

**CONFIRMATION – ELECTRICITY AGREEMENT (CORE AGREEMENT)**

To:	<b>Chris Blenkiron General Manager New Zealand Aluminium Smelters Limited</b>
Address/Email:	<b>1530 Tiwai Road Tiwai Point Invercargill 9877</b> [REDACTED] [REDACTED] [REDACTED]
From:	<b>Chris Ewers Meridian Energy Limited</b>
Address/Email:	<b>287, 293 Durham Street North, Christchurch Central City, Christchurch 8013</b> [REDACTED] [REDACTED] [REDACTED]
Date:	30 May <b>2024</b>

**1. GENERAL**

- 1.1 This Confirmation supplements and forms part of the 2002 ISDA Master Agreement and Schedule, dated on or about the date of this Confirmation ("**Agreement**"), between you and us. All provisions contained in the Agreement govern this Confirmation except to the extent as expressly modified below. A reference to "**Party A**" in this Confirmation is a reference to **Meridian Energy Limited** and a reference to "**Party B**" is to **New Zealand Aluminium Smelters Limited**.
- 1.2 The purpose of this document is to confirm the terms and conditions of the transaction entered into between us on the Trade Date specified below ("**Transaction**"). This document constitutes a "Confirmation" as referred to in the Agreement.
- 1.3 The parties agree that, with effect from the Effective Date:
- (a) the Electricity Agreement is terminated, except:
    - (i) as provided in clause 12.10 of the Electricity Agreement (other than clauses 7.9A-7.9E of the Electricity Agreement which shall not apply in respect of a month if the Clearing Manager does not issue a First Payer Invoice in relation to that month); and
    - (ii) for clause 5.1 of the Electricity Agreement which shall continue to apply for each Half Hour until (and including) the Half Hour that ends immediately before the Effective Date; and

- (b) the process in clause 12.9 of the Electricity Agreement shall be followed as if references to "Expiry Date" are references to the "Effective Date" under this Confirmation, except:
  - (i) that clause 12.9(a) of the Electricity Agreement shall not apply; and
  - (ii) clause 12.9(b) of the Electricity Agreement shall be applied subject to paragraph 1.3(a)(ii).
  
- 1.4 On or before the date which is 3 Business Days before the Effective Date the parties shall sign a notice to the Clearing Manager in the form of the notice set out in Appendix 3. On receipt of the signed notice, Party A shall send the notice to the Clearing Manager on behalf of the parties, copying Party B.
  
- 1.5 On the Effective Date Party A shall, upon being reasonably satisfied that all amounts of whatever nature that are due and payable to Party A on or before the Effective Date under the Electricity Agreement and each Surety described below (other than contingently) have been paid in full, deliver the following documents to Party B or its nominated lawyers:
  - (a) the bank demand guarantees issued by ANZ Bank New Zealand Limited with instrument numbers [REDACTED] and [REDACTED] and
  - (b) a signed release of the deed of guarantee and indemnity dated 29 November 2016 between Sumitomo and Party A.
  
- 1.6 In this paragraph 1, "First Payer Invoice", "Half Hour" and "Surety" have the meanings given to them in the Electricity Agreement, and other defined terms in the Electricity Agreement shall continue to apply to the extent necessary to give effect to paragraphs 1.3 and 1.7.
  
- 1.7 Party B shall, on each date on which an amount becomes payable to Party A under clause 7 or clause 25 of the Electricity Agreement on or after the Effective Date ("**relevant amount**"), pay to Party A an amount equal to the relevant amount ("**equal amount**") and, if Party B pays an equal amount to Party A under this paragraph 1.7, the payment shall discharge Party B's obligation to pay the relevant amount under the Electricity Agreement.
  
- 1.8 The Trade Date is the date specified in the table on Page 1.
  
- 1.9 For the purposes of Subpart 7 of Part 13 of the Code, the parties agree that nothing in the Agreement shall be construed as a restriction on Party B's ability to on-sell any unused megawatt quantities without Party B being subject to any worse terms than if it had consumed the relevant quantity itself.

## 2. DEFINITIONS

**Aluminium Business** means a business that:

- (a) owns an aluminium smelter with an expected remaining operating life of the greater of:
  - (i) the Term of this Confirmation having regard to the rights of Party B under paragraph 6.1(b); and
  - (ii) 10 years;
- (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.

**Best Endeavours** means:

- (a) in relation to Party A, the endeavours that would be applied by Party A acting without reference to electricity prices and as a Best Practice Generation Business, doing everything which Party A 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 ability of the Underlying Generation Assets to generate at no less than Normal Generation.
- (b) in relation to Party B, the endeavours that would be applied by Party B acting without reference to aluminium prices or electricity prices and as a Best Practice Aluminium Business, doing everything which Party B 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 ability of the Smelter to Consume at or above Normal Consumption.

**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.

**Best Practice Generation Business** means a 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 Underlying Generation Assets.

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

**Clearing Manager** means Energy Clearing House Limited.

**Consume** or **Consumption** means the consumption of electricity at the Grid Reference Point by Party B in connection with the smelting of alumina and for related purposes (including the production and processing of aluminium and related products).

**Demand Response Agreement** means the agreement entered into by the parties on or about the date of this Confirmation that is headed "Demand Response Agreement".

**Effective Date** means the date on which the Transaction evidenced by this Confirmation takes effect, as described in paragraph 3.1(a) below.

**Electricity Agreement** means the electricity agreement dated 1 October 2007 (as restated on 31 July 2015 and amended by letters dated 22 March 2016, 27 April 2018, 30 April 2018 and 24 December 2020 (countersigned on 13 January 2021)) between Party A and Party B.

**Force Majeure Event** means any event or circumstance which:

- (a) is beyond the affected party's reasonable control (but does not include any event or circumstance that results from a lack of, or inability to use, money or available funds); and

- (b) has one or both of the following actual consequences:
  - (i) in the case of Party A as the affected party, a reduction in its actual ability to generate electricity at its Underlying Generation Assets, taken as a whole, by 21% or more over a period of 240 consecutive Calculation Periods compared to Normal Generation which could not reasonably have been avoided or overcome by Party A by applying Good Electricity Industry Practice; or
  - (ii) in the case of Party B as the affected party, a reduction in its actual ability to Consume by an average of 95 MWh per Calculation Period or more over a period of 240 consecutive Calculation Periods compared to Normal Consumption which could not reasonably have been avoided or overcome by Party B by applying Good Aluminium Industry Practice; and
- (c) is not caused or contributed to by the affected party's negligence or the negligence of any of the affected party's contractors.

For the avoidance of doubt, any loss of price protection under a contract will not be an event that has the consequence of reducing Party B's actual ability to Consume for the purposes of paragraph (b)(ii) of this definition.

**Force Majeure Notice** means, in relation to a Force Majeure Event, a written notice in the form of Appendix 2 to this Confirmation, given by the affected party to the other party giving full particulars of the Force Majeure Event, including:

- (a) the date and time that the Force Majeure Event started;
- (b) the nature of the Force Majeure Event;
- (c) the anticipated impact of the Force Majeure Event;
- (d) the steps the affected party is planning on taking to restore Consumption or Generation to Normal Consumption or Normal Generation (as applicable); and
- (e) the expected duration of the Force Majeure Event.

**Force Majeure Start Date** has the meaning set out in paragraph 4.5.

**Good Aluminium Industry Practice** means the exercise of that degree of skill, care, diligence, prudence, methods, practices, processes, workmanship and use of materials and equipment that would be reasonably expected from a skilled and experienced person who is engaged in carrying on the same type of activity under the same or equivalent circumstances and in the aluminium smelting sector.

**Good Electricity Industry Practice** means the exercise of that degree of skill, care, diligence, prudence, methods, practices, processes, workmanship and use of materials and equipment that would be reasonably expected from a skilled and experienced person who is engaged in carrying on the same type of activity under the same or equivalent circumstances and in the New Zealand electricity sector.

**Hedge Settlement Agreement** means the hedge settlement agreement dated on or about the date of this Confirmation between Party A, Party B and the Clearing Manager.

**Manapouri Power Station** means Party A's power station located within the Fiordland National Park.

**Normal Consumption** means, in relation to a Force Majeure Event affecting Party B, the average Consumption of the Smelter per Calculation Period (expressed in Units per Calculation Period) over the 60 day period immediately preceding the day that the Force Majeure Event started as set out in the Force Majeure Notice, provided that the 60 day period shall exclude any day on which an event giving rise to any Force Majeure Event is claimed by Party B to have occurred and was continuing. If any Calculation Period during that 60 day period falls during a DR Period, Ramp-Up Period, Paused Period or Ramp-Down Period (as those terms are defined in the Demand Response Agreement), when calculating Normal Consumption, the actual Consumption will be increased by the Gross Reduction achieved in that Calculation Period. For the purposes of this definition, "**Gross Reduction**" means, in respect of a Calculation Period,  $M - D$ , where "M" and "D" have the meanings given to them in the definition of Actual Reduction in the Demand Response Agreement.

**Normal Generation** means, in relation to a Force Majeure Event affecting Party A on a particular day and the Underlying Generation Assets on that day, the average generation of those Underlying Generation Assets per Calculation Period (expressed in Units per Calculation Period) on each Clear Day in each of the following periods:

- (a) the period that commences on the day that is the lesser of 45 days and 30 Clear Days before the day that is 1 year prior to that day and ends on the day that is the lesser of 45 days and 30 Clear Days after the day that is 1 year prior to that day;
- (b) the period that commences on the day that is the lesser of 45 days and 30 Clear Days before the day that is 2 years prior to that day and ends on the day that is the lesser of 45 days and 30 Clear Days after the day that is 2 years prior to that day; and
- (c) the period that commences on the day that is the lesser of 45 days and 30 Clear Days before the day that is 3 years prior to that day and ends on the day that is the lesser of 45 days and 30 Clear Days after the day that is 3 years prior to that day,

where a "**Clear Day**" is a day on which no Force Majeure Event is claimed by Party A as having occurred and was continuing, provided that, if there are no Clear Days under any of paragraphs (a), (b) or (c) above, Normal Generation shall be deemed to be 684 Units per Calculation Period or such other amount Party A has notified to Party B to take account of changes to the Underlying Generation Assets since the Trade Date.

**NZAS Entities** means the entity or entities that are the shareholder(s) of Party B.

**Restoration Date** means, in relation to a Force Majeure Event:

- (a) in the case of a Force Majeure Event affecting Party A, the time at which the generation of electricity at the Underlying Generation Assets could again be at Normal Generation for a period of no less than 240 consecutive Calculation Periods if Party A had used Best Endeavours to so restore; or
- (b) in the case of a Force Majeure Event affecting Party B, the time at which the actual ability to Consume could again be at Normal Consumption for a period of no less than 240 consecutive Calculation Periods if Party B had used Best Endeavours 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 Party B.

**Sumitomo** means Sumitomo Chemical Company, Limited.

**Underlying Generation Assets** means, as at any date, each of Manapouri Power Station, the stations in the Waitaki Power Scheme and any other generation stations that Party A and Party B agree in writing to be an Underlying Generation Asset, in each case that are owned by Party A on that day.

**Waitaki Power Scheme** means Party A's power stations referred to as Ohau A, Ohau B, Ohau C, Benmore, Aviemore and Waitaki, located in the Waitaki Valley.

### 3. TRANSACTION

#### 3.1 Term:

(a) **Effective Date:** The later of 00:00 hours on 1 July 2024 and 00:00 hours on the fourth Business Day following the date on which Party A confirms to Party B that all of the conditions specified in Appendix 1 to this Confirmation as being "Party A conditions precedent" have been met or waived provided that, if:

- (i) the "Party A conditions precedent" specified in Appendix 1 to this Confirmation have not been met or waived on or before 31 December 2024; or
- (ii) the "Party B conditions precedent" specified in Appendix 1 to this Confirmation have not been met or waived before the date on which Party A confirms to Party B that all "Party A conditions precedent" have been met or waived,

the Effective Date shall not occur and the Agreement will immediately terminate and be of no further effect, and the Transaction shall not come into existence.

(b) The parties acknowledge that:

- (i) the Party A conditions precedent are included solely at the request, and for the benefit, of Party A and may be waived by Party A in its absolute discretion at any point in time; and
- (ii) the Party B conditions precedent are included solely at the request, and for the benefit, of Party B and may be waived by Party B in its absolute discretion at any point in time.

(c) The parties shall keep each other apprised in a timely manner as to progress with satisfaction of their respective conditions.

(d) **Termination Date:** 23.59 hours on 31 December 2044, unless terminated earlier in accordance with the Agreement.

3.2 **Grid Reference Point:** TWI2201.

3.3 **Notional Quantity:** The Notional Quantity for the Transaction will be:

- (a) for each Calculation Period falling during the period from (and including) the Effective Date to (and including) 23.59 hours on 31 December 2024, 236 Units per Calculation Period; and
- (b) for each Calculation Period falling during the period from (and including) 00:00 hours on 1 January 2025 to (and including) the Termination Date, 188.5 Units per Calculation Period,

in each case, subject to any adjustment in accordance with paragraphs 4 and 5.

3.4 For the purposes of the Transaction:

(a) Party A is the **Floating Price Payer**; and

(b) Party B is the **Fixed Price Payer**.

3.5 **Calculation of Fixed Amount:** The Fixed Amount payable in respect of each Settlement Period shall be calculated and paid in accordance with Part 5(2)(3) of the Schedule to the Agreement except for the first Settlement Period. In relation to the first Settlement Period, the Fixed Amount will be calculated as though paragraph (a) of Part 5(2)(3) of the Schedule to the Agreement was replaced with the following:

"A Fixed Amount shall be equal to the aggregate of:

- (i) the amount calculated in accordance with the formula set out in Article 5 of the 2005 Definitions (defined in the Schedule to the Agreement) in respect of each Calculation Period in each day during the Settlement Period; and
- (ii) where the Effective Date falls after 1 July 2024 and on or before 31 December 2024, an amount equal to the product of NZ\$ [REDACTED] multiplied by the number of days from (and including) 1 July 2024 to (but excluding) the Effective Date.

The aggregate amount shall be paid by the Fixed Price Payer to the Floating Price Payer on the Settlement Date for that Settlement Period."

3.6 **Fixed Price:** In relation to each Calculation Period during a Settlement Period, the Fixed Price is equal to \$ [REDACTED], as adjusted in accordance with paragraph 3.7 below.

3.7 **Adjustment of Fixed Price:** With effect from 1 January in each calendar year of the Term, commencing on 1 January 2028, if the Avg LME Price for the LME Reference Period<sub>y</sub> is greater than the Avg LME Price for the LME Reference Period<sub>y-1</sub>, the Fixed Price shall be adjusted in accordance with the formula below, calculated to four decimal places:

$$aBP = BP + (BP \times CPI \text{ Escalator}_y)$$

Where:

$aBP_{\square}$  = the adjusted Fixed Price to have effect from 1 January in the relevant calendar year

$BP_{\square}$  = the Fixed Price as originally specified in paragraph 3.6 or, if the Fixed Price has previously been adjusted in accordance with this paragraph 3.7, the Fixed Price as at the end of the Reference Period<sub>y</sub>.

$CPI \text{ Escalator}_y$  means an escalator in accordance with the formula:

$$\frac{\text{Reference CPI}_y}{\text{Base CPI}} - 1$$

provided that, if the  $CPI \text{ Escalator}_y$  for any year is less than zero, the  $CPI \text{ Escalator}_y$  for that year shall be equal to zero.

- Reference CPI<sub>y</sub> = the CPI most recently published in respect of the Reference Period<sub>y</sub>;
- Base CPI = the CPI most recently published in respect of the period ending on 30 September in the calendar year prior to the relevant Reference Period<sub>y</sub>;
- Reference Period<sub>y</sub> = in relation to an adjustment to apply from 1 January of any year (year<sub>y</sub>), is the period ending on 30 September in the year immediately preceding that year; provided that if, at the date of calculation, CPI has not been published in respect of Reference Period<sub>y</sub>, then:
- (a) CPI Escalator<sub>y</sub> shall be calculated by substituting for such Reference Period<sub>y</sub> the immediately preceding date on which CPI for a 12 month period has been published; and
  - (b) any subsequent publication of CPI for such Reference Period<sub>y</sub> shall be treated as a revision of the relevant CPI under paragraph 3.12.

where:

y = the calendar year in respect of which the Base Price is being adjusted.

the "**Avg LME Price**" means, in relation to any period, the average of the NZ Dollar Equivalent of the LME Price for each day of that period on which the London Metal Exchange was open for trading.

"**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**" means the "Consumers Price Index (All Groups)" published by the Government Statistician or, if that index ceases to be published, any measure certified by the Government Statistician as being equivalent to that index.

"**LME Price**" means, in relation to a day the official price in US dollars per tonne (rounded to 5 decimal places) 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.

"**LME Reference Period<sub>y</sub>**" means, in relation to an adjustment to apply from 1 January of any year, the 12 month period ending on 30 September in the year immediately preceding that year.



"**LME Reference Period<sub>y-1</sub>**" means, in relation to an adjustment to apply from 1 January of any year, the 12 month period ending on 30 September in the year prior to the immediately preceding year.

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

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

3.8 **Alternative LME Price:** If at any time the London Metal Exchange publishes official prices for low-carbon aluminium or the London Metal Exchange no longer exists or does not publish official prices for aluminium (either temporarily or permanently) or the time at which the official price is recorded changes, the LME Price will be the official price per tonne of aluminium determined in accordance with such mechanism that the Calculation Agent determines. In making this determination, the Calculation Agent:

- (a) will act in good faith and in a commercially reasonable manner; and
- (b) may consult with such sources of market practice as it considers.

The Calculation Agent will promptly notify the other party of the alternative reference rate after having made its determination.

3.9 If the party that is not the Calculation Agent disputes the Calculation Agent's determination of the alternative reference rate in accordance with paragraph 3.8 then Negotiated Fallback shall occur as if a Market Disruption Event had occurred, and if:

- (a) Negotiated Fallback does not produce an agreement within the specified period; and
- (b) the parties do not agree to refer the matter to arbitration under the Arbitration Act 1996,

No Fault Termination will apply.

3.10 **Linking to rebased Consumers Price Index (All Groups):** 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 Confirmation 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 =  $\frac{\text{New Index}}{\text{Old Index}}$  (expressed to 5 decimal places).

3.11 If a Link Period cannot be determined under paragraph 3.10 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 paragraph 8.1(d), and that method shall be applied in interpreting references to CPI under this Confirmation.

3.12 **Revisions to CPI:** If, at any time, the Government Statistician publishes CPI later than expected or publishes a revision to any CPI that would, had that CPI or revised CPI, as the case may be, 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 Confirmation then the Calculation Agent shall advise the other party of the amount of that difference and the identity of the party required to pay that difference to the other. The party obliged to make the payment shall then pay that amount within five Business Days of such notification.

3.13 **Settlement Date:**

- (a) In respect of a Settlement Period and a Fixed Amount payable by Party B for that Settlement Period, the later of:
- (i) the 17<sup>th</sup> day of the month following that Settlement Period; and
  - (ii) if Party B has not actually received from Party A (as Calculation Agent) by the 15<sup>th</sup> day of the month following that Settlement Period an invoice or statement detailing the aggregate of the Fixed Amounts and Floating Amounts in respect of that Settlement Period, the date falling 5 days after the date on which Party B actually receives such statement or invoice.
- (b) In respect of a Settlement Period and a Floating Amount payable by Party A for that Settlement Period:
- (i) if paragraph 3.13(a)(i) applies, the 18<sup>th</sup> day of the month following that Settlement Period; or
  - (ii) if paragraph 3.13(a)(ii) applies, the Business Day following the day determined in accordance with clause 3.13(a)(ii),

provided that Party A's obligation to pay the Floating Amount for a Settlement Period only arises if Party B has paid, and Party A has received, the Fixed Amounts payable in accordance with paragraph 3.13(a).

Party B shall issue to Party A an invoice for the Floating Amount (as calculated by the Calculation Agent) payment.

- (c) If an amount is owed by a party ("**Party X**") under the Hedge Settlement Agreement for a Settlement Period ("**HSA amount**") then the discharge of Party X's obligation to pay the HSA amount to the Clearing Manager in accordance with the Code shall automatically satisfy and discharge Party X's obligation to pay an amount to the other party under paragraph 3.13 in respect of the Transaction for that Settlement Period ("**Transaction amount**") to the extent of an amount equal to the lesser of (i) the HSA amount and (ii) the Transaction amount. If the HSA amount owing by Party X for a Settlement Period exceeds the Transaction amount payable by Party X for that Settlement Period then, provided Party X's obligation to pay the HSA amount to the Clearing Manager has been discharged in accordance with the Code, the other party shall pay to Party X on the related Settlement Date the difference between the HSA amount and the Transaction amount.

- (d) For so long as the Hedge Settlement Agreement is in effect, a failure by a party to pay a Transaction amount in accordance with paragraph 3.13(a) or (b) (as applicable) shall not constitute an Event of Default under Section 5(a)(i) of the Agreement unless the party has failed to pay the related HSA amount in an amount equal to the Transaction amount as contemplated by paragraph 3.13(c), and the failure of a party to pay that related HSA amount shall constitute an immediate Event of Default without the requirement of the other party to give notice or to take any other action.
- (e) In paragraphs 3.13(c) and (d), Transaction amount does not include any part of the Fixed Amount described in item (ii) of the replacement paragraph (a) of Part 5(2)(3) of the Schedule to the Agreement set out in paragraph 3.5.

3.14 **Settlement Period:** Settlement Period means each calendar month that includes 1 or more days of the Term.

3.15 **Local Business Day:** For the purposes of paragraph (a) of the definition of "Local Business Day", the places are Invercargill and Wellington.

3.16 **Taxes:** The parties acknowledge and agree that any taxes arising from or in connection with the Transaction contemplated by this Confirmation shall be borne by the party that is primarily responsible for them in accordance with applicable laws. All sums payable by one party to the other under this Confirmation are exclusive of goods and services tax (GST) (if any). In addition to any payments specified or determined pursuant to this Confirmation, each party shall pay to the other an amount equal to any GST for which such other party is liable in respect of a taxable supply. The GST amount will be due and payable at the same time as the payment for the provision of the goods or services constituting a taxable supply is due, provided that the relevant supplier has provided the recipient with an invoice containing taxable supply information (or such other information or documentation that is required to be provided in respect of a taxable supply for GST purposes).

#### 4. **FORCE MAJEURE EVENTS**

##### 4.1 **Force Majeure Notice:**

- (a) If a Force Majeure Event occurs with respect to a party (the "**affected party**"), then the affected party may, as soon as practicable after but in any event within 10 Business Days of:
  - (i) the Effective Date, if the affected party is aware of the Force Majeure Event as at the Effective Date; or
  - (ii) the date on which the affected party becomes aware of the occurrence of the Force Majeure Event, in any other case,give a Force Majeure Notice to the other party (the "**unaffected party**").
- (b) For the avoidance of doubt:
  - (i) each party may issue a Force Majeure Notice in relation to the same event or circumstance if it constitutes a Force Majeure Event for that party and each Force Majeure Event will require a separate Force Majeure Notice to be provided; and

- (ii) a party may issue more than 1 Force Majeure Notice if more than 1 Force Majeure Event occurs and is continuing at the same time for that party, and paragraph 4.6 shall be applied separately in relation to each of those Force Majeure Events.

4.2 Upon receiving a Force Majeure Notice, the recipient shall promptly:

- (a) notify the sender that it has received the notice; and
- (b) if the notice does not comply with the requirements of this Confirmation, notify the sender of the reasons why it does not comply.

4.3 A document that purports to be a Force Majeure Notice:

- (a) that meets the requirements of the definition of Force Majeure Notice and is given in accordance with paragraphs 4.1(a) and 4.4 shall be treated as a valid Force Majeure Notice;
- (b) that does not meet the requirements of the definition of Force Majeure Notice and is not given in accordance with paragraphs 4.1(a) or 4.4 shall be invalid and of no effect, unless the Parties agree otherwise, but shall not constitute a breach of the Agreement; and
- (c) that is subsequently found to be invalid, will be deemed to have had no effect and, for clarity, the party that disputed the validity of the Force Majeure Notice shall be entitled to claim damages for losses (if any) suffered or incurred by it as a result of the other party having given the Force Majeure Notice. For this purpose, where Party A has disputed the validity of a Force Majeure Notice given by Party B and its losses suffered or incurred are claimed to include losses arising under the Demand Response Agreement in the form of DR Reduction not achieved by Party B, those losses shall not be treated as having been suffered or incurred unless Party A has actually given the relevant DR Exercise Notice and Party B has failed to achieve the required DR Reduction (as those terms are defined in the Demand Response Agreement).

4.4 Each Force Majeure Notice shall be sent by email to each of the addresses specified below and followed up with a telephone call to the number specified below (or to such other address or telephone number as may be specified by a party from time to time):

- (a) Party A:

*Email addresses:*

■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

*Telephone:*

[REDACTED]

(b) Party B:

*Email addresses:*

■ [REDACTED]

■ [REDACTED]

*Telephone:*

[REDACTED]

4.5 A Force Majeure Notice shall be treated as having been received by the recipient at the time the notice is deemed to be effective in accordance with Section 12(a) of the Master Agreement (the **Force Majeure Start Date**).

4.6 **Effect of Force Majeure Notice:**

(a) With effect from the first Calculation Period in the day that is 30 days after the Force Majeure Start Date until the earlier of the first Calculation Period in:

- (i) the Restoration Date; and
- (ii) such other date that the parties agree,

the Notional Quantity per Calculation Period shall be reduced to the following quantity:

(iii) where Party A is the affected party that has given the related Force Majeure Notice, an amount equal to:

(aa) for each Calculation Period falling during the period from (and including) the Effective Date to (and including) 23.59 hours on 31 December 2024:

$$236 \times \left( \frac{\text{Normal Generation} - \text{Generation Reduction}}{\text{Normal Generation}} \right)$$

(bb) for each Calculation Period falling during the period from (and including) 00:00 hours on 1 January 2025 to (and including) the Termination Date:

$$188.5 \times \left( \frac{\text{Normal Generation} - \text{Generation Reduction}}{\text{Normal Generation}} \right)$$

where "**Generation Reduction**" is equal to the difference between Normal Generation and Party A's expected level of generation of the Underlying Generation Assets per Calculation Period, having regard to the impact of the Force Majeure Event and assuming that Party A uses its Best Endeavours;

(iv) where Party B is the affected party that has given the related Force Majeure Notice, an amount equal to:

(aa) for each Calculation Period falling during the period:

(1) from (and including) the Effective Date to (and including) 23.59 hours on 31 December 2024:

$$236 \times \left( \frac{\text{Normal Consumption} - \text{Consumption Reduction}}{\text{Normal Consumption}} \right)$$

(2) from (and including) 00:00 hours on 1 January 2025 to (and including) the Termination Date:

$$188.5 \times \left( \frac{\text{Normal Consumption} - \text{Consumption Reduction}}{\text{Normal Consumption}} \right)$$

where "**Consumption Reduction**" is equal to the difference between Normal Consumption and Party B's expected level of Consumption per Calculation Period, having regard to the impact of the Force Majeure Event and assuming that Party B uses its Best Endeavours; and

(v) where a Force Majeure Notice has been received by both parties, for so long as both parties are affected parties, the lesser of the Notional Quantities calculated under paragraphs (iii) and (iv) above.

(b) For the avoidance of doubt, if a Force Majeure Notice has been provided, the other party may, within 20 Business Days of receipt of the Force Majeure Notice, dispute the notice. If a Force Majeure Notice that is treated as valid in accordance with paragraph 4.3(a) is disputed, the Force Majeure Notice will be treated as being valid unless or until the dispute is resolved and the Force Majeure Notice is found to be invalid.

## 5. ADJUSTMENT FOR DEMAND RESPONSE

5.1 If a DR Exercise Notice is given in accordance with the Demand Response Agreement, then the Notional Quantity for each Calculation Period that falls within the Ramp-Down Period, the DR Period, the Paused Period and the Ramp-Up Period shall be reduced by an amount equal to the DR Reduction for the Calculation Period.

5.2 In this paragraph 5, terms defined in the Demand Response Agreement have the same meanings, unless provided otherwise.

5.3 If paragraph 4.6(a) applies to a Calculation Period, paragraph 5.1 shall not apply to that Calculation Period.

## 6. TERMINATION

6.1 **Additional Termination Events:** The following events shall be Additional Termination Events for the purpose of this Transaction:

(a) **Force Majeure with no Restoration Date:** A Force Majeure Start Date has occurred and the Restoration Date has not occurred within the period that ends 24 months after the Force Majeure Start Date. Both parties are Affected Parties and, notwithstanding Section 6(b)(iv) of the Agreement, if a party wishes to designate an Early Termination Date, the Early Termination Date must be at least 3 months after the date on which the notice of termination is given.

- (b) **Party B early termination:** Party B wishes to terminate the Transaction. Party B is the sole Affected Party and notwithstanding Section 6(b)(iv) of the Agreement, if Party B wishes to designate an Early Termination Date, the Early Termination Date must be at least 24 months after the date on which the notice of termination is given, provided that Party B may not give any such notice (i) before 31 December 2032, and (ii) unless Party B has consulted with Party A no less than three months before the notice of termination is given. In addition, Party B shall, on the date that Party B gives its notice of termination, pay Party A NZ\$180,000,000 and the notice of termination shall not take effect unless and until Party A receives that amount.

6.2 **Early Termination Amount:** The parties agree that if an Early Termination Date is designated in relation to the Transaction, the amount payable in respect to the early termination of the Transaction will not be determined in accordance with the methods specified in Section 6(e) of the Agreement; instead the only amount payable with respect to the early termination of the Transaction (other than the payment referred to in paragraph 6.1(b)) will be determined in accordance with Section 2(c) of the Agreement as if the only amounts payable by each party on the Early Termination Date were:

- (a) the amounts that would have been payable on the Settlement Date falling immediately after the Early Termination Date; and
- (b) any amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) by the parties in respect of the Transaction under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date,

as determined on the Early Termination Date. The amount payable under this paragraph 6.2 shall be treated as an Early Termination Amount for the purposes of Section 6(f) of the Agreement.

6.3 **Section 5(b)(ii) to not apply:** The "Force Majeure Event" Termination Event set out in Section 5(b)(ii) of the Agreement shall not apply to the Transaction, and Sections 5(c), 5(d), 5(e), 6(b)(i), 6(b)(iv)(2) and 8(h) of the Agreement shall not apply to a Force Majeure Event (as defined in section 5(b) of the Agreement or this Confirmation).

## 7. CREDIT SUPPORT DOCUMENTS

The Credit Support Documents are described in paragraphs (a) to (d) below:

- (a) For so long as the Transaction or the Demand Response Agreement continues, or an amount is or may be payable by Party A to Party B under the Transaction or the Demand Response Agreement, in the event that the credit rating of Party A falls below the minimum credit rating of BBB- (S&P) or, if Party A is not rated by S&P, the equivalent rating by alternative internationally recognised rating agencies, Party A must, within 5 Business Days of such change in its credit rating, provide to Party B an unconditional, irrevocable, unsubordinated payment guarantee in respect of Party A's payment obligations under the Transaction and the Demand Response Agreement in an amount not less than NZ\$60,000,000 and provided by an Acceptable Bank, in form and substance satisfactory to Party B.
- (b) For so long as any amount is or may become payable by Party B to Party A under the Transaction or the Demand Response Agreement, Party B shall procure the provision to Party A of one or more unconditional, irrevocable, unsubordinated payment guarantees in form and substance satisfactory to Party A in respect of Party B's payment obligations under the Transaction and the Demand Response Agreement ("**Payment Guarantees**"). The Payment Guarantees shall be provided by each of:

- (i) one or more Acceptable Banks, in an amount not less than NZ\$100,000,000 able to be drawn in New Zealand immediately (each a "**Bank Guarantee**"); and
- (ii) one or more Corporate Guarantors (each a **Corporate Guarantee**),

provided that the total amount guaranteed by the Bank Guarantees and the Corporate Guarantees at any time shall not be less than:

- (iii) NZ\$235,000,000; or
  - (iv) provided Party B has complied with all of its obligations under the Agreement as at 23.59pm on the day before the tenth anniversary of the Effective Date, on and from the tenth anniversary of the Effective Date, NZ\$180,000,000.
- (c) If at any time Party A is able to make demand and receive payment under two or more Bank Guarantees that have been procured by Party B, and the amount to be demanded by Party A ("**claim amount**") is less than the aggregate maximum amount able to be demanded under the Bank Guarantees at that time ("**total amount**"):
- (i) Party A shall first demand the claim amount under any Bank Guarantee under which the applicant for such Bank Guarantee is stated to be Party B ("**NZAS BG**");
  - (ii) if the claim amount is not paid in full by the NZAS BG, Party A shall demand the outstanding claim amount under any other Bank Guarantees (each a "**Non-NZAS BG**") procured by Party B, provided that if there is more than one Non-NZAS BG:
    - (aa) Party A shall not make demand under one of those Non-NZAS BGs unless it also makes demand under the other Non-NZAS BGs; and
    - (bb) Party A shall make demand under each Non-NZAS BG for such part of the outstanding claim amount that is equal to the proportion that the maximum amount of that Non-NZAS BG bears to the total amount of all Non-NZAS BGs.
- (d) For the purpose of this paragraph 7:
- (i) "**Acceptable Bank**" means a major New Zealand trading bank or financial institution operating in New Zealand, which has a rating for its long term unsecured and non credit-enhanced debt obligations of A or higher by S&P or A2 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency.
  - (ii) "**Corporate Guarantor**" means an NZAS Entity or related company of an NZAS Entity which satisfies Party A's reasonable creditworthiness requirements.
  - (iii) "**Credit Support Provider**" means, in relation to Party A and Party B, each person referred to as a guarantor or otherwise providing a guarantee under a Credit Support Document.



- (iv) **"Moody's"** means Moody's Investors Service Limited or any successor to its rating business.
- (v) **"S&P"** means Standard and Poor's Rating Group (a division of McGraw-Hill Inc.) or any successor to its rating business.

## 8. ADDITIONAL AGREEMENTS

8.1 In addition to the agreements set out in the Agreement (including Section 4 of the Agreement), each party agrees with the other that, so long as either party has or may have any obligation under the Agreement or under any Credit Support Document to which it is a party:

(a) **Appointment of representatives:**

- (i) Each party shall by notice in writing to the other appoint a representative and an alternative representative who will be responsible for:
  - (aa) managing the relationship and facilitating liaison between the parties with regard to the general operation and administration of the Transaction and the Demand Response Agreement; and
  - (bb) 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 the Transaction and the Demand Response Agreement.
- (ii) The alternative representative of each party shall act only when the representative is absent or unavailable.
- (iii) Either party may change the identity of its representative, or alternative representative, by giving notice in writing to the other party.

(b) **Transfer:** Notwithstanding Section 7 of the Agreement, for so long as the Transaction or the Demand Response Agreement continues:

- (i) Neither the rights nor the obligations of either party under the Agreement (including the Transaction) or the Demand Response Agreement are capable of being assigned or transferred (whether at law, in equity or otherwise) or made the subject of any security interest or trust or other fiduciary obligation. Any action by a party that purports to do any of these things is void.
- (ii) Nothing in this paragraph 8.1(b):
  - (aa) restricts a transfer by a party under Section 6(b)(ii) of the Agreement; or
  - (bb) restricts a transfer by a party of its rights and obligations under the Agreement (including the Transaction) or the Demand Response Agreement with the prior written consent of the other party.

- (c) **Credit Support:**
- (i) Party B shall ensure that each Credit Support Document provided under paragraph 7 continues to meet the requirements of paragraph 7(b) until the end of the Term unless it is fully released by Party A in accordance with paragraph 8.1(c)(vi) before that date.
  - (ii) Party B may from time to time offer to Party A a replacement Credit Support Document, provided that:
    - (aa) any replacement Credit Support Document continues to meet the requirements of paragraph 7(b); and
    - (bb) Party B provides with that replacement Credit Support Document a legal opinion or legal opinions satisfactory to Party A (acting reasonably) confirming the due execution and enforceability of that Credit Support Document.
  - (iii) If at any time a Credit Support Document no longer meets the requirements of paragraph 7(b), Party B shall immediately procure and provide to Party A a replacement Credit Support Document that meets the requirements of paragraph 7(b), together with a legal opinion or legal opinions satisfactory to Party A (acting reasonably) confirming the due execution and enforceability of that Credit Support Document.
  - (iv) If an NZAS Entity which has provided a Credit Support Document proposes to sell or otherwise transfer its shareholding (held either directly or indirectly) in Party B to another person, Party B shall, prior to completion of the sale or transfer, procure and provide to Party A an additional or replacement Credit Support Document:
    - (aa) provided by a guarantor satisfactory in all respects to Party A, including satisfying Party A's reasonable creditworthiness requirements; and
    - (bb) that meets the requirements of paragraph 7(b) (as applicable), together with a legal opinion or legal opinions satisfactory to Party A (acting reasonably) confirming the due execution and enforceability of that Credit Support Document.
  - (v) Within 10 Business Days of Party A's receipt of a Credit Support Document under paragraph 8.1(c)(ii), 8.1(c)(iii) or 8.1(c)(iv), Party A shall:
    - (aa) notify Party B that such Credit Support Document, in Party A's opinion, meets the requirements of paragraph 7(b) and 8.1(c)(iv) (if applicable) and is therefore accepted as a replacement Credit Support Document; or
    - (bb) notify Party B that such Credit Support Document does not, in Party A's opinion, meet the requirements of paragraph 7(b) and 8.1(c)(iv) (if applicable), and specify the reasons for such opinion.

(vi) If Party A accepts under paragraph 8.1(c)(v)(aa) a Credit Support Document provided under paragraph 8.1(c)(ii), 8.1(c)(iii) or 8.1(c)(iv) as a replacement for an earlier Credit Support Document ("**Replaced Document**"), it shall sign and deliver a full release of that Replaced Document once it is reasonably satisfied that:

(aa) Party A has received all amounts owing under that Replaced Document; and

(bb) no payment received, or to be received, by Party A under that Replaced Document may be avoided, or required to be repaid by Party A, whether under any law relating to insolvency or otherwise.

(d) **Dispute resolution:**

(i) Without limiting their rights to require mediation or an arbitration under this paragraph 8.1(d), the parties:

(aa) acknowledge their desire that all questions, disputes or differences arising out of the Transaction or the Demand Response Agreement ("**Dispute**") be resolved amicably by a good faith discussion between the parties; and

(bb) 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.

(ii) Either party may initiate the dispute resolution procedures in sub-paragraph (i)(aa) 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 good faith negotiations to try to resolve the Dispute.

(iii) If:

(aa) the Dispute is not resolved within 10 Business Days (or such longer period as may be agreed between the parties) of both parties being advised of each other's representatives under sub-paragraph (ii); or

(bb) the party receiving notice under sub-paragraph (ii) 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 mediation in accordance with sub-paragraph (iv).

- (iv) If permitted by sub-paragraph (iii), either party may submit the Dispute to mediation by giving the other party written notice stating that party's desire to have the matter referred to mediation. The mediator shall be agreed upon by the parties or, in the event that the mediator cannot be agreed within 10 Business Days of the giving of notice under this sub-paragraph (iv), then the mediator for Dispute shall be appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc. The mediation shall take place in Wellington. Each party shall bear its own costs of the mediation and the parties will share equally the costs of the mediator. If the Dispute is not resolved through mediation within 20 Business Days (or such longer period as may be agreed between the parties) of the mediator being appointed, then either party may refer the Dispute to arbitration in accordance with sub-paragraph (v).
  - (v) If permitted by sub-paragraph (iv), 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.
  - (vi) 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 sub-paragraph (v), then an arbitrator for the Dispute shall be appointed by the President for the time being of the New Zealand Law Society, 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).
  - (vii) The arbitration shall take place in Wellington. The final determination of the arbitrator will be binding on and confidential to the parties.
  - (viii) Only clauses 2, 3, 5, 6 and 7 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under the Transaction or the Demand Response 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.
  - (ix) While following the procedures in this paragraph 8.1(d) to resolve the Dispute, neither party is relieved from its obligations under the Transaction or the Demand Response Agreement, except that the termination of the Transaction or Demand Response Agreement in accordance with the Agreement or Demand Response Agreement (as applicable) is effective unless and until the parties agree or the arbitrator determines otherwise.
  - (x) Nothing in this paragraph 8.1(d) shall limit the right of a party to enforce the terms of the Agreement by seeking relief by way of injunction and/or summary judgment.
- (e) **Liability:**
- (i) In no event shall either party be liable for any indirect loss or damage or any consequential loss or damage.

- (ii) Notwithstanding Section 6(a) of the Agreement, the parties acknowledge that the right to terminate and recover damages if an Event of Default occurs with respect to a party may not be an adequate remedy for the Non-defaulting Party and the Non-defaulting Party remains entitled to seek injunctive relief and specific performance of the obligations of the Defaulting Party, provided that nothing in this paragraph 8.1(e)(ii) limits the right of a party to assert that damages are an adequate remedy in the particular circumstances.
- (iii) For the purposes of paragraph 8.1(e)(i), the following are deemed to be indirect losses and/or damages:
  - (aa) loss of profits or revenues, or loss of opportunity, use or anticipated savings;
  - (bb) increased costs; and/or
  - (cc) damages or compensation paid or payable to third parties, however arising, and whether or not any of the loss, costs, damages or compensation ought to have been known or anticipated by the party in breach.

(f) **Real time generation information:** Party A shall establish and maintain systems to provide Party B, at no cost, with real time information as to:

- (i) aggregated generation from the Underlying Generation Assets that are connected to the Grid (as defined in the Code); and
- (ii) if Party A has given a Force Majeure Notice, the actual generation from the Underlying Generation Assets that are connected to the Grid (as defined in the Code),

and provide such information to Party B at no cost for the duration of the Term. Party A shall ensure that such real time information is at least as accurate and available as that which Party A predominantly uses for its own purposes. Party B shall be responsible for the transmission of information from Party A's information system to Party B's information system (as that term is used in the Contract and Commercial Law Act 2017).

(g) **Real time consumption information:** Party B shall establish and maintain systems to provide Party A, at no cost, with Party B's real time Consumption information, and provide such information to Party A at no cost for the duration of the Term. Party B shall ensure that such real time information is at least as accurate and available as that which Party B predominantly uses for its own purposes. Party A shall be responsible for the transmission of information from Party B's information system to Party A's information system (as that term is used in the Contract and Commercial Law Act 2017).

(h) **Metering:**

- (i) Party B 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. Party B shall provide to Party A as soon as practicable after the end of each month the Meter Information and the information from the check meters in respect of each Calculation Period of the previous month.

- (ii) Consumption shall, subject to sub-paragraphs (iii) to (v) below, 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:
  - (aa) Party B 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
  - (bb) such metering installation or metering installations shall be considered part of the Metering Installation for the purposes of sub-paragraphs (iii) to (v) below;
- (iii) If, through monitoring of its check meters referred to in sub-paragraph (i), Party B believes that the Metering Installation may not meet the relevant Metering Standards, it shall seek a test of the Metering Installation.
- (iv) If Party A requests Party B to seek a test of the Metering Installation, Party B shall promptly use its reasonable endeavours to arrange for that Metering Installation to be tested in accordance with the Code. If Party A has requested the test and, as a result, Party B incurs any reasonable cost, Party A shall reimburse Party B for that reasonable cost.
- (v) In this paragraph (h):
  - "Meter Information"** has the meaning that "consumption information" has under the Code as such meaning relates to Party B at the Grid Reference Point.
  - "Metering Installation"** has the meaning under the Code as such meaning relates to the Grid Reference Point.
  - "Metering Standards"** has the meaning under the Code as such meaning relates to the Grid Reference Point.

## 9. GREEN PRODUCTS

To the extent that Party A is required under New Zealand law to create Green Products for the Underlying Generation Assets (as at the date of this Confirmation), Party A shall, if and to the extent Party A is permitted by law and the Green Initiative to do so, transfer to Party B an amount of those Green Products in the proportion that the Notional Quantity bears to the aggregate generation capacity of those Underlying Generation Assets ("**Relevant Green Products**"). Party A undertakes to take all reasonable steps to ensure that no other party has acquired, and it does not allow any other party to acquire, an adverse interest in the Relevant Green Products except as may be created or required by law. Where the creation and/or transfer of the Relevant Green Products by Party A to Party B results in material cost to Party A, Party B shall promptly reimburse Party A for those costs.

For the purposes of this paragraph 9:

**"Green Initiative"** means any scheme or system created by New Zealand law coming into effect after the Effective Date which (i) runs in parallel with the New Zealand wholesale electricity market as at the Effective Date and (ii) allows each unit of electricity generated from a renewable electricity generation asset to be matched to each unit of electricity

consumption by a user of electricity, but which does not include any scheme or system which confers any subsidy, grant or other direct financial payment from the New Zealand government on the holder of a Green Product issued or available to the holder as part of that scheme or system.

"Green Products" means any certificate or other recognition issued under a Green Initiative.

**10. MISCELLANEOUS**

**10.1 Account details:**

(a) Payments to Party A:

██

██

(b) Payments to Party B:

██

██

**SIGNED**

<b>Meridian Energy Limited</b>	<b>New Zealand Aluminium Smelters Limited</b>
Signature	Signature
Name	Name
Position	Position

## **APPENDIX 1: Conditions precedent**

### **Party A conditions precedent**

Party A, in its sole discretion, is satisfied that:

1. Party A has obtained all regulatory approvals that it deems are necessary or prudent to obtain in relation to this Confirmation, the Demand Response Agreement and any ancillary agreements, including clearance from the Electricity Authority on terms acceptable to Party A.
2. The New Zealand Commerce Commission has not within five Business Days of the Electricity Authority issuing its decision in respect of any materially large contract clearance application by Party A under clause 13.273 of the Code:
  - (a) opened or indicated that it is considering opening an investigation, or
  - (b) taken or indicated that it is considering taking injunctive or enforcement action,under the Commerce Act 1986, in each case, in relation to this Transaction.
3. Party A has received the Party B Credit Support Documents in form and substance satisfactory to it.
4. Party A has received a legal opinion or legal opinions satisfactory to it (acting reasonably) confirming the due execution and enforceability of the Corporate Guarantees.
5. Party A and Party B have executed and entered into the Demand Response Agreement.

### **Party B conditions precedent**

1. Party B has entered into electricity agreements (for example, electricity derivatives) with a party other than Party A on terms satisfactory to it in relation to at least 97.5 MWh per Calculation Period for at least part of the Term.
2. Party B notifies Party A that it is satisfied (in its sole discretion) as to the likelihood of an appropriate electricity allocation factor being set by the Minister for Climate Change under section 161C(4) of the Climate Change Response Act 2002.
3. Party A and Party B have executed and entered into a hedge settlement agreement in the form set out in Schedule 14.4 of Part 14 of the Code or approved by the Electricity Authority under clause 14.8(2) of the Code, which hedge settlement agreement has been countersigned by the Clearing Manager.



## APPENDIX 2: Form of Force Majeure Notice – email template

Email from affected party to the other party

To: **[email tbc]**

From: **[email tbc]**

Sent: [Date of Notice inserted automatically]

Subject: Notification – Force Majeure Notice for Confirmation – Electricity Agreement (Core Agreement)

Text: We, **[insert party name]**, refer to the Confirmation dated **[insert date]** between you and us (the **Confirmation**). This email constitutes a "Force Majeure Notice" referred to in the Confirmation. Terms defined in the Confirmation have the same meanings as in this Force Majeure Notice.

The Force Majeure Event is **[include details of the Force Majeure Event, including how it addresses each applicable element of the definition of Force Majeure Event]**.

The Force Majeure Event started at **[xx:xx]** hours on **[insert date]**.

We anticipate that the impact of the Force Majeure Event will be **[insert description of the anticipated impact]**.

We are planning on taking the following steps to restore [Consumption to Normal Consumption/Generation to Normal Generation]:

**[insert description of the steps]**.

We expect that the Force Majeure Event will continue for **[insert expected duration of Force Majeure Event]**.

For and on behalf of **[insert party name]**

