1. Definitions

1.1 *Acceptance* means acceptance of the Agreement by the Customer, by signing the Agreement and, if the Works Agreement or these Terms require payment of the Initial Contribution as a requirement for acceptance to occur, receipt of that Initial Contribution by EA Networks.

1.2 *Agreement* means the Works Agreement, the Site Plan, and the General Terms.

1.3 *Customer* means the customer described in the Agreement, and where the context permits, includes its subsidiaries, employees, contractors and agents.

1.4 *EA Networks' Equipment* means all plant and equipment on the network side of the Network Connection Point, plus any equipment supplied as part of the Works on the Customer side of the Network Connection Point and specified in the Agreement as being EA Networks' Equipment.

1.5 *EA Networks* means Electricity Ashburton Limited, trading as EA Networks, and where the context permits, includes its subsidiaries, employees, contractors and agents.

1.6 *Easement* means an easement granted in favour of EA Networks in gross in respect of EA Networks' Equipment on the terms published on EA Networks' website at the date of the Agreement.

1.7 *Force Majeure* means any event or circumstance beyond the reasonable control of the party claiming the benefit of Force Majeure in the Agreement, which that party is unable to prevent or overcome by the exercise of reasonable care and at a reasonable cost.

1.8 *General Terms* means these terms and conditions.

1.9 *Goods* means any goods supplied by EA Networks to the Customer, but does not include EA Networks' Equipment.

1.10 *Initial Contribution* has the meaning given to that term in the Works Agreement or these Terms (if any).

1.11 *Insolvency Event* means, in respect of any person if:

(a) that person ceases to carry on all or substantially all of its business or operations, or an application or order is made, or a resolution is passed, for the winding-up, liquidation or dissolution of that person;

(b) a trustee, receiver, receiver and manager, administrator, inspector, or similar official, is appointed in respect of that person or the whole or any material part of its assets;

(c) that person is declared or becomes bankrupt or insolvent or is unable to pay its debts when they fall due; or

(d) anything occurs that has a substantially similar effect to any of the events, matters, or circumstances set out above.

1.12 *Network Connection Point* means, the point where the Customer's supply is physically connected to EA Networks' electricity network and may be a transformer, pillar box on the property boundary or such other point as is marked "Network Connection Point" on the Site Plan.

1.13 *Price* means the price payable for the Works determined in accordance with the Agreement.

1.14 *Retailer* means a provider that is registered as a trader with the Electricity Authority and has arrangements in place to operate on EA Networks' network to provide electricity to Customers.

1.15 *Services* means all services supplied by EA Networks to the Customer as required for the Works or in relation to the Works and includes any advice or recommendations.

1.16 *Works* means tasks, activities, upgrades, downgrades, and/or provision of Goods and Services, in each case, as described in the Agreement.

1.17 *Works Agreement* means the specific requirements for the Works agreed by the parties in writing regardless of form (and may include email correspondence).

2. Construction

2.1 In the construction of the Agreement, unless the context requires otherwise:

(a) *Inclusion*: referring to anything after the word "including", "include" or "includes" does not limit what else might be included.

(b) *Joint and several liability*: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally.

(c) *No Contra Proferentem Construction*: any rule of construction that a document is to be construed against the drafting party will not apply.

3. Agreement

3.1 The Agreement shall apply to the provision of the Works by EA Networks and continues to apply in relation to any EA Networks' Equipment located at or on the Customer's premises for as long as it is located there.

3.2 The Agreement does not provide for the supply of electricity, as this is to be arranged separately by the Customer through a Retailer.

4. Price and Payment

4.1 Unless the Works Agreement expressly provides otherwise, the Price provided to the Customer is an estimate only and the actual amount payable by the Customer will be determined on a cost reimbursable basis. For the purpose of determining EA Networks costs, third party costs incurred by EA Networks for materials and workmanship will be passed onto the Customer at cost and EA Networks' internal labour costs will be charged on a time charge basis at the rates in its standard rate card at the relevant time (which is available on request).

4.2 Notwithstanding the Price set out in the Works Agreement and clause 4.3, where a delay in providing the Works is caused by the Customer, or by Force Majeure, EA Networks may adjust the Price to reasonably reflect changes in costs that would not have been incurred but for the delay.

4.3 Any variation to the Agreement, including any changes to the scope of work, must be agreed in writing by both parties including any additional time and cost implications. Any resulting additional costs shall be borne by the Customer, including, additional labour, materials, and other associated costs.

4.4 If the Works Agreement does not specify the payment terms for the Price, the following provisions will apply:

(a) one-third of the Price is payable on (and as a requirement of) Acceptance;

(b) one-third of the Price is payable on or prior to EA Networks commencing any physical Works; and

(c) one-third of the Price is payable on Completion of the Works.

In addition, EA Networks may issue wash up invoices after completion of the Works for any additional amounts payable by the Customer under the Agreement.

4.5 Time for payment for the Works shall be of the essence and will be stated on EA Networks' invoice. If no time is stated, payment shall be due on the 20th day of the month following the date of the invoice.

4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.7 The Customer must pay the Price to EA Networks without set off, deduction or

withholding.

4.8 If the Customer does not pay any amount to EA Networks by its due date:

(a) EA Networks may charge the Customer interest at the rate of 12% per annum on the amount unpaid from the due date until the date of payment (whether before or after judgement); and

(b) the Customer agrees to reimburse EA Networks' for its costs of enforcement, including legal costs incurred on a solicitor client basis and debt collection agency costs.

4.9 Following completion of the Works, EA Networks will apply or adjust line service charges under its distributor agreement with the appropriate Retailer. Unless initial network pricing is specified in the Works Agreement, EA Networks will determine the initial pricing category in accordance with its published pricing policies. Subject to obligations in its distributor agreement with the relevant retailer, EA Networks may adjust the pricing and categorisation over time.

5. Provision of Works

5.1 EA Networks will undertake the Works for the Customer as described in the Agreement and in accordance with good electricity industry practice. Where EA Networks supplies Goods to the Customer it will ensure that the Goods comply with any description in the Agreement and, unless the parties agree otherwise in writing, that the Goods are of merchantable quality and are new and unused.

5.2 The Customer must provide EA Networks with details of the location of any underground services or infrastructure on the Customer side of the Network Connection Point prior to the commencement of the Works. EA Networks shall not be liable for any damage to any property caused by the Customer incorrectly identifying or failing to identify the location of any underground services or infrastructure and the Customer is responsible for any increased costs incurred by EA Networks as a result of utilities and infrastructure not being in the position indicated by the Customer. EA Networks may also adjust the Price to reflect any reasonable additional costs it may incur as a result of any ground conditions encountered by EA Networks when undertaking the Works including any contamination.

5.3 Where necessary for the Works, the Customer will grant access to EA Networks or any of its employees, agents or subcontractors to its premises for that purpose, provided that EA Networks shall endeavour to give reasonable advance notice to the Customer.

5.4 Delivery of the Goods shall take place when the Goods are installed on the Customer's side of the Network Connection Point, or if EA Networks is not responsible for the installation of the Goods, when the Goods have been delivered to the Customer's premises.

5.5 EA Networks will use all reasonable endeavours to meet the start dates and completion dates in the Works Agreement, however it will not be liable for any delays caused by the Customer and/or by Force Majeure.

5.6 If there are any delays caused by the Customer and/or by Force Majeure the start date and completion date in the Works Agreement will be extended by a fair and reasonable period to reflect the impact of the delay.

5.7 We will each comply with our respective obligations as a "person conducting a business or undertaking" under the Health and Safety at Work Act 2015 in respect of the Works. You will notify us of any known hazards or special health and safety requirements for the Site prior to the physical works commencing.

6. Access Rights if no Easement required

6.1 This clause 6 applies if EA Networks does not require an Easement under the Works Agreement.

6.2 The Customer will grant, or procure EA Networks is granted, all necessary access to the land on which the EA Networks' Equipment is or will be located at all reasonable times and for such reasonable periods to install, construct, operate, maintain, repair, replace, upgrade and remove EA Networks' Equipment, with or without any kind of machinery, vehicles or implements and with or without contractors and employees. The Customer will not do anything on the land (and will ensure nothing is done on any other third party land on which EA Networks' Equipment is located) that interferes with EA Networks' rights under this clause 6.

6.3 If the Customer is not the owner of the land, the Customer will at the Customer's cost procure the owner's written consent for EA Networks to access the land in accordance with this clause 6 in a form satisfactory to EA Networks acting reasonably. EA Networks may delay the commencement of the Works until such consent is provided.

6.4 The Customer will at the Customer's cost procure the consent of any mortgagee, tenant, occupant, encumbrancee or chargeholder of the land to EA Networks exercising its rights under this clause 6 in a form satisfactory to EA Networks acting reasonably.

6.5 The Customer will not sell, transfer, subdivide or otherwise dispose of any interest in the land to a third party without EA Networks' prior written consent. EA Networks will not withhold consent provided EA Networks receives a deed of covenant from such third party, in a form acceptable to EA Networks (acting reasonably), binding them to the Customer's rights and obligations under this Agreement.

7. Risk

7.1 Risk in all Goods supplied as part of the Works shall pass to the Customer when the Goods are installed on the Customer's side of the Network Connection Point, except where EA Networks is not responsible for installing the relevant Goods, in which case risk in the relevant Goods shall pass to the Customer when the Goods are delivered to the Customer. Any loss, damage or deterioration to the Goods after risk has passed to the Customer shall be borne by the Customer. The Customer shall, notwithstanding any loss, damage or deterioration to the Goods that occurs after risk so passes, remain liable to pay for the Works.

7.2 The Customer is responsible for repair and maintenance of all Goods provided as part of the Works. Where any EA Networks' Equipment is located on property owned or occupied by the Customer, the Customer shall indemnify EA Networks for any loss or damage to EA Networks' Equipment caused by the Customer.

7.3 EA Networks is responsible for operating and maintaining EA Networks' Equipment, and where applicable, removing that equipment.

8. Title

8.1 EA Networks and the Customer agree that ownership of the Goods shall not pass to the Customer until the Customer has paid EA Networks all amounts payable for the Goods.

8.2 Until title to the Goods passes from EA Networks to the Customer, EA Networks may, if the Customer is in breach of any term of the Agreement, give notice in writing to the Customer to return the Goods or any of them to EA Networks. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods ceases. If the Customer does not promptly return the Goods, EA Networks may access the land on which the EA Networks' Equipment is located and remove that equipment and will not be liable to the Customer for any cost, loss or damage incurred by the Customer as a result of EA Networks

(acting reasonably) exercising this right.

8.3 The Customer is only a bailee of the Goods and until such time as EA Networks has received payment in full for the Goods the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for EA Networks.

9. Personal Property Securities Act 1999 (PPSA)

9.1 The Customer acknowledges and agrees that the retention of title in clause 8.1 constitutes a security agreement in the Goods for the purposes of the PPSA.

9.2 The Customer undertakes to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EA Networks may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and

(b) reimburse EA Networks for all costs incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby.

9.3 EA Networks and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this security agreement.

9.4 The Customer waives its right as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10. Application of implied warranties

10.1 The Customer acknowledges that the Consumer Guarantees Act 1993 does not apply where the Works provide an electricity supply capacity greater than 45 kVA (which is greater than the capacity ordinarily acquired for personal, domestic, or household use or consumption).

10.2 To the extent permitted by law, EA Networks and the Customer agree that:

(a) where the amount payable by the Customer under the Agreement and all other agreements entered into between EA Networks and the Customer in the last year exceeds $250,000 and where the Customer is acquiring the Works for the purposes of trade or business, it is fair and reasonable for the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 to not apply and accordingly those provisions do not apply in that circumstance.

(b) the provisions of Part 3 "Sale of Goods" of the Contract and Commercial Law Act 2017 do not apply to this Agreement

11. Termination and Suspension

11.1 The Customer may terminate this Agreement with immediate effect at any time without cause by giving written notice to EA Networks to this effect.

11.2 EA Networks may terminate this Agreement if the Works are not completed within 2 years after Acceptance for reasons not due to acts or omissions of EA Networks.

11.3 Either party may terminate this Agreement if the other party:

(a) has not remedied a material breach of this Agreement within 10 working days of receiving written notice of such breach; or

(b) is subject to an Insolvency Event.

11.4 On termination for any reason, any reservation of capacity ends, and the Customer must pay EA Networks for all Works performed or provided up to the date of termination and for any costs incurred by EA Networks in reasonable contemplation of carrying out the Works and which it cannot cancel. In addition, if the Customer terminates the Agreement under clause 11.1, or if EA Networks terminates the Agreement under clause 11.3, the Customer shall be liable for any loss incurred by EA Networks arising from the termination. EA Networks may retain any amounts already paid for the Works to the extent necessary to satisfy any amounts which the Customer is required to pay EA Networks under the Agreement.

11.5 EA Networks may, as an alternative to termination, suspend performance of its obligations under the Agreement until such time as the breach or Insolvency Event of the Customer is remedied.

11.6 Termination does not affect any accrued rights or obligations under the Agreement, or any clauses intended to survive termination.

12. Privacy Act 2020

12.1 The Customer authorises EA Networks to:

(a) collect, retain, disclose and use any information about the Customer for the purpose of providing the Works and assessing the Customer's creditworthiness of the Customer; and

(b) disclose information about the Customer, whether collected by EA Networks from the Customer directly or obtained by EA Networks from any other source, to any Retailer for any purpose in connection with the Works or any other credit provider, debt collection agency or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

12.2 The Customer has the right to request a copy of any information that EA Networks holds about the Customer and/or Guarantors. The Customer may also ask EA Networks to correct any incorrect information about the Customer and/or Guarantors held by EA Networks.

13. Liability

13.1 Neither party is liable to the other for any loss of profit or loss of revenue or use or for any indirect or consequential loss suffered by the other party however arising.

13.2 Each party's total maximum liability to the other is limited to the Price, except that this limitation will exclude the Customer's obligation to pay the Price to EA Networks.

13.3 The limitations and exclusions in this clause 13 apply irrespective of the basis of the claim including in contract, tort (including negligence), equity, statute or otherwise.

14. Guarantee

14.1 Where the Works Agreement provides for a Guarantor to guarantee the performance of the Customer's obligations under this Agreement, the provisions of this clause 14 will apply.

14.2 In consideration of EA Networks entering into the Agreement with the Customer in which this guarantee is incorporated, the Guarantor:

(a) guarantees payment of all amounts payable by the Customer and the performance of all the Customer's obligations under the Agreement;

(b) indemnifies EA Networks against any liabilities, damages or loss suffered or incurred by EA Networks from the Customer failing to perform the Customer's obligations under the Agreement;

(c) indemnifies EA Networks against any loss EA Networks might suffer should the Agreement be lawfully disclaimed or abandoned by any liquidator, official assignee, receiver or other person;

(d) agrees with EA Networks that:

(i) this document is a continuing guarantee and operates (and remains in full force and effect) irrespective of any intervening payment, settlement of account or anything else until EA Networks releases the Guarantor from its obligations under this

guarantee;

(ii) as between the Guarantor and EA Networks the Guarantor is liable as a principal debtor and not as a surety. EA Networks will be under no obligation exercise any right which it may have against the Customer or any other person before exercising its rights against the Guarantor;

(iii) any time, credit, waiver, indulgence or other concession given to, or arrangement made with, between EA Networks and the Customer or any other person does not in any way affect the obligations of the Guarantor;

(iv) this guarantee may be enforced by any person entitled for the time being to receive any money payable under the Agreement;

(v) any assignment or any review of, or change in, any amount payable under the Agreement or any other amendment or variation of the Agreement will not release the Guarantor from liability; and

EA Networks has no obligation to advise the Guarantor of any matter relating to the Agreement.

15. General

15.1 *Severability:* If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 *Governing law and jurisdiction:* This Agreement shall be governed by the laws of New Zealand and is subject to the exclusive jurisdiction of the courts of New Zealand.

15.3 *Entire agreement:* This Agreement represents the entire agreement between the parties for provision of the Works, and replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written relating to such matters.

15.4 *Assignment:* The Customer may transfer or assign its rights and obligations under this Agreement by providing written notice of the transfer to EA Networks. In such transfer, the Customer remains contingently liable to EA Networks for the transferee's performance.

15.5 *Force Majeure:* Non-performance by either party of any of its obligations (other than to pay money) under this Agreement will be excused, without liability for that non-performance, during the time and to the extent that performance of the obligation is prevented or hindered by the Force Majeure.

15.6 *Non-waiver:* The failure by either party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.

15.7 *Counterparts:* This Agreement may be executed in any number of counterparts (including emailed PDF copies), which together will constitute a binding and enforceable agreement between the parties. The parties agree that the execution and transmission of an emailed electronic copy of the Agreement to the other shall constitute a valid and binding offer or acceptance (as applicable).

15.8 *Notices:* Any notice, invoice or other communication required to be given under this Agreement to a party will be in writing addressed to that part at the address or email address set out in this Agreement (or as otherwise notified by the relevant party in writing to the other party from time to time).