

LOAD TERMS AND CONDITIONS (NON-STANDARD)

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BACKGROUND

The purpose of these Load Terms and Conditions (Non-Standard) is to enable you to establish your network connection point with Orion. They form part of your Connection Agreement.

PART 1 – General Terms

1. DEFINITIONS

1.1 **Definitions:** Unless the context shows that a different meaning is clearly intended, in these Load Terms and Conditions (Non-Standard):

“Business Day” means any day that is not:

- (a) a Saturday or Sunday;
- (b) a public holiday (as that term is defined in the Holidays Act 2003) in Christchurch; or
- (c) a day in the Christmas shutdown period (23 December to 4 January).

“Confidential Information” of a party means any information that is provided or made available by that party (the **“Disclosing Party”**) to the other party (the **“Recipient”**) under or in connection with the Connection Agreement that:

- (a) a reasonable person would consider to be confidential; and/or
- (b) the Disclosing Party identifies in writing at the time of transmission as being confidential, except that information shall not be Confidential Information if:
 - (c) that information is available to the public through no fault of the Recipient; or
 - (d) the Recipient already has that information when it first receives it from the Disclosing Party; or
- (e) a third party provides that information to the Recipient (unless the third party directly or indirectly received the information as a result of a confidential disclosure to the Recipient); or
- (f) the Recipient develops that information independently of the Disclosing Party’s information.

“Connection Agent” means a person or entity authorised by Orion to carry out inspections, tests, and livening of connections to the Orion network.

“Connection Agreement” means the agreement signed by you, which sets out the specific details and terms of your connection, which incorporate these Load Terms and Conditions (Non-Standard) by reference.

“Consents” means all consents, licences, approvals, authorisations, statutory requirements, and permits that are reasonably required in relation to the Customer-Led Works and includes, where applicable, any archaeological or cultural requirements.

“Customer Contribution” means the amounts payable by the Customer to Orion as set out in the Connection Agreement.

“Customer-Led Works” means the work required to deliver a connection from the Installation at the Property to the Orion network (but does not include the Installation), where the Customer is directly engaging an SDP to deliver the connection to the Orion network.

“Easement” means any electrical easement (in gross) to be registered in favour of Orion in respect of the Customer-Led Works.

“Easement Agreement” means an agreement to grant an electrical easement (in gross) in favour of Orion in respect of the Customer-Led Works.

“End Date” means the later of the dates the Customer-Led Works are completed, the Installation is lived in and Orion receives evidence of this, and the Easement or other land interest is registered (if required), unless a party terminates the Connection Agreement early under clause 12.2, in which case, the End Date shall be adjusted accordingly.

“Extraordinary Event” means, in relation to a party, an event beyond the reasonable control of that party, which may include, for example:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, and pandemics;
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war;
- (d) contamination by radioactivity or any hazardous substances; or
- (e) disruption to supply chains or logistics (including unavailability or delayed delivery of equipment), where not caused by the affected party’s own act or omission,

but does not include a strike or other labour unrest that affects only that party, an increase in prices, or other general change in economic conditions.

“Installation” means all electrical wiring and equipment located within the boundary of the Property.

“Orion’s Contribution” means an amount payable by Orion to the SDP.

“Orion Accepted Design” means the design accepted by Orion in accordance with clause 18.

“Property” refers to the property at the address set out in your Connection Agreement.

“SDP” means the service delivery partner that is approved by Orion to deliver the Customer-Led Works.

“Start Date” means the date for the Customer-Led Works to begin, as set out in clause 2.2.

“Subdivision Letter” means a letter, setting out the land interest requirements to enable a subdivision’s connection with the Orion network, which must be signed by the registered proprietor of the Property.

“Work Order” means a document issued by Orion to an SDP, under Orion’s agreement with the SDP, allowing the SDP to access the Orion network for the purposes of undertaking the Customer-Led Works.

- 1.2 **Interpretation:** Unless the context requires otherwise, headings are not to be used in interpreting the Connection Agreement; a reference to a statute or the Electricity Industry Participation Code is to that statute or Electricity Industry Participation Code as amended or substituted from time to time; a reference to a document is to that document as amended or replaced from time to time; a reference to the singular includes the plural and vice versa; a reference to “includes” is a reference to “includes without limitation” and different grammatical forms of “includes” will be interpreted in the same way; a reference to a party is to that party’s successors and assigns.

2. TIMEFRAMES

- 2.1 **Term:** These Load Terms and Conditions (Non-Standard) apply from the date you sign your Connection Agreement and continue until the End Date.
- 2.2 **Start Date:** It is your responsibility to arrange with the SDP the Start Date for the Customer-Led Works after the Work Order has been issued in accordance with clause 19.1.

3. GENERAL ORION OBLIGATIONS

- 3.1 **Consents:** Orion is responsible for obtaining the relevant Consents required by law to be held in Orion’s name for the performance of the Customer-Led Works.

4. CUSTOMER OBLIGATIONS

- 4.1 **Provision of information:** You must provide Orion with any information that Orion has reasonably requested regarding the Customer-Led Works.
- 4.2 **Third party interests:** You must ensure that there are no third party rights or interests over the Property that will or might reasonably be expected to have a material adverse effect on the Customer-Led Works and/or any conveyance of electricity once the connection is livened.
- 4.3 **Safe distances:** You must comply with the minimum safe distances set out under the New Zealand Electrical Code of Practice for Electrical Safe Distances 2001 (NZECP 34:2001).
- 4.4 **Legal cable route:** You must ensure that any Installation is laid over a legal cable route.
- 4.5 **Strategic lines:** If the Installation or Customer-Led Works are within 35 metres of a strategic line (typically 33kV and/or 66kV lines supported by a steel structure), your Connection Agreement will set out any requirement for an Earth Potential Rise (**EPR**) assessment and any potential mitigations, including the estimated costs that you will be responsible for paying.

- 4.6 **Consents:** The Customer is responsible for obtaining any relevant Consents required, which are not required to be held in Orion's name for the performance of the Customer-Led Works. The Customer must provide evidence of such Consents and must comply with any conditions.
- 4.7 **Land interest requirements:** If the Connection Agreement identifies that an Easement or other land interest is required, the Customer agrees to carry out the requirements set out in the Connection Agreement, including, where relevant:
- (a) signing an Easement Agreement;
 - (b) paying all survey and legal costs to register the Easement or other land interest;
 - (c) procuring that the registered proprietor of the Property signs an Easement Agreement and/or Subdivision Letter; and
 - (d) doing all things necessary to enable registration of the Easement or other land interest.

5. OBLIGATIONS FOR BOTH PARTIES

- 5.1 **No surprises:** Each party must notify the other as soon as reasonably practicable of any actual or anticipated issues that could materially impact on the performance of its obligations under the Connection Agreement.
- 5.2 **Health and Safety:** Each party must comply with the Health and Safety at Work Act 2015 (**HSWA**), including the duty to consult, cooperate and coordinate with the other party and each relevant PCBU (as that term is defined in the HSWA) who has a duty in relation to the same matters under the Connection Agreement.
- 5.3 **Performance:** Each party must exercise reasonable care, skill and diligence in performing its obligations under the Connection Agreement and these Load Terms and Conditions (Non-Standard).

6. PROCESS FOR THE CUSTOMER-LED WORKS

- 6.1 Unless otherwise agreed with Orion, the Customer must directly engage an SDP to deliver the Customer-Led Works, and Part 2 of these Terms and Conditions (Non-Standard) apply to these Customer-Led Works.

7. PAYMENTS

- 7.1 **Customer Contribution:** The Customer must pay Orion the Customer Contribution specified in the Connection Agreement at the time and in the manner set out in the Connection Agreement.
- 7.2 **Orion Contribution:** If there is an Orion Contribution under the Connection Agreement, Orion will make payment of its Orion Contribution to the SDP after all of the following are completed:
- (a) the Customer has paid Orion its Customer Contribution;
 - (b) Orion has received satisfactory evidence of completion of the Customer-Led Works from the SDP; and

(c) Orion has received valid tax invoice from the SDP.

7.3 Other payments: You are responsible for any payments to any SDP other than the Orion Contribution (if any), or for procuring that the Property Owner makes such payments. The amount and due date of your payments will be as set out in your agreement with the SDP.

8. CONTRACT MANAGER

8.1 Role of Contract Manager: The Orion Contract Manager is responsible for managing the relationship between the parties and acting as a first point of contact for any issues that arise.

9. OWNERSHIP OF THE CUSTOMER-LED WORKS

9.1 Ownership: Unless otherwise agreed with us, Orion will own all electrical infrastructure and equipment as a result of the Customer-Led Works.

10. CONFIDENTIALITY AND PRIVACY

10.1 Confidentiality undertaking: Subject to clause 10.2, in relation to any Confidential Information received by or made available to a Recipient, the Recipient undertakes to the Disclosing Party that:

- (a) it will take all safeguards that are reasonable in the circumstances to receive and hold the relevant Confidential Information in confidence, and not disclose it to any person, for so long as it remains Confidential Information; and
- (b) it will put in place and maintain reasonable security measures to prevent any unauthorised person from using or accessing the Confidential Information in its possession or control.

10.2 Permitted Disclosures: A Recipient may disclose Confidential Information or personal information:

- (a) if required by law;
- (b) to the extent authorised by the Disclosing Party;
- (c) to its employees, professional advisers, auditors, service providers and independent contractors who have a specific need to have access to the Confidential Information in the course of their work for the Recipient and are legally obliged to the Recipient to keep it confidential; and
- (d) to the extent reasonably required for the Customer to receive the full contemplated benefit of the Customer-Led Works (for example, to the Connection Agent).

10.3 Privacy: Orion's Privacy Statement (<https://www.oriongroup.co.nz/privacy-statement>) applies to your Connection Agreement. You agree to be bound by this.

11. LIABILITY

11.1 General: Subject to clause 11.2 and 11.3, each party (the First Party) is liable to the other party for direct loss or damage caused by the First Party arising due to any breach by the First Party of the Connection Agreement, including these Load Terms and Conditions (Non-Standard).

- 11.2 **Consequential loss exclusion:** Neither party shall be liable to the other for any indirect loss, consequential loss (including, but not limited to, incidental or special damages), loss of profit, loss of revenue, loss of use, loss of contract, loss of opportunity, or loss of goodwill.
- 11.3 **Liability cap:** The maximum liability of a party to the other party under or in connection with the Connection Agreement is limited to the amount of the Contributions paid by both parties.
- 11.4 **Mitigation:** Each party must take all reasonable steps to mitigate any loss, damage, cost or expense it may suffer or incur arising out of or in connection with the Connection Agreement.
- 11.5 **Heads of law:** The limitations and exceptions of liability set out in the Connection Agreement apply regardless of the legal basis on which any claim is made, including any cause of action in or claim under contract, tort (including negligence), statute, equity, or any cause of action.
- 11.6 **No limitations:** Notwithstanding any other provision in the Connection Agreement, nothing in this clause 11 will limit or exclude a party's liability to the extent such liability:
- (a) arises from or in connection with that party's fraud, wilful default or failure to pay for any reason; and/or
 - (b) cannot lawfully be limited or excluded.

12. DISPUTE RESOLUTION

- 12.1 **Notification:** A party must notify the other as soon as reasonably practicable if it considers a matter under or in relation to your Connection Agreement, including these Load Terms and Conditions (Non-Standard) is in dispute.
- 12.2 **Next steps:** Please see the "Dispute resolution" section of the Connection Pricing Methodology document on Orion's website (<https://www.oriongroup.co.nz/our-story/pricing>) for further information on Orion's approach to dispute resolution.
- 12.3 **Code rights:** You also have rights under the Electricity Industry Participation Code (**the Code**) in respect of disputes about connection pricing methodologies. If you are a participant under the Code, you may commence the default dispute resolution process in Schedule 6.3 of the Code at any time in respect of any dispute about the mandatory connection pricing methodologies (the Code, clause 6B.12). If you are not a participant under the Code, Orion is required to attempt to resolve any such dispute in good faith (the Code, clause 6B.13). You may report a breach or possible breach of the Code to the Electricity Authority under regulation 9 of the Electricity Industry (Enforcement) Regulations 2010 at any time, or make a complaint to Orion under regulation 5 of those Regulations at any time.

13. TERMINATION AND EXPIRY

- 13.1 **Termination by the Customer:** Without limiting clause 13.5, you may terminate your Connection Agreement:
- (a) at any time by giving 20 Business Days' notice to Orion, provided that there has been no Orion Contribution paid and Customer-Led Works have not begun; or

- (b) by giving 10 Business Days' notice to Orion:
 - (i) if Orion becomes insolvent or ceases for any reason to continue in business; or
 - (ii) if Orion is in breach of any of its obligations under the Connection Agreement, including these Load Terms and Conditions (Non-Standard), and the breach is not remedied within 10 Business Days of the Customer providing notice of the breach and reasonable mitigation required.
 - (iii) if there are strategic lines and Orion gives the Customer written notice, in accordance with the Connection Agreement, of the costs associated with any required Earth Potential Rise assessment and reasonable mitigations, the Customer may issue to Orion a termination notice within 10 Business Days of receiving Orion's notice if the Customer does not agree to pay the notified costs;

13.2 Termination by Orion: Without limiting clause 13.5, Orion may terminate the Connection Agreement or these Load Terms and Conditions (Non-Standard), by giving 10 Business Days' notice to the Customer, if:

- (a) the Customer becomes insolvent or ceases for any reason to continue in business;
- (b) the Customer fails to make payment of any amount due under the Connection Agreement and the non-payment is not remedied within 10 Business Days after Orion gives notice of the non-payment;
- (c) the Customer is in breach of any of its obligations under the Connection Agreement or these Load Terms and Conditions (Non-Standard) and the breach is not remedied within 10 Business Days of Orion providing notice of the breach and the reasonable mitigation required; or
- (d) the Customer provides information to Orion that it knows, or ought to know, is misleading or inaccurate in any material respect.

13.3 Effect on rights: The termination or expiry of the Connection Agreement or these Load Terms and Conditions (Non-Standard) does not affect those rights of each party that:

- (a) accrued prior to the End Date; or
- (b) relate to any breach or failure to perform an obligation under the Connection Agreement that arose prior to the time of End Date.

13.4 Effect on obligations: Neither party shall have any obligations under the Connection Agreement or these Load Terms and Conditions (Non-Standard) after the End Date other than:

- (a) obligations that arise as a result of the rights referred to in clause 13.3; and
- (b) obligations under the following clauses:
 - (i) clauses 10, 13.3, 13.4, 13.5, and any other clauses that, by their nature, are clearly intended to continue in force past the End Date

which shall continue in full force and effect.

- 13.5 **Charges and Expenses paid in advance:** If your Customer Contribution was paid in advance, to the extent this relates to Customer-Led Works that were not performed prior to the End Date, Orion must refund the Customer Contribution minus any reasonable costs incurred by Orion as soon as reasonably practicable after the End Date.

14. EXTRAORDINARY EVENTS

- 14.1 **No breach if failure to perform:** Without limiting clause 14.3, neither party shall be liable to the other for any failure to perform its obligations under the Connection Agreement, including these Load Terms and Conditions (Non-Standard), where the failure is due to an Extraordinary Event.
- 14.2 **Obligations of affected party:** A party that is unable to perform an obligation as a result of an Extraordinary Event must:
- (a) take reasonable steps to mitigate the effects of its non-performance on the other party; and
 - (b) give notice to the other party as soon as reasonably practicable after it becomes aware that there is a material risk that it will not be able to perform an obligation, and the notice must include (to the extent known at the time) the following information:
 - (i) a description of the Extraordinary Event;
 - (ii) the extent of its inability to perform its obligations;
 - (iii) the estimated duration of that non-performance; and
 - (iv) the steps it intends to take in accordance with clause 14.2(a).
- 14.3 **Termination:** Where an Extraordinary Event occurs, either party may terminate the Connection Agreement because of that Extraordinary Event if it does so under clause 12.2.

15. AMENDED CUSTOMER-LED WORKS

- 15.1 **Amended Customer-Led Works:** The parties may agree to amend the Orion Accepted Design for the Customer-Led Works under the Connection Agreement. Any such amendment must be in writing. The cost of the amended Customer-Led Works will be covered:
- (a) by Orion if the amendment is required by Orion; or
 - (b) by the Customer if the amendment is requested by the Customer and accepted by Orion; or
 - (c) as otherwise agreed between the parties.

16. GENERAL

- 16.1 **No transfer:** Neither party may assign or transfer its rights or obligations under the Connection Agreement or these Load Terms and Conditions (Non-Standard) without the prior written consent of the other party (not to be unreasonably withheld).
- 16.2 **Incorporated documents:**

- (a) Documents that are incorporated by reference into the Connection Agreement or these Load Terms and Conditions (Non-Standard) are those in force at the time the Connection Agreement is entered into.
- (b) Orion may:
 - (i) make amendments to the incorporated documents that are neutral or beneficial to you at any time without notice; and
 - (ii) make amendments to the incorporated documents that are detrimental to you provided that Orion gives you at least 30 days' notice of the change by publishing the amended terms on Orion's website. If you do not agree with the change, you may terminate the Connection Agreement and clause 13.5 will apply to any Customer Contribution paid in advance.

16.3 **Notices:** Notices are to be delivered to the Contract Manager.

16.4 **Privity:** Unless expressly stated otherwise, no third party is entitled to enforce or take the benefit of the Connection Agreement.

16.5 **Governing law and jurisdiction:** The Connection Agreement and these Load Terms and Conditions (Non-Standard) are governed by and shall be construed in accordance with New Zealand law and both parties submit to the jurisdiction of the New Zealand courts.

PART 2 – Customer-Led Works

This Part 2 sets out key terms in relation to Customer-Led Works.

17. USE OF SDPS

- 17.1 The Customer must use an SDP approved by Orion for any Customer-Led Works and must ensure that the SDP complies with all relevant terms of this Part 2.
- 17.2 The SDP must hold all approvals required by law to safely and lawfully carry out the Customer-Led Works.
- 17.3 The Customer must promptly give Orion whatever information Orion may reasonably request from time to time about any Customer-Led Works.

18. DESIGN

- 18.1 Before construction of the Customer-Led Works commences, the Customer (or the SDP undertaking the design) must provide Orion with a copy of the proposed design of the Customer-Led Works, prepared by an SDP.
- 18.2 Orion will review the proposed design to confirm it meets Orion's standards. If Orion provides feedback on the proposed design, the Customer must revise the design and resubmit it to Orion for review.
- 18.3 Where Orion is required to consider the proposed design of the Customer-Led Works on more than one occasion (because Orion validly refused to approve the proposed design the first time approval was requested), Orion may charge the Customer Orion's reasonable costs of considering each subsequent proposed design.
- 18.4 Once Orion has accepted the design in writing, the design becomes the Orion Accepted Design and this will form the basis for the Customer-Led Works. No alteration to the Orion Accepted Design is to be made unless amended in accordance with clause 15.
- 18.5 The Orion Accepted Design will expire if the Customer-Led Works have not been constructed within 12 months of the date of the Connection Agreement. Due to possible changes in Orion's network, the Customer will have to re-submit the design to Orion for acceptance.
- 18.6 Orion has no liability for any loss or costs associated with the Orion Accepted Design, including any possible liability arising due to a failure by the Customer or the SDP to properly interpret or use the Orion Accepted Design.

19. TENDERING AND CONSTRUCTION

- 19.1 After the Orion Accepted Design has been issued, the Customer will tender the Customer-Led Works to approved service delivery partner(s) (unless otherwise agreed with Orion).
- 19.2 Within 10 Business Days of the later of the Customer paying the Customer Contribution and the Customer informing Orion that the service delivery partner has been appointed as the SDP for the purposes of the Connection Agreement, Orion will issue a Work Order to the SDP for construction

of the Orion Accepted Design. The Work Order will contain a purchase order for any Orion Contribution. The SDP must invoice Orion directly for the Orion Contribution in accordance with clause 7.2. The Orion Contribution will be in partial satisfaction of the amount the Customer is required to pay the SDP under the agreement the Customer has with the SDP for the Customer-Led Works.

- 19.3 The Customer is responsible for the Customer-Led Works and for making an agreement with the SDP, including arranging the relevant dates for the Customer-Led Works to commence and payment for the Customer-Led Works, other than the Orion Contribution. The Customer and the SDP must ensure that the Customer-Led Works are constructed in accordance with the Orion Accepted Design, Orion's network standards, all applicable laws, good industry practice, and the requirements of the Connection Agreement.
- 19.4 Any reduction in specified ground cover over installed electrical infrastructure caused by the Customer-Led Works will need to be remedied by and at the cost of the Customer or its SDP. In particular, Environment Canterbury's requirements for swales for stormwater retention purposes may result in swales and stormwater retention facilities being constructed over or near installed network electrical reticulation. Access to the front of any kiosk must be available in all weathers, with no water races, potential water filled swales, or open drains directly in front of kiosks. There must be a flat apron of ground in front of any proposed electrical kiosk to allow safe operation at all times. The apron must be at least the full width of the site and a minimum of 1.5m wide and be of stable material. Before construction of swales over or near installed electrical infrastructure, please discuss the implications with the Contract Manager so that appropriate steps can be taken to safeguard Orion's network.
- 19.5 The Customer and the SDP must promptly give Orion any information Orion reasonably requests about the construction of the Customer-Led Works and allow Orion to undertake site observations.
- 19.6 If requested by Orion, the Customer:
- (a) will not unreasonably withhold consent to Orion flying a drone or UAV (unmanned aerial vehicle) over the Customer-Led Works to capture accurate electronic as-built records; and
 - (b) agrees to give Orion one week's written notice of the planned cable installation date to ensure Orion can arrange for the drone/UAV survey before trenches are filled in.
- 19.7 If any part of the Customer-Led Works is sealed, covered or buried before Orion or a Connection Agent undertakes an inspection or test, the Customer and its SDP must uncover or expose the works where required by Orion.
- 19.8 The Customer shall procure that the SDP immediately repairs and make good any defect (which arises from faulty materials or faulty workmanship) notified to the Customer or its SDP by Orion or its agent within a period of twenty-four months from the date of liveness (**the Defects Liability Period**).
- 19.9 The Customer and SDP must ensure the Customer-Led Works do not encroach on property outside the boundaries of any relevant easements.

20. LIVENING

20.1 **Safety and Quality:** To allow Orion to comply with our safety and quality obligations for our electricity distribution network, prior to livening, you must ensure that the Installation complies with the following (see <https://www.oriongroup.co.nz/connections/network-connection-standard>):

- (a) the Orion Network Connection Standard;
- (b) the Electricity Act 1992 and associated codes of practice;
- (c) the Electricity (Hazards from Trees) Regulation 2003; and
- (d) the Electricity (Safety) Regulations 2010.

20.2 **Livening of equipment:** Before the connection is livened, the following must be completed:

- (a) any relevant Easement Agreement, Subdivision Letter, or other land arrangement as agreed with Orion, must be signed by all required parties; and
- (b) for the Installation, there must be a Certificate of Compliance (**COC**) issued by a registered electrician and a Record of Inspection (**ROI**) completed by a registered inspector.

The authorised Connection Agent will then liven the connection to Orion's network, issue an Electrical Safety Certificate, and provide the relevant documentation to Orion. Where there is underground reticulation, acceptable as-built records and cable test certificates must be provided to Orion.

20.3 **What happens if equipment is not livened:** If the connection is not livened within 12 months from the completion of the Customer-Led Works, due to the Customer's delay, Orion may take reasonable steps to recover the infrastructure and equipment enabling the connection to the Orion network.

21. SECTION 224 CLEARANCE (APPLICABLE FOR SUBDIVISIONS)

21.1 On request from the Customer, Orion will provide a letter for the purpose of satisfying Council's conditions of subdivision consent (**s224 Clearance Letter**) stating the subdivision lots have the ability to connect to the Orion electrical network, provided the following requirements have been met:

- (a) Orion has received an approved Council Street Numbering Plan for the subdivision; and
- (b) Orion has received electronic as-built records for the network electrical reticulation; and
- (c) Orion has received a copy of the subdivision resource consent decision and approved scheme plan; and
- (d) The Customer-Led Works have been livened.