

**NGAWHA GENERATION LIMITED**

**CORPORATE GOVERNANCE**

**CODE**

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## 1. Introduction

- 1.1 Ngawha Generation Limited (**NGL**) and its directors recognise that there is a strong link between good governance and performance. The directors of NGL are committed to ensuring that it and its subsidiaries conduct their business in a transparent manner and accordance with the highest ethical standards and applicable corporate governance best practice.
- 1.2 The Financial Markets Authority (FMA) (which succeeded the Securities Commission) has published revised guidance on corporate governance and published a new handbook reflecting revised corporate governance principles. The NGL Board although not legally required to do so, has established a Corporate Governance Code which reflect these principles.
- 1.3 NGL has chosen to substantially comply with the corporate governance principles and guidelines issued by the FMA. In doing so, it recognises that the guidelines are not a checklist or set of rules and the Company has attempted to implement the spirit and intent of the principles and guidelines. The Company will report annually on compliance with those principles
- 1.4 This Governance Code consists of a series of formal charters and policies which address various governance topics.
- 1.5 Governance principles and best practice will continue to evolve. This Governance Code and the charters and protocols which comprise it will be kept under review to ensure they are current.
- 1.6 In this Governance Code including the Annexures, references to “Ngawha Generation,” “NGL” and the “Company” are references to Ngawha Generation Limited and references to “Board” are references to the board of directors of Ngawha Generation Limited.
- 1.7 The Board of Top Energy Limited, NGL’s holding company, has determined that (unless otherwise determined by Top Energy Limited) all its subsidiaries will prepare a governance code to the same or similar effect as that adopted by the Top Energy Limited Board. This Governance Code meets this requirement.

## 2. Ethics

- 2.1 The FMA corporate governance principles refer to the establishment and disclosure of a company code of conduct or ethics to guide compliance with legal and other obligations to legitimate stakeholders.
- 2.2 NGL has adopted a code of ethics which is Annexure 1.

## 3. Board Charter

- 3.1 A charter governing how the directors of NGL will conduct themselves (**Board Charter**) has been adopted.

3.2 In general, the Board Charter outlines the purpose and objective of NGL, the Board's main functions, appointment and expectations of directors, the role of the Chair of the Board, Committees, the CEO, and the review of the performance of the Board.

3.3 The Board Charter is Annexure 2.

#### 4. **Board Committees**

4.1 Under NGL's Constitution, the Board may from time to time establish appropriate committees to assist it by focusing on specific responsibilities in greater detail than is possible for the Board as a whole, reporting to the NGL Board and making any necessary recommendations.

4.2 The Board has adopted a standard form committee charter which is Annexure 3.

4.3 There is one standing committee, the Audit and Risk Committee. The Audit and Risk Committee charter is Annexure 4.

#### 5. **Performance**

The Board has adopted a directors' annual performance evaluation process and policy. This is Annexure 5.

#### 6. **Shareholder and Stakeholder Engagement**

The Board recognises that engagement with its shareholder and other stakeholders will generally occur through engagement by Top Energy Limited with its shareholder and stakeholders. The requirements of this Governance Code support such engagement. While no specific shareholder and stakeholder policy forms part of this Governance Code, the NGL Board Charter allows for adoption of a formal policy to be considered and, if appropriate, adopted and incorporated into this Code.

#### **Risk recognition and management**

6.1 NGL's policies relating to risk include procedures regarding risk:

- (a) oversight;
- (b) identification and the profile of such risks;
- (c) management;

(d) compliance and control.

6.2 The Risk Management policy is Annexure 6.

7. **Director and Executive Remuneration and reimbursement of expenses**

The Company's remuneration and expenses policy for directors and executives is Annexure 7.

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## **ANNEXURE 1**

### **Ngawha Generation Limited**

#### **Code of Ethics**

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This Code of Ethics is the framework of the standard by which the directors, employees, contractors for personal services and advisors of Ngawha Generation Limited and its related companies are expected to conduct their professional lives and has been approved by the Board. The Company is a wholly owned subsidiary of Top Energy Limited and has adopted the Values which apply to all Directors and employees of the Top Energy Group (Top Energy people) This Code is not intended to prescribe an exhaustive list of acceptable and non-acceptable behaviour; rather it is intended to facilitate decisions that are consistent with the Top Energy values, business goals and legal and policy obligations, thereby enhancing performance outcomes. Top Energy people must familiarise themselves with the Top Energy values, as they govern their behaviour while they are employed by Ngawha Generation.

An annual report on action taken in respect of serious breaches of this Code of Ethics will be published.

Directors and employees who are proven to have breached this Code of Ethics will face disciplinary action which, depending on the seriousness and severity of the breach, could include dismissal or legal action or both.

Directors and managers are expected to provide leadership according to these standards of professional ethics and to ensure that they are communicated to Top Energy Generation people who report to them and that where necessary, training on the Code of Ethics will be provided to them.

Ethical questions, or concerns about an ethical question or knowledge of a breach of a legal obligation or a Ngawha Generation policy, should be raised with the Chief Executive as soon as possible. If this is not appropriate, contact the Chair of the Board or the Chair of the Audit and Risk Committee. (Refer to Clause 12, Reporting Concerns, for more information).

#### **1. Commitment to honesty, integrity and ethical behaviour**

Top Energy people will act honestly, observe the highest standards of ethical behaviour and conduct and will act with personal and professional integrity.

#### **2. Conflicts of Interest**

Top Energy people will not, without the prior consent of Ngawha Generation:

- engage in any other business or commercial activities which would conflict with their ability to perform their duties for Ngawha Generation;
- support a political party or organisation, other than in a personal capacity. This does not preclude attendance and membership of the local branches of the major political parties where the Group's interests can be advanced.
- be directly or indirectly interested or concerned, in any capacity including as a material shareholder (i.e. a shareholder who holds more than 5% of the shares), or as a director, employee, or independent contractor with any other business in the electricity industry; and
- engage in any other activity which could conflict with Ngawha Generation's interests.

### **3. Gifts**

Top Energy people will not accept gifts or personal benefits from external parties if it could be perceived that such acceptance might compromise or influence any decision by Ngawha Generation. Any offer of a gift must be reported by the staff member to the Chief Executive, or in the case of a Director, to the Chair. Distribution of any gifts received will be carried out transparently at the direction of the Chief Executive and may include retention by the Director or staff member receiving the gift, "raffling" amongst all staff, return of the gift or donation to a charity in the Far North.

### **4. Corporate Opportunities**

Top Energy people are expected to advance Ngawha Generation's legitimate interests when the opportunity to do so arises.

Top Energy people will not:

- take for themselves any opportunity discovered through the use of Ngawha Generation property, information or position;
- use Ngawha Generation property (including Ngawha Generation's name), information or position for personal gain;
- compete with Ngawha Generation;
- use information that comes from their roles at Ngawha Generation, if that information has not been reported publicly.

### **5. Confidentiality**

Top Energy people will maintain and protect the confidentiality of information entrusted to Ngawha Generation about work colleagues, stakeholders and Ngawha Generation's business and financial affairs, except where disclosure is allowed by Ngawha Generation or is required by law.

### **6. Behaviours**

Top Energy people will:

- undertake their duties in accordance with Ngawha Generation values;
- always watch over and assist each other to be safe.
- Conduct themselves in a way that demonstrates their honesty is beyond question and will not behave in a manner that has the potential to bring Ngawha Generation's reputation into disrepute;
- deal fairly and honestly with other people at Ngawha Generation and Ngawha Generation's professional advisors and stakeholders and not act in a manner likely to mislead or deceive;
- not enter into transactions or make promises on behalf of Ngawha Generation that Ngawha Generation cannot or does not intend to honour;
- undertake their duties with care and diligence;
- ensure that any personal opinions Top Energy people express are clearly defined as their own and are not represented to be the view of Ngawha Generation;
- value individual's differences and treat people in the workplace with respect in accordance with Ngawha Generation's philosophies of equal employment opportunities, and anti-harassment and discrimination policies;
- to the best of their ability, use reasonable endeavours to ensure that Ngawha Generation records and documents, including financial reports, are true, correct and conform to Ngawha Generation reporting standards and internal controls;
- not accept or offer bribes or improper inducements to or from anyone; and
- not otherwise participate in any illegal or unethical activity.

#### **7. Proper use of Ngawha Generation Assets and Information**

Top Energy people have a duty to protect Ngawha Generation assets from loss, damage, misuse, waste and theft. Ngawha Generation assets include systems, information, intellectual property and networks.

Top Energy people will:

- only use Ngawha Generation assets for lawful business purposes authorised by Ngawha Generation; and
- only create and only retain, information and communications required for business needs or to meet legal obligations.

#### **8. Compliance with Laws and Policies**

Top Energy people will:

- familiarise themselves with and comply with Ngawha Generation policies, frameworks and processes at all times (including those relating to equal employment opportunities and health and safety);

- abide by the laws, rules and regulations of New Zealand;
- undertake training on legal obligations and policies as required by management from time to time; and
- comply with all statutory and internal disclosure requirements on a timely basis.

## **9. Delegated Authority**

Top Energy people will:

- only act within the delegated authority framework and any authority that may be specifically given to them as a delegated authority holder; and
- ask their manager if they are uncertain as to their level of delegated authority.

## **10. Reporting Concerns**

The Company has a Protected Disclosure Policy (C5.24). Breaches of this Code of Ethics should be reported in accordance with that policy to a manager or the CEO, as appropriate. If this is not appropriate in the circumstances, breaches should be reported to the Chair of the Board of Directors or the Chair of the Audit and Risk Committee.

Ngawha Generation will fully support any employee who, acting in good faith, reports a breach, serious problem or wrongdoing. The identity of the person making the report will be kept confidential where possible – there may be situations however where the proper investigation of the matter inadvertently identifies the reporter or requires his or her identification.

Ngawha Generation requires all Directors, and managers who receive a report of an actual or suspected violation of this Code of Ethics to take all reasonable steps within their control to ensure that:

- the behaviour alleged in the report is thoroughly investigated;
- the rules of natural justice are observed in that investigation; and
- appropriate disciplinary action is taken if the allegation is substantiated.

## **11. Monitoring and Bi-Annual Review**

The directors will monitor adherence with this Code of Ethics and will review this Code every 2 years.

The bi-annual review of this Code of Ethics will be undertaken in accordance with the following process:

- the CEO will prepare a report on all concerns reported to him or her, the Chair of the Board or the Chair of the Audit and Risk Committee, under clause 10 of this Code

- directors and employees will be invited to comment generally on the Code of Ethics
- the CEO will, based on all concerns reported under clause 10 and comments made by employees will make such recommendations as he or she considers appropriate;

Notwithstanding the requirement to conduct a bi-annual review of the Code, if at any time it becomes apparent that as a result of notified breaches under the Code or otherwise, that changes to it should be made immediately, the CEO will bring such changes to the directors for consideration at the next appropriate directors meeting.

If you have feedback on the Code of Ethics please contact the Chief Executive, the Chair of the Board of Directors or the Chair of the Audit and Risk Committee.

## ANNEXURE 2

### Ngawha Generation Limited

#### Board Charter

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#### 1. ROLE OF THE BOARD

The Board is responsible for setting the strategic direction of the Company, overseeing the management of the Company, and ensuring effective execution of strategy by management, with the ultimate aim of increasing shareholder value. The Board is accountable to the shareholder for the performance of the Company.

##### 1.1. Company's Purpose and Objectives

The purpose of the Company (and members of its group, if any) is to operate as a successful business by carrying on the business of generating electricity through geothermal generation plants situated at the Ngawha Springs geothermal resource and through such other legal entities as it may establish, carrying on other businesses as the directors, after consultation with the shareholder, may determine.

The objective of the Company is to achieve the objectives set out in the Statement of Corporate Intent, a document negotiated and agreed each year, between the board of the holding company and its shareholder.

##### 1.2. Main Functions of the Board

In carrying out its role, the main functions of the Board are to:

- (a) review and approve the strategic, business, and financial plans prepared and recommended by management and to develop a depth of knowledge of the Company's business so as to understand and question the assumptions upon which such plans are based and to reach an independent judgement on the probability that such plans can be achieved;
- (b) review, amend (where necessary) and measure (by way of setting KPIs) the effectiveness of the Company's health, safety, and environment (**HSE**) policies, ensuring that they clearly set out the commitment of the Company to effectively manage these issues by:
  - (i) ensuring that all directors are provided with such information and reports as may be necessary to enable each director to comply with their duty under section 44 of the Health and Safety at Work Act to exercise due diligence;
  - (ii) affording sufficient opportunity to all directors to ask such questions in relation to health and safety risks, the management of those risks and the policies and systems used to manage such risks as well as the opportunity

- for all directors to discuss and debate the appropriateness of those policies and HSE risk management systems;
- (iii) reviewing the Company's HSE management systems and ensuring they are fit for purpose;
  - (iv) ensuring sufficient funds are available to deliver the outcomes expected;
  - (v) ensuring employees participate in decision making and implementation of health and safety programmes;
  - (vi) monitoring performance of the effectiveness of the HSE systems that are in place;
  - (vii) reviewing the effectiveness of the Board's management of HSE issues at least once every year.
- (c) monitor the Company's performance against its approved strategic, business, and financial plans and oversee the Company's operating results on a regular basis so as to evaluate whether the business is being properly managed;
  - (d) select and (if necessary) replace the CEO;
  - (e) ensure that the Company has adequate management to achieve its objectives and to support the CEO;
  - (f) delegate certain authorities to the CEO to allow him or her to manage the day to day operation of the Company;
  - (g) review and approve individual investment and divestment decisions which the Board has determined should be referred to it before implementation;
  - (h) review and, if believed to be appropriate, approve material transactions not in the ordinary course of the Company's business;
  - (i) after consultation with the shareholder, approve the appointments by the Company (including its affiliates) to the boards of directors of subsidiary and associate companies (if any);
  - (j) ensure compliance with the Company's Constitution, the relevant laws and regulations and the relevant auditing and accounting principles; and
  - (k) assess from time to time its own effectiveness in carrying out these functions and the other responsibilities of the Board.

### **1.3. Boards Relationship with the shareholder**

The Board will use all reasonable endeavours to familiarise itself with the issues of concern to the Company's shareholder. The Board will regularly evaluate economic, political, social, and legal issues and other relevant external matters that may influence or affect the development of the Company's business or the interests of its shareholder and, if thought appropriate, take outside advice on these matters.

#### **1.4. Boards relationship with its other stakeholders**

The Board will use all reasonable endeavours to familiarise itself with the issues of concern relevant to the Company's stakeholders recognising that the Company's long-term prosperity is closely intertwined with the needs and concern of its consumers, employees, and customers.

#### **1.5. Board Relationship with Management**

The Board, through formal delegated authorities as set out in the "Delegated Matrix," delegates management of the day-to-day activities and management responsibilities of the Company to the CEO (who is accountable for the strategic direction and achievement of goals determined by the Board) and management to whom authority is delegated with the approval of the Board. The delegations of authorities shall be consistent with the Policies approved by the Board (including, without limitation, the Treasury, Energy Trading and Carbon Policies).

Between meetings of the Board, the Chair maintains an informal link between the Board and the CEO and expects to be kept informed by the CEO on all important matters. Only decisions or instructions of the Board acting as a whole are binding on the CEO. Decisions of individual directors or committees are not binding on the CEO except where specific prior authorisation is given by the Board.

The Board's role is to monitor the performance of the CEO against the Board's requirements and expectations and to take timely action if the objective of the Company is not being achieved or a correction to management is required.

### **2. COMPOSITION OF THE BOARD**

#### **2.1. Shareholder's Director Nominations Committee**

Directors are appointed by the shareholder, following approval by its ultimate shareholder. The Chair of the Board is a member of the Director Nominations Committee (a sub-committee of the Top Energy Consumer Trust Board of Trustees). The Chair will ensure both the shareholder and the Director Nominations Committee is informed as to the skills, diversity, experience, and attributes that the Board believe are required, to ensure that the Board can meet the demands facing the Company, can work co-operatively and effectively, and to comply with any applicable regulatory requirements.

#### **2.2. Appointments to the Board**

Written appointment letters establishing the terms of their appointment will be provided to all directors for their signature.

Directors must fully commit to giving the time needed to be effective as a director of the Company and are expected to observe the highest standards of ethical behaviour to comply with the Governance Code and this Charter. Each director acknowledges that their appointment is made within the terms of the Company's Constitution and their re-

appointment (should the director make themselves available for re-appointment) will be made by the shareholder(s), generally at the annual meeting.

### **2.3. Board Membership**

The Board has adopted the following principles:

- (a) a Board member should not have any significant conflict of interest that is potentially detrimental to the Company, including:
  - (i) affiliations with competitors of the Company; and
  - (ii) affiliations with parties that are likely to be a counterparty to a transaction with the Company where that affiliated party might receive commercial benefit to the potential detriment of the Company. In practice, however, such conflicts may arise in the course of a director's tenure and procedures for dealing with these situations are contained in clause 3.2;

## **3. INDEPENDENCE, INTERESTS, AND CONFLICT MANAGEMENT**

### **3.1. Independence Definition**

A director is regarded as having a relationship that may compromise his or her ability to act independently when that director:

- (a) is, directly or indirectly, an advisor or consultant to the Company;
- (b) has a personal service contract with the Company;
- (c) is a director of or employed by, or is a member of, an organisation that has an interest in an existing business relationship with the Company, or which has an interest in establishing, a business relationship with the Company or any subsidiary or associate of the Company;
- (d) is a member of the immediate family of any person described above;
- (e) has had any of the relationships described above with any affiliate of the Company.

For the avoidance of doubt, the fact that a director is a power consumer connected to the Top Energy power network, either directly or via an organisation of which he or she is involved, does not, of itself, indicate a conflict of interest or raise issues of independence.

### **3.2. Procedures in respect of independence or conflict-of-interest**

A director must declare to the Board any relationship that might compromise his or her ability to act independently from management (see 3.1) or any conflicts of interest that are potentially detrimental to the Company (see 3.4). This information will be recorded as part of the Board's records and will be available to all directors at the commencement

of each Board meeting. Every meeting of the Board will, at the commencement of the meeting, consider the issue of possible conflicts of interest and the accuracy of the record of declarations made by each director.

It is the responsibility of every director to identify a possible conflict of interest as soon as it becomes apparent to that director that the consideration of any specific matter may raise issues of possible conflict or independence. Once raised, it will become the responsibility of the other Board members to consider whether the director should withdraw from any further consideration of the matter and/or exercise a vote on the matter, should one be required.

### **3.3. Confidentiality of Company Information**

A director who has confidential information in his or her capacity as a director must not disclose that information to any person, make use of or act on that information, except:

- (a) for the purposes of the Company;
- (b) as required or permitted by law; and
- (c) in complying with the director's obligation to disclose his or her interest in a transaction with the Company.

### **3.4. General Conflicts**

Directors are required to take all reasonable steps to avoid actual, potential, or perceived conflicts-of-interest.

Examples of a conflict-of-interest include, but are not limited to:

- (a) material affiliations with competitors of the Company; and
- (b) material affiliations with parties that are likely to be a material or regular counterparty to a transaction with the Company.

When an actual or perceived conflict of interest is identified, the director concerned shall not attend any part of meeting of the Board (or Committee) at which the matter is to be discussed or deliberated on, nor may that director cast a vote in respect of such matter, unless the Chair shall have determined otherwise.

### **3.5. Corporate Opportunities**

Directors will not take any opportunity discovered through the use of the Company's property, information, or position for themselves or for persons with whom they have a relationship.

### **3.6. Business Relationships to be Disclosed**

Before accepting appointment to the Board, and thereafter as they occur, a director is required to disclose to the Board his or her business relationships that may have a

bearing on his or her role as a director of the Company or which are relevant to the matters referred to in 2.3, 3.1, or 3.4.

### **3.7. Disclosure of directors' information**

The Company's annual report will include information about each director including their qualifications, experience, length of service and remuneration.

## **4. DIRECTOR INDUCTION**

**4.1** All new directors appointed to the Board will undertake an induction programme coordinated by the CEO, in consultation with the Chair, which will provide such information as will enable new directors to understand the nature and scope of the businesses of the Company and any subsidiary of the Company so as to assist them in fulfilling their duties and responsibilities.

**4.2** Directors are expected to keep themselves abreast of changes and trends in the environment and markets in which the Company operates as well as trends in the economic, political, social, and legal climate generally.

**4.3** Directors will commit to the appropriate level of ongoing training and continuing skills development to ensure that they continue to contribute to the strategic direction of the Company and their roles in accordance with best practice.

## **5. EXPECTATIONS OF DIRECTORS**

### **5.1 Principal Duties**

The Directors will:

- (a) when exercising powers or performing duties, act in good faith and in what the director believes to be the best interests of the Company or, so long as it is a wholly owned subsidiary of Top Energy Limited, subject to compliance with the arm's-length rules required to be complied with under the Electricity Industry Participation Code, the best interests of Top Energy Limited even though it may not be in the best interests of the Company. To avoid doubt, in considering the best interest of the Company or Top Energy Limited, a director may consider matters other than the maximisation of profit (for example environmental, social and governance matters);
- (b) exercise their powers for a proper purpose;
- (c) not act, or agree to the Company acting, in a manner that contravenes the law or the Constitution;
- (d) not:
  - (i) agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or

- (ii) cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors;
- (e) not agree to the Company incurring an obligation unless the director believes at that time, on reasonable grounds, that the company will be able to perform the obligation when it is required to do so; and
- (f) when exercising powers or performing duties as a director, must exercise care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:
  - (i) the nature of the Company;
  - (ii) the nature of the decision; and
  - (iii) the position of the director and the nature of the responsibilities undertaken by him or her;
- (g) adhere to the truth, and not mislead, directly or indirectly, nor make false statements or mislead by omission; and
- (h) advance the legitimate interests of the Company.

## 5.2 Reliance on Information

A director may rely on information, financial data and professional or expert advice given by any of the following:

- (i) an employee of the Company who the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (j) a professional advisor or expert in relation to matters which the director believes on reasonable grounds to be within the person's competence; or
- (k) any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's delegated authority.

A director may only rely on information from other persons not referred to above, if the director:

- (i) acts in good faith;
- (ii) makes proper enquiry where the need to enquire is indicated by the circumstances; and
- (iii) has no knowledge that such reliance is unwarranted.

## 5.3 Indemnities and Insurance

The Company will indemnify a director upon joining the Board to the extent provided in section 162 of the Companies Act 1993 (*the Act*) and it will also indemnify persons who undertake directorships of other companies at the request of the Company. In addition,

the Company will put in place director and officers' liability insurance cover for the benefit of the directors and management.

#### **5.4 Independent Advice**

A director may obtain independent advice at the expense of the Company on issues related to the fulfilment of his or her duties as a director, subject to obtaining the approval of the Chair prior to the incurrence of any advisory fees being incurred.

#### **5.5 Resigning Director**

A director who resigns before the expiry of his or her term will identify to the Board his or her reasons for such resignation.

### **6. ROLE OF THE CHAIR**

#### **6.1 Chair's Responsibilities**

The Chair, in accordance with the NGL Constitution, must be the Chair of Top Energy Limited.

The Chair is responsible to ensure that Board meetings are sufficiently well planned and conducted in a manner that ensures the most effective and efficient use of Board time and energy, for leading the Board and setting the tone for the conduct of its meetings and the way in which issues are debated and in particular has the following specific responsibilities:

- (a) conduct meetings of the Board and ensure that adequate minutes of the proceedings of meetings are taken;
- (b) schedule Board meetings in a manner that enables the Board and its Committees to perform their duties responsibly while not interfering with the flow of the Company's business;
- (c) prepare, in consultation with the CEO, other directors and committee Chairs, the agendas for the Board and committee meetings;
- (d) define the quality, quantity, and timeliness of the flow of information between management and the Board;
- (e) ensure that issues raised, or information requested, by any director are responded to promptly and as fully as possible;
- (f) approve, in consultation with the Board, the retention of consultants who report directly to the Board;
- (g) foster a constructive governance culture and assist the Board and management in assuring compliance with and implementation of this Charter and to be principally responsible for recommending revisions thereto;

- (h) promote and maintain the independence of the Board from management;
- (i) lead the directors evaluation of the CEO's performance and to meet with the CEO to discuss the Board's requirements and expectations and the evaluation of the CEO's performance by the Board; and
- (j) in consultation with the shareholder, to ensure rigorous, formal processes for evaluating the performance of the Board, Board committees and individual directors are in place and to lead these processes.

## **6.2 Chair's relationship with CEO**

The Chair is responsible for establishing a close working relationship with the CEO and acting as his or her mentor.

## **7. BOARD PROCEDURES**

### **7.1 Conduct**

The conduct of the Board will be consistent with their duties and responsibilities to the Company. The Board will be disciplined in carrying out its role, with emphasis on strategic issues and policy.

The Board has in place procedures to ensure that the Board meets regularly, conducts its meetings in an efficient and effective manner and that each director is fully empowered to perform his or her duties as a director of the Company and to fully participate in meetings of the Board.

### **7.2 Meetings without CEO and/or management**

The Board will meet without the CEO and other management at the conclusion of each meeting and at least once a year specifically to address the performance and remuneration of the CEO and management.

### **7.3 Attendance at Meetings**

Directors are expected, and will use all reasonable endeavours, to attend all Board meetings. If it is not possible for a director to attend in person, that director will give his or her apologies in writing to the Chair at the earliest date possible.

### **7.4 Convening of Meetings**

Board meetings are normally convened by the Chair. Any director may request the Chair to convene a meeting. Notice of a meeting must be given to all directors.

### **7.5 Agenda for Meetings**

The agenda for normal Board meetings is determined by the Chair. Where a director has requested a meeting, the agenda will be as specified by that director. In addition, each Board meeting has a general business item under which directors may raise issues.

## **7.6 Information to Directors**

The Board recognises that appropriate information, provided on a timely basis, is essential to the effective discharge of its duties. The Chair and the CEO are responsible for ensuring appropriate Board papers (including any financial reports), that identify and fairly address the key issues concerning the Company, are prepared and distributed to Board members in a format and at a time that allows directors to be fully informed on the affairs of the Company and to properly prepare for discussion at Board meetings.

## **7.7 Availability of Management**

The Chair, in consultation with the CEO, is responsible to ensure the availability of the CEO and management when required by the Board but except to this extent, and except to the extent permitted in the Audit and Risk Committee Charter, directors have no authority to deal directly with, or to instruct, management.

## **7.8 Passing of Resolutions**

A resolution of the Board is passed at a Board meeting by the agreement of a majority of the votes cast on it. In the case of an equality of votes the Chair has a casting vote.

## **7.9 Director Performance Evaluation**

The Board will undertake an annual performance evaluation of itself. Under the direction of the shareholder, the performance of individual directors will be evaluated at not more than 2 yearly intervals. The performance of the CEO and executives will also be evaluated on an annual basis. The scope and process for such evaluations will be as set out in the Performance Evaluation Policy set out in Annexure 5.

# **8. COMMITTEES OF THE BOARD**

## **8.1 Establishment of Committees**

The Board may from time to time establish committees to assist it in carrying out its responsibilities. For each committee, the Board must adopt a formal charter that sets out the delegated functions and responsibilities for, and the composition of and any administrative matters relating to, that committee.

## **8.2 Standard form Committee Charter**

A standard form committee charter to apply with appropriate modifications on the establishment of a committee has been adopted by the Board and is set out in Annexure 3 to the Corporate Governance Code.

## **8.3 Oversight of Committees**

The Board is responsible for oversight of the committees. This oversight will include, in relation to each committee, determining and reviewing its structure and composition and regularly reviewing its performance against its charter.

## **8.4 Audit and Risk Committee for both Top Energy and Ngawha Generation**

Recognising the significance of the assets held by the Company, the Board has determined to establish an audit and risk committee with a charter the same as or substantially similar effect of the charter applicable to the Audit and Risk committee of Top Energy.

## **8.5 Publication of Committee Members**

The Board will identify the members of each committee and their charter in the Company's annual report.

## **9. FINANCIAL ACCOUNTING AND REPORTING AND AUDIT**

### **9.1 Overall Responsibility**

The Board, as a whole, monitors the processes which are undertaken by management executives (for internal audit purposes) and external auditors to ensure that the Board meets all financial corporate governance requirements. The Board has appointed the Audit and Risk committee to assist it in fulfilling its oversight responsibilities. The objectives, authority and functions of the Audit and Risk committee are set out in its Charter in Annexure 4.

### **9.2 Appointment of Auditor**

As required by the Energy Companies Act, the auditor of the Company is the Controller and Auditor-General. In practice, the Controller and Auditor-General appoints a private audit practitioner (external auditor) to undertake the audit.

### **9.3 Full and Frank Dialogue**

The Board recognises the importance of and shall facilitate full and frank dialogue among the Audit and Risk committee, the auditor and management. The Audit & Risk Committee Charter will include a requirement for that committee to meet with the auditors without management present.

### **9.4 Report on Audit Fees and non-audit work**

The Board shall include in the Company's annual report, fees paid to the auditor for both audit and non-audit work and shall separately identify fees paid for each category of non-audit work and why non-audit work undertaken by the external auditor did not compromise the independence of the external auditor.

## **10. REMUNERATION POLICY**

### **10.1 Alignment of Interests with Shareholder**

The Board promotes the alignment of the interests of the directors, the CEO and management with the long-term interests of the shareholder.

## **10.2 Review Process**

The Board shall annually review the remuneration of the directors, the CEO and executives and the remuneration structure and policy within the Company in accordance with the Remuneration Policy set out in Annexure 8.

## **11 THE CHIEF EXECUTIVE OFFICER**

### **11.1 Responsibilities of the CEO**

The CEO is the senior executive of the Company and is responsible for:

- (a) recommending the strategic direction, vision, and policies of the Company, for approval by the Board;
- (b) providing management of the day to day operations of the Company for approval; and
- (c) acting as the spokesperson of the Company in accordance with the Company's Media Protocol.

### **11.2 No Appointment as Chair**

The CEO is not eligible to be appointed as a director. A Chair may, however, assume the post of CEO concurrently on a temporary basis when the post of CEO is vacant, for a period not longer than six months. After the initial period of six months, if a CEO has not been appointed, the Board may extend the Chair's CEO post for another maximum period of six months.

### **11.3 Independence of the Board**

The CEO must respect the independence of directors so as to permit the Board to challenge management decisions objectively and evaluate corporate performance.

### **11.4 Other Boards**

The CEO will not accept appointment to the board of other companies except for family companies and directorships undertaken at the request of the Company where the Company has a significant interest, except with the consent of the Board.

## **12 REPORTING AND DISCLOSURE**

### **12.1 Annual Report**

NGL is not required to prepare an annual report. However, the NGL Board acknowledges that although not currently the case, it may be appropriate in the future for the Company to adopt a Stakeholder Engagement Policy, and accordingly the NGL will annually consider whether a Stakeholder Engagement policy should be adopted

## **12.2 Financial Reports**

The Chair and Chair of the Audit and Risk committee of the Company shall certify in the published financial reports of the Company that the reports comply with generally accepted accounting standards and present a true and fair view of the financial affairs of the Company.

## **12.3 Code of Ethics**

The Board will monitor performance of the NGL Governance Code and the charters and policies which form part of it.

The Board's Code of Ethics will be available to all directors, Top Energy people and the shareholder and will be published on the Ngawha Generation Limited web site.

## ANNEXURE 3

### Ngawha Generation Limited

#### Standard Form Committee Charter

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##### Establishment of the [ ] Committee

This Charter sets out the basis on which the NGL Board has established the [ ] Committee pursuant to the authority contained in, and subject to the provisions of, the Constitution.

This Charter and the membership of the [ ] Committee will be made available on the NGL website.

##### Objectives

The objectives of the [ ] Committee are to [ ]. The Committee's role is not to replace the ultimate authority of the NGL Board.

##### Structure and Committee Composition

The [ ] Committee shall consist of at least [ ] members, [all of whom] [a majority of whom] are directors of the Company.

The members of the [ ] Committee shall elect one of their members who is a director of NGL to be the chair. In that person's absence, any member who is a director may chair a meeting of the [ ] Committee.

The [ ] Committee may invite such other persons to attend their meetings as they consider appropriate. The [ ] Committee may, if it considers it appropriate, appoint a secretary.

The Board may appoint a person as an advisor to the [ ] Committee. Such person will be entitled to attend and speak at meetings of the [ ] Committee but shall not be a member of such committee or by virtue of his or her participation will that advisor be a director of the Company and such person shall have no voting rights in respect of Committee decisions.

##### Meetings and procedure

The [ ] Committee will meet [ at least [ ] times per year/as frequently as required.

A quorum for a meeting of the [ ] Committee is two members.

The [ ] Committee shall ensure that formal minutes of its meetings are kept and shall be circulated/made available to all directors together with any papers prepared for the Committee.

The dates, times and venues of each meeting of the [ ] Committee will be notified to all members of the Committee (and to all directors of NGL who may attend and observe such meetings) as far in advance as possible. Supporting papers shall also be sent to members as far in advance as possible and in any event in sufficient time to allow attendees to become familiar with the issues to be addressed.

The proceedings of the [ ] Committee will be governed by the provisions of NGL's Constitution that govern meetings of directors, in so far as they are applicable.

**Authority, Duties and Responsibilities**

The [ ] Committee has the authority, duty and responsibility to:

[ ];

**Conflict**

No member of the Committee will participate in the review of their own performance.

**Reporting**

The chair of the [ ] Committee (or a person nominated by the [ ] Committee for that purpose) must provide a verbal report to the NGL Board on the [ ] Committee's proceedings following each meeting on all matters relevant to the Committee's duties and responsibilities.

**Review**

The [ ] Committee must conduct a review of its Charter and the Committee's performance and effectiveness annually, inviting comments from all members of the NGL Board.

## **ANNEXURE 4**

### **Ngawha Generation Limited**

#### **Audit and Risk Committee**

##### **Charter**

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### **1. Introduction**

This Charter sets out the basis on which the NGL Board has established the Audit and Risk Committee (Committee).

### **2. Objectives**

The objectives of the Committee are:

- (i) To assist the NGL Board in performing its oversight responsibilities relating to financial reporting, including financial statements, regulatory compliance, regulatory information disclosures, and any changes to them.
- (ii) To review the financial reporting process, the system of internal control, the audit process and the company's policies and process for monitoring compliance with statutes.
- (iii) To review risk management controls, systems, and processes, including Treasury controls relating to NGL.
- (iv) To assist the NGL Board in performing its oversight responsibilities relating to the identification, analysis and management of risks which may have a significant influence on the performance of the company in delivering its Statement of Corporate Intent.
- (v) To alert the NGL Board Audit and Risk committee and where appropriate referral to the Top Energy Limited Audit and Risk committee if matters of concern arise from any of the above reviews and analysis.

The Committee's role is not to replace the ultimate authority of the NGL Board

### **3. Structure and Committee Composition**

The Committee shall be a committee of the NGL Board, established by the NGL Board. Members of the Committee will normally be appointed for a period of three years and the longest serving member shall stand down (but may be reappointed) following the Company's Annual General Meeting. Where more than one member is longest serving, the member to retire shall be selected by lot. Members may be removed from the Committee by the NGL Board at any time during their tenure.

The Committee shall comprise not less than three members, being non-executive Directors of NGL, the majority of who are acknowledged as independent by the Board,

pursuant to the Board Charter. The chairperson is to be appointed by the Board, shall be a non-executive director who has a good understanding of the business of the Company and the Top Energy group companies and has no long-standing association with the external auditor firm and who is not the Chair of the Board.

Members of the Committee will be financially literate with at least one member being a chartered accountant or hold a similar recognised form of financial expertise.

The Committee shall extend a standing invitation for attendance to all other non-member NGL directors. Such invitation cannot be revoked. The Committee shall extend a standing invitation to the Chief Executive Officer and the General Manager-Finance unless, in a particular circumstance, the Committee believes this is inappropriate. The external auditors shall be invited to attend those parts of any meetings as deemed appropriate by the Committee.

The Committee will meet with the external auditors of NGL at least once a year, and for at least part of that meeting, no executive directors or other employees of the company should be present.

#### **4. Meetings, Procedures and Reporting**

The Committee should meet formally at least three times per year for structured meetings and at other times if requested by the auditors, any member of the Audit and Risk Committee, the NGL Board, Chief Executive, or the General Manager – Finance. The dates, times, and venues of each meeting of the Committee will be notified to all members of the Committee (and to all directors who may attend and observe such meetings) as far in advance as possible. An agenda and supporting papers shall be sent to members as far in advance as possible and in any event in sufficient time to allow attendees to become familiar with the issues to be addressed.

A quorum shall be at least two members. The proceedings of all meetings shall be minuted. The minutes of the Committee shall be circulated to all members of the NGL Board together with any papers prepared for the Committee.

The Committee will update the NGL Board on Committee activities at the next scheduled board meeting (unless circumstances require earlier communication), make appropriate recommendations and ensure that the NGL Board is made aware of any matters which may significantly impact on the financial or risk condition or affairs of the business.

#### **5. Authority Duties and Responsibilities**

The Committee has a responsibility to promote integrity and transparency in financial reporting. In particular, the Committee's duties and responsibilities include but are not limited to the matters set out under the following headings:

## **5.1. Financial Reporting**

- (i) Consider and approve all material accounting policies and practices including any proposed changes, whether proposed by management and/or changes in Generally Accepted Accounting Principle and/or statutory requirement.
- (ii) Consider and approve for submission to the NGL Board the half year and final (year-end) accounts including the notes thereto, and all other financial statements (if any) prepared by the company including advising all directors whether they comply with the appropriate laws and regulations.
- (iii) Assessing the fairness of financial statements prepared by NGL, and obtaining explanations from management and external auditors on whether:
  - There are any new, significant, or unusual events or transactions.
  - Related party transactions are correctly disclosed
  - Significant accounting estimates, accruals and judgements included in the accounts are correctly disclosed
  - Classification of costs between capital and revenue are appropriate
  - All financial statements and announcements contain adequate and appropriate disclosures.
- (iv) Considering director's reports to its shareholder and recommending final format and draft to the NGL Board.
- (v) Prior to full NGL Board sign-off of the financial statements, certificates relating thereto and the issue of representation letters to external auditors, the Chief Executive and the most senior financial officer will provide written confirmation to the NGL Board that the financial statements meet financial reporting requirements and that all matters have been disclosed.

## **5.2. External Audit**

The Energy Companies Act requires that the Controller and Auditor-General be the Company's auditor. However, as a matter of practice, private practitioners (external auditors) are appointed to complete this work.

Until the requirement no longer applies, the Committee will:

- (i) As required, meet with management and/or the external auditors to discuss the Audit Plan, Proposed audit fees and any other planned work for the Company by the external auditor, and any areas where there are any accounting difficulties, with a view to working towards an acceptable solution.
- (ii) Confirm with the external auditors the form and content of the Audit Report and to receive assurance from the external auditor that management has not placed any restrictions on the Audit report or the Audit approval.

- (iii) At the time the final accounts are received, receive, and consider a report from the external auditor on their annual audit including the audit management letter.
- (iv) Following receipt of the external auditor's management letter, meet with the external auditor to consider their report. For at least part of that meeting, the Committee will meet alone with the auditors.
- (v) Review the performance of the external auditors

While the Company cannot dictate the rotation of the external audit firm's partner who undertakes the audit, the Committee shall ensure that the same external audit partner does not lead the company's audit for more than six consecutive years in accordance with OAG policy (i.e. lead and engagement audit partner should be rotated from the engagement after a maximum of six years).

The Committee will also ensure that there is no relationship between the company and the external auditor firm appointed by the Controller and Auditor-General that could compromise that firm's independence.

### **5.3. Internal Controls**

- (i) Ensure NGL's internal control environment is effective;
- (ii) Evaluate the adequacy and effectiveness of NGL's administrative, operating and accounting policies through active communication with senior management, the external auditor and monitoring managements responses and actions to correct any noted deficiencies; and
- (iii) Review the NGL's potential exposure to fraud

### **5.4. Risk Management**

- (i) Approve risk management policy for recommendation to the NGL Board;
- (ii) Review risk reports from management;
- (iii) Review NGL's risk system annually, including the systematic management of risk on a consistent basis across the Company's operations and shall report the results of such review to the Top Energy Limited Audit and Risk Committee;
- (iv) Ensure risk management is integrated into structures, policies, processes, and procedures and complies with applicable laws and regulations;
- (v) Establish and review the policies for insurance coverage and periodically review insurance coverage.

## **5.5. Regulatory disclosures**

Consider and approve for submission to the NGL Board all material regulatory disclosures and statements prepared by the Company including advice to all directors on compliance with the appropriate laws and regulations.

## **5.6. General Responsibilities**

- (i) Review NGL's accounting and Treasury Policies, from time to time. No changes to the Treasury Policy should occur without the approval of the Committee;
- (ii) Undertake a regular review of NGL's tax position, compliance, and exposure;
- (iii) Ensure that there is full and frank dialogue among the Committee, Board, external auditors, and management of the company;
- (iv) Develop, implement, and maintain whistle-blowing (protected disclosure) procedures with respect to compliance with the Corporate Governance Code, whether this be by an amendment to the Company's Code of Ethics or otherwise; and.
- (v) Undertake such other directives that the Board may set down, from time to time.

The Committee does not have authority to take actions or make decisions on behalf of the Board unless specifically mandated.

The Board authorises the Committee, for carrying out its responsibilities, to:

- (vi) Through the Chief Executive, seek any information it requires from any employee of the company and external parties
- (vii) Obtain directly external legal or other professional advice
- (viii) To consult with management and other outside advisers
- (ix) Ensure the attendance of company officers at meetings, as appropriate.

Committee members are not employees of the Company. They are entitled to rely on company executives on matters within those executive's areas of responsibility and on external professionals on matters within their area of expertise and, subject to evaluation and review, may assume the accuracy of information provided by such persons, provided the member is not aware of any reasonable grounds upon which such reliance or assumption may be inappropriate.

**6. Access**

The Committee will have unlimited access to the company's auditor's and to senior management

The Auditors, Chief Executive, and General Manager – Finance will report directly to the Committee on any matter relevant to the Committee's responsibilities under this Charter.

**7. Review of Charter and Committee Performance**

The Chair of the NGL Board will review this Charter and the Committee's performance and effectiveness annually, inviting comments from all members of the NGL Board.

## **ANNEXURE 5**

### **Ngawha Generation Limited**

#### **Corporate Governance Performance Planning and Review Policy**

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##### **The Board**

The process of evaluating the performance of the Board as a whole is the responsibility of the Board under the direction of the Chair. The Board Charter requires the Board to undertake an annual performance evaluation of itself that:

1. compares the performance of the Board with the requirements of its Charter and the objectives for the Board set for the prior year;
2. reviews the performance of the Board's committees (if any);
3. sets the objectives of the Board for the upcoming year; and
4. effects any improvements to the Board Charter as may be necessary or appropriate.

The performance evaluation of the NGL Board's performance shall be conducted in such a manner as the NGL Board considers appropriate.

##### **Individual Directors**

The Chair will engage with each director individually on an annual basis to conduct a director performance assessment. Directors will fully participate in that process. The Chair may undertake such other enquiries and/or seek such advice in relation to director performance as they may consider appropriate.

##### **Board Committees**

The standard charter for Board committees requires the committee to review its performance and effectiveness, inviting comments from all members of the Board.

##### **Executives**

All of NGL's senior executives are subject to a formal annual performance review to be completed by the Chief Executive.

## ANNEXURE 6

### Ngawha Generation Limited

#### Corporate Governance Risk Management Policy

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The Company has a number of management policies, as well as related internal compliance systems that are designed to safeguard the Company's assets and maintain its reputation.

The Company is also aware of the need for it to consider and manage non-financial risks which may be relevant to the conduct of its business.

The adequacy and effectiveness of these internal control requirements in relation to NGL is monitored by the NGL Audit and Risk Committee, which evaluates the adequacy and effectiveness of such internal control requirements in accordance with its Charter.

The NGL Audit and Risk committee engages with its parent, Top Energy Limited's Audit and Risk committee to ensure risk management policies of both entities are applicable and appropriate to the risks faced by the Top Energy group.

Directors approve the Risk Management Policy based on recommendations from the Audit and Risk Committee. In addition, the Audit and Risk Committee undertakes the functions relating to Risk Management set out in the Audit and Risk Committee Charter.

The CEO will provide a report to the Audit and Risk Committee, at least every two years, reviewing the risk management framework and a review of internal control processes will be provided annually. A copy of the Company's risk register, identifying the main risks impacting on the Group, will be provided monthly to the Board

In addition, any matter considered by the NGL Audit and Risk committee as being of sufficient importance, will be brought to the attention of the board of Top Energy Limited under an agenda item referencing "subsidiary company update".

#### **The Board is Ultimately Responsible**

The NGL Board ultimately has responsibility for compliance, control, and management of risk at NGL as part of the compliance, control and management of the Top Energy group risks.

## **ANNEXURE 7**

### **Ngawha Generation Limited**

#### **Remuneration Policy**

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##### **Introduction**

The NGL Board recognises and promotes the alignment of the interests of the directors, the CEO and executives with the long-term interests of the shareholder.

The Board will review the remuneration structure and policy within the Company, annually. In doing so, the Board may seek external advice from recognised and competent advisors.

##### **Executive Remuneration**

The Board recognises the vital role personnel play in the pursuit of its strategic objectives and acknowledges the importance of establishing remuneration packages for key executives which is fair and reasonable in a competitive market for the skills, knowledge and experience required by the Company.

Acknowledging that the NGL CEO and the General Manager Finance hold these positions in NGL's parent, Top Energy Limited, it is noted that the Chief Executive is required as part of the overall performance review of the key executives to ensure that this link exists and to provide additional remuneration benefits to executives who meet the criteria established by him with the benefit of guidance from the Board and that the total remuneration benefits paid to executives to ensure that such remuneration packages are competitive in the market for the skills knowledge and experience required.

##### **Director Remuneration**

The NGL Board recognise the principle that the remuneration of the non-executive directors should be at levels that are fair and reasonable in a competitive market for the skills, knowledge and experience required.

In addition, it is recognised that no special remuneration will be paid to a retiring director without the authority of an ordinary resolution of the shareholder.

In determining the remuneration of the directors of NGL, the Chair in their capacity as Chair of NGL and Chair of Top Energy Limited will seek the endorsement of the Top Energy Limited shareholder to the remuneration proposed for the directors of Top Energy Limited and NGL

(including independent directors) on an annual basis and the remuneration of directors of NGL will be fixed in accordance with such endorsed remuneration proposal.

### **Reimbursement of Directors' Expenses**

The Company recognises that directors are required to travel to attend board meetings and undertake other travel to attend events in order to represent the Company.

All reasonable and actual expenses together with reasonable incidental expenses incurred by directors in attending board meetings will be reimbursed by the Company. All actual and reasonable expenses incurred by directors in attending events in order to represent the Company, or otherwise necessarily and directly incurred in the fulfilment of their duties and obligations as directors, if approved by the Chair prior to being incurred, will be reimbursed by the Company.

Receipts are required in respect of all expense claims.

Reimbursement for private motor vehicle use will be at the Inland Revenue Department stipulated rate.

### **Publication**

This Remuneration Policy will be published on the Ngawha Generation Limited website.