

**NGĀTI TŪWHARETOA**

**and**

**TE KOTAHITANGA O NGĀTI TŪWHARETOA**

**and**

**THE CROWN**

---

**DEED OF SETTLEMENT SCHEDULE:**

**PROPERTY REDRESS**

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## 1 DISCLOSURE INFORMATION AND WARRANTY

### DISCLOSURE INFORMATION

#### 1.1 The Crown -

- 1.1.1 has provided information to the Tūwharetoa Hapū Forum about the redress properties, through the Office of Treaty Settlements, between July 2015 and July 2017; and
- 1.1.2 must under paragraph 5.2.1 provide information to the governance entity about a deferred selection property or the deferred selection geothermal assets if the governance entity has, in accordance with part 5, given the Crown notice of interest in purchasing the property or assets.

### WARRANTY

#### 1.2 In this deed, unless the context otherwise requires -

##### 1.2.1 **acquired property** means -

- (a) each redress property; and
- (b) each purchased deferred selection property; and
- (c) purchased deferred selection geothermal assets; and

##### 1.2.2 **disclosure information**, in relation to an acquired property, means the information given by the Crown about the property referred to in paragraph 1.1.

#### 1.3 The Crown warrants to the governance entity that the Crown has given to the governance entity in its disclosure information about an acquired property all material information that, to the best of the land holding agency's knowledge, is in the agency's records about the property or the assets (as the case may be) (including its encumbrances), at the date of providing that information -

- 1.3.1 having inspected the agency's records; but
- 1.3.2 not having made enquiries beyond the agency's records; and
- 1.3.3 in particular, not having undertaken a physical inspection of the property or the assets (as the case may be).

### WARRANTY LIMITS

#### 1.4 Other than under paragraph 1.3, the Crown does not give any representation or warranty, whether express or implied, and does not accept any responsibility, with respect to -

##### 1.4.1 an acquired property, including in relation to -

- (a) its state, condition, fitness for use, occupation or management; or

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1: DISCLOSURE INFORMATION AND WARRANTY

- (b) its compliance with -
  - (i) legislation, including bylaws; or
  - (ii) any enforcement or other notice, requisition or proceedings; or

1.4.2 the disclosure information about an acquired property, including in relation to its completeness or accuracy.

1.5 The Crown has no liability in relation to the state or condition of an acquired property, except for any liability arising as a result of a breach of paragraph 1.3.

**INSPECTION**

1.6 In paragraph 1.7, **relevant date** means, in relation to an acquired property that is -

1.6.1 a redress property, the date of this deed; and

1.6.2 a purchased deferred selection property or purchased deferred selection geothermal assets, the day on which the governance entity gives an election notice electing to purchase the property or assets.

1.7 Although the Crown is not giving any representation or warranty in relation to an acquired property, other than under paragraph 1.3, the governance entity acknowledges that it could, before the relevant date -

1.7.1 inspect the property or assets and determine its state and condition; and

1.7.2 consider the disclosure information in relation to it.

## 2 VESTING OF CULTURAL REDRESS PROPERTIES

### SAME MANAGEMENT REGIME AND CONDITION

- 2.1 Until the settlement date, the Crown must -
- 2.1.1 continue to manage and administer each cultural redress property in accordance with its existing practices for the property; and
  - 2.1.2 maintain each cultural redress property in substantially the same condition that it is in at the date of this deed; and
  - 2.1.3 obtain the prior written consent of the governance entity before -
    - (a) materially varying a disclosed encumbrance affecting or benefiting a cultural redress property; or
    - (b) entering into an encumbrance affecting or benefitting a cultural redress property; or
    - (c) procuring a consent, providing a waiver, or giving an approval, that materially affects a cultural redress property, under the Resource Management Act 1991 or any other legislation.
- 2.2 Paragraph 2.1 does not -
- 2.2.1 apply to a cultural redress property that is not managed and administered by the Crown; or
  - 2.2.2 require the Crown to restore or repair a cultural redress property damaged by an event beyond the Crown's control.

### ACCESS

- 2.3 The Crown is not required to enable access to a cultural redress property for the governance entity or members of Ngāti Tūwharetoa, except under clause 8.16.2.

### COMPLETION OF REQUIRED DOCUMENTATION

- 2.4 Any documentation, required by the settlement documentation to be signed by the governance entity in relation to the vesting of a cultural redress property must, on or before the settlement date, be -
- 2.4.1 provided by the Crown to the governance entity; and
  - 2.4.2 duly signed and returned by the governance entity.

2: VESTING OF CULTURAL REDRESS PROPERTIES

**SURVEY AND REGISTRATION**

- 2.5 The Crown must arrange, and pay for -
- 2.5.1 the preparation, approval and, where applicable the deposit, of a cadastral survey dataset of a cultural redress property to the extent it is required to enable the issue, under the settlement legislation, of a computer freehold register for the property; and
  - 2.5.2 the registration of any document required in relation to the vesting under the settlement legislation of a cultural redress property in the governance entity.

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### 3 COMMERCIAL REDRESS PROPERTIES

Property Name/ Address	Landholding Agency	General description/ location	Conditions of transfer / Specific conditions currently known	Total transfer value for the property
<b>Licensed Land</b>				
<b>Part Karioi Forest</b>	Land Information New Zealand	950.00 hectares, approximately, being Part Lot 2 DP 442574 as shown on the plan in part 2 of the attachments. Subject to survey.	<p>Subject to a Crown forestry licence held in computer interest register WN1300/4 (and variation held in 9836728.1).</p> <p>Subject to a protective covenant held in computer interest register WN1300/16.</p> <p>Subject to a Notice pursuant to section 195(2) of the Climate Change Response Act 2002 registered as instrument 9282663.1.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.1.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.2.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.3.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.4.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.5.</p> <p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.6.</p>	\$565,000.00 plus GST (if any)

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3: COMMERCIAL REDRESS PROPERTIES

Property Name/ Address	Landholding Agency	General description/ location	Conditions of transfer / Specific conditions currently known	Total transfer value for the property
			<p>Subject to a Notice pursuant to Section 91 of the Transit New Zealand Act 1989 registered as instrument B616937.8.</p> <p>Subject to an easement in gross for a right to transmit telecommunications and maintain clear line of sight (shown as AG and T on DP 442574), to be created.</p> <p>Together with an easement for a right of way over Lot 1 DP 442574 to be created.</p> <p>Together with a right of way to be created in the form set out in in part 8.19 of the documents schedule.</p>	
<b>Other commercial redress properties</b>				
<b>Taurewa Station</b>	Ministry of Justice on behalf of the Crown	<p>608.2150 hectares, more or less, being Section 1 SO 36602. All computer freehold register WN56A/226.</p> <p>2347.9660 hectares, more or less, being Sections 1, 2 and 3 SO 36603. All computer freehold register WN56A/227.</p>	<p>Subject to Conservation Covenant B207164.4.</p> <p>Subject to Conservation Covenant B207164.5.</p> <p>Subject to Conservation Covenant B207164.6.</p> <p>Subject to Conservation Covenant B207164.7.</p> <p>Subject to Conservation Covenant B207164.8.</p> <p>Subject to Conservation Covenant B207164.9.</p> <p>Subject to Conservation Covenant B207164.10.</p> <p>Subject to Conservation Covenant B207164.11.</p> <p>Subject to Conservation Covenant B207164.12.</p> <p>Subject to a right of way in gross created by Deed of Easement B207164.3 (marked D on DP 72603).</p> <p>Subject to right in gross to convey water created by Easement Instrument 6340198.1 (marked R on DP 72604).</p>	\$8,000,000.00 plus GST (if any)*



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3: COMMERCIAL REDRESS PROPERTIES

Property Name/ Address	Landholding Agency	General description/ location	Conditions of transfer / Specific conditions currently known	Total transfer value for the property
			<p>Subject to Certificate 6364436.1.</p> <p>Subject to a right in gross to convey electricity, telecommunications, computer media and a right of way created by Easement Instrument 6364436.2 (marked D on DP 72603).</p> <p>Together with a right of way created by Deed of Easement B207164.3.</p> <p>Subject to a Notice pursuant to section 195(2) Climate Change Response Act 2002 registered as Instrument 8700819.5.</p> <p>Subject to a grazing permit to be created.</p> <p>Subject to a licence to occupy to be created, in the form set out in part 8.20 of the documents schedule.</p>	
Tauhara Recreation Reserve	Department of Conservation	0.3186 hectares, more or less, being Lot 1 DPS 27763. All transfer H311319.6.	Subject to a marginal strip reduced to a width of three metres	\$9,000.00 plus GST (if any)

\* In accordance with clause 8.28.

## 4 DEFERRED SELECTION PROPERTY AND DEFERRED SELECTION GEOTHERMAL ASSETS

**Table 1: Deferred selection property**

Name	Description	Encumbrances	Determining market value	Land holding agency	Deferred selection period
Waipapa Road Conservation Area	0.0747 hectares, more or less, being Sections 1, 2 and 3 SO 27633. All <i>Gazette</i> notice 798309.	Subject to a registrable easement to be created for a right to drain and convey water, a right to drain and convey stormwater and a right to convey sewage, in gross in gross in favour of the Taupo District Council, in accordance with clause 9.8	Separately valued	Department of Conservation	2 years

**Table 2: Deferred selection geothermal assets**

Property name/ address	Legal description of parcel of land on which wells are located	Conditions of transfer	Transfer value	Land holding agency	Deferred selection period
Geothermal wells RK6 and RK8	Part Tahorakuri A2 Block, computer freehold register SA628/101.	"Wells" has the meaning given to it in the general matters schedule. Subject to the interests registered on computer freehold register SA628/101, including: Subject to Encumbrance 5318925.3. Subject to Forestry Right 6079977.1 as varied by Variations 6761013.1 and 6868858.1. Subject to Mortgage 6772990.3.	\$500,000	Treasury	6 months

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**4: DEFERRED SELECTION PROPERTY AND DEFERRED SELECTION GEOTHERMAL ASSETS**

<b>Property name/ address</b>	<b>Legal description of parcel of land on which wells are located</b>	<b>Conditions of transfer</b>	<b>Transfer value</b>	<b>Land holding agency</b>	<b>Deferred selection period</b>
		<p>Subject to a right (in gross) to convey electricity, telecommunications, and electronic data created by Easement Instrument 8088672.1.</p> <p>Subject to Encumbrance 8589082.1.</p> <p>Subject to a right (in gross) to convey electricity, telecommunications and electronic data created by Easement Instrument 9484640.1.</p>			

## **5 DEFERRED PURCHASE**

### **SUBPART A: RIGHT OF PURCHASE**

#### **NOTICE OF INTEREST**

- 5.1 The governance entity may during the deferred selection period for the deferred selection property or the deferred selection geothermal assets, give the Crown a written notice of interest in purchasing the deferred selection property or the deferred selection geothermal assets, as the case may be.

#### **EFFECT OF NOTICE OF INTEREST**

- 5.2 If the governance entity gives, in accordance with this part, a notice of interest in the deferred selection property or the deferred selection geothermal assets -
- 5.2.1 the Crown must, not later than 10 business days after the notification date, give the governance entity all material information that, to the best of its knowledge, is in its records about the property or assets, including its encumbrances; and
- 5.2.2 if the property is the deferred selection property, the property's transfer value must be determined or agreed in accordance with subpart B.

#### **ELECTION TO PURCHASE**

- 5.3 If the governance entity gives a notice of interest in the deferred selection property in accordance with this part, it must give the Crown written notice of whether or not it elects to purchase the property, by not later than 15 business days after its transfer value being determined or agreed in accordance with this part.
- 5.4 If the governance entity gives a notice of interest in the deferred selection geothermal assets in accordance with this part, it must give the Crown written notice of whether or not it elects to purchase the assets, by not later than 15 business days after receipt of information under paragraph 5.2.1.

#### **EFFECT OF ELECTION TO PURCHASE**

- 5.5 If the governance entity gives an election notice electing to purchase the deferred selection property in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the property at the transfer value determined or agreed in accordance with this part, plus GST if any, on the terms in subpart A of part 6 and under which -
- 5.5.1 on the DSP settlement date -
- (a) the Crown must transfer the property to the governance entity; and

5: DEFERRED PURCHASE

- (b) the governance entity must pay to the Crown an amount equal to the transfer value of the property determined or agreed in accordance with this part, plus GST if any, by:
  - (i) the SCP system, as defined in Guideline 6.2 of the New Zealand Law Society's Property Law Section's Property Transactions and E-Dealing Practice Guidelines (April 2015); or
  - (ii) another payment method agreed by the parties.

5.6 If the governance entity gives an election notice electing to purchase the deferred selection geothermal assets in accordance with this part, the parties are to be treated as having entered into an agreement for the sale and purchase of the assets at the transfer value set out in table 2 of part 4, plus GST if any, on the terms in subpart B of part 6 and under which -

5.6.1 on the DSP settlement date -

- (a) the Crown must transfer the assets to the governance entity; and
- (b) the governance entity must pay to the Crown an amount equal to the transfer value of the assets, plus GST if any, by -
  - (i) the SCP system, as defined in Guideline 6.2 of the New Zealand Law Society's Property Law Section's Property Transactions and E-Dealing Practice Guidelines (April 2015); or
  - (ii) another payment method agreed by the parties.

5: DEFERRED PURCHASE

**SUBPART B: DETERMINING THE TRANSFER VALUE  
OF A SEPARATE VALUATION PROPERTY**

**APPLICATION OF THIS SUBPART**

- 5.7 This subpart provides how the transfer value is to be determined after the governance entity has given, in accordance with this part, a notice of interest in the deferred selection property that is a separate valuation property.
- 5.8 The transfer value is to be determined as at the notification date.

**APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR**

- 5.9 The parties, in relation to a separate valuation property, not later than 10 business days after the notification date -
- 5.9.1 must each -
- (a) instruct a valuer using the form of instructions in appendix 1; and
  - (b) give written notice to the other of the valuer instructed; and
- 5.9.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the separate valuation property.
- 5.10 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within 15 business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
- 5.11 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

**QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR**

- 5.12 Each valuer must be a registered valuer.
- 5.13 The valuation arbitrator -
- 5.13.1 must be suitably qualified and experienced in determining disputes about the market value of similar properties; and
- 5.13.2 is appointed when he or she confirms his or her willingness to act.

**VALUATION REPORTS FOR A PROPERTY**

- 5.14 Each party must, in relation to a separate valuation property, not later than -
- 5.14.1 50 business days after the notification date, provide a copy of its final valuation report to the other party; and
- 5.14.2 60 business days after the notification date, provide its valuer's written analysis report (referred to in part 5, appendix 1 para (f) under heading "Valuation of Property") to the other party.
- 5.15 Valuation reports must comply with the International Valuation Standards [2013], or explain where they are at variance with those standards.

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**EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR A PROPERTY**

- 5.16 If only one valuation report for a separate valuation property is delivered by the required date, the transfer value of the property is the market value, as assessed in the report.

**NEGOTIATIONS TO AGREE A TRANSFER VALUE FOR A SEPARATE VALUATION PROPERTY**

- 5.17 If both valuation reports for a separate valuation property are delivered by the required date -
- 5.17.1 the parties must endeavour to agree in writing the transfer value of the separate valuation property; and
  - 5.17.2 either party may, if the transfer value of the separate valuation property, is not agreed in writing within 70 business days after the notification date and if a valuation arbitrator has been appointed under paragraph 5.9.2 or paragraph 5.10, refer that matter to the determination of the valuation arbitrator; or
  - 5.17.3 if that agreement has not been reached within the 70 business day period but the valuation arbitrator has not been appointed under paragraph 5.9.2 or paragraph 5.108, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further 5 business days; and
  - 5.17.4 if paragraph 5.17.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further 5 business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and
  - 5.17.5 the valuation arbitrator must, promptly on his or her appointment, specify to the parties the arbitration commencement date.

**VALUATION ARBITRATION**

- 5.18 The valuation arbitrator must, not later than 10 business days after the arbitration commencement date -
- 5.18.1 give notice to the parties of the arbitration meeting, which must be held -
    - (a) at a date, time and venue determined by the valuation arbitrator after consulting with the parties; but
    - (b) not later than 30 business days after the arbitration commencement date; and
  - 5.18.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable -
    - (a) each valuer; and
    - (b) any other person giving evidence

5: DEFERRED PURCHASE

5.19 Each party must -

5.19.1 not later than 5pm on the day that is 5 business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer -

- (a) its valuation report; and
- (b) its submission; and
- (c) any sales, rental, or expert evidence that it will present at the meeting; and

5.19.2 attend the arbitration meeting with its valuer.

5.20 The valuation arbitrator must -

5.20.1 have regard to the requirements of natural justice at the arbitration meeting; and

5.20.2 no later than 50 business days after the arbitration commencement date, give his or her determination -

- (a) of the market value of the separate valuation property; and
- (b) being no higher than the higher, and no lower than the lower, assessment of market value contained in the parties' valuation reports.

5.21 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

**TRANSFER VALUE FOR ALL PROPERTIES**

5.22 The transfer value of the separate valuation property for the purposes of paragraph 5.5.1(b) is -

5.22.1 determined under paragraph 5.16; or

5.22.2 agreed under paragraph 5.17.1; or

5.22.3 the market value determined by the valuation arbitrator under paragraph 5.17.2.



5: DEFERRED PURCHASE

**SUBPART C: GENERAL PROVISIONS**

**TIME LIMITS**

- 5.23 Time is of the essence for the time limits in paragraphs 5.1, 5.3 and 5.4.
- 5.24 In relation to the time limits in this part, other than those referred to in paragraph 5.23, each party must use reasonable endeavours to ensure -
- 5.24.1 those time limits are met and delays are minimised; and
- 5.24.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

**DETERMINATION FINAL AND BINDING**

- 5.25 The valuation arbitrator's determination under subpart B is final and binding.

**COSTS**

- 5.26 In relation to the determination of -
- 5.26.1 the transfer value of a separate valuation property, each party must pay:
- (a) its costs; and
- (b) half the costs of a valuation arbitration; or
- (c) such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

**ENDING OF OBLIGATIONS**

- 5.27 The Crown's obligations under this deed in relation to the deferred selection property or deferred selection geothermal assets immediately cease if -
- 5.27.1 the governance entity -
- (a) does not give notice of interest in relation to the property or assets in accordance with paragraph 5.1; or
- (b) gives notice of interest in relation to the property or assets in accordance with paragraph 5.1 but the governance entity -
- (i) gives an election notice under which it elects not to purchase the property or assets; or
- (ii) does not give an election notice in accordance with paragraph 5.3 or 5.4 electing to purchase the property or assets, as the case may be; or
- (c) gives the Crown written notice that it is not interested in purchasing the property or assets at any time before an agreement for the sale and purchase of the property or assets is constituted under paragraph 5.5 or 5.6, as the case may be; or

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(d) does not comply with any obligation in relation to the deferred selection property under subpart B; or

5.27.2 an agreement for the sale and purchase of the property or assets is constituted under paragraph 5.5 or 5.6, as the case may be, and the agreement is cancelled in accordance with the terms of transfer in subpart A of part 6.

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APPENDIX 1

**[Note: These instructions may be modified to apply to more than one separate valuation property.]**

**[Valuer's name]**

**[Address]**

**Valuation instructions**

**INTRODUCTION**

**[Name]** (the **governance entity**) has the right under a deed of settlement to purchase properties from **[name]** (the **land holding agency**).

This right is given by -

- (a) clauses 9.7 and 9.8 of the deed of settlement; and
- (b) part 5 of the property redress schedule to the deed of settlement (**part 5**).

**PROPERTY TO BE VALUED**

The governance entity has given the land holding agency a notice of interest in purchasing -

*[describe the property including its legal description]*

**DEED OF SETTLEMENT**

A copy of the deed of settlement is enclosed.

Your attention is drawn to part 5 of the property redress schedule to the deed.

All references in this letter to subparts or paragraphs are to subparts or paragraphs of part 5.

A term defined in the deed of settlement has the same meaning when used in these instructions.

The property is a separate valuation property for the purposes of part 5. Subpart B of part 5 applies to the valuation of separate valuation properties.

**ASSESSMENT OF MARKET VALUE REQUIRED**

You are required to undertake a valuation to assess the market value of the property as at **[date]** (the **valuation date**), being the date the land holding agency received the notice of interest in the property from the governance entity.

The ~~[[land holding agency][governance entity][delete one]~~ will require another registered valuer to assess the market value of the property as at the valuation date.

The two valuations are to enable the market value of the property, to be determined either -

- (a) by agreement between the parties; or
- (b) by arbitration.

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The market value of the property so determined will be the basis of establishing the 'transfer value' at which the governance entity may elect to purchase the property under part 5, plus GST (if any).

**VALUATION OF PROPERTY**

You must, in relation to a property -

- (a) before inspecting the property, determine with the other valuer -
  - (i) the valuation method or methods applicable to the property; and
  - (ii) the comparable sales to be used in determining the market value of the property; and
- (b) inspect the property, where practical, together with the valuer appointed by the other party; and
- (c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and
- (d) by not later than [30] business days after the valuation date, prepare and deliver to us, a draft valuation report; and
- (e) by not later than [45] business days after the valuation date -
  - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and
- (f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property; and
- (g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value; and
- (h) if a consensus on market value is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and
- (i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property; and
- (j) if a review valuer has been appointed by parties, you must within 5 business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and
- (k) participate in any arbitration process required under subpart B to determine the market value of the property.

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**REQUIREMENTS OF YOUR VALUATION**

Our requirements for your valuation are as follows.

You are to assume that -

- (a) the property is a current asset and was available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is -

- (a) to assess market value on the basis of market value as defined in the current edition of the Australia and New Zealand Valuation and Property Standards [2012] and International Valuation Standards [2013]; and
- (b) to take into account -
  - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and
  - (ii) the attached disclosure information about the property that has been given by the land holding agency to the governance entity, including the disclosed encumbrances; and
  - (iii) the terms of transfer in subpart A of part 6 of the property redress schedule to the deed of settlement (that will apply to a purchase of the property by the governance entity); but
- (c) not to take into account a claim in relation to the property by or on behalf of the settling group.

**REQUIREMENTS FOR YOUR VALUATION REPORT**

We require a full valuation report in accordance with the current edition of the Australia and New Zealand Valuation and Property Standards [2012] and International Valuation Standards [2013], including -

- (a) an executive summary, containing a summary of -
  - (i) the valuation; and
  - (ii) the key valuation parameters; and
  - (iii) the key variables affecting value; and
- (b) a detailed description, and a clear statement, of the land value; and
- (c) a clear statement as to any impact of -
  - (i) the disclosed encumbrances; and
- (d) details of your assessment of the highest and best use of the property; and

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- (e) comment on the rationale of likely purchasers of the property; and
- (f) a clear identification of the key variables which have a material impact on the valuation; and
- (g) full details of the valuation method or methods; and
- (h) appendices setting out -
  - (i) a statement of the valuation methodology and policies; and
  - (ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation, and other relevant standards, insofar as they are consistent with subpart B.

You may, with our prior consent, obtain specialist advice, such as engineering or planning advice.

**ACCEPTANCE OF THESE INSTRUCTIONS**

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than -

- (a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and
- (b) [45] business days after the valuation date, to -
  - (i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and
- (c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and
- (d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

**[ACCESS**

[You should not enter on to the property without first arranging access through the [*landholding agency*] [*give contact details*].]

**OPEN AND TRANSPARENT VALUATION**

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must -

- (a) copy any questions you have or receive with regard to the valuation, together with the responses, to the governance entity, the landholding agency, and the other valuer; and

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5: DEFERRED PURCHASE

- (b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final report to us.

Yours faithfully

**[Name of signatory]**

**[Position]**

**[Governance entity/Land holding agency][delete one]**

## **6 TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

### **SUBPART A: COMMERCIAL REDRESS PROPERTIES AND PURCHASED DEFERRED SELECTION PROPERTY**

#### **APPLICATION OF THIS SUBPART**

- 6.1 This subpart applies to the transfer by the Crown to the governance entity of each of the following properties (a **transfer property**):
- 6.1.1 each commercial redress property, under clause 9.4:
  - 6.1.2 the purchased deferred selection property, under paragraph 5.5.

#### **TRANSFER**

- 6.2 The Crown must transfer the fee simple estate in a transfer property to the governance entity -
- 6.2.1 subject to, and where applicable with the benefit of -
    - (a) the disclosed encumbrances affecting or benefiting the property (as they may be varied by a non-material variation, or a material variation entered into under paragraph 6.18.4(a)); and
    - (b) any additional encumbrances affecting or benefiting the property entered into by the Crown under paragraph 6.18.4(b); and
  - 6.2.2 if the transfer property is a commercial redress property, any encumbrances in relation to that property that the governance entity is required to provide to the Crown on or by the settlement date under clause 9.5.2.
- 6.3 The Crown must pay any survey and registration costs required to transfer the fee simple estate in a transfer property to the governance entity.

#### **POSSESSION**

- 6.4 Possession of a transfer property must, on the TSP settlement date for the property -
- 6.4.1 be given by the Crown; and
  - 6.4.2 taken by the governance entity; and
  - 6.4.3 be vacant possession subject only to any encumbrances referred to in paragraph 6.2.1 that prevent vacant possession being given and taken.



6: TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS

SETTLEMENT

- 6.5 Subject to paragraphs 6.6 and 6.44.3, the Crown must provide the governance entity with the following in relation to a transfer property on the TSP settlement date for that property:
- 6.5.1 evidence of -
- (a) a registrable transfer instrument; and
  - (b) any other registrable instrument required by this deed in relation to the property:
- 6.5.2 all contracts and other documents (but not public notices such as proclamations and *Gazette* notices) that create unregistered rights or obligations affecting the registered proprietor's interest in the property after the TSP settlement date.
- 6.6 If the fee simple estate in the transfer property may be transferred to the governance entity electronically under the relevant legislation -
- 6.6.1 paragraph 6.5.1 does not apply; and
- 6.6.2 the Crown must ensure its solicitor -
- (a) a reasonable time before the TSP settlement date for the property -
    - (i) creates a Landonline workspace for the transfer to the governance entity of the fee simple estate in the property and for any other registrable instruments required by the deed in relation to the property (the **electronic transfer instruments**); and
    - (ii) prepares, certifies, signs and pre-validates in the Landonline workspace the electronic transfer instruments; and
  - (b) on the TSP settlement date, releases the electronic transfer instruments so that the governance entity's solicitor may submit them for registration under the relevant legislation; and
- 6.6.3 the governance entity must ensure its solicitor, a reasonable time before the TSP settlement date, certifies and signs the electronic transfer instruments for the property prepared in the Landonline workspace under paragraph 6.6.2(a)(ii); and
- 6.6.4 paragraphs 6.6.2 and 6.6.3 are subject to paragraph 6.44.3.
- 6.7 The **relevant legislation** for the purposes of paragraph 6.6 is -
- 6.7.1 the Land Transfer Act 1952; and
- 6.7.2 the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

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- 6.8 The Crown must, on the actual TSP settlement date for a transfer property, provide the governance entity with any key or electronic opener to a gate or door on, and any security code to an alarm for, the property that are held by the Crown.
- 6.9 The transfer value of, or the amount payable by the governance entity for, a transfer property is not affected by -
- 6.9.1 a non-material variation, or a material variation entered into under paragraph 6.18.4(a), of a disclosed encumbrance affecting or benefiting the property; or
- 6.9.2 an additional encumbrance affecting or benefiting the property entered into by the Crown under paragraph 6.18.4(b).

**APPORTIONMENT OF OUTGOINGS AND INCOMINGS**

- 6.10 If, as at the actual TSP settlement date for a transfer property -
- 6.10.1 the outgoings for the property pre-paid by the Crown for any period after that date exceed the incomings received by the Crown for any period after that date, the governance entity must pay the amount of the excess to the Crown; or
- 6.10.2 the incomings for the property received by the Crown for any period after that date exceed the outgoings for the property pre-paid by the Crown for any period after that date, the Crown must pay the amount of the excess to the governance entity.
- 6.11 The outgoings for a transfer property for the purposes of paragraph 6.10 do not include insurance premiums and the governance entity is not required to take over from the Crown any contract of insurance in relation to the property.
- 6.12 The incomings for the licensed land for the purposes of paragraph 6.10 do not include licence fees under the Crown forestry licence.
- 6.13 An amount payable under paragraph 6.10 in relation to a transfer property must be paid on the actual TSP settlement date for the property.
- 6.14 The Crown must, before the actual TSP settlement date for a transfer property, provide the governance entity with a written statement calculating the amount payable by the governance entity or the Crown under paragraph 6.10.

**FIXTURES, FITTINGS AND CHATTELS**

- 6.15 The transfer of a transfer property includes all fixtures and fittings that were owned by the Crown, and located on the property, on the first date of the transfer period for that property.
- 6.16 Fixtures and fittings transferred under paragraph 6.15 must not be mortgaged or charged.
- 6.17 The transfer of a transfer property does not include chattels.

**6: TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

**OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD**

- 6.18 The Crown must, during the transfer period for a transfer property -
- 6.18.1 ensure the property is maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
  - 6.18.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the property, except where those charges are payable by a tenant or occupier to the supplier; and
  - 6.18.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the property during the period -
    - (a) by the Crown; or
    - (b) with the Crown's written authority; and
  - 6.18.4 obtain the prior written consent of the governance entity before -
    - (a) materially varying a disclosed encumbrance affecting or benefiting the property; or
    - (b) entering into an encumbrance affecting or benefiting the property; or
    - (c) procuring a consent, providing a waiver, or giving an approval, that materially affects the property, under the Resource Management Act 1991 or any other legislation; and
  - 6.18.5 use reasonable endeavours to obtain permission for the governance entity to enter and inspect the property under paragraph 6.19.2 if the governance entity is prevented from doing so by the terms of an encumbrance referred to in paragraph 6.2.
- 6.19 The governance entity, during the transfer period in relation to a transfer property -
- 6.19.1 must not unreasonably withhold or delay any consent sought under paragraph 6.18.4 in relation to the property; and
  - 6.19.2 may enter and inspect the property on one occasion -
    - (a) after giving reasonable notice; and
    - (b) subject to the terms of the encumbrances referred to in paragraph 6.2; and
  - 6.19.3 must comply with all reasonable conditions imposed by the Crown in relation to entering and inspecting the property.

**PRE-TRANSFER OBLIGATIONS AND RIGHTS IN RELATION TO LICENSED LAND**

- 6.20 During the transfer period for the licensed land, the Crown -
- 6.20.1 must prudently manage the licensor's rights under the Crown forestry licence in relation to the licensed land; and

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- 6.20.2 in reviewing the licence fee under the Crown forestry licence -
- (a) must ensure that, so far as reasonably practicable, the governance entity's interests as licensor after the settlement date are not prejudiced; and
  - (b) must not agree a licence fee for the licensed land that is less than any licence fee agreed to by the Crown for the balance of the land that is subject to the Crown forestry licence; and
- 6.20.3 must provide the governance entity with all material information, and must have regard to the governance entity's written submissions, in relation to the performance of the Crown's obligations under paragraphs 6.21.1 and 6.21.2; and
- 6.20.4 must, so far as is reasonably practicable, provide the information to the governance entity under paragraph 6.20.3 in sufficient time to enable it to make effective submissions on the performance of the Crown's obligations under paragraphs 6.20.1 and 6.21.2; but
- 6.20.5 is not required to provide information to the governance entity under paragraph 6.20.3 if that would result in the Crown breaching a confidentiality obligation.

**SPLITTING OF CROWN FORESTRY LICENCE**

- 6.21 The Crown must carry out, and use reasonable endeavours to complete by the settlement date, its obligations under clause 17.4 of the Crown forestry licence in relation to the licensed land (the **licence-splitting process**) that will, in particular, enable -
- 6.21.1 the granting of separate licences to the licensee under the Crown forestry licence by -
- (a) the governance entity, in relation to the licensed land; and
  - (b) the Crown in relation, to the balance of the land that is subject to the Crown forestry licence; and
- 6.21.2 the protection after the settlement date of the interests of the governance entity, the Crown, and the licensee in respect of the licensed land and the balance of the land that is subject to the Crown forestry licence, including -
- (a) the shared use of roading and other facilities; and
  - (b) rights of access; and
  - (c) the sharing of outgoings.
- 6.22 The governance entity acknowledges and agrees that -
- 6.22.1 the licence-splitting process in relation to the licensed land may not be completed until after the settlement date as, in particular, the licensee under the Crown forestry licence has no obligation to participate in them until that date; and

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6.22.2 the governance entity must -

- (a) provide any assistance reasonably required by the Crown to assist with the licence-splitting process; and
- (b) sign all documents, and do all other things, required of it as owner of the licensed land to give effect to the matters agreed or determined under the licence-splitting process.

**SPLITTING OF LICENCE FEE**

6.23 Until completion of the licence splitting process in relation to the licensed land, unless otherwise agreed by the governance entity as licensor, and the licensee under the Crown forestry licence, and the Crown, the licence fee under the Crown forestry licence attributable to the licensed land is to be calculated in accordance with the following formula:

$$A \times (B \div C)$$

6.24 For the purposes of the formula in paragraph 6.23 -

**A** is the licence fees under the Crown forestry licence; and

**B** is the area of licensed land; and

**C** is the area of land covered by the Crown forestry licence.

**OBLIGATIONS AFTER SETTLEMENT**

6.25 The Crown must -

6.25.1 give the relevant territorial authority notice of the transfer of a transfer property immediately after the actual TSP settlement date for the property; and

6.25.2 if it receives a written notice in relation to a transfer property from the Crown, a territorial authority, or a tenant after the actual TSP settlement date for the property -

- (a) comply with it; or
- (b) provide it promptly to the governance entity or its solicitor; or

6.25.3 pay any penalty incurred by the governance entity to the person providing the written notice as a result of the Crown not complying with paragraph 6.25.2.

6.26 The governance entity must, from the settlement date, comply with the licensor's obligations under the Crown forestry licence in relation to the licensed land -

6.26.1 including the obligation to -

- (a) repay any overpayment of licence fees by the licensee; and
- (b) pay interest arising on or after the settlement date on that overpayment; but

**6: TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

6.26.2 not including the Crown's obligations under clause 17.4 of the Crown forestry licence.

**RISK AND INSURANCE**

6.27 A transfer property is at the sole risk of -

6.27.1 the Crown, until the actual TSP settlement date for the property; and

6.27.2 the governance entity, from and including the actual TSP settlement date for the property.

**DAMAGE AND DESTRUCTION**

6.28 Paragraphs 6.29 to 6.37 apply if, before the actual TSP settlement date for a transfer property -

6.28.1 the property is destroyed or damaged; and

6.28.2 the destruction or damage has not been made good.

6.29 Paragraph 6.30 applies if the transfer property is -

6.29.1 a commercial redress property (other than licensed land); or

6.29.2 the deferred selection property; and

6.29.3 as a result of the destruction or damage, the property is not tenable.

6.30 Where this paragraph applies the governance entity may cancel its transfer by written notice to the Crown -

6.31 Notice under paragraph 6.30 must be given before the actual TSP settlement date.

6.32 Paragraph 6.33 applies if the property is -

6.32.1 licensed land; or

6.32.2 a commercial redress property (other than licensed land), or the deferred selection property, that -

(a) despite the destruction or damage, is tenable; or

(b) as a result of the damage or destruction, is not tenable, but its transfer is not cancelled under paragraph 6.30 before the actual TSP settlement date.

6.33 Where this paragraph applies -

6.33.1 the governance entity must complete the transfer of the property in accordance with this deed; and

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- 6.33.2 the Crown must pay the governance entity -
- (a) the amount by which the value of the property has diminished, as at the actual TSP settlement date for the property, as a result of the destruction or damage;
  - (b) plus GST if any.
- 6.34 The value of the property for the purposes of paragraph 6.33.2 is to be -
- 6.34.1 in the case of a commercial redress property, its transfer value as provided in part 3; or
  - 6.34.2 in the case of the deferred selection property, its transfer value as determined or agreed in accordance with part 5.
- 6.35 An amount paid by the Crown under paragraph 6.33.2 -
- 6.35.1 is redress, if it relates to the destruction or damage of a commercial redress property; and
  - 6.35.2 is a partial refund of the purchase price if it relates to the destruction or damage of the deferred selection property.
- 6.36 Each party may give the other notice -
- 6.36.1 requiring a dispute as to the application of paragraphs 6.30 to 6.35 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and
  - 6.36.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.
- 6.37 If a dispute as to the application of paragraphs 6.30 to 6.35 is not determined by the TSP settlement date, the date the parties must comply with their obligations on transfer of the property is to be -
- 6.37.1 the fifth business day following the determination of the dispute; or
  - 6.37.2 if an arbitrator appointed under paragraph 6.36 so determines, another date including the original TSP settlement date.

**BOUNDARIES AND TITLE**

- 6.38 The Crown is not required to point out the boundaries of a transfer property.
- 6.39 If a transfer property is subject only to the encumbrances referred to in paragraph 6.2 he governance entity -
- 6.39.1 is to be treated as having accepted the Crown's title to the property as at the actual TSP settlement date; and
  - 6.39.2 may not make any objections to, or requisitions on, it.

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- 6.40 An error or omission in the description of a transfer property or its title does not annul its transfer.

**FENCING**

- 6.41 The Crown is not liable to pay for, or contribute towards, the erection or maintenance of a fence between a transfer property and any contiguous land of the Crown, unless the Crown requires the fence, in which case the provisions of the Fencing Act 1978 will prevail.
- 6.42 Paragraph 6.41 does not continue for the benefit of a purchaser from the Crown of land contiguous to a transfer property.
- 6.43 The Crown may require a fencing covenant to the effect of paragraphs 6.41 and 6.43 to be registered against the title to a transfer property.

**DELAYED TRANSFER OF TITLE**

- 6.44 The Crown covenants for the benefit of the governance entity that it will -
- 6.44.1 arrange for the creation of one computer freehold register for licensed land that is subject to a particular Crown forestry licence if that land -
    - (a) is not contained in one computer freehold register; or
    - (b) is contained in one computer freehold register but together with other land; and
  - 6.44.2 arrange for the creation of a computer freehold register for the land of a transfer property for land that -
    - (a) is not licensed land; and
    - (b) is not contained in a computer freehold register; or
    - (c) is contained in a computer freehold register or registers but together with other land; and
  - 6.44.3 transfer (in accordance with paragraph 6.5 or 6.6, whichever is applicable) the fee simple estate in a transfer property to which paragraph 6.44.1 or 6.44.2 applies as soon as reasonably practicable after complying with that paragraph in relation to the property but not later than five years after the settlement date.
- 6.45 If paragraph 6.44.3 applies to a transfer property, and paragraph 6.6 is applicable, the governance entity must comply with its obligations under paragraph 6.6.3 by a date specified by written notice by the Crown.
- 6.46 The covenant given by the Crown under paragraph 6.44 has effect and is enforceable, despite -
- 6.46.1 being positive in effect; and
  - 6.46.2 there being no dominant tenement.



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- 6.47 If paragraph 6.44 applies then, for the period from the actual TSP settlement date until the date that the Crown transfers the fee simple estate in the transfer property to the governance entity -
- 6.47.1 the governance entity will be the beneficial owner of the property; and
  - 6.47.2 all obligations and rights will be performed and arise as if the fee simple estate had been transferred to the governance entity on the actual TSP settlement date; and
  - 6.47.3 the governance entity may not serve a settlement notice under paragraph 6.50.

**INTEREST**

- 6.48 If for any reason (other than the default of the Crown) all or any of the amount payable by the governance entity to the Crown in relation to the purchased deferred selection property is not paid on the TSP settlement date -
- 6.48.1 the Crown is not required to give possession of the property to the governance entity; and
  - 6.48.2 the governance entity must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST if any) for the period from the TSP settlement date to the actual TSP settlement date.
- 6.49 Paragraph 6.48 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

**SETTLEMENT NOTICE**

- 6.50 If, without the written agreement of the parties, settlement of the purchased deferred selection property is not effected on the TSP settlement date -
- 6.50.1 either party may at any time after the TSP settlement date serve notice on the other (a **settlement notice**) requiring the other to effect settlement; but
  - 6.50.2 the settlement notice is effective only if the party serving it is -
    - (a) ready, able and willing to effect settlement in accordance with the settlement notice; or
    - (b) not ready, able and willing to effect settlement only by reason of the default or omission of the other party; and
  - 6.50.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and
  - 6.50.4 time is of the essence under paragraph 6.50.3; and
  - 6.50.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by paragraph 5.4.
- 6.51 Paragraph 6.50, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

**6: TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

**FURTHER ASSURANCES**

- 6.52 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things that the other may reasonably require to give full force and effect to this part.

**NON-MERGER**

- 6.53 On transfer of a transfer property to the governance entity -
- 6.53.1 the provisions of this part will not merge; and
  - 6.53.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

**GST**

- 6.54 When the governance entity gives a written notice of election to purchase under part 5, it must include in that notice the following information in relation to the factual situation that will exist at the DSP settlement date and warrants the correctness of that information -
- 6.54.1 whether or not the governance entity is a registered person for GST purposes:
  - 6.54.2 the governance entity's registration number (if any):
  - 6.54.3 whether or not the governance entity intends to use the property for the purposes of making taxable supplies:
  - 6.54.4 whether or not the governance entity intends to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.
- 6.55 If any of that information provided in the election to purchase notice alters before the DSP settlement date, the governance entity must forthwith notify the Crown and warrants the correctness of that altered information.
- 6.56 If the information provided (subject to alteration, if any) indicates that, at the DSP settlement date, each of the following statements is correct and the supply of the property is a taxable supply by the Crown, the parties agree that GST will apply to the supply at the rate of zero percent:
- 6.56.1 the governance entity is a registered person for GST purposes; and
  - 6.56.2 the governance entity intends to use the property for the purposes of making taxable supplies; and
  - 6.56.3 the governance entity does not intend to use the property as a principal place of residence of the governance entity or a person associated with the governance entity under section 2A(1)(c) of the Goods and Services Tax Act 1985.

## **SUBPART B: PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

### **APPLICATION OF THIS SUBPART**

- 6.57 This subpart applies to the transfer by the Crown to the governance entity of the purchased deferred selection geothermal assets (the **purchased assets**).

### **TRANSFER**

- 6.58 The Crown must transfer the purchased assets to the governance entity subject to, and where applicable with the benefit of -
- (a) the disclosed encumbrances affecting or benefiting the purchased assets (as they may be varied by a non-material variation, or a material variation entered into under paragraph 6.70.4(a)); and
  - (b) any additional encumbrances affecting or benefiting the purchased assets entered into by the Crown under paragraph 6.70.4(b); and
- 6.59 The Crown must pay any costs required to transfer the purchased assets to the governance entity.

### **POSSESSION**

- 6.60 Possession of the purchased assets must, on the TSP settlement date for the purchased assets -
- 6.60.1 be given by the Crown; and
  - 6.60.2 taken by the governance entity; and
  - 6.60.3 be subject only to any encumbrances referred to in paragraph 6.58 that prevent possession being given and taken.
- 6.61 The purchased assets transferred under paragraph 6.60 must not be mortgaged or charged.

### **SETTLEMENT**

- 6.62 The transfer value of, or the amount payable by the governance entity for, the purchased assets is not affected by -
- 6.62.1 a non-material variation, or a material variation entered into under paragraph 6.70.4(a), of a disclosed encumbrance affecting or benefiting the purchased assets; or
  - 6.62.2 an additional encumbrance affecting or benefiting the purchased assets entered into by the Crown under paragraph 6.70.4(b).

### **APPORTIONMENT OF OUTGOINGS AND INCOMINGS**

- 6.63 If, as at the actual TSP settlement date for the purchased assets -
- 6.63.1 the outgoings for the purchased assets pre-paid by the Crown for any period after that date exceed the incomings received by the Crown for any period after

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that date, the governance entity must pay the amount of the excess to the Crown; or

- 6.63.2 the incomings for the purchased assets received by the Crown for any period after that date exceed the outgoings for the purchased assets pre-paid by the Crown for any period after that date, the Crown must pay the amount of the excess to the governance entity.
- 6.64 The outgoings for the purchased assets for the purposes of paragraph 6.63 do not include insurance premiums and the governance entity is not required to take over from the Crown any contract of insurance in relation to the purchased assets.
- 6.65 An amount payable under paragraph 6.63 in relation to the purchased assets must be paid on the actual TSP settlement date for the purchased assets.
- 6.66 The Crown must, before the actual TSP settlement date for the purchased assets, provide the governance entity with a written statement calculating the amount payable by the governance entity or the Crown under paragraph 6.63.

**FIXTURES, FITTINGS AND CHATTELS**

- 6.67 The transfer of the purchased assets includes all fixtures and fittings that were owned by the Crown, and affixed to the purchased assets, on the first date of the transfer period for the purchased assets.
- 6.68 Fixtures and fittings transferred under paragraph 6.67 must not be mortgaged or charged.
- 6.69 The transfer of the purchased assets does not include chattels.

**OBLIGATIONS AND RIGHTS DURING THE TRANSFER PERIOD**

- 6.70 The Crown must, during the transfer period for the purchased assets -
- 6.70.1 ensure the purchased assets are maintained in substantially the same condition, fair wear and tear excepted, as it was in at the first day of the period; and
- 6.70.2 pay the charges for electricity, gas, water, and other utilities that the Crown owes as owner of the purchased assets, except where those charges are payable by a tenant or occupier to the supplier; and
- 6.70.3 ensure the Crown's obligations under the Building Act 2004 are complied with in respect of any works carried out on the purchased assets during the period -
- (a) by the Crown; or
- (b) with the Crown's written authority; and
- 6.70.4 obtain the prior written consent of the governance entity before -
- (a) materially varying a disclosed encumbrance affecting or benefiting the purchased assets; or
- (b) entering into an encumbrance affecting or benefiting the purchased assets; or

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**6: TERMS OF TRANSFER FOR COMMERCIAL REDRESS PROPERTIES, PURCHASED DEFERRED SELECTION PROPERTY AND PURCHASED DEFERRED SELECTION GEOTHERMAL ASSETS**

- (c) procuring a consent, providing a waiver, or giving an approval, that materially affects the property, under the Resource Management Act 1991 or any other legislation; and
- 6.70.5 use reasonable endeavours to obtain permission for the governance entity to enter and inspect the purchased assets under paragraph 6.71.2 if the governance entity is prevented from doing so by the terms of an encumbrance referred to in paragraph 6.58.
- 6.71 The governance entity, during the transfer period in relation to the purchased assets –
  - 6.71.1 must not unreasonably withhold or delay any consent sought under paragraph 6.70.4 in relation to the purchased assets; and
  - 6.71.2 may enter and inspect the purchased assets on one occasion -
    - (a) after giving reasonable notice; and
    - (b) subject to the terms of any encumbrance referred to in paragraph 6.58; and
  - 6.71.3 must comply with all reasonable conditions imposed by the Crown in relation to entering and inspecting the purchased assets.

**OBLIGATIONS AFTER SETTLEMENT**

- 6.72 The Crown must -
  - 6.72.1 if it receives a written notice in relation to the purchased assets from the Crown, a territorial authority, or any other party after the actual TSP settlement date for the purchased assets -
    - (a) comply with it; or
    - (b) provide it promptly to the governance entity or its solicitor; or
  - 6.72.2 pay any penalty incurred by the governance entity to the person providing the written notice as a result of the Crown not complying with paragraph 6.72.1.

**RISK AND INSURANCE**

- 6.73 The purchased assets are at the sole risk of -
  - 6.73.1 the Crown, until the actual TSP settlement date for the purchased assets; and
  - 6.73.2 the governance entity, from and including the actual TSP settlement date for the purchased assets.
- 6.74 If at any time following the actual TSP settlement date the governance entity elects to abandon the purchased assets (or any part of the purchased assets) it will, at its cost -
  - 6.74.1 do all things necessary to safely abandon the purchased assets in accordance with, as applicable at the time of abandonment, the accepted industry practice and any relevant industry, regulatory and statutory standards; and

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6.74.2 without limiting paragraph 6.74.1, remove all physical works that comprise the purchased assets, fill the bore hole to the required depth, and reinstate the land area immediately around the purchased assets to a similar condition to that existing prior to abandonment in the immediate surrounding area.

**DAMAGE AND DESTRUCTION**

6.75 Paragraphs 6.76 to 6.84 apply if, before the actual TSP settlement date for the purchased assets -

6.75.1 the purchased assets are destroyed or damaged; and

6.75.2 the destruction or damage has not been made good.

6.76 Paragraph 6.77 applies if, as a result of the destruction or damage, the purchased assets are not operable.

6.77 Where this paragraph applies the governance entity may cancel its transfer by written notice to the Crown.

6.78 Notice under paragraph 6.77 must be given before the actual TSP settlement date.

6.79 Paragraph 6.80 applies if the purchased assets are -

6.79.1 operable, despite the destruction or damage; or

6.79.2 as a result of the damage or destruction, is not operable, but its transfer is not cancelled under paragraph 6.77 before the actual TSP settlement date.

6.80 Where this paragraph applies -

6.80.1 the governance entity must complete the transfer of the purchased assets in accordance with this deed; and

6.80.2 the Crown must pay the governance entity -

(a) the amount by which the value of the purchased assets have diminished, as at the actual TSP settlement date for the purchased assets, as a result of the destruction or damage;

(b) plus GST if any.

6.81 The value of the purchased assets for the purposes of paragraph 6.80.2 is to be its transfer value as set out in part 4.

6.82 An amount paid by the Crown under paragraph 6.80.2 is a partial refund of the purchase price.

6.83 Each party may give the other notice -

6.83.1 requiring a dispute as to the application of paragraphs 6.77 to 6.82 be determined by an arbitrator appointed by the Arbitrators' and Mediators' Institute of New Zealand; and

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- 6.83.2 referring the dispute to the arbitrator so appointed for determination under the Arbitration Act 1996.
- 6.84 If a dispute as to the application of paragraphs 6.77 to 6.82 is not determined by the TSP settlement date, the date the parties must comply with their obligations on transfer of the purchased assets is to be -
- 6.84.1 the fifth business day following the determination of the dispute; or
- 6.84.2 if an arbitrator appointed under paragraph 6.83 so determines, another date including the original TSP settlement date.

**INTEREST**

- 6.85 If for any reason (other than the default of the Crown) all or any of the amount payable by the governance entity to the Crown in relation to the purchased assets is not paid on the TSP settlement date -
- 6.85.1 the Crown is not required to give possession of the purchased assets to the governance entity; and
- 6.85.2 the governance entity must pay the Crown default interest at the rate of 12% per annum on the unpaid amount (plus GST if any) for the period from the TSP settlement date to the actual TSP settlement date.
- 6.86 Paragraph 6.85 is without prejudice to any of the Crown's other rights or remedies available to the Crown at law or in equity.

**SETTLEMENT NOTICE**

- 6.87 If, without the written agreement of the parties, settlement of the purchased assets is not effected on the TSP settlement date -
- 6.87.1 either party may at any time after the TSP settlement date serve notice on the other (a **settlement notice**) requiring the other to effect settlement; but
- 6.87.2 the settlement notice is effective only if the party serving it is -
- (c) ready, able and willing to effect settlement in accordance with the settlement notice; or
- (d) not ready, able and willing to effect settlement only by reason of the default or omission of the other party; and
- 6.87.3 upon service of a settlement notice, the party on which it is served must effect settlement within 10 business days after the date of service (excluding the date of service); and
- 6.87.4 time is of the essence under paragraph 6.87.3; and
- 6.87.5 if the party in default does not comply with the terms of a settlement notice, the other party may cancel the agreement constituted by paragraph 5.6.

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- 6.88 Paragraph 6.87, and the exercise of rights under it, is without prejudice to any other rights or remedies, at law, in equity, or otherwise, that the party not in default may have.

**FURTHER ASSURANCES**

- 6.89 Each party must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things that the other may reasonably require to give full force and effect to this part.

**NON-MERGER**

- 6.90 On transfer of the purchased assets to the governance entity -
- 6.90.1 the provisions of this part will not merge; and
- 6.90.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

**GST**

- 6.91 When the governance entity gives a written notice of election to purchase under part 5, it must include in that notice the following information in relation to the factual situation that will exist at the DSP settlement date and warrants the correctness of that information -
- 6.91.1 whether or not the governance entity is a registered person for GST purposes:
- 6.91.2 the governance entity's registration number (if any).
- 6.92 If any of that information provided in the election to purchase notice alters before the DSP settlement date, the governance entity must forthwith notify the Crown and warrants the correctness of that altered information.



## 7 NOTICE IN RELATION TO REDRESS PROPERTIES, DEFERRED SELECTION PROPERTY AND DEFERRED SELECTION GEOTHERMAL ASSETS

- 7.1 If this schedule requires the governance entity to give notice to the Crown in relation to or in connection with a redress property, the deferred selection property, or deferred selection geothermal assets, the governance entity must give the notice in accordance with part 4 of the general matters schedule, except the notice must be addressed to the land holding agency for the property at its address or facsimile number provided -
- 7.1.1 in paragraph 7.2; or
- 7.1.2 if the land holding agency has given notice to the governance entity of a new address or facsimile number, in the most recent notice of a change of address or facsimile number.
- 7.2 Until any other address or facsimile number of a land holding agency is given by notice to the governance entity, the address of each land holding agency is as follows for the purposes of giving notice to that agency in accordance with this part.

Land holding agency	Address and facsimile number
Department of Conservation	Nokia House 13-27 Manners Street Wellington 6011  Fax: +64 4 381 3057
The Treasury	1 The Terrace Wellington 6011  Fax: +64 4 473 0982

## 8 DEFINITIONS

8.1 In this schedule, unless the context otherwise requires, **party** means each of the governance entity and the Crown.

8.2 In this deed, unless the context otherwise requires -

**acquired property** has the meaning given to it by paragraph 1.2.1; and

**actual TSP settlement date**, in relation to -

- (a) a transfer property, means the date on which settlement of the property takes place; and
- (b) the purchased assets, means the date on which settlement of the purchased assets takes place; and

**arbitration commencement date**, in relation to the determination of the market value of a separate valuation property means -

- (a) in relation to a referral under paragraph 5.17.2 the date of that referral; and,
- (b) in relation to an appointment under paragraph 5.17.3 or 5.17.4, a date specified by the valuation arbitrator under paragraph 5.17.5; and

**arbitration meeting**, in relation to the determination of the market value of a separate valuation property, means the meeting notified by the valuation arbitrator under paragraph 5.18.1; and

**deferred selection geothermal assets** means each property described in table 2 of part 4; and

**deferred selection property** means the property described in table 1 of part 4; and

**disclosed encumbrance**, in relation to -

- (a) a transfer property, means an encumbrance affecting or benefiting the property that is disclosed in the disclosure information about the property; and
- (b) the purchased assets, means an encumbrance affecting or benefiting the purchased assets that is disclosed in the disclosure information about the assets; and

**disclosure information** has the meaning given to it by paragraph 1.2.2; and

**DSP settlement date**, in relation to -

- (a) the purchased deferred selection property, means the date that is 20 business days after the Crown receives an election notice from the governance entity electing to purchase the property; and

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- (b) purchased deferred selection geothermal assets, means the date that is 20 business days after the Crown receives an election notice from the governance entity electing to purchase the assets; and

**election notice** means a written notice given by the governance entity in accordance with paragraph 5.4 or 5.5 electing whether or not to purchase the deferred selection property or deferred selection geothermal assets, as the case may be; and

**licence-splitting process** has the meaning given to it by paragraph 6.21; and

**market value**, in relation to a separate valuation property, has the meaning provided in the valuation instructions in appendix 1 to part 5; and

**notice of interest**, in relation to the deferred selection property or deferred selection geothermal assets, means a notice given by the governance entity under paragraph 5.1 in relation to the property or assets; and

**notification date**, in relation to the deferred selection property or deferred selection geothermal assets, means the date that the Crown receives a notice of interest in the property or assets from the governance entity; and

**purchased assets** has the meaning given to it in paragraph 6.57; and

**registered bank** has the meaning given to it by section 2(1) of the Reserve Bank of New Zealand Act 1989; and

**registered valuer** means a person registered as a valuer with the Valuers Act 1948; and

**separate valuation property** means the deferred selection property that table 1 of part 4 provides is to be separately valued; and

**settlement notice** has the meaning given to it by paragraph 6.50.1; and

**terms of transfer** means the terms of transfer set out in part 6; and

**transfer property** has the meaning given to it by paragraph 6.1; and

**transfer period** means, in relation to -

- (a) a commercial redress property, the period from the date of this deed to its actual TSP settlement date; and
- (b) the deferred selection property or deferred selection geothermal assets, the period from the notification date for that property or assets to its actual TSP settlement date; and

**transfer value**, in relation to -

- (a) a commercial redress property, means the transfer value provided in part 3 in relation to that property; and
- (b) the deferred selection property, means the amount payable by the governance entity for the transfer of the property determined or agreed in accordance with part 5; and

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- (c) deferred selection geothermal assets, means the transfer value for those assets set out in table 2 of part 4; and

**TSP settlement date** means, in relation to -

- (a) a commercial redress property, the settlement date (as defined in paragraph 6.1 of the general matters schedule); and
- (b) the purchased deferred selection property, the DSP settlement date for the property; and
- (c) the purchased deferred selection geothermal assets, the DSP settlement date for the assets; and

**valuation arbitrator**, in relation to a separate valuation property means the person appointed under paragraphs 5.9.2 or 5.10, in relation to the determination of its market value; and

**valuation date**, in relation to the deferred selection property, means the notification date in relation to the property.