within three Business Days of receipt of such notice, give written notice to the other party naming its representative in the negotiations. As soon as possible after both parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the Dispute.

15.3 Reference to arbitration

Subject to clause 15.4, if:

- (a) the Dispute is not resolved within five Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under clause 15.2; or
- (b) the party receiving notice under clause 15.2 does not name a representative within three Business Days of receipt of the initiating party's notice,

then either party may refer the Dispute to arbitration in accordance with clause 15.4.

15.4 Arbitration

Where clause 15.3 applies, either party may submit the *Dispute* to arbitration in accordance with the Arbitration Act 1996 by giving the other party written notice stating that party's desire to have the matter referred to arbitration.

15.5 Appointment of arbitrator

The arbitration shall be by one arbitrator to be agreed upon by the parties or, in the event that a single arbitrator cannot be agreed within 10 Business Days of the giving of notice under clause 15.4, then an arbitrator for the Dispute shall be appointed by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc, or his or her nominee, at the request of either party (or, if the President or nominee fails to make such an appointment within 10 Business Days, by the High Court).

15.6 Place of arbitration

The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.

15.7 Application of Second Schedule

Clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement and any party may appeal to the High Court on any question of law arising out of an award. All other clauses in the Second Schedule shall not apply.

15.8 Continuation of performance

While following the procedures in this clause 15 to resolve the Dispute neither party is relieved from its obligations under this deed.

15.9 Interlocutory steps

Nothing in this clause 15 shall limit the right of a party to enforce the terms of this deed by seeking relief by way of injunction and/or summary judgment.

16 COUNTERPARTS

This deed is deemed to be executed by a party if that party has signed or attached that party's signature or signatures (as the case may be) to any of the following formats of this deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy,

and if each party has signed or attached that party's signature (or signatures) to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding deed between the parties.

EXECUTION

Executed as a deed.

[Name of counterparty] by:

Director

Director

Meridian Energy Limited by:

Director

Director