



Use-of-System Agreement (Interposed)

between

Top Energy Limited

as Network Operator

and

[Retailer]

as Retailer

[Month] 2016

TABLE OF CONTENTS

INTRODUCTION	6
AGREEMENT	7
PART I - SERVICE COMMITMENTS	7
1. TERM OF AGREEMENT	7
2. SERVICES	7
3. CONVEYANCE ONLY	9
4. EQUAL ACCESS AND EVEN-HANDED TREATMENT	10
5. SERVICE INTERRUPTIONS.....	11
6. LOAD MANAGEMENT	14
7. LOSSES AND LOSS FACTORS	17
8. SERVICE PERFORMANCE REPORTING	18
PART II - PAYMENT OBLIGATIONS	19
9. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES	19
10. ALLOCATING PRICE CATEGORIES AND TARIFF OPTIONS TO ICPS	21
11. BILLING INFORMATION AND PAYMENT	25
12. PRUDENTIAL REQUIREMENTS	29
PART III - OPERATIONAL REQUIREMENTS	36
13. ACCESS TO THE CONSUMER'S PREMISES.....	36
14. GENERAL OPERATIONAL REQUIREMENTS.....	38
15. NETWORK CONNECTION STANDARDS.....	41
16. MOMENTARY FLUCTUATIONS	41
17. CONSUMER SERVICE LINES	42
18. TREE TRIMMING	42
19. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPS	43

PART IV: OTHER RIGHTS	43
20. BREACHES AND EVENTS OF DEFAULT	43
21. TERMINATION OF AGREEMENT	45
22. CONFIDENTIALITY	48
23. FORCE MAJEURE	50
24. AMENDMENTS TO AGREEMENT	52
25. DISPUTE RESOLUTION PROCEDURE	55
26. LIABILITY	57
27. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY	64
28. CONDUCT OF CLAIMS.....	67
29. CONSUMER CONTRACTS.....	68
30. NOTICES	70
31. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS.....	70
32. MISCELLANEOUS	72
33. INTERPRETATION	73
SCHEDULE 1 – SERVICE STANDARDS.....	86
SCHEDULE 2 – ADDITIONAL SERVICES	93
SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS	96
SCHEDULE 4 – CONSUMER CONTRACTS.....	97
SCHEDULE 5 – COMMUNICATION POLICIES	100
SCHEDULE 6 – CONNECTION POLICIES	103
SCHEDULE 7 – PRICING PRINCIPLES.....	111
SCHEDULE 8 – LOAD MANAGEMENT	112
SCHEDULE 9 – PRICING INFORMATION	116

AGREEMENT dated [date] [month] 20[-]

PARTIES

Distributor: Top Energy Limited	Retailer: [Insert full legal name of Retailer]
<p>Distributor's Details: Level 2, John Butler Centre 60 Kerikeri Road PO Box 43 Kerikeri, 0245</p> <p>Address for Notices: Level 2, John Butler Centre 60 Kerikeri Road PO Box 43 Kerikeri, 0245</p> <p>Contact Person's Details: General Manger Network Phone: 09 401 5440 Fax: 09 407 0611 Website: www.topenergy.co.nz Email Address: info@topenergy.co.nz</p>	<p>Retailer's Details: Street Address: [-] Postal Address: [-]</p> <p>Address for Notices: Contact Person's Details: [-] Phone: [-] Fax: [-] Website: [-] Email Address: [-]</p>

COMMENCEMENT DATE: [date] [month] 20[-]

SIGNATURES:

Signature

Signature

Name of authorised person signing for Distributor

Name of authorised person signing for Retailer

Position

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 Code.

AGREEMENT

PART I - SERVICE COMMITMENTS

1. TERM OF AGREEMENT

- 1.1 **Term:** This agreement commences on the Commencement Date and continues until it is terminated under clause 21 or at law.

2. SERVICES

- 2.1 **Distributor's services and obligations:** Subject to the terms and conditions of this agreement, the Distributor will in accordance with Good Electricity Industry Practice:
- (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
 - (b) deliver 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) provide for Warranted Persons to Energise and De-energise Points of Connection in accordance with this agreement, including clause 19 and schedule 6;
 - (d) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis, Network repair and information service, and provide service interruption information in accordance with schedule 5, unless a change to the party responsible for receiving and managing Unplanned Service Interruption calls in respect of a Network area has been made in accordance with the process set out in clause 24.4;
 - (e) make provision for Load Management Services on its Network to the extent required by clause 6;
 - (f) review and determine Loss Factors and help identify the reasons for abnormal trends in Losses in accordance with clause 7;
 - (g) if the Distributor proposes to make changes to the Network Supply Points supplying the Network, follow the process set out in clause 24;

- (h) allow Consumers' Installations that comply with Network Connection Standards to remain connected (unless a Consumer's Installation is disconnected or decommissioned in accordance with this agreement), and consider applications for new connections and changes to capacity for existing connections in accordance with clause 19;
- (i) if a Consumer, or the Retailer on behalf of a Consumer, raises concerns with the Distributor regarding the power quality (which means the frequency or voltage of the supply), reliability or safety of the Consumer's supply, the Distributor will investigate those concerns, and, if the Distributor considers it appropriate to do so, install equipment at the Consumer's Point of Connection to measure power quality, and provide the results of such measurements to the Retailer or Consumer, as the case may be. If such installation requires the Services to be interrupted, the Distributor will restore the Services as soon as reasonably practicable; and
- (j) provide the Additional Services as set out in schedule 2.

2.2 Retailer's services and obligations: Subject to the terms and conditions of this agreement, the Retailer will in accordance with Good Electricity Industry Practice:

- (a) if it becomes aware that a Consumer's Installation does not comply with the Network Connection Standards, notify the Distributor of the ICP identifier of the Consumer's Installation and the details of the non-compliance as soon as reasonably practicable;
- (b) process any applications for new connections or changes to the capacity of existing connections in accordance with clause 19;
- (c) comply with the Service Standards;
- (d) provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information in accordance with schedule 5, unless a change to the party responsible for receiving and managing Unplanned Service Interruption calls in respect of a Network area has been made in accordance with the process set out in clause 24.4;
- (e) subject to clause 27, have a Consumer Contract with each Consumer for the supply of electricity that contains terms that have substantially the same effect as schedule 4;
- (f) provide information in accordance with clauses 7 and 11;

- (g) investigate and minimise, in accordance with Good Electricity Industry Practice, non-technical Losses;
- (h) respond to requests from the Distributor for Consumer details in accordance with clause 31; 'and
- (i) provide the Additional Services as set out in schedule 2.

3. CONVEYANCE ONLY

- 3.1 **Distributor may enter into Distributor's Agreement with a Consumer:** The Distributor may enter into a Distributor's Agreement with a Consumer at the Consumer's written request, provided that any existing Consumer Contract with the 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 will:
 - (a) allow electricity to be conveyed 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; and
 - (b) for each relevant ICP, and within 5 Working Days following the commencement of a Distributor's Agreement, notify the Retailer that a Distributor's Agreement has been entered into in respect of that ICP
- 3.3 **Valid Distributor's Agreement:** The Retailer will not knowingly supply electricity on a Conveyance Only basis to an ICP unless there is a valid Distributor's Agreement in force in relation to the 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 any Distributor's Agreement. However, the technical requirements in a Distributor's Agreement may differ from the technical requirements in relation to Distribution Services set out in this agreement, if 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:** Without limiting either party's rights or remedies in respect of any breach of this agreement, if either of the following issues arises, the Distributor and the Retailer will co-operate with each other to try to resolve the issue in a manner that on balance delivers the best outcome for all affected parties (including the Consumer) but that does not adversely impact on the integrity of the Network:

- (a) if, in relation to the supply of electricity to any Consumer that is a party to a Distributor's Agreement, the Distributor notifies the Retailer that it considers (acting reasonably) that the Retailer has done, or is doing, anything that is inconsistent with the Distributor's Agreement and that may have an impact on the Network or the provision of distribution services by the Distributor to that or any other Consumer; or
- (b) if 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.

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 one or more 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 may notify the Retailer (or any other retailer) of the situation and suggest the Retailer (or any other retailer) take up the opportunity to supply the 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 (or any other 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, in each case in relation to the provision of Distribution Services under this agreement.

- 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 (with any changes necessary to reflect the fact that the Retailer is a different party).
- 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 not less than 20 Working Days' notice to the Distributor of its intention to sign the Alternative Contract; and
 - (b) the Retailer adopts the Alternative Contract in its entirety.
- 4.4 If an Alternative Contract is adopted in accordance with clause 4.3, this agreement will terminate from the date of such adoption. The provisions of clauses 21.3 to 21.7 also apply to a termination of this agreement under this clause 4.4.

5. SERVICE INTERRUPTIONS

General

- 5.1 **Communications policies:** The parties will use reasonable endeavours to comply with the communication policies set out in schedule 5.
- 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.
- 5.3 **Policy for managing load during a System Emergency Event:** The Distributor will develop and make available on request a policy for managing load on the Network during a System Emergency Event, and will set out in the policy the priorities for Load Shedding, the use of controllable load, and the restoration of load. When developing and amending the policy, the Distributor will consult with the Retailer and all other retailers who trade on the Network, and will take all feedback received into account in finalising the policy. The policy must not be inconsistent with this agreement and the Distributor will endeavour in accordance with Good

Electricity Industry Practice to comply with the policy, but the Distributor will not be in breach of the policy if the Distributor has acted in good faith.

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

- (a) **Maintenance of Network equipment:** if the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 5.6, 5.8, 5.9 and schedule 5 as applicable;
- (b) **Provision of supply within the Service Standards:** as permitted by the Service Standards, if 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 a request or instruction received from the System Operator in accordance with the Code; or
 - (ii) if 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 request or instruction from the System Operator to shed load in accordance with the Code;
- (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
 - (i) maintain a safe environment, (including for the purpose of maintaining public health and safety), consistent with the Distributor's health and safety policies;
 - (ii) prevent short term overloading of the Network;
 - (iii) prevent voltage levels rising or falling outside of statutory requirements;
 - (iv) manage System Security; and
 - (v) avoid or mitigate damage to the Network or any equipment connected to the Network;
- (e) **Compliance with the Code:** to comply with the Code or any other legislative requirements;
- (f) **Automatic Load Shedding:** if automatic under-frequency Load Shedding is implemented in accordance with the Code; or

- (g) **Other circumstances:** for any other purpose that, in the Distributor's reasonable opinion and in accordance with Good Electricity Industry Practice, requires the interruption or reduction of delivery of electricity to any ICP.

Unplanned Service Interruptions

- 5.5 **Party to receive Unplanned Service Interruption calls:** The party specified in relation to the network area in Schedule 5 is responsible for receiving Unplanned Service Interruption calls from Consumers and managing further communication with affected Consumers until normal service is restored, as necessary.
- 5.6 **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 5.
- 5.7 **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 set out in schedule 5.

Planned Service Interruptions

- 5.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor will, as far as is reasonably practicable, schedule Planned Service Interruptions in a safe and efficient manner and with consideration to minimising disruption to Consumers.
- 5.9 **Distributor to comply with communication policies:** The Distributor will comply with the Service Interruption communication policy set out in schedule 5 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Distribution Services.
- 5.10 **Costs of communication:** If the Distributor asks the Retailer to notify Consumers in accordance with schedule 5, the Distributor will meet the reasonable costs incurred by the Retailer in complying with such requests, unless agreed otherwise in writing.

Restoration of Distribution Services

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

- (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,

and in any event will restore the Distribution Services as soon as practicable.

5.12 **Retailer's remedy:** Except as provided in clause 11.10, the Retailer's only remedy if the Distributor fails to meet the timeframes in clause 5.11 is recovery of a Service Guarantee in accordance with schedule 1, if applicable.

6. LOAD MANAGEMENT

6.1 **Distributor may control load:** Subject to clause 5.3, if the Distributor provides a Price Category or Tariff Option that provides a non-continuous level of service by allowing the Distributor to control part of, or all of, the Consumer's load (a "**Controlled Load Option**"), and the Consumer elects to take up the Retailer's corresponding price option that incorporates the Controlled Load Option, the Distributor may control the relevant part of the Consumer's load in accordance with this clause 6 and schedule 8.

6.2 **Retailer may control load:** Subject to clause 6.3, if the Retailer offers to a Consumer, and the Consumer elects to take up, a price option that provides a non-continuous level of service by allowing the Retailer to control part of or all of the Consumer's load, the Retailer may control the relevant part of the Consumer's load in accordance with and subject to this clause 6 and schedule 8.

6.3 **Control of load by an Entrant if some load is controlled by an Incumbent:** If either party (the "**Entrant**") seeks to control part of a Consumer's load at a Consumer's ICP, but the other party (the "**Incumbent**") has obtained the right to control part of the load at the same ICP in accordance with clause 6.1 or 6.2 (as the case may be), the Entrant may only control the part of the Consumer's load that:

- (a) the Consumer has agreed the Entrant may control under an agreement with the Entrant; and
- (b) is separable from, and not already subject to, the Incumbent's right to control part of the Consumer's load at the ICP obtained in accordance with clause 6.1 or 6.2 (as the case may be).

- 6.4 **No interference with or damage to an Incumbent's Load Control System:** The Entrant will ensure that neither it nor its Load Control System interferes with the proper functioning of, or causes damage to, the Incumbent's Load Control System.
- 6.5 **Remedy if interference or damage:** If the Entrant or any part of the Entrant's Load Control System interferes with, or causes damage to, any part of the Incumbent's Load Control System, the Entrant will, on receiving notice from the Incumbent or on becoming aware of the situation, promptly and at its own cost remove the source of the interference and make good any damage.
- 6.6 **Retailer to make controllable load available to the Distributor for management of system security:** If the Retailer has obtained the right to control part of any Consumer's load in accordance with clause 6.2, the Retailer will:
- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Retailer has obtained the right;
 - (b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice in paragraph (a), develop and agree jointly with the Distributor (such agreement not to be unreasonably withheld by either party), a protocol to be used by the parties to this agreement that:
 - (i) is consistent with the Distributor's emergency load management policy established in accordance with clause 5.3;
 - (ii) is for the purpose of coordinating the Retailer's controllable load with other emergency response activities undertaken by the Distributor during a System Emergency Event, such purpose having priority during a System Emergency Event over other purposes for which the load might be controlled;
 - (iii) assists the Distributor to comply with requests and instructions issued by the System Operator when managing System Security in accordance with the Code during a System Emergency Event; and
 - (iv) assists the Distributor to manage Network system security during a System Emergency Event;
 - (c) during a System Emergency Event, operate its controllable load in accordance with the protocol developed in accordance with paragraph (b); and
 - (d) at all times, operate its controllable load as a reasonable and prudent operator in accordance with Good Electricity Industry Practice.

- (e) indemnify and hold harmless the Distributor if the control of all or any part of a Consumer's load by the Retailer results in the Distributor incurring any costs, loss, claim or liability that the Distributor would not have incurred if that load had been controlled by the Distributor.
- 6.7 **Maintenance of Load Control Equipment:** A party providing Load Control Equipment will endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Control Equipment:
- (a) receives and responds to the appropriate load control signals;
 - (b) properly controls the appropriate load; and
 - (c) is otherwise fit for purpose.
- 6.8 **Maintenance of Load Signalling Equipment:** A party providing Load Signalling Equipment will endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Signalling Equipment:
- (a) sends appropriate load control signals that are capable of being reliably received by all associated Load Control Equipment; and
 - (b) is otherwise fit for purpose.
- 6.9 **Access to demand and energy information:** The Distributor may from time to time request that the Retailer provide Consumers' demand and energy information to the Distributor (where such information has been obtained from such Consumers) in a format reasonably requested by the Distributor to assist the Distributor in managing and planning the Network. The Retailer will comply with such request as soon as practicable and the Distributor will pay the Retailer's reasonable out of pocket costs for doing so.
- 6.10 **Inclusion in Consumer Contracts:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement for the Consumer to ensure that, if it enters into any agreement or arrangement with any third party in relation to control of its load:
- (a) the load is not already subject to the Distributor's right of control;
 - (b) the third party does not interfere with or damage the Distributor's or the Retailer's Load Control Systems;

- (c) if any damage occurs due to the actions of the third party, the Consumer will promptly and at its own cost remove the source of the interference and make good the damage;
- (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner in respect of managing System Security in accordance with the Code and to meet the Service Standards for Distribution Services; and
- (e) prior to controlling the load, the third party has entered into an agreement with the Distributor which sets out the protocols for the use of the load, including the coordination with the Distributor of the disconnection and reconnection of load.

7. LOSSES AND LOSS FACTORS

- 7.1 **Retailer to provide information to enable calculation of Loss Factors by Distributor:** The Distributor will obtain information for the purpose of calculating Loss Factors. The Retailer will provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors within 15 Working Days of the request from the Distributor. The Retailer will provide all information requested by the Distributor pursuant to this clause 7.1 at no cost.
- 7.2 **Calculation of Loss Factors:** Subject to clause 7.7, the Distributor will calculate Loss Factors in accordance with the Loss Factor Guidelines.
- 7.3 **Change of Loss Factors:** If the Distributor wishes to change one or more Loss Category codes or Loss Factors, the Distributor will give the Retailer at least 40 Working Days' notice of the proposed change (including the reasons for the proposed change).
- 7.4 **Transparent Loss Factors methodology:** A notice provided to the Retailer in accordance with clause 7.3 will include details of the methodology and information used by the Distributor to determine the Loss Factors.
- 7.5 **Non-technical Losses:** The Retailer must investigate and minimise, in accordance with Good Electricity Industry Practice, non-technical Losses.
- 7.6 **Distributor to investigate adverse trends in Losses:** If over time Losses trend abnormally away from expected or historical Losses, the Distributor will use reasonable endeavours to identify the cause of the abnormal movement. If the

Distributor is unable to identify the cause of the abnormal movement, the Distributor will 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. The Retailer will provide the Distributor, at no cost, any additional information the Distributor reasonably requires in order to investigate abnormal trends in Losses.

7.7 Complaints about Loss Factors: If, at any time, the Retailer considers that one or more Loss Factors notified by the Distributor are not appropriate, or that the methodology or information used to calculate the Loss Factor is incorrect, the Retailer may make a written complaint to the Distributor. The Distributor will consider the complaint in good faith, and may change the Loss Factors declared in its notice to reflect the Retailer's concerns in accordance with clause 7.3. The Distributor will decide whether to make the change and, if applicable, give notice under clause 7.3, no later than 20 Working Days after receipt of the complaint.

7.8 Disputes about Loss Factors: If the Distributor does not change its notice after having received a complaint from the Retailer, the Retailer may raise a Dispute with the Distributor for the Loss Factors to be determined in accordance with the Dispute resolution process in clause 25. If the outcome of the Dispute is that the Distributor changes the Loss Factors declared in the Distributor's notice, and the change leads to a change in the level of revenue received by the Distributor, the Distributor may determine the time from which the change is to apply, which will be no later than 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 Standards: Each party will, unless it is required by law (including any regulations and the Code) to publish such information elsewhere, prepare a report on its performance relative to the Service Standards in accordance with the reporting measures and at the frequency set out in clause 8.2 and schedule 1 ("**Performance Report**").

8.2 Contents of performance report: A Performance Report prepared in accordance with clause 8.1 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 by either party, and explain what actions the party will undertake to rectify that under-performance; and

- (c) if a 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 and the impact of the Force Majeure Event on that party's performance in relation to the Service Standards.
- 8.3 **Additional reports:** Either party (the "**Requester**") may request that the other party (the "**Provider**") 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 will 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 that 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 commercially sensitive information or information that may adversely affect an insurance policy held by that party.

PART II - PAYMENT OBLIGATIONS

9. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 9.1 **Distribution Services price information:** The Distributor's Pricing Policy and Methodology, and a schedule of Price Categories, Tariff Options (if any), and Tariff Rates, are set out in schedule 9.
- 9.2 **Tariff Rate changes:** Unless otherwise agreed with the Retailer, the Distributor may not change its Tariff Rates more than once in any period of 12 consecutive months, unless a change is a material increase to one or more existing Tariff Rates and results from a change in:
- (a) a cost that is a pass-through cost or a recoverable cost as defined in the Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010, as amended or substituted from time to time; or the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed Tariff Rate change will only apply to ICPs affected by the new or changed Distribution Services; or

- (b) the law (including any regulations and the Code).
- (c) any determination, direction or decision of a regulatory agency.

Nothing in this clause 9.2 prevents the Distributor from decreasing a Tariff Rate at any time, or from increasing a Tariff Rate with the agreement of the Retailer.

9.3 Process to change Tariff Structures: This clause 9.3 applies if the Distributor intends to make a change to its tariff structure (as that term is used in clause 12A.7 of the Code ("**Tariff Structure**")) that will materially affect one or more retailers or Consumers such that clause 12A.7 of the Code requires the Distributor to consult before making the change. Without limiting clause 9.2 and unless the parties agree otherwise, the Distributor will:

- (a) **comply with guidelines:** comply with the Tariff Structure Consultation Guidelines, including by implementing the good consultation practices set out in those guidelines;
- (b) **consider certain matters:** have regard to the pricing principles in schedule 7; and
- (c) **Publish final Tariff Structure:** Publish the final Tariff Structure and the reasons for its decision, no later than the notice period specified in clause 9.4(a).

9.4 Notice of price changes: In addition to any consultation or notification requirements under clause 9.3, the Distributor will give the Retailer notice of price changes in accordance with this clause 9.4. The Distributor will:

- (a) provide 40 Working Days' notice of the price change, unless the Distributor is required by law to implement the price change earlier, in which case the Distributor will give as much notice as reasonably practicable;
- (b) provide to the Retailer:
 - (i) an update of schedule 9, in a way that makes key changes from the previous version clear; and
 - (ii) without limiting clause 10, if an ICP or a group of ICPs is to be allocated to a different Price Category, a mapping table that clearly shows the new Price Category to which each ICP or group of ICPs is to be allocated;

- (c) in addition to the requirements of paragraph (b), if the change is in respect of ICPs that have either a category 1 or category 2 metering installation, notify the Retailer in accordance with EIEP12; and
 - (d) send the information required in paragraphs (b) and (c) to the Retailer by email, as a minimum.
- 9.5 **Standard tariff codes:** If the Distributor introduces a new Tariff Rate, it will assign a tariff code to the Tariff Rate in accordance with Good Electricity Industry Practice and any requirements of the Code.
- 9.6 **Tariff Structure change and price change disputes:** Once a Tariff Structure has been finalised in accordance with clause 9.3, or a price change is notified in accordance with clause 9.4, the Retailer may raise a Dispute under clause 25 in respect of the Tariff Structure or the price change (as the case may be) only if the Retailer considers that the Distributor has not complied with clause 4.1. If a Dispute is raised, the Retailer will continue to pay the Distributor's Tax Invoices until the Dispute is resolved.
- 9.7 **Changes containing an error:** If the Retailer identifies an error in the Tariff Structure finalised and Published in accordance with clause 9.3, or a price change notified in accordance with clause 9.4, and the error arises from an obvious arithmetic error in recording the Tariff Structure or calculating prices, the Retailer will bring that error to the Distributor's attention as soon as possible after becoming aware of the error. The Distributor may correct such an error, including an error that it identifies itself, without following the process under clause 9.3 or giving notice under clause 9.4(a) (as the case may be), provided that the correction of the error will not have a material effect on the Retailer. To avoid doubt, the parts of the Tariff Structure or prices that are not affected by the arithmetic error are not subject to this clause 9.7.

10. ALLOCATING PRICE CATEGORIES AND TARIFF OPTIONS TO ICPS

- 10.1 **Distributor allocates Price Category:** The Distributor will allocate a Price Category to each ICP on its Network. If there are two or more Price Categories within the Distributor's Tariff Structure for which an ICP is eligible, the Distributor will, acting reasonably, allocate one of the eligible Price Categories to the ICP. In allocating a Price Category, the Distributor will have regard to:
- (a) the eligibility criteria for each Price Category that are set out in schedule 9;
 - (b) the attributes of the ICP; and

- (c) if known and relevant:
- (i) the Retailer's or Consumer's preference for a particular Price Category in respect of which the ICP is eligible;
 - (ii) the meter register configuration(s) of the Metering Equipment and any Load Control Equipment installed for the ICP, which will determine the Tariff Option or Tariff Options that apply if more than 1 Tariff Option is defined for the relevant Price Category;
 - (iii) the ICP's historic demand profile;
 - (iv) the Consumer's capacity requirements; and
 - (v) any other factors.

10.2 Retailer may request allocation of an alternative eligible Price Category to an ICP: At any time but no more than once a Year (unless supply at an ICP has changed to a new Consumer), the Retailer may request that the Distributor allocate an alternative Price Category to an ICP, and will provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor will apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 5 Working Days after receipt of notice of the Retailer's request. If the Distributor declines the request, it will provide the reasons for its decision.

10.3 Retailer to select Tariff Option to match meter register configuration: If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("**Tariff Options**"), the Retailer will select the Tariff Option that corresponds to the configuration of each meter register installed at the relevant ICP and notify the Distributor of that selection within 10 Working Days after its selection using the appropriate EIEP. If the meter register configuration at an ICP is changed at any time, the Retailer will change the Tariff Option to match the new configuration and notify the Distributor of the change using the appropriate EIEP within 10 Working Days after the change. If it is found at any time that the Retailer has been overcharged or undercharged by the Distributor as a consequence of the Retailer's selection of a Tariff Option for a meter register that does not reflect the meter register code in the Registry, clause 11.8 will apply.

10.4 Retailer request for reallocation of a Price Category if it considers a Price Category has been Incorrectly Allocated: Under this clause 10.4 and clauses 10.5 and 10.7, a Price Category is "**Incorrectly Allocated**" to an ICP only if the ICP was ineligible for the Price Category allocated by the Distributor based on the relevant information available to the Distributor at the time it made the allocation. If the Retailer reasonably considers that a Price Category was Incorrectly Allocated, the

Retailer will notify the Distributor of the reasons why it considers that the Price Category was Incorrectly Allocated and identify a Price Category that the Retailer considers should have been allocated to the ICP, which must be a Price Category for which the ICP is eligible. The Distributor will advise the Retailer within 10 Working Days after receipt of the Retailer's notice whether it agrees to allocate the requested Price Category (the "**Corrected Price Category**") to the ICP, such agreement not to be unreasonably withheld, and will provide the reasons for its decision. To avoid doubt, this clause 10.4 does not apply if the Distributor has already provided notice to the Retailer that the relevant Price Category is Incorrectly Allocated under clause 10.7.

10.5 Credit following correction: If the Distributor allocates a Corrected Price Category to an ICP following notice from the Retailer given under clause 10.4, the Distributor will:

- (a) commence charging the Retailer in accordance with the Tariff Rate(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to clause 10.6, and by issuing a Credit Note payable in the next monthly billing cycle, credit the Retailer with an amount (if positive) equivalent to:
 - (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
 - (A) the Commencement Date;
 - (B) the date the Distributor Incorrectly Allocated the Price Category to that ICP; and
 - (C) the Switch Event Date for that ICP recorded for the Retailer,
 up to the date on which the Distributor allocates a Corrected Price Category to that ICP; less
 - (ii) the charges that would have applied if the Corrected Price Category had been allocated to that ICP during the period referred to in subparagraph (i),

provided that the maximum period for which credit will be payable under this clause 10.5 is 15 months, unless otherwise agreed.

10.6 Limitations on credits for Price Category corrections: Clause 10.5(b) will not apply in respect of an ICP if:

- (a) clause 10.7 applies to the ICP; or

- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer has not provided the Distributor with correct or complete information about the ICP or the Consumer necessary to determine Price Category eligibility (provided that information was not already known by the Distributor);
- (c) the Price Category correction was necessary because the Retailer provided the Distributor with incorrect or incomplete information in relation to the ICP or the Consumer or any other factors in respect of that ICP that were relevant to the allocation of a Price Category; or
- (d) the initial Price Category was allocated on the basis of incorrect information provided by the Consumer or the Consumer's representative.

10.7 Distributor's right to change Price Category if it considers a Price Category has been incorrectly allocated: If at any time the Distributor reasonably considers that a Price Category has been incorrectly allocated to an ICP:

- (a) the Distributor will notify the Retailer accordingly, including notification of the reasons why it considers that the Price Category has been incorrectly allocated, and identify the Price Category or Price Categories it considers the ICP is eligible for; 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 has not been incorrectly allocated, the Distributor may allocate the Price Category that it considers appropriate to that ICP (acting reasonably and, if the Distributor identified more than one eligible Price Category in its notice, taking into account the Retailer's or the Consumer's preferred Price Category as communicated to the Distributor by the Retailer), and may 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.

To avoid doubt, this clause 10.7 does not apply if the Retailer has already provided notice to the Distributor under clause 10.4 that the relevant Price Category has been Incorrectly Allocated.

10.8 Commencement of charges: The Retailer is liable to pay charges in respect of an ICP from:

- (a) the Commencement Date in the case of ICPs or Consumers supplied by the Retailer at the Commencement Date; or
- (b) if the Retailer is assuming responsibility for the ICP after the Commencement Date, the later of the Switch Event Date or the date that the ICP is Energised or Re-energised.

10.9 **Cessation of charges:** The Retailer is not liable to pay charges in respect of an ICP:

- (a) for the day on which an ICP is De-energised (except as a result of a Temporary Disconnection); or
- (b) from the Switch Event Date, if another retailer takes responsibility for the ICP; or
- (c) from the day which is 2 Working Days after the Distributor receives a notification from the Retailer that the Distributor is responsible for completing a Vacant Site Disconnection in respect of the ICP, in accordance with schedule 6.

11. BILLING INFORMATION AND PAYMENT

11.1 Calculating Tax Invoices for Distribution Service charges:

The Retailer will provide consumption information, and the Distributor will calculate Distribution Services charges payable by the Retailer, in accordance with the following:

- (a) the Retailer will provide to the Distributor, by 5:00pm on the 3rd Working Day after the end of each month, and in accordance with the EIEP(s) set out in paragraph (b), all information that the Distributor reasonably requires to enable it to calculate the Distribution Services charges payable by the Retailer to the Distributor including any relevant smart meter data available to the Retailer;
- (b) the parties acknowledge that the Distributor's Pricing Policy and Methodology is based on it receiving consumption volume information from the Retailer using:
 - i. the incremental replacement normalised reporting methodology, as that methodology is defined in EIEP 1;
 - ii. summary consumption information as described in EIEP 2; and

iii. information in respect of half-hour metered ICPs as described in EIEP 3;

(c) the Distributor will calculate the charges based on the Tariff Rates that apply to each chargeable quantity to which the Tax Invoice relates.

In respect of incremental replacement normalised consumption information, the Retailer will provide revised consumption information within 5 Working Days after the end of the month in which revised submission information was provided by the Retailer to the reconciliation manager, and the Distributor will issue a Credit Note or Debit Note to the Retailer reflecting the revised consumption information on a no less than 6 monthly basis unless otherwise agreed.

11.2 Late, incomplete, or incorrect information: If the Retailer does not provide information to the Distributor in accordance with clause 11.1 by the 3rd Working Day after the last day of the month to which the Tax Invoice relates, or any information provided by the Retailer is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Electricity Industry Practice, the Retailer's Tax Invoice for Distribution Services.

11.3 Issuing of Tax Invoices: The Distributor will issue Tax Invoices for Distribution Services as follows:

- (a) the Distributor will invoice the Retailer within 10 Working Days after the last day of the month to which the Tax Invoice relates;
- (b) at the same time as it provides a Tax Invoice, the Distributor will provide to the Retailer, in accordance with the relevant EIEP, sufficiently detailed information to enable the Retailer to verify the accuracy of the Tax Invoice; and
- (c) if late, incomplete, or incorrect information is provided and the Tax Invoice is estimated in accordance with clause 11.2 on the basis of that information, the Distributor will issue a Credit Note or Debit Note in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Retailer for its Distribution Services charges for that month.

11.4 Due date for payment: The settlement date for each Tax Invoice issued by the Distributor will be the 20th day of the month in which the Tax Invoice is received, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. However, if the Distributor fails, for any reason other than as a result of the Retailer failing to comply with its obligations in clause 11.1(a) (in which case the

settlement date will not be extended), to send a Tax Invoice to the Retailer within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

11.5 Other invoices:

- (a) If applicable, the Distributor may issue the Retailer with:
 - (i) a Tax Invoice for payment for Additional Services, Service Guarantee payments and any other sums due to the Distributor under this agreement; and
 - (ii) a Credit Note for payment of Service Guarantee payments due to the Retailer; and
 - (iii) A Credit Note in relation to rebates in Schedule 2.
- (b) If applicable, the Retailer may issue the Distributor with a Tax Invoice for Service Guarantee payments and any other sums due to the Retailer under this Agreement.
- (c) Any Tax Invoice or Credit Note under clause 11.5(a) or (b) will be issued within 10 Working Days of the end of the month to which the Tax Invoice or Credit Note relates.
- (d) The Settlement date for any Tax Invoice issued under clause 11.5(a) or (b) is the 20th day of the month in which the Tax Invoice is received, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor or the Retailer (as the case may be) fails to send a Tax Invoice to the Retailer or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

11.6 **Interest on late payment:** Subject to clause 11.7, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this clause 11. If any part of a Tax Invoice that is properly due in accordance with this agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the Tax Invoice remains unpaid.

11.7 **Disputed invoices:** If the Retailer or the Distributor disputes a Tax Invoice issued under this clause 11, the party disputing the invoice ("**Disputing Party**") will 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 the Tax Invoice ("**Invoice Dispute**"). On receiving an Invoice Dispute notice, the Non-disputing Party will:

- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute notice and:
 - (i) the Disputing Party has not paid the disputed Tax Invoice, promptly issue a Credit Note for the disputed amount, and any remaining amount owed must be paid by the Disputing Party within 6 Working Days of receipt of the Credit Note, but need not pay prior to the time set out in clause 11.4 or 11.5; or
 - (ii) the Disputing Party has paid the disputed invoice, calculate the amount that the Disputing Party has over paid and promptly issue a Credit Note to the Disputing Party for the amount over paid, which will include a Use of Money Adjustment. Any amount owed must be paid by the Non-disputing Party within 6 Working Days of issuing the Credit Note. A Use of Money Adjustment will apply for the period commencing on the date the original Tax 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 11.4 or 11.5; or
- (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute notice, either party may raise a Dispute in accordance with clause 25 and if the Disputing Party has not paid the disputed Tax Invoice, it will pay the undisputed amount of the disputed Tax Invoice issued in accordance with clauses 11.4 or 11.5; and
- (c) on the resolution of a Dispute under clause 25, any amount owed must be paid by the relevant party within 6 Working Days. Default Interest is payable for the period commencing on the date the disputed amount would have been due for payment under this clause 11, and ending when payment is made. To the extent the Tax Invoice is held not to be payable, the Non-disputing Party will issue a Credit Note to the Disputing Party.

11.8 Incorrect invoices: If it is found at any time that a party has been overcharged or undercharged and the party has paid the Tax Invoice containing such overcharge or undercharge, within 20 Working Days after the error has been discovered and the amount has been agreed between the parties, the party that has been overpaid will refund to the other party the amount of any such overcharge or the party that has underpaid will 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 will be no right to re-open Tax Invoices if more than 18 months has elapsed since the date of the Tax Invoice.

11.9 **No set off:** Both parties will make the payments required to be made to the other under 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 or as may be required by law.

11.10 **Refund of charges:** If:

- (a) Subject to clause 23.6as a consequence of a fault on the Network (not resulting from a Force Majeure Event or resulting from third party damage to 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 will issue a Credit Note and refund, in the next monthly billing cycle, the Distribution Services charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which supply was interrupted. The Retailer agrees to refund any charges paid to Consumers affected by a continuous interruption for 24 hours or longer.

12. PRUDENTIAL REQUIREMENTS

12.1 **Retailer will satisfy prudential requirements:** If required by a notice from the Distributor, the Retailer will comply with either one of the following prudential requirements within 10 Working Days of receipt of the Distributor's notice:

- (a) the Retailer will maintain an acceptable credit rating; or
- (b) the Retailer will provide and maintain acceptable security by, at the Retailer's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 12.6 ("**Cash Deposit**"), which the Distributor will hold in a trust account that the Distributor will establish and operate in accordance with clause 12.24;
 - (ii) arranging for a third party with an acceptable credit rating to provide security in a form acceptable to the Distributor, of the value specified in clause 12.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in clause 12.6.

- 12.2 **Acceptable credit rating:** For the purposes of clause 12.1, an acceptable credit rating means that the Retailer or the third party (as the case may be):
- (a) carries a long term credit rating of at least:
 - (i) BBB- (Standard & Poor's Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
 - (b) if the Retailer or the third party (as the case may be) carries a credit rating at the minimum level required by paragraph (a), is not subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.
- 12.3 **Retailer may elect prudential requirements:** The Retailer may elect to comply with the prudential requirements in any of the ways described in clause 12.1 at any time, by complying with clause 12.4.
- 12.4 **Change in prudential requirements complied with:** If the Retailer elects to change the way in which it complies with the prudential requirements, the Retailer will notify the Distributor of its intention at least 2 Working Days before the change occurring and the parties will comply with clause 12.16. The change will come into effect on the intended date, provided that the Retailer has complied with all its obligations under this agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of clause 12.1.
- 12.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) will provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.
- 12.6 **Value of security:** The value of security required for the purposes of this clause 12 is the amount calculated in accordance with clause 12A.4 or 12A.5 (as applicable) of the Code and advised by the Distributor to the Retailer in the Distributor's notice under clause 12.1. If additional security is required in accordance with clause 12A.5 of the Code ("**Additional Security**"), the Distributor's notice provided under clause 12.1 must state the amount of the Additional Security.
- 12.7 **Additional security:** If the value of the security required for the purposes of this clause has been calculated in accordance with clause 12A.4 of the Code, the Distributor may, by notice to the Retailer, require the Retailer to provide Additional Security. If the Distributor requires the Retailer to provide Additional Security:

- (a) the Retailer may elect the type of security that it provides in accordance with clause 12.1(b); and
 - (b) the parties must comply with clauses 12.14 and 12.16.
- 12.8 **Additional security requirements:** The following provisions apply in respect of any Additional Security provided:
- (a) if the Additional Security is in the form of a Cash Deposit, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(a) of the Code, and the Additional Security will be held as if it were part of the Cash Deposit under this agreement;
 - (b) if the Additional Security is in the form of security from a third party, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(b) of the Code; and
 - (c) any money required to be paid by the Distributor to the Retailer in accordance with this clause 12.8 will be paid by the Distributor to the Retailer on a quarterly basis.
- 12.9 **Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will estimate the value of security required under clause 12.6 for the first 6 months of this agreement, subject to any reassessment of the value under this agreement, having regard to:
- (a) the Distributor's historical records of the Distribution Service charges in respect of the relevant ICPs; or
 - (b) in the absence of such records, a bona fide business plan prepared by the Retailer in good faith necessary for the Distributor to determine the value of security that it requires from the Retailer.
- 12.10 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review, the value of security required to be provided by the Retailer at any time.
- 12.11 **Retailer to notify Distributor of changes affecting security:** Subject to clause 12.12, the Retailer will immediately notify the Distributor if any of the following occurs:
- (a) the Retailer no longer carries an acceptable credit rating; or

- (b) the Retailer has complied with prudential requirements by arranging for a third party to provide security in accordance with clause 12.1(b), and the Retailer learns that the third party no longer carries an acceptable credit rating; or
- (c) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to pay for Services will be affected.

Any information provided by the Retailer to the Distributor under this clause 12.11 will be Confidential Information.

12.12 Listed issuers and listed companies: For the purpose of clause 12.11, if the Retailer:

- (a) is a “listed issuer” for the purposes of the Financial Markets Conduct Act 2013), 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.

12.13 Distributor may make enquiries: If the Distributor believes that the Retailer should have given notice under clause 12.11 and the Distributor has not received any such notice, the Distributor may enquire of the Retailer as to whether it should have given such notice. Any such enquiry will be in writing and be addressed to the Chief Executive of the Retailer. If notice should have been given, the Retailer will give notice immediately, or if no notice is required, the Retailer will respond to the Distributor in writing within 2 Working Days of receipt of the Distributor’s notice under this clause 12.13. Correspondence sent or received by either party under this clause will be Confidential Information.

12.14 Change to the value of security: If:

- (a) the Distributor requires that the Retailer provide Additional Security in accordance with clause 12.7; or
- (b) following a review of the Retailer's security in accordance with clause 12.10; or
- (c) on receipt of information contemplated by clause 12.11 or 12.13; or
- (d) as the result of a failure by the Retailer to respond to a request made under clause 12.13 within the timeframe set out in clause 12.13;

the Distributor or the Retailer considers that the value of security should be increased or decreased, the Distributor will, acting reasonably, make a decision on what the value of security should be, and immediately notify the Retailer of its decision and the grounds for that decision and will include in the notification details of the part of the security that constitutes Additional Security. To avoid doubt, failure by a Retailer to respond to a request made under clause 12.13 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Retailer.

12.15 Failure to maintain acceptable credit rating: If:

- (a) on receipt of information contemplated by clauses 12.11 or 12.13; or
- (b) as the result of a failure by the Retailer to respond to a request made under clause 12.13 within the timeframe set out in clause 12.13,

the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with clause 12.1(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor will notify the Retailer of the value of acceptable security required in accordance with clause 12.1(b).

12.16 Distributor or Retailer to effect changes in value 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 value of security or change to the type of security, within 5 Working Days of notification under clause 12.4, 12.14 or 12.15. Refunds of Cash Deposits and reductions of the value of third party security required will be made in accordance with clauses 12.17 or 12.19.**12.17 Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it will refund all or part of the Cash Deposit into a bank account nominated by the

Retailer on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.

12.18 Cash Deposit on Insolvency Event: If an Insolvency Event occurs in relation to the Retailer:

- (a) the Retailer will not be entitled to a return of the Cash Deposit, other than as set out in 12.24(f); and
- (b) if the Retailer fails or has failed to pay an amount owing under this agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest), on 2 Working Days' notice to the Retailer.

12.19 Reduction of third party security: If the Distributor decreases the value of third party security required in accordance with this agreement, the Retailer may arrange for the issuing of new third party security for the lesser value, in satisfaction of clause 12.1(b)(ii), which will replace the earlier third party security.

12.20 When the Distributor may make a call on security: The Distributor may make a call on security in accordance with clause 12.21 if:

- (a) the Retailer has provided acceptable security in accordance with clause 12.1(b);
- (b) the Retailer fails to pay an amount due under this agreement; and
- (c) the amount is not subject to a genuine dispute.

12.21 Calls on security: If this clause applies in accordance with clause 12.20, the Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under clause 12.23), call on the security as follows:

- (a) if the Retailer provided a Cash Deposit (which includes a deemed Cash Deposit), full beneficial ownership of the amount owing (plus Default Interest) of the Cash Deposit will automatically transfer solely to the Distributor effective from the expiry of the 2 Working Day notice period or immediately (as applicable) and the Distributor may then draw down and apply the amount owed (including Default Interest) from the Cash Deposit;

- (b) if the Retailer arranged for a third party to provide security, the Distributor may call on the provider of a third party security to pay the amount owed in accordance with the security; and
 - (c) in either case, the Distributor will immediately notify the Retailer that it has called on the security.
- 12.22 **Requirement to maintain security:** To avoid doubt, if the Distributor draws down some or all of a Cash Deposit held by the Distributor under this agreement, or calls on the provider of a third party security, the Retailer will within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in clause 12.6 and the value of any Additional Security required by clause 12.7 (as such may be reviewed by the Distributor in accordance with clause 12.10), as required by clause 12.1(b).
- 12.23 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the third party security and will be dealt with in accordance with clause 12.24.
- 12.24 **Trust Account Rules:** If the Distributor receives a Cash Deposit:
- (a) the Cash Deposit will be held in a trust account in the name of the Retailer, to be applied or distributed only on the terms of this agreement, or as otherwise agreed by the parties;
 - (b) the Distributor will establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding the Cash Deposit ("**Trust Account**");
 - (c) the Distributor will obtain acknowledgement from the Bank that the Cash Deposit is held on trust in the Trust Account and that the Bank has no right of set-off or right of combination in relation to the Cash Deposit;
 - (d) the Retailer will inform the Distributor of the bank(s) that the Retailer uses for its banking purposes and if the Retailer changes banks;
 - (e) the Trust Account will bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor will pay the Retailer the interest earned on the Cash Deposit (except for the amount of the Cash Deposit that is Additional Security, in respect of which a charge should be paid in accordance with clause 12.8) on a quarterly basis net of

account fees and any amounts required to be withheld by law, unless the parties agree otherwise;

- (f) if this agreement is terminated, the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Retailer) to the Retailer in accordance with clause 12.17, provided that the Retailer:
 - (i) is not otherwise in default of this agreement;
 - (ii) has ceased to be bound by this agreement; and
 - (iii) has discharged all obligations under this agreement to the Distributor, including payment of all outstanding amounts under this agreement; and
- (g) the Distributor will provide the Retailer with an annual report in respect of the operation of the Trust Account if requested by the Retailer.

12.25 Release of third party security: If this agreement is terminated, the Distributor will release any third party security, provided that the Retailer has met all of the requirements set out in clause 12.24(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 29.1, include in each of its Consumer Contracts a requirement that the Consumer provide the Distributor and its agents with safe and unobstructed access onto the Consumer's Premises for any of the following purposes:
- (a) to inspect, maintain, operate or upgrade (provided that the upgrade does not have any material adverse effect on the relevant Consumer or Consumer's Premises) the Distributor's Equipment;
 - (b) to install, read, maintain or upgrade (provided that the upgrade does not have any material adverse effect on the relevant Consumer or Consumer's Premises) Metering Equipment;
 - (c) to disconnect and reconnect the Consumer in accordance with this agreement;

- (d) to access the Retailer's Equipment to verify metering information, including, in the event of termination of this agreement, to determine any charges outstanding at the time of termination;
- (e) for the safety of persons or property;
- (f) to ensure that the Consumer fulfils its obligations in accordance with clause 14.7; or
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Consumer Contract for the period ending 6 months after the date that termination takes effect.

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

- (a) comply with sections 23A to 23D, 57 and 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 13.1, provided that the Distributor will give written notice to a Consumer if the Distributor intends to access the Consumer's Premises for any reason (except if the Distributor requires access to carry out a routine inspection or operation of the Distributor's Equipment, or in an emergency situation);
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Consumer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer (including minimising any direct impact on the Consumer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate and professional manner at all times while on the Consumer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor; and
 - (iii) if practicable, identify themselves to the Consumer before entering the Consumer's property; and
- (d) comply with the Consumer's reasonable requirements, 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 29.1, include in its Consumer Contracts a provision to the effect that if the Consumer breaches the provisions of its Consumer Contract that require it to give the Distributor access to the Distributor's Equipment on the Consumer's Premises, and the breach is material or persistent, the Distributor may disconnect the Consumer's ICP from the Network and access the Consumer's Premises to reclaim the Distributor's Equipment, provided that:
- (a) if access was required for a purpose described in clause 13.1(a), (b), (d), or (g), the Distributor or Retailer gave the Consumer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 13.1(c), (e) or (f), such notice is not required); and
 - (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with clause S6.15 of schedule 6.
- 13.4 **Costs of disconnection:** The Distributor will not be liable for any loss the Retailer may suffer or incur as a result of a disconnection carried out because the Consumer has not given the Distributor access in accordance with the relevant Consumer Contract. The Retailer will reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.
- 13.5 **Existing agreement will prevail:** In the event of a conflict between 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, the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

14. GENERAL OPERATIONAL REQUIREMENTS

- 14.1 **Interference or damage to Distributor's Equipment by Consumers:** The Retailer will, subject to clause 29.1, include in each of its Consumer Contracts a requirement that, during the term of the Consumer Contract and until the end of the period ending 6 months after the termination of the Consumer Contract, the Consumer will not interfere with or damage, and will ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 14.2 **Costs of making good any damage:** The Retailer will, subject to clause 29.1, include in each of its Consumer Contracts a requirement that, if any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of

the Consumer or the Consumer's agents or invitees, then the Consumer will pay the cost of making good the damage to the Distributor.

- 14.3 **Interference or damage to Distributor's Equipment by the Retailer:** The Retailer will ensure that it and 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 or safety of persons or to prevent damage to property).
- 14.4 **Costs of making good any 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 will pay the cost of making good the damage to the Distributor.
- 14.5 **Interference or damage to Retailer's Equipment or Consumer's Installations:** 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 (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 14.6 **Costs of making good any 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, the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause 14.6 is for the benefit of the Consumer and may be enforced by the Consumer under the Contracts (Privity) Act 1982.
- 14.7 **Interference with the Network:** The Retailer will, subject to clause 29.1, include in its Consumer Contracts a provision to the effect that the Consumer 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 in accordance with 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.
- 14.8 **Connection of Distributed Generation:** The Retailer will:

- (a) purchase electricity from Distributed Generation connected to the Network only if the Retailer has confirmation from the Distributor that there is a Connection Contract in place between the Distributed Generator and the Distributor; and
 - (b) notify the Distributor if the Retailer has reasonable grounds to suspect that a Distributed Generator does not have a Connection Contract with the Distributor and has connected its Distributed Generation directly or indirectly to the Network.
- 14.9 **Notification of interference, damage or theft:** If the Distributor or Retailer discovers 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.
- 14.10 **Additional Metering Equipment:** Either party may, at its own cost, install and maintain additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that:
- (a) the additional Metering Equipment does not interfere with any other equipment owned or used by the other party; and
 - (b) the party installing the additional Metering Equipment ensures that it is installed and maintained in accordance with Good Electricity Industry Practice.
- 14.11 **Responsibility for damages:** If the party installing or maintaining additional Metering Equipment (the "**First Party**") causes damage to the equipment or invalidates the existing Metering Equipment certification of the other party, the First Party will:
- (a) meet the cost of making good the damage or recertifying the Metering Equipment (including the cost of any fines or penalties imposed under the Code as a result of the damage or invalidation of certification); and
 - (b) if the damage invalidates the existing Metering Equipment certification, and the other party incurs costs because of its use of the Metering Equipment during the period of non-certification, the First Party will reimburse the other party for those costs, except to the extent that the indemnified party knew or ought reasonably to have known that the Metering Equipment was uncertified.

- 14.12 **Safe Housing of Equipment:** The Retailer will, subject to clause 29.1, include in its Consumer Contracts (subject to any alternative written agreement between the Retailer and the Distributor) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the safe and 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 that the Distributor determines is necessary.
- 14.13 **The Network:** The Retailer will, subject to clause 29.1, include in its Consumer Contracts an acknowledgement by the Consumer that:
- (a) the Network, including any part of the Network situated on Consumer's Premises, is and will remain the sole property of the Distributor; and
 - (b) no provision of the Consumer Contract 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 Distributor's Equipment that is used to provide any such services.

15. NETWORK CONNECTION STANDARDS

- 15.1 The Distributor will publish its Network Connection Standards on its website.
- 15.2 The Retailer will:
- (a) subject to clause 29.1, include in its Consumer Contracts an undertaking that the Consumer will comply with the Distributor's Network Connection Standards and the Consumer's Installations will comply with all relevant legal requirements; and
 - (b) include in its Consumer Contracts a statement that the Network Connection Standards can be found on the Distributor's website.
- 15.3 If the Retailer becomes aware that a Consumer's Installation does not comply with the Network Connection Standards, the Retailer must notify the Distributor of the ICP identifier of the Consumer's Installation and the details of non-compliance as soon as reasonably practicable after becoming aware of the non-compliance.

16. MOMENTARY FLUCTUATIONS

- 16.1 Subject to clause 29.1, the Retailer will:

- (a) include in its Consumer Contracts an acknowledgement that the Consumer recognises that surges, sags or spikes:
 - (i) are momentary fluctuations in voltage or frequency that can occur at any time;
 - (ii) may cause damage to the Consumer's sensitive equipment;
 - (iii) are not treated as interruptions; and
 - (iv) an acknowledgement from the Consumer that it must take its own steps to protect any sensitive equipment from such surges, sags or spikes;
- (b) advise each of its Consumers of the steps the Consumer should take to protect their sensitive equipment from such surges, sags or spikes, or inform the Consumer of where to find information about the steps the Consumer should take, but provided that such advice shall not limit the Consumer's acknowledgement in clause 16.1(a)(iv).

17. CONSUMER SERVICE LINES

- 17.1 **Responsibility for Consumer Service Lines:** The Retailer will, subject to clause 29.1, include in its Consumer Contracts a statement to the effect that it is the Consumer's responsibility to maintain the Consumer Service Lines in a safe condition using a suitably qualified person (except if and to the extent that the Distributor is required by law to provide and maintain those lines or the Distributor agrees to maintain the Consumer Service Lines).

18. TREE TRIMMING

- 18.1 **Consumer Contracts to provide Consumer is responsible for tree trimming required by the regulations:** Subject to any written agreement between a Consumer and the Distributor, and any statutory provision, the Retailer will ensure that each of its Consumer Contracts provides that the Consumer will comply with its obligations under the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Consumer has an interest in that are near the Grid or any line that forms part of the Network.
- 18.2 **Distributor's right and obligations:** The Distributor will comply with the Electricity (Hazards from Trees) Regulations 2003.

19. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPS

- 19.1 **Policies and procedures:** The Distributor and the Retailer will comply with the policies and procedures for establishing new ICPs, changing the capacity of existing ICPs, Decommissioning existing ICPs and De-energising and Energising existing ICPs set out in schedule 6 and the relevant provisions of the Code.

PART IV: OTHER RIGHTS

20. BREACHES AND EVENTS OF DEFAULT

- 20.1 **Breach of agreement:** Subject to clause 20.6, 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 will 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 **Distributor will exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with clause 12.1(b), and the Retailer has committed a Serious Financial Breach of the type described in paragraph (a) of the definition of Serious Financial Breach, the Distributor may give notice to the Retailer under clause 20.1 and a notification under clause 20.4, but only if:
- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
 - (b) the Retailer has arranged for a third party to provide acceptable security in accordance with clause 12.1(b)(ii) or 12.1(b)(iii), and the Distributor has called on the third party to make payment in accordance with clause 12.21(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.
- 20.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 20.1:
- (a) the breach is an Event of Default for the purposes of this agreement;

- (b) 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 Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 20; and
- (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as possible.

20.4 Notification of Events of Default: If the Event of Default is any one of the following:

- (a) a Serious Financial Breach (in the case of the Retailer only);
- (b) a material breach of the Defaulting Party's obligations under this agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
- (c) 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, if 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, if the Defaulting Party is the Retailer, the Distributor's ability to carry out its obligations under any agreement with any other electricity retailer,

then no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1, the non-breaching party may (at its election):

- (d) issue a notice of termination in accordance with clause 21.2; and/or
- (e) in the case of an Event of Default by the Retailer:
 - (i) prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it; and/or
 - (ii) exercise any other legal rights available to it; and/or
- (f) if the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code.

- 20.5 **Breaches that are not Events of Default:** If a breach is not an Event of Default, the non-breaching party may:
- (a) refer the matter to Dispute resolution in accordance with clause 25 no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1; and
 - (b) exercise any other legal rights available to it.
- 20.6 **Insolvency Event:** Despite clause 20.1, if either party is subject to an Insolvency Event, the other party may:
- (a) immediately issue a notice of termination in accordance with clause 21.2;
 - (b) prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it;
 - (c) exercise any other legal rights available to it; and/or
 - (d) if the Insolvency Event involves a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code.

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 at least 120 Working Days' notice in writing of termination and the date on which this agreement will terminate. Where the Distributor issues a notice of termination to the Retailer under this clause 21.1(a), the Distributor will at the same time provide the Retailer with a copy of the standard use of system agreement it proposes will apply between the Distributor and the Retailer after the termination of this agreement. If the Retailer wishes to continue to use the Network, the parties will negotiate any amendments to the proposed new use of system agreement in good faith during the 120 Working Day notice period with a view to entering into the new agreement effective from the termination of this agreement;
 - (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 if the other party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach;

- (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 32.4 it is not practicable for this agreement to continue;
- (d) **Termination by the Retailer if the Retailer is not supplying electricity on the Network:** the Retailer may terminate this agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying electricity to any Consumer through the Network;
- (e) **Termination by the Distributor if the Retailer is not supplying electricity on the Network:** the Distributor may terminate this agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with electricity through the Network;
- (f) **Force majeure:** either party may terminate this agreement by giving 10 Working Days' notice to the other party, if:
 - (i) notice of a Force Majeure Event is given by either party to the other under clause 23.3; and
 - (ii) the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice of termination to remain bound by its obligations under this agreement, provided that if the party who wishes to terminate this agreement is the party that gave notice of the Force Majeure Event, the party has complied with clauses 23.3 and 23.4; or
- (g) **Conveyance only:** the Distributor may terminate this agreement by giving the Retailer at least 120 Working Days' notice in writing of termination and the date on which this agreement will terminate if the Distributor proposes to move to a conveyance only form of use of system agreement. Where the Distributor issues a notice of termination to Retailer under this clause 21.1(g), the Distributor will at the same time provide any Consumer that it proposes to move to a conveyance only arrangement with a copy of the standard use of system agreement (conveyance) it proposes will apply between the Distributor and the Consumer after the termination of this

agreement. If the Consumer wishes to continue to use the Network, the parties will negotiate any amendments to the proposed new use of system agreement (conveyance) in good faith during the 120 Working Day notice period with a view to entering into the new agreement effective from the termination of this agreement

21.2 Termination of agreement for Event of Default or Insolvency Event: In addition to any other termination right in this agreement, if 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 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.

21.4 Retailer remains liable for charges for remaining Consumers: If this agreement is terminated by the Distributor for any reason, the Retailer remains liable to pay any charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Retailer will not be liable to pay any charges for Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP). The Distributor may charge for such Services at the prices that apply at the time of termination.

21.5 Obligations to continue until termination: The parties will continue to meet their responsibilities under this agreement up to the effective date of termination. If the Distributor continues to charge the Retailer for Services after the effective date of termination of this agreement in accordance with clause 21.4, then the Retailer will continue to be bound by all of the terms of this agreement as if the agreement had

not been terminated for so long as the Retailer is liable to pay such charges with respect to such connections.

21.6 **Events to occur on termination:** On the effective date of termination, unless this agreement is replaced by an Alternative Contract:

- (a) the parties will have returned or certified the destruction of the other party's Confidential Information;
- (b) the parties will cease to provide the Services to each other;
- (c) until such time as the Electricity Authority introduces a default retailer provision, the Distributor may notify any Consumer that there is no longer a use of system agreement between the Retailer and the Distributor and the Consumer must, as soon as reasonably practicable, enter into a Consumer Contract with an electricity retailer who does have a current use of system agreement with the Distributor, provided that the information contained in that notice is not inaccurate or misleading; and
- (d) within 5 Working Days of this agreement being terminated, the Retailer must notify the Distributor of all ICPs that have not been disconnected or switched to another Retailer.

21.7 **Survival of terms:** Any terms of this agreement that 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 will:

- (a) preserve the confidentiality of, and will 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:** if the Retailer and Distributor agree in writing to the disclosure of the information;

- (b) **Provided in this agreement:** if disclosure is expressly provided for under the terms of this agreement;
- (c) **Public domain:** if at the time of receipt by the party the Confidential Information is in the public domain or if, 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:** if either party is required to disclose Confidential Information by:
 - (i) law (including the Code), or by any statutory or regulatory body or authority; or
 - (ii) any judicial or other arbitration process; or
 - (iii) the regulations of any stock exchange on which the share capital of either party is from time to time listed or dealt in;
- (e) **Released to employees, directors, agents or advisors:** if 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;
 - (ii) recipients of the Confidential Information will 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;
- (f) **Released to a bona fide potential purchaser:** if 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 that reflects the obligations in the agreement;
- (g) **Released to a Consumer:** if the Confidential Information relates to a Consumer and the Consumer has requested the release of the information.

22.3 **Limit for breach:** A party's liability for breach of this clause 22 will 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:** A Force Majeure Event occurs if:

- (a) a party fails to comply with or observe any provision of this agreement (other than payment of any amount due); and
- (b) such failure is caused by:
 - (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
 - (A) due to natural causes, and
 - (B) that was not reasonably foreseeable; or
 - (C) if it was reasonably foreseeable, the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with Good Electricity Industry Practice; or
 - (D)
 - (ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, aircraft or civil disturbances;
 - (iii) the binding order or requirement of any court, any government, any local authority, the Rulings Panel, the Electricity Authority, or the System Operator, which the party could not reasonably have avoided;
 - (iv) the partial or entire failure of supply or availability of electricity to the Network;
 - (v) failure of the Network or any part of it which can be reasonably proven by the Distributor to be an event that did not arise from the Distributors failure to act in accordance with Good Electricity Industry Practice; or
 - (vi) any other event or circumstance beyond the reasonable control of the party invoking this clause 23.1; and

- (c) the failure did not occur as a result of the party invoking this clause 23 or a failure to act in accordance with Good Electricity Industry Practice.
- 23.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event (except with respect to the payment of charges in accordance with clause 23.6).
- 23.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it will:
- (a) notify the other party as soon as reasonably practicable that it is invoking clause 23.1;
 - (b) provide the full particulars of the potential or actual Force Majeure Event; and
 - (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 23.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 23.1 will:
- (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
 - (c) consult with the other party on the performance of the obligations referred to in paragraphs (a) and (b).
- 23.5 **No obligation to settle:** Nothing in clause 23.4(a) 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.
- 23.6 **Charges continue:** If a Force Majeure Event occurs:
- (a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges or capacity charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but

- (b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event.

24. AMENDMENTS TO AGREEMENT

24.1 A change may be made to this agreement:

- (a) if the change is to one or more of the Variable Provisions and the change is made in accordance with clause 24.2;
- (b) if the change is a change to schedule 9 and the change is made in accordance with clause 9;
- (c) to avoid doubt, if the change is a change to a Loss Factor made in accordance with clause 7;
- (d) if the change is required by law, including the Code, or any mandatory rules or protocols of any industry association or body of 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) if the change is made in accordance with clause 24.5 and involves:
 - (i) permanent disconnection of all or part of the Network from a GXP; or
 - (ii) the construction of a new GXP; and
- (f) if 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:** The Variable Provisions may be changed only:

- (a) in accordance with any applicable process in the Variable Provision;
- (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 a Variable Provision:** If there is no applicable process in the Variable Provision, the Distributor may change the Variable Provision, provided that the proposed change is in accordance with Good Electricity Industry Practice and the Distributor has complied with the following:

- (a) subject to paragraph (b), the Distributor will give the Retailer a Change Notice not less than 20 Working Days before the date on which the Distributor wishes the change to take effect; and
- (b) before giving the Change Notice to the Retailer:
 - (i) the Distributor will consult with the Retailer about 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, and will consider in good faith any submission that the Retailer makes regarding the proposed change; and
 - (ii) provide the Retailer with a summary of all submissions received and the responses to the submissions that clearly indicates whether the majority of retailers by number of ICPs supplied on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor may change the Variable Provision as proposed in the Change Notice whether or not a majority of retailers support the change proposed.

24.4 **Procedure for changes required by law, including the Code, 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 will:
 - (i) if the proposed change is contemplated by clause 24.1(d), specify the provisions of the Code, the mandatory rules or protocols, or the laws that 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 the form that the change is 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 will 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; and

- (d) **Procedure for changes required by law, including the Code, if 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), 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 New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
- (i) will be the minimum necessary to effect the mandatory change required by clause 24.1(d);
 - (ii) subject to subparagraph (i), 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 is required to take immediate effect by law (including the Code) or mandatory rules or protocols.

24.5 **Change to GXPs:** The following procedure will apply to changes contemplated by clause 24.1(e):

- (a) **Notice of Proposal:** the Distributor will notify the Retailer that it proposes to:
- (i) construct and operate, or agree with a Transmission Provider to have constructed and operated, a new GXP; or
 - (ii) permanently disconnect the Network from a GXP,
- 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 consult with the Retailer about the Proposal for a reasonable period of time; and
- (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 retailers). The Distributor will provide the Retailer at least 20 Working Days' notice of the date on which the commissioning of or permanent disconnection from the GXP is expected to be complete, and this agreement will be deemed to be varied from that date to the extent necessary as a result of the commissioning or permanent disconnection.
- 24.6 **Exception:** If 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 may effect the change by notice to the other party and nothing in clauses 24.1 to 24.5 will apply to the change. If the party receiving such a notice disagrees that the change has a de minimis effect, the party may raise a Dispute in accordance with clause 25.

25. DISPUTE RESOLUTION PROCEDURE

- 25.1 **Internal dispute resolution processes:** The parties intend that, if 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 notice describing such Dispute to the other party. If notice is provided, representatives of the parties will promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) 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 will agree on the identity of the mediator or, if they cannot agree within that timeframe, the mediator will 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:** Either party may refer the Dispute to arbitration 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 (or their representatives) in accordance with clause 25.1 within 15 Working Days of the matter being referred to them and neither party referred the Dispute to mediation.
- 25.8 **Arbitration:** A Dispute referred to arbitration under clause 25.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.

- 25.9 **Choice of arbitrator:** The sole arbitrator will 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, the arbitrator will be appointed by the President of the New Zealand Law Society.
- 25.10 **No connection to previous mediator or previous mediation:** If the Dispute has been referred to mediation, the mediator may not be called by either party as a witness, and no reference may 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.
- 25.11 **Urgent Relief:** Despite any other provision of this agreement, each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.
- 25.12 **Consumer complaints:** The parties agree that any network related complaint made by a Consumer (including in relation to Distribution Services) will be managed in accordance with the policy set out in Part B of SCHEDULE 5 –

26. LIABILITY

- 26.1 **Payments of charges:** Nothing in this clause 26 will operate to limit the liability of either party to pay all charges and other sums due under this agreement.
- 26.2 **Direct damage:** Except in respect of liability under clauses 22, 26.8, 26.11 and 26.12, each party (and its officers, employees and agents) will be liable under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) to the other party for only direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this agreement, negligence, or failure to exercise Good Electricity Industry Practice.
- 26.3 **Consequential loss excluded:** Except in respect of liability under clauses, 22, 26.8, 26.11 and 26.12, neither party (nor any of their respective officers, employees or agents) will be liable under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) 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;
 - (b) any indirect or consequential loss (including, but not limited to, incidental or special damages);
 - (c) any loss resulting from liability of a party to another person (except any liability for Direct Damage that arises 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:** Except as provided in clause 26.8, 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;

- (ii) such failure arises from:

- (A) a failure to convey or reduction of injection or supply of electricity into the Network; or

- (B) an interruption in the conveyance of electricity in the Network,

if the failure or interruption was requested by the System Operator or was done under a nationally or regionally coordinated response to a shortage of electricity;

- (iii) such failure arises from any defect or abnormal conditions in or about any Consumer's Premises;

- (iv) the Distributor was taking any action in accordance with this agreement including clause 5.4;

- (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 a service guarantee from the System Operator or Transmission Provider and the System Operator or Transmission Provider has paid the Distributor under the relevant service guarantee, in which case the Distributor will only be liable to the Retailer to the extent of the Retailer's proportionate share of such payment having regard to all other retailers and all consumers affected by the relevant event, as determined by the Distributor (acting reasonably);

- (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene); or

- (vii) such failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice,

except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this agreement; or

- (c) any failure to perform any obligation under this agreement caused by the Retailer's failure to comply with this agreement, except to the extent that the failure is caused or contributed to by the Distributor 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 under this agreement caused by the Distributor's failure to comply with this agreement; or
- (b) any failure to perform any obligation under this agreement arising from any defect or abnormal conditions in the Network,

except to the extent that the failure is caused or contributed to by the Retailer not acting in accordance with this agreement.

26.6 Limitation of liability: Subject to clauses 26.1 and 26.7 but otherwise notwithstanding any other provision of this agreement, the maximum total liability of each party under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) for any single event or series of connected events will not in any circumstances exceed the lesser of \$10,000 for each ICP on the Network at which the Retailer supplied electricity on the day of the event, or \$2,000,000. In any event, neither party's liability shall exceed \$2,000,000 for all events in any 12 month period.

26.7 Exclusion: Clause 26.6:

- (a) does not limit a party's liability under clauses 21.6(c) 22, 26.8, 26.11 or 26.12;
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme; and
- (c) does not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Consumer failing to comply with the Distributor's Network Connection Standards;
 - (ii) the Retailer is required by this agreement to include in its Consumer Contracts a provision requiring the Consumer to comply with those Network Connection Standards; and

- (iii) the Consumer Contract between the Retailer and the Consumer did not include such a provision.

26.8 Distributor indemnity:

- (a) This clause 26.8 applies if:
 - (i) there has been a failure of the acceptable quality guarantee in section 7A of the Consumer Guarantees Act 1993 in the supply of electricity to a Consumer by the Retailer (a "**Failure**") as determined;
 - (A) by agreement between the Retailer and the Distributor; or
 - (B) if the Retailer and Distributor do not, are unable to, reach agreement as to such determination within a reasonable time which shall not exceed 20 Working Days, by the dispute resolution scheme following a complaint made under the Electricity Act 2010; or
 - (C) by a court or a Disputes Tribunal (if a court or a Disputes Tribunal makes a determination on the issue); and
 - (ii) the Failure of acceptable quality was wholly or partly the result of an event, circumstance or condition associated with the Network;
 - (iii) the Failure was not a result of any person involved in the supply complying with a rule or an order with which it was legally obliged to comply;
 - (iv) the Failure was not a result of action taken by Transpower in its capacity as system operator under the Electricity Act 2010;
 - (v) the Consumer obtains a remedy under Part 2 of the Consumer Guarantees Act 1993 in relation to the Failure against the Retailer; and

- (vi) that remedy is a cost to the Retailer (a "**Remedy Cost**").

- (b) If this clause 26.8 applies, the Retailer is entitled to be indemnified for the Remedy Cost by the Distributor.

- (c) The amount of the Distributor's liability under this indemnity is limited to the proportion of the Remedy Cost that is attributable to the events, circumstances or conditions associated with the Network.

- (d) However:
 - (i) if the Distributor pays compensation to the Consumer ("**Payment A**") in respect of a service provided directly by the Distributor to that Consumer; and

 - (ii) the Retailer incurs a Remedy Cost in relation to that Consumer for a failure of acceptable quality that arose from the same event, circumstance or condition that led to the payment of Payment A; then

 - (iii) the amount that the Retailer would otherwise recover from the Distributor in respect of that Consumer will be reduced by the amount of Payment A.

26.9 Consumer Guarantees Act: The following provisions apply:

- (a) subject to clause 29.1, the Retailer will, to the fullest extent permitted by law, exclude from all its Consumer Contracts (which includes a contract between the Retailer and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations:
 - (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this agreement ("**Distributor Warranties**"); and

 - (ii) imposed on the Retailer by the Consumer Guarantees Act 1993 concerning the supply of electricity by the Retailer under the Consumer Contract ("**Retailer Warranties**");

- (b) if the Consumer on-supplies electricity to an end-user the Retailer will, as a condition of any Consumer Contract, require the Consumer to include provisions in all agreements between the Consumer and an end-user, excluding all Distributor Warranties and Retailer Warranties to the fullest extent permitted by law; and
 - (c) to avoid doubt, nothing in this clause 26.9 affects the rights of any Consumer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Retailer from offering in its Consumer Contracts its own warranties, guarantees or obligations pertaining to distribution services.
- 26.10 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to clause 29.1, include in its Consumer Contracts clear and unambiguous clauses to the effect that:
- (a) the Consumer will indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud of, dishonesty of or wilful breach of the Consumer Contract by the Consumer or any of its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and
 - (b) to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Consumer under the Consumer Contract.
- 26.11 **The Distributor will be indemnified:** The Retailer 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;
 - (ii) the disconnection by the Retailer, or disconnection requested by the Retailer, of any Consumer's Premises in accordance with this agreement;
 - (iii) the termination of this agreement by the Retailer, except when the termination is the result of a breach by the Distributor;

- (iv) any failure by the Retailer to perform any obligation under any agreement between the Retailer and any Generator or Consumer or other third party;
 - (v) any failure by the Retailer to comply with its obligations required by law or regulation; or
 - (vi) 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 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;
 - (ii) the termination of this agreement by the Distributor, except when the termination is the result of a breach by the Retailer;
 - (iii) any failure by the Distributor to perform any obligation under any agreement between the Distributor and the System Operator or any other third party;
 - (iv) any failure by the Distributor to comply with its obligations required by law or regulation; 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 26.8, 26.11 and 26.12 are in addition to and without prejudice to the rights and remedies of each party under this agreement, the Code 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, employees and

agents that are intended to create, in respect of the benefit, an obligation enforceable by those officers, employees and agents and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this clause 26.

27. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY

27.1 **Claim against Retailer:** If a Consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor's indemnity in clause 26.8 (a "**Claim**"), the Retailer must:

- (a) give written notice of the Claim to the Distributor as soon as reasonably practicable after the Retailer determines that it wishes to be indemnified by the Distributor, specifying the nature of the Claim in reasonable detail;
- (b) make available to the Distributor all information that the Retailer holds in relation to the Claim that is reasonably required by the Distributor; and
- (c) subject to clause 27.4(b), not make any determination, admission, settlement or compromise in respect of the Claim without first consulting the Distributor in respect of the Claim.

27.2 **Distributor may take actions in respect of a Claim:** If the Distributor is notified of a potential Claim, the Distributor may:

- (a) communicate directly with the relevant Consumer in relation to the Claim; and
- (b) assume management and defence of the Claim.

27.3 **Distributor must advise Retailer:** The Distributor must advise the Retailer as soon as practicable after being notified of the Claim whether or not the Distributor intends to assume the management and defence of the Claim.

27.4 **Management and defence of Claim:** If the Distributor assumes the management and defence of the Claim:

- (a) the Distributor may, subject to the terms of this agreement, determine the conduct of the Claim; and
- (b) the Retailer may advise the relevant Consumer and the Dispute Resolution Scheme that the Distributor is dealing with the Claim.

27.5 **Conduct: The party that conducts the management and defence of the Claim must ensure that:**

- (a) the other party is kept informed on a timely basis of any developments in relation to the Claim; and
- (b) the other party and its legal counsel (to the extent applicable) are consulted in a timely manner before the party managing and defending the Claim takes any significant steps in relation to the Claim, so that the reputation of the other party is not unfairly harmed.

27.6 **Distributor to notify Retailer if asserting indemnity is not applicable:** If, in respect of any Claim in respect of which the Distributor has assumed the management and defence, the Distributor intends to assert that the Distributor's indemnity in clause 26.8 does not apply, the Distributor must promptly notify the Retailer accordingly. In that event, the Retailer may resume the conduct of the management and defence of the Claim.

27.7 **Payment arrangements:** The following payment arrangements apply:

- (a) the Retailer may require the Distributor to pay to the Retailer the out-of-pocket costs incurred by the Retailer in managing and defending or settling the Claim, at not less than monthly intervals, on presentation of documents supporting the claim for payment, as and when those costs are incurred by the Retailer; and
- (b) subject to clause 27.8, the Distributor must promptly pay the Retailer the amounts due under the Distributor's indemnity, following the Distributor's liability:
 - (i) being agreed by the Distributor with the Retailer; or
 - (ii) being determined by the Dispute Resolution Scheme; or
 - (iii) otherwise being finally determined in accordance with this agreement.

27.8 **Early Payment Amount:** If the Retailer becomes legally obliged to pay a Remedy Cost to the Consumer before the Distributor's liability to pay to the Retailer an amount equal to that Remedy Cost being agreed or finally determined under clause 27.7(b), the Distributor must promptly pay to the Retailer an amount equal to that Remedy Cost even though the Distributor's liability to make such payment has not been agreed or finally determined ("**Early Payment Amount**"), provided that:

- (a) the Retailer has used reasonable endeavours to avoid incurring such Remedy Cost and it would be unreasonable in the circumstances for the Retailer not to pay such Remedy Cost to the Consumer at that time;
- (b) the Distributor is not required to pay an Early Payment Amount if and to the extent that, following such payment, the aggregate amount paid by the Distributor to the Retailer in respect of the Early Payment Amount and all Early Payment Amounts previously paid would exceed the lesser of \$1,000,000 and the Distributor's reasonable estimate of the Distribution Services charges payable by the Retailer to the Distributor in respect of any period not more than 2 months. For the purpose of calculating the Early Payment Amount, any Early Payment Amount previously paid must be disregarded if, at the time of the calculation, the Distributor's liability to pay the Retailer for the Remedy Cost to which the Early Payment Amount relates has been agreed or finally determined as contemplated in clause 27.7(b) (\$1,000,000 being the maximum amount that the Retailer is entitled to receive in respect of Early Payment Amounts if the liability of the Distributor to the Retailer to pay Remedy Costs to which such Early Payment Amounts relates is not at that time certain); and
- (c) the Retailer must promptly repay amounts paid by the Distributor to the Retailer (including under clause 27.7(a)) in respect of any liability to or on behalf of the Retailer under clause 27.7(a) to the extent that:
 - (i) the Claim is or becomes a claim for which the Retailer is not entitled to be indemnified under clause 26.8;
 - (ii) a court of competent jurisdiction determines that the Retailer is not entitled to be indemnified by the Distributor for the Claim;
 - (iii) the Retailer receives payment under a contract of insurance in respect of the Claim, or the insurer pays, discharges or satisfies the Claim directly and the Retailer is not obliged to refund the payment to the insurer as a result of the payment by the Distributor under the Distributor's indemnity in clause 26.8;
 - (iv) the Retailer receives payment from a person other than the Distributor in respect of the Claim, or that person pays, discharges or satisfies the Claim directly; or
 - (v) it is established in relation to the Claim that the Retailer did not perform an obligation referred to in this clause 27 and the Distributor's liability is or would have been reduced if the obligation had been performed.

- 27.9 **Owner to be paid for property damage:** If the Distributor is liable to pay the Retailer any amount in accordance with this clause in respect of property damage that is not related to the property of the Retailer, the Retailer must pass through the amount received by it from the Distributor in relation to that property damage to the owner of the affected property (whether or not that person is a Consumer). The Distributor may, with the prior written consent of the Retailer (such consent not to be unreasonably withheld), pay such amount directly to the property owner instead of to the Retailer. In such circumstances, the Retailer must provide the Distributor with the information required to enable the Distributor to make payment, and the Distributor must inform the Retailer as soon as reasonably practicable after making such payment.
- 27.10 **Dispute resolution:** Any dispute between the Distributor and the Retailer relating to the allocation of liability under the Distributor's indemnity in clause 26.8 must be dealt with by each party in accordance with the Dispute Resolution Scheme or, if the dispute is not accepted by the Electricity and Gas Complaints Commissioner, the parties must deal with the dispute in accordance with clause 25.
- 27.11 **Right not prejudiced:** Despite clause 27.6, any adjudication of a Claim in respect of which the parties have not agreed and it has not otherwise been determined as to whether the Distributor indemnity in clause 26.8 applies will not prejudice the right of the Retailer or the Distributor (as applicable) to assert that the Distributor's indemnity in clause 26.8 does, or does not, apply.
- 27.12 **Application of clauses:** Clauses 27.2 to 27.8, do not apply if a complaint has been made to the Dispute Resolution Scheme under section 95 of the Act.

28. CONDUCT OF CLAIMS

- 28.1 **Third Party Claim:** This clause applies if a party with a right of indemnity under clauses 26.11 or 26.12 ("**Indemnified Party**") seeks or may seek to be indemnified by the other party ("**Indemnifying Party**") under clauses 26.11 or 26.12 in respect of a claim by any person of the kind described in clause 26.11(a) or **Error! Reference source not found.** ("**Third Party Claim**").
- 28.2 **Indemnified Party to give Notice of Third Party Claim:** The Indemnified Party must give notice of the Third Party Claim (including reasonable details) to the Indemnifying Party and ensure that the Indemnified Party does not make any payment or admission of liability in respect of the Third Party Claim.
- 28.3 **Indemnifying Party may act in relation to Third Party Claim:** The Indemnifying Party may, at its election, in the name of the Indemnified Party, but only after consultation with the Indemnified Party and so that the reputation of the Indemnified Party is not unfairly harmed, conduct all negotiations and defend any proceedings

relating to the Third Party Claim. For this purpose, the Indemnified Party must make available to the Indemnifying Party all such information, books and records, and co-operate (including making available employees as witnesses) as the Indemnifying Party may reasonably require for the purpose.

28.4 Indemnified Party to keep Indemnifying Party informed: If and for so long as the Indemnifying Party does not assume the defence of the Third Party Claim, the Indemnified Party must:

- (a) keep the Indemnifying Party fully informed of the Indemnified Party's progress in defending the Third Party Claim and of any related proceedings; and
- (b) at the Indemnifying Party's request, consult with, and take account of the reasonable views of, the Indemnifying Party so far as reasonably possible in the relevant Indemnified Party's defence of the Third Party Claim and any related proceedings.

28.5 Third Party Claim not to be settled without consent: The Indemnified Party must not, without the prior written consent of the Indemnifying Party, settle the Third Party Claim.

28.6 Indemnifying Party to be reimbursed: If the Indemnified Party recovers from any third party any amount to which a payment made by the Indemnifying Party to the Indemnified Party under this agreement relates, the Indemnified Party must procure that the amount so recovered by the Indemnified Party (net of the cost of recovery, but not exceeding the amount paid by the Indemnifying Party) will be reimbursed without delay to the Indemnifying Party.

29. CONSUMER CONTRACTS

29.1 Retailer to include provisions in Consumer Contracts: The following clauses apply in respect of the Retailer's Consumer Contracts:

- (a) in respect of each Consumer Contract that has been entered into prior to the Commencement Date:
 - (i) at the next review date, or, if the Retailer is able to unilaterally vary the Consumer Contract, within 12 months after the Commencement Date (whichever is earlier), the Retailer will issue a unilateral variation to the Consumer Contract to include provisions that have substantially the same effect as the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed

to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982; or

(ii) if the Retailer is unable to unilaterally vary one or more Consumer Contracts as set out in subparagraph (i), the Retailer will:

(A) use all reasonable endeavours to obtain at the next review of each Consumer Contract, or within 12 months, whichever is earlier, the agreement of the Consumer to enter into a variation of the Consumer Contract to include provisions that have substantially the same effect as the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 4 of the Contracts (Privity) Act 1982; and

(B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Consumer required in subparagraph (A); or

(b) in respect of each Consumer Contract that has been entered into after the Commencement Date, include the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982. However, to the extent that the Retailer's standard Consumer Contract does not comply with this clause 29.1(b) as at the Commencement Date, the Retailer will not be obliged to have remedied that non-compliance until the date that is 12 months after the Commencement Date.

29.2 Changes to Consumer Contracts during term: If this agreement is changed in accordance with clause 24 and the change results in the addition of a new provision to this agreement that requires the Retailer to include a new provision in its Consumer Contracts, the Retailer will take such steps as are necessary to comply with that provision. If the Retailer is required by the Distributor to change its Consumer Contracts 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 may not recover such costs if the change is required by the Distributor under:

(a) clause 24.1(b), unless the change results in a new obligation in schedule 4;

- (b) clause 24.1(c), unless the change results in a new obligation in schedule 4; or
- (c) clause 24.1(d).

29.3 **Retailer to indemnify Distributor:** Subject to clause 26, the Retailer indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations in accordance with clause 29.1.

30. NOTICES

30.1 **Delivery of Notices:** Any notice given under this agreement will be in writing and will be deemed to be validly given if personally delivered, posted or sent by email 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.

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

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, 2 Working Days following the date of posting; and
- (c) in the case of email, when actually received in readable form by the recipient, provided that a delivery failure notice has not been received by the sender, in which case the notice will be deemed not to have been sent.

30.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice given in accordance with clause 30.2 that is personally delivered or sent by facsimile or email 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.

31. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

31.1 **Protocols for exchanging information:** From time to time the Electricity Authority will publish certain EIEPs, including new or amended EIEPs, which specify recommended formats for the exchange of information between distributors and retailers. Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any relevant EIEPs when exchanging information, provided that the frequency at which, and method by which, the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.

- 31.2 **Consumer information:** The Retailer will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Consumer information as is reasonably available to the Retailer and necessary to enable the Distributor to fulfil its obligations in accordance with this agreement. The information will be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and will not, use such information in any way or form other than as permitted by this clause 31.2.
- 31.3 **Auditing information provided:** To enable either party to this agreement (the “**Verifier**”) to verify the accuracy of information provided to it by the other party to this agreement (the “**Provider**”), the Provider will allow the Verifier and its agents reasonable access to the Provider’s books and records (including, if the Retailer is the Provider, of metering or consumption data) (the “**Records**”) to the extent that those Records relate to the obligations of the Provider under this agreement. If the Retailer is the Provider and any relevant metering or consumption data is held in a third party metering equipment owner or operator, the Retailer will procure access to the third party owner or operator’s books or records for the benefit of the Distributor. 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.
- 31.4 **Limitations on the Verifier:** In relation to its review of the Records under clause 31.3, 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 31.4(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.
- 31.5 **Independent Auditor:** If:
- (a) the provider is the 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) the provider is the 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 will 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 that is permitted by this clause 31.5 to appoint an Auditor will pay the Auditor’s costs, unless the Auditor discovers a material inaccuracy in the Records in which case the other party will pay the Auditor’s costs. The terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

31.6 **Provider will 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 31.3 and will ensure that the Records are readily accessible and readable.

31.7 **Non-Compliance:** If a review of the Provider’s Records under clause 31.4 or 31.6 by the Verifier or the Auditor (as the case may be) identifies any material inaccuracy in the Records provided by the Provider to the Verifier under this agreement, the Provider will:

- (a) as soon as possible agree with the Verifier the remedial action to be taken and take such steps (including providing the Verifier or its agent (including the Auditor) with access to the Records and other relevant information following the remedial action being taken) as are necessary to enable the Verifier to satisfy itself that the Records and other information provided by the Provider to the Verifier under this agreement are materially accurate and that any deficiencies in the Provider’s systems, processes and controls that gave rise to the material inaccuracy have been adequately addressed; and
- (b) bear the reasonable costs of the Verifier and/or its agent (including the Auditor) incurred in relation to the exercise of its rights under this clause 31.7.

32. MISCELLANEOUS

32.1 **No Waiver:** Unless 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.

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

32.3 **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 delayed or withheld. For the purposes of this clause 32.3, unless a party is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.

32.4 **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.

33. INTERPRETATION

33.1 **Interpretation:** 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 any time;
- (g) all amounts payable under this agreement are in New Zealand dollars and exclude GST and every other tax and duty, (*except in schedule 1, if the amounts of GST are inclusive*) but if GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable, 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.

33.2 **Definitions:** In this agreement, unless the context otherwise requires:

“Act” means the Electricity Industry Act 2010;

“Additional Services” means the additional services that the Distributor or the Retailer will provide to the other as described in schedule 2;

“Alternative Contract” has the meaning given in clause 4.2;

“Avoided Transmission Charge” means any expense (including the cost of capital) incurred by the Distributor that arises from any generation or other activity that substitutes for use of the transmission system;

“CAIDI” means the electricity consumer average interruption duration index and is measured for each Feeder and is otherwise 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 a Variable Provision given by the Distributor to the Retailer under clause 24.3;

“Code” means the Electricity Industry Participation Code 2010 made under the Act;

“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 that is identified by the party providing the information as being confidential, or should reasonably be expected by the other party to be confidential, 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; and
- (d) the existence and terms of this agreement, except schedule 2;

“Connection Contract” means a contract under which Distributed Generation is connected to the Network entered into by the Distributor and a Distributed Generator in accordance with Part 6 of the Code, and, for the purposes of this Agreement, the Distributor and a Distributed Generator are deemed to have entered into a Connection Contract if the regulated terms in Part 6 of the Code apply;

“Consumer” means a person who purchases electricity from the Retailer that is delivered via the Network;

“Consumer Contract” means an agreement between the Retailer and the Consumer that includes the supply of electricity and distribution services;

“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” means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Consumer’s Installation;

“Consumer’s Premises” means the land and buildings owned 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 within which 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;

“Controlled Load Option” has the meaning given in clause 6.1;

“Conveyance Only” means a situation in which 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;

“**Credit Note**” has the meaning given to that term in the GST Act;

“**Debit Note**” has the meaning given to that term in the GST Act;

“**Decommission**” means the decommissioning of an ICP in accordance with Part 11 of the Code so that the ICP is permanently disconnected from the Network, and the Registry status has been altered to “decommissioned” (but excludes a Vacant Site Disconnection);

“**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 requirements of the Electricity Distribution Information Disclosure Determination 2012 issued by the Commerce Commission under sections 57T and 57U of the Commerce Act 1986 as amended or replaced from time to time;

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

“**Dispute Resolution Scheme**” means the Electricity and Gas Complaints Commission or such other dispute resolution scheme approved or provided for in accordance with section 95 of the Act;

“**Distributed Generation**” means equipment used, or proposed to be used, for generating electricity that is:

- (a) connected, or proposed to be connected, to the Network, or to an Electrical Installation; and
- (b) in addition to supplying electricity to the Consumer, may also be used for injecting electricity into the Network for supply to another person;

“**Distributed Generator**” means a person who owns or operates Distributed Generation;

“**Distribution Services**” means those services described in clause 2.1 provided by the Distributor to the Retailer under this agreement but excludes Additional Services;

“**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 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 the party’s Fittings or Metering Equipment that are from time to time installed in, over or on Consumer’s Premises;

“**EIEP**” means:

- (a) an electricity information exchange protocol approved by the Electricity Authority and published on the Electricity Authority’s website <http://www.ea.govt.nz>; or
- (b) an electricity information exchange protocol that is additional to those published on the Electricity Authority’s website, agreed by the parties and recorded in schedule 3;

“**Electrical Installation**” means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Consumer’s Point of Connection to any point from which electricity conveyed through that system may be consumed; and
- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person’s use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

“**Electricity Authority**” has the meaning given to it in section 5 of the Act;

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

“**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;

“**Event of Default**” has the meaning given to it in clause 20.3(a);

“**FAIDI**” means the Feeder average interruption duration index and is measured for each Feeder and is otherwise calculated in the same manner as SAIDI is calculated in the Disclosure Requirements;

“**FAIFI**” means the Feeder average interruption frequency index and is measured for each Feeder and is otherwise calculated in the same manner as SAIFI is calculated in the Disclosure Requirements;

“**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 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, including a Distributed Generator;

“**Good Electricity Industry Practice**” means:

- (a) in the case of the Distributor, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced electricity network owner engaged in New Zealand in the distribution of electricity under conditions comparable to those applicable to the Network consistent with applicable law, safety and environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the Network and the applicable law; and
- (b) in the case of the Retailer, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced electricity retailer engaged in New Zealand in the same type of undertaking under comparable conditions consistent with applicable law, safety and environmental protection;

“**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;

“**GST**” means goods and services tax payable under the Goods and Services Tax Act 1985;

“**GST Act**” means the Goods and Services Tax Act 1985;

“**GXP**” means a Grid Exit Point that is a point of connection on the Grid:

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such by the Authority following an application made under the Code;

“**ICP**” means an installation control point being one of the following:

- (a) a Point of Connection at which a Consumer’s Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared Unmetered Load;

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

“**Insolvency Event**” means a party:

- (a) has had a receiver, administrator 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;

“**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) that is from time to time installed in, over or on Consumer's Premises for the purpose of receiving signals sent by Load Signalling Equipment and switching on and off, or otherwise controlling, controllable load;

"Load Management Service" means providing a signal for the purpose of reducing or interrupting delivery of electricity to all or part of 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 Control System" means a control and communications system for controlling parts of a Consumer's load and consisting of Load Signalling Equipment and Load Control Equipment;

"Load Signalling Equipment" means the equipment (which may include, but is not limited to, ripple injection plant) for the purpose of sending control signals to Load Control Equipment;

"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 on the Network at any point in time;

"Loss Factor" means the scaling factor determined in accordance with clause 7 and applied by the reconciliation manager to volumes of electricity measured or estimated in respect of ICPs on the Network, in order to reflect the impact of the ICP on Losses within the Network;

"Loss Factor Guidelines" means the most recently published guidelines relating to the calculation and use of Loss Factors for reconciliation purposes issued by the Electricity Authority and updated from time to time. If the guidelines issued by the

Electricity Authority are not finalised or cease to be published (or the basis of its calculation is changed), the Distributor will apply a substitute index (or an adjustment to the formula to take into account the change in basis of calculation) which approximates the purpose and composition of that index and the date from which it will apply, and failing agreement, a substitute index (or adjusted formula) and the date of its application is to be determined by the President for the time being of the Institute of Chartered Accounts of New Zealand;

“Metering Equipment” means any apparatus for the purpose of measuring the quantity and/or quality of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

“Network” means the Distributor's lines, substations and associated equipment used to convey electricity between:

- (a) two NSPs; or
- (b) an NSP and an ICP;

“Network Connection Standards” means the Distributor's written technical and safety standards for connection of an Electrical Installation to the Network that are issued by the Distributor and updated from time to time, and include:

- (a) a list of all referenced regulations and industry standards relevant to the provision of the Distribution Services; and
- (b) all externally referenced publications, such as website links in those regulations and standards;

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

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

“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 schedule 5;

“**Point of Connection**” means the point at which electricity may flow into or out of the Network;

“**Price Category**” means the price category and associated eligibility criteria set out in schedule 9 that determine the Tariff Rate(s) that apply to an ICP;

“**Pricing Policy and Methodology**” means the policy and methodology set out in schedule 9, being the Distributor’s policies and processes relating to setting prices for Distribution Services;

“**Publish**” means to disclose information by making the information available on the Distributor’s website and notifying the Retailer that the information has been disclosed on the website (or, where agreed, providing an electronic copy 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 Code to assist switching and reconciliation;

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

“**Retailer’s Equipment**” means the Fittings 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 Metering Equipment, which are from time to time installed in, over, or on Consumer’s Premises;

“**Rulings Panel**” means the Rulings Panel continued by the Act;

“**SAIDI**” means the system average interruption duration index;

“**Serious Financial Breach**” means:

- (a) a failure by the Retailer to pay an amount due that exceeds the lesser 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 Guarantee**” means any payment or other benefit that one party provides to the other party when it fails to meet a Service Standard for which a guarantee payment is provided should that Service Standard not be met;

“**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 Standard, other than in accordance with this agreement;

“**Service Level**” means the magnitude of a Service Measure set out in schedule 1;

“**Service Measure**” means the characteristics or features of a Service Standard 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 the date recorded in the Registry as being the date on which a retailer assumes responsibility for an ICP;

“**System Emergency Event**” means a grid emergency in accordance with the definition of that term in Part 1 of the Code and, in respect of the Network, any emergency situation in which:

- (a) public safety is at risk;
- (b) there is a risk of significant damage to any part of the Network;
- (c) the Distributor is unable to maintain Network voltage levels within statutory requirements; or
- (d) an Unplanned Service Interruption affecting part or all of the Network is imminent or has occurred.

“**System Operator**” means the person who is the system operator under the Act;

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

“**System Security**” means the secure state of the Grid achieved when the System Operator acts in accordance with its principal performance obligations in relation to common quality and dispatch that are set out in Part 7 of the Code;

“**Tariff Options**” has the meaning given to it in clause 10.3;

“**Tariff Rate**” means a fixed or variable rate within a Price Category that determines the Distribution Services charges that apply to an ICP;

“**Tariff Structure Consultation Guidelines**” means the guidelines relating to consulting on distributor tariff structure changes issued by the Electricity Authority and updated from time to time;

“**Tax Invoice**” means a valid tax invoice as specified by section 24 of the GST Act;

“**Temporary Disconnection**” means an ICP is De-energised but there is no change to the status of the ICP in the Registry;

“**Transmission Charge**” means:

- (a) an amount charged by a Transmission Provider for use 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;
 - (vi) any other charge component that is introduced into, or substitutes for, an existing component of the Transmission Provider’s transmission pricing methodology from time to time; and
- (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 established and operated by the Distributor in accordance with clause 12.20;

“**Unmetered Load**” means electricity consumed on the Network that is not directly recorded using Metering Equipment, but is calculated or estimated in accordance with the Code;

“**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 anticipated in schedule 5 that relate to Unplanned Service Interruptions;

“**Use of Money Adjustment**” means an amount payable at the Interest Rate plus 2% from the date of payment to the date of repayment (in the case of a Credit Note or other repayment) or from the due date of the original invoice to the date of payment (in the case of a Debit Note or other payment) accruing on a daily basis and compounded at the end of every month;

“**Vacant Site**” means a property that has become vacant;

“**Vacant Site Disconnection**” means the De-energisation of an ICP that occurs when the property at which the ICP is located has become vacant, and the Retailer has changed the status in the Registry to “Inactive”;

“**Variable Provisions**” means schedule 6 and schedule 7 or insert provisions of this agreement and schedules (if any) that may be changed

“**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 any individual who is Warranted; and

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

SCHEDULE 1 – SERVICE STANDARDS

Introduction

- S1.1 In accordance with clause S1.2, the Distributor and the Retailer will meet the Service Standards outlined in this schedule.
- S1.2 If either party becomes aware of or suspects a breach of the Service Standards by the other party, the party will give the other party notice of the reasons why it suspects that there has been a breach.
- S1.3 If either party breaches a Service Level that is subject to a Service Guarantee, it will notify the other party as soon as possible and no later than 10 Working Days after becoming aware of the breach. The notification will include:
- (a) the identity of the ICPs affected and the Service Guarantee amount by ICP and in total (if applicable);
 - (b) the reason for the breach;
- A Credit Note, or order number if the payer requires an invoice from the payee for the amount payable in respect of the breach will be sent in the next payment cycle.
- S1.4 All Service Guarantee amounts in this schedule are exclusive of GST (if any). All Service Guarantee invoices will state clearly the amount of GST (if any) that is payable.
- S1.5 If the Distributor makes a Service Guarantee payment in respect of an ICP, the Retailer will pass that payment on to the Consumer but may deduct an amount that reflects its reasonable cost of administering the payment.
- S1.6 The parties acknowledge that the Service Guarantees are set at a level to provide reasonable compensation to the Consumer, 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.
- S1.7 Notwithstanding the foregoing provisions, the Distributor and the Retailer agree that any breach of, or failure to meet the Service Standards, shall not constitute a breach of this Agreement.

Service standards relating to electricity supply

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
A. DISTRIBUTOR'S SERVICE STANDARDS RELATING TO ELECTRICITY SUPPLY					
UNCONTROLLED SUPPLY CATEGORY					
Time period when electricity supply is available	1. 24 hour Continuous Supply Supply is in normal supply circumstances continuously available 24 hours each day, 7 days each week.	The Distributor will endeavour in accordance with Good Electricity 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 Uncontrolled Supply Price Category or Tariff Option in accordance with schedule 9. Metering requirements for this category of supply are specified in schedule 9. Different metering configurations may be available that provide for recording of consumption in different time periods. Refer to schedule 9 for details of the options available.	General residential and business usage where a continuous supply of electricity is required.	SAIDI	The Distributor will comply with its statutory reporting requirements under the law, including the Code.

Use-of-System Agreement (Interposed)



SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
CONTROLLED SUPPLY CATEGORIES					
Time period when electricity supply is available	1. Controlled Supply Supply is in normal supply circumstances available for a minimum of an agreed hours each day, 7 days each week.	If the Consumer has elected to receive Controlled Supply and be charged on the basis of the relevant Controlled Supply Price Category or Tariff Option in accordance with schedule 10, the Distributor may effect Load Shedding at any time for up to the agreed total of hours on any one day. The controlled appliances will be connected (and remain connected) to a load control relay that operates manually or automatically as the Distributor may determine and as specified in schedule 9. Metering requirements for this category of supply are specified in schedule 9.	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 cylinders and spa pool heaters are the most common appliances controlled in this category of supply.	For each period of excess control for any day, the number of excess hours of control and the number of ICPs affected.	The Distributor will, if requested by the Retailer, use reasonable endeavours to, notify the Retailer if the maximum period of control is exceeded if this information is reasonably known by the Distributor.

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
Time period when electricity supply is available	<p>2. Controlled Supply for Streetlights and Unmetered connections</p> <p>Supply is intended to be continuously available during the hours of darkness, 7 days each week.</p>	<p>If 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 Price Category or Tariff Option in accordance with schedule 9, the Distributor will provide appropriate load control signals.</p> <p>Streetlights will be connected (and remain connected) to a load control relay that is programmed to receive load control signals in accordance with the method(s) specified in schedule 9. The hours of supply are set and controlled in accordance with the Consumer's requirements. Specific special functionality may be provided by agreement to meet Consumer needs, e.g. ANZAC Day timetable.</p> <p>Streetlights are an Un-metered Supply load in accordance with the relevant provisions of schedule 9.</p>	Streetlights and other lights (e.g. 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 and the number of streetlight feeders affected.	The Distributor will, if requested by the Retailer, use reasonable endeavours to notify the Retailer if supply is not provided during the hours of darkness, if this information is reasonably known by the Distributor.

Use-of-System Agreement (Interposed)



SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
DISTRIBUTOR'S SERVICE STANDARDS					
RELIABILITY					
Restoration of supply: Unplanned Service Interruptions.	The Distributor is subject to the Commerce Commissions Price Path Quality Path Determination.	To comply with the requirements of the Determination	The Distributor is subject to the Commerce Commissions Price Path Quality Path Determination. Under this Determination, the Commerce Commission has set a SAIDI target as an acceptable service level on behalf of Consumers (a Proxy Customer). If the Distributor does not meet this target then its revenue is reduced in future pricing years. As a result, no further compensation is payable.	Annual Compliance Statement as required by the Determination.	nil
Frequency of Service Interruptions and short interruptions at ICPs.	The Distributor is subject to the Commerce Commissions Price Path Quality Path Determination.	To comply with the requirements of the Determination	Nil	Annual Compliance Statement as required by the Determination.	Nil
Steady State Voltage Range at ICPs.	± 6% of nominal at Point of Connection.	Measurement will be triggered by notification of a voltage sag under the 'Power Quality and service interruption	Nil	If requested by the Retailer, report to the Retailer the number of ICPs at which performance has been measured to exceed the Service Level, itemised by Feeder, if this	Nil

Use-of-System Agreement (Interposed)



SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
		investigation' Service Measure.		information is reasonably known by the Distributor.	
Load Management Service.	The Distributor to operate and maintain its Load Management Service in accordance with schedule 8.		Nil	The Distributor to self-report any failures to provide Load Management Services and, if requested by the Retailer, investigate any Consumer initiated request and report back to the Retailer.	Within 7 Working Days of the breach or notification.

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
COMMUNICATION					
Unplanned Service Interruption communication.	As defined in schedule 5.	For the purposes of this Service Standard an Unplanned Service Interruption applies to 20 or more Consumers.	Nil		Nil
Notification of Planned Service Interruption.	As defined in schedule 5.		Nil		Nil

RETAILER'S SERVICE STANDARDS					
SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
MUTUAL OBLIGATIONS					
Information Requests.	Each party will consider all reasonable requests for information from the other party (if they are stated to be made under this schedule 1 of this agreement) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, the party to whom the request is made will provide an explanation and/or a new timeframe.	Nil	Nil	Nil	Nil

SCHEDULE 2 – ADDITIONAL SERVICES

Schedule 2.1 - Rebates

S2.1 For the purposes of this schedule:

- (a) **“Rebate”** includes line charge discounts, line charge rebates, line charge holiday, Trust dividends, and Trust distributions;
- (b) **“Trust”** means a trust that has an ownership interest in the Distributor; and
- (c) if the Trust wishes to engage directly with the Retailer but is not prepared to meet the Retailer’s reasonable costs for providing the services requested as contemplated by clause S2.13 of this schedule, clause S2.13 of this schedule will apply as if the Distributor is the Trust, and the Distributor will meet such costs.

S2.2 The Distributor may require, no more than twice in any calendar year, the Retailer to pass a Rebate to qualifying Consumers by crediting the Consumers’ electricity accounts, by giving the Retailer at least 20 Working Days’ notice.

S2.3 The notice will include:

- (a) the time period within which the eligibility date will be set;
- (b) the criteria to identify qualifying ICPs or Consumers, including any specific exclusions;
- (c) the proposed process and timelines for information to be exchanged to enable efficient implementation;
- (d) whether the Distributor wishes to include any promotional material with the invoice containing the credit and, if so, include a draft of that promotional material;
- (e) the format of the information to be exchanged; and
- (f) the proposed basis of calculation (if known).

S2.4 The Retailer, acting reasonably, will confirm to the Distributor that it is able to meet the Distributor’s requirements set out in the notice.

S2.5 The parties will test the information exchange process in advance of each Rebate.

- S2.6 The Distributor will advise the Retailer of the eligibility date as soon as reasonably practicable, and provide details of any proposed publicity information and media releases.
- S2.7 The Distributor will provide contact details for queries that cannot be addressed by the Retailer and a set of relevant FAQs.
- S2.8 The Retailer will provide a file to the Distributor containing any information reasonably requested by the Distributor to enable the Distributor to calculate the Rebate applicable to each qualifying ICP or Consumer.
- S2.9 The Distributor will return the file to the Retailer with the Rebate amounts added within 2 Working Days after receipt of the Retailer's file.
- S2.10 The Retailer will as soon as reasonably practicable after receiving the file from the Distributor apply the Rebate to qualifying Consumers' accounts.
- S2.11 The Rebate will be separately identified on invoices to qualifying Consumers, and will include words as specified by the Distributor along the following lines "Distributor Name] rebate". This requirement will only extend to the Retailer including wording within the existing limitations of the Retailer's billing system and/or bill format.
- S2.12 If the Retailer agrees in accordance with clause S2.4 to distribute the Distributor's promotional material with the invoice containing the credit:
- (a) the Retailer will provide the Distributor's promotional material to the Consumer along with the Retailer's invoice that includes the Rebate; and
 - (b) the Distributor will indemnify the Retailer against any costs, losses, liabilities, claims, charges, demands, expenses or actions that 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.
- S2.13 The Distributor will meet the Retailer's reasonable costs for providing any services requested, and if requested the Retailer will provide a quote for the services in advance. The Distributor will pay the Retailer's invoice for the services by the 20th of the month following the invoice date.

- S2.14 The Distributor will compensate the Retailer by issuing a Credit Note for prior distribution charges for the total amount credited and offset the total amount due against future Distribution Services charges
- S2.15 If for any reason the Rebate payable to a Consumer is unable to be paid (by way of example but without limitation, because a qualifying consumer ceases to be a Consumer and its 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 will 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 or refund the consumer directly the remaining amount by cheque. The Retailer will also provide a supporting file to the Distributor containing the ICP, refund amount, consumer name and forwarding address (if available).

Schedule 2.2 - Trust Information

- S2.16 The Retailer acknowledges that the Distributor is owned by a Trust and requires from time to time information from the Retailer to enable updating and maintenance of an accurate register of shareholders/beneficiaries, and to allow communication with those persons.
- S2.17 If reasonably requested by the Distributor, the Retailer will provide, in a reasonable timeframe, relevant information in its possession required by the Distributor to meet its obligations under the Trust Deed. Any information provided by the Retailer under this clause S2.17 will be treated as confidential information.
- S2.18 The Distributor will reimburse the Retailer's reasonable costs for supplying the information requested, and, if requested, the Retailer will provide a quote for supplying the information in advance. The Distributor will pay the Retailer's invoice for supplying the information by the 20th of the month following the invoice date.

SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

S3.1 Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any relevant EIEPs when exchanging information, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.

SCHEDULE 4 – CONSUMER CONTRACTS

S4.1 This schedule summarises the obligations that this agreement requires the Retailer to include and the rights that the Retailer must include in every Consumer Contract.

Summary of right/obligation	Clause in this agreement
<p>If the Consumer enters into any agreement or arrangement with any third party in relation to control of its load, the Consumer will ensure that:</p> <ul style="list-style-type: none"> (a) the load is not already subject to the Distributor’s right of control; (b) the third party does not interfere with or damage the Distributor’s or the Retailer’s Load Control Systems; (c) if any damage occurs due to the actions of the third party, the Consumer will promptly and at its own cost remove the source of the interference and make good the damage; (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner in respect of managing System Security in accordance with the Code and to meet the Service Standards for Distribution Services; and (e) prior to controlling the load, the third party has entered into an agreement with the Distributor which sets out the protocols for the use of the load, including the coordination with the Distributor of the disconnection and reconnection of load. 	<p>Clause 6.10</p>
<p>The Consumer will provide the Distributor and its agents with safe and unobstructed access onto the Consumer’s Premises for the purpose of,</p> <ul style="list-style-type: none"> a) inspecting, maintaining, operating or upgrading the Distributor’s Equipment; b) installing, reading or upgrading Metering Equipment; c) disconnecting or reconnecting the Consumer; d) accessing the Retailer’s Equipment to verify metering information; e) ensuring that the Consumer fulfils its obligations in accordance with clause 14.7 of this Agreement; and f) enabling the Distributor to gain access to and remove the Distributor’s Equipment following the termination of the Consumer Contract. 	<p>Clause 13.1</p>

Summary of right/obligation	Clause in this agreement
The Distributor may disconnect the Consumer's ICP on notice from the Distributor and reclaim its equipment if the Consumer materially or persistently fails to give the Distributor access to the Distributor's Equipment on the Consumer's Premises.	Clause 13.3
The Consumer will not, during the term and for a period of six months after termination, interfere with or damage the Distributor's Equipment.	Clause 14.1
If any of the Distributor's equipment is damaged by the negligence or wilful act or omission of the Consumer or the Consumer's agents or invitees, then the Consumer will pay the cost of making good the damage to the Distributor	Clause 14.2
<p>The Consumer will not, without the prior written agreement of the Distributor,</p> <ul style="list-style-type: none"> a) inject energy into or attempt to convey or receive signals over the Network. b) convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy in accordance with 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. 	Clause 14.7
The Consumer will provide and maintain (at no cost to the Distributor) suitable space for the safe and secure housing of the Distributor's Equipment.	Clause 14.12
<p>The Consumer acknowledges that:</p> <ul style="list-style-type: none"> a) the Network, including any part of the network situated on the Consumer's Premises, is the Distributor's property. b) no provision of the Consumer Contract 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 Distributor's Equipment that is used to provide any such services. 	Clause 14.13
<p>The Consumer undertakes to comply with the Distributor's Network Connection Standards.</p> <p>The Retailer will include a statement that the Network Connection Standards can be found on the Distributor's website.</p>	Clause 15.2(a)

Summary of right/obligation	Clause in this agreement
<p>The Consumer acknowledges that surges, sags or spikes:</p> <ul style="list-style-type: none"> a) are momentary fluctuations in voltage or frequency that can occur at any time; and b) may cause damage to the Consumer’s sensitive equipment; c) are not treated as interruptions, <p>the Consumer that it must take its own steps to protect any sensitive equipment from such surges, sags or spikes;</p> <p>In addition to the above acknowledgement, the Retailer will advise its Consumers of the steps they should take to protect their sensitive equipment from such surges, sags or spikes, or inform the Consumer of where to find information about the steps they should take.</p>	<p>Clause 16.1</p>
<p>It is the Consumer's responsibility to maintain Consumer Service Lines in a safe condition using a suitably qualified person (unless the Distributor is required by law or agrees to provide and maintain those Consumer Service Lines).</p>	<p>Clause 17.1</p>
<p>The Consumer will comply with the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Consumer has an interest in that are near the Grid or any line that forms part of the Network.</p>	<p>Clause 18.1</p>
<p>The Consumer will ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards, including (if applicable) by ensuring that any alteration is certified by a suitably qualified person.</p>	<p>Clause 19.1 (and clause S6.10)</p>
<p>The Distributor may perform a Temporary Disconnection in relation to a Consumer’s ICP in the circumstances set out in S6.14.</p>	<p>Clause 19.1 (and clause S6.14)</p>
<p>To the fullest extent permitted by law, all warranties, guarantees or obligations imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law are excluded.</p>	<p>Clause 26.9(a)</p>
<p>If the Consumer on-sells electricity to an end-user, the Consumer’s agreement with the end-user will include provisions that exclude all Distributor Warranties.</p>	<p>Clause 26.9(b)</p>
<p>The Consumer will indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud, dishonesty or wilful breach of the Consumer Contract between the Retailer and the Customer.</p>	<p>Clause 26.10(a)</p>
<p>The Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Consumer under the Consumer Contract.</p>	<p>Clause 26.10(b)</p>

SCHEDULE 5 – COMMUNICATION POLICIES

PART A – SERVICE INTERRUPTIONS

Unplanned Service Interruptions

- S5.1 The Distributor will, as soon as reasonably practicable but no later than the periods specified in paragraphs (a) below after first becoming aware of an Unplanned Service Interruption and that the Unplanned Service Interruption is affecting 20 or more Consumers, communicate to the Retailer to provide relevant information that enables the Retailer to respond in an informed manner to calls from affected Consumers, in a manner reasonably determined by the Distributor from time to time. Such information should include, if known, a description of the reason for the interruption, the general area affected and an estimated time for restoration.
- (a) Staffed control room hours – 15 minutes
- S5.2 If 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, in the manner reasonably requested by the Distributor from time to time.
- S5.3 The following situations will trigger the Distributor’s media communication process:
- (a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 24 hours in duration, and that affects (without limitation):
- (i) more than 10% of Consumers;
 - (ii) a central business district;
 - (iii) an industrial area;
 - (iv) supply to critical facilities such as hospitals, pumping stations, dairy farms; or
 - (v) 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 (refer S5.17)

- S5.4 If required, and subject to clause 31.2, the Retailer will provide Consumer contact information to the Distributor on a monthly basis. The information will be provided in the manner reasonably requested by the Distributor from time to time.
- S5.5 For all Planned Service Interruptions, the Distributor will provide each of the Consumers it identifies as being affected with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 5 Working Days prior to the date on which the Planned Service Interruption is scheduled. Such notice will be provided in the manner reasonably determined by the Distributor from time to time
- S5.6 The Distributor will provide the Retailer with notice of the Planned Service Interruption in the manner reasonably determined by the Distributor from time to time at least 5 Working Days before the Planned Service Interruption is scheduled.

PART B – CONSUMER COMPLAINTS

- S5.7 If the Retailer receives a network related complaint (including in relation to Distribution Services) from a Consumer, it will refer the complaint to the Distributor in accordance with the Dispute Resolution Scheme, including providing details of the complaint to the Distributor, and giving written notice to the Consumer that the Distributor is managing the complaint. The Distributor shall acknowledge the referral to both the Retailer and the Consumer as soon as possible in accordance with the Dispute Resolution Scheme.
- S5.8 Upon receipt of a complaint from a Consumer, or from the Retailer (including where the Retailer is managing a network related complaint for the Consumer), the Distributor will complete its investigation and provide information to the Consumer, or to the Retailer (where the Retailer is managing the complaint for the Consumer), to enable resolution of the Consumer's complaint within the timelines set out in the Dispute Resolution Scheme and avoid referral to the Electricity and Gas Complaints Commission.
- S5.9 Should the Consumer wish for the complaint to be managed by the Retailer, the Distributor and the Retailer will as soon as possible after the complaint is received discuss the complaint and the Distributor and the Retailer may agree for the Retailer to manage and resolve the complaint in accordance with the Dispute Resolution Scheme.

- S5.10 If the Retailer assumes the management of the complaint, the Retailer shall make it clear to the relevant Consumer and the Dispute Resolution Scheme that the Retailer is managing the complaint.
- S5.11 Where the Retailer is managing the complaint for the Consumer, the Distributor will within 5 Working Days of receipt of the complaint from the Retailer complete its investigation and provide information to the Retailer, or otherwise provide an acknowledgment that the Distributor is investigating the complaint, what specifically is being done, and the expected timeframe to complete the investigation and provide the required information. However, in any event, the Distributor will complete its investigation and provide information to the Retailer so that the Retailer can offer a resolution to the Consumer within the timelines set out in the Dispute Resolution Scheme and avoid referral to the Electricity and Gas Complaints Commission.
- S5.12 The Distributor will remedy any complaints under its control in a timely manner, in accordance with Good Electricity Industry Practice.

SCHEDULE 6 – CONNECTION POLICIES

Introduction

- S6.1 The Distributor and the Retailer recognise that the process of managing connections and disconnections of ICPs on the Network requires significant co-ordination between them.
- S6.2 This schedule sets the processes that the Distributor and Retailer will follow in respect of:
- (a) new connections;
 - (b) capacity changes to existing connections;
 - (c) Temporary Disconnections and associated Reconnections;
 - (d) Vacant Site Disconnections and associated Reconnections;
 - (e) Decommissioning ICPs; and
 - (f) Unmetered Load.

Information content and transmission media

- S6.3 The clauses set out below focus on the 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. The parties agree that the information content and transmission media will be consistent with the relevant EIEP, or in the absence of a relevant EIEP or capability by either or both parties to use the relevant EIEP, as agreed between the parties.

Process for new connections or changes in capacity

- S6.4 The Distributor may receive applications from:
- (a) the owner of a premises not currently connected to the Network or the owner's agent (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created; and
 - (b) a Consumer (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for an increase or decrease in the capacity of an existing connection.

- S6.5 The Distributor will undertake an impact assessment to determine whether the capacity required for the connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S6.6 If the Distributor agrees to supply a new connection or change the capacity of an existing connection, and the Requesting Party agrees to terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 2 Working Days of the ICP identifier, the NSP to which the ICP is or will be connected, the allocated Price Category and, if the ICP is a new ICP, that the ICP is ready to be electrically connected. If the ICP is eligible for more than one Price Category, the Retailer may advise the Distributor of its preferred Price Category in accordance with clause 10.2.
- S6.7 The Distributor or the Retailer (if authorised by the Distributor) will arrange for the ICP to be electrically connected (using a Warranted Person) once approval has been granted by the Distributor. The party electrically connecting the ICP will, unless otherwise agreed, notify the other party within 2 Working Days of the ICP being electrically connected.
- S6.8 Both parties will update the status of the ICP in the Registry throughout this process in accordance with the Code.

Timeframe for electrically connecting standard new connections

- S6.9 The timeframe for electrically connecting a standard new ICP connection (if all necessary equipment is in place, line upgrades or extensions are not required and other requirements are met and is within the Distributors control), is within 2 Working Days after a request is made by the Retailer. The timeframe for electrically connecting all other ICP connections will be as agreed between the parties.

Temporary Disconnections and associated reconnections

- S6.10 **Consumers' Installations to be compliant:** The Retailer will, subject to clause 29.1, ensure that its Consumer Contracts require the Consumer to ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards, including (if applicable) by ensuring that any alteration is certified by a suitably qualified person.
- S6.11 **ICPs not to be Decommissioned without notice:** Subject to section 105 of the Act and any agreement the Distributor may have with a Consumer, the parties agree that

neither party will seek to have an ICP Decommissioned without first giving the other party 24 hours' notice or any other notice period agreed by the parties.

- S6.12 **Warranted Persons:** Each party will ensure that any person that it engages to carry out any activity related to Energising, De-energising and Decommissioning ICPs involving work on the Network, or performing any other work on the Network, is a Warranted Person.
- S6.13 **Disconnection by the Retailer:** The parties agree that a Temporary Disconnection of an ICP at which the Retailer supplies electricity may be carried out by the Retailer in the following circumstances:
- (a) if in an emergency it is necessary to avoid endangering persons or property;
 - (b) for credit reasons; or
 - (c) if requested by the Consumer, for safety or other reasons.
- S6.14 **Disconnection by the Distributor:** The Retailer will, subject to clause 29.1, ensure that its Consumer Contracts require that, subject to clauses S6.15 to S6.17, the Distributor may perform a Temporary Disconnection in relation to a Consumer's 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 the 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;
 - (f) if a Consumer does any of the things prohibited under clauses 14.1 or 14.7, or fails to do any of the things required of it as contemplated in clause 15; or
 - (g) if the Distributor has provided substantive evidence of theft by the Consumer and the Retailer, acting reasonably, has agreed to a Temporary Disconnection by the Distributor; or
 - (h) on termination of this agreement.

S6.15 Notice of disconnection if event is within Consumer's control: Subject to clause S6.19, if the Distributor intends to perform a Temporary Disconnection as contemplated in clause S6.14, the Distributor will give the Retailer notice of the Temporary Disconnection as follows:

- (a) the Distributor will give the Retailer at least 5 Working Days' prior notice of disconnection if the Distributor intends to perform a Temporary Disconnection because:
 - (i) the Consumer failed to provide the Distributor with access in accordance with its Consumer Contract; or
 - (ii) the Consumer damaged or interfered the Distributor's Equipment or Network or there is evidence of theft; or
- (b) the Distributor will give the Retailer at least 10 Working Days' prior notice of disconnection if the Distributor intends to perform a Temporary Disconnection where the Consumer fails to do any of the things required of it as contemplated in clause 13.

S6.16 Content of notice of disconnection for events within Consumer's control: The notice of Temporary Disconnection provided by the Distributor to the Retailer under clause S6.15 will specify:

- (a) the ICP identifier relating to the Consumer breach;
- (b) the particulars of the Consumer breach;
- (c) the remedy required if disconnection is to be avoided; and
- (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.

S6.17 Retailer to provide notice of disconnection to Consumer: On receipt of a notice of breach by a Consumer under clause S6.15, the Retailer will promptly forward a physical notice to the relevant Consumer and include mail, email and telephone contact details that the Consumer may use to communicate with the Retailer over the matter. The Retailer will promptly forward to the Distributor any response received from the Consumer and the Distributor will consider in good faith all such responses it receives. The Retailer and the Distributor will work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.

S6.18 Notice of disconnection if event is outside the Consumer's control: Subject to clause S6.19:

- (a) if the Distributor intends to perform a Temporary Disconnection under clause S6.14, S6.14(c) or S6.14(h), the grounds for the Temporary

Disconnection are not being reasonably Disputed by the Retailer, and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor will give each Consumer:

- (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such notice to include the reason for the Temporary Disconnection and be sent to each Consumer's last address provided to the Distributor by the Retailer, or if no address has been provided as the Retailer has no Consumer at that ICP, the notice will be sent to the Consumer's address on the Registry, and the Distributor will provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;
 - (ii) a final warning not less than 48 hours nor more than 7 days before the disconnection. The final warning will provide the timeframes for disconnection. This will be a separate notice to the one provided at least 9 Working Days prior to disconnection;
 - (iii) if disconnection is not completed within the timeframes notified, the Distributor will issue another final warning not less than 48 hours nor more than 7 days before disconnection:
- (b) if the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.14, S6.14(a) or S6.14(b), the Distributor will use its best endeavours to give each Consumer as much prior notice as reasonably practicable, but in any event will notify the Consumer no later than 2 days after the Temporary Disconnection.

S6.19 Authority guidelines: Notwithstanding clauses 3.6(b), 13.3, S6.14, or any other relevant provision in this agreement, the parties will work together in good faith to ensure that if the Retailer identifies a Consumer as being either a medically dependent or a vulnerable consumer for the purposes of the Electricity Authority guidelines on arrangements to assist vulnerable and medically dependent consumers, then in respect of any proposed Temporary Disconnection in any of the circumstances in clause S6.14, the notice requirements of those guidelines will be complied with to the fullest extent practicable in the circumstances.

S6.20 Each party to give notice of Temporary Disconnection: The party that performs a Temporary Disconnection in respect of a Consumer will (unless otherwise agreed) notify the other party of that fact no later than 2 Working Days after the Temporary Disconnection. To avoid doubt, the status of the ICP in the Registry is only to be changed by the party undertaking the Temporary Disconnection to "inactive" if the Temporary Disconnection remains in effect for more than 5 Working Days.

S6.21 **Restoration of connection:** If either party has performed a Temporary Disconnection in respect of a Consumer's ICP, the party that performed the Temporary Disconnection will take reasonable steps to arrange restoration of supply to the connection as soon as reasonably practicable and no longer than 3 Working Days after conditions for reconnection have been satisfied.

Vacant Site Disconnections and associated reconnections

S6.22 The Retailer may undertake a Vacant Site Disconnection of an ICP if:

- (a) the Retailer is recorded as the retailer for the ICP in the Registry;
- (b) the ICP has an "active" status in the Registry; and
- (c) in respect of that ICP, no Consumer Contract exists with the Retailer,

and should undertake a Vacant Site Disconnection of an ICP without delay if the above criteria apply and the ICP has been inactive for at least 30 Working Days.

S6.23 The Retailer may reconnect an ICP that is subject to a Vacant Site Disconnection if it wishes to supply electricity to that ICP. If the ICP has not been electrically connected for more than 6 months, the Retailer will 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 person authorised to certify mains work. A copy of the certificate issued following such an inspection will either be provided to the Distributor, or held by the Retailer at the Retailer's offices for the later inspection by the Distributor, before the ICP is Re-energised.

S6.24 The Retailer will ensure that Vacant Site Disconnections and associated reconnections are carried out in accordance with the Distributor's reasonable operational work practices for managing vacant sites. If a Vacant Site Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.

S6.25 The Retailer may give the Distributor notice that the Distributor is responsible for completing the Vacant Site Disconnection for an ICP if:

- (a) the Retailer wishes to carry out a Vacant Site Disconnection for the ICP;
- (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 Electricity Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s).

- S6.26 If the Retailer gives the Distributor notice under clause S6.25:
- (a) the Distributor will endeavour in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;
 - (b) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound to install such a device if it considers in its opinion that it would be impractical or unreasonably costly to do so; and
 - (c) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.
- S6.27 The party performing the disconnection or reconnection will, unless otherwise agreed, notify the other party within 2 Working Days of completion of the work.
- S6.28 Both parties will update the Registry throughout this process in accordance with the Code.

Decommissioning an ICP

- S6.29 A Distributor may Decommission an ICP in the following circumstances, provided that the requirements of section 105 of the Act and Part 11 of the Code are met:
- (a) the Distributor is advised by a Retailer that electricity is no longer required at the ICP;
 - (b) it is necessary to Decommission the ICP because public safety is at risk;
 - (c) the Registry notifies the Distributor that the ICP has the status of “Inactive”, with the reason given “De-energised – ready for decommissioning”, the ICP has been De-energised and the Retailer has attempted to recover the meters; or
 - (d) if the Distributor has not supplied Distribution Services in respect of the ICP for 6 months or more,

provided that in respect of paragraphs (a) and (d), the Distributor will, unless advised by the Retailer, notify the Retailer before Decommissioning the ICP to enable the Retailer to arrange for removal of the Metering Equipment (if appropriate) and updating of the Registry.

- S6.30 A Decommissioning will be performed by removing all or part of the Consumer Service Line to the ICP, or if a shared Consumer Service Line forms part of the supply, by isolating and removing the load side cable from the main switch at the meter board

and removing any associated meters. In all circumstances, the property will be left electrically safe.

- S6.31 The party performing the Decommissioning will notify the other party within 2 Working Days of the Decommissioning having been completed.
- S6.32 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier will not be used again and the process for new connections will be followed if supply is required again at the property.
- S6.33 Both parties will update the Registry throughout this process in accordance with the Code.

Unmetered Load

- S6.34 If the Retailer is responsible for an ICP that includes Unmetered Load, the Retailer will provide information about the ICP to the Registry in accordance with the Code.
- S6.35 The Distributor will maintain a database of ICPs that include Unmetered Load and, if it becomes aware of changes to any Unmetered Load, the Distributor will update its database and the Registry and notify the Retailer of those changes in accordance with the Code. The detail included in the database will include, at a minimum, information necessary to support the Registry.
- S6.36 If the Retailer notifies the Distributor that Unmetered Load is shared between several Consumers, the Distributor will, if requested, allocate the Unmetered Load to the appropriate ICP and advise the Retailer and all other affected retailers in accordance with the Code.
- S6.37 Both parties will align their processes and populate the Registry, in particular the format of Unmetered Load data populated in the Registry, in accordance with the Electricity Authority's "Guidelines for Unmetered Load Management – Version 2.1" dated 1 November 2010, as updated from time to time.

SCHEDULE 7 – PRICING PRINCIPLES

The Distributor’s Pricing Principles are contained in the documentation referred to in Schedule 9 Pricing Information.

SCHEDULE 8 – LOAD MANAGEMENT

Rights to control load

S8.1 As provided for in clauses 6.1 and 6.2, control of the load at an ICP at which the Retailer supplies electricity may be undertaken by either the Distributor or the Retailer or, feasibly, by both parties. This schedule sets out additional obligations of the parties in each of these situations.

Use of controllable load

S8.2 To facilitate the use of a Load Control System to achieve the highest value, the party that has obtained the right to control a load may assign that right to another party (provided that the party obtains the right to make such an assignment from the Consumer).

S8.3 The purposes for which load control can be used (provided that the relevant party obtains the right to control the load in accordance with clause 6.1 or 6.2) include:

- (a) **System Security:** managing Grid System Security in accordance with the Code;
- (b) **Network management:**
 - (i) managing Network system security;
 - (ii) reducing transmission charges; and
 - (iii) optimising Network investment;
- (c) **Market participation:**
 - (i) managing wholesale electricity purchase cost risk (e.g. the time-shifting of consumption); and
 - (ii) providing interruptible load into the reserves market.

Coordination of split ownership Load Control Systems

S8.4 If the Retailer provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:

- (a) The Distributor will provide the Retailer with details of the technical characteristics of the Load Control Equipment appropriate for use with the Distributor's Load Signalling Equipment in each Network area.
- (b) If the Distributor has obtained the right to control load at an ICP in accordance with clause 6.1, the Retailer will install Load Control Equipment that reliably receives the Distributor's load control signals and controls the relevant load. If the Distributor's specific Controlled Load Option makes it necessary for the Retailer to install additional Metering Equipment that separately measures and records controlled load electricity consumption, the Retailer will install the Metering Equipment (provided that the parties acknowledge that such installation does not give the Distributor the right to change the eligibility criteria for Price Categories or Tariff Options in a manner that would require a mass change to existing metering installations).
- (c) If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it will first seek to negotiate suitable terms with the Retailer for the upgrade of the Retailer's 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.
- (d) The Distributor may periodically, but not more than once in any 12 month period, undertake an audit of Load Control Equipment performance within a Network area that it defines. The audit will review the proper functioning of the Load Control Equipment for a randomly selected sample of ICPs to which the Retailer supplies electricity. The sampling technique will be consistent with the methodology outlined in Part 10 of the Code that applies to selecting samples of meters.
- (e) If the sample audit shows that Load Control Equipment for which the Retailer is responsible is not functional in respect of a number that is greater than 5% of the sample, the Distributor and Retailer will, within 40 Working Days of the Distributor notifying the Retailer of the results of the audit, meet and agree a programme including scope and timeframe within which the non-functioning Load Control Equipment will be identified and repaired. The Retailer will pay the reasonable costs of any inspection (including the initial audit) and repair work identified.

- (f) If the audit identifies non-functional Load Control Equipment due to low signal levels or faults on a pilot wire network that are the responsibility of the Distributor, those failures will be excluded from the audit results.
- (g) If the audit shows that Load Control Equipment for which the Retailer is responsible is functional for 95% or more of the Consumers sampled, the cost of the audit will be the responsibility of the Distributor, but the Retailer will be required to remedy all defects found in respect of non-functional Load Control Equipment for which the Retailer is responsible.

Either party may obtain Load Management Services from the other

- S8.5 Either party that has obtained the right to control load at an ICP in accordance with clause 6.1 or 6.2 may provide Load Management Services to the other party as an Additional Service.
- S8.6 If a party requests Load Management Services from the other party, the parties will negotiate the provision of additional Load Management Services in good faith.
- S8.7 **Distributor Load Management Service - Priority and Use:** Where the Distributor has obtained rights to control load at an ICP either through the Consumer's acceptance of the Retailer's price option incorporating the Controlled Load Option, or by assignment of load control rights to the Distributor by the Retailer, the Distributor and the Retailer agree, whenever conflicting demands over the use of Load Management arise, the following priorities will be followed:

(a) **Priorities:**

First ranking priority for the use of Load Management Services will be for coordinated industry wide initiatives to:

- (i) manage System Security of the Grid in accordance with the Code
- (ii) manage energy security in accordance with the Code (e.g. centralised System Operator instruction for extended hot water cuts in event of an energy supply crisis)

Second ranking priority will accrue to the Distributor for Network related purposes including:

- (iii) managing security on the local transmission Grid and the Distributor's Network
- (iv) Network investment cost optimisation
- (v) Transmission cost minimisation

S8.8 Retailer Load Management Service:

Where the Retailer has obtained rights to control load at an ICP and the Retailer is able to manage load independently of the Distributor and the Distributor's Load Signalling Equipment, the Retailer will agree, subject to Clause 6.6 of this Agreement, a protocol with the Distributor concerning use of its load control capability with respect to:

- (i) Grid and Network security requirements
- (ii) Transmission costs
- (iii) Load Management coordination where the Distributor also retains load control rights and capability
- (iv) Load restoration coordination
- (v) Applicable network tariff options
- (vi) Communication protocols
- (vii) Services available to the Distributor

SCHEDULE 9 – PRICING INFORMATION

S9.1 This schedule contains:

- (a) a reference to a document that provides a description of the Distributor's current Pricing Methodology; and
- (b) a reference to a document that provides a schedule of the Distributor's current Pricing Policy and Schedules which sets out the Price Categories, Tariff Options (if any) and Tariff Rates, including, for each Price Category and Tariff Option, the applicable eligibility criteria, and loss factors.

S9.2 A document containing the Distributor's Pricing Methodology the Distributor's Pricing Policy and Schedules are each available at the Distributor's website: www.topenergy.co.nz