

Schedule 1: Conditions Precedent

(Clause 10.4 (Conditions Precedent))

This Agreement is conditional on the Contractor delivering to the Transport Agency all of the following in a form and substance reasonably satisfactory to the Transport Agency:

- (a) **Limited Partnership Certificate:** a duly completed Limited Partnership Certificate in respect of the Contractor in substantially the form set out in the Annexure to this Schedule 1;
- (b) **Legal opinions:** a legal opinion from solicitors acting for:
 - (i) the Contractor; and
 - (ii) each Major Sub-contractor,in relation to those persons entering into and performing their obligations under each of the Project Documents to which it is a party;
- (c) **Project Documents:** original counterparts of all Project Documents and original counterparts or certified copies of all Ancillary Documents, all duly executed by all parties other than (if applicable) the Transport Agency;
- (d) **Financing Agreements and shareholding agreements:**
 - (i) original counterparts, certified copies or copies of the Initial Financing Agreements and original counterparts or certified copies of [REDACTED], [REDACTED], [REDACTED] and [REDACTED] [REDACTED] duly executed by all parties to them; and
 - (ii) evidence that all conditions precedent to funding under the Initial Financing Agreements, [REDACTED], [REDACTED] and [REDACTED] [REDACTED] have been satisfied (or waived in accordance with their terms) save for the giving of the notice by the Transport Agency described in clause 10.4(c) (Conditions Precedent) of the Base Agreement;
- (e) **Model Audit:** a copy of the final report of the model auditor in respect of its audit of the Base Case;
- (f) **Revised Base Case:** the Base Case, as varied from the Base Case at the Execution Date (if applicable) with the approval of the Transport Agency;
- (g) **Copies of Insurance Policies:**
 - (i) copies of all Insurance Policies for the insurances required under clause 70 (Insurance) of the Base Agreement for the period from Financial Close to Works Completion except the D&C Professional Indemnity Insurance Policy referred to and described in Sub-part 1 (Design and Construction Phase) of Part 1 (Required Insurances) of Schedule 15A (Insurance); and
 - (ii) in respect of the D&C Professional Indemnity Insurance Policy referred to and described in Sub-part 1 (Design and Construction Phase) of Part 1 (Required Insurances) of Schedule 15A (Insurance), a copy of a detailed Certificate of Currency in respect of that policy;

- (h) **Broker's Letter of Undertaking:** a letter of undertaking from the Contractor's insurance broker as to the currency of each policy under, and the compliance of each policy with, the requirements of clause 70.2(a) (Specified Insurances) and clause 70.4(a) (General provisions relating to insurances) of the Base Agreement;
- (i) **Outline Plans:** written confirmation from the Contractor that:
 - (i) each of the required Outline Plans has been submitted to the relevant territorial authority, excluding:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - (ii) [REDACTED] any changes to any Outline Plan required by the relevant territorial authority have been addressed to the satisfaction of the Contractor and the relevant territorial authority;
 - (iii) each relevant territorial authority has no further right, under section 176A of the Resource Management Act 1991, to request changes to the relevant Outline Plan, [REDACTED] and
 - (iv) [REDACTED] the terms and conditions of the Outline Plans enable it to complete the design of, and undertake the construction of, the TG Project in accordance with this Agreement;
- (j) **Binding ruling:** a copy of a binding ruling from Inland Revenue in relation to specified aspects of the Contractor's tax treatment of the Project as follows:
 - (i) the amount and timing of income and expenditure arising in relation to financial arrangements under the financial arrangements rules. These financial arrangements include the Design and Construction Payment, the ACC Subordinated Convertible Loan, the ACC Facility, the Term Facility, the Debt Service Reserve Facility and the Swap Agreements (as those terms are defined under the Senior Financing Agreements);
 - (ii) the tax treatments as set out in BR Pub 13/06 in the context of the specific arrangement;
 - (iii) the arrangement is not a tax avoidance arrangement for the purposes of the general anti-avoidance rule, or in respect of the financial arrangement rules; and
 - (iv) other tax treatments specific to HoldCo LP and the Contractor's arrangement.
- (k) **Overseas Investment Act:** evidence that the Contractor has obtained such consents as are required under the Overseas Investment Act 2005;
- (l) **Deed of Indemnity:** written acknowledgement from the Contractor that it has received an executed copy of the Deed of Indemnity, certified as representing a true copy of the original by the Transport Agency or its solicitors; and
- (m) **Delegation Instrument:** written acknowledgement from the Contractor that it has received an executed copy of the Delegation Instrument, certified as representing a true copy of the original by the Transport Agency or its solicitors.

Annexure: Limited Partnership Certificate

TO: The New Zealand Transport Agency (the **Transport Agency**)

I am a [director] of [insert] (the **Contractor General Partner**). As at the date of this certificate, the Contractor General Partner is the sole general partner of [insert] (the **Contractor**) and I am authorised to execute this certificate for the Contractor General Partner acting for and on behalf of the Contractor.

I refer to the Agreement relating to the Transmission Gully PPP between the Transport Agency and the Contractor dated [] 2014 (**Project Agreement**).

Terms defined in the Project Agreement have the same meaning when used in this certificate.

THE CONTRACTOR GENERAL PARTNER CERTIFIES as follows:

1. Attached to this certificate are true, complete and up to date certified or original copies of the following:
 - (a) the partnership agreement (**Partnership Agreement**) of the Contractor and the certificate of registration of the Contractor (marked "A");
 - (b) the constitution of the Contractor General Partner and certificate of incorporation of the Contractor General Partner (marked "B"); and
 - (c) [a power of attorney granted by the Contractor General Partner for the purpose of permitting the execution by the Contractor General Partner, acting for and on behalf of the Contractor, of the relevant Project Documents (marked "C"), which power of attorney has not been revoked by the Contractor General Partner and remains in full force and effect;] and
 - (d) [insert others].
2. The Contractor General Partner has passed resolutions authorising the Contractor General Partner, acting for and on behalf of the Contractor, to enter into, and perform and observe its obligations under, the Project Agreement, the Project Documents and the Ancillary Documents:
 - (a) these resolutions have been duly passed [at a properly convened meeting of the duly appointed directors of the Contractor General Partner] OR [in accordance with the constitution of the Contractor General Partner by way of written resolution of the duly appointed directors] and have been approved and ratified by special resolution duly passed by the shareholder of the Contractor General Partner; [to be deleted as applicable]
 - (b) [a duly qualified quorum of directors was present and voting at the meeting of the Contractor General Partner and the requisite majority of directors of the Contractor General Partner voted in favour of approving the resolutions;] [delete if written resolution]
 - (c) all provisions contained in the Companies Act 1993, the constitution of the Contractor General Partner and the Partnership Agreement relating to the declaration of interests and the powers of interested directors to vote were observed; [and]
 - (d) the resolutions have not been amended or rescinded and are in full force and effect[.]; and
 - (e) the power of attorney of the Contractor General Partner referred to in those resolutions has not been revoked.]

3. The following signatures are the true signatures of the authorised representatives of the Contractor General Partner and the persons who have been authorised to sign the relevant Project Documents and to give, for the Contractor General Partner on behalf of the Contractor, notices and communications under, or in connection with, the relevant Project Documents.

Authorised Representatives

Name	Position	Signature

Signatories

Name	Position	Signature

Signed

.....

Date:

.....

(Print Full Name of Director)