

PARTIES:

1. **THE GRANTOR** [*PowerNet to insert name of grantor*]
2. **OTAGONET LIMITED** a duly incorporated company having its registered office at Invercargill.

BACKGROUND:

- A. The Grantor owns the Land.
- B. OtagoNet's business is transmitting and distributing electricity and it is an electricity distributor as defined in the Electricity Industry Act 2010.
- C. The Grantor has agreed to grant OtagoNet, as a perpetual easement in gross over and in respect of the Land, the rights and privileges in this Agreement.

AGREEMENT:**1. DEFINITIONS AND INTERPRETATION:****Definitions**

- 1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means this agreement and includes all attached schedules and plans.

"Easement" means the easement to be registered against the Land substantially in the form attached to Schedule 2 of this Agreement and containing all of the rights set out in that document.

"Easement Land" means the land described as "Easement Land" in the Annexure Schedule to the Easement, the approximate location of which is shown on the Provisional Plan.

"OtagoNet" means OtagoNet Limited and includes its successors and assigns.

"Grantor" means the person or persons described as Grantor in the Easement and includes its successors and permitted assigns.

"Land" means the land described as the "Land" in the Annexure Schedule to the Easement.

"Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

"LINZ" means Land Information New Zealand.

"Persons Under the Control of OtagoNet" includes any workmen, contractors, professional advisers or other employees or invitees authorised by OtagoNet pursuant to this Agreement.

“**Provisional Plan**” means the plan attached to Schedule 1 of this Agreement.

Other words or expressions contained in this Agreement have the same meaning as in the Easement.

Interpretation

- 1.2 In this Agreement, unless a contrary intention appears, the rules of interpretation to be applied shall be the same as those in the Easement.

2. RIGHTS OF OTAGONET

Rights Pending Registration of Easement

- 2.1 Whether or not the Easement has been executed or registered, OtagoNet shall have all the rights and powers (including the rights in respect of entry and Maintenance) as are set out in the Easement as if it were in full force and effect but as limited and restricted in this Agreement.

3. GRANT OF EASEMENT

Grant

- 3.1 The Grantor hereby grants the Easement to OtagoNet.

Registration

- 3.1 OtagoNet’s solicitor will:

- a. create a Landonline Workspace for the registration of the Easement instrument;
- b. prepare the Easement instrument in such Landonline Workspace; and
- c. provide to the Grantor or the Grantor’s solicitor the dealing number allocated by LINZ.

- 3.2 The Grantor will ensure that, within 14 days of receiving such dealing number, the Grantor’s solicitor:

- a. prepares in the Landonline Workspace all other electronic instruments (if any) required to fulfil the Grantor’s obligations under this Agreement; and
- b. certifies, signs and pre-validates those instruments and the Easement instrument in the Landonline Workspace,

and the Grantor will ensure that the Grantor’s solicitor promptly releases those instruments and the Easement instrument once OtagoNet’s solicitor has certified and signed them so that OtagoNet can submit them to LINZ for registration.

- 3.3 The Grantor is not required to comply with clause 3.2 if the Grantor executes a client authority & instruction form (as required by section 164A of the Land Transfer Act 1952) authorising OtagoNet’s solicitor to certify and register the Easement instrument on the Grantor’s behalf as an electronic e-dealing, provided the Grantor executes such form within 14 days of receiving it from OtagoNet’s solicitor.

- 3.4 OtagoNet will pay the LINZ fees for the registration of the Easement instrument. Where the Easement is Grantor-initiated (as determined by OtagoNet acting reasonably) the Grantor will reimburse OtagoNet for such fees on demand.

Payment

- 3.5 In consideration of the grant of Easement in clause 3.1 and any injurious affection to the Land, OtagoNet will pay to the Grantor \$[**PowerNet to insert total amount**] (inclusive of GST) apportioned as follows:
- a. \$[**PowerNet to insert amount**] for the Grant of the Easement; and
 - b. \$[**PowerNet to insert amount**] for injurious affection to the Land,
such amount will be paid by OtagoNet to the Grantor as follows:
 - c. 50% on execution of this Agreement; and
 - d. the balance on registration of the Easement.

Costs

- 3.6 Subject to clause 3.7, OtagoNet will pay the Grantor's reasonable solicitor costs of and incidental to perusing this Agreement and the Easement, provided that such costs are approved by OtagoNet in writing prior to their being incurred.
- 3.7 Where the Easement is Grantor-initiated (as determined by OtagoNet acting reasonably), the Grantor will:
- a. bear all of the Grantor's own costs of and incidental this Agreement and the Easement, including the Grantor's solicitor costs; and
 - b. promptly pay OtagoNet's solicitor costs of and incidental to this Agreement and the Easement.

4. CONSENTS

Consent of Registrar General of Lands to Form of Easement

- 4.1 The parties acknowledge that the consent of the Registrar General of Lands is required to the form of the Easement. In the event that such consent is not given the Grantor will grant OtagoNet a licence on the same terms as provided in this Agreement.

Modifications to Form of Easement

- 4.2 OtagoNet shall be entitled to make such modifications to the form and content of the Easement as shall be necessary or expedient to obtain the consent of the Registrar General of Lands, provided that any such change does not affect the Grantor's rights and obligations.

Grantor's Obligations

- 4.3 The Grantor will:
- a. Give and sign all consents (including consents under the Resource Management Act 1991) reasonably required for OtagoNet to exercise its rights under this Agreement;
 - b. Execute all plans and documents, including the Easement, within 14 days of receipt of a written request to do so by OtagoNet; and
 - c. Do all things reasonably necessary to enable OtagoNet to obtain and register the Easement over the Land.

If the Grantor fails to perform any provision in this clause 4.3 the Grantor irrevocably appoints OtagoNet to be the Grantor's attorney for the purpose of giving full effect to the

provisions of this clause 4.3, and to enter into and execute any documents, and to do any acts in the name of and on behalf of the Grantor as OtagoNet thinks necessary for the purposes stated in this Agreement. The production of this Agreement will be conclusive evidence of the consent of the Grantor to do anything done by OtagoNet under the powers conferred by this Agreement.

No Withholding of Information

- 4.4 The Grantor agrees with OtagoNet that the Grantor will not knowingly withhold from OtagoNet any interests, in writing or otherwise, affecting the Land for which a consent or an agreement may be required pursuant to the terms and conditions of this Agreement.

Consent of Third Parties

- 4.5 The Grantor authorises OtagoNet to obtain the consent to this Agreement of any chargeholders, mortgagees, caveators and encumbrance holders of any type which have or may acquire an interest in the Land.
- 4.6 This Agreement is sufficient authority for OtagoNet to request such consents and also to obtain the requisite certificates of title to enable registration of the Easement.
- 4.7 The Grantor will obtain the consent to this Agreement of any lessee.

5. CAVEAT

Registration of Caveat

- 5.1 The Grantor acknowledges that OtagoNet may register a caveat against the title to the Land to protect its interest under this Agreement.

Costs

- 5.2 The Grantor's costs for obtaining OtagoNet's consent as caveator will be borne by OtagoNet unless the Easement is Grantor-initiated (as determined by OtagoNet acting reasonably).

Dealings by Grantor

- 5.3 OtagoNet will not withhold its consent to any dealing with the Land where:
- a. The dealing does not involve the loss of OtagoNet's priority or any other rights of OtagoNet; and
 - b. The rights being acquired by any person as a result of the dealing do not adversely affect OtagoNet's rights.

6. TRANSFER OF RIGHTS AND OBLIGATIONS BY THE PARTIES

Disposal by Grantor

- 6.1 The Grantor will notify any party acquiring or intending to acquire an interest in any part of the Land (including any potential mortgagee) of the terms and conditions of this Agreement.

Deed of Covenant

- 6.2 The Grantor will not assign this Agreement or transfer or in any way dispose of the whole or any part of the Grantor's estate or interest in the Land (including granting any mortgage or other encumbrance) except with the prior written consent of OtagoNet which will not be withheld where the party acquiring the estate or interest enters into a Deed of Covenant pursuant to which that party undertakes and agrees:

- a. That it will be bound by and comply with the terms of this Agreement.
- b. That it will not assign transfer or in any way dispose of the whole or any part of its estate or interest in the Land without first obtaining a like Deed of Covenant from any party acquiring the estate or interest.
- c. To execute all plans, deeds, transfers, consents and other documents and all things necessary to give effect to the terms of this Agreement and to enable the registration of the Easement over any part of the Land if required.
- d. That it is not entitled to any payment from OtagoNet,

such Deed of Covenant to prepared by OtagoNet's solicitors and, except where the Easement is Grantor-initiated (as determined by OtagoNet acting reasonably), at OtagoNet's expense. Where the Easement is Grantor-initiated (as determined by OtagoNet acting reasonably) the Grantor will promptly pay OtagoNet's solicitor costs of and incidental to the Deed of Covenant.

7. **CONFIDENTIALITY**

- 7.1 This Agreement is strictly confidential to the parties and accordingly no party will disclose or permit to be disclosed any terms of this Agreement without the prior written consent of the other party. The following disclosure shall not be a breach of this clause.
- a. Disclosure made to professional advisors in relation to advice or opinions required pursuant to the terms and provisions of this Agreement where the confidentiality of the Agreement is made binding on the advisor.
 - b. Disclosures made to prospective purchasers or mortgagees or chargeholders of the Land and to the Grantor's financiers and bankers where such information is required to be disclosed to enable finance to be obtained or to comply with any existing contract but then only on the basis such persons acknowledge and agree to confidentiality in like terms of this clause.
 - c. Disclosures made to any mortgagees or chargeholders whose consent is required pursuant to this Agreement, but then only on the basis such persons acknowledge and agree to confidentiality in like terms of this clause.

8. **NOTICES**

- 8.1 A notice to be given under this Agreement shall be in writing and delivered or transmitted to the addresses shown below or to such other addresses either party may notify to the other in writing, and in any event shall be sufficiently given or served if actually received by the party:

Grantor

Name: [PowerNet to insert Grantor's full name]
Address: [PowerNet to insert Grantor's address]
Phone: [PowerNet to insert Grantor's phone number]
Email: [PowerNet to insert Grantor's email address]

OtagoNet

Name: The Chief Executive
Address: OtagoNet Limited

C/- 251 Racecourse Road

Invercargill

Phone: (03) 211 1899

9. **MISCELLANEOUS**

Merger

- 9.1 The provisions of clauses 5.1, 6.1, 6.2 and 9.5 shall become null and void on registration of the Easement. The other terms and conditions of this Agreement shall not merge upon registration of the Easement.

Severability

- 9.2 In the event that any part of this Agreement or the Easement becomes void, invalid or unenforceable at any time, that will not affect the validity of the rest of this Agreement or the Easement.

Further Assurance

- 9.3 The Grantor will from time to time sign, execute, and procure all such further documents, and shall undertake all such acts, matters, and things as shall be required to effect the provisions of this Agreement.

Entire Agreement

- 9.4 This Agreement constitutes the entire agreement between the parties and no earlier representation, warranty or agreement in relation to any matter dealt with in this Agreement has any force or effect from the date of this Agreement.

No Obligation

- 9.5 Nothing herein contained or implied shall compel OtagoNet to exercise all or any of its rights or to use the Easement Land.

Disputes

- 9.6 Any dispute arising between the parties to this Agreement which touches the construction meaning or effect of this Agreement or the rights or liabilities of the parties to this Agreement shall, unless otherwise specifically agreed in writing between the parties, be referred to an arbitration conducted in accordance with the provisions of the Arbitration Act 1996 of New Zealand or any statutory modification or re-enactment of that Act which may at the time of the dispute be in force.

EXECUTED AS AN AGREEMENT

EXECUTED for and on behalf of)
THE GRANTOR)
in the presence of:)

Witness Signature

Witness Name

Witness Occupation

Witness Address

EXECUTED for and on behalf)
of **OTAGONET**)
LIMITED by)
in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

SCHEDULE 1 TO EASEMENT AGREEMENT

PROVISIONAL PLAN

Refer to attached plan.

[PowerNet to attach diagram showing proposed easement location]

SCHEDULE 2 TO EASEMENT AGREEMENT

EASEMENT

Refer to attached Easement.

[PowerNet to attach relevant easement instrument]