

Undertakings to the New Zealand Commerce Commission

Given under section 74A of the Commerce Act 1986 (**Act**) by The Lines Company Limited (**TLC**).

1. Person(s) giving the Undertakings

1.1. These Undertakings are given to the New Zealand Commerce Commission (**Commission**) by TLC for the purposes of section 74A of the Act.

2. Background

2.1. Section 54G of the Act provides that all electricity lines services supplied by electricity distributors are subject to default/customised price-quality regulation, unless they are exempt.

2.2. TLC is not exempt from price-quality regulation and is subject to a default price-quality path (**Price Path**). The Price Path sets TLC's maximum permissible SAIDI and SAIFI values for each assessment period (**SAIDI Limit** and **SAIFI Limit**) as part of the Price Path quality standards (**Quality Standards**).

2.3. For the 12 month assessment periods ending 31 March 2017, 2018, 2019 and 2020 respectively (each **Assessment Period** and together, the **Assessment Periods**), TLC's Price Path was imposed by the Electricity Distribution Services Default Price-Quality Path Determination 2015 [2014] NZCC 33 (**DPP Determination 2015**).

2.4. For the Assessment Periods, TLC's SAIDI Limit was 234.182 and its SAIFI Limit was 3.467. TLC's SAIDI and SAIFI assessed values for the Assessment Periods were:

2.4.1. SAIDI of 251.94 and SAIFI of 3.39 for the 2017 Assessment Period,

2.4.2. SAIDI of 243.34 and SAIFI of 3.75 for the 2018 Assessment Period,

2.4.3. SAIDI of 285.55 and SAIFI of 4.41 for the 2019 Assessment Period, and

2.4.4. SAIDI of 271.42 and SAIFI of 3.00 for the 2020 Assessment Period.

2.5. Therefore, TLC exceeded its SAIDI Limit in each of the 2017, 2018, 2019 and 2020 Assessment Periods and its SAIFI Limit in each of the 2018 and 2019 Assessment Periods.

2.6. To comply with the Price Path, TLC's SAIDI and SAIFI assessed values must not exceed the limits for each Assessment Period, or for each of the two preceding Assessment Periods.

2.7. Because TLC's reported SAIDI and SAIFI assessed values exceeded the SAIDI and SAIFI Limits as explained in paragraph 2.5, the Commission considers, and TLC agrees, that TLC has contravened the Price Path imposed by the DPP Determination 2015 for the 2018, 2019 and 2020 Assessment Periods (**Contraventions**).

- 2.8. TLC has offered these Undertakings in resolution of the Commission’s investigation of the Contraventions.

3. Commencement of these Undertakings

- 3.1. These Undertakings come into effect when:

3.1.1. these Undertakings are executed by TLC, and

3.1.2. these Undertakings so executed are accepted by the Commission

(the **Commencement Date**).

4. Duration of Undertakings

- 4.1. These Undertakings will continue to have effect until the Annual Delivery Report for the last Disclosure Year during which there are associated actions required under the Development and Delivery Plan (referred to in clause 6.1.10 below) is publicly disclosed, in accordance with clause 6.1.14).¹

5. Acknowledgement of contravention of Price Path

- 5.1. TLC acknowledges that it contravened the Quality Standards imposed by the DPP Determination 2015 for the 2018, 2019 and 2020 Assessment Periods because:

5.1.1. its SAIDI assessed values exceeded the SAIDI Limit for the 2017, 2018, 2019 and 2020 Assessment Periods; and

5.1.2. its SAIFI assessed values exceeded the SAIFI Limit for the 2018 and 2019 Assessment Periods.

6. Undertakings

- 6.1. TLC undertakes to the Commission, for the purposes of section 74A of the Act, that to the extent it has not done so already:

Independent Engineering Review

6.1.1. No later than 3 months after the Commencement date, TLC will engage an independent engineering expert (**Expert**) to prepare a report in accordance with the tripartite deed in **Annex 1** and the terms of reference in **Annex 2** to these Undertakings (**Expert Report**).

6.1.2. The Expert Report will address, amongst other things, TLC’s:

6.1.2.1. systems to record and analyse system outages and interruptions to supply and address their cause;

¹ The term “Disclosure Year”, for the purposes of these Undertakings, has the meaning set out in the Electricity Distribution Information Disclosure Determination 2012 [2012] NZCC 22.

- 6.1.2.2. asset data collection and maintenance systems;
 - 6.1.2.3. asset management strategies; and
 - 6.1.2.4. asset management practices (including vegetation management and levels of vegetation-related opex) from forecasting to implementation, including how decisions are linked with emerging trends in asset condition.
- 6.1.3. TLC will provide the Commission with the name of the person that it proposes to engage as the Expert under clause 6.1.1, and obtain the Commission's written approval for that person to be the Expert (with such approval not to be unreasonably withheld).
- 6.1.4. TLC will submit a draft of the Expert Report to the Commission no later than 21 working days after receiving it from the Expert.
- 6.1.5. TLC will make the Expert available to the Commission to answer questions and provide any ancillary assistance and advice reasonably requested by the Commission solely for the purpose of understanding or clarifying the draft Expert Report (provided that the Commission will not require the Expert to undertake any substantial work revising the draft Expert Report or re-performing any analysis prepared for the purposes of the draft Expert Report).
- 6.1.6. TLC will submit the final Expert Report to the Commission no later than 3 months after the date on which the Expert is appointed under clause 6.1.1, or such later date as is agreed to in writing by the Commission.
- 6.1.7. TLC will publish, on its usual publicly accessible website, the final Expert Report within 10 working days of TLC submitting the final Expert Report to the Commission under clause 6.1.6. TLC will maintain public access to the final Expert Report, on its usual publicly accessible website while these Undertakings are in effect under clause 4.
- 6.1.8. If these Undertakings require TLC to provide or submit anything to the Commission, TLC will do so by sending it to infrastructure.regulation@comcom.govt.nz.
- 6.1.9. The due date in clause 6.1.6 will be extended to the extent that finalisation of the Expert Report is delayed by the Commission requiring the Expert to answer questions and provide ancillary assistance and advice for the purpose of clarifying and understanding the draft Expert Report, but only to the extent that the Expert reasonably requires more than 5 working days of elapsed time to complete the additional work involved in answering such questions and providing such ancillary assistance and advice.

Development and Delivery Plan

- 6.1.10. TLC will prepare a draft Development and Delivery Plan in accordance with the scope set out in **Annex 3** to these Undertakings.
- 6.1.11. TLC will have regard to the findings of the final Expert Report in preparing the draft Development and Delivery Plan.
- 6.1.12. TLC will consult with consumers on the draft Development and Delivery Plan, by:
 - 6.1.12.1. undertaking targeted workshops with key stakeholder groups including TLC’s consumer working group and the trustees of the Waitomo Energy Services Customer Trust; and
 - 6.1.12.2. publishing the draft Development and Delivery Plan on TLC’s website for consultation, with a one-month period provided for comment.
- 6.1.13. TLC will, no later than 3 months after the date that TLC submits the final Expert Report to the Commission under clause 6.1.6 or such later date as is agreed to in writing by the Commission, publicly disclose the final Development and Delivery Plan.

Annual Delivery Report

- 6.1.14. For each Disclosure Year during which there are associated actions required under the Development and Delivery Plan, TLC will, no later than 5 months after the end of that Disclosure Year, prepare and Publicly Disclose:²
 - 6.1.14.1. A report (**Annual Delivery Report**) that includes the contents specified in **Annex 4**; and
 - 6.1.14.2. a summary of the key features of that Annual Delivery Report in a format that allows TLC’s consumers to readily understand and engage with the information presented.

7. Effect of Undertakings

- 7.1. These Undertakings are a Court-enforceable undertaking in terms of section 74C of the Act.

² The term “Publicly Disclose”, for the purposes of clause 6.1.3, has the meaning set out in the Electricity Distribution Information Disclosure Determination 2012 [2012] NZCC 22.

8. Compliance with Undertakings

- 8.1. If TLC becomes aware of a breach or potential breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within five working days of becoming aware, giving full particulars of the breach or potential breach.
- 8.2. For the avoidance of doubt, nothing in clause 8.1 prevents the Commission from directly seeking any information from TLC at any time for the purpose of checking compliance with these Undertakings.

9. Variation of Undertakings

- 9.1. The Commission and TLC may agree at any time to vary these Undertakings.
- 9.2. No variation to these Undertakings will be effective unless it is in writing, executed by TLC, and signed as accepted by the Commission.

10. Further acknowledgements

- 10.1. TLC further acknowledges that:
- 10.1.1. the Commission will make these Undertakings publicly available, including by publishing it on the Commission's register of enforceable undertakings on its website,
 - 10.1.2. the Commission may, from time to time, make public reference to these Undertakings, including in media statements and in Commission publications, and
 - 10.1.3. these Undertakings in no way derogate from the rights and remedies available to any other person arising from the alleged conduct.
- 10.2. These Undertakings are properly executed or accepted (as applicable) if TLC and the Commission sign the same copy, or separate identical copies, of these Undertakings. Where TLC and the Commission sign separate identical copies of these Undertakings, a signed copy can be the original signed document, or a scanned copy of the signed document.

Executed as Undertakings


Executed by The Lines Company Limited pursuant to section 180 of the Companies Act 1993:



Bella Takiari-Brame

Director

Date: 17 January 2024



Mike Underhill

Director

Date: 17 January 2024

Accepted by the New Zealand Commerce Commission pursuant to section 74A of the Act:



Commissioner

23 January 2024

Date

Annex 1 – Tripartite deed for Independent Engineering Review

Tripartite Deed

The Lines Company Limited (TLC)

The Commerce Commission
(Commission)

[Independent engineering expert]
(Expert)

TRIPARTITE DEED RELATING TO 2018-2020 QUALITY STANDARDS CONTRAVENTIONS

Date: [to add]

PARTIES

The Lines Company Limited (*TLC*)

Commerce Commission (*Commission*)

[Full legal name of independent engineering expert] (*Expert*)

BACKGROUND

- A TLC provides electricity distribution services, and is a supplier of regulated goods and services under Part 4 of the Commerce Act 1986 (**Act**).
- B Pursuant to Part 4 of the Act, the Commission made the Electricity Distribution Services Default Price-Quality Path Determination 2015 [2014] NZCC 33 (**DPP Determination 2015**). The DPP Determination 2015 set out TLC's maximum permissible SAIDI and SAIFI values (**SAIDI Limit** and **SAIFI Limit**) as part of the price path quality standards (**Quality Standards**) for the 2016-2020 Assessment Periods.
- C TLC's reported SAIDI and SAIFI assessed values exceeded the SAIDI and/or SAIFI Limits for the 2017, 2018, 2019 and 2020 Assessment Periods. Therefore, the Commission considers, and TLC agrees, that TLC has contravened the Price Path imposed by the DPP Determination 2015 in the 2018, 2019 and 2020 Assessment Periods (**Contraventions**).
- D In response to, and in acknowledgement of, TLC's Contraventions, TLC has offered, and the Commission has accepted, enforceable undertakings (**Undertakings**).
- E Clause 6.1.1 of the Undertakings requires TLC to obtain an independent engineering report on certain matters (**Expert Report**) in accordance with this deed and the Terms of Reference in Annex 2 to the Undertakings (**Terms of Reference**).
- F The final Expert Report will be published by TLC. TLC will have regard to the final Expert Report when developing the draft Development and Delivery Plan.
- G TLC has, with the approval of the Commission, engaged the Expert to prepare the Expert Report in accordance with the Terms of Engagement referred to in the Terms of Reference (**Terms of Engagement**).
- H This Deed sets out certain undertakings of the Parties relating to the Expert Report.

BY THIS DEED the parties agree as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Defined terms**

In this Deed, terms capitalised but otherwise undefined have the meanings given to them in the Undertakings.

1.2 **Construction**

In the construction of this deed, unless the context requires otherwise:

Clauses: a reference to a clause of this deed unless otherwise stated;

Documents: a reference to any document, including this deed and the DPP Determination 2015, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this deed;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this deed;

Parties: a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assignees;

Related Terms: where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations; and

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form (and, to avoid doubt, includes all such modes in electronic form).

1.3 **Conflict**

In the event of any conflict between the Undertakings, this Deed and/or obligations of the Expert or TLC in the Terms of Reference or Terms of Engagement, they will be read in the following descending order of priority:

- (a) the Undertakings;
- (b) this deed;
- (c) the Terms of Reference; and
- (d) the Terms of Engagement.

1.4 Condition precedent

This deed is conditional upon the Undertakings, Terms of Reference and Terms of Engagement all having been executed by the relevant parties.

2 PROVISION OF INFORMATION

2.1 TLC must:

- (a) as soon as reasonably practicable following entry into this Deed, and as soon as is reasonably practicable following any written request by the Expert, provide the Expert with any information of which TLC is in possession and that is relevant (in the opinion of the Expert, acting reasonably) to the Expert Report; and
- (b) ensure all information provided by TLC to the Expert has been confirmed by a senior representative of TLC as being accurate at the time it is provided.

3 PAYMENT OF EXPERT'S FEE

3.1 TLC must pay the Expert its fee for preparing the Expert Report in accordance with the Terms of Engagement.

3.2 This must include all fees associated with further questions that the Commission, acting reasonably, asks the Expert to answer in relation to the draft Expert Report in accordance with clause 6.1.5 of the Undertakings.

4 EXPERT'S OBLIGATIONS

4.1 Independent Expert Report on TLC's network

The Expert will, subject to TLC complying with its obligations under this Deed:

- (a) carry out an independent engineering review and prepare the Expert Report in accordance with clause 2.3 of the Terms of Reference that addresses, amongst other things, TLC's:
 - (i) systems to record and analyse system outages and interruptions to supply and address their cause;
 - (ii) asset data collection and maintenance systems;
 - (iii) asset management strategies; and

- (iv) asset management practices from forecasting to implementation, including how decisions are linked with emerging trends in asset condition;
- (b) prepare a draft Expert Report and provide it to TLC and the Commission;
- (c) be available to answer any questions posed by the Commission on the draft Expert Report in person, by telephone or in writing, as reasonably required by the Commission in accordance with clause 2.6 of the Terms of Reference; and
- (d) prepare a final Expert Report and provide it to TLC and the Commission that takes account of any modifications to the information originally provided to the Expert under clause 2, in light of TLC's consideration of the draft Expert Report provided to it in accordance with clause 4.1(b).

4.2 **Overriding duty**

- (a) The Expert acknowledges that, in carrying out its obligations under clause 4.1, its overriding duty is to assist the Commission as an independent expert and to act with reasonable care on relevant matters within the Expert's area of technical expertise.
- (b) Subject to that overriding duty to assist the Commission, the Expert also acknowledges that it has a duty of care to TLC.
- (c) To assist in maintaining its overriding duty and independence, the Expert shall not seek to be engaged in providing any other services or advice to TLC within 12 months from the date of the publication of the Expert's Report unless the Commission has provided prior written consent.

5 **DEALINGS WITH COMMISSION**

5.1 **Amendments to the Terms of Reference**

TLC and the Expert must not amend the Terms of Reference without the Commission's prior written consent.

5.2 **Other communications with the Commission**

In addition to clause 4.1(c) above, either or both of the Expert and TLC, at the Commission's reasonable request, must attend meetings with the Commission in order to keep the Commission informed of progress on the Expert Report.

5.3 **Confidential Information**

TLC consents to the Expert disclosing, to the Commission, any information TLC reasonably considers to be confidential (**TLC Confidential Information**) where such information was provided by TLC to the Expert for the purposes of preparing the Expert Report, on the basis that the Commission also treats TLC Confidential Information as confidential.

5.4 Preservation of records

TLC must keep copies of all communications between it and the Expert relating to the preparation of the Expert Report and preserve those records for a period of at least one year after the final Expert Report is published.

5.5 Assignment

TLC must not consent to an assignment of Expert's interest in the Terms of Engagement without the Commission's prior written consent. Any such assignment will be of no effect unless the assignee also takes an assignment of the Expert's interest in this Deed.

6 CONFIDENTIALITY

6.1 Obligation to keep confidential

Subject to the requirements of disclosure under the Official Information Act 1982, the Commission must keep confidential all TLC Confidential Information disclosed to it by TLC or the Expert relating to the preparation of the Expert Report and not disclose it in any form to any third party without TLC's prior written consent.

7 COMMENCEMENT, EXPIRATION, AND TERMINATION

7.1 Subject to the condition precedent in clause 1.4, this deed commences upon execution and delivery by all parties, and expires on the earlier of the following dates:

- (a) One year after TLC publishes the final Expert Report in accordance with clause 6.1.7 of the Undertakings; or
- (b) TLC terminates the Expert's appointment in accordance with the Terms of Engagement, provided that if TLC has submitted the draft Expert Report to the Commission under clause 6.1.4 of the Undertakings then TLC cannot terminate the Terms of Engagement without the Commission's prior approval in writing, unless TLC has terminated the Expert's appointment due to the Expert undergoing an insolvency event or due to the Expert committing a material breach of the Terms of Engagement or this deed.

7.2 This deed may be terminated by mutual agreement of all the parties in writing.

8 LIABILITY

8.1 The liability of TLC to the Expert, and the Expert to TLC, under or in connection with this deed and/or the Terms of Reference is subject to clause [10] of the Terms of Engagement, as they stand at the commencement date of this deed. For that purpose, TLC and the Expert each acknowledge that any liability they may have to each other under or in connection with this deed and/or the Terms of Reference will be treated as arising in connection with the Terms of Engagement.

8.2 The total aggregate liability of the Expert to the Commission under or in connection with this deed and/or the Terms of Reference will not exceed the greater of

_____ times the sum of all fees paid and/or payable by TLC under the Terms of Engagement.

8.3 The limitations of liability in clauses 8.1 and 8.2 do not apply to or take into account any liability that cannot lawfully be limited or excluded by contract, or any liability for fraud, deceit, breach of confidentiality or wilful default (including any repudiation of the Terms of Engagement, Terms of Reference or this deed).

9 **AMENDMENT**

No amendment to this deed will be effective unless it is in writing and executed by all the parties.

10 **COUNTERPARTS**

This deed may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart will be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

11 **GOVERNING LAW**

This deed is governed by and construed in accordance with New Zealand law.

EXECUTED as a deed

For and on behalf of **The Lines Company Limited** by a director:

For and on behalf of **The Lines Company Limited** by a director:

Signature

Signature

Name of director

Name of director

Date:

Date:

For and on behalf of **The Commerce Commission** by a member:

Signature

Name of member

Date:

For and on behalf of **[full legal name of Expert]** by **[a director]**:

Signature

Name of director

Date:

For and on behalf of **[full legal name of Expert]** by **[a director]**:

Signature

Name of director

Date:

Annex 2 – Terms of Reference for Independent Engineering Review

Terms of Reference

Independent Engineering review

The Lines Company Limited

[full legal name of Expert]

TERMS OF REFERENCE

Date: [insert]

PARTIES

The Lines Company Limited (company number 578653) (*TLC*)

[insert full legal name of Expert] (*Expert*)

BACKGROUND

- A TLC provides electricity distribution services, and is a supplier of regulated goods and services under Part 4 of the Commerce Act 1986 (*Act*).
- B In response to, and in acknowledgement of, TLC's contraventions of the default price-quality path quality standards as provided for in the Electricity Distribution Services Default Price-Quality Path Determination 2015 [2014] NZCC 33, TLC has offered, and the Commerce Commission (*Commission*) has accepted, enforceable undertakings (*Undertakings*).
- C Clause 6.1.1 of the Undertakings requires TLC to obtain an independent engineering report (referred to in the Undertakings as the 'Expert Report') (*Expert Report*) on certain matters set out in that clause and in this deed, and in accordance with a tripartite deed between the parties and the Commission (*Tripartite Deed*).
- D TLC [has engaged/proposes to engage] the Expert by entering into terms of engagement setting out the commercial terms and conditions under which the Expert will perform the services outlined in clause 2 of this deed (*Terms of Engagement*).
- E TLC now also wishes to enter into terms of reference with the Expert in the form of this deed.

BY THIS DEED the parties agree as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this deed, terms capitalised but otherwise undefined have the meanings given to them in the Undertakings.

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

Documents: a reference to any document, including this deed, includes a reference to that document as amended or replaced from time to time.

Headings: headings appear as a matter of convenience and do not affect the construction of this deed.

No Contra Proferentem Construction: the rule of construction known as the *contra proferentem* rule does not apply to this deed.

Parties: a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assignees.

Related Terms: where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders.

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form (and, to avoid doubt, includes all such modes in electronic form).

1.3 **Priority**

In the event of any conflict between the Undertakings, the Tripartite Deed, this deed and the Terms of Engagement, they will be read in the following descending order of priority:

- (a) the Undertakings,
- (b) the Tripartite Deed,
- (c) this deed, and
- (d) the Terms of Engagement.

2 **APPOINTMENT**

- 2.1 This deed is conditional upon the Undertakings, Terms of Engagement and Tripartite Deed all having been executed by the relevant parties.
- 2.2 This deed is conditional on TLC obtaining the Commission's written approval of the appointment of the Expert in accordance with clause 6.1.3 of the Undertakings.
- 2.3 The Expert will provide an opinion on the matters set out in Schedule 1 to this deed (*Services*).
- 2.4 The Expert will provide the *Services* in accordance with:
 - (a) the Terms of Engagement;
 - (b) this deed;
 - (c) the Tripartite Deed; and
 - (d) the Undertakings.
- 2.5 The Expert will provide the *Services* with all due skill, care and diligence that could reasonably be expected of a leading consultant in the Expert's area of expertise.

- 2.6 If and when TLC has submitted the draft Expert Report to the Commission as required by clause 6.1.4 of the Undertakings, the Expert will make itself available to the Commission to answer questions and provide any ancillary assistance and advice reasonably requested by the Commission solely for the purpose of understanding or clarifying the draft Expert Report. Nothing in this clause 2.6 requires the Expert to undertake any substantial work revising its draft Expert Report or re-performing any analysis prepared for the purposes of the draft Expert Report.
- 2.7 TLC will pay the Expert its fee in accordance with the Terms of Engagement, including any fee associated with further questions and ancillary assistance and advice requested by the Commission in relation to the Services (if any).

3 **COMMENCEMENT AND EXPIRATION**

Subject to the conditions precedent in clauses 2.1 and 2.2, this deed commences on the date on which the parties duly execute and deliver this deed, and expires on the earlier of the date on which:

- (a) TLC publishes the final Expert Report in accordance with clause 6.1.7 of the Undertakings; or
- (b) TLC terminates the Expert's appointment in accordance with the Terms of Engagement, provided that if TLC has submitted the draft Expert Report to the Commission under clause 6.1.4 of the Undertakings then TLC cannot terminate the Terms of Engagement without the Commission's prior approval in writing, unless TLC has terminated the Expert's appointment due to the Expert undergoing an insolvency event or due to the Expert committing a material breach of the Terms of Engagement or this deed.

4 **MISCELLANEOUS**

- 4.1 The Expert acknowledges that TLC is able to appoint more than one Expert for the purposes of undertaking the Services and any other expert role contemplated in the Undertakings, and TLC therefore does not grant the Expert any exclusive rights of supply under this deed or the Terms of Engagement.
- 4.2 This deed, the Terms of Engagement, the Tripartite Deed and (to the extent relevant to the Expert's delivery of the Services) the Undertakings constitute the complete statement of the agreement between the parties relating to the Services, and supersedes all of their previous agreements and understandings on that subject, whether oral or written.
- 4.3 No amendment to this deed will be effective unless it is in writing and executed by all the parties in the same manner required for each party to execute a deed. To avoid doubt, without derogating from clause 1.3, this clause 4.3 does not prevent TLC and the Expert from amending the Terms of Engagement by mutual agreement.
- 4.4 A failure, delay or indulgence by any party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.
- 4.5 This deed may be executed in multiple counterparts (including by email), all of which when signed and taken together constitute a single deed between the parties.
- 4.6 This deed is governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

4.7 Each party must, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to this deed.

EXECUTED as a deed

For and on behalf of **The Lines Company Limited** by a director:

For and on behalf of **The Lines Company Limited** by a director:

Signature

Signature

Name of director

Name of director

Date:

Date:

For and on behalf of **[full legal name of Expert]** by **[a director]**:

Signature

Name of director

Date:

SCHEDULE 1 – SERVICES

1 CONTEXT

- 1.1 TLC breached its DPP quality standards in the 2018, 2019 and 2020 Assessment Periods. TLC has offered and the Commission has accepted enforceable undertakings in lieu of further enforcement proceedings. A requirement of TLC's enforceable undertaking is that an Expert Report shall be procured and made public that addresses TLC's:
- (a) systems to record and analyse system outages and interruptions to supply and address their cause;
 - (b) asset data collection and maintenance systems;
 - (c) asset management strategies; and
 - (d) asset management practices from forecasting to implementation, including how decisions are linked with emerging trends in asset condition.
- 1.2 During the course of, and subsequent to the Commission's investigations, TLC has planned a number of remedial actions intended to improve network reliability, which are included in Table 1 below. These matters are amongst the areas of focus for the Expert Report.

2 OBJECTIVE

- 2.1 The objective of the review is to determine the state of TLC's asset management strategy, practices, and asset management data (relevant to 1.1(a) to (d) above), having regard to:
- (a) the appropriate standard for asset management; and
 - (b) the remedial matters in Table 1 below.

3 SCOPE

- 3.1 The Expert Report shall:
- (a) define the appropriate and fit for purpose standard for asset management, having regard to:
 - (i) the organisation and its context, in particular TLC's scale and network configuration (refer to ISO 55001, Section 4.1);
 - (ii) the needs and expectations of relevant stakeholders (refer to ISO 55001, Section 4.2); and
 - (iii) good electricity industry practice in New Zealand;
 - (b) assess past (within the current year and three prior years) and emerging trends in asset health condition and asset reliability on the TLC network;
 - (c) with reference to clauses 3.1(a) and (b), assess the current state of TLC's asset management system in the areas that are relevant to clauses 1.1(a) to (d) above and identify any gaps to the required asset management standard. This shall include an assessment of:

- (i) asset management policies, objectives, and strategies (refer to ISO 55001, Section 5.2, 6.2.1) with particular reference to vegetation management and asset management maturity;
 - (ii) practices for performance evaluation and improvement in relation to planned system outages, unplanned interruptions to supply and response and recovery from interruptions (refer to ISO 55001, Section 9.1, 9.3, 10.1, 10.2 preventative action);
 - (iii) life cycle asset management practices (refer to ISO 55001, Section 6.2.2(a) and (b));
 - (iv) asset management information (refer to ISO 55001, Section 7.5), with particular reference to asset information maturity, information on asset health condition and outages;
 - (v) asset management maturity annual self-assessments and improvement plan (refer to ISO 55001, Sections 9.3 and 10 and Commerce Commission Electricity Distribution Information Disclosure Determination 2012 [2012] NZCC 22, Schedule 13, Report on Asset management maturity);
 - (vi) the governance and senior management review of asset management (refer to ISO 55001, section 9.3);
- (d) assess the remedial matters, including:
- (i) whether they will close any identified gaps to the required asset management standard; and
 - (ii) progress on the remedial matters;
- (e) recommend any further actions required to close any identified gaps to the required asset management standard;
- (f) include other matters that the Expert considers necessary to fulfil the objective of the Expert Report.

3.2 The Expert Report will include:

- (a) a description of the asset management standard;
- (b) a description of the investigations undertaken and key findings;
- (c) a description of any emerging trends in asset condition and reliability;
- (d) a description of the current state of TLC's asset management strategy, practices, and asset management data, including identifying any gaps to the required asset management standard;
- (e) an assessment of asset management maturity;
- (f) a description of the remedial matters and whether these will close the identified gaps to the required asset management standard; and
- (g) any further actions required to close identified gaps to the required asset management standard.

3.3 The Expert will define their investigation approach to meet the objectives and scope of the review.

4 DELIVERABLES

4.1 The Expert will provide:

- (a) a draft report to TLC for the purpose of checking factual accuracy, and for TLC to provide to the Commission; and
- (b) a final report suitable for public disclosure.

4.2 The Expert will be available to the Commission, in accordance with clause 6.1.5 of the Undertakings.

5 TIMING

5.1 The draft report is required by [date].

5.2 The final report is required by [date].

5.3 These due dates will be extended to the extent that preparation or finalisation of the Expert Report is delayed by the Commission requiring the Expert to answer questions and provide ancillary assistance and advice for the purpose of clarifying and understanding the draft Expert Report, but only to the extent that the Expert reasonably requires more than 5 working days of elapsed time to complete the additional work involved in answering such questions and providing such ancillary assistance and advice.

TABLE 1 – REMEDIAL MATTERS ARISING IN COURSE OF INVESTIGATION

Remedial Matters	Source
<p><u>Vegetation Management</u> Assessing and responding to vegetation risk:</p> <ul style="list-style-type: none"> - Vegetation management strategy to address weaknesses in vegetation management: <ul style="list-style-type: none"> • Establishment of baseline measurement of vegetation stock (use of LiDAR data to create a vegetation database to assess the current risk to the network). • Embedded risk management and continuous improvement frameworks. • Establishment of a Vegetation Management Committee to enable broader oversight and faster decision making. • Increased OPEX expenditure. 	<p>2021 AMP pages 9, 16, 91, 120</p> <p><i>Strata Final Draft Report (August 2021) pages 5, 113, 114</i></p> <p><i>Strata letter to Commerce Commission (21 February 2022) page 8</i></p>
<p><u>Reliability/resilience – Data collection and systems</u> Data collection, systems and processes to identify and respond to reliability issues and inform asset management planning:</p> <ul style="list-style-type: none"> - <i>Asset and network data collection, analysis and application:</i> <ul style="list-style-type: none"> o System and practice development to provide greater insights to help understand and mitigate the causes of faults. 	<p>2021 AMP pages 8, 14 to 17, 68, 72 to 76, 90, 92</p> <p>2022 AMP pages 11, 17, 21</p> <p><i>Strata Final Draft Report (August</i></p>

<ul style="list-style-type: none"> ○ Use of new risk database to improve analysis techniques to enable asset health to be more accurately assessed. ○ Preventative maintenance practices to collect information on health of assets and reduce preventable defects. ○ Analysis on mitigation of the impact of outages when they occur (e.g. using further investment in network switches and switch automation to mitigate the impact of outages by isolating faults). ○ General increased digitisation of information and systems (including asset management planning). <p>- <i>Reliability Committee</i>: formation of a reliability committee to meet bi-monthly to review and recommend 'quick win' improvements to reliability based on emerging trends.</p> <p>Post-incident reviews.</p>	<p>2021) pages 5, 6, 113, 114</p> <p><i>Strata letter to Commerce Commission (21 February 2022)</i> pages 8, 9</p>
<p><u><i>Security of supply – Asset improvement</i></u></p> <p>Asset investments/improvements for security of supply:</p> <ul style="list-style-type: none"> - Investment in zone substations and points of supply. - Line renewal and reconductoring programme. - Creation of a floating stock of transformers to deploy when failures occurs. - Switch renewal/upgrades (allow downstream line sections to be de-energised for repair and allow upstream sections to be restored earlier). 	<p>2021 AMP pages 8, 15, 72, 73, 90, 92</p>

Annex 3 – Scope of Development and Delivery Plan

TLC DEVELOPMENT AND DELIVERY PLAN – SCOPE

Objective

- 1 The objective of the Development and Delivery Plan is to define the plans, projects and programmes that will improve TLC’s practices for managing its assets, having regard to the Expert Report and the appropriate standards for asset management.

Scope

- 2 The Development and Delivery Plan shall cover the aspects of TLC’s asset management system included in the Expert Report, and shall address relevant aspects of:
 - 2.1 asset management policy, objectives, and strategies;
 - 2.2 performance evaluation and improvement in relation to system outages and interruptions to supply;
 - 2.3 life cycle asset management practices; and
 - 2.4 asset management information.
- 3 For each aspect of TLC’s asset management system included in the Expert Report, the Development and Delivery Plan shall:
 - 3.1 define how TLC will develop and improve practices for managing its assets, including:
 - (a) the improvements needed to achieve the required standard; and
 - (b) where the improvements may encompass data, systems, processes, employee competency, employee training, communication and/or leadership;
 - 3.2 define the projects and programmes necessary to deliver the matters referred to in paragraph 3.1 above, including:
 - (a) resource requirements;
 - (b) interdependences between projects/programmes;
 - (c) timeline, including the Disclosure Years in which the relevant actions are to take place;¹ and
 - (d) opex and capex requirements.
- 4 TLC will have regard to the Expert Report in preparing the Development and Delivery Plan.

¹ The term “Disclosure Year” has the meaning set out in the Electricity Distribution Information Disclosure Determination 2012 [2012] NZCC 22.

Annex 4 – Required Contents of Annual Delivery Report

REQUIRED CONTENTS OF ANNUAL DELIVERY REPORT

TLC must include the following in an Annual Delivery Report:

1. Overview

1.1. an overview setting out:

- 1.1.1. TLC's overall progress in achieving the required asset management standard in relation to each of the aspects of TLC's asset management system included in the Expert Report, as referred to in clause 2 of Annex 3 to these Undertakings, as further specified in the Development and Delivery Plan;
- 1.1.2. TLC's overall progress in completing the capital expenditure and operational expenditure projects and programmes identified in TLC's Development and Delivery Plan; and
- 1.1.3. in respect of any project or programme that TLC is behind schedule in completing according to TLC's Development and Delivery Plan, the reason(s) why the project or programme is behind schedule, and any actions TLC is taking to bring the project or programme back on track.

2. Progress in developing key processes and practices

2.1. for each Disclosure Year, a summary, a self-assessment rating, and reason(s) for the self-assessment rating, of TLC's progress in achieving the required asset management standard in each of the aspects of TLC's asset management system included in the Expert Report, including on the following:

- 2.1.1. asset management policy, objectives, and strategies;
- 2.1.2. performance evaluation and improvement in relation to system outages and interruptions to supply;
- 2.1.3. life cycle asset management practices; and
- 2.1.4. asset management information.

3. Delivery of projects and programmes

3.1. the key capital expenditure and operational expenditure projects and programmes in TLC's Development and Delivery Plan that TLC:

- 3.1.1. has delivered on time in the most recent Disclosure Year (or most recent part year if in relation to Disclosure Year 2024);
- 3.1.2. has not yet completed, but which are on schedule in accordance with TLC's project and programme delivery plan;

- 3.1.3. has not completed on time, but had planned to complete in the most recent Disclosure Year (or most recent part year if in relation to Disclosure Year 2024); and
 - 3.1.4. has not commenced, but had planned to commence, in the most recent Disclosure Year (or most recent part year if in relation to Disclosure Year 2024).
 - 3.2. the reasons for any material variance (+/-20%) between capital expenditure or operational expenditure on projects or programmes proposed in TLC's Development and Delivery Plan for that relevant Disclosure Year and actual expenditure on those projects or programmes;
 - 3.3. compared to TLC's documented planning for vegetation management, the percentage of the network that TLC, as part of its vegetation management:
 - 3.3.1. has inspected; and
 - 3.3.2. in respect of which TLC has felled, trimmed, removed, or sprayed vegetation.