

# Electricity Industry Participation Code 2010

## Part 14A Prudential requirements

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#### **Schedule 14A.1 Acceptable security**

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**14A.1 Purpose of prudential requirements**

The purpose of the prudential requirements in this Part is to ensure that each **payer** can meet the **payer's** financial obligations under this Code.

**14A.2 Payers must comply with prudential requirements**

- (1) Each **payer** must comply with the prudential requirements in this Part at all of the following times:
  - (a) before purchasing **electricity** or **ancillary services** under this Code;
  - (b) at any time when it owes an amount to the **clearing manager** for **electricity** or **ancillary services**;
  - (c) before purchasing an **FTR**;
  - (d) at any time when it has an obligation in relation to an **FTR**.
- (2) A **payer** must comply with the prudential requirements in 1 of the following ways:
  - (a) by maintaining an acceptable credit rating under clause 14A.3;
  - (b) by providing acceptable security that complies with clause 14A.4.

**14A.3 Acceptable credit rating**

- (1) For the purposes of this Part, a person has an acceptable credit rating if—
  - (a) the person has a long-term credit rating no lower than—
    - (i) A3 (Moody's Investor Services Inc.); or
    - (ii) A– (Standard & Poor's Rating Group); or
    - (iii) B+ (AM Best); or
    - (iv) A– (Fitch Ratings); and
  - (b) in the case of a person who has a credit rating at the minimum level required under paragraph (a), the person is not subject to negative credit watch (or any

- equivalent arrangement) by the agency that gave the credit rating.
- (2) The **clearing manager** may require a **payer** whose compliance with the prudential requirements in this Part is dependent on the credit rating of a person to provide evidence of the person's credit rating.
  - (3) The **payer** must provide the evidence required by the **clearing manager**.

#### **14A.4 Acceptable security**

- (1) A **payer** provides acceptable security by providing security in accordance with Part 1 of Schedule 14A.1.
- (2) The **clearing manager** must calculate the amount of the security that a **payer** must provide in accordance with Part 2 of Schedule 14A.1.
- (3) A **payer** who provides acceptable security must do anything the **Authority** requires in respect of the validity, enforceability and effectiveness of the security.

#### **14A.5 Payer may change form of security**

The **clearing manager** must release a **payer's** existing security upon provision by the **payer** of the different form of security notified under this clause, if a **payer**—

- (a) gives the **clearing manager** at least 2 **business days'** notice of its intention to substitute a different form of security for any security provided by it to the **clearing manager**; and
- (b) has not committed an unremedied **event of default**; and
- (c) satisfies the **clearing manager** that the proposed new form of security meets the requirements in [Schedule 14A.1].

#### **14A.6 Reductions and releases**

The **clearing manager** must reduce or release a **payer's** existing security to the extent requested by the **payer**, if the **payer**—

- (a) gives the **clearing manager** at least 2 **business days'** notice that it seeks a partial or complete reduction or release of any security provided by it to the **clearing manager**; and
- (b) has not committed an unremedied **event of default**; and
- (c) satisfies the **clearing manager** that, following the reduction or release of the security, it will continue to meet the requirements in [Schedule 14A.1], or that it will meet the requirements in [clause 14A.3].

#### 14A.7 Hedge settlement agreements

If a **payer** lodges a **hedge settlement agreement** with the **clearing manager** under [clause 1(1)(d) of Schedule 14A.1], a party to the **hedge settlement agreement** may only cancel it, or cancel its lodgement with the **clearing manager**, on giving at least 2 **business days'** notice to the **clearing manager**.

#### 14A.8 Release of security on ceasing to be participant

The **clearing manager** must release a **payer's** existing security if the **payer**—

- (a) ceases to be a **participant** and the **Authority** advises the **clearing manager** that the **payer** has ceased to be a **participant**; and
- (b) gives the **clearing manager** at least 2 **business days'** notice of it ceasing to be a **participant**; and
- (c) has paid all amounts that it owes under this Code (excluding, for the avoidance of doubt, any **washup** amount that has not yet been invoiced).

#### 14A.9 Clearing manager to release security within 1 business day

- (1) If a **payer** becomes entitled under [clauses 14A.5, 14A.6, 14A.8 or 14A.22] to a reduction or release of any security, the **clearing manager** must reduce or release that security within 1 **business day** of the **payer** becoming entitled to that reduction or release.
- (2) If a **cash deposit** is to be reduced or refunded under subclause (1), the **clearing manager** must pay the amount of the reduction or refund to a **bank** account nominated by the **payer** for that purpose.

#### 14A.10 Hedge settlement agreements, under-frequency events or other liability

If a **generator** is liable, under a **hedge settlement agreement**, or under an **FTR**, or as the **causer** of an **under-frequency event**, or under any other liability it has incurred or amount it owes under this Code, to pay more to the **clearing manager** for a **billing period** than it is to be paid under this Code for that **billing period**, the **generator** is deemed to be a net **purchaser** and may be called upon by the **clearing manager** to comply with the prudential requirements in this Part as a **payer**.

*Cash deposits to be held on trust*

#### 14A.11 Cash deposit accounts

- (1) The **clearing manager** must establish, in the **clearing manager's** name, 2 or more interest bearing **cash deposit**

**accounts.**

- (2) The **cash deposit accounts** must be—
  - (a) held with 1 or more **banks** that each has and maintains an acceptable credit rating; and
  - (b) clearly identified as such and be entirely separate from the **operating account**, the **FTR account**, and any other **bank account** of the **clearing manager**.
- (3) The **clearing manager** must obtain acknowledgement from each **bank** with which it has a **cash deposit account**, that the **cash deposits** are held on trust in the **cash deposit accounts** for the purposes of this Part, and that the **bank** has no right of set-off or right of combination in relation to the **cash deposits**.

**14A.12 Cash deposits to be paid into cash deposit accounts**

- (1) All **cash deposits** received by the **clearing manager** must be paid by the **clearing manager** immediately into the **cash deposit accounts**.
- (2) Each **cash deposit** must be held equally between **cash deposit accounts**.
- (3) If a **cash deposit** is debited under this Part, the **clearing manager** must ensure that the debit is allocated on a pro rata basis from each **cash deposit account**.

**14.A13 Cash deposits to be applied subject to conditions**

The **clearing manager** must hold each **cash deposit** in the **cash deposit accounts** on trust to be applied, subject to this Code, only in accordance with the following:

- (a) following any **event of default**, the **clearing manager** must transfer to the **operating account** such amount on account of the defaulter's **cash deposit** as is necessary or available in order to satisfy (to the extent possible) any amounts that may be due and owing by the defaulter to the **clearing manager** under this Code that have not been transferred in accordance with paragraph (b):
- (b) following any **event of default**, the **clearing manager** must transfer to the **FTR account** such amount on account of the defaulter's **cash deposit** as is necessary or available in order to satisfy (to the extent possible) any amounts that may be due and owing by the defaulter to the **clearing manager** in respect of **FTRs** under this Code in accordance with [clause 14.62A]:
- (c) if there has been no unremedied **event of default**, the **payer** that provided the **cash deposit** is entitled to be paid the part of the **cash deposit** that has not been transferred under paragraph (a) in accordance with [clauses 14A.5, 14A.6, 14A.8 or 14A.22]:
- (d) the **payer** is not entitled to receive back any part of its

**cash deposit**, other than in accordance with this clause, irrespective of whether the **payer** is in liquidation, receivership, or subject to statutory management or other analogous situation.

#### 14A.14 Interest on cash deposits

- (1) Subject to [clauses 14A.13 and 14A.15], a **payer** is entitled to the interest earned in accordance with subclause (3) on its **cash deposit**.
- (2) If a payer does not wish the interest to accumulate in the **cash deposit accounts**, then the **clearing manager** must, at the request of the **payer**, provided that the **payer** has not committed an unremedied **event of default**, pay the interest (less any deduction for resident withholding tax) within 2 **business days** of the end of the month to a **bank** account nominated by the **payer** for this purpose.
- (3) Interest on **cash deposits** accrues daily and must be calculated at the **cash interest rate**.

#### 14A.15 Fees and taxes payable by payers

- (1) A **payer** is liable to reimburse the **clearing manager** for all **bank** fees in relation to its **cash deposit** and any taxes that may from time to time be imposed either on its **cash deposit** or on interest earned on such **cash deposit**.
- (2) Such payments must be deducted by the **clearing manager** from any amounts paid to the **payer** under [clause 14A.14(2)].
- (3) If the amounts are less than the payments owed by that **payer** under this clause, the shortfall must be invoiced in accordance with [clause 14.36].

#### 14A.16 Clearing manager must issue trust account statements each month

Each month the **clearing manager** must issue or arrange the issue of statements to each **payer** who has provided a **cash deposit** regarding the balance of its **cash deposit**.

#### *Information, monitoring and reporting*

#### 14A.17 Information required from new purchasers

Before a new **purchaser** commences **trading**, it must submit to the **clearing manager** either—

- (a) historical records of the quantity of **electricity** purchased and sold by that person before that person became a **purchaser**; or
- (b) if the **clearing manager** is not satisfied with the records provided under paragraph (a), or if there are no such records, a bona fide **business** plan prepared in good faith to permit a realistic estimate of the

**purchaser's** future trading.

**14A.18 Payers must provide information to clearing manager**

- (1) Each **payer** must provide any information that the **clearing manager** or the **Rulings Panel** may from time to time reasonably require.
- (2) Each **payer** must provide the following information to the **clearing manager** immediately upon the **payer** becoming aware of the situation:
  - (a) if the **payer** is a **purchaser**, any significant changes to that **purchaser's business**, including a merger or acquisition, loss or gain of a **customer**, or sale or purchase of assets, that would significantly affect the quantity of **electricity** purchased or generated by the **payer** in its capacity as a **purchaser** or **generator** over the course of any **billing period**:
  - (b) any change or likely change to the **payer's** credit rating (if the **payer** has a credit rating), regardless of whether or not that the **payer** is relying on a credit rating as a prudential requirement in terms of [clause 14A.3]:
  - (c) if a letter of credit, guarantee or bond is provided, or **hedge settlement agreement** is lodged, in respect of the **payer** in accordance with [Part 1 of Schedule 14A.1]—
    - (i) any change or likely change to the credit rating of the provider of the guarantee, letter of credit or bond such that the provider's credit rating would, as a result, not be an acceptable credit rating as defined in [clause 14A.3]; or
    - (ii) any claim by the provider of the guarantee, letter of credit, bond or **hedge settlement agreement** that the guarantee, letter of credit, bond or **hedge settlement agreement** provided has ceased to be valid and enforceable.
- (2) If, at any time, a **payer** reasonably believes that its financial position is likely to be materially adversely affected so that its ability to purchase **electricity** or **ancillary services** will be consequently affected, the **payer** must provide the **clearing manager** with details of that fact immediately.

**14A.19 System operator to provide information**

The **system operator**, immediately upon becoming aware of the information set out in this clause, must provide the **clearing manager** with the following information:

- (a) any likely significant change to any amount to be allocated to a **payer** in respect of **ancillary services**:
- (b) the amount incurred by a **payer** as a result of that **payer** causing an **under-frequency event**.

**14A.20 Clearing manager must keep information confidential**

The **clearing manager** must keep all information received by it under [clauses 14A.17 to 14A.19] confidential and the information must not be disclosed to any other person except with the written consent of the person who provided it, except if that information is required to be disclosed to or by the **Rulings Panel** or the **Authority** under this Code or regulations made under section 112 of the **Act**.

**14A.21 Clearing manager must report weekly**

- (1) Each week the **clearing manager** must give each **payer**—
  - (a) a report detailing the amount estimated by the **clearing manager** under [clause 7 of Part 2 of Schedule 14A.1] that complies with subclause (2).
  - (b) a report containing a summary of the position of all **payers** that complies with subclause (3).
- (2) Each report given under subclause (1)(a) must—
  - (a) state whether the **clearing manager** considers that an adjustment to the current level of security is likely to be required within the current or next **billing periods**; and
  - (b) summarise the grounds for the **clearing manager's** opinion.
- (3) A report given under subclause (1)(b)—
  - (a) must include—
    - (i) information of any increased or decreased levels of security required by the **clearing manager** under [Part 2 of Schedule 14A.1], but, in the case of a decrease, only if the **payer** elects to withdraw the refund or reduce the amount or value of its guarantee, letter of credit, bond or **hedge settlement agreement**; and
    - (ii) information relating to the behaviour of a **payer** that the **Authority** has authorised to be **published**; and
    - (iii) notice of the occurrence of an **event of default** in relation to any **payer**; but
  - (b) must not identify any individual **payer**, unless identification is authorised by the **Authority**.

*Disputes*

**14A.22 Disputes regarding prudential requirements**

- (1) If a **participant** disputes a decision of the **clearing manager** made under [this Part], it may refer the matter to the **Rulings Panel**.
- (2) Until such time as the **Rulings Panel** makes a decision on the matter, all **payers** must comply with the decisions of the



**clearing manager.**

- (3) If a dispute is referred to it under subclause (1), the **Rulings Panel** must, after hearing from the **participant** that disputed the **clearing manager's** decision and from the **clearing manager**, make a decision in accordance with [this Part].
- (4) If the **Rulings Panel** overturns or varies a decision by the **clearing manager**, the **clearing manager's** original decision, and the process that led to that decision, is not a breach of this Code by the **clearing manager**, unless the **Rulings Panel** determines that the **clearing manager's** decision was made negligently or in bad faith.

## Schedule 14A.1 Acceptable security

### Part 1

#### Acceptable forms of security

##### 1 Acceptable forms of security

- (1) A **payer** may provide acceptable security in any of the following forms:
  - (a) a **cash deposit** (see clause 2):
  - (b) an unconditional guarantee or letter of credit (see clause 3):
  - (c) a security bond (see clause 4):
  - (d) a **hedge settlement agreement** (see clause 5):
  - (e) another similar form of security (see clause 6):
  - (f) a combination of the forms of security listed in paragraphs (a) to (e).
- (2) The amount of any acceptable security must be—
  - (a) if a single form of security is provided, the amount calculated under Part 2 of this Schedule; or
  - (b) if a combination of forms of security is provided under subclause (1)(f), an aggregate value that is no less than the amount calculated under Part 2 of this Schedule.

##### 2 Cash deposit

- (1) A **payer** must pay a **cash deposit** into the **cash deposit accounts** or to the clearing manager.
- (2) The **payer** must provide and maintain an acceptable **payer's** security agreement in respect of the **cash deposit**.
- (3) A **payer's** security agreement must—
  - (a) be a security agreement as defined in section 16(1) of the Personal Property Securities Act 1999; and
  - (b) secure the payment and performance obligation of the **payer** to the **clearing manager** under this Code; and
  - (c) contain terms approved by the **Authority**.

##### 3 Guarantee or letter of credit

- (1) A guarantee or letter of credit must be given in favour of the **clearing manager**.
- (2) A letter of credit is only an acceptable form of security if it is given by a **bank**.
- (3) A guarantee or letter of credit must be given on terms as follows, or as otherwise approved by the **Authority**:
  - (a) for a guarantee given by a **bank**, the terms in

Schedule 14A.2:

- (b) for a guarantee given by another person, the terms in Schedule 14A.3:
  - (c) for a letter of credit, the terms in Schedule 14A.4.
- (4) A guarantee or letter of credit is only an acceptable form of security while the person giving it has an acceptable credit rating.

#### **4 Security bond**

- (1) A security bond must be given in favour of the **clearing manager**.
- (2) A security bond must be given on the terms in Schedule 14A.5 or as otherwise approved by the **Authority**.
- (3) A security bond is only an acceptable form of security while the surety has an acceptable credit rating.

#### **5 Hedge settlement agreement** [*WAG has recommended that the clearing manager should make the necessary changes to allow HSAs written over bilateral cap contracts to be recognised for prudential security purposes, and that the clearing manager should be able to accept as prudential security any amount in futures margin accounts (provided appropriate legal arrangements are in place to enable the clearing manager to have priority access to those funds in the event of purchaser default). See paragraph 2.1.3(f) of the WAG recommendations paper. Does this require a change to this provision (or the definition of hedge settlement agreement and the form in schedule 14.5/14A.6), or a new clause after this clause?*]

- (1) A **hedge settlement agreement's** value for the purposes of this Schedule is a value determined by the **clearing manager**.
- (2) A **hedge settlement agreement** may only be lodged with the **clearing manager** as security if it has been approved by the **Authority** for the purpose.
- (3) A **hedge settlement agreement** must be on the terms in Schedule 14A.6 or as otherwise approved by the **Authority**.
- (4) When a **payer** lodges a **hedge settlement agreement** with the **clearing manager**, the **payer** must also provide any other information relating to the **hedge settlement agreement** that the **clearing manager** has notified **payers** is required.
- (5) A **payer** must provide information under subclause (4) in a form prescribed by the **clearing manager** and notified to **payers**.

#### **6 Other security**

- (1) Any other form of security is only an acceptable form of

- security if it has been approved by the **Authority**.
- (2) The Authority's approval may specify all or any of the following in respect of a form of security:
- (a) type:
  - (b) terms:
  - (c) acceptable counterparties:
  - (d) amount.

## Part 2

### Minimum level of security

- 7 Clearing manager to assess and call for minimum level of security**
- (1) The **clearing manager** must determine the minimum amount of security that a **payer** is required to provide at least once in every day. *[This change reflects the proposal to move to daily prudential assessments. See paragraph 2.1.3(c) of the WAG recommendations paper]*
- (2) Subclause (1) does not apply in respect of a **payer** who complies with its prudential requirements by having an acceptable credit rating.
- (3) The **clearing manager** must determine the initial amount of security for **ancillary services** for a new **payer** in consultation with the **system operator**.
- (4) Following each determination under subclauses (1) or (3), the **clearing manager** must, unless it determines that the existing minimum level of security should either reduce or remain unchanged, give written notice to the **payer** requiring it to provide security in an amount of at least the minimum determined by the **clearing manager** (a **call**).
- (5) When the **clearing manager** makes a **call**, the **clearing manager** must inform the **payer** of the reasons for the **clearing manager's** determination.
- (6) A **payer** who receives notice of a **call** made under subclause (5) must satisfy the **call** by 1600 hours 3 **business days** following the **business day** on which the notice of the **call** was received.
- (7) Failure to satisfy a **call** made under this clause constitutes an **event of default**.
- 8 Determination of security level**
- [This clause needs to be amended to reflect the change proposed in paragraph 2.1.3(b) of the WAG recommendations paper. In particular, the required security is to be assessed based on:*
- (a) The amount the purchaser owes for electricity it has*

*used, or which its customers have used; [And FTRs etc?]*

*(b) An estimate of expected accruals out to the end of the next settlement day; and [Note – the issues register states that this is not an essential part of the WAG's recommendation and a decision is needed as to whether to include it]*

*(c) An "initial margin" to cover the liability expected to accrue during the exit of a defaulting purchaser]*

- (1) The **clearing manager** must determine the minimum level of security required from each **payer**:
- (2) The minimum level of security required from a **payer** is the sum of the following amounts:
  - (a) the expected amount of the **clearing manager's** financial exposure to the **payer** calculated in accordance with [clause 9]:
  - (b) the initial margin for the **payer** calculated in accordance with the current methodology approved under [clause 11].

## **9 Calculation of clearing manager's financial exposure to payer**

The expected amount of the **clearing manager's** financial exposure to a **payer** is the sum of the following amounts:

- (a) in respect of the period comprising the current **billing period**, the next following **billing period**, and the following 7 days:
  - (i) the **clearing manager's** estimate of the amount (including **GST**) incurred, and to be incurred, by the **payer** in purchasing **electricity**:
  - (ii) the **clearing manager's** estimate of the amount (including **GST**) allocated, and to be allocated, to the **payer** in relation to **ancillary services**:
  - (iii) the **clearing manager's** estimate of the amount (including **GST**) earned, and to be earned, by the **payer** on account of gross revenue from sales of **electricity**:
  - (iv) the **clearing manager's** estimate of the amount (including **GST**) incurred or earned, and to be incurred or earned, by the **payer** in respect of any **hedge settlement agreement** lodged with the **clearing manager** under [clause 5]:
  - (v) the **clearing manager's** estimate of an amount to be required by the **payer** in respect of any **FTR** in respect of which the **payer** is named in the **FTR register**, calculated in accordance with the methodology approved by the **Authority** under [clause 15].

- (b) the amount of any **FTR acquisition cost** due in respect of an **FTR**;
- (c) any amount payable by the **payer** to the **clearing manager** under clause 13.249(4) minus any amount payable by the **clearing manager** to that **payer** under clause 13.249(7);
- (d) any amount that the **system operator** advises the **clearing manager** that a **payer** has incurred as a result of the **payer** causing an **under-frequency event** that remains unpaid.

*[New clause 10 – Methodology for determining initial margin (as per paragraph 2.1.3(d) and (e) and Appendix I of the WAG recommendation paper. To be based on FTR methodology – e.g.:*

**10 Methodology for determining initial margin**

- (1) The **clearing manager** must formulate and **publish** a methodology for determining the [initial margin required from a **payer** under [clause 8]].
- (2) The methodology formulated by the **clearing manager** under subclause (1) must be set to cover the liability expected to accrue in the event of a defaulting **purchaser** failing to meet its financial obligations to the **clearing manager**.
- (3) The initial margin must be calculated as the product of:
  - (a) the time over which it is considered likely that a defaulting participant could be exited from the market, measured in days; and
  - (b) the daily [quantities] expected to apply during that period; and
  - (c) the price [plus an adder] expected to apply during that period.

**11 Approval of methodology for determining initial margin**

- (1) The **clearing manager** must submit to the **Authority** for approval a draft methodology for determining the [initial margin required from a **payer** under [clause 8]].
- (2) In preparing the draft methodology, the **clearing manager** must—
  - (a) consult with persons that the **clearing manager** thinks are representative of the interests of persons likely to be substantially affected by the methodology; and

- (b) consider submissions made on the methodology.
- (3) The **clearing manager** must provide a copy of each submission received under subclause (2) to the **Authority**.
- (4) The **Authority** must, as soon as practicable after receiving the draft methodology, by notice in writing to the **clearing manager**—
  - (a) approve the methodology; or
  - (b) decline to approve the methodology.
- (5) If the **Authority** declines to approve the draft methodology, the **Authority** must **publish** the changes that the **Authority** wishes the **clearing manager** to make to the draft methodology.

## **12 Consultation on proposed changes to methodology**

- (1) When the **Authority** **publishes** the changes that the **Authority** wishes the **clearing manager** to make to the draft methodology under clause 11(5), the **Authority** must **notify** the **clearing manager** and interested parties of the date by which submissions on the changes must be received by the **Authority**.
- (2) Each submission on the changes to the draft methodology must be made in writing to the **Authority** and be received on or before the date specified by the **Authority** under subclause (1).
- (3) The **Authority** must—
  - (a) provide a copy of each submission received to the **clearing manager**; and
  - (b) **publish** the submissions.
- (4) The **clearing manager** may make its own submission on the changes to the draft methodology and the submissions received in relation to the changes.
- (5) The **Authority** must **publish** the **clearing manager's** submission when it is received.
- (6) The **Authority** must consider the submissions made to it on the changes to the draft methodology.
- (7) Following the consultation required by subclauses (1) to (6), the **Authority** may approve the methodology subject to the changes that the **Authority** considers appropriate being made by the **clearing manager**.

**13 Variations to methodology for determining initial margin**

- (1) A **participant** or the **Authority** may submit a proposal for a variation to the methodology formulated under [clause 10].
- (2) The **clearing manager** must provide a copy of each proposed variation received from a **participant** under subclause (1) to the **Authority**.
- (3) The **clearing manager** must consider a proposed variation to the methodology submitted under subclause (1).
- (4) The **clearing manager** may submit a request for a variation to the methodology to the **Authority**.
- (5) The consultation and approval requirements under [clauses 11 and 12] apply to a request for a variation submitted under subclause (4) as if references to the draft methodology were a reference to the requested variation.
- (6) If the **clearing manager** does not submit a request for a variation submitted under subclause (1) to the **Authority** under subclause (4), the **Authority** may consider the proposal and require the **clearing manager** to submit a request for a variation based on the proposal to the **Authority**, and subclause (5) applies accordingly.
- (7) The **Authority** may approve a variation requested under subclause (4) or subclause (6) without complying with the provisions referred to in subclause (5) if—
  - (a) the **Authority** considers that it is necessary or desirable in the public interest that the requested variation be made urgently; and
  - (b) the **Authority publishes** a notice of the variation and a statement of the reasons why the urgent variation is needed.
- (8) Every variation made under subclause (7) expires on the date that is 9 months after the date on which the variation is made.]

**14 Methodology for determining minimum level of security required in respect of FTRs**

- (1) The **clearing manager** must formulate and **publish** a methodology for determining the minimum level of security required from a **payer** in relation to a matter set out in [clause 9(a)(v)].
- (2) The methodology formulated by the **clearing manager** under subclause (1) must comply with the principle that the amount taken into account under



[clause 9(a)(v)] is an estimate of the **FTR hedge value** (being an amount that may be positive or negative) of the **FTR** at the time that the estimate is made and the potential for that value to change prior to settlement.

**15 Approval of methodology for determining minimum level of security required in respect of FTRs**

- (1) The **clearing manager** must submit to the **Authority** for approval a draft methodology for determining the minimum level of security required from a **payer** in relation to a matter set out in [clause 9(a)(v)].
- (2) In preparing the draft methodology, the **clearing manager** must—
  - (a) consult with persons that the **clearing manager** thinks are representative of the interests of persons likely to be substantially affected by the methodology; and
  - (b) consider submissions made on the methodology.
- (3) The **clearing manager** must provide a copy of each submission received under subclause (2) to the **Authority**.
- (4) The **Authority** must, as soon as practicable after receiving the draft methodology, by notice in writing to the **clearing manager**—
  - (a) approve the methodology; or
  - (b) decline to approve the methodology.
- (5) If the **Authority** declines to approve the draft methodology, the **Authority** must **publish** the changes that the **Authority** wishes the **clearing manager** to make to the draft methodology.

**16 Consultation on proposed changes to methodology**

- (1) When the **Authority publishes** the changes that the **Authority** wishes the **clearing manager** to make to the draft methodology under [clause 15(5)], the **Authority** must **notify** the **clearing manager** and interested parties of the date by which submissions on the changes must be received by the **Authority**.
- (2) Each submission on the changes to the draft methodology must be made in writing to the **Authority** and be received on or before the date specified by the **Authority** under [subclause (1)].
- (3) The **Authority** must—
  - (a) provide a copy of each submission received to the **clearing manager**; and

- (b) **publish** the submissions.
- (4) The **clearing manager** may make its own submission on the changes to the draft methodology and the submissions received in relation to the changes.
- (5) The **Authority** must **publish** the **clearing manager's** submission when it is received.
- (6) The **Authority** must consider the submissions made to it on the changes to the draft methodology.
- (7) Following the consultation required by [subclauses (1) to (6)], the **Authority** may approve the methodology subject to the changes that the **Authority** considers appropriate being made by the **clearing manager**.

**17 Variations to methodology for determining minimum level of security required in respect of FTRs**

- (1) A **participant** or the **Authority** may submit a proposal for a variation to the methodology formulated under [clause 14].
- (2) The **clearing manager** must provide a copy of each proposed variation received from a **participant** under subclause (1) to the **Authority**.
- (3) The **clearing manager** must consider a proposed variation to the methodology submitted under subclause (1).
- (4) The **clearing manager** may submit a request for a variation to the methodology to the **Authority**.
- (5) The consultation and approval requirements under [clauses 15 and 16] apply to a request for a variation submitted under subclause (4) as if references to the draft methodology were a reference to the requested variation.
- (6) If the **clearing manager** does not submit a request for a variation submitted under subclause (1) to the **Authority** under subclause (4), the **Authority** may consider the proposal and require the **clearing manager** to submit a request for a variation based on the proposal to the **Authority**, and subclause (5) applies accordingly.
- (7) The **Authority** may approve a variation requested under subclause (4) or subclause (6) without complying with the provisions referred to in subclause (5) if—
  - (a) the **Authority** considers that it is necessary or desirable in the public interest that the requested variation be made urgently; and
  - (b) the **Authority publishes** a notice of the variation and a statement of the reasons why the urgent variation is needed.

- (8) Every variation made under subclause (7) expires on the date that is 9 months after the date on which the variation is made.

**18 Information to be considered by clearing manager**

In estimating the amounts described in [clause 8], the **clearing manager** may take into account—

- (a) a substantial change to a **payer's business**; and
- (b) a substantial change in the price of **electricity**; and
- (c) any information that is relevant obtained by the **clearing manager** under [clauses 14A.17 to 14A.19]; and
- (d) quantities of **electricity** being purchased or generated by the **payer** in its capacity as a **purchaser** or **generator** under this Code, compared with any quantity previously purchased or generated or previously estimated (as the case may be); and
- (e) any advice from the **system operator** of any significant change in the costs of **ancillary services** allocated under clauses 8.55 to 8.59, 8.64 and 8.67.

**19 Washup amounts not to be considered**

To avoid doubt, the **clearing manager** must not take **washup** amounts into account in estimating the amounts described in [clauses 8 or 14A.10].

## Schedule 14A.2 Guarantee

To: [Clearing manager] [address]

Attention: [name]

Dear Sir/Madam

1. [Bank] (“the Bank”) refers to each and every obligation pursuant to the Electricity Industry Participation Code 2010 (“the Code”) of [Payer] (“the Principal”) to pay amounts the Principal, now or at any time, owes to, and is invoiced by, you (whether as principal or agent) together with default interest, if any, in relation to such amounts (“the Obligations”) pursuant to the Code.
2. The Bank hereby unconditionally guarantees the payment to you on demand of an amount specified in each such demand provided that—
  - (a) the aggregate liability of the Bank under this guarantee will not exceed [amount determined from time to time by the clearing manager calculated in accordance with [Part 2 of Schedule 14A.1] of the Code] (the “Maximum Amount”); and
  - (b) your demand is made in writing and is purported to be signed by an authorised signatory; and
  - (c) a certificate purported to be signed by your authorised signatory and certifying that the Principal has failed, in whole or in part, to fulfil the Obligations accompanies your demand, which certificate will be conclusive proof of such failure.
3. This guarantee will not be affected, discharged or diminished by any act or omission which would, but for this provision, have exonerated a guarantor but would not have affected or discharged the Bank’s liability had it been a principal debtor.
4. Subject to paragraph 5 below, this guarantee will continue in force until the date at which the Principal has ceased to be bound by the Code and has discharged its obligations to

you pursuant to the Code at which time you will return this guarantee to the Bank.

- [5. Notwithstanding anything else in this guarantee, the Bank may at any time pay you the Maximum Amount less any amount or amounts the Bank may previously have paid under this guarantee or such lesser sum as you may require. Upon payment of that sum, the liability of the Bank under this guarantee will cease and determine].

[Note: Bank to elect either this clause or the following clause as a method of cancellation].

- [5. Notwithstanding anything else in this guarantee, the Bank may cancel this guarantee as to subsequent liability by giving ninety (90) days' notice in writing to [clearing manager]; however, the Bank will remain liable with respect to the Obligations which relate to the period prior to the effective date of the ninety (90) days' notice.]

6. This guarantee may be assigned by you without the Bank's consent. It will bind the successors and assigns of the Bank, as well as any entity with which the Bank may amalgamate.

7. This guarantee will be governed by and interpreted in all respects in accordance with New Zealand law and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

EXECUTED for and on behalf )  
of [BANK] )  
by its Attorneys )  
..... )  
[Print Names] ) Signature(s)

.....  
in the presence of:  
.....  
Signature  
.....  
Full Name  
.....  
Address  
.....  
Occupation  
.....  
Signature(s)

Compare: Electricity Governance Rules 2003 schedule H1 part H

Schedule 14A.1, cl 3

**Schedule 14A.3**  
**Deed of guarantee and indemnity**

DATED

BY

1. [ ] (the “Guarantor”)

IN FAVOUR OF

2. [Clearing manager] (the “Beneficiary”)

**1. Guarantee and indemnity**

---

(1) The Guarantor—

(a) unconditionally and irrevocably guarantees to the Beneficiary the due performance and observance by [Payer] (“the Debtor”) of each and every obligation the Debtor may now or hereafter have to the Beneficiary to pay amounts it owes to, and is invoiced by, the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts ] (“the Obligations”) pursuant to the Electricity Industry Participation Code 2010 (“the Code”) and promises to pay to the Beneficiary on demand all amounts now or hereafter owing, due or payable by the Debtor to the Beneficiary in respect of the Obligations; and

(b) agrees as a primary obligation to indemnify the Beneficiary from time to time on demand from and against any loss incurred by the Beneficiary as a result of any of the Obligations being void, voidable or unenforceable for any reason whatsoever, whether or not known to the Beneficiary, the amount of such loss being the amount which the Beneficiary would otherwise have been entitled to recover from the Debtor.

(2) This Deed is to be security in respect of each and every one of the Obligations but, nevertheless, the total amount payable by the Guarantor under this Deed will not exceed the aggregate of [amount determined from time to time by the clearing manager calculated in accordance with [Part 2 of Schedule 14A.1] of the Code] (the “Maximum

Amount”) and any sums payable pursuant to clauses 1(3) and 9 of this Deed.

- (3) If any moneys payable by the Guarantor under this Deed are not paid on demand, the Guarantor will pay to the Beneficiary interest on such unpaid moneys (both before and after judgement) at the rate determined in accordance with clause 1(4) of this Deed from the date of demand to the date of their actual receipt by the Beneficiary calculated on a daily basis and capitalised as the Beneficiary will determine.
- (4) The rate at which interest will be calculated will be the aggregate of 5% per annum plus the then prevailing settlement bid rate for 90 day bills displayed on Reuters Screen BKBM at 10:45am on the date of demand or, if for any reason that rate is not displayed, the rate determined by the Beneficiary to be the nearest practicable equivalent.

## **2. Preservation of rights**

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- (1) The obligations of the Guarantor under this Deed are in addition to, and not in substitution for, any other security or guarantee which the Beneficiary may at any time hold in respect of the Obligations or any of them and may be enforced without the Beneficiary first having recourse to any such security and without the Beneficiary first taking steps or proceedings against the Debtor.
- (2) Neither the obligations of the Guarantor under this Deed nor the rights, powers and remedies conferred in respect of the Guarantor upon the Beneficiary by this Deed or by law will be discharged, impaired or otherwise affected by anything which might operate to discharge, impair or otherwise affect the same, including—
  - (a) the insolvency, liquidation or dissolution of the Debtor or any other person, the appointment of any receiver, manager, receiver and manager, inspector, trustee, statutory manager or other similar person in respect of the Debtor or any other

- person or any change in the Debtor's status, function, control or ownership; and
- (b) the Obligations or any of them, or the obligations of any person under any security or guarantee held in relation to the Obligations or any of them, being or becoming in whole or in part void, voidable, defective, illegal, invalid or unenforceable in any respect or ranking after any other security; and
  - (c) any time, credit or other indulgence or other concession being granted or agreed to be granted by the Beneficiary to, or any composition or other arrangement made with or accepted from, the Debtor in respect of the Obligations or any of them or the obligations of any person under any security or guarantee held in relation to the same; and
  - (d) any variation of the terms of any of the Obligations or of any security or guarantee (including this guarantee) held in relation to the same; and
  - (e) any failure to realise or fully realise the value of, or any release, discharge, exchange or substitution of, any security or guarantee held in relation to the Obligations or any of them;
  - (f) any failure (whether intentional or not) to take, fully take or perfect any security now or hereafter agreed to be taken by the Beneficiary in relation to the Obligations or any of them; and
  - (g) any other act, event or omission which, but for this clause 2(2), would or might operate or discharge, impair or otherwise affect any of the obligations of the Guarantor under this Deed or any of the rights, powers or remedies conferred upon the Beneficiary by the rules or by law.
- (3) If any payment to the Beneficiary under this Deed is avoided by law, the Guarantor's obligation to



have made such payment will be deemed not to have been affected or discharged and the Guarantor will on demand indemnify the Beneficiary against all costs sustained or incurred by the Beneficiary as a result of it being required for any reason to refund all or part of any amount received or recovered by it in respect of such payment and will in any event pay to the Beneficiary on demand the amount so refunded by it. The Beneficiary and the Guarantor will, in any such case, be deemed to be restored to the position in which each would have been and will be entitled to exercise the rights they respectively would have had if that payment had not been made.

- (4) The Beneficiary is not obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by law to make any demand on the Debtor, take any action or obtain judgement in any court against the Debtor, make or file any claim or prove in any liquidation of the Debtor or enforce or seek to enforce any security or guarantee taken in respect of the Obligations.
- (5) After a demand has been made by the Beneficiary under this Deed, and so long as the Guarantor is under any actual or contingent liability under this Deed, the Guarantor will not—
  - (a) exercise in respect of any amount paid by the Guarantor under this Deed any right of subrogation or any other right or remedy which the Guarantor may have in respect of such amount paid; or
  - (b) except with the Beneficiary's consent in writing, claim or receive payment of any other moneys for the time being due to the Guarantor by the Debtor or exercise any other right or remedy which the Guarantor may have in respect of the same; or
  - (c) unless so required by the Beneficiary, prove in the liquidation of the Debtor in competition with the Beneficiary for any moneys owing to the Guarantor by the Debtor on any account whatsoever.

Any moneys obtained by the Guarantor from the Debtor with such consent or as so required or in breach of this clause will, in each case, be held by the Guarantor upon trust to pay such moneys to the Beneficiary in or towards discharge of the Guarantor's obligations under this Deed.

- (6) Any moneys received by the Beneficiary which may be applied in or towards discharge of any of the obligations of the Guarantor under this Deed will be regarded as a payment in gross so that, in the event of the liquidation of the Guarantor, the Beneficiary may prove in the liquidation for the whole of such moneys.

### **3. Representations and warranties**

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The Guarantor represents that—

- (a) it is duly incorporated and validly existing under the laws of [New Zealand], capable of suing and being sued and has the power to enter into and perform this Deed and has taken all necessary corporate action to authorise it to enter into, execute, deliver and perform its obligations under this Deed; and
- (b) its entry into, execution, delivery and performance of this Deed will not contravene any law or regulation to which the Guarantor is subject or any provision of its constitutional documents and all things (including the obtaining of consents) requisite for such entry, execution, delivery and performance have been taken, fulfilled and done and are in full force and effect; and
- (c) no obligation of the Guarantor under this Deed is secured by, and the execution, delivery and performance of this Deed will not result in the existence of, or oblige it to create, any mortgage, charge, pledge, lien or other encumbrance over any of its present or future revenues or assets; and
- (d) the execution, delivery of and performance of the Guarantor's obligations under this Deed will not cause the Guarantor to be in breach of or in default under any agreement binding on the Guarantor or any of its assets and no material litigation or administrative proceeding before, by or of any court or governmental authority is pending or (so far as the Guarantor knows) threatened against the

Guarantor or any of its assets which, if decided against the Guarantor, would have a material adverse effect on the ability of the Guarantor to meet any or all of the obligations hereunder.

#### **4. Payments**

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All payments to be made by the Guarantor to the Beneficiary under this Deed will be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment will be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Beneficiary receives a net amount equal to the amount the Bank would have received had no such deduction or withholding been required to be made.

#### **5. Continuing security**

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This Deed will be a continuing security to the Beneficiary in respect of each and every one of the Obligations and will not be (or be construed so as to be) discharged by any intermediate discharge or payment of or on account of the Obligations or any settlement of accounts between the Beneficiary and the Debtor or anyone else.

#### **6. Termination**

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[(1) Notwithstanding anything else in this Deed, the Guarantor may at any time pay to you the Maximum Amount less any amount or amounts the Guarantor may previously have paid under this Deed or such lesser sum as you may require. Upon payment of that sum, the liability of the Guarantor under this Deed will cease and determine.]

[Note: Guarantor to elect either this clause or the following clause as a method of cancellation.]

[(1) Notwithstanding anything else in this Deed the Guarantor may cancel this Deed as to subsequent liability by giving ninety (90) days' notice in writing to [Clearing manager]; however, the Guarantor will remain liable with respect to the

Obligations which relate to the period prior to the effective date of the ninety (90) days' notice.]

**7. Assignment**

---

This Deed may be assigned by the Beneficiary without the Guarantor's consent. It will bind the successors and assigns of the Guarantor, as well as any entity with which the Guarantor may amalgamate.

**8. Notices**

---

- (1) Any demand to be made on the Guarantor by the Beneficiary under this Deed may be made in writing and delivered to the address set out below or to any other address in New Zealand from time to time notified pursuant to clause 8(2). The Guarantor's address, as at the date of this Deed is: [address]
- (2) The Guarantor will immediately notify the Beneficiary of any change in the above address.

**9. Costs and expenses**

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The Guarantor will on demand indemnify and hold harmless the Beneficiary from and against all costs and expenses (including legal fees and any taxes or duties) incurred by the Beneficiary in the enforcement and protection of its rights under this Deed.

**10. Governing law**

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This Deed is governed by, and construed in accordance with New Zealand law, and the Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of the New Zealand Courts.

EXECUTED for and on behalf )  
of [Guarantor] )  
in the presence of: )

.....

.....  
Director

.....  
Director/Secretary

.....  
Signature

**Electricity Industry Participation Code 2010**  
**Schedule 14A.3**

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.....  
Full Name

.....  
Address

.....  
Occupation

Note I:            If two directors sign, no witness is necessary. If a director and secretary sign, both signatories are to be witnessed. If the director and secretary are not signing together, a separate witness will be necessary for each signature.

Note II:           If the Guarantor is incorporated outside of New Zealand, insert an appropriate execution clause for the country of incorporation.

Compare: Electricity Governance Rules 2003 schedule H3 part H

**Schedule 14A.4**  
**Letter of credit**

Schedule 14A.1, cl 3

To: [Clearing manager] [address]

Attention: [name]

Dear Sir/Madam

We, [Bank] (“the Bank”) hereby issue our irrevocable transferable standby letter of credit (“the Letter of Credit”) as follows:

IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT NO. [number] DATED [date]

The Account Party: **[Payer]** (“the Account Party”)

Beneficiary: [Clearing manager] (“the Beneficiary”)

Issued in Connection With: Each and every obligation (“the Obligations”) of the Account Party to pay the amounts it, now or at any time, owes to, and is invoiced by, the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts pursuant to the Electricity Industry Participation Code 2010 (“the Code”).

Maximum Amount: [amount determined from time to time by the clearing manager calculated in accordance with [Part 2 of Schedule 14A.1] of the Code] less the amount of any sums drawn under this Letter of Credit.

Expiry: This Letter of Credit expires on the earliest of—

- (a) the date at which the Account Party has ceased to be bound by the rules and has discharged its obligations to the Beneficiary pursuant to the rules; or
- (b) the date of satisfaction of this Letter of Credit in accordance with its terms; or
- [(c) the date on which the Bank makes payment to the Beneficiary of the Maximum Amount either at its sole discretion or following demand by the Beneficiary under this Letter of Credit in accordance with its terms],

[Note: Bank to elect either this clause or the following clause as a method of cancellation.]

- [(c) ninety (90) days after notice in writing of cancellation of this Letter of Credit as to subsequent liability has been given to [Clearing manager]; however, the Bank will remain liable with respect to the Obligations which relate

to the period prior to the effective date of the ninety (90) days' notice.]

("the Expiry Date").

Payable at: Sight.

Available at: [address]

By Drafts on: The Bank.

Enfaced: Drawn under [Bank] Irrevocable Standby Letter of Credit No. [number] dated [date].

Returnable to: The Bank upon expiry.

The proceeds of this Letter of Credit are transferable by the Beneficiary. A claim may be made under this Letter of Credit by delivering to the address at which this Letter of Credit is expressed to be available, by no later than [time] New Zealand time on or before the Expiry Date, draft drawn on the Bank (enfaced as specified above) accompanied by—

- (a) this Letter of Credit; and
- (b) a Certificate purported to be signed by an authorised signatory of the Beneficiary in the following form:

To [Bank] [date]

[Clearing manager] of [address] ("the Beneficiary") hereby makes claim under the [Bank] Irrevocable Standby Letter of Credit No [number] ("the Letter of Credit"). Words and expressions defined in the Letter of Credit will have the same meaning herein.

[Payer] ("the Account Party") has failed, in whole or in part, to fulfil the Obligations.

As at the date of this Certificate, the amount owed to the Beneficiary by the Account Party in respect of the Obligations is the sum of [amount outstanding].

Accordingly, the Beneficiary is entitled to claim and hereby requests payment by [date] of the amount of [amount claimed] to be credited to account number [Beneficiary's trust account number].

The signatory or signatories hereto is/are authorised by the Beneficiary to make the statements herein on behalf of the Beneficiary.

Signed.....  
Authorised Signatory

**Electricity Industry Participation Code 2010**  
**Schedule 14A.4**

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This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500, except as otherwise provided in this Letter of Credit. Subject to that, this Letter of Credit will be governed by, and construed in accordance with, the laws of New Zealand, and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

The Bank engages with the Beneficiary that drafts drawn under, and in compliance with, this Letter of Credit and, in aggregate, up to the Maximum Amount will be paid on presentation in the manner provided in this Letter of Credit.

EXECUTED for and on behalf            )  
of [BANK]                                    )  
by its Attorneys                         )  
.....   )  
[Print Names]                             )     Signature(s)

.....  
in the presence of:  
.....  
Signature  
.....  
Full Name  
.....  
Address  
.....  
Occupation

Compare: Electricity Governance Rules 2003 schedule H2 part H



## Schedule 14A.5 Surety bond

To: [Clearing manager] [address]

Bond Number:

We, Payer as Principal, and name of Surety, as Surety, are held and firmly bound to [Clearing manager], a corporation organised and existing under the laws of New Zealand, its successors and assigns, in the amount of amount in words New Zealand dollars (NZ\$ ), lawful money of New Zealand for the payment of which the Principal and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound.

WHEREAS, the Principal has obligations (the “Obligations”) pursuant to the Electricity Participation Code 2010 (the “Code”) to pay [Clearing manager] amounts invoiced to it by [Clearing manager];

NOW THEREFORE, the Surety agrees to deliver payment to [Clearing manager] of amounts invoiced to the Principal (together with any default interest payable in respect of those invoiced amounts) forthwith upon receipt of written demand for payment issued by a purported authorised representative of [Clearing manager]. Such written demands to be delivered to the Surety at its above address and to certify that the Principal has failed, in whole or in part, to fulfil the Obligations.

PROVIDED FURTHER, that the Surety will not be liable hereunder for a larger amount, in the aggregate, than the amount of this Bond; and

[PROVIDED FURTHER, that the Surety may at any time pay to [Clearing manager] the amount of this Bond less any amount or amounts the Surety may previously have paid under this Bond or such lesser sum as [Clearing manager] may require. Upon payment of that sum, the liability of the Surety under this Bond will cease and determine; and]

[Note: Surety to elect either this proviso or the following proviso as a method of cancellation.]

[PROVIDED FURTHER, that this Bond may be cancelled by the Surety as to subsequent liability by giving ninety (90) days’ notice in writing to [Clearing manager]; however, the Surety will remain

liable with respect to the Principal's Obligations which relate to the period prior to the effective date of the ninety (90) days notice; and]

PROVIDED FURTHER, that this Bond will not be affected, discharged or diminished by any act or omission which would, but for this provision, have exonerated a surety but would not have affected or discharged the Surety's liability had it been a principal debtor; and

PROVIDED FURTHER, that this Bond will be governed by and interpreted according to, the laws of New Zealand, and the Principal and the Surety thereby agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

This Bond may be transferred or assigned by [Clearing manager] without the Surety's consent. Upon cancellation, the Bond will be returned to the Surety.

**EXECUTION CLAUSE**

Compare: Electricity Governance Rules 2003 schedule H4 part H

## Schedule 14A.6 Hedge settlement agreement

[Note: There are a number of gaps for the parties to fill in and alternative wording that needs to be deleted as appropriate by the parties.]

DATED

BY

1. ("Party A")
2. ("Party B")

IN FAVOUR OF

3. [the **clearing manager**], as the **clearing manager** (the "**clearing manager**")

### BACKGROUND

---

- A. Party A and Party B have a hedging arrangement which provides for payments for differences in respect of the price of **electricity**, at specific grid exit points for a particular period (the "CFD").
- B. Party A and Party B wish to—
  - (a) settle the CFD under the Electricity Industry Participation Code 2010 (the "Code"); and
  - (b) allow the CFD to be taken into account when considering the level of security that is required to be provided to satisfy the prudential requirements of either Party A or Party B under the Code,on the terms and conditions of this Agreement.
- C. Party A and Party B acknowledge the possibility that both Parties may be called on by the **clearing manager** to provide a level of security to satisfy the prudential

requirements under the Code as a result of the lodgement of this Agreement with the **clearing manager**.

**PARTY A AND PARTY B AGREE** as follows:

4. Any bolded term in this Agreement has the same meaning as in the Code.
5. For the purpose of the CFD—:
  - (a) Party [A/B] is the Floating Price **Payer**; and
  - (b) Party [A/B] is the Fixed Price **Payer**

[Note: The parties are to elect the appropriate wording.]
6. The term of this Agreement is from [ ] hours on [ ] to [ ] hours on [ ].
7. This Agreement applies to the [following **grid injection points** and/or **grid exit point(s)** [ ] /**grid injection points** and/or **grid exit points** listed in the attached table]. [In addition where a **grid injection point** or **grid exit point** [listed above/included in the attached table] is **disconnected**, then the **grid injection point** or **grid exit point** notified to the **clearing manager** by either party is the relevant **grid injection point** or **grid exit point** (as the case may be) for the purposes of this Agreement from and including the **trading period** during which the **clearing manager** was notified until the **clearing manager** is notified otherwise.] [Note: The parties are to elect the appropriate wording, including the possible deletion of the last sentence of this clause.]
8. This Agreement applies to [[ ] **MWh** per **trading period** at \$[ ] per **MWh**/ the quantities of **electricity** per **trading period** and prices per **MWh** listed in the attached table.] [Note: The parties are to elect the appropriate wording.]
9. [Notwithstanding clause 12, for the purposes of calculating the Amount Payable pursuant to this Agreement for a **billing period** (the “Amount Payable”), for the purposes of the “Business day” definition in section 1.3 of the 1993 ISDA Commodity Definition, [ ] shall be the relevant place.] [Note: The parties should delete this clause if it is not appropriate.]
10. The Amount Payable will be established by the following procedure:

- (a) the **clearing manager** will, by the 5th **business day** of the **billing period** following the relevant **billing period**, notify Party A and Party B of the Amount Payable:
  - (b) either Party A or Party B may dispute the Amount Payable before or on the 7th **business day** of that **billing period**:
  - (c) if neither party disputes the Amount Payable, that amount will be settled under the Code on the Settlement Date and in accordance with the Code:
  - (d) if the Amount Payable is disputed, the **clearing manager** will use its reasonable endeavours to resolve that dispute by the 9th **business day** of the **billing period**. If:
    - (i) the dispute is resolved by the 9th **business day** of the **billing period**, then the Amount Payable so resolved will be settled under the Code on the Settlement Date:
    - (ii) the dispute is not resolved by the end of the 9th **business day** of the **billing period**, the original Amount Payable notified by the **clearing manager** will be settled under the Code on the Settlement Date. For such unresolved disputes, Party A and Party B release the **clearing manager** from any liability or obligation it may have in relation to the calculation of the Amount Payable, and agree that any unresolved dispute will be resolved between them pursuant to the CFD following payment of the Amount Payable under the Code and this Agreement.
11. For the avoidance of doubt, if either Party A or Party B dispute the Amount Payable under clause 10, and that dispute is not resolved within the time specified in clause 10(d), payment of the Amount Payable shall be without prejudice to any other rights or remedies available to Party A or Party B (as the case may be) pursuant to the CFD.
12. In this agreement, “Settlement Date” means, in respect of a **billing period**, the 20th day of the month following that

period or where that day is not a **business day**, the next **business day**.

**Force Majeure**

13. [Party A and Party B confirm that the CFD has no force majeure clause.] [Note: The parties should elect either this clause or the following clause.]

or

[Party A and Party B confirm that the CFD has a force majeure clause, and agree:

- (a) that the party to the CFD invoking the force majeure clause will notify the **clearing manager** in writing (including by electronic means) of:
  - (i) any force majeure event that occurs,
  - (ii) when that force majeure event ceases to apply, and
  - (iii) the total period to the nearest **trading period** during which the force majeure event applied:
- (b) that settlement of this Agreement will occur as if the force majeure event has not occurred, if the **clearing manager** is not notified of a force majeure event.

If a force majeure event is notified to the **clearing manager**, the **clearing manager** will not settle this Agreement for any **trading period** following the **trading period** during which it was notified of that force majeure event until it is notified that the force majeure event has ceased to apply. It is acknowledged that:

- (a) the **clearing manager** will settle this Agreement for the **billing period** in which a force majeure event is notified to it up to and including the trading period it was notified of that force majeure event; and
- (b) the value of this Agreement for prudential purposes may change as a result of notification of a force majeure event.

For the avoidance of doubt, the notification of a force majeure event to the **clearing manager** under this

Agreement, and settlement of any Amount Payable pursuant to it, shall be without prejudice to any other claims, rights, obligations or actions of either Party A or Party B under the CFD.]

### Security

14. Party A and Party B acknowledge that, under the Code, Amounts Payable by Party A to Party B under this Agreement—
- (a) will be applied on a Settlement Date to satisfy in whole or in part the liability on that Settlement Date pursuant to the Code (the “Liability”) of Party B; and
  - (b) will be set off against any amount payable to Party A under the Code,
- and *vice versa*.
15. This Agreement shall be a continuing security to the **clearing manager** in respect of each and every one of the Liabilities and shall not be (or not be construed so as to be) discharged by any intermediate discharge or payment of or on account of the Liabilities or any settlement of accounts between the **clearing manager** and Party B or anyone else.
16. Where at the end of any **billing period** either Party A or Party B—
- (a) is a **generator** and is liable to pay on the next Settlement Date more money pursuant to this Agreement and its other Liabilities in that **billing period** than it is to be paid under the Code, that party is deemed to be a net **purchaser** and may be called upon by the **clearing manager** to provide security under Part 14 of the Code; or
  - (b) is a **purchaser** and is liable to pay money to the other party on the next Settlement Date pursuant to this Agreement, then the **clearing manager** may **call** upon that **purchaser** to provide additional security under this part of the Code for all or part of the Amount Payable.

### Cancellation

17. Notwithstanding anything in this Agreement or in the Code, this Agreement may only be cancelled in relation to

**trading days** after the date of cancellation. The date of cancellation will be—

- (a) the date specified by Party A or Party B, with the consent of the other party, in written notice to the **clearing manager**; or
- (b) the date either Party A or Party B gives written notice to the **clearing manager** in accordance with [clauses 14.2 to 14.17 of the Code].

18. For the avoidance of doubt and notwithstanding the fact that the date of cancellation has passed, Party A and Party B agree that the **clearing manager** will settle this Agreement up to and including midnight on the date of cancellation as determined pursuant to clause 17 on the relevant Settlement Date.

#### **Notices**

19. Any demand to be made on Party A or Party B by the **clearing manager** under this Agreement may be made in writing and delivered to the address in New Zealand notified to the **clearing manager** from time to time. Party A's and Party B's addresses as at the date of this Agreement are:

Party A: [address]

Party B: [address]

#### **Assignment**

20. In the event that the **clearing manager** ceases to be the **clearing manager** under the Code, the **clearing manager** may assign this Agreement to the person appointed as the new **clearing manager** under the Code, without the consent of either Party A or the Party B.

#### **Governing Law**

21. This Agreement shall be governed by, and construed in accordance with, New Zealand law.

#### **Limits on Liability**

22. Party A and Party B shall indemnify the **clearing manager** from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the negligence, wilful default or dishonesty of the **clearing manager**), including the



**clearing manager's** reasonable costs and expenses in relation to enforcement of the indemnity which may be imposed on, or incurred by or asserted against, the **clearing manager** solely by reason of the **clearing manager** performing any functions, obligations, discretions or duties of the **clearing manager** under this Agreement.

23. The **clearing manager's** liability under this Agreement is subject to the limitations on the liability of the **clearing manager** as set out in the regulations made under section 112(1)(i) of the Electricity Industry Act 2010.

Executed by:

Signed for and on behalf of Party A by:

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in the presence of:

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Name:

Occupation:

Address:

Signed for and on behalf of Party B by:

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in the presence of:

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Name:

Occupation:

Address:

Compare: Electricity Governance Rules 2003 schedule H5 part H