

Promotional Services Deed

between
PowerNet Limited
and
[insert]



Promotional Services Deed

Date:

2019

Parties

PowerNet Limited ("PowerNet")

[insert] ("Promoter")

Background

- A. PowerNet has installed smart energy technologies, including equipment that logs electricity usage and hot water consumption, at the property at 245 Racecourse Road, Invercargill (the **Property**). The Property is being provided as a residential tenancy by The Power Company Limited as landlord (the **Landlord**) to the Promoter as tenant for a fixed term of 1 year pursuant to a residential tenancy agreement dated on or about the same date as this deed.
- B. PowerNet wishes to gather data on electricity usage and the potential electricity saving opportunities which may arise by using smart energy technologies in the Property and the Promoter's personal experience of the smart energy technology (the **Project**).
- C. The Promoter is committed to interacting with the technology to achieve the desired outcomes of the Project and wishes to have a greater understanding of electricity, technology and electricity savings and pricing.
- D. The parties have agreed that the Promoter will promote the Project in accordance with the terms and conditions of this deed.

This deed records

1. Term of Deed

- 1.1 The term of this deed is for a period of 12 months from **[insert]**, unless terminated earlier in accordance with clause 9 (the **Term**).

2. Promoters Obligations

- 2.1 The Promoter will during the Term participate in the following activities to promote the Project on such date and at such time as reasonably required by PowerNet:
 - (a) Quarterly videos for PowerNet's Facebook page; and
 - (b) Up to one interview with PowerNet per month (which may be made public at the sole discretion of PowerNet).

- 2.2 The parties agree the promotions specified at clause 2.1 are the minimum requirements of this deed, and the Promoter may be required to participate in further promotional activities at PowerNet's request. Any request by PowerNet pursuant to this clause must be made at least 5 working days in advance before the promotional activity is to occur and the promotional activity must take place during reasonable hours.
- 2.3 Any promotional activities undertaken by the Promoter must be reviewed and approved by PowerNet in writing in advance before PowerNet releases them to the public. In the event of a live radio or television interview the parties will, as far as reasonably practical, discuss the content in advance and PowerNet will approve or amend that proposed content.
- 2.4 The Promoter will present the Project in a truthful, sincere and honest manner, and always conduct themselves with the highest standard of integrity and responsibility in keeping with the reputation of PowerNet. In complying with this clause 2.4, the Promoter shall not do anything which has the effect of undermining or was intended to undermine PowerNet or the Project.
- 2.5 During the Term the Promoter will maintain an internet account and access to a computer and/or smart device with sufficient capability to connect with, monitor and understand and interact with the technology installed in the Property.

3. **PowerNet's Obligations**

- 3.1 PowerNet will, during the Term, provide the Promoter with assistance in order to help the Promoter understand the Project's purpose, how to best use the smart technology installed in the Property, and the Electric Vehicle, electricity pricing and methods for interacting with the technology to achieve the desired outcomes of the Project.
- 3.2 The parties agree PowerNet may, with the consent of the Landlord, install additional technology or appliances in the Property from time to time at a time which reasonably suits both PowerNet and the Promoter.

4. **Electric Vehicle**

- 4.1 The parties agree that during the Term, the Promoter will have the use of an electric vehicle being a 2015 Nissan Leaf with 24kWh battery and registration number KLY148 owned by PowerNet (the **Electric Vehicle**). The Electric Vehicle is sign-written and the Promoter will not remove any signage from the Electric Vehicle.
- 4.2 The Promoter must ensure the Electric Vehicle is:
- (a) only driven by persons who:
 - (i) Hold a valid New Zealand Drivers Licence and are compliant with any conditions specified on their licence; and
 - (ii) Are over the age of 25 years.
 - (b) operated at all times with due care, skill and diligence.
 - (c) made available for maintenance and servicing when required by PowerNet.

- 4.3 The Promoter will be responsible for any traffic offences incurred while driving or parking the Electric Vehicle during the Term.
- 4.4 PowerNet will maintain an insurance policy over the Electric Vehicle during the Term and be responsible for the insurance premiums. PowerNet will advise and determine (at its sole discretion) which people nominated by the Promoter may be named on the policy.
- 4.5 PowerNet will ensure the Electric Vehicle has a valid warrant of fitness and registration at the Commencement Date, and (subject to clause 4.8) PowerNet will be responsible for any maintenance and registration costs during the Term.
- 4.6 In the event any damage occurs to the Electric Vehicle during the Term, the Promoter must notify PowerNet immediately of all the circumstances surrounding the damage and liaise with PowerNet's insurer's where required. Any insurance excess payable pursuant to an insurance claim will be paid by PowerNet, unless the Promoter was responsible for the damage, in which case the Promoter will pay.
- 4.7 If the Electric Vehicle is damaged beyond repair PowerNet are not obliged to replace the Electric Vehicle.
- 4.8 The Promoter will fully indemnify PowerNet against all claims, proceedings, actions, liabilities, damages, costs, expenses and losses (including full legal costs) suffered or incurred by PowerNet as a result of any loss of or damage to the Electric Vehicle or other property during the Term excluding fair wear and tear.

5. **Electricity Provider**

- 5.1 The Promoter will obtain their electricity and pricing plan for the Property from a retailer determined by PowerNet in its sole discretion. PowerNet may advise the Promoter of a change of retailer in writing and the Promoter will change providers within 10 working days of receiving such notice.

6. **Publications, Data and Ownership**

- 6.1 For the Purposes of this clause 6,
- (a) **Promotional Material** means all promotional materials that the Promoter produces in accordance with this deed including but not limited to radio interviews, video recordings, social media posts, photographs, materials produced by third parties in relation to the Project including images of the Promoter.
- (b) **Data** means the Promoters electricity and hot water usage and consumption data and data for energy related devices in relation to the Property or the Electric Vehicle, including electricity invoices.
- 6.2 The Promoter irrevocably grants to PowerNet the exclusive and unrestricted right to keep, use and publish the Promotional Material and Data for promoting the Project, and any other purpose PowerNet in its sole discretion decides, and in any manner and medium. The Promoter hereby releases all claims to profits that may arise from the use of the Promotional Material and/or Data and surrenders all proprietary rights in relation to the Promotional Material and Data.

- 6.3 The Promoter will not use PowerNet's logo, or the Project's logo or any other trademark associated with PowerNet without the prior written approval of PowerNet.
- 6.4 The Promoter agrees to give PowerNet the right to electronically access the Data during the Term.
- 6.5 The Promoter will provide copies of all electricity invoices they receive for the Property with PowerNet within 5 working days of receipt.
- 6.6 The Promoter will not interfere with any electricity monitoring equipment installed on the Property or in the Electric Vehicle.

7. **Warranties and Indemnity**

- 7.1 The Promoter warrants to PowerNet that they have full power to make this Agreement, that any promotional material they produce is their own original work and that it has not been previously published anywhere, and is in no way whatsoever a violation or infringement of any existing copyright or licence, or any other right of any person or party whatsoever and agrees to indemnify PowerNet against all actions, suits, proceedings, claims, demands and costs (including any legal costs) made against PowerNet or its related entities by third parties that the Promoter's promotional activities under this agreement are in breach of that third party's rights.

8. **Disputes**

- 8.1 If a party has any dispute with the other party in connection with this deed:
 - (a) That party will promptly give full written particulars of the dispute to the other; and
 - (b) The parties will try to resolve the dispute in good faith.
- 8.2 If the dispute is not resolved within 10 working days of written particulars being given pursuant to clause 8.1(b) (or any longer period agreed to by the parties) the dispute will be referred to mediation by either party given written notice of such referral to mediation to the other. A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 8.3 The mediation procedure is as follows:
 - (a) The parties will appoint a mediator or if they fail to agree to such appointment within 14 days of the notice referring the dispute to mediation being given, the mediator will be appointed on request by either party by the President of the New Zealand Law Society or the President's nominee.
 - (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
 - (c) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
 - (d) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.

- (e) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 8.4 The terms of settlement are binding on the parties and override the terms of this deed if there is any conflict.
- 8.5 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 8.6 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period, are not admissible by the recipient in any arbitration or legal proceedings.
- 8.7 Either party may commence arbitration proceedings when mediation ceases under clause 8.3(d) by giving written notice to the other party.
- 8.8 If the dispute is referred to arbitration:
 - (a) The arbitration will be conducted by one arbitrator appointed by the parties.
 - (b) If the parties fail to agree on an arbitrator within 14 days of the notice commencing arbitration being given, the appointment will be made on request by either party by the President of the New Zealand Law Society or the President's nominee
 - (c) The arbitration will be conducted in accordance with the Rules in Schedules [1](#) and [2](#) of the Arbitration Act 1996.
- 8.9 Neither party will unreasonably delay the dispute resolution procedures in this clause 9.
- 8.10 This clause 8 does not apply to an application by either party for urgent interlocutory relief.
- 8.11 Pending resolution of any dispute the parties will perform this deed in all respects including performance of the matter which is the subject of dispute.

9. Termination

- 9.1 PowerNet can terminate this deed by notice in writing to the Promoter (the **Termination Notice**) at any stage if:
 - (a) the Promoter does not fulfil its obligations under this deed and either:
 - (i) the default is material and cannot be remedied; or
 - (ii) the default can be remedied but has not been 5 working days after the Promoter receives written notice of the default, but PowerNet cannot end this deed under this clause (ii) if the default has been remedied before the Provider receives a Termination Notice; or
 - (b) the Residential Tenancy Agreement between Southland Real Estate Limited as agent for The Power Company Limited and the Promoter in respect of the property at 245 Racecourse Road, Invercargill dated on or about the date of this deed expires or is terminated for any reason.

9.2 Termination or expiry of this deed will not affect:

- (a) any rights and remedies available to a party under this deed which have accrued up to and including the date of termination or expiry; and
- (b) the provisions of this deed which expressly, or by their nature, survive termination or expiry, including clauses 6 and 7.

9.3 Subject to clause 6, after expiry or termination of this deed for any reason, each party will, within five business days of written notice from the other party, return to the other party all of the other party's property (including the Electric Vehicle).

10. Relationship between the Parties

10.1 The Promoter agrees they are an independent contractor, and are not an employee, agent, partner or joint venture of PowerNet or any of its related entities. The Promoter agrees they have no authority to act on behalf of, represent or execute any contracts on behalf of PowerNet. Further, the Promoter has no ability to incur any debt, obligation or liability on behalf of PowerNet.

11. Notices

11.1 PowerNet's Details

Address for service	251 Racecourse Road, Invercargill
Telephone (8am - 5pm, Mon –Fri)	03 211 1899
Contact Person(s)	Kavi Singh and Kathryn McCoy

Promoters Details

Address for service	245 Racecourse Road, Invercargill
Telephone	[insert]

11.2 Any notices delivered pursuant to this deed must be delivered in writing to the above addresses for service. Notices delivered in person are deemed served on delivery. Notices delivered by post are deemed to be delivered 3 working days after posting.

11.3 The parties will notify each other immediately if any of the details specified in clause 11.1 change.

12. General

12.1 The Promoter may not assign or transfer their rights and obligations under this deed.

12.2 The Promoter will do or procure all other acts and things reasonably and necessary to implement and to carry out its obligations, and the intention of this deed.

12.3 Where the Promoter is more than one person, they are jointly and severally bound by the terms of this deed.

12.4 The parties agree that the rule of construction known as the contra proferentum rule does not apply to this deed.

Signed by

Signed by **PowerNet Limited** by:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by **[insert]** as Promoter in the presence of:

[insert]

Signature of witness

Name of witness

Occupation

Address

Signed by **[insert]** as Promoter in the presence of:

[insert]

Signature of witness

Name of witness

Occupation

Address