

Part A2: General Terms

1. Provision of Ancillary Services

1.1 Provision of Ancillary Services:

In relation to each Ancillary Service, the Ancillary Service Agent must:

(a) Provide Ancillary Service:

provide the Ancillary Service in accordance with this Contract, the Regulations and the Code; and

(b) Implement, Maintain and Operate Systems:

implement, maintain, operate and test the Equipment and any other equipment directly related to the provision of the Ancillary Service as is necessary to enable it to provide the Ancillary Service and otherwise to perform its obligations under this Contract. This includes ensuring that equipment is maintained and operators of the equipment are trained in accordance with Good Industry Practice. For the purposes of clauses 3 and 10.1 the Ancillary Service Agent's obligation under this clause 1.1(b) is deemed to be a Performance Standard for all Ancillary Services.

1.2 Relationship with the Regulations and Code:

Nothing in this Contract limits any obligation of the System Operator or Ancillary Service Agent to comply with the Regulations or the Code or limits any liabilities arising due to the breach of the Regulations or Code by the System Operator or Ancillary Service Agent.

2. Invoicing and Payment

2.1 Clearing Manager Processes to Apply:

The parties acknowledge that Part 14 of the Code and clauses 8.55 to 8.70 of Part 8 the Code set out the processes that apply to the invoicing, payment, dispute and washup of all fees and other amounts payable by the System Operator in respect of Ancillary Services.

2.2 Information from Ancillary Service Agent:

The Ancillary Service Agent must provide to the System Operator, on request, any information the System Operator reasonably requires in order to comply with its obligations under clauses 8.68(2) and 8.69(3) of Part 8 the Code to provide Allocable Cost information to the Clearing Manager.

3. Performance Standards

3.1 Compliance with Performance Standards:

(a) Compliance:

In providing any Ancillary Service, the Ancillary Service Agent must comply with the Performance Standards.

(b) Dispensations:

Any Performance Standard that refers to a specific clause in the Code is subject to any Dispensation granted to the Ancillary Service Agent, provided the Ancillary Service Agent has notified the System Operator of the Dispensation.

3.2 Notice of Inability to Meet Performance Standards:

The Ancillary Service Agent must advise the System Operator as soon as possible if the Ancillary Service Agent is unable to meet any Performance Standard for an Ancillary Service in any respect.

3.3 Claims for Failure to Provide the Ancillary Service:

(a) Notice:

If the System Operator reasonably believes that the Ancillary Service Agent:

- (i) has failed, or is unable, to meet a Performance Standard; or
- (ii) has failed, or is unable, to comply with Dispatch Instruction(s), including restoring Interruptible Load without instruction,

the System Operator may give notice to the Ancillary Service Agent of the claim specifying:

- (iii) if relevant, the date and time the Ancillary Service Agent failed to meet the Performance Standard or comply with Dispatch Instruction(s); and
- (iv) details of all relevant evidence held by the System Operator that indicates the cause of the failure or inability to meet the Performance Standard or comply with Dispatch Instruction(s),

provided that, if the claim is that the Ancillary Service Agent failed to meet a Performance Standard or comply with Dispatch Instruction(s), the System Operator must give notice under this clause 3.3(a) within 40 Business Days of the System Operator becoming aware of the failure. For the avoidance of doubt, the System Operator may give notice under this clause 3.3(a) without first requiring a Test or carrying out an inspection under clause 5.

(b) Assessment of Claim:

The Ancillary Service Agent must:

- (i) within 15 Business Days of receipt of the System Operator notice under clause 3.3(a), if the claim is that the Ancillary Service Agent failed to meet a Performance Standard or comply with Dispatch Instruction(s); or
- (ii) as soon as reasonably practicable and in any event within five Business Days of receipt of the System Operator notice under clause 3.3(a), if the claim is that the Ancillary Service Agent is unable to meet a Performance Standard or comply with Dispatch Instruction(s),

assess the claim and notify the System Operator in writing whether the Ancillary Service Agent accepts or rejects the claim and, in the case of rejection, the reasons for such rejection.

(c) Accepted Claims - Fees:

Without limiting any other remedy the System Operator may have against the Ancillary Service Agent, if the Ancillary Service Agent accepts, or it is determined through Dispute Resolution, that the Ancillary Service Agent

has failed, or is unable, to meet a Performance Standard or comply with Dispatch Instruction(s), then (unless the failure or inability was or is due to the System Operator's breach of this Contract):

- (i) the System Operator will not be liable to pay any fees or other amounts to the Ancillary Service Agent in respect of the relevant Ancillary Service for all periods when the Performance Standard was not met or is unable to be met or Dispatch Instruction(s) were not complied with or are unable to be complied with; and
- (ii) the Ancillary Service Agent must refund any such fee or other amount already paid by the System Operator.

Where any fee or other amount must be refunded, such refund may be made by adjusting the next or a subsequent invoice under clause 2.1.

(d) Accepted Claims – Remedial Action:

If the Ancillary Service Agent accepts, or it is determined through Dispute Resolution, that the Ancillary Service Agent is unable to meet a Performance Standard or comply with Dispatch Instructions, the Ancillary Service Agent must (unless the inability is due to the System Operator's breach of this Contract):

- (i) promptly advise the System Operator of the remedial steps it proposes to take to ensure that it is able to meet the Performance Standard or comply with Dispatch Instructions and the proposed timetable for implementing those steps;
- (ii) diligently, and at its own expense, take such remedial action to ensure that it is able to meet the Performance Standard or comply with Dispatch Instructions;
- (iii) from time to time, keep the System Operator informed of its progress in implementing the remedial action; and
- (iv) after taking the remedial action notify the System Operator accordingly and, if requested by the System Operator, submit such evidence as the System Operator may reasonably require to demonstrate that it is able to meet the Performance Standard or comply with Dispatch Instructions.

Subject to clause 4.8(b), for the purposes of clause 3.3(c), the Ancillary Service Agent is deemed to be unable to meet the Performance Standard or comply with Dispatch Instructions from the earlier of:

- (v) the end of the day on which notice was given by the System Operator under clause 3.3(a); or
- (vi) the end of the day the failure, or inability, to meet the Performance Standard, or the failure, or inability, to comply with the Dispatch Instruction began,

until the time the Ancillary Service Agent has complied with clause 3.3(d)(iv).

(e) Rejected Claims:

If the Ancillary Service Agent rejects the System Operator's claim, the parties must meet to discuss the matter in good faith to attempt to resolve

their difference of opinion. If the parties are unable to reach agreement within 10 Business Days after the System Operator receives the Ancillary Service Agent's notice of rejection under clause 3.3(b) the matter must be referred to Dispute Resolution.

(f) Dispatch Instructions:

In this clause 3.3, "Dispatch Instruction":

- (i) means a Dispatch Instruction for an Ancillary Service issued by the System Operator to the Ancillary Service Agent in accordance with this Contract;
- (ii) includes a request to provide the Black Start Service made by the System Operator to the Ancillary Service Agent in accordance with this Contract; and
- (iii) includes a regulating instruction for multiple provider Frequency Keeping.

4. Tests

4.1 Required Tests:

The Ancillary Service Agent must conduct tests of Equipment as required by each Ancillary Service Schedule that meet the test requirements specified for the Ancillary Service (if any) in the Ancillary Service Schedule and the test requirements agreed or determined in accordance with clause 4.10. The Ancillary Service Agent must pay the costs of any Test required under this clause 4.1.

4.2 Information about Tests:

The Ancillary Service Agent must provide to the System Operator in writing, in such detail and in such format as the System Operator may reasonably require:

(a) Timing of Tests:

if requested by the System Operator, the day on, and time at, which the Ancillary Service Agent intends to conduct a Test; and

(b) Results of Tests:

the results of any Test:

- (i) required under clause 4.1 if the System Operator requests those results; and
- (ii) required under clause 4.3(a) as soon as practicable after the results become available to the Ancillary Service Agent.

4.3 System Operator May Request Test or Equipment Capability Statement:

The System Operator may, in writing, at any time request the Ancillary Service Agent to:

(a) Conduct a Test:

conduct a test of Equipment (in addition to any Test required under clause 4.1); and/or

(b) Provide Equipment Capability Statement:

provide to the System Operator in writing, and in such detail as the System Operator may reasonably require, a statement of the capability and

operational limitations of the Equipment (an **Equipment Capability Statement**).

4.4 Ancillary Service Agent to Conduct Test or Provide Equipment Capability Statement:

Where the System Operator has required:

(a) Ancillary Service Agent to Conduct Test:

a Test under clause 4.3(a):

- (i) the Ancillary Service Agent must conduct such a Test within a timeframe to be agreed between the parties, and the Test must meet the test requirements specified for the Ancillary Service in the Ancillary Service Schedule (if any) and the test requirements agreed or determined in accordance with clause 4.10; and
- (ii) unless otherwise agreed between the parties, if the Test has not been conducted within 30 Business Days of the System Operator's request under clause 4.3(a), the Ancillary Service Agent will be deemed incapable of providing the Ancillary Service from the end of the last day of that period until the Test is conducted and demonstrates to the reasonable satisfaction of the System Operator that the Ancillary Service Agent is able to meet the Performance Standards (the **No Test Period**). For the avoidance of doubt, clause 3.3(c) will apply for the duration of the No Test Period; or

(b) Ancillary Service Agent to Provide Equipment Capability Statement:

an Equipment Capability Statement, the Ancillary Service Agent must provide the Equipment Capability Statement within 10 Business Days of the request, or as agreed between the parties.

4.5 System Operator May Pay Costs:

Subject to clause 4.6, where a Test is required under clause 4.3(a) and the results from such Test show that the Ancillary Service Agent is able to meet the relevant Performance Standard(s), the System Operator must pay to the Ancillary Service Agent the reasonable costs incurred by the Ancillary Service Agent in conducting the Test. If the results from such a Test show that the Ancillary Service Agent is not able to meet the relevant Performance Standard(s), the Ancillary Service Agent must meet the costs incurred by the Ancillary Service Agent in conducting the Test. Where the System Operator must pay the costs of the Test, payment and invoicing under this clause 4.5 must be made in accordance with clause 2.

4.6 Ancillary Service Agent May Pay Costs:

If:

- (a) the System Operator requests a Test under clause 4.3(a) within 20 Business Days from the Ancillary Service Agent complying with clause 3.3(d)(iv) in relation to an Accepted Claim that the Ancillary Service Agent failed, or is unable, to meet a Performance Standard or comply with Dispatch Instruction(s); and
- (b) the sole purpose of the Test is to determine whether or not the Ancillary Service Agent is able to meet the same Performance Standard or comply with Dispatch Instruction(s),

the Ancillary Service Agent must meet the costs incurred by the Ancillary Service Agent in conducting the Test.

4.7 System Operator May Appoint Representative:

Without limiting clause 4.2 or clause 4.4, the System Operator may, by giving at least five Business Days' notice to the Ancillary Service Agent, appoint a representative or representatives agreed to by the Ancillary Service Agent, such agreement not to be unreasonably withheld (each a **Representative**), to observe the conduct of any Test. The Ancillary Service Agent must provide reasonable access and assistance to such Representative(s) for that purpose. The System Operator must ensure that its Representative(s) do not interfere with the conduct of a Test.

4.8 Failure to Pass Tests:

If a Test does not demonstrate, to the reasonable satisfaction of the System Operator, that the Ancillary Service Agent is able to meet the Performance Standards, the System Operator must advise the Ancillary Service Agent within 10 Business Days from receipt of the results of the Test, and this notice will be treated as an Accepted Claim under clause 3.3. Without limiting the Ancillary Service Agent's obligations in relation to the claim under clause 3.3(d), the Ancillary Service Agent:

(a) Re-Test:

must, unless:

- (i) the Equipment subject to the Test is used to provide or monitor Frequency Keeping and/or Instantaneous Reserve and no other Ancillary Service; or
- (ii) otherwise agreed between the parties,

conduct further tests until it demonstrates to the reasonable satisfaction of the System Operator that it is able to meet the Performance Standards in providing the Ancillary Service. The Ancillary Service Agent must meet the costs incurred by the Ancillary Service Agent in conducting such further tests; and

(b) Deemed Incapable:

is deemed incapable of providing the Ancillary Service from the end of the day on which the initial Test was conducted or was due to be conducted (whichever is earlier) until the time the Ancillary Service Agent demonstrates, to the reasonable satisfaction of the System Operator that it is able to meet the Performance Standards in providing the Ancillary Service (the **Failed Test Period**). For the avoidance of doubt, clause 3.3(c) will apply for the duration of the Failed Test Period.

4.9 Failure to Conduct Tests:

If the Ancillary Service Agent is unable, for whatever reason, to conduct a Test when required under this Contract, the Ancillary Service Agent must notify the System Operator and the Ancillary Service Agent must conduct a Test as soon as practicable thereafter.

4.10 Test Requirements:

In addition to meeting any relevant requirements set out in respect of a Test in an Ancillary Services Schedule, Tests must be carried out in compliance with any relevant test guidelines published on the System Operator's website, including by using and submitting to the System Operator any standard forms in those guidelines.

In the case of Tests for which such guidelines do not exist, the Test must measure the performance indicators and use a method of testing for such performance indicators as agreed between the parties, and provide results in a format as agreed between the parties. If the parties cannot agree within five Business Days of the Ancillary Service Agent giving notice that it intends to conduct a Test or the System Operator giving notice that it is requesting a Test (as the case may be), then the matter must be resolved by reference to Dispute Resolution.

5. Inspections

5.1 Right to Inspect:

In relation to each Ancillary Service provided in accordance with this Contract, the System Operator may inspect the Equipment, including any other equipment directly related to the provision of the Ancillary Service, used, or proposed to be used, by the Ancillary Service Agent to provide the Ancillary Service to determine whether the Ancillary Service Agent is capable of providing the Ancillary Service in accordance with this Contract.

5.2 Inspection Notice:

Subject to clause 5.3, the System Operator must give the Ancillary Service Agent at least five Business Days' notice of its intention to carry out any inspection under clause 5.1. Such notice must include the following information:

(a) Name:

the name of the representative or representatives nominated by the System Operator and agreed to by the Ancillary Service Agent (such agreement not to be unreasonably withheld) (each a **Representative**) to carry out the inspection on behalf of the System Operator; and

(b) Time:

the time when the inspection will commence.

5.3 No Notice Required:

Where the System Operator reasonably believes that the Ancillary Service Agent is using or proposes to use any Equipment, including any other equipment directly related to the provision of an Ancillary Service, in a manner inconsistent with the Ancillary Service Agent providing the Ancillary Service in accordance with this Contract, the System Operator is entitled to carry out an inspection of that Equipment without giving notice as required under clause 5.2. Any such inspection must be carried out between the hours of 8.30 am and 5.30 pm on a Business Day.

5.4 Conduct of Inspection:

The System Operator may not carry out any inspection under clause 5.1 within six months of any previous inspection, unless any Test has found that the Ancillary Service Agent is not able to meet the Performance Standards for the Ancillary

Service or any inspection carried out in accordance with this clause 5 has found that the Ancillary Service Agent is not able to provide the Ancillary Service in accordance with this Contract.

5.5 Obligations During Inspection:

At any time when the System Operator or its Representatives are carrying out an inspection in accordance with clause 5.1 or clause 5.3, the System Operator must:

(a) Not Cause Loss:

not cause any loss or damage to the Ancillary Service Agent, its plant, equipment or other assets;

(b) Not Interfere:

not interfere unreasonably with the operation of the Ancillary Service Agent's business (provided that the inspection does not of itself constitute interference);

(c) Comply With Requirements:

comply with the requirements of the Ancillary Service Agent in relation to occupational health and safety, security and industrial relations matters, which requirements are of general application to all invitees of the Ancillary Service Agent; and

(d) Not Give Directions:

not give any direction, instruction or advice to any employee, agent or contractor of the Ancillary Service Agent, other than any such person designated by the Ancillary Service Agent for this purpose,

and must ensure that its Representatives do likewise.

6. Force Majeure

6.1 Force Majeure:

If either party fails to comply with or observe any provision of this Contract (other than payment of any amount due) and such failure is caused by:

(a) Specific Events or Circumstances:

any event or circumstance occasioned by, or in consequence of, any act of God (being an event or circumstance (i) due to natural causes, directly or indirectly and exclusively without human intervention, and (ii) that could not by any amount of ability have been foreseen or, if foreseen, could not by any amount of human care and skill have been resisted), strikes, lockouts, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances;

(b) Court Orders etc:

the binding order of any Court, government or a local authority (except where the Ancillary Service Agent seeks to invoke this clause 6.1 and the local authority that made the binding order is the owner of, or is otherwise associated with or related to, the Ancillary Service Agent); or

(c) Other Event or Circumstance:

any other event or circumstance beyond the control of the party invoking this clause 6.1 and being such that, by the exercise of reasonable care

acting in accordance with Good Industry Practice, such party could not have prevented such failure,

that failure does not give rise to any cause of action or liability based on default of the provision.

6.2 Breach of the Regulations and Code:

For the avoidance of doubt the Force Majeure provisions of this Contract only apply to provide relief from liability under this Contract. Clause 6.1 will not apply in respect of any liability of either party that arises due to a breach of the Regulations or the Code (whether or not, in the case of the Ancillary Service Agent, such obligation arises in the provision of Ancillary Services).

6.3 Notice:

If a party becomes aware of a serious prospect of a forthcoming Force Majeure or that a Force Majeure has occurred, it must notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 6.1, it must notify the other party as soon as reasonably practicable of the full particulars of the Force Majeure relied upon.

6.4 Avoidance and Mitigation of Effect of Force Majeure:

The party invoking clause 6.1 must:

(a) Endeavour to Avoid or Overcome:

use reasonable endeavours to overcome or avoid the Force Majeure;

(b) Endeavour to Mitigate:

use reasonable endeavours to mitigate the effects or consequences of the Force Majeure; and

(c) Consult:

consult with the other party on the performance of the obligations referred to in clause 6.4(a) and (b).

6.5 No Obligation to Settle:

Nothing in clause 6.4 is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

6.6 Termination on Account of Force Majeure:

If a Force Majeure subsists, or is reasonably likely to subsist, for a period of not less than six consecutive months from the date of the commencement of the Force Majeure then the party not affected by the Force Majeure may, upon not less than 10 Business Days' notice, terminate the Ancillary Service Schedule to which the Force Majeure relates in whole, or where there is more than one site or location providing the Ancillary Service and the Force Majeure relates to that particular site or location, terminate the Ancillary Service Schedule in respect of that particular site or location, provided that this Contract will continue to apply in respect of the provision of the Ancillary Service from the other sites or locations referred to in the Ancillary Service Schedule.

7. Exclusions and Limitations of Liability

7.1 Liability – The Regulations and Code:

Where either party breaches an obligation under this Contract that is also an obligation contained within the Regulations or the Code, the liability (if any) of that party must be determined under and in accordance with the Regulations and Code (including the limitations of liability contained in the Regulations and Code) and that party will have no liability under this Contract.

7.2 Exclusion from Ancillary Service Agent's Liability:

Without limiting any provision of any Ancillary Service Schedule requiring a reduction in any amounts payable by the System Operator for an Ancillary Service, the Ancillary Service Agent and its Associated Persons will not, in any circumstance, be liable (whether in contract, tort, equity or otherwise) to the System Operator for any loss, injury, damage (in each case whether direct, indirect or consequential) or expense caused by an act or omission of the Ancillary Service Agent or any of its Associated Persons in relation to any matter contemplated by this Contract unless such act or omission constitutes a failure by the Ancillary Service Agent to comply with a provision of this Contract. For the avoidance of doubt, if the failure by the Ancillary Service Agent to comply with a provision of this Contract is a negligent act or omission, the limitations on the Ancillary Service Agent's and its Associated Persons' liability as provided in clauses 7.3 and 7.4 will apply to such negligent act or omission of the Ancillary Service Agent or its Associated Persons.

7.3 Limitation of Ancillary Service Agent's Liability:

If the Ancillary Service Agent fails to comply with any provision of this Contract (other than payment of amounts due), the Ancillary Service Agent and its Associated Persons will only be liable to the System Operator for the direct loss suffered by the System Operator caused by the Ancillary Service Agent's failure to comply with that provision up to the combined maximum limits specified in clause 7.4, but will not be liable for:

(a) Loss:

any loss of use, revenue or profit, or any consequential or indirect loss, suffered by the System Operator;

(b) Damages:

the amount of any damages awarded against the System Operator in favour of a third party;

(c) Settlement Money:

the amount of any money paid by the System Operator by way of settlement to a third party; or

(d) Cost or Expenses:

any costs or expenses of the System Operator incurred in connection with any of clause 7.3(a), (b) or (c),

even when such losses may be direct losses.

7.4 Ancillary Service Agent's Capped Liability:

For the purposes of clause 7.3, the combined maximum liability of the Ancillary Service Agent and its Associated Persons to the System Operator will be:

(a) General Terms:

if the liability arises because of default of any obligation contained in this Part A2: General Terms, and does not relate to a breach of any obligation contained in any Ancillary Service Schedule, \$100,000 in any 1 year period irrespective of the number of defaults; and

(b) Ancillary Service Schedules:

if the liability arises because of default of any obligation contained in or relating to any Ancillary Service Schedule, up to the maximum limits specified in the relevant Ancillary Service Schedule.

7.5 Contractual Privity – Ancillary Service Agent's Associated Persons:

The benefits of clauses 7.2, 7.3 and 7.4 (and of any limits specified in the relevant Ancillary Service Schedule) are conferred on the Ancillary Service Agent's Associated Persons and are intended to be enforceable by each of them under Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

7.6 Exclusion From the System Operator's Liability:

The System Operator and its Associated Persons will not, in any circumstance, be liable (whether in contract, tort, equity or otherwise) to the Ancillary Service Agent for any loss, injury, damage (in each case whether direct, indirect or consequential) or expense caused by an act or omission of the System Operator or its Associated Persons in relation to any matter contemplated by this Contract unless such act or omission constitutes a failure by the System Operator to comply with a provision of this Contract. For the avoidance of doubt, if the failure by the System Operator to comply with a provision of this Contract is a negligent act or omission, the limitations on the System Operator's and its Associated Persons' liability as provided in clauses 7.8 and 7.9 will apply to such negligent act or omission of the System Operator or its Associated Persons.

7.7 Breach of the Procurement Plan:

For the avoidance of doubt, the Procurement Plan does not form part of this Contract and the System Operator will not be liable under this Contract to the Ancillary Service Agent for any failure to follow the Procurement Plan.

7.8 Limitation of the System Operator's Liability:

If the System Operator fails to comply with any provision of this Contract (other than payment of amounts due), the System Operator and its Associated Persons will only be liable to the Ancillary Service Agent for the direct loss suffered by the Ancillary Service Agent caused by the System Operator's failure to comply with that provision up to the combined maximum limits specified in clause 7.9, but will not be liable for:

(a) Loss:

any loss of use, revenue or profit, or any consequential or indirect loss suffered by the Ancillary Service Agent;

(b) Damages:

the amount of any damages awarded against the Ancillary Service Agent in favour of a third party;

(c) Settlement Money:

the amount of any money paid by the Ancillary Service Agent by way of settlement to a third party; or

(d) Costs and Expenses:

any costs or expenses of the Ancillary Service Agent incurred in connection with any of clause 7.8(a), (b) or (c),

even where such losses may be direct losses.

7.9 System Operator's Capped Liability:

For the purposes of clause 7.8, the combined maximum liability of the System Operator and its Associated Persons to the Ancillary Service Agent will be:

(a) General Terms:

if the liability arises because of default of any obligation contained in Part A2: General Terms (other than provisions relating to payments of amounts due under any Ancillary Service Schedule) and does not relate to a breach of any obligation contained in any Ancillary Service Schedule, \$100,000 in any 12 month period irrespective of the number of defaults; and

(b) Ancillary Service Schedules:

if the liability arises because of default of any obligation contained in or relating to any Ancillary Service Schedule (other than provisions relating to payments of amounts due under any Ancillary Service Schedule), up to the maximum limits specified in the relevant Ancillary Service Schedule.

7.10 System Operator may Withhold Payment:

Nothing in this clause 7 limits the System Operator's ability to withhold payment for an Ancillary Service under clause 3.3(c).

7.11 Contractual Privity – System Operator's Associated Persons:

The benefits of clauses 7.6 to 7.10 (and of any limits specified in the relevant Ancillary Service Schedule) are conferred on the System Operator's Associated Persons and are intended to be enforceable by each of them under Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.

7.12 Survive Termination:

The whole of this clause 7 will survive termination of this Contract.

8. Dispute Resolution

8.1 Exceptions:

This clause 8 does not apply to disputes under the Regulations or Code.

8.2 Management and Resolution of Disputes Between the Parties:

The following provisions of this clause 8.2 apply to all disputes between the parties in relation to this Contract:

(a) Amicable resolution:

the parties acknowledge that they are in a long-standing business relationship and recognise the importance of resolving disputes arising out of this Contract between them quickly and cost effectively;

(b) Interest Based:

disputes must be resolved by focusing on the interests of both parties to achieve an agreed solution;

(c) Reasonable Endeavours:

the parties must use reasonable endeavours to resolve any dispute;

(d) Obligation to Resolve Remains:

the parties must continue to seek to resolve any dispute by consultation and negotiation whether or not any dispute is referred to Dispute Resolution;

(e) Continued Performance:

pending resolution of any dispute, the parties must continue to perform their obligations under this Contract; and

(f) Agreement:

any agreement to resolve any dispute must be in writing and signed by each party.

8.3 Dispute Notice and Meeting:

The following provisions apply to any dispute in relation to this Contract:

(a) Dispute Notice:

the party claiming a dispute must give prompt and early notice of the dispute to the other party (the **Dispute Notice**) and must provide the grounds for the dispute within five Business Days of the Dispute Notice. The party receiving the Dispute Notice must give a response notice within five Business Days after receiving the grounds for the dispute;

(b) Dispute Meeting:

the parties must use reasonable endeavours to meet within 15 Business Days after service of the Dispute Notice (the **Dispute Meeting**). At the Dispute Meeting, the parties must seek to:

- (i) identify and agree the interests of each party;
- (ii) identify and isolate the issues between the parties;
- (iii) where possible, resolve the dispute;
- (iv) if the Dispute Meeting cannot resolve the dispute, identify whether any further information is required by either party and agree a time within which the information must be provided; and
- (v) if not otherwise provided in this Contract, determine the most appropriate method for resolving the dispute, including:
 - (A) mediation in accordance with clause 8.4;

- (B) independent expert determination in accordance with clause 8.5;
- (C) Rulings Panel determination under Part 3 of the Electricity Industry (Enforcement) Regulations 2010 in accordance with clause 8.6; or
- (D) arbitration in accordance with clause 8.7;

(c) Arbitration is Fallback Dispute Resolution Process:

in the event that the parties do not agree to a method of dispute resolution at a Dispute Meeting, or having agreed on a method the dispute is not resolved within 100 Business Days (or such longer period as the parties may agree) of the Dispute Meeting, either party may refer the dispute to an arbitrator for resolution in accordance with clause 8.7; and

(d) Timetable:

at the Dispute Meeting, the parties must agree a timetable to endeavour to resolve the dispute. Where practicable, the timetable must provide for the dispute to be resolved within six weeks from the date of the Dispute Meeting unless the dispute is to be resolved by litigation.

8.4 Mediation:

Where the parties agree that a dispute is to be referred to mediation, the following provisions of this clause 8.4 apply:

(a) Appointment of Mediator:

the parties must agree the appointment of a mediator within five Business Days of the Dispute Meeting;

(b) Default of Appointment:

if a mediator is not appointed under clause 8.4(a), either party may request the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Incorporated to appoint the mediator;

(c) Mediator to Settle Procedures:

the mediator must consult with the parties to settle the timetable and procedures to be adopted during the mediation within five Business Days of being appointed. The mediator may call any meeting between the parties at such times and places as the mediator considers appropriate. The mediation must be held within 25 Business Days of the mediator's appointment;

(d) Parties to Attend Meetings:

the parties must attend all meetings called by the mediator and use reasonable endeavours to assist the mediation;

(e) Legal Representation:

the parties may have the assistance of legal counsel;

(f) Without Prejudice:

the mediation must be conducted on a without prejudice basis. The mediation will not affect the rights, or prejudice the position, of the parties to the dispute in any subsequent proceedings of any kind;

(g) Mediator has no Power of Decision:

the mediator has no power of decision on any matters;

(h) Mediator's Costs to be Borne Equally:

the mediator's costs must be paid equally by the parties and the parties will be jointly and severally liable to the mediator for such costs. This clause 8.4(h) confers a benefit on the mediator and is intended to be enforceable by the mediator under Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017; and

(i) Parties' Costs of the Mediation:

responsibility for the costs and expenses of the parties will be agreed between the parties.

8.5 Independent Expert Determination:

Where the parties agree to the submission of any dispute between the parties in relation to this Contract to an independent expert for determination the following provisions of this clause 8.5 apply:

(a) Appointment of Independent Expert:

the parties must agree on the appointment of an independent expert within five Business Days of the Dispute Meeting;

(b) Default Appointment:

if an independent expert is not appointed under clause 8.5(a), either party may request the president for the time being of the New Zealand Law Society to make the appointment;

(c) Notice of Appointment as Independent Expert:

the independent expert must give the parties notice of his or her appointment;

(d) Representations:

the independent expert must invite the parties to submit such representations as the parties wish to make within 10 Business Days of the independent expert's notice of appointment. The independent expert must take into account any representations submitted by the parties but is not limited or fettered by them in any way;

(e) Independent Expert not Arbitrator:

the independent expert must act as an independent expert and not as an arbitrator;

(f) Inspection of Records:

the independent expert may inspect any relevant records kept by a party in relation to this Contract at any reasonable time provided that:

- (i) a party is not obliged to provide records for inspection where to do so will breach an obligation owed by that party to a third party or is contrary to law; and

- (ii) each party must use reasonable endeavours to obtain any consent necessary to disclose information requested by the independent expert;

(g) Rely on Own Judgement:

the independent expert is entitled to rely on his or her own judgement and opinion;

(h) Give Reasons:

the independent expert must provide the reasons for any determination within six weeks after the independent expert's appointment or within such extended period as the parties may agree. The independent expert is not to release any determination to the parties until the independent expert's fees and expenses are paid;

(i) Binding Determination:

the independent expert's determination will be final and binding upon the parties;

(j) Replacement of Independent Expert:

if the independent expert does not make a determination within six weeks of his or her appointment (or within the time agreed by the parties), or relinquishes his or her appointment, or dies, or for any other reason is unable to complete the determination, if the parties agree, another independent expert will be appointed. This clause 8.5 will apply in relation to that appointment;

(k) Independent Expert's fees:

the independent expert's fees and incidental expenses must be paid equally by the parties and the parties will be jointly and severally liable to the independent expert. This clause 8.5(k) confers a benefit on the independent expert and is intended to be enforceable by the independent expert under Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017; and

(l) Expert to Determine Costs:

subject to clause 8.5(k), the independent expert must determine the allocation of costs. The independent expert may invite the parties to make submissions on costs in such manner as determined by the independent expert. The parties will be bound by the independent expert's determination as to costs.

8.6 Rulings Panel:

Where the parties agree to the submission of any dispute between the parties in relation to this Contract to the Rulings Panel for determination under Part 3 of the Electricity Industry (Enforcement) Regulations 2010, the following provisions of this clause 8.6 apply:

(a) Application of the Rulings Panel:

any application to the Rulings Panel for resolution of the dispute between the parties must be in the form prescribed in regulation 80 of the Electricity Industry (Enforcement) Regulations 2010;

(b) Form of the Dispute Resolution Process:

the parties to the dispute must agree to the form of the dispute resolution to be utilised. In the absence of such agreement, the Rulings Panel will determine the form of dispute resolution;

(c) Process of the Rulings Panel:

the Rulings Panel must resolve the dispute in accordance with Part 3 of the Electricity Industry (Enforcement) Regulations 2010;

(d) Decision of the Rulings Panel:

the parties agree to be bound by the decision of the Rulings Panel, subject to the rights of appeal in Subpart 4 of Part 2 of the Act; and

(e) Costs:

the parties to any dispute referred to the Rulings Panel will be liable for the costs of the resolution process undertaken by the Rulings Panel in accordance with regulation 90 of the Electricity Industry (Enforcement) Regulations 2010.

8.7 Arbitration:

Where the parties agree, or this Contract requires, that a dispute is to be referred to arbitration, the following provisions of this clause 8.7 apply:

(a) Single Arbitrator:

the arbitration must be conducted by a single arbitrator;

(b) Appointment of Arbitrator:

the parties must agree the appointment of the arbitrator within five Business Days of the Dispute Meeting;

(c) Default of Appointment:

if an arbitrator is not appointed under clause 8.7(b), either party may request the President for the time being of the New Zealand Law Society to appoint the arbitrator;

(d) Arbitration Act 1996:

arbitration commenced pursuant to this clause 8.7 must be conducted under and in accordance with the provisions of the Arbitration Act 1996; and

(e) Arbitrator's Decision:

the parties agree to be bound by the decision of the arbitrator.

8.8 Survive Termination:

The whole of this clause 8 will survive termination of this Contract.

9. Confidentiality

9.1 Confidential Information:

A party may, by written notice to the other party, designate any information provided by the first party as being confidential information (**Confidential Information**) if the disclosure of that information by the other party would:

- (a) cause the first party to be in breach of any legal obligation; or
- (b) unreasonably prejudice the commercial position of the first party or the person who is the subject of the information.

Except as expressly provided otherwise in this Contract, each party must keep confidential any Confidential Information provided by the other party relating to this Contract, and not disclose such information to any other person without the prior written consent of the other party, which is not to be unreasonably withheld.

9.2 Exceptions:

Clause 9.1 is not to apply to the disclosure of any Confidential Information by a party:

(a) Associated Persons:

to its Associated Persons where necessary for the ordinary business purposes of that party;

(b) Banks and Financiers:

to any bank or financial institution from which the party is seeking to obtain or maintain financial facilities in connection with that party's business;

(c) Assignee:

to a bona fide intending assignee who has signed a confidentiality agreement in favour of the disclosing party;

(d) As Required by Law or Stock Exchange:

to any person to whom that party reasonably believes it is required to disclose to by law or to meet the listing requirements of any stock exchange;

(e) Authority:

to the Authority;

(f) Regulations and Code:

to any person to whom that party reasonably believes it is required to disclose to so as to comply with (including the exercise of any rights under) the Regulations or the Code and, in the case of the System Operator, to any person to whom it reasonably believes it is required to disclose to so as to comply with (including the exercise of any rights under) any contract or deed between the System Operator and the Authority;

(g) Dispute Resolution:

in any Dispute Resolution process or determination or legal proceeding of any kind arising out of or in connection with this Contract or otherwise in compliance with the order of any court of competent jurisdiction;

(h) Public Domain:

to the extent that the information at the time of disclosure was, or subsequently has become, generally available to the public other than as a

result of unauthorised disclosure by that party or any of its Associated Persons;

(i) Already Known:

to the extent that the information was already known to a party at the time of disclosure and came into that party's possession otherwise than by breach of any confidentiality obligation owed to any other party or the information was disclosed to a party on a non-confidential basis by a third party who was not bound by any confidential obligation; or

(j) System Operator:

in relation to the System Operator, to the extent it reasonably believes that it is necessary to do so in the proper performance of the functions of System Operator. The System Operator must seek to minimise disclosure of any commercially sensitive information wherever it considers that it is practical to do so.

9.3 Disclosure On Aggregated Basis:

The System Operator may disclose confidential information to any person where the information has been developed into aggregated statistical data and such disclosure will not, in the reasonable opinion of the System Operator, in a material manner commercially disadvantage the Ancillary Service Agent.

9.4 Associated Persons:

Each party must ensure that its Associated Persons who are in possession of any Confidential Information observe and comply with these confidentiality provisions and is responsible to the other party for the acts or omissions of its Associated Persons in relation to the Confidential Information.

9.5 Survive Termination:

The whole of this clause 9 will survive the termination of this Contract.

10. Consequence of Default

10.1 Material Breach:

If a party (the **Breaching Party**) commits a material breach of this Contract in respect of an Ancillary Service, the following provisions apply:

(a) Notice:

the other party (the **Non-breaching Party**) may give notice to the Breaching Party specifying the material breach; and

(b) Non-Breaching Party's Rights:

if the Breaching Party does not remedy or remove the material breach to the reasonable satisfaction of the Non-breaching Party within 10 Business Days of the Non-breaching Party's notice under clause 10.1(a), or such longer period as the parties may agree, the Non-breaching Party may, without prejudice to any rights it may have at law or under this Contract and while the material breach remains unremedied:

- (i) terminate the Ancillary Service Schedule to which the material breach relates in whole; or

- (ii) where there is more than one site or location providing the Ancillary Service and the non-compliance relates to that particular site or location, terminate the Ancillary Service Schedule in respect of that particular site or location only, provided that this Contract will continue to apply in respect of the provision of the Ancillary Service from the other sites or locations referred to in the Ancillary Service Schedule.

(c) Failure to Meet Performance Standards:

A failure by the Ancillary Service Agent to meet a Performance Standard for an Ancillary Service will not be a material breach of this Contract unless the Ancillary Service Agent has previously failed to meet the same Performance Standard or the effect of the failure is that the Ancillary Service was not provided at all when it should have been.

11. Termination

11.1 Amendment to the Regulations or the Code:

If, during the term of this Contract there is any change to the Regulations or the Code and such change:

(a) Inconsistency:

results in this Contract being materially inconsistent with the Regulations or the Code; or

(b) Material Additional Obligations:

imposes material additional obligations or material costs on either party in respect of the matters covered by this Contract (and which that party would not be subject to if it was not a party to this Contract),

then either party may terminate this Contract (or any relevant Ancillary Service Schedule) immediately on notice to the other party. Any dispute as to whether a change results in this Contract being materially inconsistent with the Regulations or Code or imposes material additional obligations or material costs must be referred to Dispute Resolution.

11.2 Other Rights to Terminate:

Either party may terminate this Contract (or any Ancillary Service Schedule) immediately on notice to the other party if:

(a) Liquidation:

any resolution is passed, or any proceeding is commenced, for the winding up or liquidation of the other party, except for the purposes of a solvent reconstruction or amalgamation on terms previously approved in writing by the first party (not to be unreasonably withheld);

(b) Compromise:

except as previously approved in writing by the first party, the other party enters into any compromise, arrangement or assignment with, or for the benefit of, its creditors;

(c) Statutory Management or Receiver:

the other party goes into receivership or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of the whole or a material part of the other party's property;

(d) Insolvency:

the other party is unable to pay its debts as they fall due in the normal course of business or where the value of the other party's assets is less than the value of its liabilities, including contingent liabilities;

(e) Sale of Business:

the other party sells or transfers its business or a major part of its business without the prior written consent of the first party (not to be unreasonably withheld). Notwithstanding this clause 11.2(e), the Ancillary Service Agent may sell or transfer any part of its business not directly related to the provision of Ancillary Services under this Contract without the System Operator's consent;

(f) Other:

the other party is not a company and it is the subject of an event reasonably analogous to any event described in clause 11.2(a) to (e); or

(g) Illegality:

if it becomes illegal for either party to perform any provision of this Contract to an extent that is material but subject to either party having first given notice and the parties having met and considered any practical basis on which this Contract might be varied.

11.3 Termination of Ancillary Services Schedule

If the System Operator determines, acting reasonably, that circumstances have occurred or are reasonably likely to occur which have, or will, require:

(a) Increase in quantity

an increase in the contracted quantities of an Ancillary Service; or

(b) Change in Performance Standards

a change in the Performance Standards for an Ancillary Service,

in order for the System Operator to continue to meet its Principal Performance Obligations, the System Operator may terminate the Ancillary Service Schedule in its entirety, or one or more individual line items in the Ancillary Service Schedule, for the relevant Ancillary Service by giving the Ancillary Service Agent at least 3 months' written notice.

11.4 Termination of Part A etc:

If all of the Ancillary Service Schedules have terminated, the whole of this Contract will be deemed to be terminated.

11.5 Effect of Termination:

Termination of this Contract or of any Ancillary Service Schedule, whether in whole or in respect of any particular site or location, (for any reason) will not of itself affect:

(a) Liability for Preceding Breach:

a liability of either party for any preceding default, including any default that gave rise to termination;

(b) Indemnity:

any indemnity given by either party to the other under this Contract for any liability arising under such indemnity prior to, or that relates to or results from, termination, irrespective of whether or not any claim has been made under the indemnity prior to termination;

(c) Recovery of Amount Due:

the right of either party to recover from the other party any amount that is or may become due to it under this Contract; and

(d) Rights and Remedies:

any other rights and remedies to which either party would otherwise be entitled, whether under this Contract, at law, at equity or otherwise,

subject in each case to clause 7.

11.6 Certain Provisions Survive Termination:

Termination of this Contract for any reason will not affect clauses 7 (Liability), 8 (Dispute Resolution) and 9 (Confidentiality) or any other clauses that are expressed as being intended to survive such termination.

11.7 Limit on Right to Terminate:

Neither the System Operator nor the Ancillary Service Agent is entitled to terminate or cancel this Contract except as expressly provided in this Contract.

12. Assignment and Sub-contracting

12.1 Assignment to New System Operator:

The System Operator may, in the event that it ceases (for any reason) to be the system operator under the Act, assign its interest in this Contract to the Authority or any person that replaces the System Operator as the system operator.

12.2 No Other Assignment Without Consent:

Except as provided in clause 12.1, neither party may assign or otherwise dispose of the whole or any part of its interest in this Contract without the prior written consent of the other party, not to be unreasonably withheld.

12.3 No Relief from Liability:

An assignment, mortgage, pledge, charge or other disposition of any interest in this Contract by either party does not relieve that party from its obligations under this Contract.

12.4 Deemed Assignment:

Except in the case of a party who is an issuer listed on the New Zealand Stock Exchange or a recognised overseas exchange, there is deemed to be an assignment of a party's interest in this Contract in breach of clause 12.2 if, without the prior written approval of the other party (not to be unreasonably withheld), by transfer or allotment of shares or amendment of its company constitution or by some other act or deed, the effective control of a party

changes or passes to any person not having effective control as at the date of this Contract.

12.5 Sub-contracting:

The Ancillary Service Agent may not sub-contract any of its obligations under this Contract without the prior written consent of the System Operator, not to be unreasonably withheld. If the Ancillary Service Agent does sub-contract any of its obligations under this Contract, it will remain primarily responsible for the proper performance of those obligations, including for any breach of the Regulations or Code arising from the performance or non-performance of those obligations.

13. General Legal Terms

13.1 No Partnership:

This Contract does not constitute the System Operator or the Ancillary Service Agent as an agent or legal representative of the other or employee or servant for any purpose nor does this Contract deem to establish a joint venture or partnership.

13.2 No Representation:

Each party acknowledges that it is not entering into this Contract on the basis of any representation or warranty made by the other party that is not expressly set out in this Contract.

13.3 Amendments:

Except as expressly provided in this Contract, there is to be no amendment to any of the provisions of this Contract except by a supplementary written agreement signed by the parties.

13.4 Severability:

If any of the provisions of this Contract are held by a court or tribunal of competent jurisdiction to be unenforceable, then that provision will be severed from this Contract and immediately replaced with a valid enforceable provision as similar as possible to the severed provision.

13.5 Waiver:

No waiver, extension or excuse (as the case may be) will be deemed to arise unless it is in writing and signed by the relevant party providing it.

13.6 No Third Party Rights:

Except as expressly provided in this Contract, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Contract and all provisions contained in this Contract are for the sole and exclusive benefit of the parties.

13.7 Further Acts:

Each party must sign, execute, procure, pass and do all such further documents, acts, matters, resolutions and things within its power as may reasonably be necessary to effect the provisions of this Contract.

13.8 Governing Law and jurisdiction:

This Contract is to be governed by and interpreted in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Contract.

13.9 Counterparts:

This Agreement may be executed in two counterparts each of which will be deemed to be an original, but both of which together will constitute one and the same document. A party may enter into this Agreement by signing any such counterpart. This Agreement may be executed and exchanged by email in PDF form, or other reliable method of electronic reproduction, and each executed reproduction will be deemed an original.

14. Notices

14.1 Delivery of Notices:

Except as expressly provided otherwise, all notices or other communication required by this Contract must be in writing and must be forwarded by personal delivery, post or email to the number or address of the party set out in clause 1 and 2 of Part A: Foundation – Ancillary Service Procurement Contract or otherwise notified by that party from time to time. Subject to clause 14.2, any such notice or other communication will be deemed to have been duly received:

(a) Personal Delivery:

if personally delivered, when delivered at the recipient's address;

(b) By Post:

if sent by post, two Business Days after posting; or

(c) By Email:

if sent by email, on the date generated by the sender's machine as the date of sending of the email (provided there is no manifest error in such date and no automated message indicating a transmission error).

14.2 Not a Business Day:

If any such notice or other communication is not received on a Business Day, or is not received before 5.00 pm on any Business Day, that notice or other communication will be deemed to have been duly received by the recipient at 9.00 am on the next Business Day.