

**USE OF SYSTEM AGREEMENT**  
**(Interposed)**

Between

**NETWORK TASMAN LIMITED**

And

**RETAILER**

.....*date*

## CONTENTS

PART I - SERVICE COMMITMENTS .....	4
1. TERM OF AGREEMENT .....	4
2. SERVICES .....	4
3. CONVEYANCE ONLY .....	6
4. EQUAL ACCESS AND EVEN-HANDED TREATMENT .....	7
5. SERVICE INTERRUPTIONS .....	8
6. LOAD MANAGEMENT .....	11
7. LOSSES AND LOSS FACTORS.....	12
8. SERVICE PERFORMANCE REPORTING.....	13
PART II - PAYMENT OBLIGATIONS.....	14
9. PROCESS FOR SETTING AND APPLYING PRICES.....	14
10. PRICE CATEGORY AND TARIFF OPTIONS .....	16
11. BILLING AND PAYMENT .....	18
12. PRUDENTIAL REQUIREMENTS .....	21
PART III - OPERATIONAL REQUIREMENTS.....	27
13. ACCESS TO THE CONSUMER'S PREMISES .....	27
14. INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY .....	29
15. NETWORK CONNECTION STANDARDS.....	31
16. MOMENTARY FLUCTUATIONS .....	31
17. CONSUMER SERVICE LINES .....	31
18. TREE TRIMMING.....	31
19. CONNECTIONS AND DISCONNECTIONS .....	32
PART IV: OTHER RIGHTS.....	34
20. EVENTS OF DEFAULT.....	34
21. TERMINATION OF AGREEMENT .....	35
22. CONFIDENTIALITY .....	37
23. FORCE MAJEURE.....	39
24. AMENDMENTS TO AGREEMENT .....	41
25. DISPUTE RESOLUTION PROCEDURE .....	45
26. LIABILITY .....	46
27. CONSUMER AGREEMENTS .....	52
28. NOTICES .....	53
29. INFORMATION EXCHANGE .....	54
30. MISCELLANEOUS .....	56
31. INTERPRETATION: .....	56
SCHEDULE 1 .....	67
SERVICE STANDARDS .....	67
SCHEDULE 2.....	80

TRANSMISSION SERVICES .....	80
SCHEDULE 3.....	82
ADDITIONAL SERVICES .....	82
SCHEDULE 4.....	85
INFORMATION EXCHANGE PROTOCOLS.....	85
SCHEDULE 5.....	86
CONSUMER AGREEMENTS.....	86
SCHEDULE 6.....	90
SERVICE INTERRUPTION COMMUNICATION POLICIES .....	90
SCHEDULE 7.....	92
CONNECTION POLICIES .....	92
SCHEDULE 8.....	97
PRICING PRINCIPLES .....	97
SCHEDULE 9.....	98
LOAD MANAGEMENT POLICY.....	98
SCHEDULE 10.....	103
PRICING SCHEDULE AND POLICY .....	103
SCHEDULE 11 .....	107
LOSS FACTORS .....	107

**AGREEMENT** dated this ...th day of Month YYYY

**PARTIES**

Distributor: <b>Network Tasman Limited</b>	Retailer <b>XYZ Energy Limited</b>
<u>Distributor's Details:</u> <i>Street Address:</i> 52 Main Road Hope, Richmond 7020  <i>Postal Address:</i> PO Box 3005, Richmond 7050 <i>Address for Notices:</i> PO Box 3005, Richmond 7050 <i>Contact Person's Details:</i> Wayne Mackey CEO <i>Phone:</i> 03 989 3600 <i>Fax:</i> 03 989 3631 <i>Website:</i> www.networktasman.co.nz <i>Email Address:</i> <a href="mailto:info@networktasman.co.nz">info@networktasman.co.nz</a>	<u>Retailers Details:</u>   PO. Box  PO Box

**COMMENCEMENT DATE:** 1 March 2009

**SIGNATURES:**

**Network Tasman Limited**

**Retailer**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of authorised person signing for Distributor

\_\_\_\_\_  
Name of authorised person signing for Retailer

\_\_\_\_\_  
Position  
CEO

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **INTRODUCTION**

- A. The Distributor and the Retailer agree to provide the Services to one another on the terms and conditions set out in this agreement.
- B. The Distributor and the Retailer agree to purchase the Services from one another on the terms and conditions set out in this agreement.
- C. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Rules.

## **AGREEMENT**

### **PART I - SERVICE COMMITMENTS**

#### **1. TERM OF AGREEMENT**

- 1.1 **Term:** This agreement shall commence on the Commencement Date and shall continue until it is terminated pursuant to clause 21.

#### **2. SERVICES**

- 2.1 **Distributor's services and obligations using Good Industry Practice:** The Distributor will endeavour in accordance with Good Industry Practice to:
  - (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
  - (b) provide delivery of electricity to the quality level specified in the Service Standards but does not guarantee delivery of electricity that is free from defects and interruptions;
  - (c) operate its Network in order to optimise Transmission Charges and Transmission Services faced by it and those using its Network;
  - (d) optimise the level of technical losses on its Network where economically efficient to do so; and
  - (e) operate a policy that permits parties other than the Distributor to Energise and De-energise Points of Connection in accordance with this agreement, including clause 19 and Schedule 7.

2.2 **Distributor's other services and obligations:** The Distributor will:

- (a) comply with the Service Standards as specified in Schedule 1;
- (b) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis, Network repair and information service;
- (c) make provision for Load Management Services on its Network to the extent required by clause 6;
- (d) work with the Retailer to identify the level of Losses in accordance with clause 7;
- (e) where it proposes to make changes to the Network Supply Points supplying the Network, follow the process set out in clause 24;
- (f) allow Consumer's Installations that comply with Network Connection Standards to remain connected and to consider applications for new connections and changes to capacity for existing connections in accordance with clause 19 of this agreement; and
- (g) provide the Additional Services as set out in Schedule 3.

2.3 **Transmission Services:** The Distributor will comply with the provisions relating to Transmission Services as set out in Schedule 2.

2.4 **Retailer's obligations: Using Good Industry Practice** the Retailer will:

- (a) ensure Consumer Installations that do not comply with Network Connection Standards do not remain connected, and process any applications for new connections or changes to capacity for existing connections in accordance with clause 19 of this agreement;
- (b) comply with the Service Standards;
- (c) subject to clause 27, have a Retailer's Agreement with each Consumer for the supply of electricity which contains terms that have substantially the same effect as Schedule 5;
- (d) provide consumption information in accordance with clauses 7 and 11;
- (e) adopt a process of revenue assurance to minimise, in accordance with Good Industry Practice, non-technical Losses;

- (f) respond to requests from the Distributor for Consumer details in accordance with clause 29; and
- (g) provide the Additional Services as set out in Schedule 3.
- (h) maintain meters and Load Control Equipment if owned by the Retailer

### 3. CONVEYANCE ONLY

3.1 **Distributor may enter into Distributor's Agreement with a Consumer:** The Distributor shall be entitled to enter into a Distributor's Agreement with a Consumer at the Consumer's written request, provided that:

- (a) the Distributor's Agreement is in relation to an ICP or group of ICPs with an aggregate connection capacity of not less than 345 kVA / 500 Amps and are time of use metered, or it is in relation to connection of distributed generation;
- (b) the Distributor's Agreement does not interfere with any existing Retailer's Agreement with that Consumer; and
- (c) any existing Retailer's Agreement with that Consumer is not a fixed term agreement.

3.2 **Conveyance Only basis:** If a Consumer has, or enters into, a Distributor's Agreement, the Distributor agrees with the Retailer to convey electricity through the Network on a Conveyance Only basis on the applicable terms of this agreement to allow the Retailer to supply electricity to that Consumer.

3.3 **Valid Distributor's Agreement:** The Retailer will not knowingly supply electricity on a Conveyance Only basis in relation to any ICP unless there is a valid Distributor's Agreement in force in relation to that ICP.

3.4 **The Retailer:** The Retailer:

- (a) will not knowingly do or omit to do anything or cause any person to do or omit to do anything that is inconsistent with the obligations of the Consumer or the Distributor under or in relation to any Distributor's Agreement provided that where there are technical requirements in a Distributor's Agreement that differ from the technical requirements in relation to Distribution Services set out in this agreement, the Distributor has given the Retailer reasonable notice of those requirements; and

- (b) acknowledges that the Distributor will be entitled to terminate any Distributor's Agreement in accordance with its terms.

3.5 **Co-operate to resolve issues:** If:

- (a) in relation to the supply of electricity to any Consumer that is a party to a Distributor's Agreement, the Retailer does anything that is inconsistent with this agreement and which may have an impact on the Network or the provision of distribution services by the Distributor to that or any other Consumer; or
- (b) either the Retailer or the Distributor becomes aware that any provisions of a Distributor's Agreement and any Electricity Supply Agreement would conflict to the extent that a party would be in breach of contract;

the Distributor and the Retailer will co-operate with each other to resolve the issue in a manner which delivers the best outcome for all affected parties (including the Consumer) but which does not adversely impact on the integrity of the Network.

3.6 **Consumer not party to a valid Distributor's Agreement:** If at any time it is found that a Consumer is not being supplied on an Interposed basis in relation to particular ICPs and is not a party to a valid Distributor's Agreement in relation to those ICPs, or if any Distributor's Agreement in relation to particular ICPs expires or is terminated or is about to expire or be terminated, then, without limiting any other right of the Distributor under this agreement or otherwise:

- (a) the Distributor will use best endeavours to notify the Retailer and suggest the Retailer take up the opportunity to supply the relevant Consumer on an Interposed basis in relation to those ICPs; and
- (b) if the Distributor gives notice under clause 3.6(a), the Distributor may disconnect the ICPs if within 20 Working Days of giving that notice the Distributor has not received notice that the Retailer will immediately commence supplying the Consumer on an Interposed basis in relation to those ICPs.

#### 4. **EQUAL ACCESS AND EVEN-HANDED TREATMENT**

4.1 **Equal access and even-handed treatment:** The Distributor will give all retailers equal access to the Distribution Services and will treat all retailers even-handedly.

- 4.2 **The Distributor will notify the Retailer of alternative contracts:** Within 20 Working Days after agreeing, or agreeing an amendment to, a contract relating to the supply of Distribution Services with any retailer other than the Retailer (the contract or amended contract, as applicable, being an “**Alternative Contract**”), the Distributor will notify the Retailer in writing of the existence of that Alternative Contract, make the Alternative Contract available on its website and invite the Retailer to adopt the Alternative Contract.
- 4.3 **The Retailer has sole discretion to adopt Alternative Contracts:** Within 12 months of the Distributor commencing an Alternative Contract with any retailer other than the Retailer, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract in substitution for this agreement provided that:
- (a) **The Retailer gives notice to the Distributor:** the Retailer gives not less than 20 Working Days notice to the Distributor of its intention to sign the Alternative Contract; and
  - (b) **The Retailer adopts the contract in its entirety:** the Retailer adopts the Alternative Contract in its entirety.

If an Alternative Contract is adopted in accordance with this clause 4.3, this agreement will terminate from the date of such adoption. The provisions of clauses 21.4 to 21.8 shall also apply to a termination of this agreement under this clause 4.3.

## 5. SERVICE INTERRUPTIONS

### General

- 5.1 **Communications policies:** The Distributor, in consultation with the Retailer, shall develop and maintain communication policies to give effect to this clause 5. The communications policies are set out in Schedule 6.
- 5.2 **The Distributor may Publish Service Interruption information:** The Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption. The Distributor will, whenever practicable, endeavour to avoid disclosing information to the public that might allow third parties to identify individual consumer sites subject to interruption.
- 5.3 **Protocols for Service Interruptions:** If the Distributor has developed a protocol on the priorities for Load Shedding, restoration of load, or other similar events where security of supply may be compromised, the Distributor will provide a copy of that protocol to the Retailer and to any customer on request.

5.4 **Load Shedding:** The Distributor may carry out Load Shedding in the following circumstances:

- (a) **Maintenance of Network equipment:** where the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 5.5, 5.7, 5.8 and Schedule 6 as applicable;
- (b) **Provision of supply within the Service Standards:** as permitted by the Service Standards, where the Consumer has elected to receive an interruptible or otherwise non-continuous supply of electricity;
- (c) **Compliance with instructions from the System Operator:**
  - (i) to comply with any reasonable request or instruction received from the System Operator; or
  - (ii) where communication with the System Operator has been lost and the Distributor reasonably believes that had communication with the System Operator been maintained the Distributor would have received a reasonable request or instruction from the System Operator to shed load;
- (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
  - (i) **Public safety:** maintain a safe environment, consistent with the Distributor's health and safety policies.
  - (ii) **Overloading:** prevent unexpected short term overloading of the Network.
  - (iii) **Abnormal voltage levels:** prevent voltage levels rising or falling outside statutory requirements.
  - (iv) **Preserve security:** preserve the security of the Network;
  - (v) **Avoid damage:** avoid or mitigate damage to the equipment of any person connected to the Network;
- (e) **Deficit of electricity flowing into the Network:** where called upon by a Relevant Authority through a regionally or nationally co-ordinated process to ration electricity in response to an anticipated shortage of electricity;

- (f) **Compliance with the Rules:** to comply with the Rules or other legislative requirements;
- (g) **Automatic Load Shedding:** where automatic under-frequency Load Shedding is implemented in accordance with the Rules; or
- (h) **Other circumstances:** for any other purpose which in the Distributor's reasonable opinion and in accordance with Good Industry Practice requires the interruption or reduction of delivery of electricity to any ICP.

### **Unplanned Service Interruption**

- 5.5 **Notification of Unplanned Service Interruptions:** After the occurrence of an Unplanned Service Interruption, the Distributor and Retailer will comply with the relevant service interruption communication policy as set out in Schedule 6.
- 5.6 **Consumer requests for restoration of Distribution Services:** During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Retailer will forward to the Distributor any requests it receives from Consumers for the restoration of the Distribution Services as soon as practicable, and the Distributor shall acknowledge such receipt unless the Retailer requests otherwise.

### **Planned Service Interruptions**

- 5.7 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor shall, as far as is reasonably practicable, schedule Planned Service Interruptions to minimise disruption to Consumers.
- 5.8 **Distributor to comply with communications policies:** The Distributor will comply with the Service Interruption communications policy set out in Schedule 6 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Distribution Services.
- 5.9 **Costs of communication:** Where the Distributor asks the Retailer to notify Consumers in accordance with Schedule 6, the Distributor shall meet the reasonable costs incurred by the Retailer in complying with such requests, unless agreed otherwise in writing.

### **Restoration of Distribution Services**

- 5.10 **Distributor to restore Distribution Services as soon as practicable:** For all Service Interruptions, the Distributor will endeavour in accordance with Good Industry Practice to restore the Distribution Services as soon as practicable and:

- (a) for Unplanned Service Interruptions, within the timeframes set out in Schedule 1; and
- (b) for Planned Service Interruptions, within the timeframe set out in the notice for Planned Service Interruptions,

provided that the Retailer's only remedy for failure by the Distributor to meet the timeframes in this clause 5.10 shall be recovery of a Service Guarantee payment in accordance with Schedule 1.

## **6. LOAD MANAGEMENT**

- 6.1 **Distributor entitled to control load:** Where the Retailer and Distributor agree to offer, and the Consumer elects to take up, a Tariff Option that provides a non-continuous level of service to some or all of the Consumer's load in accordance with Schedule 1, the Distributor will be entitled to control the relevant part of the Consumer's load in accordance with Schedule 9.
- 6.2 **Distributor to maintain its Load Management Services:** Where the Distributor has agreed with the Retailer to provide the Retailer a Load Management Service then the Distributor will provide that service until the service is changed in accordance with clause 24.
- 6.3 **Distributor to operate the Load Management Service:** Except in the circumstances permitted in clause 5.4, the Distributor shall not interrupt supply for a period longer than the period for interruption permitted by the relevant Service Standard.
- 6.4 **Ensure that Load Control Equipment to be maintained:** The party providing Load Control Equipment shall use reasonable endeavours in accordance with Good Industry Practice to ensure that the required Load Control Equipment will respond to the appropriate load control signals.
- 6.5 **Ensure that Load Signalling Equipment to be maintained:** The party providing the Load Signalling Equipment shall use reasonable endeavours in accordance with Good Industry Practice to ensure that the required Load Signalling Equipment will send the appropriate load control signals.

## 7. LOSSES AND LOSS FACTORS

7.1 **Retailer to provide consumption information:** Within 20 Working Days of the end of each month, the Retailer shall provide to the Distributor, or cause a third party to provide to the Distributor:

- (a) its reconciled purchases and/or data submitted to the RM on request by the Distributor, and
- (b) ICP consumption information, (by month & by GXP) if not already provided under clause 11 of this agreement,

for each Network Supply Point relevant to the Network using the appropriate Information Exchange Protocol.

7.2 **Distributor to report on Losses:** Within 40 Working Days of the end of each month, the Distributor shall provide to the Retailer, or cause a third party to provide to the Retailer, monthly and moving annual Loss Ratio information relating to each Network Supply Point (or aggregated group of Network Supply Points where these fall within the same pricing/Loss Factor region) relevant to the Network for each of the previous 12 months. This information shall also identify the average Loss Ratio implicit in the current Loss Factors.

7.3 **Distributor to investigate adverse trends in Losses:** If over time the actual Loss Ratio moves abnormally away from the average Loss Ratio implicit in the current Loss Factors, the Distributor will use reasonable endeavours to identify the cause of the abnormal movement. If the abnormal movement is clearly due to substandard data provision by the Retailer or any other retailer, the Distributor shall address the matter with the retailer(s) concerned in order to remedy the situation. If the Distributor is unable to identify the cause of the abnormal movement, or its inquiries fail to remedy the situation, then the Distributor shall provide relevant information to all affected retailers and will, if requested by the Retailer, facilitate a meeting of all affected retailers to attempt to resolve the matter.

7.4 **Retailer to provide information to enable calculation of Loss Factors by the Distributor:** The Retailer shall provide the Distributor with any additional information the Distributor may reasonably require to enable it to calculate Loss Factors.

7.5 **Calculation and notification of Loss Factors:** Subject to clause 7.7, the Distributor:

- (a) shall review Loss Factors annually; and
- (b) may change Loss Factors in conjunction with a price review.

If any change of Loss Factors is proposed, the Distributor will notify the Retailer of the new Loss Factors by giving the Retailer no less than 40 Working Days written notice of the change (including the reasons for the change).

7.6 **Transparent Loss Factors methodology:** Any notice provided to the Retailer in accordance with clause 7.5 will contain details of the methodology and information used by the Distributor to determine the Loss Factors, including an explanation of the relationship between the Loss Ratio reported under clause 7.2 and the Loss Factors notified under clause 7.5.

7.7 **Disputes over Loss Factors:** If, at any time, a Retailer considers that the Loss Factors notified by the Distributor are not appropriate, or considers the methodology or information used to calculate those Loss Factors is incorrect, a Retailer may make a written complaint to the Distributor. The Distributor will consider the complaint in good faith within 20 Working Days and may change the Loss Factors declared in its notice accordingly. If the Distributor fails to change its notice, the Retailer may refer the matter to the dispute resolution process set out in clause 25. In the event that the outcome of dispute resolution is to change the Loss Factors declared in the Distributor's notice, and such change leads to a change in the level of revenue received by the Distributor, the Distributor reserves the right to determine the time from which that change is to apply, provided that the time of application does not exceed 60 Working Days from the date on which the Dispute is finally resolved.

## 8. SERVICE PERFORMANCE REPORTING

8.1 **Parties to report on performance relative to Service Levels:** Each party will, unless it is required under legislation or regulation to publish such information elsewhere, report on its performance relative to Service Levels in accordance with the reporting measures and frequency of reporting as set out in Schedule 1.

8.2 **Contents of performance report:** The parties will prepare a performance report ("**Performance Report**") in accordance with clause 8.1, which will:

- (a) compare actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
- (b) explain the reasons for any significant under-performance, and explain what actions the party will undertake to rectify that under-performance; and

- (c) for the avoidance of doubt, in the event that the party claimed during the relevant reporting period that it was unable to meet the Service Standards due to the occurrence of a Force Majeure Event for which it invoked clause 23, give a full account of the nature of the Force Majeure Event(s) and the impact of such event(s) on the party's performance in relation to the Service Standards,

in accordance with the frequency of reporting set out in Schedule 1.

8.3 **Additional reports:** Either party (the "requester") may request the other party (the "provider") to provide additional performance reports, including reports containing information in addition to that specified in clause 8.2 or more frequent reports containing the same information. The provider shall comply with such requests if it is reasonably able to do so. The provider may charge the requester for the costs reasonably incurred in preparing and supplying such additional reports, provided that, if an additional report is requested due to a suspected failure by the provider to meet a Service Standard which has not been reported in accordance with clause 8.2, and the additional report demonstrates that such failure existed, no charge may be levied.

8.4 **Insurance not to be compromised:** Nothing in this clause 8 requires either party to disclose information which may adversely affect an insurance policy held by that party.

## **PART II - PAYMENT OBLIGATIONS**

### **9. PROCESS FOR SETTING AND APPLYING PRICES**

9.1 **Price Adjustment:** The Distributor may alter its pricing (e.g. a change under clause 9.2 to its pricing methodology or a change to the prices for Distribution Services) no more than once in any period of 12 consecutive months except where a proposed price change is a material increase and results from a change in:

- (a) Local authority rates; or
- (b) Transmission Charges; or
- (c) Distribution Services; or
- (d) a legislative requirement.

Nothing in this clause 9.1 prevents a price decrease, or a price change if agreed by the Retailer.

9.2 **Process to change pricing methodology:** When the Distributor contemplates a change to its pricing methodology which may result in the introduction of a new Price Category or the closure of an existing Price Category the following process shall be followed:

- (a) **Advise the proposal:** the Distributor will notify the Retailer of its proposed changes and rationale and invite the Retailer to provide written comments within 20 Working Days of such notification;
- (b) **Notify submissions and responses:** Prior to disclosure of the pricing methodology under clause 9.2(d), the Distributor will provide the Retailer with a summary of any submissions received and its response to them;
- (c) **Consider certain matters:** The Distributor will develop its final pricing methodology and prices, and in doing so it shall:
  - (i) have regard to the pricing principles in Schedule 8; and
  - (ii) consider in good faith all matters relevant and available to it in developing its views, including the submissions and information made available during the process set out in this clause;
- (d) **Disclose pricing methodology:** upon developing the final methodology, the Distributor will Publish its final pricing methodology and prices and reasons for its decisions.

9.3 **Notice of price adjustment:** The Distributor will give the Retailer written notice (and notice by email, where email is not an agreed method of notice under clause 28.2(d) of this agreement) of any price adjustment, such notice to include details of the new prices (and mapping by ICP of changes in price category where applicable), as specified below:

- (a) **Existing pricing methodology:** in the case of new prices calculated using an existing pricing methodology, 40 Working Days written notice;
- (b) **New pricing methodology:** in the case of new prices calculated using a new pricing methodology, 60 Working Days written notice.

9.4 **Pricing methodology and prices cannot be disputed:** Once the price methodology and prices are finalised and notified in accordance with clauses 9.2 and 9.3, the pricing methodology and prices can not be challenged except on the grounds of clause 4.1. Where a dispute is raised under clause 4.1, the Retailer will continue to pay invoices until the dispute is resolved.

9.5 **Pricing methodology identified as containing manifest error:** Where the Retailer identifies an error in the pricing methodology or prices notified in accordance with clauses 9.2 and 9.3 and the error arises from an obvious arithmetic error in calculating the prices or pricing methodology, the Retailer shall bring that error to the Distributor's attention as soon as possible.

## 10. PRICE CATEGORY AND TARIFF OPTIONS

10.1 **Distributor determines Price Category:** Where different Price Categories exist within the charges (as opposed to the Tariff Options within a Price Category where such a Price Category provides for Retailer choice amongst two or more alternatives), the Distributor will be entitled to determine which Price Category will apply to an ICP. In determining which Price Category should reasonably apply to an ICP, the Distributor will have regard to the Consumer's Installation, the Consumer's demand profile and capacity requirements and any other relevant factors.

10.2 **Retailer request for correction of Price Category:** If the Retailer reasonably considers that a Price Category has been inappropriately allocated to an ICP, the Retailer will notify the Distributor and the Distributor will advise the Retailer, within 10 Working Days, as to whether or not it agrees to allocate a different Price Category to that ICP. The Retailer will provide the Distributor with the reasons why it considers the Price Category has been inappropriately allocated to the ICP, and the Distributor will provide to the Retailer information relevant to its decision.

10.3 **Credit following correction:** If the Distributor allocates a different Price Category to an ICP following notice from the Retailer pursuant to clause 10.2, the Distributor will:

- (a) commence charging the Retailer in accordance with that Price Category with immediate effect; and
- (b) subject to clause 10.4, credit the Retailer with the difference (if any) between:
  - (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
    - (1) the Commencement Date;
    - (2) the date the Distributor incorrectly allocated the Price Category to that ICP;
    - (3) the Switch Event Date for that ICP recorded for the Retailer;

up to the date on which the Distributor allocates a different Price Category to that ICP; and

- (ii) the charges that would have applied if the new Price Category had been allocated to that ICP during the period referred to in paragraph (i),

provided that the maximum period for which credit will be required under any circumstances pursuant to this clause is 15 months.

10.4 **Limitations on credits for Price Category corrections:** Paragraph (b) of clause 10.3 will not apply in respect of an ICP where:

- (a) clause 10.5 applies to that ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer has failed to provide the Distributor with correct or complete information in relation to the Consumer's Installation, the Consumer's demand profile and capacity requirements and any other factors in respect of that ICP relevant to the allocation of a Price Category (provided that information was not already known by the Distributor); or
- (c) the Retailer has, at any time, provided the Distributor with incorrect or incomplete information in relation to the Consumer's Installation, the Consumer's demand profile and capacity requirements or any other factors in respect of that ICP relevant to the allocation of a Price Category.

10.5 **Distributor's right to change Price Category:** Where the Distributor reasonably considers that a different Price Category should be allocated to a particular ICP:

- (a) the Distributor will notify the Retailer accordingly including the reasons why it considers the Price Category allocated to the ICP should be changed; and
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Price Category is appropriate, the Distributor will be entitled to allocate the Price Category that it considers appropriate to that ICP and to commence charging the Retailer for Distribution Services in accordance with that Price Category after a further 40 Working Days; and

- (c) the Distributor will provide to the Retailer information relevant to its decision.

10.6 **Price Category changes where available as a Consumer elected alternative:** If the Retailer seeks an alternative Price Category as a result of a Consumer electing an alternative Price Category, then the Distributor will change the Price Category to that requested, provided that the ICP meets the requirements for that Price Category. Price Category changes notified under this clause shall apply from the later of the effective date in the notification or 10 Working Days after the date of notification.

10.7 **Tariff Options within a Price Category:** Within 10 Working Days of a change to the Tariff Option applicable to any Distribution Services in respect of an ICP, where the change to that Tariff Option results from a change in Metering Equipment (and/or Load Control Equipment where applicable), the Retailer shall notify the Distributor of the change using the appropriate Information Exchange Protocol.

10.8 **Commencement of charges:** Charges will commence at an ICP:

- (a) on the day the ICP is Energised or Re-energised; or
- (b) where the Retailer is assuming responsibility for an ICP, from the later of the Switch Event Date and the date that the ICP is Energised.

10.9 **Cessation of charges:** Charges will cease at an ICP:

- (a) on the day an ICP is De-energised (except where this occurs as a result of a Temporary Disconnection); or
- (b) from the Switch Event Date where another retailer takes responsibility for the ICP; or
- (c) 2 Working Days after the Distributor receives a notification from the Retailer to take responsibility for completing a Vacant Site Disconnection that is in accordance with paragraph 16 of Schedule 7.

## 11. BILLING AND PAYMENT

11.1 **Retailer to provide consumption information:** The Retailer will provide to the Distributor within 7 Working Days of the end of the month all information the Distributor may reasonably require to enable it to calculate its invoice for Distribution Services. Where consumption information is used in the calculation of charges, the information shall be provided using the appropriate Information Exchange Protocol.

- 11.2 **Late, incomplete, or incorrect provision of information:** If the Retailer fails to provide consumption information by the 7<sup>th</sup> Working Day or the information is incomplete or materially incorrect, the Distributor may estimate the Retailer's invoice for Distribution Services using Good Industry Practice.
- 11.3 **Charges, invoices and due date for payment:** The Distributor's invoice for Distribution Services shall be based on the schedule of prices set out in Schedule 10, and shall be sent to the Retailer within 11 Working Days of the end of the month to which the invoice relates. At the same time the Distributor shall provide sufficient detail information, using the appropriate Information Exchange Protocol, to enable the Retailer to verify the accuracy of the invoice. The Distributor will use best endeavours to deliver an electronic copy of the invoice to the Retailer together with supporting information within 10 Working Days of the end of the month to which the invoice relates. The settlement date for the invoice shall be the 20<sup>th</sup> day of the month in which the invoice is received, or the next Working Day where the 20<sup>th</sup> of the month is not a Working Day. However if the Distributor fails to send an invoice to the Retailer by the 11<sup>th</sup> Working Day then the due date for payment will be extended by 1 Working Day for each Working Day that the invoice is late.
- 11.4 **Wash-ups:** Where complete and accurate consumption information, or adjusted reconciliation information (as applicable to the pricing methodology) is received by the Distributor after the 7<sup>th</sup> Working Day following the end of the month or corrected consumption information and/or reconciliation information to replace the earlier information used for invoicing is provided, the Distributor will provide an invoice for the wash-up amount for settlement in the next monthly billing cycle. The settlement date for the wash-up amount will be 6 Working Days from the wash-up invoice date.
- 11.5 **Other invoices:**
- (a) The Distributor may issue the Retailer with an invoice for payment for Additional Services, Services Guarantee payments and any other sums due to the Distributor under this agreement.
  - (b) The Retailer may issue the Distributor with an invoice for Service Guarantee payments and any other sums due to the Retailer under this Agreement.
  - (c) Any invoice under clause 11.5(a) or (b) shall be issued within 10 Working Days of the end of the month to which the invoice relates.
  - (d) The Settlement date for any invoice under clause 11.5(a) or (b) shall be the 20<sup>th</sup> day of the month in which the invoice is received, or the next

Working Day where the 20<sup>th</sup> of the month is not a Working Day. However if the Distributor or the Retailer (as applicable) fails to send an invoice to the Retailer or the Distributor (as applicable) by the 11th Working Day of the month then the due date for payment will be extended by 1 Working Day for each Working Day that the invoice is late.

- 11.6 **Interest on late payment:** Subject to clause 11.7, the Retailer or the Distributor, as appropriate, will pay any invoice issued under clauses 11.3, 11.4 or 11.5. Where any part of an invoice that is due in accordance with this agreement is not paid by the due date, Default Interest may be charged.
- 11.7 **Disputed invoices:** If the Retailer or the Distributor disputes an invoice issued under clauses 11.3, 11.4 or 11.5, the party disputing the invoice ("**disputing party**") shall notify the other party ("**non-disputing party**") in writing and provide details as to the reasons why the disputing party disputes that invoice within 18 months of the date of supply of the Services ("**Invoice Dispute**") On receiving the Invoice Dispute notice, the non-disputing party shall:
- (a) where the non-disputing party agrees with the matters set out in the Invoice Dispute notice and:
    - (i) the Retailer or the Distributor, as appropriate, has not paid the disputed invoice, promptly issue a new invoice and the relevant party will pay the new invoice within 6 Working Days of receiving it, but need not pay prior to the time set out in clause 11.3, 11.4 or 11.5; or
    - (ii) the Retailer or the Distributor, as appropriate, has paid the disputed invoice, calculate the amount that the relevant party has over paid and promptly issue an invoice to the disputing party for the over paid amount, and that invoice plus a Use of Money Adjustment is to be settled within 6 Working Days of the non-disputing party's invoice for the over paid amount. A Use of Money Adjustment will apply for the period commencing on the date the original invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clauses 11.3, 11.4 or 11.5; or
  - (b) where the non-disputing party disagrees with the matters set out in the Invoice Dispute notice, the matter will be referred to dispute resolution in accordance with clause 25 and if the Retailer or the Distributor, as appropriate, has not paid the disputed invoice, it will pay the undisputed

amount of the disputed invoice issued in accordance with clauses 11.3, 11.4 or 11.5; and

- (c) upon the resolution of any Invoice Dispute under clause 11.7(b), the party which is found to have an outstanding amount will pay that amount within 6 Working Days, plus Default Interest to the other party. The Default Interest will apply for the period commencing on the date the disputed amount would have been due for payment under clauses 11.3, 11.4 or 11.5, and ending when payment is made.

11.8 **Incorrect invoices:** If it shall be found at any time that a party has been overcharged or undercharged and a party shall actually have paid the invoices containing such overcharge or undercharge, then within 20 Working Days after such error has been discovered and the amount has been agreed to between the parties or determined pursuant to clause 25, the party which has been overpaid shall refund to the other party the amount of any such overcharge or the party which has underpaid shall pay to the other party the amount of any such undercharge in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there shall be no right to re-open invoices if more than 18 months has elapsed since the date of the invoice.

11.9 **No set off:** Both parties will make the payments required to be made to the other pursuant to this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in clause 11.7.

## 12. PRUDENTIAL REQUIREMENTS

12.1 **Retailer must satisfy prudential requirements:** The Retailer will comply at its election with one of the following prudential requirements when required by the Distributor:

- (a) **Holding and maintaining an acceptable credit rating:** holding and maintaining an acceptable credit rating in accordance with clause 12.2; or
- (b) **Paying a cash deposit:** pay a cash deposit (or transferring or granting security over assets of equivalent value if agreed by the parties) of the amount required in accordance with this clause 12 ("Cash Deposit"). If a Cash Deposit is paid, the Distributor will deal with such funds in accordance with the Trust Account Rules specified in clause 12.18; or

- (c) **Third party security:** arranging for a third party to provide one or a combination of the following securities, in a form acceptable to the Distributor, for the amount required in accordance with this clause 12, provided the party providing the security maintains an acceptable credit rating in accordance with clause 12.3;
  - (i) **Guarantee or letter of credit:** an unconditional guarantee or letter of credit in favour of the Distributor; or
  - (ii) **Third party guarantee:** an unconditional third party guarantee in favour of the Distributor; or
  - (iii) **Bond:** a security bond in favour of the Distributor;or
- (d) **Providing a mixture of security:** providing any combination of the securities listed in clauses 12.1(b) and 12.1(c) (or any similar securities approved by the Distributor).

12.2 **Acceptable credit rating:** For the purposes of clause 12.1(a), an acceptable credit rating means that the Retailer must carry a long-term credit rating:

- (a) of at least [Baa2] (Moody's Investor Services Inc.), [BBB] (Standard & Poors Ratings Group), [B] (AM Best), or an equivalent rating from any other reputable rating agency which is acceptable to the Distributor; and
- (b) if the Retailer has the minimum acceptable credit rating, this rating is not subject to negative credit watch.

12.3 **Acceptable credit rating:** For the purposes of clause 12.1(c), an acceptable credit rating means that the third party security provider must carry a long-term credit rating:

- (a) of at least [A2] (Moody's Investor Services Inc.), [A] (Standard & Poors Ratings Group), [B++] (AM Best), or an equivalent rating from any other reputable rating agency which is acceptable to the Distributor; and
- (b) if the third party security provider has the minimum acceptable credit rating, this rating is not subject to negative credit watch.

12.4 **Evidence of acceptable credit rating:** The Retailer, or third party security provider (as the case may be) will provide such evidence of the acceptable credit rating (as set out in clause 12.2 or 12.3), as the Distributor or its agent may from time to time reasonably require.

- 12.5 **Level of security:** Where the Retailer provides a Cash Deposit or has a third party provide a guarantee, letter of credit or bond to satisfy the prudential requirements in clause 12.1, the maximum amount of the Cash Deposit, or maximum amount which may be payable pursuant to the guarantee, letter of credit or bond, is the Distributor's reasonable estimate of the charges for 2 months (GST inclusive) payable by the Retailer plus any disputed amount withheld in the case of a disputed invoice under clause 11.7(b) to the Distributor under this agreement.
- 12.6 **Distributor to calculate new Retailer's level of security:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will calculate the requisite level of security required pursuant to clause 12.5 for the first 12 months, subject to any reassessment of the security level pursuant to this agreement having regard to:
- (a) **Historical records:** the Distributor's historical records of the consumption of relevant Consumers; and/or
  - (b) **Retailer's business plan:** in the absence of records satisfying the requirements of clause 12.6(a), a bona fide business plan prepared in good faith to permit a realistic estimate of the Retailer's level of security as defined in clause 12.5.
- 12.7 **Review of security level:** At any time, the Distributor may review or the Retailer may require the Distributor to review and if appropriate change, the level of security required to be held by the Retailer in accordance with clause 12.5, or if no security has been provided by the Retailer due to the Retailer having an acceptable credit rating in accordance with clause 12.2 and the Retailer has failed to maintain an acceptable credit rating under clause 12.2, the Distributor may require the Retailer to provide additional security in accordance with this clause 12. Where either party has by written notice required the other to review the level of security, the other party must make any appropriate changes to that level within 20 Working Days of receiving the notice.
- 12.8 **Retailer to notify Distributor of changes affecting security:** Subject to clause 12.9, the Retailer is to immediately notify the Distributor should any of the following occur:
- (a) the Retailer gives a notice (in accordance with rules 4.2.2 or 4.2.3 of Part H of the Rules) of a change to its security status; or
  - (b) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to purchase Services will be consequently affected; or

- (c) the Retailer learns that a third party security provider (upon which its current satisfaction of the prudential requirements in this clause 12 is dependent) no longer holds an acceptable credit rating in terms of clause 12.3.

Any information provided by the Retailer to the Distributor under this clause shall be Confidential Information.

12.9 **Public issuers and listed companies:** For the purpose of clause 12.8 above, if the Retailer:

- (a) is a “public issuer” for the purposes of the Securities Markets Act 1988, the Retailer may withhold any information to the extent that, and for so long as, the Retailer considers such information to be “inside information” as defined in that Act; or
- (b) is listed on the New Zealand Stock Exchange, the Retailer may withhold any information to the extent that the Retailer considers such information is “material information” under the Listing Rules of the New Zealand Stock Exchange.

12.10 **Distributor may make enquiries:** Where the Distributor believes that the Retailer should have given notice under clauses 12.8(a) to (c) and the Distributor has not received a copy of any such notice, the Distributor may enquire of the Retailer as to whether it should have given such notice. Any such enquiry shall be in writing and be addressed to the Chief Executive of the Retailer. If such notice should have been given, the Retailer shall give notice immediately, or if no notice is required, the Retailer must respond to the Distributor in writing within 2 Working Days of receipt of the Distributor’s notice under this clause 12.10. Correspondence sent or received by either party under this clause shall be Confidential Information.

12.11 **Change in the level or type of security:** If the Distributor:

- (a) following a review of the Retailer's security level pursuant to clause 12.7; or
- (b) on receipt of information contemplated by clauses 12.8 or 12.10; or
- (c) as the result of a failure by the Retailer to respond to a request in terms of clause 12.10 within the timeframe set out above,

considers on reasonable grounds that the level of security should, subject to clause 12.5, be increased or decreased or that reliance on an acceptable credit rating is no

longer sufficient security, the Distributor will immediately notify the Retailer of its decision and the grounds for that decision. For the avoidance of doubt, failure by a Retailer to respond to a request made under clause 12.10 within the required timeframe shall constitute reasonable grounds for a Distributor to, subject to clause 12.5, alter the security required to be provided by the Retailer.

- 12.12 **Distributor or Retailer to effect changes in level or type of security:** The Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the level of security or change in type of security notified by the Distributor, within 5 Working Days of notification under clause 12.11. Refunds of Cash Deposits and reductions of guarantees, letters of credit and bonds will be made in accordance with clauses 12.13 or 12.14.
- 12.13 **Refund of Cash Deposits:** If the Distributor refunds a Cash Deposit in accordance with this clause 12, it will refund all or part of the Cash Deposit, as the case may be, into a bank account nominated by the Retailer on the Working Day following the day on which the Distributor made the decision to refund the Cash Deposit, or is required to refund the Cash Deposit in accordance with the Trust Account Rules.
- 12.14 **Reduction of guarantees etc:** If the Distributor decreases the level of a guarantee, letter of credit or bond in accordance with this agreement, the Retailer may arrange for the issuing of a guarantee, letter of credit or bond as the case may be, for the lesser amount in satisfaction of clause 12.1(c) which will replace the earlier guarantee, letter of credit or bond.
- 12.15 **Change of security by Retailer:** If the Retailer elects to substitute a form of security or a combination of securities (which, in either case, would satisfy the requirements of clause 12.1) for the existing form of security or combination of securities, provided in accordance with this clause 12, then the Retailer will notify the Distributor of its intention at least 2 Working Days prior to the change occurring and such change will come into effect on the intended date provided the Retailer has complied with all its obligations under this agreement, and upon confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided which satisfies the requirements of clause 12.1. Any refund of a Cash Deposit, or any release or replacement of a guarantee, letter of credit or bond provided in accordance with clause 12.1, that results from such a change will take place in accordance with clauses 12.13 or 12.14.
- 12.16 **Calls on security and deemed change of security:** If the Retailer fails to pay an amount pursuant to this agreement which is not subject to a genuine dispute, the Distributor may on 2 Working Days notice to the Retailer call on the provider of a

guarantee, letter of credit or bond to make payment in accordance with the guarantee, letter of credit or bond.

- 12.17 **Third party security may be released:** Where the provider of a guarantee or letter of credit or bond makes a payment to the Distributor in order to be released from its obligations pursuant to a guarantee or letter of credit or bond, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the letter of credit or guarantee or bond (as the case may be) and clause 12.1 will apply accordingly.
- 12.18 **Trust Account Rules:** The Distributor will comply with the following rules in relation to the establishment and operation of the trust account set up in accordance with clause 12.1(b):
- (a) the Distributor will establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding Cash Deposits received from retailers in accordance with the relevant prudential requirements agreed with any retailer ("**Trust Account**");
  - (b) the Retailer's Cash Deposit will be credited to a sub-account, separate from all other amounts deposited into the Trust Account and clearly identified as relating to the Retailer's funds;
  - (c) the Distributor must obtain acknowledgement from each Bank with which it has a Trust Account that the Cash Deposits are held on trust in the Trust Account for the purposes set out in clause 12.18(a) and that the Bank has no right of set-off or right of combination in relation to the Cash Deposits;
  - (d) the Retailer will inform the Distributor of the bank(s) the Retailer uses for its banking purposes and if the Retailer changes banks;
  - (e) the Trust Account will bear interest at the best rate reasonably obtainable from time to time from the Bank. Interest will be paid out to the Retailer on a quarterly basis net of account fees and any withholdings required by law, unless agreed otherwise;
  - (f) the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus interest) to the Retailer in accordance with clause 12.13 in the event that this agreement is terminated, provided that the Retailer:

- (i) is not otherwise in default of this agreement; and
- (ii) has ceased to be bound by this agreement; and
- (iii) has discharged all such obligations to the Distributor, including payment of all outstanding amounts under this agreement;
  
- (g) in the event that the Retailer fails to pay an amount pursuant to this agreement which is not subject to a genuine dispute, the Distributor may on 2 Working Days notice (provided that this notice requirement shall not apply to deemed Cash Deposits under clause 12.16) draw down that amount, plus Default Interest from the Cash Deposit and the Distributor will immediately notify the Retailer of the amount drawn down;
  
- (h) The Distributor will provide the Retailer with an annual report in respect of the operation of the relevant sub-account of the Trust Account if requested by the Retailer.

12.19 **Release of guarantees, letters of credit and bonds:** If this agreement is terminated, the Distributor will release any guarantee, letter of credit or bond provided that the Retailer has met all of the requirements set out in clause 12.18(f).

### **PART III - OPERATIONAL REQUIREMENTS**

#### **13. ACCESS TO THE CONSUMER'S PREMISES**

13.1 **Rights of entry onto Consumer's Premises:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers access onto the Consumer's Premises by the Distributor or its agent for the following purposes:

- (a) to inspect, test, install, maintain, operate, replace or remove the Distributor's Equipment; or
- (b) to install, read or maintain Metering Equipment to ascertain and measure the attributes of the Consumer's load on the Network; or
- (c) to ascertain the cause of any interference with the quality of supply to the Consumers Installation or the surrounding area
- (d) to disconnect and reconnect in accordance with this agreement; or

- (e) to access any of the Retailer's Equipment for the purpose of verification of metering information, including, in the event of termination of this agreement, access to any Retailer's Equipment to determine any charges outstanding at the time of termination; or
- (f) for safety of persons and property; or
- (g) to ensure that obligations under clause 14.3 are carried out; or
- (h) to enable the Distributor to gain access to and remove any of the Distributor's Equipment for up to 6 months following the termination of the agreement with the Consumer.

13.2 **Exercise of access rights:** In exercising the access rights under clause 13.1, the Distributor shall, except to the extent that the Distributor has any other binding agreement setting out the access rights directly with the Consumer:

- (a) comply with sections 23A to 23D, section 57 and section 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 13.1;
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to, and/or other security information for, the Consumer's premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer and ensure its personnel behave in a courteous and considerate manner at all times while on the Consumer's Premises; and
- (d) comply with the Consumer's reasonable practices and procedures as disclosed by the Consumer or as generally practised for health and safety, and security requirements.

13.3 **Distributor may disconnect:** The Retailer will, subject to clause 26.1, procure in its agreements with Consumers that if the Consumer fails to reasonably grant to the Distributor access rights to the Distributor's Equipment on the Consumer's Premises:

- (a) where access is required under clause 13.1(a), (b), (d) or (g), after the Distributor or Retailer has given the Consumer 7 Working Days' written notice of access being required; or
- (b) where access is required under clause 13.1(c), (e) or (f), immediately,

the Distributor may, subject to clause 19.6, disconnect the Consumer's Point of Connection from the Network and go onto the Consumer's Premises to reclaim the Distributor's Equipment.

13.4 **Costs of Disconnection:** The Distributor shall not be liable for any loss the Retailer may suffer or incur as a result of disconnection carried out in accordance with the Retailer's agreement with the relevant Consumer. The Retailer shall reimburse the Distributor for all costs relating to the disconnection and reconnection.

13.5 **Existing agreement will prevail:** In the event of a conflict between the provisions of clause 13 and any provision of any existing agreement between the Consumer and Distributor with respect to the Distributor's access rights to the Consumer's Premises, then the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

#### 14. INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY

14.1 **Interference or damage to Distributor's Equipment:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers that the Consumer will, not interfere with or damage, and ensure that its employees, agents and invitees do not interfere with or damage, the Distributor's Equipment (including, without limitation (for a period of 6 months), after termination of this agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect the Distributor's Equipment from damage. If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer shall pay the cost of making good the damage to the Distributor.

14.2 **Interference or damage to Retailer's Equipment or Consumer's Installation:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Consumer's Installation (including, without limitation for a period of 6 months after termination of this agreement) without the prior written consent of the Retailer or the Consumer (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect that equipment from damage. If the Retailer's Equipment or the Consumer's Installation is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, then the Distributor shall pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause is for the

benefit of the Consumer and may be enforced by the Consumer pursuant to the Contracts (Privity) Act 1982.

- 14.3 **Interference with the Network:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers that they will not without the prior written agreement of the Distributor:
- (a) inject or attempt to inject any energy into the Network; or
  - (b) convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy pursuant to this agreement and load control signals transmitted by or with the written consent of the Distributor) over the Network or cause or permit any other person to do so.
- 14.4 **Notification of interference, damage or theft:** If the Distributor or Retailer discover any interference or damage to the other party's equipment or the Consumer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party will notify the affected party as soon as it is practicable to do so.
- 14.5 **Metering Equipment:** Either party may at its own cost, install and maintain additional Metering Equipment for metering data verification purposes or other purposes, provided that:
- (a) it does not interfere with any other Metering Equipment and
  - (b) If the party installing or maintaining the additional Metering Equipment causes damage to the other party's Metering Equipment or invalidates the existing metering certification, then the party that has caused the damage and/or invalidated the existing metering installation's certification will meet the cost of making good the damage and/or re-certifying the metering installation, and if applicable will indemnify the other party for any direct costs incurred due to non-compliance with the Rules which result from the use of the equipment during the period of non-certification.
- 14.6 **Safe Housing of Equipment:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers (subject to any alternative agreed between the Retailer and the Distributor in writing) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Consumer's premises which the Distributor determines is necessary.

14.7 **The Network:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers an acknowledgement by the Consumer that:

- (a) the Network, including any part of the Network situated on a Consumer's Premises, is and will remain the sole property of the Distributor; and
- (b) no provision of the Consumer's agreement with the Retailer nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Fittings owned or controlled by the Distributor which are used to provide any such services.

## 15. NETWORK CONNECTION STANDARDS

The Retailer will, subject to clause 27.1, procure in its agreements with its Consumers an undertaking that the Consumer will comply with the Distributor's Network Connection Standards;

## 16. MOMENTARY FLUCTUATIONS

16.1 The Retailer will, subject to clause 27.1, procure in its agreements with its Consumers undertakings that the Consumer:

- (a) recognises that surges or spikes are momentary fluctuations in voltage or frequency and are not treated as interruptions; and
- (b) has been advised to protect the Consumer's sensitive equipment from such surges or spikes.

## 17. CONSUMER SERVICE LINES

17.1 **Responsibility for Consumer Service Lines:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers an acknowledgment of the Consumer's responsibility for its Consumer Service Lines (including responsibility for maintenance, repair, replacement and enhancement).

## 18. TREE TRIMMING

18.1 **Retailer's Agreements to provide for tree trimming:** Subject to any prior written agreement between the Retailer and a Consumer or a Consumer and the Distributor, or any statutory provision, the Retailer shall ensure that every agreement in relation to the

supply and transportation of electricity between the Retailer and a Consumer provides for the matters set out in clauses 18.2 and 18.3.

- 18.2 **Consumer responsible for Consumer Service Lines:** The Consumer is responsible for ensuring, at its cost, that its Consumer Service Lines are unobstructed by trees or vegetation so as not to create an unsafe situation.
- 18.3 **Consumer responsible for complying with Tree Regulations:** The Consumer is responsible for complying with the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees on the Consumer's property..
- 18.4 **Distributor's right and obligations:** The Distributor will comply with the requirements of the Electricity (Hazards from Trees) Regulations 2003.

## 19. CONNECTIONS AND DISCONNECTIONS

- 19.1 **Policies:** The Distributor and the Retailer will comply with the policies for establishing new ICPs, changing the capacity of existing ICPs, Permanently Disconnecting existing ICPs and for De-energising or Energising existing ICPs set out in Schedule 7.
- 19.2 **All of the Consumer's Installations to be compliant:** The Retailer will, subject to clause 27.1, ensure that its agreement with each Consumer contains an obligation on the Consumer to ensure that the Consumer's Installation(s) complies with all relevant legal requirements (including where applicable that any alteration be certified by a suitably qualified person) and with the Distributor's requirements as set out in Schedule 5 of this agreement.
- 19.3 **Consumers' Installations not Permanently Disconnected without notice:** Subject to section 62 of the Electricity Act 1992 and any agreement the Distributor may have with a Consumer, the parties will adhere to the terms laid out in Schedule 7 of this agreement when seeking to have a Consumer's Installation Permanently Disconnected.
- 19.4 **Warranted Persons:** Only a Warranted Person may carry out any activity related to Energising, De-energising, and Permanently Disconnecting ICPs or performing any other works on the Network.
- 19.5 **Disconnection:** Subject to clause 19.6, the Distributor may perform a Temporary Disconnection in relation to a particular ICP in the following circumstances:
- (a) it is necessary to avoid endangering persons or property;

- (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or transmission system;
- (c) an Event of Default or Insolvency Event has occurred in relation to the Retailer;
- (d) in the circumstances set out in clause 3.6;
- (e) in accordance with clause 13.3 (where the Consumer fails to allow the Distributor access to the Consumer's premises);
- (f) where a Consumer does any of the things prohibited under clauses 14.1 or 14.3, or fails to do any of the things required of it pursuant to clause 18.2 or
- (g) on termination of this agreement.

19.6 **Notice of disconnection where event is within Consumer's control:** Where the Distributor intends to perform a Temporary Disconnection under clause 19.5(e) or (f), the Distributor will give the Retailer

- (a) at least 12 days' notice of warning of disconnection before any disconnection;
- (b) a final warning not less than 48 hours nor more than 8 days before the disconnection. The final warning must provide the timeframes for disconnection. This will be a separate notice to the one provided at least 7 days prior to disconnection;
- (c) if disconnection is not prevented by the Retailer and not completed within the timeframes notified, the Distributor will issue another final warning not less than 48 hours nor more than 8 days before disconnection

The Distributor will use reasonable endeavours to perform disconnections under this clause 19.6 between the hours of 8am and 7pm Monday to Saturday.

## PART IV: OTHER RIGHTS

### 20. EVENTS OF DEFAULT

20.1 **Breach of agreement:** If either party (the “defaulting party”) fails to comply with any of its obligations under this agreement the other party may notify the defaulting party that it is in breach of this agreement. The defaulting party must remedy any breach within the following timeframe:

- (a) in the case of a Serious Financial Breach by the Retailer, within 2 Working Days of the date of receipt of such notice;
- (b) in any other case, within 5 Working Days of the date of receipt of such notice.

20.2 **Failure to remedy breach:** If the defaulting party fails to remedy a breach within the relevant timeframe set out in clause 20.1, then the other party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the defaulting party in relation to the breach and to notify him or her of the other party’s intention to exercise its rights under this clause, and:

- (a) where:
  - (i) the breach is a Serious Financial Breach (in the case of the Retailer only);
  - (ii) the breach is a material breach of the defaulting party’s obligations under this agreement and the failure is not in the process of being remedied to the reasonable satisfaction of the other party; or
  - (iii) the defaulting party has failed on at least two previous occasions within the last 12 months to meet an obligation under this agreement within the time specified and has received notice of such failures from the other party in accordance with clause 20.1 and, whether each individual failure is in itself material or not, where all such failures taken cumulatively materially adversely affect the other party’s rights or the other party’s ability to carry out its obligations under this agreement or, where the defaulting party is the Retailer, the Distributor’s ability to carry out its obligations under any agreement with any other electricity retailer,

then after at least 1 Working Day following the end of the timeframe set out in clause 20.1, the other party may commence termination of this agreement in accordance with clause 21.2 and, where the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Commission in writing that the Retailer is in breach of this agreement and Part H of the Rules or;

- (b) where the breach is not an Event of Default, the other party may refer the matter to dispute resolution in accordance with clause 25 within 1 Working Day after the end of the timeframe set out in clause 20.1;

and

- (c) the other party may exercise any other legal rights available to it.

20.3 **Insolvency Event:** Where either party is subject to an Insolvency Event:

- (a) the other party may:
  - (i) immediately commence termination of this agreement in accordance with clause 21.2; and
  - (ii) exercise any other legal rights available to it; and
- (b) where the Insolvency Event involves a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Commission in writing that the Retailer is in breach of this agreement and Part H of the Rules.

## 21. TERMINATION OF AGREEMENT

21.1 **Either party may terminate this agreement:** In addition to any other termination right in this agreement:

- (a) **At will:** either party may terminate this agreement by giving not less than 6 months notice in writing of termination and the date on which this agreement will terminate; or
- (b) **Dispute resolution:** either party may terminate this agreement in accordance with any agreement reached or determination made as a result of the dispute resolution process set out in clause 25 where the other party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach; or

- (c) **Illegality:** either party may terminate this agreement 1 Working Day after notice is given by either party to the other party terminating this agreement for the reason that performance of any material provision of this agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 30.4 it is not practicable for this agreement to continue; or
- (d) **No Consumers:** either party may terminate this agreement 5 Working Days after notice is given by either party to the other party terminating this agreement following any continuous period of 6 months or more during which the Retailer has not supplied any Consumers with electricity using the Network; or
- (e) **Force majeure:** either party may terminate this agreement 10 Working Days after notice is given by either party to the other terminating this agreement for the reason of a Force Majeure Event, which has resulted in the party's failure to perform a material obligation under this agreement, and which is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice to remain bound by its obligations under this agreement, provided that the party seeking to rely on the Force Majeure Event has complied with clauses 23.2 and 23.3.

21.2 **Termination of agreement for Event of Default or Insolvency Event:** In addition to any other termination right in this agreement, where a party has breached this agreement and the breach is an Event of Default, or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 20.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:

- (a) no less than 5 Working Days after the date of such notice; or
- (b) immediately if the Retailer has ceased to supply electricity to all Consumers.

Such notice for termination will lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws or extends the effective date of its notice.

- 21.3 **Retailer's termination of agreement:** In addition to any other termination right in this agreement, the Retailer may terminate this agreement provided that it is not supplying electricity to any Consumer through the Network.
- 21.4 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.
- 21.5 **Retailer remains liable for charges for remaining Consumers:** Where this agreement is terminated by the Distributor for any reason, the Retailer remains liable for all charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or for which the Distributor has not received a notice requesting disconnection of the relevant ICP(s) or the relevant ICP(s) is not disconnected. The Retailer will procure in its agreements with Consumers the right to terminate supply of electricity by the Retailer through the Network to the Consumer upon termination of this agreement.
- 21.6 **Obligations to continue until termination:** The parties will continue to meet their responsibilities under this agreement up to the effective date of termination.
- 21.7 **Events to occur on termination:** On the effective date of termination, unless this agreement is replaced by an Alternative Contract:
- (a) the parties must have returned or certified the destruction of the other party's Confidential Information; and
  - (b) the parties will cease to provide the Services to each other.
- 21.8 **Survival of terms:** Any terms of this agreement which by their nature extend beyond its expiration or termination remain in effect until fulfilled.

## 22. CONFIDENTIALITY

- 22.1 **Commitment to preserve confidentiality:** Each party to this agreement undertakes that it shall:
- (a) preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as provided for in clause 22.2; and
  - (b) only use Confidential Information for the purposes expressly permitted by this agreement.

22.2 **Disclosure of Confidential Information:** Either party may disclose Confidential Information in any of the following circumstances:

- (a) **By agreement in writing:** where the Retailer and Distributor agree in writing to the disclosure of the information;
  - (b) **Provided in this agreement:** where disclosure is expressly provided for under the terms of this agreement;
  - (c) **Public domain:** where at the time of receipt by the party the Confidential Information is in the public domain or where, after the time of receipt by either party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause 22 or a breach by any other person of that person's obligation of confidence);
  - (d) **Required to disclose:** where either party is required to disclose Confidential Information by:
    - (i) any statutory or regulatory obligation, body or authority; or
    - (ii) any judicial or other arbitration process; or
    - (iii) the regulations of any stock exchange upon which the share capital of either party is from time to time listed or dealt in; or
    - (iv) the Rules;
  - (e) **Released to employees, directors, agents or advisors:** where the Confidential Information is released to the employees, directors, agents or advisors of the party provided that:
    - (i) the information is disseminated only on a "need to know" basis; and
    - (ii) recipients of the Confidential Information shall be made fully aware of the party's obligations of confidence in relation thereto; and
    - (iii) any copies of the information clearly identify it as Confidential Information;
- or,
- (f) **Released to a bona fide potential purchaser:** where the Confidential Information is released to a bona fide potential purchaser of the business

or any part of the business of the Distributor or the Retailer, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form approved by the other party, such approval not to be unreasonably withheld.

22.3 **Limit for breach:** A party's liability for breach of this clause 22 shall not be limited by clause 26.

22.4 **Unauthorised disclosure:** For the avoidance of doubt, a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 22.2(f).

### 23. **FORCE MAJEURE**

23.1 **Force Majeure Event:** If either party fails to comply with or observe any provision of this agreement (other than payment of any amount due) and:

- (a) such failure is caused by:
  - (i) **Specific events or circumstances:** any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
    - (A) due to natural causes, directly or indirectly and exclusively without human intervention, and
    - (B) which could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted;
  - (ii) **Strikes, lockouts etc:** strikes, lockouts, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances;
  - (iii) **Orders or requirements:** the binding order or requirement of any court, any government, any local authority, the Rulings Panel or the Electricity Commission, which the party could not reasonably have avoided;
  - (iv) **Failure of supply:** the partial or entire failure of supply or availability of electricity to the Network; or

- (v) **Other event or circumstance:** any other event or circumstance beyond the control of the party invoking this clause 23.1; and
- (b) such party could not have prevented such failure by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced distributor or retailer engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time,

that failure shall be deemed to be a "**Force Majeure Event**" and shall not give rise to any cause of action or liability based on default of the provision.

23.2 **Notice:** If a party becomes aware of a prospect of a forthcoming Force Majeure Event, it must notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 23.1, it must as soon as reasonably practical notify the other party that is invoking clause 23.1 and the full particulars of the Force Majeure Event relied upon.

23.3 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 23.1 must:

- (a) **Endeavour to avoid or overcome the Force Majeure Event:** use all reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) **Endeavour to mitigate the Force Majeure Event:** use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
- (c) **Consult the other party:** consult with the other party on the performance of the obligations referred to in sub clauses (a) and (b) above.

23.4 **No obligation to settle:** Nothing in clause 23.3 is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

23.5 **Refund of charges:** If:

- (a) as a consequence of a fault on the Network, there is a continuous interruption affecting a Consumer's Point of Connection for 24 hours or longer; and

- (b) the Retailer within 60 days of the interruption requests the Distributor to refund the charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which the loss of supply continued,

the Distributor shall refund in the next monthly billing cycle the charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which the loss of supply continued. The Retailer will pass through any refund of charges made by the Distributor to the Consumers that suffered the interruption of supply unless an equivalent amount has already been paid to the Consumers.

The Distributor will provide the Retailer with the information in the manner outlined in Schedule 1 "Introduction" to support a request under 23.5(b) above and within 10 Working Days of the event occurring.

## 24. AMENDMENTS TO AGREEMENT

24.1 A change may be made to this agreement:

- (a) **Variable Provisions changes:** where the change is a change to the Variable Provisions and the change is made in accordance with clause 24.2; and
- (b) **Price changes:** where the change is a change to Schedule 10 and the change is made in accordance with clause 9; and
- (c) **Change in Loss Factor:** where the change is a change to Schedule 11 and the change is made in accordance with clause 7; and
- (d) **Required by law or Rules:** where the change is required by law, the Rules or any mandatory rules or protocols of any industry association or body to which both the Distributor and the Retailer are members or signatories at the relevant time, and the change is made in accordance with clause 24.4;
- (e) **Grid Network Supply Point:** where the change involves:
  - (i) Permanent Disconnection of a Grid Network Supply Point; or
  - (ii) the construction of a new Grid Network Supply Point,

and the change is made in accordance with clause 24.5.

- (f) **Other changes:** where the change does not fall into any of the categories set out above, and the change is made in accordance with clause 24.4.

24.2 **Process to change any of the Variable Provisions:** A change to any of the Variable Provisions may only be made:

- (a) in accordance with any applicable process in the Variable Provision; or
- (b) if there is no applicable process in the Variable Provision and the party seeking the change is the Distributor, in accordance with clause 24.3; or
- (c) by agreement in writing between the parties.

24.3 **Distributor seeks change to any of the Variable Provisions:** If there is no applicable process in the Variable Provision the Distributor may change any of the Variable Provisions, provided that the proposed change is in accordance with Good Industry Practice and further provided the Distributor has complied with the following:

- (a) Subject to paragraph (b) below, the Distributor must give the Retailer a Change Notice not less than 20 Working Days prior to the date on which the Distributor wishes the change to take effect; and
- (b) Before giving a Change Notice to the Retailer;
  - (i) the Distributor must consult with the Retailer over the proposed change for a reasonable period, having regard to the nature of the proposed change, but in any event a period of not less than 20 Working Days, before giving a Change Notice and must consider in good faith any submissions the Retailer may make regarding the proposed change; and
  - (ii) provide the Retailer with a summary of the submissions received and the responses to the submissions which clearly indicates whether the majority of retailers by number of ICPs trading on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor shall not be prevented from changing the Variable Provision as proposed in the Change Notice if a majority of retailers does not support, or opposes, the change proposed.

24.4 **Procedure for changes required by law or Rules and other changes:** The following procedures will apply to changes contemplated by clauses 24.1(d) and 24.1(f):

- (a) **Notice of change:** Either the Distributor or the Retailer may suggest a change by notice to the other. The notice must:
  - (i) if the proposed change is contemplated by clause 24.1(d) specify the provisions of the Rules, the mandatory rules or protocols, or the laws which are the basis for the proposed change; or
  - (ii) if the proposed change is contemplated by clause 24.1(f) set out the reasons for the proposed change; and
  - (iii) set out the change in a form proposed to be incorporated in this agreement.
- (b) **Good faith:** The parties will negotiate the change in good faith.
- (c) **By agreement:** If the Distributor and the Retailer agree to the proposed change they must promptly sign a written variation to this agreement documenting the change and this agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation.
- (d) **Procedure for changes required by law or Rules where the parties have not agreed:** If the proposed change is contemplated by clause 24.1(d) and the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under paragraph (a) above, then the matter will be referred to the decision of any independent, experienced and suitably qualified person agreed between the parties or failing agreement, appointed by the President for the time being of the Auckland District Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
  - (i) must be the minimum necessary to effect the mandatory change required pursuant to clause 24.1(d);
  - (ii) subject to paragraph (i) above, will be binding, absent obvious error; and
  - (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision must take immediate effect by law or by operation of Rules or mandatory rules or protocols.

24.5 **Change to Network Supply Points to the Grid:** The following procedure will apply to changes contemplated by clause 24.1(e):

- (a) **Notice of Proposal:** The Distributor shall provide at least 40 Working Days notice to the Retailer that it proposes to:
  - (i) construct and operate a new Grid NSP; or
  - (ii) Permanently Disconnect a Grid NSP,such proposed change being a “Proposal”.
  
- (b) **Information about proposal:** The Distributor will provide the following details in writing to the Retailer:
  - (i) the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal; and
  - (ii) an estimate of the overall costs of the Proposal and a description of any benefits of the Proposal.
  
- (c) **Consultation:** The Distributor will:
  - (i) consult with the Retailer over the Proposal for a reasonable period of time; and
  - (ii) comply with its legislative obligations for Consumer engagement under clause 6 of the Commerce Act (Electricity Distribution Thresholds) Notice 2004.
  
- (d) **Implementation:** At the conclusion of the process set out in clause 24.5(a) to (c), if the Distributor decides to proceed with the Proposal, the Distributor may proceed with the Proposal (including incorporating any changes to the original version of the Proposal arising out of consultation with the Retailer or other electricity retailer). The Distributor will notify the Retailer of the date on which the construction or Permanent Disconnection of the Network Supply Point is complete and this agreement will be deemed to be varied from that date to the extent necessary as a result of the construction or Permanent Disconnection.

24.6 **Exception:** Where a change to the agreement has a de minimis effect on the contractual undertakings of the parties (for example terminology changes to accord with new industry classifications or definitions), either party will be entitled to effect the change by written notice to the other party and nothing in clauses 24.1 to 24.5 will apply to any such change.

## 25. DISPUTE RESOLUTION PROCEDURE

- 25.1 **Internal dispute resolution processes:** The parties intend that, where possible, any differences between them concerning this agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide a written notice describing such Dispute to the other party. Where such notice is provided by a staff member of a party, a staff member of the other party will promptly meet with that person in order to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between such staff members within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives of the parties for resolution.
- 25.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, either party may give a notice to the other requiring that the Dispute be referred to mediation.
- 25.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties shall agree on the identity of the mediator or, where they cannot so agree within that timeframe, the mediator shall be appointed by the President (or equivalent) of the New Zealand chapter of LEADR.
- 25.4 **Conduct of mediation:** In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.
- 25.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.
- 25.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) **Act in good faith:** the parties and their representatives will act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
  - (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;

- (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
- (d) **Costs of mediation borne equally:** the costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.

25.7 **Arbitration to resolve disputes:** If the Dispute:

- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
- (b) is not resolved by negotiation of the Chief Executives in accordance with clause 25.1 within 15 Working Days of the matter being referred to them and, if neither party referred the Dispute to mediation,

the Dispute shall be referred to and finally resolved by arbitration before a sole arbitrator under the Arbitration Act 1996.

25.8 **Choice of arbitrator:** The sole arbitrator shall be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 25.7 above, the arbitrator shall be appointed by the President for the time being of the New Zealand Law Society.

25.9 **No connection to previous mediator or previous mediation:** Where the Dispute has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent arbitration on the matter in Dispute.

25.10 **Urgent Relief:** Notwithstanding any other provision of this agreement, each party reserves the right to take steps to seek urgent injunctive or equitable relief before an appropriate court.

## 26. LIABILITY

26.1 **Payments of charges:** Nothing in this clause 26 shall operate to limit the liability of either party to pay all charges and other sums due under this agreement.

- 26.2 **Direct Damage:** Except as expressly provided in clauses 22.3, 26.9, 26.11 and 26.12 each party (and its respective officers, employees or agents) will only be liable to the other party under this agreement or otherwise arising from the relationship between them for any direct loss to or damage to the physical property of any person (together “Direct Damage”) where the Direct Damage results from the breach of this agreement, negligence or failure to use Good Industry Practice by the first party or any of its officers, employees, agents or invitees.
- 26.3 **Consequential loss:** For the avoidance of doubt, except as expressly provided in clauses 22.3, 26.9, 26.11 and 26.12, neither party (nor any of their respective officers, employees or agents) will be liable to the other party for:
- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person; or
  - (b) any indirect or consequential loss (including, but not limited to, incidental or special damages); or
  - (c) any loss resulting from liability of a party to another person (except any liability under clause 26.2); or
  - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 26.4 **Distributor not liable:** The Distributor will not be liable for:
- (a) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or
  - (b) any failure to convey electricity to the extent that:
    - (i) such failure arises from any act or omission of any Consumer or other person excluding the Distributor and its officers, employees or agents; or
    - (ii) such failure arises from:
      - (1) a failure to convey or reduction of injection or supply of electricity into the Network; or
      - (2) an interruption in the conveyance of electricity in the Network,

at the request of the System Operator or under a nationally or regionally coordinated response to a shortage of electricity; or

- (iii) such failure arises from any defect or abnormal conditions in or about any Consumer's Premises; or
- (iv) the Distributor was taking any action in accordance with this agreement including clause 5.4; or
- (v) such failure arises from any act or omission of the System Operator, a Generator, or the Transmission Provider unless and to the extent that the Distributor has obtained an appropriate Service Guarantee from the Transmission Provider; or
- (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene),

except to the extent caused or contributed to by the Distributor in circumstances where the Distributor was not acting in accordance with this agreement.

26.5 **Retailer not liable:** The Retailer will not be liable for:

- (a) any failure to perform any obligation pursuant to this agreement caused by the Distributor's failure to comply with the same; or
- (b) any failure to perform any obligation to this agreement arising from any defect or abnormal conditions in the Network,

except to the extent caused or contributed by the Retailer in circumstances where the Retailer was not acting in accordance with this agreement.

26.6 **Other liabilities:** Except as expressly provided in clauses 22.3, 26.9, 26.11 and 26.12, all other liability of each party, including any liability in tort (including negligence), contract, breach of statutory guarantee or warranty, breach of statutory duty, equity or otherwise is excluded to the fullest extent permitted by law.

26.7 **Limitation of liability:** Subject to clauses 26.1 and 26.8 but otherwise notwithstanding any other provision of this agreement, the maximum total liability of each party, whether as a result of a breach of this agreement or on any other ground or basis whatsoever, shall not in any circumstances exceed:

In respect of a single event or series of events arising from the same event or circumstance, the lesser of the Direct Damage suffered; or

- (i) an amount which is equal to the aggregate amount per Consumer available under the constitution for the Electricity and Gas Complaints Commission or any similar procedures or scheme that may be approved by the Electricity Commission in respect of the event (or series of events) giving rise to the liability; and
- (ii) \$1,000,000

In respect of all events or circumstances occurring in any consecutive period of 365 days, under this use of system agreement between the Distributor and retailers including the Retailer, the lesser of the Direct Damage suffered; or

- (i) an amount which is equal to the aggregate amount per Consumer available under the constitution for the Electricity and Gas Complaints Commission or any similar procedures or scheme that may be approved by the Electricity Commission in respect of all the events or circumstances occurring during the period giving rise to the liability; and
- (ii) an amount of \$3,000,000 in aggregate

26.8 **Exclusion:** Clause 26.7 will not apply to clauses 22.3, 26.9, 26.11, 26.12 or 27.3 and is subject to any contrary requirements of the constitution of the Electricity and Gas Complaints Commission.

26.9 **Consumer Guarantees Act:**

- (a) Subject to clause 27.1, the Retailer shall, to the fullest extent permitted by law exclude from all agreements between it and a Consumer (which, for the avoidance of doubt, includes a purchaser of electricity that is not an end user) all warranties, guarantees or obligations imposed on the Distributor to any Consumer concerning the services to be provided by the Distributor pursuant to this agreement by the Consumer Guarantees Act 1993 or any other law (“**Distributor Warranties**”).
- (b) Where the Consumer on-sells electricity to an end-user the Retailer must, as a condition of any agreement between it and the Consumer, require the Consumer to include provisions in all agreements between it and an end-user, excluding all Distributor Warranties to the fullest extent permitted by law.

- (c) To the extent the Retailer is not permitted by law to contract out of any warranties, guarantees or obligations on the Retailer to any Consumer imposed by the Consumer Guarantees Act 1993 or any other law ("**Retailer Warranties**"), the Distributor indemnifies the Retailer to the extent of any liability under any Retailer Warranties that the Retailer would not have incurred but for the breach by the Distributor of the Distributor Warranties, provided that if the Retailer wishes to claim against the Distributor under this clause the Retailer must comply with the following procedure:
  - (i) within the time specified in paragraph (ii) below, the Retailer must give the Distributor notice of the claim, together with full details of the event or occurrence giving rise to the claim, the amount which the Retailer considers it is liable for and the amount it is seeking to be indemnified for;
  - (ii) for the purposes of paragraph (i) above, notice must be given as soon as practicable after the Retailer receives the claim from the Consumer and before settling the claim but in any event no later than 10 Working Days after receiving the claim; and
  - (iii) the Retailer must give the Distributor a reasonable opportunity to consider the claim and use all reasonable endeavours to discuss the resolution of the claim in good faith with the Distributor.
- (d) For the avoidance of doubt, nothing in this clause affects the rights of any Consumer under the Consumer Guarantees Act 1993, nor does it preclude the Retailer from offering in its contracts with Consumers its own warranties, guarantees or obligations pertaining to distribution services.

26.10 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers clear and unambiguous clauses that:

- (a) the Consumer will be liable to the Distributor (including liable in tort (including negligence)) for any direct loss or damage which is caused or contributed to by the fraud, dishonesty or wilful breach of the agreement between the Retailer and the Consumer, by the Consumer, its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and

- (b) without limiting the rights of Consumers under the Consumer Guarantees Act 1993, all claims by Consumers will be subject to the limitations of liability set out in clause 26.7.

26.11 **The Distributor will be indemnified:** The Retailer hereby indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis) suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim by any person with whom the Retailer has a contractual relationship in relation to the provision of Services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
  - (i) any breach by the Retailer of any of its obligations under this agreement; or
  - (ii) the disconnection by the Retailer, or disconnection requested by the Retailer, of any Consumer's Premises in accordance with this agreement; or
  - (iii) the termination of this agreement pursuant to a notice by the Retailer, except when the notice is the result of a breach by the Distributor; or
  - (iv) any failure by the Retailer to perform any obligation pursuant to any agreement between the Retailer and any Generator or Consumer or other third party (or otherwise arising at law); or
  - (v) any action undertaken by the Distributor under or in connection with this agreement at the request of the Retailer; and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this agreement.

26.12 **The Retailer will be indemnified:** The Distributor hereby indemnifies and holds harmless the Retailer and will keep the Retailer indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis), suffered, or incurred by the Retailer arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Retailer has a contractual relationship in relation to the provision of services or conveyance of electricity to the extent that claim arises out of or could not have been made but for:

- (i) any breach by the Distributor of its obligations under this agreement;  
or
  - (ii) the disconnection by the Distributor of any Consumer's Premises in accordance with this agreement; or
  - (iii) the termination of this agreement pursuant to a notice by the Distributor, except when the notice is the result of a breach by the Retailer; or
  - (iv) any failure by the Distributor to perform any obligation pursuant to any agreement between the Distributor and any System Operator or other third party or otherwise arising at law; or
  - (v) any action undertaken by the Retailer under or in connection with this agreement at the request of the Distributor; and
- (b) any recovery activity of the Retailer in respect of any unpaid charges or interest payable under this agreement.

26.13 **Rights of indemnity:** The indemnities in clauses 26.11 and 26.12 are in addition to and without prejudice to the rights and remedies of each party under this agreement, the Rules or under statute, in law, equity or otherwise.

26.14 **Benefits to extend:** Each party acknowledges that its obligations under this clause 26 constitute promises conferring benefits on each party's officers, agents and employees which are intended to create, in respect of the benefit, an obligation enforceable by those officers, agents and employees and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this clause 26.

## 27. CONSUMER AGREEMENTS

27.1 **Retailer to include required provisions in Consumer agreements:** The Retailer shall, with respect to agreements between the Retailer and a Consumer in relation to the supply and transportation of electricity:

- (a) take reasonable steps within 12 months after the Commencement Date, to vary those agreements to included provisions that have substantially the same effect as the clauses referred to in Schedule 5, and those provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982; or

- (b) where the Retailer is unable to unilaterally vary the agreements, use all reasonable endeavours to obtain, the agreement of the Consumer to enter into a variation of that agreement with the Retailer to include provisions that have substantially the same effect as the clauses referred to in Schedule 5, and those provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982; or

27.2 **Changes to Consumer agreements during term:** In the event that this agreement is changed in accordance with clause 24 and such change results in the addition of a new provision to this agreement that requires the Retailer to include a new provision in its agreements with Consumers, the Retailer will take such steps as are reasonably necessary to comply with that provision. If the Retailer is required by the Distributor, to change its agreements with Consumers more than once in any 2 year period, the Retailer may recover all reasonable costs and expenses associated with such compliance from the Distributor provided that the Retailer shall not have the right to recover such costs where the change is required by the Distributor pursuant to:

- (a) clause 24.1(b), where the pricing methodology or prices are changed in accordance with clause 9, unless the change results in a new obligation in Schedule 5
- (b) clause 24.1(c), where a Loss Factor is changed unless the change results in a new obligation in Schedule 5 or
- (c) clause 24.1(d).

27.3 **Retailer to indemnify Distributor:** The Retailer will indemnify the Distributor against any loss or damage incurred by the Distributor as a result of its failure to meet its obligations in accordance with clause 27.1.

## 28. NOTICES

28.1 **Delivery of Notices:** Any notice given pursuant to this agreement will be deemed to be validly given if personally delivered, posted, emailed subject to clause 28.2(d) or forwarded by facsimile transmission to the address for notice set out on the execution page of this agreement or to such other address as that party may notify from time to time.

28.2 **Deemed receipt:** Any notice given pursuant to this agreement will be deemed to have been received:

- (a) in the case of delivery, when delivered;
- (b) in the case of facsimile transmission, when sent, provided the sender has a facsimile confirmation receipt recording successful transmission;
- (c) in the case of posting, on the 2<sup>nd</sup> Working Day following the date of posting;
- (d) in the case of email, the date that the acknowledgement is received of receipt of the email. Notices may not be given pursuant to this agreement by email unless the party sending the email is able to produce evidence (if required by the other party) of the acknowledgement of receipt from the party receiving the email.

28.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice in accordance with clause 28.2 that is personally delivered or sent by facsimile either after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

## 29. INFORMATION EXCHANGE

29.1 **Protocols for exchanging information:** Where the Electricity Commission publishes new or amended Information Exchange Protocols, the Distributor and the Retailer will, unless otherwise agreed, use Information Exchange Protocols as soon as reasonably practicable. Where certain information is exchanged on a regular basis and there is no appropriate Information Exchange Protocol the Distributor and the Retailer will agree on the protocol to be used to exchange such information.

29.2 **Consumer information:** The Retailer will upon reasonable written request from the Distributor, and in a reasonable timeframe, provide the Distributor with such Consumer information as is reasonably available to it, and which is required by the Distributor to operate its electricity distribution business and to fulfil its obligations in accordance with this agreement. The information is to be treated by the Distributor as Confidential Information, and the Distributor expressly acknowledges and agrees that it is not authorised to, and shall not, use such information in any way or form other than as permitted by this clause 29.2.

29.3 **Auditing information provided:** To enable either party to this agreement (being the “**Verifier**”) to verify the accuracy of information provided to it by the other party to this agreement (being the “**Provider**”), the Provider will allow the Verifier and its agents reasonable access to the Provider’s books and records (including where the Retailer is

the Provider of metering or consumption data) (collectively the “**Records**”) to the extent that those Records relate to the obligations of the Provider under this agreement. Access to such Records will be given at all reasonable times providing the Verifier has given the Provider not less than 10 Working Days prior notice.

29.4 **Limitations on the Verifier:** In relation to its review of the Records pursuant to clause 29.3, the Verifier will not:

- (a) use the information obtained for any purpose other than verifying the accuracy of information provided by the Provider under this agreement; and
- (b) engage as its agent any person that is in competition with the Provider, any person who is related to a person in competition with the Provider or any employee, director, agent of such persons. For the purposes of this clause 29.4(b) a person is related to another person if it is a related company (as that term is defined in section 2(3) of the Companies Act 1993) of that other person.

29.5 **Independent Auditor:** Where the Provider is the:

- (a) Distributor and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from the information relating to the Retailer or that the information is commercially sensitive; or
- (b) Retailer and, acting reasonably, gives notice that the Records contain information about other Industry participants that cannot reasonably be severed from information relating to the Distributor or that the information is commercially sensitive,

then the Distributor or the Retailer, as appropriate, will permit an independent auditor (the “**Auditor**”) appointed by the other party to review the Records and the other party must not itself directly review any of the Records. The Distributor or the Retailer, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Retailer, as appropriate, reasonably objects to the identity of the Auditor, the parties will request the President of the Institute of Chartered Accountants (or a nominee) to appoint a person to act as the Auditor. The party which is permitted pursuant to this clause 29.5 to appoint an Auditor will pay the Auditor’s costs, except where the Auditor discovers a material inaccuracy in the Records in which case the other party shall pay the Auditor’s costs. The terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

29.6 **Provider must co-operate:** The Provider will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider's Records under clause 29.3 and will ensure that the Records are readily accessible and readable.

## 30. MISCELLANEOUS

30.1 **No Waiver:** Except where a party has signed an express written waiver of a right under this agreement, no delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.

30.2 **Entire agreement:** This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject.

30.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. For the purposes of this clause, except where a party is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.

30.4 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.

## 31. INTERPRETATION:

31.1 Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;

- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- (g) amounts are in NZ\$ and exclude GST and every other tax and duty, except in Schedule 1 and unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement includes it as varied or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

31.2 **Interpretation:** In this agreement, unless the context otherwise requires:

**"Additional Services"** means those optional services that the Distributor or the Retailer will provide to the other party as described in Schedule 3;

**"Alternative Contract"** has the meaning given in clause 4.2;

**"Avoided Transmission Charge"** means any expense (including the cost of capital) of the Distributor that arises from any generation or other activity which substitutes for use of the transmission system;

**"CAIDI"** means the electricity consumer average interruption duration index and is calculated in the same manner as in the Disclosure Requirements;

**"Channel"** means a code that operates the Load Control Equipment;

**"Change Notice"** means notice of a change to any of the Variable Provisions given by a Distributor to a Retailer under clause 24.3;

**"Commencement Date"** means the date specified on the execution page of this agreement;

**"Confidential Information"** means all data and other information of a confidential nature provided by one party to the other under the terms of this agreement or otherwise, but excludes:

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (c) reports prepared in accordance with clause 8;
- (d) the existence and terms of this agreement, except Schedule 3;

**"Consumer"** means a purchaser of electricity from the Retailer where the electricity is delivered via the Network;

**"Consumer Service Lines"** means the lines used or intended to be used for the conveyance of electricity between the Consumer's Point of Connection and the Consumer's Premises;

**"Consumer's Installation"** has the same meaning as "electrical installation" in the Electricity Act 1992, and excludes the Network, Distributor's Equipment and Retailer's Equipment.

**"Consumer's Premises"** means the land and buildings owned and / or occupied by a Consumer, and any land over which the Consumer has an easement or right to pass electricity, including:

- (a) the land within the boundary where the electricity is consumed;
- (b) the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier; and
- (c) the whole of the property that has been subdivided under the Unit Titles Act 1972.

**"Conveyance Only"** means a situation where the Retailer contracts with the Consumer for the supply of electricity only in relation to an ICP and the Distributor does not provide Distribution Services to the Retailer in respect of that ICP;

**"De-energise"** means the process of removing a fuse or link or the opening of a switch to prevent further transportation of electricity to or from an ICP;

**"Default Interest"** means interest on the amount payable at the Default Interest Rate from the due date for payment until the date of payment of that amount to the relevant party accruing on a daily basis and compounded monthly;

**"Default Interest Rate"** means the Interest Rate plus 5%;

**"Direct Damage"** has the meaning given to it in clause 26.2;

**"Disclosure Requirements"** means the Electricity Information Disclosure Requirements 2004 issued by the Commerce Commission pursuant to sections 57T and 57U of the Commerce Act 1986 as such disclosure requirements may be amended or replaced from time to time;

**"Dispute"** has the meaning given to it in clause 25.1;

**"Distribution Services"** means those services described in clauses 2.1 to 2.2 (excluding 2.2(g)) provided by the Distributor to the Retailer under this agreement;

**"Distributor"** means the party identified as such in this agreement;

**"Distributor's Agreement"** means an agreement between the Distributor and a Consumer for the provision of distribution services and unless otherwise agreed with the Retailer, includes the direct billing of lines charges to the Consumer and responsibility for associated debt;

**"Distributor's Equipment"** means the Fittings and/or Metering Equipment owned by the Distributor, the Distributor's agent or any other third party with whom the Distributor has contracted with for the use by the Distributor of such third party's Fittings or Metering Equipment which are from time to time installed in, over or upon a Consumer's Premises;

**"Energise"** means the process of adding a fuse or link or the closing of a switch to allow transportation of electricity to or from an ICP;

**"Electricity Supply Agreement"** means an agreement between the Retailer and a Consumer for the supply of electricity only;

**"Event of Default"** means a breach referred to in clause 20.2(a);

**"Feeder"** means a high voltage circuit served by automatic switchgear at 3.3kV and above, and for which the Distributor can reasonably aggregate network interruption statistics to monitor average feeder performance;

**"Fitting"** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance, measurement, or use of electricity;

**"Force Majeure Event"** has the meaning set out in clause 23.1;

"**Generator**" means any person that has assets that have the capability to generate electricity;

"**Good Industry Practice**" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled, diligent and experienced operator engaged in New Zealand in the same type of undertaking under the same or similar circumstances, but subject to the terms of this agreement;

"**Grid**" means the nationwide system of transmission lines, substations and other works including the HVDC (High Voltage Direct Current) link owned by Transpower and used to connect all grid injection points and/or grid exit points to transport electricity throughout New Zealand;

"**Grid Network Supply Point**" or "**Grid NSP**" means an NSP described in paragraph (a) of the definition of "**Network Supply Point**";

"**GST**" means goods and services tax charged pursuant to the Goods and Services Tax Act 1985;

"**Industry**" means those parties involved in the generation, transmission, distribution and retailing of electricity in New Zealand;

"**Information Exchange Protocol**" means an information exchange protocol approved by the Electricity Commission for the exchange of certain information, as held on the Electricity Commission website ([www.electricitycommission.govt.nz](http://www.electricitycommission.govt.nz)) or as otherwise agreed by the parties including those recorded in Schedule 4;

"**Insolvency Event**" means in relation to a party, where that party:

- (a) has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

**"Installation Control Point" ("ICP")** means a point which the Distributor nominates as the point at which a Retailer is deemed to supply electricity to a Consumer, and has the attributes set out in the Rules;

**"Interest Rate"** means, on any given day, the rate (expressed as a percentage per annum and rounded up to nearest fourth decimal place) displayed on the Reuter's screen page BKBM (or its successor page) at or about 10.45 a.m. on that day, as the bid rate for three month bank accepted bills of exchange or, if no such rate is displayed or that page is not available, the average (expressed as a percentage per annum and rounded up to the nearest fourth decimal place) of the bid rates for three-month bank accepted bills of exchange quoted at or about 10.45 a.m. on that day by each of the entities listed on that Reuter's screen page when the rate was last displayed or, as the case may be, that page was last available;

**"Interposed"** means in relation to a Consumer, that the Distributor provides Distribution Services to the Retailer and the Retailer contracts with the Consumer for the supply of those services;

**"Load Control Equipment"** means the equipment (which may include, but is not limited to, ripple receivers and relays) which is from time to time installed in, over, or upon a Consumer's Premises for the purpose of receiving Load Management Service signals;

**"Load Management Service"** means providing a signal for the purpose of reducing or interrupting delivery to all or part of a Consumer's Premises, including as an example, but without limitation, delivery to a water heater, on a basis agreed between the Distributor and the Retailer;

**"Load Signalling Equipment"** means the equipment (which may include, but is not limited to, ripple injection plant) for the purpose of providing a Load Management Service;

**"Load Shedding"** means the act of reducing or interrupting the delivery of electricity to one or more ICPs;

**"Losses"** means, for a particular period, the difference between the sum of all electricity injected into a network and the sum of all electricity measured or estimated as having exited that network;

**"Loss Category"** means the code in the Registry, and in the Schedule of Loss Category codes and Loss Factors published by the Distributor, which enables retailers to identify the Loss Factor(s) applicable to an ICP at any point in time;

**"Loss Factor"** means the factor(s) expressed as 1.XXXX to be applied to the electricity measured or estimated as having been delivered to an ICP (or NSP for an embedded network) in order to allocate a share of the expected Losses within the network to that ICP, such loss factor(s) to be determined by the Distributor and published from time to time;

**"Loss Ratio"** means, for a particular period and network, the Losses expressed as a percentage of the electricity injected into the network;

**"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable transfer of metering information;

**"Network"** means lines, equipment and plant owned by the Distributor that are used to transport electricity between Network Supply Points and Points of Connection ;

**"Network Connection Standards"** means the Distributor's written technical standards for connection to the Network as detailed in the Network Tasman Distribution Code (available on the Distributor's web site at [www.networktasman.co.nz](http://www.networktasman.co.nz)) and issued (and as may be amended from time to time) by the Distributor in accordance with Good Industry Practice;

**"Network Supply Point"** or **"NSP"** means a point of connection between:

- (a) the Network and the Grid;
- (b) the Network and another distribution network;
- (c) the Network and an embedded network; or
- (d) the Network and an embedded generator.

**"Permanent Disconnection"** means the disconnection of an ICP where the property is permanently disconnected from the Network, and where the Registry status has been altered to "decommissioned" (but does not include a Vacant Site Disconnection);

**"Performance Report"** has the meaning set out in clause 8.2;

**"Planned Service Interruption"** means a Service Interruption that has been scheduled to occur in accordance with the relevant provisions of Schedule 6;

**"Point of Connection"** means the point at which electricity may flow between the Network and the Consumer's Installation;

**"Price Category"** means the relevant price category selected by the Distributor from Schedule 10 to unambiguously define the line charges applicable to a particular ICP;

**"Publish"** means to disclose information by making the information available on the Distributor's website, notifying the Retailer that the information has been disclosed on the website and sending the information in hardcopy to the Retailer;

**"Re-energise"** means to Energise an ICP after it has been De-energised;

**"Registry"** means the central database of ICP information maintained in accordance with the Rules to assist switching and reconciliation;

**"Relevant Authority"** means the Electricity Commission or any other relevant authority from time to time;

**"Retailer"** means the party identified as such in this agreement;

**"Retailer's Agreement"** means an agreement between the Retailer and the Consumer which includes the supply of electricity and distribution services;

**"Retailer's Equipment"** means the Fittings Load Control Equipment and/or Metering Equipment owned by the Retailer, the Retailer's agent or any other third party with whom the Retailer has contracted with for the use by the Retailer of such third party's Fittings or Load Control Equipment or Metering Equipment, which are from time to time installed in, over, or upon a Consumer's Premises;

**"Rules"** means the Electricity Governance Rules 2003 including any codes of practice issued pursuant to the Rules;

**"Rulings Panel"** has the same meaning as set out in the regulations made pursuant to subpart 2 of Part 14 of the Electricity Act 1992, as amended from time to time;

**"SAIDI"** means the system average interruption duration index;

**"Serious Financial Breach"** means:

- (a) a failure by the Retailer to pay an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with clause 11.7; or
- (b) a material breach of clause 12 by the Retailer.

**"Service Guarantees"** means any payments or other benefits which one party provides to the other party when it fails to meet certain Service Standards;

**"Service Interruption"** means, in relation to the supply of electricity to an ICP the cessation of supply to that ICP for a period exceeding the time allowed for interruptions in the relevant Service Level, other than in accordance with this agreement;

**"Service Level"** means the magnitude of a Service Measure set out in Schedule 1;

**"Service Measures"** means the characteristics or features of the Service Standards as set out in Schedule 1;

**"Service Standards"** means the set of Service Measures, Service Levels, Service Guarantees, service performance reporting measures and frequency of reporting as set out in Schedule 1;

**"Services"** means the Distribution Services, Additional Services, Transmission Services and any other services provided by the Distributor to the Retailer in accordance with this agreement;

**"Switch Event Date"** means in respect of an ICP, the date recorded in the Registry as being the date on which a retailer assumes reconciliation responsibility for that ICP;

**"System Operator"** means the system operator appointed pursuant to the Rules;

**"System Operator Services"** means co-ordination services for the control, dispatch and security functions necessary to operate the transmission system;

**"Tariff Option"** means the price option within a Price Category where such a Price Category provides for Retailer choice amongst two or more options, subject to a particular configuration of Metering and Load Control Equipment;

**"Temporary Disconnection"** means the De-energisation of an ICP where there is no change to the status in the Registry;

**"Transmission Charge"** means any amount in respect of:

(a) the use by a Transmission Provider of that Transmission Provider's transmission system for the purpose of providing Transmission Services to the Distributor, and includes any amounts received from or payable to that Transmission Provider in relation to:

(i) connection, interconnection, and economic value adjustments;

- (ii) new investment;
  - (iii) the provision of System Operator Services;
  - (iv) loss and constraint rentals; and
  - (v) the settlement of financial transmission rights; or
- (b) Avoided Transmission Charges;

**"Transmission Interruption"** means a failure of a service provided by a Transmission Provider to meet the service standards agreed between the Distributor and the Transmission Provider;

**"Transmission Provider"** means a person who transports electricity across the Grid and provides the Distributor with services relating to the injection or off-take of electricity at Network Supply Points;

**"Transmission Services"** the services provided by the Transmission Provider(s) to the Distributor;

**"Trust Account Rules"** means the rules relating to the establishment and operation of a trust account set up by the Distributor in accordance with clause 12.1(b) as specified in clause 12.18;

**"Unmetered Supply"** means a supply of electricity to an ICP with a predictable energy usage and in respect of which the Distributor's pricing option for Distribution Services does not require metering data;

**"Unplanned Service Interruption"** means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Retailer or any affected Consumer (as appropriate), as anticipated in the provisions of Schedule 6 relevant to Unplanned Service Interruptions;

**"Use of Money Adjustment"** means an amount payable at the Interest Rate plus 2% from the due date of the original invoice to the date of settlement of the wash-up amount accruing on a daily basis and compounded at the end of every month;

**"Vacant Site"** means a property which has become vacant;

**"Vacant Site Disconnection"** means the De-energisation of an ICP where the property has become vacant, and where the Retailer is required to change the status in the Registry to "inactive";

**“Variable Provisions”** means Schedule 6 and Schedule 7

**“Warranted”** means pre-qualified to the Distributor’s reasonable standards and authorised by the Distributor to carry out the particular work on or in relation to the Network;

**“Warranted Person”** means a person who is Warranted or who is employed by a person who is Warranted; and

**“Working Day”** means every day except Saturdays, Sundays and days which are statutory holidays in the city specified for each party's street address at the start of this agreement.

## **SCHEDULE 1**

### **Service Standards**

#### **Introduction**

In accordance with clause 2 the Distributor and the Retailer undertake to meet the Service Standards outlined in this Schedule.

Each party will provide the other with information demonstrating a breach of Service Standards, or the reasonable grounds for suspecting that there has been a breach of Service Standards.

Where either party has breached a Service Level that is subject to a Service Guarantee it will proactively notify the other party, at the earliest possible occasion within 10 Working Days, of the breach and the notification shall include:

- the identity of the ICPs affected and Service Guarantee amount by ICP (if acceptable);
- reason for the breach and the Service Guarantee amount in total; and
- a credit invoice, or order number if it requires an invoice from the affected party for the amount payable in respect of the breach.

All Service Guarantee amounts in this Schedule 1 are inclusive of GST (if any). All Service Guarantee invoices shall state clearly the amount of GST (if any) which is payable.

Where the Distributor makes payment for Service Guarantees in respect of an ICP, the Retailer will pass that payment through to the Consumer at that ICP

The parties acknowledge that the Service Guarantees are set at a level to provide reasonable compensation to the Retailer or the Distributor (as the case may be) in respect of the Distributor's or the Retailer's failure to meet the relevant Service Levels and are not a penalty.

## Network Tasman: Electricity Distribution Service Standards

Service Measure	Service Level	Policy	Intended Consumer Usage	Service Performance Reporting Measure	Frequency of Reporting
<b>DISTRIBUTOR'S SERVICE STANDARDS RELATING TO ELECTRICITY SUPPLY</b>					
<b>UNCONTROLLED SUPPLY CATEGORY</b>					
<b>1. Anytime</b>	<p><b>24 hour Continuous Supply</b></p> <p>Supply in normal supply circumstances is continuously available 24 hours each day, 7 days each week.</p>	<p>The Distributor will endeavour in accordance with Good Industry Practice to maintain continuous supply to every ICP where the Consumer has elected to receive Uncontrolled Supply and be charged on the basis of the relevant Anytime Supply Pricing Option in accordance with Schedule 10.</p> <p>Metering requirements for this category of supply are specified in Schedule 10.</p> <p>Different metering configurations may be available that provide for recording of consumption in different time periods. Refer to Schedule 10 for details of the options available.</p>	<p>General residential and business usage where a continuous supply of electricity is required.</p>	SAIDI	<p>The Distributor will comply with its statutory reporting requirements under the law and the Rules.</p>

Service Measure	Service Level	Policy	Intended Consumer Usage	Service Performance Reporting Measure	Frequency of Reporting
<b>CONTROLLED SUPPLY CATEGORIES</b>					
<b>2. Off Peak</b>	<p><b>20 hour Controlled Supply</b></p> <p>Supply is in normal circumstances is available for a minimum of 20 hours each day, 7 days each week.</p>	<p>Where the Consumer has elected to receive 20 hour Controlled Supply and be charged on the basis of the relevant Controlled Supply Pricing Option in accordance with Schedule 10, the Distributor is entitled to effect Load Shedding at any time for up to a total of 4 hours on any one day.</p> <p>The controlled appliances must be connected (and remain connected) to a load control relay that is programmed to receive load control signals on any of the relevant Channels specified in Schedule 10.</p> <p>Metering requirements for this category of supply are specified in Schedule 10.</p>	<p>Supply to appliances where shorter supply interruptions are tolerable, up to the daily maximum duration specified in this category, and have no material impact on the overall performance of the appliance. Dairy farm hot water cylinders and business process heating are the most common appliances controlled in this category of supply.</p>	<p>The frequency and duration of excess hours of control in any calendar month.</p>	<p>The Distributor will report to the Retailer the hours and days where the maximum period of control is exceeded in a calendar month.</p>
<b>3. Economy</b>	<p><b>Controlled Supply</b></p> <p>Supply in normal circumstances varies with a minimum of least 14 hours availability each day and subject to a minimum "on period" of 5 hours during daylight hours, 7 days</p>	<p>Where the Consumer has elected to receive 14 hour Controlled Supply and be charged on the basis of the Economy Controlled Supply Pricing Option in accordance with Schedule 10, the Distributor is entitled to effect Load Shedding at any time for up to a total of 10 hours on</p>	<p>Supply to appliances where periodic supply interruptions, up to the daily maximum duration specified in this category, have no material impact on the overall performance of the appliance. Residential hot water</p>	<p>The frequency and duration of excess hours of control in a calendar month.</p>	<p>The Distributor will report to the Retailer the hours and days where the maximum period of control is exceeded in a calendar month.</p>

Service Measure	Service Level	Policy	Intended Consumer Usage	Service Performance Reporting Measure	Frequency of Reporting
	each week.	<p>any one day with a minimum of 5 hours supply made available during daylight hours.</p> <p>The controlled appliances must be connected (and remain connected) to a load control relay programmed to receive load control signals on any of the relevant Channels specified in Schedule 10.</p> <p>Metering requirements for this category of supply are specified in Schedule 10.</p>	cylinders and spa pool heaters are the most common appliances controlled in this type of supply.		
<b>4. Controlled Night Supply</b>	<p>Supply is in normal supply circumstances available within the time period between 11 pm to 7 am, 7 days each week:</p> <p>At other times the supply is De-energised.</p>	<p>Where the Consumer has elected to receive supply only within the specified time periods and be charged on the basis of the relevant Controlled Night Supply Pricing Option in accordance with Schedule 10, the Distributor will provide appropriate load control signals to automatically energise and de-energise the supply at the specified times.</p> <p>The controlled appliances must be connected (and remain connected) to a load control relay that is programmed to receive load control signals on the relevant</p>	Residential Night Store space heaters, some larger residential hot water cylinders and under floor heating where adequate performance is provided by the limited periods of supply provided in this category.	The frequency and duration of excess hours of control in a calendar month	The Distributor will report to the Retailer the hours and days where the maximum period of control is exceeded in a calendar month

Service Measure	Service Level	Policy	Intended Consumer Usage	Service Performance Reporting Measure	Frequency of Reporting
		Channels specified in Schedule 10. Metering requirements for this category of supply are specified in Schedule 10.			
<b>5. Controlled Supply for Streetlights</b>	Supply is intended to be continuously available during the hours of darkness, 7 days each week.	<p>Where the Consumer (usually a Territorial Local Authority or Transit NZ) has elected to receive a streetlight controlled supply and be charged on the basis of the relevant Controlled Supply for Street Lights Pricing Option in accordance with Schedule 10, the Distributor will provide appropriate load control signals or will be controlled by a customer owned photo sensitive cell device.</p> <p>Streetlights will be connected (and remain connected) to a photo sensitive cell device or a load control relay that is programmed to receive load control signals on the relevant Channels. The hours of supply are set and controlled in accordance with the Consumer's requirements.</p> <p>Streetlights are an Un-metered Supply load in accordance with the relevant provisions of Schedule 10.</p>	Streetlights and other lights (eg billboard lights, bus shelter lights and public amenity lights) connected to streetlight circuits.	The number of hours on any day where supply is not provided during the hours of darkness.	The Distributor will report to the Retailer where supply is not provided during the hours of darkness.

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
<b>DISTRIBUTOR'S SERVICE STANDARDS : RELIABILITY</b>					
<p><b>Restoration of supply:</b></p> <p>Unplanned Service Interruptions as a consequence of a general network fault.</p>	<p>The Distributor will:</p> <p><u>Urban</u> - restore supply within 6 hours of notification of an Urban Unplanned Service Interruption;</p> <p><u>Rural</u> - restore supply within 10 hours of notification of a Rural Unplanned Service Interruption; and</p> <p><u>Remote Rural</u> - restore supply within 12 hours of notification of a Remote Rural Unplanned Service Interruption;</p>	<p><u>Service area:</u></p> <p><u>Urban</u> – Atawhai Nelson Tahunanui Annesbrooke Stoke Richmond Hope Brightwater Wakefield Motueka Township Takaka Township (Generally within those areas where roads have 50 kph speed restrictions)</p> <p><u>Rural</u> – all areas other than Urban and Remote Rural; and</p> <p><u>Remote Rural</u> – West Haven Feeder</p>	<p>\$50 in respect of each metered ICP up to 15 kVA directly affected by the Unplanned Service Interruption to the extent the Service Level is not met, plus a further \$50 for each completed 24 hr period in excess of the time limit, subject to the general limit of liability.</p> <p>\$80 in respect of each ICP greater than 15kVA directly affected by the Unplanned Service Interruption to the extent the Service Level is not met, plus a further \$80 for each completed 24hr period in excess of the time limit, subject to the general limit of liability.</p> <p>The Distributor will be exempted from paying the Service Guarantee in the following situations:</p> <ul style="list-style-type: none"> <li>• where there is substantial third-party damage to the Network</li> <li>• where an Unplanned Service Interruption caused by the Transmission Provider,</li> </ul>	<p>The number of ICPs by service area where the Service Level has not been met.</p>	<p>Monthly</p>

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
			<p>unless the Distributor has obtained an appropriate Service Guarantee from the Transmission Provider;</p> <ul style="list-style-type: none"> <li>• a Force Majeure Event; including an extreme weather event, has occurred</li> <li>• where the Distributor is prevented from making repairs (e.g. by police at accident scene).</li> </ul>		
<p><b>Restoration of supply:</b> Unplanned Service Interruptions caused by failure of a customer's ICP fuse unless caused by customer</p>	<p>The Distributor will:</p> <p>Urban - restore supply within 3 hours of notification of an Urban Unplanned Service Interruption;</p> <p>Rural - restore supply within 6 hours of notification of a Rural Unplanned Service Interruption; and</p> <p>Remote Rural - restore supply within 8 hours of notification of a Remote Rural Unplanned Service Interruption.</p>	<p><u>Service area:</u></p> <p><u>Urban –</u></p> <p>Atawhai Nelson Tahunanui Annesbrooke Stoke Richmond Hope Brightwater Wakefield Motueka Township Takaka Township (Generally in those areas where roads have 50kph speed restrictions)</p>	<p>\$50 in respect of each metered ICP up to 15 kVA directly affected by the Unplanned Service Interruption where the service level is not met, plus a further \$50 for each completed 24 hr period in excess of the time limit, subject to the general limit of liability.</p> <p>\$80 in respect of each ICP greater than 15kVA directly affected by the Unplanned Service Interruption where the service level is not met, plus a further \$80 for each completed 24hr period in excess of the time limit, subject to the general limit of liability.</p> <p>The Distributor will be</p>	<p>The number of ICPs by service area where the Service Level has not been met.</p>	<p>Monthly</p>

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
		<u>Rural</u> – all areas other than Urban and Remote Rural; and  <u>Remote Rural</u> – West Haven Feeder	exempted from paying the Service Guarantee in the following circumstances: <ul style="list-style-type: none"> <li>• there is substantial third-party damage to the Network</li> <li>• where the Unplanned Service Interruption is caused by the Transmission Provider, unless the Distributor has obtained an appropriate Service Guarantee from the Transmission Provider;</li> <li>• a Force Majeure Event; including an extreme weather event, has occurred</li> <li>• where the Distributor is prevented from making repairs (e.g. by police at an accident scene).</li> </ul>		
<b>Fault Response Times:</b>  For Service Interruptions not caused by a general network fault  (Relates to customer specific interruptions caused by faults on the 400V Network or	The Distributor will:  Urban – respond within 3 hours of notification of a customer specific Urban Unplanned Service Interruption;  Rural - respond within 6 hours of notification of a customer specific rural Unplanned Service	<u>Service area:</u>  <u>Urban</u> – Atawhai Nelson Tahunanui Annesbrooke Stoke Richmond	Nil	Report to the Retailer the number of ICPs that have exceeded the Service Level annually.	Annually

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
failure of Load Control Injection Equipment)	Interruption; and  Remote Rural - respond within 8 hours of notification of a customer specific remote rural Unplanned Service Interruption	Hope Brightwater Wakefield Motueka Township Takaka Township (Generally in those areas where roads have 50kph speed restrictions) <u>Rural</u> – all areas other than Urban and Remote Rural; and <u>Remote Rural</u> – West Haven Feeder			
<b>Frequency of Service Interruptions and short interruptions at any ICP.</b>	<u>Urban</u> : No more than 4 per annum recorded by the Distributor or reported by the Consumer;  <u>Rural</u> : No more than 10 per annum recorded by the Distributor or reported by the Consumer; and  <u>Remote Rural</u> : No more than 20 per annum recorded by the Distributor or reported by the Consumer.	Includes cessation of supply to a Consumer of less than 1 minute to the extent advised by that Consumer, but excludes subsequent interruptions that relate to an intermittent system fault and auto-recloser operations.  Includes Transmission Interruptions.  Urban, rural and remote rural defined as above	Nil	Report to the Retailer the number of ICPs that have exceeded the Service Level annually.	Annually

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
<b>Frequency of voltage sags at ICPs (to less than 80% of normal voltage).</b>	<p><u>Urban</u>: No more than 30 per annum recorded by the Distributor or reported by the Consumer;</p> <p><u>Rural</u>: No more than 50 per annum recorded by the Distributor or reported by the Consumer; and</p> <p><u>Remote rural</u>: No more than 60 per annum recorded by the Distributor or reported by the Consumer.</p>	<p>Measurement will be triggered by notification of voltage sags under the 'Power quality and Service Interruption' Service Measure.</p> <p>Urban, rural and remote rural defined as above</p>	Nil	Report to the Retailer the number of ICPs at which performance has been measured to exceed the Service Level, itemised by Feeder.	Annually
<b>Steady State Voltage Range at ICPs.</b>	± 6% of nominal at Point of Connection.	Measurement will be triggered by notification of a voltage sag under the 'Power quality and service interruption investigation' Service Measure.	Nil	Report to the Retailer the number of ICPs at which performance has been measured to exceed the Service Level, itemised by Feeder.	Annually
<b>Load Management Service.</b>	The Distributor to operate and maintain its Load Management Service and injection signalling equipment in accordance with Schedule 9. The distributor is not responsible for the operation & performance of signal receiving equipment installed at Consumers' premises	Measurement will be triggered by failure the distributors load management signalling equipment to operate effectively & in accord with the requirements of Schedule 9 and the controlled tariff pricing options above.	Nil	The Distributor to self-report any breaches of the Load Management Policy and investigate any Consumer initiated request relevant to injection signalling equipment and report back to the Retailer.	Monthly in the event of Failure

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
<b>I</b> <b>INVESTIGATIONS OF POWER QUALITY AND SERVICE INTERRUPTIONS</b>					
<b>Power quality or Service Interruption investigations.</b>	<p>The Distributor will, within 5 Working Days of receiving notification from the Retailer of a problem on the Network, investigate the complaint and respond to the Retailer detailing the nature of the problem. If the investigation cannot be completed within 5 Working Days, the Distributor will provide within 7 Working Days an estimate of the time it will take to complete such an investigation and the reason for requiring extra time. However, in any event, the Distributor shall complete its investigation and provide information to the Retailer such that the Retailer will be able to offer a resolution to the Consumer within the timelines set out in the Electricity Commission Scheme and avoid referral to the Office of the Electricity</p>	<p>Power quality investigations include, but are not limited to momentary voltage fluctuations, flicker, harmonics, voltage imbalance and sags.</p>	<p>\$50 for exceeding the timeframe.</p>		<p>Monthly on failure</p>

Service Measure	Service Level	Policy	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
	and Gas Complaints Commission. The Distributor will remedy any problems under its control in a timely manner, in accordance with Good Industry Practice.				
<b>COMMUNICATION</b>					
<b>Notification of Planned Service Interruption.</b>	As defined in Schedule 6.		\$50 per ICP per missed communication.		Monthly on failure
<b>Information Requests.</b>	The Distributor will consider all reasonable requests for information from the Retailer (where they are noted that they are requests under Schedule 1 of this agreement) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, within 5 Working Days the requested party must provide an explanation and/or a new timeframe.		\$50 for exceeding the timeframe.		Monthly on failure

RETAILER'S SERVICE STANDARDS				
MUTUAL OBLIGATIONS				
Information Requests.	Each party will consider all reasonable requests for information from the other party (where they are noted that they are requests under Schedule 1 of this agreement) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, within 5 Working Days the requested party must provide an explanation and/or a new timeframe.	\$50 for exceeding the timeframe.		Monthly

## SCHEDULE 2

### Transmission Services

- 2.1 The parties acknowledge that the Distributor is a party to certain agreements with Transpower pursuant to which the Distributor's Network is connected to the Grid and the Distributor obtains services relating to injection or off-take of electricity ("**Transmission Agreement**").
- 2.2 The Distributor will:
- a) resell Transmission Services to the Retailer;
  - b) exercise its rights (if any) in relation to any failure by a Transmission Provider to comply with its Transmission Provider agreement with respect to the quality and/or delivery of the Transmission Services;
  - c) use its best endeavours to negotiate terms and conditions for each Transmission Provider agreement that enables the Distributor to provide the Transmission Services to the Retailer in a manner that reflects the interests of the Retailer and meets the needs of the Consumer, as such interests are understood by the Distributor;
  - d) provide the Retailer with a copy of the service measures and service levels (if any) specified in the Transmission Agreement; and
  - e) will use reasonable endeavours to monitor the Transmission Provider's performance against those service measures and service levels (if any) and will inform the Retailer of any material or persistent breach by the Transmission Provider of them in the performance report provided to the Retailer in accordance with clause 8. The performance report will also specify what steps, if any, the Distributor has taken, or is proposing to take, in relation to such breaches.
  - f) If requested by the Retailer, consider whether to take any particular steps in relation to any material or persistent breach by the Transmission Provider of the service measures and service levels. Without limiting the Distributor's discretion as to whether or not it considers it appropriate to take any action requested by the Retailer, the Distributor may require, as a condition of doing so where the Distributor reasonably believes there is little or no chance of success, that the Retailer pay all of the Distributor's costs relating to the exercise of the Distributor's rights in relation to such breach.

- 2.3 If the Retailer requests the Distributor to negotiate service levels and/or service measures which are different to those provided in, or required of the Transmission Provider, under part F of the Rules, the Distributor will consider whether those service levels and/or service measures are appropriate having regard to the Distributor's own requirements and those of other users of the Distribution Network. If the Distributor considers any of the requested service levels and/or service measures are appropriate, the Distributor will use reasonable endeavours to negotiate those service levels and/or service measures with the Transmission Provider. The Retailer acknowledges that the Distributor's ability to negotiate and/or implement those service levels and/or service measures may be subject to obligations or constraints imposed on either the Distributor or the Transmission Provider under part F of the Rules.

### SCHEDULE 3

#### Additional Services

This Schedule contains any Additional Services agreed between the parties.

#### 3.1 Rebates

For the purposes of this Schedule 3.1 “rebate” includes line charge discount, line charge rebate, line charge holiday, Trust dividend, or Trust distribution. For the purposes of this Schedule 3.1, “Trust” means a trust that has an ownership interest in the Distributor.

The Distributor may require, no more than twice in any year and upon the giving of a minimum of 40 Working Days written notice on each occasion, the Retailer to pass a rebate to qualifying Consumers by crediting the Consumers’ electricity accounts. The parties agree as follows:

- (a) The Distributor’s notice of intention to process a rebate will include:
- the time period within which the eligibility date will be set
  - the criteria to identify qualifying ICPs or Consumers including any specific exclusions
  - the proposed process and timelines for information to be exchanged to enable efficient implementation,
  - whether it wishes to include any promotional material with the invoice containing the credit,
  - details and format of the information to be exchanged, and
  - the proposed basis of calculation if known.
- (b) The Retailer will confirm whether or not it is able to meet the Distributor’s requirements.
- (c) If there are any changes to the detail to be exchanged or eligibility criteria compared to the last rebate processed, the parties will test the information exchange process in advance.
- (d) The Distributor will confirm the eligibility date as soon as reasonably practicable, and provide details of any proposed publicity and/or media release.
- (e) The Distributor shall provide contact details for queries which cannot be addressed by the Retailer and a set of relevant FAQs.
- (f) The Retailer will provide a file to the Distributor containing information reasonably requested by the Distributor to enable the Distributor to calculate the rebate applicable to each qualifying ICP or Consumer.

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- (g) The Distributor will return the file to the Retailer with the rebate amounts added within 2 Working Days of receipt of the Retailer's file.
- (h) The Retailer will as soon as reasonably practicable apply the rebate to qualifying Consumers' accounts. All rebates will be passed by the Retailer to Consumers without any deduction or alteration of any nature.
- (i) The rebate will be separately identified on invoices to qualifying Consumers, and will include words as specified by the Distributor along the lines of "Network Tasman Line Charge Discount". This requirement will only extend to the Retailer including wording within the existing limitations of the Retailer's billing system and/or bill format.
- (j) Subject to agreement and it not conflicting with the Retailer's own communication plans, the Retailer will, if requested in advance, include the Distributor's promotional material regarding the rebate provided the promotional material is reasonable, is not detrimental to the Retailer's business, and can be inserted into a standard DLE envelope.
- (k) The Distributor will indemnify the Retailer against any costs, losses, liabilities, claims, charges, demands, expenses or actions which may be incurred by the Retailer or may be made against the Retailer as a result of or in relation to any illegal, defamatory or offensive content in the Distributor's promotional material, except where such costs, losses, liabilities, claims, charges, demands, expenses or actions arise as a result of or in connection with any breach by the Retailer of its obligations under this agreement.
- (l) The Distributor will meet the Retailer's reasonable charge for providing the services requested, and if requested the Retailer will provide a quote for the services in advance. The Distributor shall pay the Retailer's invoice for the services by the 20<sup>th</sup> of the month following the invoice date.
- (m) Any rebates received in advance by the Retailer shall be held as separately identifiable funds by the Retailer for the benefit of qualifying ICPs or Consumers.
- (n) The Distributor shall recompense the Retailer for the full amount of the rebates credited by the Retailer within 5 Working Days (or an alternative agreed date) of the Retailer confirming the total amount credited to Consumers' accounts. The Retailer will confirm this by providing a file itemising the rebate credited to each ICP or Consumer. The Distributor will issue a credit invoice for the total amount credited and recompense the Retailer by depositing the total amount due without offset into the Retailer's nominated bank account. Alternatively by agreement the Distributor may recompense the Retailer by issuing a credit invoice for the total amount credited and offset the total amount due against future line charges.

- (o) If for any reason the rebate payable to a Consumer is unable to be paid (by way of example but without limitation, where a qualifying Consumer ceases to be a Consumer and their account with the Retailer has a credit balance after the date of processing of the rebate), and the Retailer has received funds from the Distributor in respect of the rebate, the Retailer shall as soon as practicable refund to the Distributor the rebate received for that qualifying Consumer, or the net credit of the account for that qualifying Consumer if this is less than the amount of the rebate for that qualifying Consumer. The Retailer will also provide a supporting file to the Distributor containing the ICP, refund amount, Consumer name and forwarding address (if available).

### **3.2 Trust Company Information**

- (a) The Retailer acknowledges that the Distributor is owned by a Consumer Trust and requires from time to time information from the Retailer to enable updating and maintenance of an accurate register of Consumer beneficiaries, and to allow communication with them.
- (b) Subject to Clause 29.2, the Retailer agrees to provide, upon request and in a reasonable timeframe, relevant information in its possession required by the Distributor to meet its obligations in terms of the Trust Deed. Any information provided by the Retailer under this clause shall be treated as confidential information.
- (c) The Retailer will provide the Distributor with a list of Consumer names and billing addresses for each ICP on request by the Distributor and the Distributor warrants the information provided will be used for the purposes of Trustee elections and for distribution of Trust funds to Consumer beneficiaries.
- (d) The Distributor will meet the Retailer's reasonable charge for supplying the information requested, and if requested the Retailer will provide a quote for supplying the information in advance. The Distributor shall pay the Retailer's invoice for supplying the information by the 20th of the month following the invoice date.

## SCHEDULE 4

### Information Exchange Protocols

This Schedule 4 identifies the primary information exchange transactions between the parties, and references Information Exchange Protocols.

The following table lists the Information Exchange Protocols published by the Electricity Commission.

Protocol Reference	Description
EIEP1	Detail Consumption Information (HHR & NHH)
EIEP2	NHH Summary Consumption Information
EIEP3	HHR Metering Information
EIEP4	Customer Information
EIEP5	Service Interruption Information to the Retailer (Planned and Unplanned)
EIEP6	Fault and Service Requests
EIEP7	General Installation Status Change
EIEP8	Notification of Network Price Category and Tariff Change
EIEP9	Customer Location Address Change Notification
EIEP11	New Connections

Where the protocols listed above are not already in use upon execution of this agreement, the existing bilateral protocols established under prior agreements will continue to be acceptable in the interim however the parties will agree a timeframe for moving onto Electricity Commission protocols.

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## SCHEDULE 5

### Consumer Agreements

This Schedule 5 summarises the obligations, which the Retailer must include in every agreement for the supply and transportation of electricity entered into between the Retailer and the Consumer.

Summary of contractual obligation required	Clause reference in this agreement
The Consumer will provide Distributor with safe and unobstructed access at reasonable times.	Clause 13.1
The Distributor may access Consumer's Premises without the Consumer's permission, and take all reasonable steps to gain such access, where it believes there is immediate danger to persons or property.	Clause 13.1
<p>If the Consumer fails to reasonably grant the Distributor access rights to the Distributor's Equipment:</p> <p>(a) where access is required under clause 13.1(a), (b), (d) or (g), after the Distributor or the Retailer has given the Consumer 7 Working Days' written notice of access being required; or</p> <p>(b) where access is required under clause 13.1(c), (e) or (f), immediately,</p> <p>the Distributor may, subject to clause 18.6, disconnect the Consumer's Point of Connection from the Network and go onto the Consumer's Premises to reclaim the Distributor's Equipment.</p>	Clause 13.3
The Consumer shall protect the Distributor's Equipment against interference and damage.	Clause 14.1
The Consumer will not without the prior agreement of the Distributor inject or attempt to inject any energy into the Network and convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy and load control signals) over the Network.	Clause 14.3

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Summary of contractual obligation required	Clause reference in this agreement
The Consumer will provide and maintain, at no cost to the Distributor, suitable space for the secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Consumer's premises which the Distributor determines is necessary.	Clause 14.6
The Consumer acknowledges that the Network, including any part of the Network situated on a Consumer's Premises, is and will remain the sole property of the Distributor. No provision of the Consumer's agreement with the Retailer nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Fittings owned or controlled by the Distributor which are used to provide any such services.	Clause 14.7
The Consumer will comply with the Distributor's Network Connection Standards.	Clause 15.1
The Consumer recognises that surges or spikes are momentary fluctuations in voltage or frequency and are not treated as interruptions. The Consumer has been advised to protect the Consumer's sensitive equipment from such surges or spikes.	Clause 16.1
The Consumer acknowledges the Consumer's responsibility for its Consumer Service Lines.	Clause 17
The Consumer is responsible for ensuring, at its cost, that its Consumer Service Lines are unobstructed by trees or vegetation so as not to create an unsafe situation.	Clause 18.2
The Consumer is responsible for complying with the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Consumer owns that are near the Grid or any line that forms part of the Network.	Clause 18.3
The Consumer's Installation to be compliant and to be operated in compliance with the policies set out in Schedule 7.	Clause 19.2

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Summary of contractual obligation required	Clause reference in this agreement
<p>The Distributor may temporarily disconnect a particular ICP if:</p> <ul style="list-style-type: none"> <li>• it is necessary to avoid endangering persons or property;</li> <li>• there has been an occurrence or circumstances that may adversely affect the proper working of the Network or transmission system;</li> <li>• an Event of Default in relation to the Retailer has occurred;</li> <li>• the Consumer fails to allow the Distributor access;</li> <li>• does anything prohibited under clause 14 or fails to do anything required under clause 15;</li> <li>• on termination of this agreement.</li> </ul>	Clause 19.5
<p>The right to terminate supply by the Retailer through the Network to the Consumer upon termination of this agreement.</p>	Clause 21.5
<p>The Retailer is to exclude, to the fullest extent permitted by law, all warranties, guarantees or obligations imposed on the Distributor concerning the services to be provided by the Distributor pursuant to this agreement, by the Consumer Guarantees Act 1993</p>	Clause 26.9(a)
<p>Consumers who on-sell electricity to an end-user must include provisions in agreements between it and end-users to exclude all Distributor Warranties to the fullest extent permitted by law.</p>	Clause 26.9(b)
<p>The Consumer will be liable to the Distributor (including liable in tort (including negligence)) for any direct loss or damage which is caused or contributed to by the fraud, dishonesty or wilful breach of the agreement between the Retailer and the Consumer of the Consumer or its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and</p>	Clause 26.10(a)

Summary of contractual obligation required	Clause reference in this agreement
<p>All claims by Consumers will be limited to the direct damage suffered or an amount which is equal to the aggregate amount per Consumer determined under the Electricity and Gas Complaints Commission up to a maximum of \$1,000,000 per event or \$3,000,000 in aggregate in any 12 month period across all retailers</p>	<p>Clauses 26.10(b) and 26.7</p>

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## SCHEDULE 6

### Service Interruption Communication Policies

#### Introduction

#### Unplanned Service Interruptions

1. The Distributor will, as soon as reasonably practicable but no later than the periods specified below after first becoming aware of an Unplanned Service Interruption affecting 20 or more Consumers, communicate to the Retailer by electronic file transfer in accordance with the appropriate Information Exchange Protocol.
  - Manned control room hours - 10 minutes
  - On call control room hours - 40 minutes
2. The Distributor will, within 20 minutes of new information becoming available and at intervals of no longer than 60 minutes, unless otherwise agreed or as reasonable in the circumstances, until a firm restoration time has been advised, provide the Retailer with an update of the status of the Unplanned Service Interruption.
3. Where the expected restoration time is likely to be exceeded, the Distributor will inform the Retailer of the new expected restoration time. This will be done no less than 10 minutes before the expected restoration time elapses.
4. The Distributor will supply the Retailer, within 20 minutes of a full or partial restoration of supply, details of the areas restored.
5. The Distributor will be responsible for receiving and managing Unplanned Service Interruption calls from Consumers
 

Where the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Consumers, the Retailer may provide the Distributor's contact details to the Consumer rather than taking details and logging the call with the Distributor.
6. The following situations will trigger the Distributor's media communication process:
  - a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 30 minutes in duration, and that affects, but is not necessarily limited to:
    - more than 1,000 Consumers;

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- a central business district;
  - an industrial area;
  - supply to critical facilities such as hospitals, pumping stations, dairy farms; or
  - the Network to such an extent that a disaster recovery plan should be triggered by a severe storm or natural disaster;
- b) a Civil Defence emergency has been initiated (in such situation communication may be via Civil Defence Headquarters); or
- c) any other major event that has a material adverse effect on the delivery of Distribution Services.

## **Planned Service Interruptions**

### **Distributor to notify Consumers**

1. If required, and subject to Clause 29.2, the Retailer will provide Consumer contact information to the Distributor on a monthly basis. The information provided shall be in accordance the relevant Information Exchange Protocol.
2. For all Planned Service Interruptions, the Distributor will notify affected Consumers with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 4 Working Days prior to the date on which the Planned Service Interruption is scheduled.
3. The Distributor will provide the Retailer with a notice in accordance with the relevant Information Exchange Protocol at least 10 days prior to the date on which the Planned Service Interruption is scheduled.
4. Where a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor will provide the Retailer with a notice in accordance with the relevant Information Exchange Protocol as soon as is reasonably practicable
5. Where the Retailer receives enquiries from Consumers concerning an interruption to service, whether scheduled or unscheduled, the Retailer will advise the Consumers to treat the Distribution Network and Consumers' Installation as if they are live and to disconnect or switch off all appliances, plant and equipment that could create a hazard, and all sensitive equipment.

## SCHEDULE 7

### Connection Policies

#### Introduction

1. The Distributor and the Retailer recognise that the process of managing connections to and disconnections from the Network requires significant co-ordination between them.
2. This Schedule 7 sets out examples of the broad processes to be followed in respect of:
  - new connections;
  - capacity changes;
  - temporary disconnections and associated re-connections;
  - vacant site disconnections and associated re-connections;
  - permanent disconnections; and
  - unmetered supplies.

#### Information Content and Transmission Media

3. The policies set out below focus on the broad responsibilities of each party and do not deal with the particular content of the information transferred between the parties or the media by which the information is transferred. It is agreed that the information content and transmission media will be consistent with Schedule 4, or in the absence of an appropriate Information Exchange Protocols or energy service transaction standards as agreed between the parties.

#### Process for New Connections Or Changes In Capacity

4. The Distributor will receive applications from the owner of a Consumer's Premises, , (Requesting Party) for the capacity for a new connection or an increase or decrease in capacity for an existing connection.
5. The Distributor will undertake an assessment to determine whether the capacity is already available or whether Network expansion is required. The Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works or may decline the Requesting Party's application. If the application is declined the Distributor will provide reasons why.

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6. Upon the Distributor agreeing to supply the changed capacity or new connection, the Requesting Party agreeing to take the changed capacity on the terms offered by the Distributor, the agreed work being undertaken, and the Requesting Party advising the Distributor of its Retailer (if not already known), the Distributor will advise the Retailer of the ICP number, the NSP it will be connected to, the applicable Price Category, and that the ICP is ready to be livened (if it pertains to a new ICP).
7. The Distributor or the Retailer (if authorised to do so by the Distributor) will arrange for the ICP to be livened once livening approval has been granted by the Distributor. The party performing the energisation will, unless otherwise agreed, notify the other party within 1 Working Day.
8. Where a Network expansion is required, or other works are required to increase the connection capacity, as the case may be :
  - The Distributor will determine costs and Consumer contribution requirements, if any.
  - The Requesting Party will be advised of the proposed costs and contribution requirements, if any.
  - The Distributor will await acceptance from the Requesting Party of contribution requirements if any, and any other conditions that may apply.
  - The Distributor will approve construction of the network expansion upon receiving the Requesting Party's acceptance.
  - When construction has been completed to the satisfaction of the Distributor, the Distributor or the Retailer (if authorised to do so) will arrange for the Point of Connection to be livened once livening approval has been granted by the Distributor.
9. Both parties will update the Registry throughout this process in accordance with the Rules.

### **Temporary Disconnections and Associated Re-Connections**

10. A Temporary Disconnection may be carried out in the following circumstances:
  - by either party in an emergency where the interests of public safety require an immediate disconnection;
  - by the Retailer, for credit reasons;
  - by the Retailer or Distributor, where requested by the Consumer, for safety or other reasons; or
  - by the Distributor acting in accordance with clause 19.5.

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11. The party performing the De-energisation or Re-energisation will, unless otherwise agreed, notify the other party within 2 Working Days of the work having been completed. For the avoidance of doubt, the status in the Registry is not to be changed for Temporary Disconnections.

### **Vacant Site Disconnections and Associated Reconnections**

12. The Retailer may undertake a Vacant Site Disconnection when it no longer requires Distribution Services for an ICP and wishes to stop paying line charges for that ICP. The most common situation is where the Consumer has moved out and the premises are vacant. Distribution Services for the ICP are expected to be required in the future but they may be required by another retailer. Standard line charges remain payable by the Retailer for each ICP up until midnight of the day before the Vacant Site Disconnection.
13. The Retailer may undertake a Vacant Site Reconnection when it requires Distribution Services for an ICP that had previously been De-energised as a Vacant Site.
14. If the ICP has not been Energised within the previous 6 months, the Retailer must either request an inspection from the Distributor (if the Distributor provides this service) or advise the Consumer to procure its own safety inspection using a certified person. A copy of the certificate issued following such an inspection must be provided to the Distributor, before the ICP can be Re-energised.
15. The Retailer shall ensure that Vacant Site Disconnections and Reconnections are carried out by Warranted Persons in compliance with the Distributor's reasonable operational work practices for managing Vacant Sites.
16. Where:
- (a) the Retailer wishes to carry out a Vacant Site Disconnection for a specific ICP; and
  - (b) the Distributor has not provided an exclusive and accessible isolation device for that ICP; and
  - (c) the Retailer has not been able to complete a Vacant Site Disconnection in accordance with Good Industry Practice for that ICP after a site visit for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s); then

the Retailer may notify the Distributor to take responsibility for completing the Vacant Site Disconnection for that ICP.

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- (i) the Distributor will use reasonable endeavours in accordance with Good Industry Practice to complete the Vacant Site Disconnection; and
  - (ii) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound to install such a device where it considers in its opinion that it would be impractical or unreasonably costly to do so; and
  - (iii) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Rules.
17. The party performing the De-energisation or Re-energisation will, unless otherwise agreed, notify the other party within 2 Working Days of the work having been completed.
18. Both parties will update the Registry throughout this process in accordance with the Rules.

### **Permanent Disconnections**

19. Permanent Disconnections of an ICP may be carried out by the Distributor in the following circumstances, provided the requirements of section 62 of the Electricity Act 1992 are met and the Retailer has been communicated with prior to any work being undertaken :
- on receipt of a request from a Consumer, land-owner or Retailer when electricity is no longer required at a particular ICP; or
  - where public safety is at risk; or
  - on receipt of the Registry “Inactive” status with reason “De-energised - ready for decommissioning” where a Retailer has Disconnected a site, attempted to recover the meters, and updated the Registry to that status; or
  - where the Distributor has not supplied Distribution Services to an ICP for a considerable period of time,(usually in excess of 6 months), and has communicated with the property owner.
20. A Permanent Disconnection (Decommissioning) is performed by means of removal of all of the exclusive fittings between the Consumer’s designated ICP and the property boundary (point of supply) of the Consumer’s Installation. (Exclusive fittings and point of supply have the same meaning as in the Electrical Regulations 1997 and the Electricity Act 1992). The party initiating the Permanent Disconnection will submit a Network Connection Application (marked Decommission) to the Distributor 5 Working Days prior to the work being undertaken. In emergency or safety circumstances the site can be De-energised as an interim measure prior to application for Permanent Disconnection

(Decommissioning). In all circumstances the property and Consumers Installation is to be left in an electrically safe condition. .

21. The party performing the Permanent Disconnection must notify the other party within 2 Working Days of the work having been completed.
22. Once having the status of decommissioned on the Registry, the ICP will not be used again, and the process for new connections must be followed should supply be again required at this site.
23. Both parties will update the Registry throughout this process in accordance with the Rules.

### **Unmetered Supplies**

24. The Distributor and Retailer will comply with their obligations for maintaining and updating unmetered load information in the Registry and in accordance with the Rules
25. The Distributor will maintain a database of ICPs that include Unmetered Supply in accordance with the Rules. and where it becomes aware of changes to any Unmetered Supply, the Distributor will update its database and notify the Retailer of those changes, and the Retailer will update the Registry in accordance with the Rules. The detail included in the database shall include the information necessary comply with the Rules and to support the Registry. .

## SCHEDULE 8

### Pricing Principles

The Distributor's line prices will be set and maintained in a manner that reflects the following line pricing principles:

- Provide a fair and reasonable rate of return on investment (when measured on a pre-discount basis) to shareholders;
- Maintain a reasonable level of uniformity among like Consumers across regional areas;
- Recover, where appropriate, the Distributor's line business costs, including the return on and return of capital reasonably allocated to each group or class of Consumer;
- Recover the transmission costs in a manner that reasonably reflects how these costs are incurred by each group or class of Consumer;
- Provide appropriate economic signals to Consumers relating to the nature of their use of the distribution and transmission systems
- Provide medium term stability, predictability and certainty for Consumers and retailers;
- Meet regulatory and public policy requirements imposed by Government, The Electricity Commission and the Commerce Commission;
- Be simple to understand, implement and administer;
- Ensure that the distribution-pricing component is only changed once in any 12-month period.

The Distributor's directors will use their discretion to determine the appropriate balance whenever conflicts arise between the principles above

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## SCHEDULE 9

### Load Management Policy

#### 1 Introduction

Load management is the process of reducing electricity demand on the Network by controlling the supply of electricity to specific Consumer appliances. This normally occurs during peak load periods when the demand for electricity is at its highest. Examples of load management practices include the temporary interruption of supply to hot water storage heaters, spa pool heaters, and space heaters such as night store heaters.

The value of load management lies in the ability to reduce energy and transportation costs. Those who might benefit from load management capability include:

- The Distributor, by assisting in managing asset utilisation;
- The Retailer, by optimising electricity purchase costs and by matching energy demand to supply in the event of a supply shortage;
- The Consumer, through lower electricity charges where they choose to make some of their appliances controllable by Load Control Equipment.

#### 2 Entirely Voluntary

The decision whether all or any part of a Consumer's load is available for load management ("controllable load") is that of the Consumer. Neither the Retailer nor the Distributor will require a Consumer to allow their appliances to be controlled. Instead, they may incentivise the use of controllable load by Consumers by offering lower line and / or retail pricing options (known as controllable load tariff options) to Consumers. The options and eligibility criteria for controllable load line tariff options are set out in the Distributor's pricing Schedule and policy in Schedule 10. A Retailer may choose whether to make these controllable load tariff options available to its Consumers. Where the Retailer allocates a Consumer to a controllable load tariff option, the Distributor is entitled to rely on that allocation as an election by the Consumer, and the Retailer acknowledges that, in consideration of the controllable load tariff options the Distributor has purchased the right to control load for Network related purposes.

A Consumer (via its Retailer) elects to make controllable load available to the Distributor by choosing a controllable load tariff option on offer from the Retailer's pricing schedule. Such a Consumer election is subject to installation of the appropriate metering and Load Control Equipment necessary to conform to the Distributor's requirements for the elected controllable

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load tariff option. The options and eligibility criteria are set out in the Distributor's pricing schedule and policy in Schedule 10.

### 3 Rights To Undertake Load Management

Where a controllable load tariff option applies to any part of the Consumer's load the Distributor has the right to control the load of the Consumer for Network related purposes, but subject to any time constraints relevant to the particular controllable load tariff option, the Retailer has the right to request / instruct load management for purposes other than these Network related purposes.

### 4 Hierarchy And Use Of Load Management

The load management system can be used for a variety of purposes and has value to both the Distributor and the Retailer. At any point in time, for example a half hour trading period, the value to the Distributor of the right to load control may be less than the value to another party, for example, the Retailer. To enable load control to be used for the highest value use, the Distributor has the right to assign the right to control load to another party, for example, the Retailer.

The Distributor and the Retailer agree where any conflicting demands exist for the use of Load Management the following hierarchy will be followed:

First Call: Distributor for Network related purposes

- 1 Transmission Grid and distribution Network security
- 2 Transmission cost minimisation
- 3 Network investment optimisation

Second Call: Retailer for other than Network related purposes

- 4 Wholesale purchase cost containment (e.g .load shifting using limited hot water cuts within allowable parameters for the relevant Price Category, or shifting load between Network Supply Points).
- 5 Interruptible load (e.g. to bid the ability to interrupt load into the reserves market)

Other Calls: Instruction by relevant authority through a regionally or nationally co-ordinated process to ration electricity in response to an anticipated shortage of electricity

- 6 Extended hot water cuts in order to match demand to supply in the event of a supply crisis. The Distributor will not be liable for any non performance payments where there is a breach of Schedule 1 service standards as a consequence of load management initiated under these circumstances.

## 5 Load Management Equipment

5.1. The load management system is comprised of:

Load Signalling Equipment; and

Load Control Equipment; and

Consumers' controllable load.

5.2. The Retailer may own or lease Load Control Equipment and the Distributor owns and manages the Load Signalling Equipment. Load Signalling Equipment and Load Control Equipment may be based on a number of technologies. Current technologies employed include pilot wire and ripple control systems. The Distributor will provide the Retailer with details of the technical characteristics of the Load Control Equipment appropriate to each of the Network areas in which load management is provided.

5.3. If the Distributor seeks to change the operating characteristics (including the operating frequency) of its Load Signalling Equipment it will seek to negotiate suitable terms with the Retailer for the upgrade of the Load Control Equipment. If agreement is not reached, the Distributor may at its discretion, choose to procure and install, at its own cost, suitable Load Control Equipment. An additional service charge may then be applicable for the Distributor's provision of Load Control Equipment.

5.4. If the Retailer wishes to install a type of load management system different to that used by the Distributor and wishes to allocate Consumers to a controllable load tariff option offered by the Distributor, it must seek agreement from the Distributor prior to installation to ensure the new system meets the Distributor's requirements.

## 6 Line Charges

6.1. To qualify for a controlled load Price Category or Tariff Option, the Retailer must ensure that the relevant ICP has Load Control Equipment that is in working order and controlling the appropriate Consumer's appliances on which the controlled load Price Category or Tariff Option is based.

6.2. The Distributor may periodically, no more than once a year, undertake an audit using a representative sample of the Load Control Equipment for which the Retailer is responsible and its connections to Consumer's appliances.

6.3. Where a sample audit shows that load management is not functional for in excess of 5% of the Retailer's Consumers sampled, the Distributor and Retailer will, within 40 Working Days, meet and agree a programme including scope and timeframe within which non-functioning Load Control Equipment will be identified and made functional. The Retailer

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agrees that the reasonable costs of any inspection (including the initial audit) and repair work identified will be at its cost.

- 6.4. Where the audit identifies non-functional Load Control Equipment due to low signal levels or faulty pilot wires that are the responsibility of the Distributor then these failures shall be excluded from the audit results.
- 6.5. Where a sample audit shows that load management is functional for 95% or more of the Retailer's Consumers sampled, the cost of the audit will lie with the Distributor but the Retailer will still be required to remedy all defects found in respect of the non-functional Load Control Equipment.

## **7 Retailer May Purchase Load Management Services**

- 7.1. The Distributor will accept load management instructions from the retailer that supplies the majority of ICPs which are under load management (the "Instructing Retailer"), provided that all retailers receiving Distribution Services from the Distributor have signed this agreement or have agreed to terms that have substantially the same effect as this clause 7. The Distributor will advise the retailer who is the Instructing Retailer and of any change to the status of the Instructing Retailer, and of any circumstances where this clause is unable to be triggered.
- 7.2. Where the right to issue instructions has been established the Distributor will provide specific load management Services to the Instructing Retailer during periods when the Distributor does not need to operate load management for network related purposes.
- 7.3. To enable this service to be provided the Instructing Retailer shall provide a proposed load management schedule to the Distributor. The schedule will set out the proposed off/on times for each day for the period the additional load management Services are being sought, at least one Working Day prior to the period when the requested service is to commence.
- 7.4. Any deviations (by either party) from the off/on hours or days specified in the initial load management request will be established by mutual agreement between the Instructing Retailer and the Distributor.
- 7.5. Where the additional load management service is requested by the Instructing Retailer for more time in any one day than that which is agreed for the relevant Price Category or Tariff Option the Instructing Retailer shall advise all other retailers selling to consumers on the Network of its intentions and any changes thereto immediately or at least one Working Day prior to the control being implemented. Except under exceptional circumstances, the Service Standards in Schedule 1 should be complied with at all times.
- 7.6. Both the Distributor and Retailer will act in accordance with any industry protocol for extended hot water cuts.

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- 7.7. The Distributor shall comply with the additional load management services request unless it otherwise notifies the Instructing Retailer at least 4 hours prior to commencement of the instruction.
- 7.8. The off/on times and days applicable to the additional load management Services is not Confidential Information and the Distributor is able to convey the information to other retailers.
- 7.9. Due to the nature and constraints of the existing load management equipment, the Distributor may not be able to offer the Instructing Retailer the load management Services it requires, but will seek, where possible (but without additional cost to the Distributor), to configure the equipment to accommodate the Instructing Retailer's requests.
- 7.10. Where the Distributor cannot accommodate a request using existing equipment, it will supply a price to install new Load Signalling Equipment that can meet the Instructing Retailer's requirements.
- 7.11. The Distributor may charge a reasonable operational and administration fee for providing the additional load management services, such fee to be advised by the Distributor and agreed by the Instructing Retailer prior to providing the service.
- 7.12. The Distributor will not be liable for any breach of Service Standards in carrying out load management in accordance with the Instructing Retailers instructions.

## **8 Co-Operation**

- 8.1. Where either party becomes aware of any situation that may affect supply into the Network, the parties shall co-operate to identify the most appropriate load management or load shifting response and clauses 7 and 8 will apply, as appropriate.

## SCHEDULE 10

### Pricing Schedule and Policy

1.1. The Distributor's Pricing Schedule and pricing methodology are updated annually and are disclosed on the distributors web site [www.networktasman.co.nz](http://www.networktasman.co.nz)

1.2. Distributors Price Schedule effective from 1 April 2011:

#### Use-of-System Charges

##### (a) **General**

- All charges are stated exclusive of Goods and Services Tax.
- Access to controlled and off peak tariffs is contingent on the Consumer having the appropriate metering and/or relay equipment fitted at their installation
- No allowance is made for distribution losses.
- Capacity is the "contracted capacity" according to records of the Distributor or as approved in the Network Connection Application and is generally based on the minimum of the mains size, mains protective device rating, or load limiting circuit breaker rating or in the case of Customers with dedicated transformers, the capacity of the transformer.
- Control period demand is based upon the average kVA demand at each consumer's installation whilst load control is being carried out by Network Tasman to restrict system load peaks - applies to installations with a capacity of greater than 150 kVA.

##### (b) **Method of Derivation**

Generally derivation of line charges has followed NTL's current pricing methodology as published on its website. It is expected that future methodologies will be based on accepted industry practice.

##### (c) **Network Tasman Line Charge Schedule**

**Note:**

Line Charge Schedule = (Distribution pricing + Transmission Pricing)

Line Charges are for all GXP's: STK0331, MOT0111, MPI0661, MCH0111, KIK0111

All charges exclusive of GST and payable on a monthly basis.

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## Line Charge Schedule

**NETWORK TASMAN LIMITED PRICING****Effective from 01 April 2011**

<b>Group 0 (unmetered)</b>				
<b>Fixed</b>	<b>Code</b>	<b>Distribution</b>	<b>Transmission</b>	<b>Total</b>
Low capacity - EI fences, Comms etc c/day	0UNM	32.00	13.00	45.00
Streetlight (c/day)	0S	0.00	0.00	0.00
Temporary box, c/day	0TBX	85.00	31.00	116.00
<b>Variable</b>				
Streetlight (c/W/day)	0STL	0.074	0.026	0.100

<b>Standard Group 1&amp;2.</b>				
<b>Variable Charges - c/kWh</b>				
<b>Tariff</b>	<b>Code</b>	<b>Distribution</b>	<b>Transmission</b>	<b>Total</b>
Anytime Continuous	ANY	5.76	2.14	7.90
Day (of Day/Night)	DAY	6.33	2.36	8.69
Controlled Water	WSR	2.67	0.97	3.64
Night	NIT	1.91	0.73	2.64
Off Peak Controlled	OPK	4.52	1.63	6.15
<b>Group 2 Domestic LFC, &lt; 40kVA capacity</b>				
Anytime Continuous	2LANY	8.76	2.14	10.90
Day (of Day/Night)	2LDAY	9.33	2.36	11.69
Controlled Water	2LWSR	5.67	0.97	6.64
Night	2LNIT	4.91	0.73	5.64
Off Peak Controlled	2LOPK	7.52	1.63	9.15
<b>Group 2 Domestic LFC, &gt;= 40kVA capacity</b>				
Anytime Continuous	2HANY	12.46	2.14	14.60
Day (of Day/Night)	2HDAY	13.03	2.36	15.39
Controlled Water	2HWSR	9.37	0.97	10.34
Night	2HNIT	8.61	0.73	9.34
Off Peak Controlled	2HOPK	11.22	1.63	12.85

<b>Fixed Charges</b>				
<b>Group 1 Daily Charge, c/day</b>	<b>Code</b>	<b>Distribution</b>	<b>Transmission</b>	<b>Total</b>
Daily Charge - All GXP -c/day	1	11.85	3.15	15.00
<b>Group 2</b>				
Standard - All GXP - c/kVA/day	2	3.20	0.85	4.05
Domesic LFC < 40kVA. All GXP c/day	2LLFC	11.85	3.15	15.00
Domesic LFC >= 40kVA. All GXP c/day	2HLFC	11.85	3.15	15.00

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**Group 3**

Minimum of 150kVA Anytime demand All regions/GXP	Price Code/Category			
	3.1	3.3	3.4	3.5
<b>Variable Energy - c/kWh</b>				
Summer Day	0.40	1.28	1.28	0.87
Summer Night	0.23	0.67	0.67	0.54
Winter Day	0.73	3.43	3.43	2.93
Winter Night	0.23	0.67	0.67	0.54
<b>Demand Charges</b>				
Anytime c/kVA/day (Transmission portion = 2.02)	10.18	13.11	13.85	13.11
Winter/RCPD c/kW/day (Dist = 3.03 Trans = 19.69)	22.72	22.72	22.72	22.72
<b>Power Factor Charge</b>				
Reactive Charge - c/kVAr/day	24.01	24.01	24.01	24.01

**Group 3 Line Charges Continued**

Winter is the time period from 1 May to 30 September  
 Summer is the time period from 1 October to 30 April  
 RCPD is regional coincident peak demand for the Upper South Island  
 Day is from 0700 hours to 2300 hours  
 Night is from 2300 hours to 0700 hours

The power factor charge is applicable to any ICPs operating at <0.95 power factor.  
 Contact NTL for details.

**(d) Metering Service Charges**

Apparent Power metering charges as specified below shall apply to Customer Installations with connected capacities greater than 150 kVA unless the Apparent Power metering information is provided by the Retailer or the Retailers Agent.

Apparent Power (kVA) Metering Charges	\$ meter/pa including reading
Three phase 5amp (CT metering)	<i>Subject to individual assessment</i>
Three phase 5amp (11kV metering CTs & PTs)	
Data Logger	

**(e) Supply Capacity Groups**

Subject to compliance with the Distribution Code, supply capacities for Load Groups 0, 1, 2, 3, 4 and 5 are set out below.

**Load Group 0**                      0 – 1 kVA

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**Load Group 1**

	kVA	Amps/phase
Single phase	15	60
Two phase	15	40
Three phase	15	30

**Load Group 2**

	kVA	Amps/phase
Two phase	20	60
Three phase	20	40
Three phase	30	50
Three phase	40	60
Three phase	50	80
Three phase	70	100
Three phase	90	125
Three phase	110	160
Three phase	130	200
Three phase	150	250

**Load Group 3**

	kVA	Amps/phase
Three phase	200	300

Dedicated Transformers (Load Group 3 Capacity Greater or equal to 300kVA)  
Transformers owned by Distributor or Customer or Embedded Network Operator or any other third party.

300 kVA

500 kVA

750 kVA

1000 kVA

Greater than 1000 kVA the sum of transformer capacity installed

**Load Group 4 and 5**

The sum of transformer capacity owned by the Distributor, Customer, Embedded Network Operator or any other third party.

**(f) Power Factor Penalty Charge**

After giving the Retailer notice that a Customer Installation is in breach of the minimum Power Factor requirements as detailed in clause 15.5 and the Distribution Code, and allowing the Retailer of twelve months to rectify, the formulae below may be applied if the Customer Installation continues in breach and such charges may be invoiced on a monthly basis in accordance with clause 7.

Power Factor Penalty Charge = Chargeable kVA<sub>r</sub> × [Reactive Charge] cents per kVA<sub>r</sub> per day

Chargeable kVA<sub>r</sub> based on total kVA<sub>r</sub> less kVA<sub>r</sub> if at 0.95 Power Factor

Note:

- i) Applicable for Customer Installations with a Power Factor of less than 0.95
- ii) Lowest average Power Factor measured during the Distributors peak loads over year.

Chargeable on a daily basis.

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## SCHEDULE 11

### Loss Factors

- 1.1. The Distributors Loss factors are reviewed annually and are disclosed on the distributors web site [www.networktasman.co.nz](http://www.networktasman.co.nz)
- 1.2. Distributors Loss Factor Schedule effective from 1 April 2011:

#### Loss Allocation Policy

For all Retailers the following Loss Factors are to be used by Retailers to multiply the kWh recorded on the meter at Customer premises in order to determine the Retailers responsibility for the purchase of kWh within the Distribution Network.

#### Loss Factor Allocation for Supply Areas Served From

	All GXP (STK0331, MOT0111, MCH0111, KIKI0111, MPI0661)					
<b>Load Group and Description/type</b>	Load Groups 0, 1 & 2	3.1, 3.4 Non-Dedicated Transformer	3.1, 3.4 Dedicated Transformer	3.3 11kV Supply	6.1 Bulk supply <sup>5</sup>	6.2 Bulk supply <sup>5</sup>
<b>Loss Code<sup>6</sup></b>	L0, L1, L2	3ND	3D	311kVM	L61	L62
<b>Loss Factor</b>	1.078	1.0610	1.0535	1.035	Contact NTL	1.035

#### Note

- 1) Day 0700 – 2300 hrs
- 2) Night 2300 – 0700 hrs
- 3) Winter months May to September
- 4) Summer months October to April
- 5) Customers with installed capacities greater than 2,500 kVA subject to individual calculation.
- 6) Codes used in Registry to identify ICP loss factor.

The Retailer should note that the Distributor shall monitor Loss Factors from information supplied by Retailers under Schedule 4, technical evaluation from load flow analysis and evaluation of non technical factors. Amended Loss Factors may be posted by the Distributor on giving Retailer 90 days notice and the reason for the justification after consulting with Retailers.