

**NGĀTI TARA TOKANUI NEGOTIATORS**

**and**

**THE CROWN**

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**DEED RECORDING ON ACCOUNT ARRANGEMENTS**

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**8 May 2013**

**DEED RECORDING ON ACCOUNT ARRANGEMENTS**

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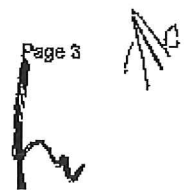
**DEED RECORDING ON ACCOUNT ARRANGEMENTS**

THIS DEED is made between

NGĀTI TARA TOKANUI NEGOTIATORS

AND

THE CROWN



## 1 BACKGROUND

- 1.1 The Crown has invited those iwi with a recognised deed of mandate or an agreement in principle who are yet to settle their historical claims with the Crown under the Treaty of Waitangi, to participate in the government share offer programme.
- 1.2 The Crown has offered to make payments to those iwi referred to in clause 1.1, to be satisfied through the transfer of shares in government share offer companies as part of the initial public offerings of shares in those companies. Such payments are to be on account of the settlement of their historical Treaty claims and will be deducted from the financial and commercial redress provided by the Crown in settlement of historical Treaty claims. To avoid doubt, iwi can use their own funds to purchase additional shares in any government share offer company.
- 1.3 The Ngāi Tara Tokanui Negotiators have entered into this deed and have elected to purchase shares in Mighty River Power Limited out of its GSO quantum entitlement on the terms set out in this deed.

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**2 AGREEMENT TO PURCHASE NOMINATED SHARES**

**STATUS OF NGĀTI TARA TOKANUI NEGOTIATORS**

- 2.1 As at the date of this deed, the parties agree that Ngāti Tara Tokanui:
  - 2.1.1 have entered into an agreement in principle;
  - 2.1.2 have accepted a GSO quantum entitlement of \$150,000 being 5% of the midpoint of the band;
  - 2.1.3 have made an offer to purchase fully paid ordinary shares in Mighty River Power Limited as set out in the elect to purchase form; and
  - 2.1.4 are:
    - (a) a non-local iwi; and
    - (b) subject always to clause 6.2.2, may therefore only invest up to a maximum of \$150,000 in Mighty River Power Limited.

**ENTRY INTO THIS DEED**

- 2.2 Ngāti Tara Tokanui Negotiators have accepted the Crown's offer described at clauses 1.1 and 1.2. Accordingly, Ngāti Tara Tokanui Negotiators and the Crown wish to enter into this deed, recording:
  - 2.2.1 the terms of the transfer of the nominated shares to the Public Trust for the benefit of Ngāti Tara Tokanui in Mighty River Power Limited, for the share value amount; and
  - 2.2.2 that the payment by way of shares to the Public Trust for the benefit of Ngāti Tara Tokanui is on account of the settlement of Ngāti Tara Tokanui historical claims.



### 3 TERMS OF TRANSFER OF SHARES

#### PAYMENT BY WAY OF SHARE TRANSFER

- 3.1 The provisions of this part 3 are subject to parts 6 and 7 of this deed.
- 3.2 The Crown will transfer to the Public Trust to hold on trust for the benefit of the Ngāti Tara Tokanui on the share transfer date, the nominated shares.
- 3.3 The parties agree that as at the share transfer date:
- 3.3.1 the value of the nominated shares is the share value amount; and
  - 3.3.2 the Ngāti Tara Tokanui adjusted GSO quantum entitlement is \$150,000 less the share value amount.
- 3.4 Subject to clause 6.2.2, the Ngāti Tara Tokanui Negotiators may use their adjusted GSO quantum entitlement to participate in any future initial public offerings associated with the government share offer programme.
- 3.5 The parties acknowledge and agree that the nominated shares and nominated funds are to be held by the Public Trust pursuant to the terms of the Public Trust deed of trust.
- 3.6 Without limiting clause 3.5 above, the parties acknowledge that in accordance with the terms of the Public Trust deed of trust, the Ngāti Tara Tokanui Negotiators are entitled to direct the Public Trust on the exercise of voting rights associated with the nominated shares.
- 3.7 The Ngāti Tara Tokanui Negotiators agree that:
- 3.7.1 they will promptly provide the Public Trust with:
    - (a) any information it may reasonably request from time to time to enable the Public Trust to:
      - (i) perform its functions under the Public Trust deed of trust; or
      - (ii) comply with any legal obligations; and
    - (b) up-to-date information (and, if such information changes from time to time, details of the changes to such information) regarding:
      - (i) their IRD number;
      - (ii) their tax exemption status, including (if applicable) a copy of any resident withholding tax exemption certificate;
      - (iii) their residency for tax purposes;
      - (iv) their bank account details;
      - (v) their financial year end;
      - (vi) the notice details set out in part 6; and

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- (vii) their authorised signatories for the purposes of giving notices and other communications to the Public Trust pursuant to the Public Trust deed of trust;
- 3.7.2 they cannot offer for sale, sell, transfer, assign, create a security interest over or otherwise deal with its beneficial interest in the nominated shares; and
- 3.7.3 their pro rata share of the costs, and other expenses relating directly to the Public Trust holding nominated shares and nominated funds on trust for iwi (including, in particular, the fees and reasonable costs, charges and expenses of the Public Trust) will be met out of the nominated funds held by the Public Trust on behalf of Ngati Tara Tokenui.

**TRANSFER OF NOMINATED SHARES FROM PUBLIC TRUST**

- 3.8 If the conditions set out in clause 5.1 have been satisfied within the required timeframe, the Crown will direct the Public Trust to transfer the nominated shares and nominated funds to the governance entity in accordance with the Public Trust deed of trust (for the purposes of the rest of this part, the "transfer").
- 3.9 To avoid doubt, subject to the terms of the deed of embargo attached as schedule A to the deed of covenant, following the transfer the governance entity shall be free to deal with the nominated shares and nominated funds as it sees fit.
- 3.10 The Crown will, on its standard terms and conditions at such time, indemnify the governance entity for any GST and income tax that may be payable by the governance entity in relation to the transfer.

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#### 4 NOMINATED SHARES ON ACCOUNT OF SETTLEMENT OF HISTORICAL CLAIMS

- 4.1 Ngāti Tara Tokanui Negotiators acknowledge and agree that:
- 4.1.1 the share value amount forms part of the redress to be provided by the Crown in the settlement of Ngāti Tara Tokanui historical claims; and
  - 4.1.2 the share value amount is provided to Ngāti Tara Tokanui on account of the financial and commercial redress to be provided by the Crown through the Hauraki Collective for the settlement of Ngāti Tara Tokanui historical claims.
- 4.2 Ngāti Tara Tokanui Negotiators and the Crown agree that this deed:
- 4.2.1 records on account arrangements in relation to the Ngāti Tara Tokanui historical claims;
  - 4.2.2 subject to clause 4.1, does not settle or otherwise affect those claims; but
  - 4.2.3 subject to clause 7.3, may be used by the Crown in any proceedings whatsoever as evidence of redress previously provided by the Crown to Ngāti Tara Tokanui Negotiators on account of the settlement of Ngāti Tara Tokanui historical claims.

#### SETTLEMENT

- 4.3 Except as provided in this deed, the parties' rights and obligations remain unaffected.
- 4.4 Without limiting clause 4.3, nothing in this deed will:
- 4.4.1 extinguish or limit any aboriginal title or customary right that Ngāti Tara Tokanui may have; or
  - 4.4.2 constitute or imply an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or
  - 4.4.3 except as provided in this deed:
    - (a) affect a right that Ngāti Tara Tokanui may have, including a right arising:
      - (i) from Te Tiriti o Waitangi or its principles; or
      - (ii) under legislation; or
      - (iii) at common law (including in relation to aboriginal title or customary law); or
      - (iv) from a fiduciary duty; or
      - (v) otherwise.





**5 ACTIONS REQUIRED TO COMPLETE TRANSFER OF  
NOMINATED SHARES TO GOVERNANCE ENTITY**

- 5.1 The parties acknowledge and agree that by no later than 31 December 2019:
- 5.1.1 The Ngāti Tara Tokanui Negotiators must establish an entity (the "governance entity") that the Crown is satisfied:
- (a) is appropriate to receive the nominated shares and nominated funds and, in particular, provides for appropriate:
    - (i) representation of, accountability to, and transparency for, members of Ngāti Tara Tokanui; and
    - (ii) decision-making, and dispute resolution processes; and
  - (b) has been ratified by Ngāti Tara Tokanui to receive the nominated shares and nominated funds, in accordance with a process agreed in writing by the Crown and the governance entity; and
- 5.1.2 the governance entity must sign the deed of covenant in the form provided in part B of the schedule (under which the governance entity agrees, among other matters, to comply with its obligations under this deed).
- 5.2 The Ngāti Tara Tokanui Negotiators agree that if the governance entity is not established by 31 December 2019 in accordance with clause 5.1 then:
- 5.2.1 the Crown may terminate this deed by notice in writing to the Ngāti Tara Tokanui Negotiators; and
  - 5.2.2 the Crown will direct the Public Trust to sell the nominated shares in accordance with the Public Trust deed of trust; and
  - 5.2.3 the net proceeds of such sale, together with all nominated funds, will be transferred to the Crown in accordance with the Public Trust deed of trust.

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## 6 WARRANTIES AND UNDERTAKINGS

### WARRANTIES AND INFORMATION

- 6.1 The parties acknowledge and agree the warranties and undertakings of each party set out under this part 6.
- 6.2 The Crown provides no warranties to the Ngāti Tara Tokanui Negotiators:
- 6.2.1 as to the performance of the Mighty River Power Limited or the nominated shares; and
  - 6.2.2 that the current IPO or any future offerings in relation to the other government share offer companies will proceed.
- 6.3 The Ngāti Tara Tokanui Negotiators warrant to the Crown:
- 6.3.1 they have sought and received independent financial and legal advice in relation to the government share offer programme in relation to Mighty River Power Limited and its prospectus;
  - 6.3.2 their decision to receive the nominated shares was based on their own assessment of the prospectus and the independent financial and legal advice they received;
  - 6.3.3 not to commence any litigation action, whether in the courts or any tribunal, including the Waitangi Tribunal, or in any other forum, directed against the Crown and/or any government share offer company in respect of the implementation of the government share offer programme; and
  - 6.3.4 the replacement, removal or appointment of alternative negotiator(s) will occur via the same process undertaken by the Ngāti Tara Tokanui Negotiators in obtaining their full mandate as outlined in clause 6.2 of the deed of mandate.

### ACKNOWLEDGEMENTS AND UNDERTAKINGS

- 6.4 The parties acknowledge and agree that regardless of the performance of the nominated shares there will be no adjustment to the share value amount including, without limitation, for the purposes of clause 4.1.2.
- 6.5 The Ngāti Tara Tokanui Negotiators acknowledge that if the litigation referred to in clause 6.3.3 is commenced, then the Crown may terminate this deed in accordance with clause 7.5 and/or give notice to the Ngāti Tara Tokanui Negotiators that as from the date of such notice it will no longer be entitled to participate in the government share offer programme. To avoid doubt, the provisions of clause 7.6 shall apply.
- 6.6 The parties agree to work together in good faith to resolve any issues that may arise during the government share offer programme.
- 6.7 The parties agree that if an iwi entity within the role of Ngāti Tara Tokanui with the same or similar interests and the same or substantially similar beneficiaries commences litigation directly against the Crown or a government share offer company in which interim or final relief is sought in relation to the government share offer programme, the parties will enter into good faith discussions to explore ways to resolve the situation. To avoid doubt, in the event that the situation contemplated by this clause 6.7 arises, the provisions of clauses 7.5 and 7.6 do not apply.

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## 7 CONDITIONS AND TERMINATION

### THIS DEED IS CONDITIONAL

- 7.1 This deed is conditional on the Crown proceeding with the IPO of Mighty River Power Limited.
- 7.2 If the condition in clause 7.1 is not satisfied then either party may immediately terminate this deed upon giving notice to the other and no party shall have any claim against the other.

### THIS DEED IS WITHOUT PREJUDICE UNTIL UNCONDITIONAL

- 7.3 This deed, until it becomes unconditional:
- 7.3.1 is entered into on a "without prejudice" basis; and
- 7.3.2 in particular, may not be used as evidence in any proceedings before, or presented to, a Court, tribunal (including the Waitangi Tribunal), or other judicial body.
- 7.4 Clause 7.3.2 does not exclude any jurisdiction of a Court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

### TERMINATION OF THIS DEED

- 7.5 The Crown may terminate this deed, by notice to the Ngāi Tara Tokanui Negotiators if, at any time after the date of this deed:
- 7.5.1 the Ngāi Tara Tokanui Negotiators breach their warranty in clause 6.3.3 and have commenced litigation action directly against the Crown and/or any of the government share offer companies in respect of the implementation of the government share offer programme; or
- 7.5.2 the governance entity has not signed the deed of covenant in accordance with clause 5.1.2 after being given five (5) business days notice to do so by the Crown.
- 7.6 In the event the Crown terminates this deed in accordance with clause 7.5 prior to a transfer of nominated shares and nominated funds pursuant to clauses 3.8 to 3.10, then this deed shall immediately terminate and the Crown will direct the Public Trust to sell the nominated shares in accordance with the Public Trust deed of trust and the net proceeds of such sale, together with all nominated funds, will be transferred to the Crown in accordance with the Public Trust deed of trust.
- 7.7 In the event the Crown terminates this deed in accordance with clause 7.5.1, then this deed shall immediately terminate and the Crown will be under no obligation to enter into any further deeds recording on account arrangements with the Ngāi Tara Tokanui Negotiators in respect of any future initial public offerings of shares in any other government share offer companies.

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8 MISCELLANEOUS

NOTICES

8.1 Unless otherwise provided in this deed these provisions apply to notices under this deed to or by:

8.1.1 Ngāti Tara Tokanui Negotiators; or

8.1.2 the Crown.

8.2 The following provisions apply to notices referred to in clause 8.1:

*A notice must be*

8.2.1 in writing; and

8.2.2 signed by the person giving it (but, if the Ngāti Tara Tokanui Negotiators are giving the notice, that notice will be effective if signed in accordance with the deed of mandate); and

*Notices to be in writing*

8.2.3 the notice must be in writing addressed to the recipient at its address or facsimile number; and

*Addresses and facsimile numbers of the Ngāti Tara Tokanui Negotiators and the Crown*

8.2.4 the address, facsimile number and e-mail address of the Ngāti Tara Tokanui Negotiators and the Crown are as follows:

Ngāti Tara Tokanui Negotiators  
18 Halver Road  
Manurewa  
Auckland 2102  
Fax: Not applicable  
ameka.w@vodafone.co.nz

Ngāti Tara Tokanui Negotiators  
1 Mokau Street  
Ponsonby  
Auckland 1021  
Fax: Not applicable  
russellkaru@xtra.co.nz

Crown  
Office of Treaty Settlements  
SX10111  
Wellington  
Fax: (04) 494 9801  
ots\_gso\_enquiries@justice.govt.nz

*Change of address, facsimile number or e-mail address*

8.2.5 the address, facsimile number or e-mail address of Ngāti Tara Tokanui Negotiators, Ngāti Tara Tokanui, or the Crown may be changed by notice of one party to the other(s); and

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**Delivery**

8.2.6 delivery of a notice may be made:

- (a) by hand to the recipient's address; or
- (b) by posting an envelope with pre-paid postage addressed to the recipient's address; or
- (c) by facsimile to the facsimile number of the recipient; and

**Timing of delivery**

8.2.7 a notice delivered:

- (a) by hand will be treated as having been received at the time of delivery; or
- (b) by pre-paid post will be treated as having been received on the second day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; and

**Deemed date of delivery**

8.2.8 if a notice is treated as having been received on a day that is not a business day, or after 5pm on a business day, that notice is (despite clause 8.2.6) to be treated as having been received the next business day.

**AMENDMENT**

8.3 This deed may be amended only by a written amendment signed by the Ngāti Tara Toākanui Negotiators and the Crown.

**ENTIRE AGREEMENT**

8.4 This deed:

- 8.4.1 constitutes the entire agreement in relation to the matters in it; and
- 8.4.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it.

**NO WAIVER OR ASSIGNMENT**

8.5 Except as provided in this deed:

- 8.5.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power; and
- 8.5.2 a single, or partial, exercise of a right or power under this deed, does not preclude:
  - (a) a further exercise of that right or power; or
  - (b) the exercise of another right or power; and
- 8.5.3 a person may not transfer or assign a right or obligation under this deed.

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## 9 DEFINITIONS AND INTERPRETATION

### OTHER DEFINED TERMS

9.1 In this deed, unless the context requires otherwise:

**adjusted GSO quantum entitlement** means \$150,000 less the share value amount;

**agreement in principle** means the agreement in principle equivalent entered into and dated 22 July 2011 by the Crown and the Ngāti Tara Tokanui Negotiators recording in principle the basis upon which those parties are willing to enter into a deed of settlement settling historical claims;

**band** means:

Band 1:	\$0 - \$6m
Band 2:	>\$6 - \$15m
Band 3:	>\$15 - \$30m
Band 4:	>\$30 - \$60m
Band 5:	>\$60m

**business day** means a day that is not:

- (a) a Saturday or a Sunday;
- (b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour Day;
- (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (d) a day that is observed as the anniversary of the province of:
  - (i) Wellington; or
  - (ii) Auckland;

**company** means one of Genesis Energy Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy Limited;

**Crown** has the meaning given to it in section 2(1) of the Public Finance Act 1989;

**date of this deed** means the date this deed is signed by the Crown and the Ngāti Tara Tokanui Negotiators;

**deed** means this deed recording on account arrangements between the Ngāti Tara Tokanui Negotiators and the Crown, and that deed as amended from time to time;

**deed of covenant** means the deed of covenant referred to in clause 5.1.2 and set out in part B of the schedule;

**deed of mandate** means the mandate, recognised by the Crown on 29 June 2011 to negotiate this deed;



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**effect to purchase form** means the form completed by the Ngāti Tara Tokanui Negotiators and forming an offer to purchase fully paid ordinary shares in Mighty River Power Limited, a copy of which is attached in part C of the schedule;

**financial and commercial redress** means the financial and commercial redress payable by the Crown through the Hauraki Collective, for the settlement of Ngāti Tara Tokanui historical claims;

**governance entity** has the meaning given to it in clause 5.1;

**government share offer companies** means Genesis Energy Limited, Meridian Energy Limited, Mighty River Power Limited and Solid Energy Limited;

**government share offer programme** means the New Zealand government's extension of its current mixed ownership model in relation to the government share offer companies by way of an initial public share offer of the government's 49% shareholding in such companies;

**GSO quantum entitlement** means the figure specified in clause 2.1.2.

**Hauraki Collective** means the negotiating body established to represent the twelve iwi of Hauraki in the negotiation of the settlement of all historical Treaty claims and includes any future post-settlement governance entity established to hold collective redress on behalf of the iwi of Hauraki;

**IPO** means the initial public offering of shares in Mighty River Power Limited;

**iwi of Hauraki** means Ngāi Tai ki Tāmaki, Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Pāoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rēhiri Tumutumu, Ngāti Tamatera, Ngāti Tara Tokanui, Ngāti Whanaunga and Te Patukirikiri;

**local iwi** means that Mighty River Power Limited holds, as at the date of this deed:

- (a) existing operating plant;
- (b) operating plant under construction;
- (c) resource consents to construct operating plant; or
- (d) existing operating plant that diverts water away from a river,

within the rohe of Ngāti Tara Tokanui;

**midpoint of the band** means:

Band 1	\$3,000,000.00
Band 2	\$10,000,000.00
Band 3	\$22,500,000.00
Band 4	\$45,000,000.00
Band 5	\$100,000,000.00

  
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**Ngāti Tara Tokanui** means:

- a) the collective group composed of individuals who descend from a recognised tupuna of Ngāti Tara Tokanui as defined in the deed of settlement to be entered into between the Crown and Ngāti Tara Tokanui settling the Ngāti Tara Tokanui historical claims; and
- b) every whānau, hapū or group to the extent that it is composed of individuals referred to in clause (a) above;

**Ngāti Tara Tokanui historical claims** means every claim, whether or not the claim has arisen or been considered, researched, registered, notified or made by or on the settlement date, that Ngāti Tara Tokanui had at, or at any time before, that date, or may have at any time after that date and that:

- (a) is, or is founded on, a right arising:
  - (i) from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;
  - (ii) under legislation;
  - (iii) at common law (including in relation to aboriginal title or customary law);
  - (iv) from a fiduciary duty or otherwise; and
- (b) arises from or relates to acts or omissions before 21 September 1992:
  - (i) by or on behalf of the Crown; or
  - (ii) by or under legislation;

**Ngāti Tara Tokanui Negotiators** means the mandated negotiators for the time being of Ngāti Tara Tokanui, recognised by the Crown on 29 June 2011 as the appropriate representatives of Ngāti Tara Tokanui to negotiate a comprehensive settlement of Ngāti Tara Tokanui historical claims with the Crown;

**nominated shares** means the number of fully paid ordinary shares in Mighty River Power Limited calculated by the Crown to be available to the Ngāti Tara Tokanui Negotiators for the dollar amount of shares the Ngāti Tara Tokanui Negotiators applied for in its elect to purchase form;

**nominated funds** means all moneys paid to, or otherwise held by, the Public Trust in its capacity as trustee of the trust established under the Public Trust deed of trust (including, without limitation, any dividends paid or other distributions made in respect of the nominated shares, together with interest);

**non-local iwi** means all iwi that are not local iwi;

**prospectus** means the combined prospectus and investment statement of Mighty River Power Limited dated 5 April 2013;

**Public Trust** means the Crown Entity established pursuant to Section 7 the Public Trust Act 2001 for the purpose of providing independent trustee services for the people of New Zealand;



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**Public Trust deed of trust** means the deed of trust between the Crown and the Public Trust dated 4 April 2013 and set out in part A of the schedule;

**schedule** means the schedule attached to this deed;

**share transfer date** means the date shares in Mighty River Power Limited are allotted to successful applicants under the IPO by the Crown made under a combined prospectus and investment statement dated 5 April 2013; and

**share value amount** means the \$NZ IPO price of the nominated shares as at the share transfer date, transferred to the Public Trust for the benefit of Ngāi Tara Tokanui on the share transfer date and registered with the New Zealand Stock Exchange.

**INTERPRETATION**

9.2 In the interpretation of this deed, unless the context otherwise requires:

- 9.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed; and
- 9.2.2 defined terms have the meanings given to them by this deed; and
- 9.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning; and
- 9.2.4 the singular includes the plural and vice versa; and
- 9.2.5 a word importing one gender includes the other genders; and
- 9.2.6 a reference to a clause is to a clause of this deed; and
- 9.2.7 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors; and
- 9.2.8 an agreement on the part of two or more persons binds each of them jointly and severally; and
- 9.2.9 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time; and
- 9.2.10 a reference to a monetary amount is to New Zealand currency; and
- 9.2.11 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
- 9.2.12 a reference to a person includes a corporation, sole and a body of persons, whether corporate or unincorporate; and
- 9.2.13 a reference to the Crown endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives any legislation, except if this deed requires the Crown to introduce legislation; and

9.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the parties; and

9.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and

9.2.16 a reference to time is to New Zealand time; and

9.2.17 reference to a particular Minister includes any Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant legislation or matter.

**EXECUTION**

Executed on 6 May 2013

SIGNED for and on behalf of  
THE CROWN by the Minister for  
Treaty of Waitangi Negotiations  
in the presence of: )  
)  
)  
)



Hon Christopher Finlayson

B. Consedine

Signature of Witness

BERNADETTE CONSEDINE

Witness Name

PRIVATE SECRETARY

Occupation

WELLINGTON

Address

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- 9.2.14 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the parties; and
- 9.2.15 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day; and
- 9.2.16 a reference to time is to New Zealand time; and
- 9.2.17 reference to a particular Minister includes any Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant legislation or matter.

**EXECUTION**

Executed on **2013**

SIGNED for and on behalf of )  
THE CROWN by the Minister for )  
Treaty of Waitangi Negotiations )  
in the presence of: )

\_\_\_\_\_  
Hon Christopher Finlayson

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Witness Name


\_\_\_\_\_  
Occupation


\_\_\_\_\_  
Address

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SIGNED by  
NGĀTI TARA TOKANUI NEGOTIATORS  
Amelia Amy Tuihana Williams  
in the presence of:

  
Amelia Amy Tuihana Williams

  
Signature of Witness




Witness Name


Occupation

Address

E. TOLLEN JP  
62590J  
24 YAWA CRESCENT  
MĀHUREWA 2102  
AUCKLAND, N.Z.  
Date: 1-08-2013

SIGNED by  
NGĀTI TARA TOKANUI NEGOTIATORS  
Russell Charles Karu  
in the presence of:

  
Russell Charles Karu

  
Signature of Witness

Witness Name Neil Shaw  
Administration Practice Leader  
Solicitor  
Occupation Auckland

Address

**SCHEDULE**

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**PART A: PUBLIC TRUST DEED OF TRUST**

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**PART B: DEED OF COVENANT**

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## DEED OF COVENANT

(Clause [5.1.2])

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20.....

**BETWEEN** [Insert the name of the governance entity] (the "governance entity")

**AND** THE SOVEREIGN in right of New Zealand acting by the Minister for Treaty of Waitangi Negotiations (the "Crown")

### BACKGROUND

- A. Under a deed recording on account arrangements dated 8 May 2013 between Ngāti Tara Tokanui Negotiators and the Crown (the "on account deed"), the Crown agreed, subject to the terms and conditions specified in the on account deed, to provide certain redress on account of Ngāti Tara Tokanui historical claims, to an entity to be established under clause [5] of the on account deed.
- B. The governance entity was established on [date] as the entity to:
- be established by Ngāti Tara Tokanui under clause [5] of the on account deed; and
  - receive the nominated shares [as redress] to be provided to the governance entity under the terms of the on account deed.
- C. As required by clause [5.1.2] of the on account deed, the governance entity enters into this deed with the Crown.

IT IS AGREED as follows:

### 1 CONFIRMATION OF RATIFICATION

- 1.1 The governance entity confirms that it has been ratified by Ngāti Tara Tokanui (by a ratification process agreed in writing by the Crown and the Ngāti Tara Tokanui Negotiators as agent for Ngāti Tara Tokanui as an appropriate entity to receive the nominated shares and nominated funds that are to be provided to it under the terms of the on account deed.

### 2 COVENANT

- 2.1 The governance entity covenants with the Crown that, from the date of this deed, the governance entity:
- 2.1.1 is a party to the on account deed as if it had been named as a party to the on account deed and had signed it;
  - 2.1.2 must comply with all the obligations of the governance entity under the on account deed;
  - 2.1.3 is bound by the terms of the on account deed; and
  - 2.1.4 agrees to contemporaneously with this deed, sign the deed of embargo in the form set out in schedule A; and



2.1.5 acknowledges that it will not be entitled to receive the nominated shares and nominated funds until such time as the deed of embargo referred to in clause 2.1.4 has been properly executed.

### 3 RATIFICATION AND CONFIRMATION OF ACKNOWLEDGEMENTS AND ACTIONS

3.1 The governance entity ratifies and confirms:

3.1.1 all acknowledgements and agreements made by the Ngāti Tara Tokanui Negotiators in the on account deed; and

3.1.2 all rights and powers exercised, all waivers given, all amendments agreed to, and any other actions taken in relation to the on account deed, by the Ngāti Tara Tokanui negotiators and agrees to be bound by them.

### 4 NOTICES

4.1 Notices to the governance entity and to the Crown may be given in the same manner as provided in clause 8.2.3 of the on account deed.

4.2 The governance entity's address where notices may be given is: *[Details to be inserted]*.

### 5 INTERPRETATION

5.1 Unless the context requires otherwise:

5.1.1 terms or expressions defined in the on account deed have the same meanings in this deed; and

5.1.2 the rules of interpretation in the on account deed apply (with all appropriate changes) to this deed.

SIGNED as a deed on [            ]

*[Insert appropriate signing provisions for the governance entity]*

SIGNED for and on behalf of  
[            Governance Entity  
in the presence of:

Signature of witness

Witness name

Occupation

Address

E. TOLLEN JP  
625903  
24 TAWA CRESCENT  
MANGEREWA 2102  
AUCKLAND, N.Z.  
Date: 1-05-2013

SIGNED for and on behalf of  
THE SOVEREIGN in right of New Zealand  
by the Minister for Treaty of Waitangi  
Settlements in the presence of: )  
)  
)  
)

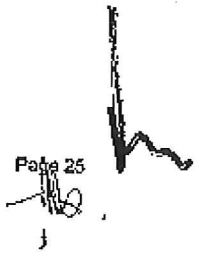
\_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address



**SCHEDULE A – DEED OF EMBARGO**

**Deed of Embargo  
(Transfer post IPO)**

relating to

shares in [ ] Limited

[ ]  
the PSGE

and

[

**Her Majesty the Queen in right of New Zealand acting by and through [the Minister for Treaty of Waitangi Negotiations]**

the Crown

Date

This Deed of Embargo is made on

2013

between (1) [ ] (the PSGE)

and (2) [Her Majesty the Queen in right of New Zealand acting by and through the Minister for Treaty of Waitangi Negotiations] (the Crown)

## Introduction

- A. Under a deed recording on account arrangements dated 8 May 2013 between the Crown and Ngāti Tara Tokanui Negotiators (the on account deed), the Crown agreed to provide certain redress to Ngāti Tara Tokanui Negotiators on account of Ngāti Tara Tokanui unsettled historical claim[s] under the Treaty of Waitangi.
- B. The redress provided by the Crown pursuant to the on account deed was the transfer of the nominated shares in Mighty River Power Limited (the Company) to the Public Trust, to be held for the benefit of the Ngāti Tara Tokanui.
- C. Pursuant to the on account deed:
- (a) the Ngāti Tara Tokanui Negotiators has now established the PSGE; and
  - (b) the nominated shares and nominated funds are to be transferred from the Public Trust to the PSGE.
- D. It is a condition of the transfer of the nominated shares and nominated funds to the PSGE that the PSGE agrees that, except as expressly permitted under this Deed, it will retain the legal and beneficial ownership of the nominated shares from and including the date on which shares in the Company were [transferred] to it (the Transfer Date) until the later of:
- (i) the expiry of two years from the date on which shares in the Company were allotted to successful applicants under the initial public offering of shares in the Company under a combined prospectus and investment statement dated 5 April 2013 (the Allotment Date); and
  - (ii) the date on which an Agreement in Principle (or other similar agreement) settling the Ngāti Tara Tokanui outstanding historical Treaty of Waitangi claim[s] against the Crown has been executed by or on behalf of the Crown and the Ngāti Tara Tokanui.

## It is agreed

1. For the purposes of this Deed the nominated shares are known as the Embargoed Shares.
2. The PSGE agrees and undertakes, subject to clause 4 and to any approval granted by the Crown under clause 3, that it will retain the legal and beneficial ownership of the Embargoed Shares from and including the Transfer Date until the later of:
  - (a) the expiry of two years from the Allotment Date; and
  - (b) the date on which an Agreement in Principle (or other similar agreement) settling the Ngāti Tara Tokanui's outstanding historical Treaty of Waitangi claim[s] against the Crown has been executed by or on behalf of the Crown and the Ngāti Tara Tokanui,(the Embargo Period).
3. The PSGE agrees and undertakes, subject to clause 4, that during the Embargo Period it will not:

- (a) offer for sale, sell, agree to sell, grant an option over, or otherwise dispose of, directly or indirectly; or
- (b) except for security interests created in favour of a registered bank or other similar recognised lending institution for advances or other financial accommodation provided in the ordinary course of business by that bank or other lending institution to the PSGE, create, or agree to create, any security interest over or in respect of; or
- (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective control of,

all or any of the Embargoed Shares without the prior approval of the Crown.

- 4. Notwithstanding clauses 2 and 3 of this Deed, the PSGE may, during the Embargo Period, sell or otherwise dispose of all or part of the Embargoed Shares to a company that is wholly-owned by the PSGE or to another post-settlement governance entity established by the Ngāti Tara Tokanui, provided that the transferee has either entered into a deed of embargo with the Crown on the same terms as this Deed or agreed unconditionally to be bound by this Deed as if it were a party to it.
- 5. To give effect to clauses 2 and 3 of this Deed, the PSGE will sign and deliver to the Company's share registrar a direction in respect of the Embargoed Shares, in favour of the Crown, requesting that the Company's share registrar tag the Embargoed Shares in its system as being unavailable for transfer until the expiry of the Embargo Period or earlier if the PSGE and the Crown direct the Company's share registrar to remove the tag.
- 6. If:
  - (a) the Embargoed Shares (or any of them) are to be released from the restrictions set out in clauses 2 and 3 of this Deed, the PSGE and the Crown shall, by notice in writing to the Company's share registrar in the form set out in clause 9 of this Deed, direct the Company's share registrar to remove the tag attached to the Embargoed Shares (or the relevant number of the Embargoed Shares) in accordance with clause 5 of this Deed and to release the same from the restrictions on transfer imposed under this Deed;
  - (b) the Embargoed Shares (or any of them) are to be sold or transferred by the PSGE in accordance with clause 4 of this Deed, the Crown shall give notice to the Company's share registrar requiring it to remove the tag attaching to the Embargoed Shares (or the relevant number of the Embargoed Shares) and release the same from the restrictions on transfer under this Deed provided the proposed transferee has entered into a deed of embargo on the same terms as this Deed or otherwise agreed to be bound by this Deed in accordance with the requirements of that clause.
- 6. No waiver, modification or alteration of, or addition to, any of the provisions of this Deed shall be made unless agreed by the PSGE and the Crown in writing.
- 7. This Deed may be executed in two or more counterparts (including facsimile copies) each of which shall be deemed an original, but all of which together shall constitute the same instrument.

8(a) Any notice or other communication given under this Deed to a party shall be in writing and addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other parties and may be sent by personal delivery, post or facsimile.

8(b) Until any other address or facsimile number of a party is notified, the parties' contact details shall be:

If to the PSGE:

[ ]

Phone [ ] Fax [ ]

Attention: [ ]

or by email to [ ]

If to the Crown:

[ ]

Phone [ ] Fax [ ]

Attention: [ ]

or by email to [ ]

9. A notice from the PSGE and the Crown to the Company's share registrar under clause 6(a) of this Deed shall contain the following information:

"[ ] and [Her Majesty The Queen in right of New Zealand acting by and through [ ]] direct [ ] Limited's share registrar to revoke the tag attaching to [the Embargoed Shares] OR [*specify number of shares*] shares in [ ] held by [ ] that are] subject to the deed of embargo dated [ ], (which tag identifies that the Embargoed Shares are unavailable for transfer) and to release [the Embargoed Shares] OR [such shares] from the restrictions on transfer imposed under that deed of embargo, [the Embargoed Shares] [such shares] having been released by the Crown from the transfer restrictions set out in the deed of embargo".

10. Interpretation: Unless the context requires otherwise:

10.1 terms or expressions defined in the on account deed have the same meanings in this Deed; and

10.2 the rules of interpretation in the on account deed apply (with all appropriate changes) to this Deed.



**Execution**

Executed as a deed.

SIGNED for and on behalf of )

[ Governance Entity )  
]

in the presence of: )

Signature of witness

Witness name

Occupation

Address

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SIGNED for and on behalf of  
THE SOVEREIGN in right of New Zealand  
by the Minister for Treaty of Waitangi  
Settlements in the presence of:

} \_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address



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**PART C: ELECT TO PURCHASE FORM**

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