



Use of System Agreement for Gas Network

Vector Limited (Distributor)

[] (Retailer)

[Insert date]

Version 1.0

June 2024

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PARTIES

Distributor:	Vector Limited
Distributor's Details:	
Street Address:	Level 6, 110 Carlton Gore Road, Newmarket, Auckland, 1023
Postal Address:	PO Box 99882, Newmarket, Auckland 1149
Address for Notices:	110 Carlton Gore Road, Newmarket, Auckland, 1023
Contact Person's Details:	
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Position:	Contracts and Relationship Manager – Retailers
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with a copy to:	legalservices@vector.co.nz
Retailer:	[insert full legal name of Retailer]
Retailer's Details:	
Street Address:	[insert]
Postal Address:	[insert]
Address for Notices:	[insert]
Contact Person's Details:	
Name:	[insert]
Position:	[insert]
Phone:	[insert]
Email Address:	[insert]

COMMENCEMENT DATE

[insert date]

SIGNATURES

Distributor: Vector Limited

**Retailer: [insert full legal name of
Retailer]**

Signature

Signature

Name of authorised person signing for
Distributor

Name of authorised person signing for
Retailer

Position

Position

Date

Date

INTRODUCTION

- A. The Distributor agrees to provide the Distribution Services to the Retailer on the terms and conditions set out in this Agreement.
- B. The Retailer agrees to purchase the Distribution Services from the Distributor on the terms and conditions set out in this Agreement.
- C. As at the Commencement Date, the Retailer is responsible for the Distribution Services Charges for the participant codes listed in Schedule 11.

PART I – AGREEMENT TERM AND SERVICE COMMITMENTS

1. TERM OF AGREEMENT

- 1.1 **Commencement:** This Agreement commences on the Commencement Date specified on the execution page.
- 1.2 **Termination:** This Agreement continues until it is terminated under clause 19 or otherwise at law.

2. SUMMARY OF GENERAL OBLIGATIONS

- 2.1 **Purpose of clause:** This clause is intended to provide an overview of each party's obligations under this Agreement and does not impose any legal obligations on either party.
- 2.2 **Summary of Distributor's general obligations:** In summary, this Agreement requires the Distributor to provide Distribution Services to the Retailer as follows:
 - (a) maintain and operate the Network in accordance with clause 2.4;
 - (b) provide conveyance of gas over the Network to each Point of Connection up to the applicable MHQ for the corresponding ICP in accordance with clause 15;
 - (c) use reasonable endeavours to provide service interruption information under clause 4 and Schedule 5;
 - (d) manage load on the Network during a System Emergency Event under clause 4 and Schedule 4;
 - (e) investigate the cause of adverse trends in UFG in accordance with clause 6;
 - (f) allocate Price Categories to ICPs under clause 8;
 - (g) process applications for new connections and changes to the capacity of existing connections, and comply with arrangements for disconnections and reconnections and decommissioning of ICPs, under clause 17 and Schedule 6;
 - (h) provide information in accordance with GIEPs under clause 31 and Schedule 2;
and
 - (i) use reasonable endeavours, consistent with Good Gas Industry Practice, to comply with the Service Levels specified for each Service Standard in Schedule 1.

2.3 **Summary of Retailer's general obligations:** In summary, this Agreement requires the Retailer to perform obligations as follows:

- (a) pay the charges for Distribution Services and any Network Related Service Charges and provide billing information under clause 9 and Schedule 2;
- (b) meet prudential requirements under clause 10;
- (c) supply interval data from each TOU Meter to the Distributor as set out in clause 12.15;
- (d) ensure that any contract it has for the purchase of gas where such gas will enter the Network requires that all gas will comply with the Gas Specification under clause 14;
- (e) use reasonable endeavours to provide service interruption information under clause 4 and Schedule 5;
- (f) direct Customers to curtail demand, or curtail demand directly where the Retailer has the capability to do so through remotely-controlled equipment installed at the Customer's Premises, in each case in accordance with instructions from the Transmission System Owner during a Critical Contingency Event under clause 4 and Schedule 4;
- (g) provide information to the Distributor to help identify the cause of adverse trends in UFG under clause 6;
- (h) process applications for new connections and changes to the capacity of existing connections, and comply with arrangements for disconnections and reconnections and decommissioning of ICPs, under clause 17 and Schedule 6;
- (i) have a Supply Agreement with each Customer for the supply of gas that contains terms that meet the requirements of clause 29 (as summarised in Schedule 10), including procuring from each Customer;
 - (i) access to Customer's Premises for the Distributor under clause 11;
 - (ii) non-interference and damage undertakings under clause 12;
 - (iii) an undertaking that Customer Installations will comply with the Distributor's Network Connection Standards under clause 13;
- (j) ensure a GMS is installed at each Customer's ICP and comply with the obligations relating to metering as set out in clause 12 and Schedule 8;
- (k) provide information in accordance with clause 31 and Schedule 3;
- (l) notify the Distributor if any participant codes applying to it change from those listed in Schedule 11, in accordance with clause 3.4; and
- (m) use reasonable endeavours, consistent with Good Gas Industry Practice, to comply with the Service Levels specified for each Service Standard in Schedule 1.

2.4 **Maintenance and operation of the Network:** Subject to the terms of this agreement, the Distributor will maintain and operate the Network in accordance with Good Gas Industry Practice and in compliance with Law.

3. RELATIONSHIPS WITH CONSUMERS

- 3.1 **Supply Agreement:** The Retailer must ensure that it has a current Supply Agreement for the supply of gas and Distribution Services with each Customer, on terms consistent with the requirements of clause 29 and Schedule 10 (Supply Agreements).
- 3.2 **Network pricing agreement:** The Distributor may have a network pricing agreement with a consumer which applies to one or more ICPs and provides for a capital contribution towards an investment in the Network and/or non-standard network charges and/or a termination fee payable. The capital contribution and/or termination fee, if any, is payable by the consumer direct to the Distributor, while the non-standard network charges are subject to the NCA signed between the Distributor and responsible retailer. Where the Retailer is the responsible retailer and the consumer is a Customer, the Distributor will invoice the network charges to the Retailer based on the terms of the NCA.
- 3.3 **Non-compliant consumers:** Where the Distributor becomes aware that a consumer is being supplied with gas delivered over the Network without being party to a current agreement for the supply of gas and Distribution Services with a retailer (“non-compliant consumer”), then without limiting any other right of the Distributor under this Agreement:
- (a) if there is no corresponding ICP in the Registry, the Distributor will create an ICP and give notice to the Retailer (along with any other Distribution Services User that is a retailer operating in the relevant region) of the non-compliant consumer and corresponding ICP suggesting that they take up the opportunity to enter into an agreement for the supply of gas and Distribution Services with that consumer. Unless within 20 Working Days of receiving that notice a retailer has entered into an agreement providing for immediate commencement of the supply of gas and Distribution Services at that ICP, and notified the Distributor accordingly (and updated the Registry), the Distributor may, subject to clause 17, disconnect the consumer’s Gas Installation at that ICP;
 - (b) if there is a corresponding ICP in the Registry, and the ICP status code on the Registry indicates the responsible retailer does not have an agreement for the supply of gas and Distribution Services or has failed to identify that gas is able to flow to the consumer’s Gas Installation and updated the Registry accordingly, then the Distributor will give notice to the responsible retailer to address the non-compliance. Unless within 20 Working Days of receiving that notice the responsible retailer has rectified the non-compliance and notified the Distributor accordingly (and updated the Registry), the Distributor may, subject to clause 17, disconnect the consumer’s Gas Installation at that ICP. The Distributor may also recover unbilled Distribution Services Charges for the ICP from the Retailer in respect of any period during which it was (or, where applicable, any of its Third Party Retailers were) the responsible retailer for that ICP, but in any event from no earlier than 14 months before the date of the notice.
- 3.4 **Retailer’s and Third Party Retailer’s participant codes:** The Registry participant codes applying to the Retailer and any Third Party Retailer as at the Commencement Date are set out in Schedule 11. The Retailer will promptly notify the Distributor whenever the participant codes applying to it change, providing all relevant information.

4. SERVICE INTERRUPTIONS

General

- 4.1 **Communication about Service Interruptions:** The parties must use reasonable endeavours to comply with any requirements relating to communication about Service Interruptions set out in Schedule 5.
- 4.2 **Distributor may Publish Service Interruption information:** Subject to Law, the Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption.
- 4.3 **Obligations during System Emergency Event:** Each party must use reasonable endeavours in accordance with Good Gas Industry Practice to comply with the Distributor's System Emergency Event management policy set out in Schedule 4 and the Critical Contingency Regulations, including, to the extent reasonably required, by assisting the other party to comply with any instructions received from the Transmission System Owner to curtail demand on the Network. A failure by a party to comply with the System Emergency Event management policy set out in Schedule 4 is not a breach of this Agreement except to the extent that party has failed to use reasonable endeavours as required by this clause.
- 4.4 **Load Shedding:** The Distributor may carry out Load Shedding in 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 4.6, 4.8, 4.10, and Schedule 5 as applicable;
 - (b) **Permitted by Service Standards:** as permitted by the Service Standards;
 - (c) **Compliance with instructions from the Transmission System Owner:** to assist the Retailer to comply with any instructions received from the Transmission System Owner to curtail demand by Customers in accordance with the Critical Contingency Regulations;
 - (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
 - (i) maintain a safe environment, consistent with the Distributor's health and safety policies;
 - (ii) prevent unexpected short-term overloading of the Network;
 - (iii) prevent the Network or GMS outlet pressures rising or falling outside safe levels;
 - (iv) manage Network security; and/or
 - (v) avoid or mitigate damage to the Network or any equipment connected to the Network;
 - (e) **Compliance with the law:** to comply with Law;
 - (f) **Force Majeure Events:** If a Force Majeure Event is occurring or, in the Distributor's reasonable opinion, is likely to occur; or

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

Unplanned Service Interruptions

- 4.5 **Party responsible for Unplanned Service Interruption calls:** The party responsible for receiving Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until normal service is restored, as necessary, is identified in Schedule 5.
- 4.6 **Notification of Unplanned Service Interruptions:** If an Unplanned Service Interruption occurs, the Distributor and the Retailer will use reasonable endeavours to comply with the Service Interruption communication requirements set out in Schedule 5.
- 4.7 Not used.

Planned Service Interruptions

- 4.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor must, as far as is reasonably practicable, schedule Planned Service Interruptions in a safe and efficient manner and with consideration to minimising disruption to Customers.
- 4.9 **Responsibility for notification of Planned Service Interruptions:** The party responsible for notifying Customers of a Planned Service Interruption is identified in Schedule 5.
- 4.10 **Parties to comply with notification requirements:** The Distributor and the Retailer must use reasonable endeavours to comply with any requirements set out in Schedule 5 in relation to the notification of Planned Service Interruptions.

Restoration of Distribution Services

- 4.11 **Distributor to restore Distribution Services as soon as practicable:** In the case of a Service Interruption, the Distributor must endeavour in accordance with Good Gas Industry Practice to restore the Distribution Services:
- (a) for Unplanned Service Interruptions, as soon as reasonably practicable and no later than the timeframes set out in Schedule 1; and
 - (b) for Planned Service Interruptions, as soon as reasonably practicable and no later than the timeframe set out in the notice for Planned Service Interruptions sent to the Customer.
- 4.12 **Retailer's remedy:** The Retailer's only remedy if the Distributor fails to meet the timeframes in clause 4.11 is the payment of a Service Guarantee Payment (if any) in accordance with Schedule 1.

5. EQUAL ACCESS AND EVEN-HANDED TREATMENT

- 5.1 **Equal access and even-handed treatment:** The Distributor will give all Distribution Services Users equal access to Distribution Services and will treat all Distribution Services Users even-handedly in relation to Distribution Services, provided that:

- (a) this will not apply to the exercise of any discretion the Distributor may have under clause 10 (Prudential Requirements), 12 (General Operational Requirements), 18 (Breaches and Events of Default), 19 (Termination), 20 (Confidentiality) or 21 (Force Majeure), or under paragraphs S9.31 or S9.32 of Schedule 9 (Third Party Retailers);
- (b) this will not require the Distributor to offer the Retailer any terms or conditions agreed by the Distributor with another person for the provision of Distribution Services, except in accordance with clauses 5.2 and 5.3.

For this purpose, the Retailer acknowledges that the Distributor's pricing and price methodologies may vary according to factors such as network region, consumer type, connection type, term and/or volume commitments, and any other criteria that the Distributor considers relevant, so that in practice the overall impact of the pricing and price methodologies may vary between Distribution Services Users.

5.2 Distributor to notify Retailer of alternative agreements: Within 20 Working Days after signing an agreement with different terms to the Distributor's standard agreement as published, or an amendment to an agreement, with another Distribution Services User relating to the supply of Distribution Services covering all or any part of the Network, other than a NCA (the agreement or amended agreement being an "**Alternative Agreement**"), the Distributor must notify the Retailer in writing of the existence of the Alternative Agreement, provide the Retailer with access to a copy of the Alternative Agreement, and invite the Retailer to adopt the Alternative Agreement in accordance with clause 5.3. To avoid doubt, the exercise of a discretion referred to in clause 5.1(a) will not give rise to any Alternative Agreement.

5.3 Retailer has sole discretion to adopt Alternative Agreements: At any time during the 12 months after the Distributor notifies the Retailer of an Alternative Agreement in accordance with clause 5.2, the Retailer may, at its sole discretion, choose to adopt the Alternative Agreement in its entirety in substitution for this Agreement. The Retailer may exercise this choice by giving notice to the Distributor identifying the Alternative Agreement that it wishes to adopt, in which case this Agreement will be deemed to have been terminated and replaced with a new agreement on the same terms as the Alternative Agreement, with effect from the date that is 20 Working Days after the day on which the Distributor receives that notice, and each party will promptly execute a copy of that new agreement if requested by the other. The provisions of clauses 19.5, 19.6, 19.7, 19.8, and 19.9 shall also apply in respect of a termination of this Agreement under this clause 5.3.

6. UFG

6.1 Distributor to investigate adverse trends in UFG: If over time the annual or rolling 12 months UFG (based on the difference between Gas Gate quantities and the aggregated consumption data provided by Distribution Services Users to support the billing of Distribution Services Charges) trend abnormally away from expected or historical UFG, 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 Distribution Services Users

and will, if requested by the Retailer, facilitate a meeting of all affected Distribution Services Users to attempt to resolve the matter.

- 6.2 **Retailer to provide information:** The Retailer must provide the Distributor with any additional consumption information reasonably requested by the Distributor to assist in identifying the cause of abnormal UFG. Such additional information must be provided within 15 Working Days of a request and may include, but is not limited to:
- (a) monthly consumption information submitted to the allocation agent for allocation purposes;
 - (b) monthly consumption billed to Customers;
 - (c) interval consumption data for ICPs with an advanced meter and/or meter with a TOU device.

PART II – PAYMENT OBLIGATIONS

7. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 7.1 **Distribution Services pricing information:** The Distribution Services Charges will be calculated in accordance with the Prices and pricing information referred to in Schedule 7. Schedule 7 identifies the reference material that defines the Distributor's:
- (a) Pricing Structure;
 - (b) Price Categories; and
 - (c) Standard Prices.
 - (d) The Distributor must ensure that the information it makes available in accordance with Schedule 7 is available in a standard, downloadable electronic document format in a form that permits electronic search and copy functions.
- 7.2 **Changes to Pricing Structure, Price Categories and Prices:** The Distributor may change:
- (a) its Prices as set out in clauses 7.3 and 7.5; and
 - (b) its Pricing Structure as set out in clauses 7.4 and 7.5; and
 - (c) its Price Categories at any time, provided that if any such change would have the effect of increasing the Price that applies at one or more ICPs for which the Retailer is currently responsible, the change must be carried out in accordance with the requirements of clauses 7.3 to 7.5 (to the extent applicable).
- 7.3 **Frequency of Price changes:** Unless otherwise agreed with the Retailer, the Distributor may not change its Standard Prices more than twice in any period of 12 consecutive months, unless a change is a material increase to 1 or more existing Prices and results from a change in:
- (a) a cost that is a pass-through cost or a recoverable cost specified in a determination of an input methodology by the Commerce Commission under Part 4 of the Commerce Act 1986 in respect of the services provided by the Distributor; or

- (b) the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed Price change must only apply to ICPs affected by the new or changed Distribution Services;
- (c) any determination, direction or decision of a statutory or regulatory body or authority, or from the reasonable costs incurred by the Distributor in order to comply with that determination, direction or decision; or
- (d) Law.

Nothing in this clause prevents the Distributor from decreasing a Price at any time, or from increasing a Price with the agreement of the Retailer or as permitted under any NCA.

7.4 Process to change Pricing Structure: If the Distributor intends to make a change to its Pricing Structure that will materially affect the Retailer or 1 or more Customers, the Distributor must first consult with the Retailer about the proposed change. If appropriate, the Distributor may consult jointly with the Retailer and all other Direct Distribution Services Users that are affected by the proposed change. Without limiting anything in clause 7.3, and unless the parties agree otherwise, the Distributor must:

- (a) notify the Retailer of the details of, and rationale for, the proposed change, and the date on which it is to take effect;
- (b) allow the Retailer a period of not less than 10 Working Days from the date of that notification during which the Retailer may provide written submissions to the Distributor in relation to the proposed change;
- (c) when finalising the proposed change, consider in good faith the submissions and other information received as part of the process set out in this clause 7.4; and
- (d) provide the Retailer with the final Pricing Structure and the reasons for the Distributor's decisions, in a manner that clearly sets out the changes made, at least 40 Working Days before the change comes into effect.

7.5 Notice of Price changes: In addition to any notification requirements under clause 7.4, if the Distributor makes or intends to make a Price change, the Distributor must:

- (a) give the Retailer at least 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 must give as much notice as is reasonably practicable;
- (b) if the Price change will result in an ICP or a group of ICPs being allocated to a different Price Category, without limiting clause 8, the Distributor must give the Retailer a mapping table that clearly shows:
 - (i) the new Price Category to which each affected ICP or group of ICPs is to be allocated; and
 - (ii) the Price Category that applied to each affected ICP or group of ICPs before the change was made; and
- (c) if the change includes changes to its Pricing Structure, provide a mark-up of changes from the previous Pricing Structure to ensure transparency for pricing analysts when processing and notifying Price changes to Customers.

7.6 **Pricing Structure and Price change disputes:** Once a change to a Pricing Structure has been finalised in accordance with clause 7.4, or a Price change is notified in accordance with clause 7.5, the Retailer may raise a Dispute under clause 23 in respect of the Pricing Structure or the Price change only on the basis that the Distributor has not complied with clause 7.4 or 7.5 (as the case may be). If a Dispute is raised, the Retailer must continue to pay the Distributor's Invoices for Distribution Services until the Dispute is resolved.

7.7 **Changes containing an error:** If the Retailer identifies an error in the Pricing Structure finalised and notified in accordance with clause 7.4, or an error in a Price change notified in accordance with clause 7.5 that arises from an obvious error in applying the Pricing Structure, the Retailer must bring that error to the Distributor's attention as soon as practicable after becoming aware of the error. The Distributor may correct such an error, including an error that it identifies itself, without having to re-consult under clause 7.4 or provide a further notification under clause 7.5(a) (as the case may be), provided that the correction of the error will not have a material effect on the Retailer or 1 or more Customers. To avoid doubt, the correction of an error in accordance with this clause is not a Price change for the purposes of clause 7.2 or 7.3.

8. ALLOCATING PRICE CATEGORIES TO ICPS

8.1 Distributor allocates Price Category:

- (a) The Distributor must allocate a Price Category to each ICP on its Network.
- (b) The Distributor must change the Price Category allocated to an ICP on its Network if it becomes aware that the attributes of the ICP or Customer's Gas Installation have changed such that the ICP is no longer eligible for the Price Category to which it is currently allocated.
- (c) The Retailer must provide, or must ensure that the Customer provides, the Distributor with the information reasonably required by the Distributor in order to initially allocate a Price Category to an ICP.
- (d) Whenever the Retailer becomes aware of any changes in respect of the ICP or Customer's Gas Installation that result in the ICP being ineligible for the Price Category to which it is currently allocated, the Retailer must promptly notify the Distributor and provide it with the information reasonably required by the Distributor in order to re-allocate that ICP to the most appropriate Price Category.

8.2 **Allocation of Price Categories if more than 1 option:** If there are 2 or more Price Categories within the Distributor's Pricing Structure for which an ICP is eligible, the Distributor must, acting reasonably, allocate 1 of the eligible Price Categories to the ICP in accordance with clause 8.3.

8.3 **Matters to have regard to in allocating Price Category:** In allocating a Price Category to an ICP or changing the Price Category allocated to an ICP, the Distributor must have regard to the following:

- (a) the eligibility criteria for each Price Category;
- (b) the attributes of the ICP or a change in the attributes of the ICP;

- (c) the default Price Category in the absence of a known preference notified by the Retailer; and
- (d) if known and relevant:
 - (i) the Retailer's or Customer's preference for a particular Price Category in respect of which the ICP is eligible;
 - (ii) the rated capacity of the GMS;
 - (iii) the ICP's historic demand profile;
 - (iv) the Customer's MHQ capacity requirements; and
 - (v) any other relevant factors.

8.4 Retailer may request allocation of an alternative eligible Price Category: At any time, the Retailer may request that the Distributor allocate an alternative eligible Price Category to an ICP, and must provide any information necessary to support its request including if requested independent documentary evidence reasonably satisfactory to the Distributor. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor must apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 10 Working Days (or such longer period as agreed between the Distributor and the Retailer) after receipt of notice of the Retailer's request. If the Distributor declines the request, it must provide the reasons for its decision. The Distributor is not required to change the Price Category of any given ICP more than once in any 12-month period, except where the Retailer produces evidence that since the last such change the supply at the ICP has changed to a new Customer or there has been a capacity change at the ICP.

8.5 Distributor may re-allocate ICPs between Price Categories: The Distributor is entitled to re-allocate any ICP or group of ICPs from one Price Category to another (including where one or more Price Categories are being closed and replaced), by giving not less than 40 Working Days' notice to the Retailer, so long as the re-allocation is in accordance with the Distributor's Price schedule and associated eligibility criteria and is based on the most up-to-date information and evidence held by the Distributor at the time of the notice.

8.6 Retailer request for reallocation of Price Category if it considers Price Category has been Incorrectly Allocated: Under this clause 8.6 and clauses 8.7 and 8.9, 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 to an ICP, the Retailer must notify the Distributor in writing of the reasons why it considers that the Price Category was Incorrectly Allocated and identify the 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 must 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 must provide the reasons for its decision. To avoid doubt this clause 8.6

does not apply if the Distributor has already provided notice to the Retailer that the relevant Price Category is Incorrectly Allocated under clause 8.9.

8.7 **Credit following correction:** If the Distributor allocates a Corrected Price Category to an ICP following notice from the Retailer given under clause 8.6, the Distributor must:

- (a) commence charging the Retailer in accordance with the Price(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to clause 8.8, and by issuing a Credit Note payable in the next monthly billing cycle or alternatively by applying the corrected Price Category in the relevant revision billing cycle(s), 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 8.7 is 14 months unless otherwise agreed or Gas Industry Co directs a special allocation under the Reconciliation Rules.

8.8 **Limitations on credits for Price Category corrections:** Clause 8.7(b) does not apply in respect of an ICP if:

- (a) clause 8.9 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 Customer 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 Customer 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 Customer or the Customer's representative.

8.9 **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 an ICP is not eligible for the Price Category to which it is currently allocated ("**Current Price Category**"):

- (a) the Distributor must notify the Retailer accordingly, including the reasons why it considers that the ICP is not eligible for its Current Price Category, and identify the Price Category or Price Categories it considers the ICP is eligible for;
- (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 ICP is eligible for the Current Price Category, the Distributor may:
 - (i) allocate the Price Category that it considers appropriate to that ICP, acting reasonably and consistently with clause 8.1 ("**Updated Price Category**"), and
 - (ii) commence charging the Retailer for Distribution Services in accordance with that Updated Price Category after a further 40 Working Days; and
- (c) the Distributor must provide to the Retailer information relevant to its decision; and
- (d) if the Price Category was previously eligible for the Current Price Category but subsequently became ineligible as a result of changes to the attributes of the ICP, and the Retailer failed to notify the Distributor of the changes as required under clause 8.1(d), the Distributor may recover from the Retailer any shortfall between:
 - (i) the Distribution Services Charges actually billed for that ICP over the period from the date 40 Working Days after the Retailer became aware of those changes up to the date 40 Working Days after the Distributor first became aware of those changes; and
 - (ii) any higher amount of Distribution Services Charges that the Retailer would have been entitled to bill for that same period had the ICP been re-allocated to the Updated Price Category 40 Working Days after the Retailer first became aware of those changes;
- (e) if the Price Category was ineligible for the Current Price Category when it was first allocated to that Price Category, due to incorrect or incomplete information having been provided by the Retailer or Customer under clauses 8.1 or 8.4 (excluding a genuine error by the Customer), the Distributor may recover from the Retailer any shortfall between:
 - (i) the Distribution Services Charges actually billed for that ICP over the period from the later of: (A) the date the Distributor allocated the Current Price Category to that ICP; and (B) the Switch Event Date for that ICP recorded for the Retailer, up to the earlier of: (C) the date on which the Distributor allocates the Updated Price Category; and (D) the date 40 Working Days after the Retailer notified the Distributor that the ICP was not eligible for the Current Price Category; and
 - (ii) any higher amount of Distribution Services Charges that the Retailer would have been entitled to bill for that same period had the ICP been allocated to the Updated Price Category instead of the Current Price Category;
- (f) the maximum period for which any shortfall will be payable under this clause 8.9 in respect of any one Price Category change is 14 months.

9. BILLING AND PAYMENT

- 9.1 **Billing and payment obligations:** Subject to the terms of this Agreement, the Distributor may invoice and the Retailer will pay the Distribution Services Charges, any Network-Related Services Charges and any other sums due to the Distributor under this Agreement. Each party agrees to comply with its obligations under this clause 9 and Schedule 2.
- 9.2 **Process to change billing policies and processes:** If the Distributor proposes to make a change to its billing policies and processes set out in Schedule 2 that could reasonably be expected to have a material impact on the Retailer it may not do so more than once in any period of 12 consecutive months unless otherwise agreed with the Retailer, and for all such changes the Distributor must first consult with the Retailer about the proposed change, as set out below. If appropriate, the Distributor may consult jointly with the Retailer and all other Direct Distribution Services Users that are affected by the proposed change. Without limiting this clause 9.2, and unless agreed otherwise, the Distributor must:
- (a) notify the Retailer of the details of, and rationale for, the proposed change, and the date on which it is to take effect;
 - (b) allow the Retailer a period of not less than 20 Working Days from the date of that notification during which the Retailer may provide written submissions to the Distributor in relation to the proposed change;
 - (c) when finalising the proposed change, consider in good faith the submissions and other information received as part of the process set out in this clause 9.2;
 - (d) provide the Retailer with a summary of submissions received from all Direct Distribution Services Users (but without identifying the Direct Distribution Services User or disclosing any confidential information if requested by the Direct Distribution Services User), along with the Distributor's responses to those submissions; and
 - (e) provide the Retailer with the updated billing policies and processes in the form of a replacement Schedule 2, and the reasons for the Distributor's decisions, at least 40 Working Days before the change comes into effect.
- 9.3 **Commencement and cessation of Distribution Services Charges:** The Distribution Services Charges will commence and cease for each ICP in accordance with the rules set out for that purpose in Schedule 2.
- 9.4 **Calculating Invoices for Distribution Services Charges:** The Retailer must provide information to enable the Distributor to calculate Distribution Services Charges and prepare Invoices, in accordance with Schedule 2.
- 9.5 **Estimation of Distribution Services Charges:** To the extent that the Retailer does not provide the required information to the Distributor in accordance with Schedule 2, the Distributor may estimate the Distribution Services Charges for the Consumption Month in accordance with Schedule 2.

- 9.6 **Issuing of Invoices:** The Distributor must issue to the Retailer Invoices for Distribution Services Charges, as follows:
- (a) a pro forma Invoice setting out the estimated Distribution Services Charges payable by the Retailer in respect of the Consumption Month, which shall be calculated in accordance with clause S2.7(a) and issued within 5 Working Days of the commencement of the Consumption Month;
 - (b) an initial Invoice for the Distribution Services Charges based on the information provided by the Retailer under clause 9.4, and any estimation permitted under clause 9.5, by the end of the month following the Consumption Month to which the Invoice relates. The initial Invoice will be issued as a new Invoice that replaces the pro forma Invoice previously issued by the Distributor for that Consumption Month pursuant to clause 9.6(a) and shall be accompanied by:
 - (i) a full Credit Note for the amount invoiced under the pro forma Invoice; and
 - (ii) a “scaling Invoice/credit” for the Distribution Services Charges as calculated in accordance with clause S2.7(c) (a “**Scaling Invoice**”).
- 9.7 **Wash-up adjustment:** The Distributor will revise the Distribution Services Charges for a Consumption Month from time to time at the frequency and to the extent set out in Schedule 2, to reflect more complete and accurate billing information provided to the Distributor during the period ending 14 months after the start of that Consumption Month (“**Wash-Up Period**”), and to reflect any Price Category adjustments notified under clause 8 during that same period. In such case:
- (a) The Distributor will issue a new Invoice to reflect any changes to the Distribution Services Charges which will be issued as a new Invoice that replaces the Invoice previously issued by the Distributor for that Consumption Month (a “**Revision Invoice**”). The Revision Invoice shall be accompanied by:
 - (i) a Credit Note for the previously issued Invoice (plus a Use of Money Adjustment if applicable);
 - (ii) a new Scaling Invoice (plus a Use of Money Adjustment if applicable); and
 - (iii) a full reversal of the previously issued Scaling Invoice.
 - (b) At the end of the Wash-Up Period, the Distribution Services Charges for that Consumption Month will cease to be revised any further under this clause 9.7 unless otherwise agreed or Gas Industry Co directs a special allocation in accordance with the Reconciliation Rules (in which case the Distributor will issue an additional Revision Invoice to reflect the revised consumption information submitted to the allocation agent by one or more retailers for the special allocation). This does not prevent either Party from disputing any Invoice issued within that Wash-Up Period on the basis that the amounts claimed or credited in that Invoice did not properly reflect the billing information provided to the Distributor prior to the Invoice being issued, or did not properly reflect any Price Category adjustments notified under clause 8 prior to the Invoice being issued.
- 9.8 **Accompanying Information:** The Distributor will provide to the Retailer information to enable the Retailer to verify the accuracy of any Invoice in accordance with Schedule 2.

- 9.9 **Due date for payment of pro forma Invoices:** The due date for payment of each pro forma Invoice issued by the Distributor pursuant to clause 9.6(a) is the 20th day of the Consumption Month to which the pro forma Invoice relates, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor fails to send a proforma Invoice to the Retailer within the period specified in clause 9.6(a), the due date for payment is extended by 1 Working Day for each Working Day of that delay,
- 9.10 **Due date for payment of other Invoices:** The due date for payment of each Invoice issued by the Distributor that is not a pro forma Invoice is the 20th day of the month following receipt of the Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor fails to send an Invoice to the Retailer within the period specified in clauses 9.6(b), 9.7 or 9.11(c) (as applicable), the due date for payment is extended by 1 Working Day for each Working Day of that delay.
- 9.11 Other invoices:
- (a) The Distributor may issue the Retailer with:
 - (i) an Invoice for payment for Network-Related Services Charges and any other sums due to the Distributor under this Agreement; and
 - (ii) a Credit Note for Service Guarantee Payments (if any) due to the Retailer.
 - (b) The Retailer may issue the Distributor with an Invoice for any other sums due to the Retailer under this Agreement.
 - (c) A party cannot invoice any amount under this clause if more than 14 months have elapsed since that party first became entitled to charge that amount under this Agreement.
- 9.12 **Interest on late payment:** Subject to clause 9.13, the Retailer or the Distributor (as the case may be) must pay any Invoice issued under this clause 9. If any part of an 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 Invoice remains unpaid.
- 9.13 Disputed Invoices:
- (a) If a party disputes an Invoice issued under this Agreement, , the party to which that Invoice was issued ("**Recipient**") may give notice to the other party ("**Issuer**") setting out reasonable details of the dispute no later than 18 months after the last day of the Consumption Month to which the Invoice relates (in each case, an "**Invoice Dispute Notice**").
 - (b) Where the Recipient issues an Invoice Dispute Notice before the due date for payment, it may withhold payment of the disputed portion of the Invoice until the dispute has been resolved, so long as it has given the Invoice Dispute Notice in good faith, and pays any undisputed portion of the Invoice by the applicable due date. If an Issuer disagrees with the matters set out in an Invoice Dispute Notice, either party may raise a Dispute in accordance with clause 23.

- (c) When the correct amount of the disputed Invoice is finally agreed by the parties or determined in accordance with clause 23 (“**Resolution Date**”), except to the extent the parties agree otherwise:
 - (i) where the Recipient has withheld payment of an amount that was correctly included in the disputed Invoice, the Recipient will pay the amount within 10 Working Days of the Resolution Date, together with Default Interest applied from the original due date up to but excluding the date of payment;
 - (ii) where the Issuer has undercharged the Recipient (in that the amount claimed in the Invoice was less than the amount the Issuer was entitled to invoice at the time of issuing the Invoice), the Issuer may issue a further Invoice or Debit Note for the amount of the undercharge, together with a Use of Money Adjustment applied to that amount, and the Recipient will pay that Invoice within 10 Working Days of receipt, so long as that Invoice is accompanied by reasonably detailed supporting information; and
 - (iii) where an amount has been incorrectly included in the disputed Invoice (in that the amount claimed in the Invoice was greater than the amount the Issuer was entitled to invoice at the time of issuing the Invoice), the Issuer will promptly issue a corresponding Credit Note to the Recipient, and if the Recipient has already paid some or all of that amount, then within 10 Working Days of the Resolution Date, the Issuer will refund the overpayment to the Recipient, together with:
 - (A) a Use of Money Adjustment applied to the amount of the overpayment calculated from the date of the disputed Invoice; and
 - (B) unless the overpayment is refunded to the Recipient within 15 Working Days after receipt of the Invoice Dispute Notice, Default Interest, applied from the date 15 Working Days after receipt of the Invoice Dispute Notice up to but excluding the date of the refund.

9.14 **Incorrect Invoices:** If it is found that a party has been overcharged or undercharged in an Invoice that has been paid (not being as a result of inaccurate consumption or demand data, which is dealt with under clause 9.7) (“**Incorrect Invoice**”), then within 20 Working Days after the amount has been finally agreed between the parties or determined under clause 23, the party that issued the Incorrect Invoice will issue a Credit Note for the amount overcharged or a further Invoice or Debit Note for the amount of the undercharged, as appropriate. If:

- (a) a Credit Note is issued, the party issuing the Credit Note will refund to the other party the amount of such overcharge; or
- (b) a further Invoice or Debit Note is issued, the party that has underpaid must pay to the other party the amount of any such undercharge,

in both cases together with:

- (c) a new Scaling Invoice (plus a Use of Money Adjustment if applicable); and
- (d) a full reversal of the previously issued Scaling Invoice.

with respect to the overcharged or undercharged amount, provided that neither party has the right to receive a compensating payment in respect of an overcharge or undercharge if more than 18 months has elapsed since the date of the Incorrect Invoice.

- 9.15 **No set-off:** Both parties must 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 9.13 or as may be required by Law.

10. PRUDENTIAL REQUIREMENTS

- 10.1 **Distributor may require Retailer to comply with prudential requirements:** The Distributor may, by giving notice to the Retailer, require the Retailer to comply with prudential requirements, in which case the Retailer must, whether the notice is received before or after the commencement of this Agreement, comply with prudential requirements as follows:

- (a) if the Retailer is not trading on the Network, the Retailer must comply with prudential requirements before the Retailer starts trading on the Network; and
- (b) if the Retailer is trading on the Network, the Retailer must comply with prudential requirements within 10 Working Days after receipt of the Distributor's notice.

- 10.2 **Retailer elects prudential requirements:** If the Distributor requires the Retailer to comply with prudential requirements in accordance with clause 10.1, the Retailer must comply with either of the following prudential requirements:

- (a) the Retailer must maintain an acceptable credit rating at all times; or
- (b) the Retailer must provide and maintain at all times acceptable security by, at the Retailer's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 10.6 ("**Cash Deposit**"), which the Distributor must hold in a trust account that the Distributor must establish and operate in accordance with clause 10.26;
 - (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 10.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in clause 10.6.

- 10.3 **Acceptable credit rating:** For the purposes of clause 10.2, 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) Baa3 (Moody's Investor Services Inc.);
 - (ii) BBB- (Standard & Poor's Rating Group);
 - (iii) (B- (AM Best)); or
 - (iv) BBB- (Fitch Ratings); 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.
- 10.4 **Change in prudential requirements complied with:** The Retailer may elect to change the way in which it complies with prudential requirements by notifying the Distributor of the change at least 2 Working Days before the change occurring, in which case the parties must comply with clause 10.18. 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 10.2.
- 10.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) must provide such evidence that it has maintained or is maintaining an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.
- 10.6 **Value of security:** The value of security required for the purposes of this clause 10 is the sum notified by the Distributor to the Retailer from time to time, up to but not exceeding the sum of: (a) the Distributor's reasonable estimate of the highest aggregate amount of Distribution Services Charges that the Retailer will be required to pay to the Distributor in respect of any consecutive period of 2 months over the forthcoming 12 months; and (b) the value of any amounts withheld by the Retailer under clause 9.13.
- 10.7 Not used.
- 10.8 Not used.
- 10.9 Not used.
- 10.10 **Estimating the value of security if the Retailer is a new Direct Distribution Services User:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor must estimate the value of security required under clause 10.6 for the first 6 months of this Agreement, subject to any reassessment of the value in accordance with clause 10.16 of this Agreement, having regard to:
- (a) the Distributor's historical records of the Distribution Services 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 to determine the value of security that the Distributor requires from the Retailer.
- 10.11 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review no more than once every 12 months, the value of security required to be provided by the Retailer at any time.
- 10.12 **Retailer to notify Distributor of changes affecting security:** Subject to clause 10.14, the Retailer must 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 10.2(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 Distribution Services will be affected.

10.13 **Confidential Information:** Any information provided by the Retailer to the Distributor under clause 10.12 will be Confidential Information.

10.14 **Public issuers and listed companies:** For the purpose of clause 10.12, if the Retailer (or its ultimate parent company) is a "listed issuer" for the purposes of the Financial Markets Conduct Act 2013, the Retailer may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement on terms reasonably satisfactory to the Retailer before giving notice and disclosing information under clause 10.13, if and for so long as the Retailer considers such information to be "inside information" as defined in the Financial Markets Conduct Act 2013.

10.15 **Distributor may make enquiries:** If the Distributor believes that the Retailer should have given notice under clause 10.12 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 must be in writing and be addressed to the Chief Executive of the Retailer. If notice should have been given, the Retailer must give notice immediately, or if no notice is required, then within 2 Working Days of receipt of the Distributor's notice under this clause 10.15 the Retailer must confirm to the Distributor in writing that there are no circumstances that would require a notice under clause 10.12. Correspondence sent or received by either party under this clause is Confidential Information.

10.16 **Change to value of security:** If:

- (a) following a review of the Retailer's security in accordance with clause 10.11; or
- (b) on receipt of information contemplated by clause 10.12 or 10.15; or
- (c) as the result of a failure by the Retailer to respond to a request made under clause 10.15 within the timeframe set out in clause 10.15,

the Distributor or the Retailer considers that the value of security should be increased or decreased, the Distributor must, 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. To avoid doubt, failure by a Retailer to respond to a request made under clause 10.15 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Retailer.

10.17 **Failure to maintain acceptable credit rating:** If:

- (a) on receipt of information contemplated by clauses 10.12 or 10.15; or
- (b) as the result of a failure by the Retailer to respond to a request made under clause 10.15 within the timeframe set out in clause 10.15,

the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with clause 10.2(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor must notify the Retailer of the value of acceptable security required in accordance with clause 10.2(b).

- 10.18 **Distributor or Retailer to effect changes in value or type of security:** The Distributor or the Retailer, as appropriate, must 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 10.4, 10.16, or 10.17. Refunds of Cash Deposits and reductions of the value of third party security required must be made in accordance with clauses 10.19 or 10.21.
- 10.19 **Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it must 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.
- 10.20 **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 clause 10.26(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.
- 10.21 **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 10.2(b)(ii), which will replace the earlier third party security.
- 10.22 **When Distributor may make a call on security:** The Distributor may make a call on security in accordance with clause 10.23 if:
- (a) the Retailer has provided security for the purpose of clause 10.2(b); and
 - (b) the Retailer fails to pay an amount due under this Agreement; and
 - (c) the amount is not subject to a genuine dispute.
- 10.23 **Calls on security:** If this clause applies in accordance with clause 10.22, the Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under clause 10.25, 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 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 must immediately notify the Retailer that it has called on the security.

10.24 **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 must within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in clause 10.6 (as such may be reviewed by the Distributor in accordance with clause 10.11), as required by clause 10.2(b).

10.25 **Third party security may be released:** If the provider of third party security on its own initiative 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 must be dealt with in accordance with clause 10.26.

10.26 **Trust Account Rules:** If the Distributor receives a Cash Deposit:

- (a) the Cash Deposit must 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 must 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 must 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 must 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 must bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor must pay the Retailer the interest earned on the Cash Deposit 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 must 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 10.19, 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 must provide the Retailer with an annual report in respect of the operation of the Trust Account if requested by the Retailer.

10.27 **Release of third party security:** If this Agreement is terminated, the Distributor must release any third party security, provided that the Retailer has met all of the requirements set out in clause 10.26(f).

PART III – OPERATIONAL REQUIREMENTS

11. ACCESS TO THE CUSTOMER'S PREMISES

11.1 **Rights of entry onto Customer's Premises:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements a requirement that the Customer provide the Distributor and its agents with safe and unobstructed access onto the Customer's Premises for the following purposes:

- (a) to inspect, maintain, operate, or upgrade (provided that the upgrade does not have any material adverse effect on the relevant Customer or Customer'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 Customer or Customer's Premises) Metering Equipment that is owned by the Distributor;
- (c) to Energise, Re-energise, De-energise, disconnect, or reconnect a Customer's ICP 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 Customer fulfils its obligations in accordance with clause 12.7;
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Supply Agreement for the period ending 6 months after the date that termination takes effect; and
- (h) to comply with Law in relation to the provision of Distribution Services.

11.2 **Exercise of access rights:** In exercising its access rights under clause 11.1, the Distributor must, except to the extent that the Distributor has any other binding agreement setting out its access rights directly with the Customer:

- (a) comply with section 50 of the Gas Act 1992 as though that section relates to the Distributor's access rights as contemplated under clause 11.1, provided that the Distributor must give written notice to a Customer if the Distributor intends to access the Customer'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 Customer's Premises;

- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Customer (including minimising any direct impact on the Customer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate, and professional manner at all times while on the Customer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor; and
 - (iii) if practicable, identify themselves to the Customer before entering the Customer's property; and
 - (iv) comply with the Customer's reasonable requirements, practices, and procedures as disclosed by the Customer or as generally practised for health and safety, and security requirements.

11.3 **Distributor may disconnect if access denied:** The Retailer must, subject to clause 29.1, include in its Supply Agreement a provision to the effect that if the Customer breaches the provisions of its Supply Agreement that require it to give the Distributor access to the Distributor's Equipment on the Customer's Premises, and the breach is material or persistent, the Distributor may disconnect the Customer's ICP from the Network and access the Customer's Premises to reclaim the Distributor's Equipment, provided that:

- (a) if access was required for a purpose described in clause 11.1(a), (b), (d), or (g), the Distributor or Retailer gave the Customer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 11.1(c), (e), or (f), such notice is not required); and
- (b) if access is required for a purpose described in clause 11.1(h), the Distributor or Retailer gave the Customer 10 Working Days' notice of access being required (unless the period of notice is specified under the relevant law, in which case the notice period specified under the relevant law applies); and
- (c) if the disconnection is a Temporary Disconnection, the Distributor has complied with the relevant provisions of Schedule 6.

11.4 **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 Customer has not given the Distributor access in accordance with the relevant Supply Agreement. The Retailer must reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.

11.5 **Existing agreement will prevail:** In the event of a conflict between clause 11 and any provision of any existing agreement between the Customer and Distributor with respect to the Distributor's access rights to the Customer's Premises, the provisions of the existing agreement between the Distributor and Customer will prevail to the extent of such conflict.

12. GENERAL OPERATIONAL REQUIREMENTS

- 12.1 **Interference or damage to Distributor's Equipment by Customers:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements a requirement that, during the term of the Supply Agreement and until the end of the period ending on the earlier of 6 months after the termination of the Supply Agreement or the date on which a new Supply Agreement is entered into in respect of the relevant ICP, the Customer must not interfere with or damage, and must 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).
- 12.2 **Costs of making good any damage:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements a requirement that, if any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Customer or the Customer's agents or invitees, the Customer must pay the reasonable cost of making good the damage to the Distributor.
- 12.3 **Interference or damage to Distributor's Equipment or Network by Retailer:** The Retailer must ensure that it and its employees, agents, and invitees do not interfere with or damage the Distributor's Equipment or Network (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).
- 12.4 **Costs of making good any damage:** If any of the Distributor's Equipment is damaged by the Retailer's breach of this Agreement, or by the negligence or wilful act or omission of the Retailer or the Retailer's employees, agents, or invitees, the Retailer must pay the cost of making good the damage to the Distributor.
- 12.5 **Interference or damage to Retailer's Equipment or Customer's Gas Installation:** The Distributor must ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Customer's Gas 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 Customer (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).
- 12.6 **Costs of making good any damage:** If the Retailer's Equipment or the Customer's Gas Installation is damaged by the Distributor's breach of this Agreement, or by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents, or invitees, the Distributor must pay the cost of making good the damage to the Retailer or the Customer (as the case may be). This clause 12.6 is for the benefit of the Customer and may be enforced by the Customer under the Contract and Commercial Law Act 2017. This clause may be amended without the consent of any Customer.
- 12.7 **Interference with the Network:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements a provision to the effect that the Customer must not, without the prior written agreement of the Distributor, inject or attempt to inject any gas or substance into the Network.

- 12.8 **Notification of interference, damage, or theft:** If the Distributor or Retailer discovers any interference or damage to the other party's equipment or the Customer's Gas Installation, or evidence of theft of gas, loss of gas, or interference with the Network (including that a Gas Installation does not comply with the Gas (Safety and Measurement) Regulations 2010, the discovering party must notify the other party as soon as it is practicable to do so.
- 12.9 **Measurement of gas delivered to each ICP:** The Retailer shall comply with the requirements of Schedule 8 and ensure that the volume of gas delivered to each Customer's ICP is measured by a GMS that complies with the Gas Measurement Standard.
- 12.10 **TOU Meter:** For each Customer's ICP where:
- (a) the rolling 12-months actual or expected consumption exceeds 10 TJ (Reconciliation Rules requirement); or
 - (b) non-standard network charges apply to the ICP,
- the Retailer must procure that a TOU Meter is installed that is recording and communicating interval data.
- 12.11 **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 it complies with the Gas Measurement Standard and:
- (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 Gas Industry Practice.
- 12.12 **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 must:
- (a) meet the cost of making good the damage or recertifying the Metering Equipment; 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 must 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.
- 12.13 **Safe Housing of Distributor's Equipment:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements (subject to any written agreement between the Retailer and the Distributor) an undertaking by the Customer to provide, at no cost to the Distributor, suitable space (complying with the Network Connection Standards) 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 Customer's Premises.

- 12.14 **Property rights to the Network and Distributor's Equipment:** The Retailer must, subject to clause 29.1, include in each of its Supply Agreements an acknowledgement by the Customer that:
- (a) the Network and Distributor's Equipment, including any part of the Network or Distributor's Equipment situated on a Customer's Premises, is and will remain the sole property of the Distributor;
 - (b) no provision of the Supply Agreement nor the provision of any services by the Distributor in relation to the Network will confer on the Customer or any other person any right, title or interest in the Network or any Distributor's Equipment that is used to provide any such services; and
 - (c) the Distributor may abandon underground assets on a Customer's Premises subject to those assets being disconnected from the Network and made safe in accordance with Good Gas Industry Practice.
- 12.15 Provision of interval data from ICPs with a TOU meter:
- (a) Subject to paragraph (c), if a TOU Meter is required to be installed at an ICP in accordance with clause 12.10, the Distributor may request, and the Retailer must supply (or procure that the TOU Meter owner supplies) the requested interval data for the ICP to the Distributor for the purposes of developing its pricing methodology, price categories and prices for Distribution Services, planning and management of the Network. Except where the Distributor requires the interval data urgently to manage a System Emergency Event or the parties agree in writing otherwise, the Distributor may not request the interval data for an ICP more than once in any period of 3 months and the Retailer must supply (or procure that the TOU Meter owner supplies) the requested interval data within 10 Working Days of the request, and at three monthly intervals after that if the Distributor's request is for ongoing access to the interval data. The interval data must be provided in a structured, commonly used, and machine-readable format and, to the extent the TOU Meter is recording the following information, include such information:
 - (i) Uncorrected volume;
 - (ii) Volume corrected for pressure and temperature;
 - (iii) Pressure at the meter;
 - (iv) Temperature at the meter.
 - (b) Subject to paragraph (c), if the Retailer has installed a TOU Meter at an ICP that is not required to have a TOU Meter installed in accordance with clause 12.10, and the TOU Meter is recording and communicating interval data, the Distributor may request and the Retailer must supply (or procure that the TOU Meter owner supplies) the requested interval data for the ICP (or group of ICPs) for the purposes of developing its pricing methodology, price categories and prices for Distribution Services, and planning and management of the Network. Unless the parties agree in writing otherwise, the Distributor may not request the interval data for such ICP (or group of such ICPs) more than once in any period of 6 months and the Retailer must supply (or procure that the TOU Meter owner supplies) the

requested interval data within 10 Working Days of the request, and at three monthly intervals after that if the Distributor's request is for ongoing access to the interval data. The interval data must be provided in a structured, commonly used, and machine-readable format.

- (c) The Distributor must pay the Retailer's (or TOU Meter owner's) reasonable costs incurred in supplying any information requested under paragraphs (a) or (b). If requested by the Distributor, the Retailer must give (or procure that the TOU Meter owner gives) the Distributor a quote for any reasonable costs for supplying the information before the Retailer (or the TOU Meter owner) supplies the information.

12.16 **Changes to Gas Gates or ICPs:** The Distributor must comply with the following procedure before making changes of the kind contemplated in paragraph (a)(i) or (a)(ii) below:

- (a) The Distributor must notify the Retailer if it proposes to:
 - (i) construct and operate, in conjunction with the Transmission System Owner, a new Gas Gate; or
 - (ii) permanently disconnect the Network from a Gas Gate or one or more ICPs from the Network (a "**Network Reduction**");such change being a "**Proposal**".
- (b) The Distributor must give the Retailer notice of the following:
 - (i) the ICPs, groups of ICPs, or geographical area(s) that will be affected by the Proposal; and
 - (ii) the Distributor's estimated assessment of the overall costs and benefits of the Proposal.
- (c) The Distributor must consult with the Retailer about the Proposal, providing the Retailer a period of at least 60 Working Days to comment on the Proposal. The Retailer will respond in an open and transparent manner with respect to any requests for information relating to the Proposal, subject to any confidentiality restrictions. Where more than one Direct Distribution Services User is affected, the Distributor may consult with those Direct Distribution Services Users as a group. Where the Proposal is revised in the course of or following the consultation, the Distributor need not consult further on the revised Proposal unless the revised Proposal is fundamentally different from the original.
- (d) The Distributor will not carry out a Network Reduction except where:
 - (i) a change in Law results in a date being specified, whether a definitive or target date, by which the supply and use of natural gas will be discontinued in New Zealand; or
 - (ii) the Distributor otherwise reasonably considers that the continued conveyance of gas to the relevant ICPs or via the relevant Gas Gate in accordance with Good Gas Industry Practice is (or is likely to become) uneconomic for the Distributor having regard to the revenue the Distributor

expects to recover from consumers using (or likely to use) that part of the Network. To avoid doubt, for this purpose the Distributor's view will be presumed to be reasonable unless it is outside the range of possible views that could be taken by a gas network owner operating in accordance with Good Gas Industry Practice.

- (e) For the purpose of paragraph (d):
 - (i) in considering whether the continued conveyance of gas is (or is likely to become) uneconomic, the Distributor is entitled to take into account (without limitation):
 - (A) policy directions or requirements of any government authority in relation to the production, use, supply or conveyance of gas; and
 - (B) the economic return of the relevant part of the Network based on the remaining life of the assets in that part of the Network and a reasonable return on capital consistent with Good Gas Industry Practice; and
 - (ii) the Distributor's view will be presumed to be reasonable unless it is outside the range of possible views that could be taken by a gas network owner operating in accordance with Good Gas Industry Practice and having due regard to policy directions of government authorities.
- (f) If, at the conclusion of the consultation, the Distributor decides to proceed with the Proposal (including as revised during or following the consultation), it must give the Retailer at least 40 Working Days' notice of the date the new Gas Gate is expected to be commissioned, or subject to paragraph (g), 12 months' notice of the date it expects to permanently disconnect the Network from a Gas Gate or one or more ICPs from the Network.
- (g) If the Proposal has resulted from damage to the Network, the period of notice in paragraph (f) may be reduced by the Distributor, acting reasonably, following the consultation (for example, permanent disconnection may be immediate if gas has ceased to be supplied to one or more ICPs following damage to the Network).
- (h) At any time following the date notified for permanent disconnection under paragraph (f), the Distributor may disconnect the Network from the relevant Gas Gate or permanently disconnect one or more of the relevant ICPs from the Network and this Agreement will be deemed to be:
 - (i) varied from the date to the extent necessary as a result of the Network Reduction; or
 - (ii) terminated where the Network Reduction is a permanent disconnection of the Network from all Gas Gate(s) or all of the Retailer's ICPs from the Network.

The Distributor will have no further obligation to provide Distribution Services in respect of the disconnected Gas Gate or ICPs, and no liability to the Retailer for the consequences of any such disconnection.

13. NETWORK CONNECTION STANDARDS

- 13.1 **Access to Network Connection Standards:** The Distributor's current Network Connection Standards shall be Published on the Distributor's website.
- 13.2 Provisions in Supply Agreements in relation to Network Connection Standards: The Retailer must:
- (a) subject to clause 29.1, include in each of its Supply Agreements an undertaking that the Customer must ensure that its Gas Installation complies with the Network Connection Standards and all relevant legal requirements; and
 - (b) include in each of its Supply Agreements a statement advising how the Customer can access the current version of the Distributor's Network Connection Standards.
- 13.3 **Notification of non-complying Gas Installation:** If the Retailer becomes aware that a Customer's Gas Installation does not comply with the Network Connection Standards, the Retailer must notify the Distributor of the corresponding ICP identifier and the details of the non-compliance as soon as practicable after becoming aware of the non-compliance. The Distributor must promptly investigate the non-compliance and keep the Retailer informed of any actions taken to resolve the non-compliance.

14. GAS QUALITY

- 14.1 **Gas supply quality, reliability, and safety:**
- (a) The Distributor and Retailer acknowledge that management of the quality of gas supply (which means the gas specification, odorization, and pressure), reliability, and safety of the Customer's gas supply, relies on the inter-dependence of parties in the physical and contractual gas supply chain. Gas composition is primarily determined by the operation of gas treatment facilities under the control of gas producers prior to injecting gas into the Transmission System, and changes that result from comingling, the addition of odorant and contaminants such as oil and gas from gas treatment facilities and pipeline compressors, and dust in the Network. The open and effective handling of reporting of gas quality exceptions and incidents is therefore important to ensure gas supplied to Customers is of acceptable quality as defined in section 7A of the Consumer Guarantees Act 1993.
 - (b) Subject to the relevant Service Standard in Schedule 1, if a Customer or the Retailer on behalf of a Customer raises a concern with the Distributor regarding the quality of gas supply (which means the gas specification, odorization and pressure), reliability or safety of the Customer's gas supply, the Distributor must take such steps as the Distributor considers reasonable and appropriate in the circumstances (which may, at the Distributor's discretion, include investigating the concern and advising the Customer and/or Retailer (as appropriate) of the results of the investigation).
- 14.2 **Gas Specification:**
- (a) The Retailer must ensure that any contract it has for the purchase or supply of gas where such gas will enter the Network requires that the gas will meet the requirements of the Gas Specification.

- (b) Either party must notify the other party as soon as reasonably practicable if it becomes aware of any situation where Non-Specification Gas has the potential to be delivered, or has been delivered, to any Gas Gate supplying the Network, and if the party notifying is the Distributor the notification must include enough detail to enable the Retailer to assess the likely effects on Customers.
- (c) The Retailer acknowledges that the Distributor may have no knowledge or control over whether Non-Specification Gas has entered the Network. To the extent permitted by Law, the Distributor shall have no liability to the Retailer for any consequences of Non-Specification Gas entering the Network, except to the extent that the Distributor is liable for a breach of its obligations under paragraph (b) or the Non-Specification Gas became Non-Specification Gas during its conveyance through the Network due to dust or other contaminants introduced into the Network due to the Distributor's actions.
- (d) The Distributor may inject blended gas into the natural gas entering the Network, provided that:
 - (i) the Distributor must give the Retailer not less than 3 months' notice of the date on which that blending is planned to begin, including full details of the gas mixture that will result from the proposed blending;
 - (ii) the Distributor must give the Retailer not less than 3 months' notice of the date on which that planned blending is planned to end, although the Distributor may shorten this notice period if more urgent action is needed to mitigate an imminent danger to persons or property;
 - (iii) the Distributor must notify the Retailer as soon as reasonably practicable of any changes to those planned start and end dates;
 - (iv) the Distributor may give such a notice in respect of the whole of the Network or part of the Network only; and
 - (v) the Distributor must ensure such blending is consistent with the Gas (Safety and Measurement) Regulations 2010, or the terms of any exemption to these regulations as granted by WorkSafe or any other regulator with the power to grant any such exemption.

Gas blended in accordance with this clause 14.2(d) is deemed to be compliant with the Gas Specification for the purposes of the Distributor's obligations under this clause 14 (including clause 14.5) and Schedule 1. To avoid doubt, blending of gas in accordance with this clause 14.2(d) will not in itself be taken as being contrary to Good Gas Industry Practice.

14.3 **Odourisation:**

- (a) The Retailer must ensure that all gas it delivers, or arranges to be delivered, for acceptance at Gas Gates is Odourised, unless the parties have agreed in writing that the Distributor will instead be responsible for ensuring the gas is Odourised. Where the Retailer is responsible for ensuring gas is Odourised, it must ensure no odorants are used that could cause damage to the Network, or any gas installations, fittings, or gas appliances. For the avoidance of doubt, where the Distributor carries out the injection of blended gas into the natural gas entering the

Network in accordance with clause 14.2(d), it will be responsible for ensuring the resulting blend is Odorised.

- (b) The Retailer will provide all information reasonably requested by the Distributor for the purpose of assisting the Distributor to comply with obligations under Law in respect of Odourisation of gas on the Network (including by providing any documentation reasonably required by the Distributor for the purpose of compliance with the Gas (Safety and Measurement) Regulation 2010).
- (c) Where requested by the Retailer, the Distributor will in accordance with Schedule 1 provide the Retailer with:
 - (i) its odourisation documentation for the purpose of assisting the Retailer to demonstrate compliance with its obligations under Law in respect of Odourisation of gas (including for the purpose of compliance with the Gas (Safety and Measurement) Regulations 2010), including a quality assurance procedure for testing and monitoring whether gas in the Network is odourised to the required level; and
 - (ii) results of spot tests undertaken to determine whether odourised gas in the Network meets the detectability requirements set out in NZS 5263:2003 Gas Detection and Odourisation.
- (d) If either party's monitoring of odourant levels within the Network indicates the odourant level is outside the detectability requirements set out in NZS 5263:2003 Gas Detection and Odourisation, and irrespective of who is responsible for gas Odourisation or where such gas Odourisation is undertaken), it must advise the other party as soon as reasonably practicable and take all reasonable steps in accordance with Good Gas Industry Practice to remedy the situation.
- (e) Notwithstanding this clause 14.3, to the extent permitted by Law, in no event or circumstance will the Distributor have any liability whatsoever to the Retailer for any loss, cost, liability, expense, damage or claim suffered or incurred by the Retailer from a loss of Odourisation attributable to any change in the composition or properties of the gas due to causes beyond the control of the Distributor, except to the extent that the Distributor's liability arises due to a breach of its obligations under this clause 14.3.

14.4 Retailer indemnity for non-compliance with Gas Specification or Odourisation:

- (a) The Retailer shall indemnify and hold the Distributor harmless against all Direct Loss or Damage suffered or incurred by the Distributor as a result of:
 - (i) any gas that the Retailer has delivered, or arranged to be delivered, for acceptance at a Gas Gate failing to meet the Gas Specification; and/or
 - (ii) any breach by the Retailer of its obligations under clause 14.3.
- (b) The Retailer's obligation to indemnify the Distributor for Loss under this clause 14.4 will be reduced to the extent that:
 - (i) the Loss is caused or contributed to by the Distributor's breach of this Agreement;

- (ii) the Loss arose due to the Distributor breaching a contractual obligation to Odorise gas or to treat gas so as to ensure it meets the Gas Specification;
 - (iii) the Distributor is entitled to recover the Loss from the Transmission System Owner; and/or
 - (iv) the Loss would not have arisen had the Distributor used reasonable endeavours to mitigate any liabilities, losses, costs or expenses arising from the occurrence of the events described in clause 14.4(a)(i) and (a)(ii).
- (c) The Retailer's liability under the indemnity in this clause 14.4, and/or for any and all breaches of clause 14.2 or 14.3, shall not exceed \$5,000,000 in respect of any one event or related series of events, and shall not exceed \$30,000,000 for all events in any 12 month period irrespective of the number of events. Charges paid or payable by the Retailer under this Agreement will not be limited by or counted against the limitations in this clause 14.4. The limitations and exclusions in clauses 24.2, 24.3, 24.4 and 24.7 shall not apply to or take into account any liability the Retailer may have under this clause 14.4 and/or for any and all breaches of clause 14.2 or 14.3.

14.5 Distributor indemnity for non-compliance with Gas Specification or Odourisation:

- (a) The Distributor shall indemnify and hold the Retailer harmless against any Direct Loss or Damage suffered or incurred by the Retailer as a result of:
- (i) gas in the Network becoming Non-Specification Gas due to actions of the Distributor that are contrary to Good Gas Industry Practice;
 - (ii) any breach by the Distributor of its obligations under clause 14.2; and/or
 - (iii) any breach by the Distributor of its obligations under clause 14.3.
- (b) The Distributor's obligation to indemnify the Retailer for Loss under this clause 14.5 will be reduced to the extent that:
- (i) the Loss is caused or contributed to by the Retailer's breach of this Agreement;
 - (ii) any gas that the Retailer has delivered, or arranged to be delivered, for acceptance at a Gas Gate failing to meet the Gas Specification;
 - (iii) the Retailer is entitled to recover the Loss from the Transmission System Owner; and/or
 - (iv) the Loss would not have arisen had the Retailer used reasonable endeavours to mitigate any liabilities, losses, costs or expenses arising from the occurrence of the events described in clause 14.5(a)(i) and (a)(ii)
- (c) The Distributor's liability under the indemnity in this clause 14.5, and/or for any and all breaches of clause 14.2 or 14.3, shall not exceed \$5,000,000 in respect of any one event or related series of events, and shall not exceed \$30,000,000 for all events in any 12 month period irrespective of the number of events. The limitations and exclusions in clauses 24.2, 24.3, 24.4, and 24.7 shall not apply to or take into account any liability the Distributor may have under this clause 14.5, and/or for any and all breaches of clause 14.2 or 14.3.

14.6 **Delivery Pressure:**

- (a) The Distributor must endeavour in accordance with Good Gas Industry Practice to ensure that the Delivery Pressure at an ICP is within the standard pressure range specified by the Distributor on its website for that part of the Network supplying the ICP, and consistent with the nominal operating pressure for the ICP in the Registry.
- (b) The Distributor must notify the Retailer as soon as reasonably practicable if it becomes aware of any Network pressure excursions or emergencies where gas may not be delivered to Points of Connection at safe operating pressures.
- (c) Where the Retailer becomes aware that the Delivery Pressure at an ICP has fallen outside the standard pressure range for that part of the Network supplying the ICP the Retailer must notify the Distributor of the occurrence as soon as reasonably practicable.
- (d) If the Distributor becomes aware that the Delivery Pressure at an ICP does, or will likely, fall outside the standard pressure range specified by the Distributor for that part of the Network supplying the ICP, the Distributor must advise the Retailer as soon as reasonably practicable of the steps required, and the timeframe proposed, to bring the Delivery Pressure back inside the standard pressure range.

15. **GAS QUANTITY**

15.1 **Maximum Hourly Quantity or MHQ:**

- (a) The Maximum Hourly Quantity or MHQ recorded in the Registry for each ICP reflects the MHQ requested by the Customer through the Retailer, unless the Distributor has agreed with the Retailer in writing that the Customer can be the “Requesting Party” for the purposes of this clause 15 (the “**Requesting Party**”) and agreed by the Distributor as the maximum quantity of gas that may be accepted into the Network in any hour on any day to be conveyed to the corresponding Point of Connection. For the avoidance of doubt, where an ICP is allocated to a Price Category with a capacity of less than 10 standard cubic metres per hour and the MHQ recorded in the Registry is ‘0’ or null, the MHQ for the ICP for the purposes of this clause 15 is deemed to be 10 standard cubic metres per hour.
- (b) The Retailer is responsible for ensuring the GMS installed at each Customer’s ICP is appropriate for the agreed MHQ.
- (c) Subject to the terms of this Agreement:
 - (i) the Retailer must use all reasonable endeavours to ensure that there is at all times sufficient gas delivered to each Gas Gate to meet the demand at all Points of Connection for ICPs for which the Retailer is responsible;
 - (ii) the Distributor will take all steps reasonably expected as a matter of Good Gas Industry Practice to operate the Network so as to ensure that, in any hour, the Distributor accepts at the Gas Gate the quantity or quantities of gas delivered by the Retailer, up to the lower of the aggregate of the MHQs

for all Active ICPs, and the aggregate actual demand at those Active ICPs;
and

- (iii) the Distributor will take all steps reasonably expected as a matter of Good Gas Industry Practice to operate the Network so as to allow gas so accepted into the Network to be conveyed to each Active ICP, in quantities that meet the demand at each such Active ICP, up to the applicable MHQ.
- (d) The Retailer shall not knowingly allow any Customer to take, and the Distributor will not be required to deliver to any Point of Connection, any quantity of gas which exceeds the applicable MHQ recorded in the Registry in respect of the corresponding ICP.
- (e) The Distributor will have no liability to the Retailer if gas available to be taken from the Network by a Customer is reduced because the quantity of gas taken from the Network by any other consumer exceeds the MHQ for the corresponding ICP.

15.2 **Change in MHQ:** Where a Customer wishes to vary the MHQ for the corresponding ICP at that Customer's Premises, and the existing or proposed MHQ is greater than 10 standard cubic metres per hour:

- (a) the Requesting Party will notify the Distributor in accordance with Schedule 6, specifying the new MHQ required, and the type of equipment being installed, removed, or modified, if that is the reason for the change in MHQ;
- (b) if the request is for an increase in the MHQ, the Distributor will undertake an impact assessment to determine whether the additional capacity is already available or whether a Network upgrade is required. If, acting reasonably, the Distributor considers that a Network upgrade is required, or that other works are required, the Distributor must advise the Requesting Party whether it is prepared to undertake the necessary works and if so on what terms (including if applicable any capital contribution, risk-sharing arrangement, or change in the Prices or network charges for the ICP), and if the request is declined the Distributor must provide the reasons for its decision;
- (c) if the request is for a decrease in the MHQ, the Distributor will undertake an impact assessment to determine whether the reduced capacity will require any alterations to the Network, advise the Requesting Party of any change in the Prices or network charges for the ICP, and record the change in MHQ on the Registry from the date of the change;
- (d) if the Distributor and Requesting Party agree on the terms under which the Distributor will increase the capacity, the Requesting Party (if it is the Retailer) will approve the Customer's request in accordance with the Distributor's reasonable requirements and once the change is completed the Distributor will record the change in MHQ on the Registry;
- (e) if the Distributor and Requesting Party are unable to agree on the terms under which the Distributor will increase the capacity under paragraph (b) the matter may be referred to mediation in accordance with clause 23, but to avoid doubt nothing in this Agreement obliges the Distributor to accept any request under this clause or agree to any particular terms for undertaking such a request; and

- (f) the Retailer must procure that the GMS is right sized for the new MHQ.

To avoid doubt, the Distributor is not required to consider any request to change the MHQ except as provided by this clause 15.2.

15.3 **Liability for exceeding MHQ:**

- (a) Where a Customer takes or is delivered gas at an ICP in excess of the MHQ, then the Retailer shall indemnify and hold the Distributor harmless against any Direct Loss or Damage suffered or incurred by the Distributor as a result of the Customer taking or having been delivered such excess quantity of gas, but excluding:
 - (i) any Loss to the extent caused or contributed to by the Distributor's breach of this Agreement; and
 - (ii) any Loss that would not have arisen had the Distributor used reasonable endeavours to mitigate any liabilities, losses, costs or expenses arising from the taking or delivery of gas in excess of the MHQ.
- (b) The maximum amount claimable under this indemnity, and/or for any breach of clause 15.1, in respect of any specific ICP where gas is taken or delivered in excess of the MHQ shall be \$250,000 in respect of any one event or related series of events with a maximum amount claimable in any 12 months' period of \$1,000,000, irrespective of the number of events. The limitations and exclusions expressed in clause 24.2, 24.3, 24.4 and 24.7 shall not apply to or take into account any liability the Retailer may have under this clause 15.3 and/or for any breach of clause 15.1.
- (c) The indemnity in clause 15.3(a) is also for the benefit of each other Distribution Services User other than the Distribution Services User responsible for the ICP in question, and may be enforced against the Retailer by each such Distribution Services User under the Contracts and Commercial Law Act 2017. However, the Retailer is not liable to another Distribution Services User under clause 15.3(a) for any amount that would not be recoverable under this Agreement if the terms of this Agreement were the same as the terms of the agreement between the Distributor and the Distribution Services User for use of the Network (e.g. if the Distribution Services User is not subject to any provision equivalent to this clause 15.3).
- (d) Where the Retailer is liable to more than one person under this clause 15.3, and some or all of that liability will be reduced by one or both of the limits in paragraph 15.3(b) above, then the affected claims against the Retailer under this clause 15.3 will be prioritised in the following (descending) order:
 - (i) first, the Distributor's claims;
 - (ii) then, each other claimant on a pro-rata basis, in proportion to the total amount that it would otherwise be entitled to recover under this clause 15.3 in the absence of the limits in paragraph 15.3(b).
- (e) The provisions of this clause 15.3 can be amended without the consent of any person who is not a party to this Agreement.

16. TITLE, POSSESSION, RESPONSIBILITY AND DEEMED DELIVERY

16.1 Title to gas:

- (a) The Retailer warrants to the Distributor that at all times while gas delivered to the Gas Gate remains in the Network, the Retailer will have Clear Title to the gas, or will have all necessary authority from a person with Clear Title to the gas, so as to permit the conveyance of the gas through the Network to Points of Connection as contemplated by this Agreement. “**Clear Title**” means good title to the gas, free and clear of all liens, encumbrances, and claims of a nature inconsistent with the Distributor’s operation of its Networks.
- (b) To avoid doubt, nothing in this Agreement gives the Distributor title to gas referred to in sub-clause (a) due to its delivery into the Network.

16.2 **Mixing of gas:** Notwithstanding clause 16.1, the Distributor shall have the right to co-mingle the Retailer’s gas with other Distribution Services Users’ gas in the Network and subject the gas to compression, cleaning, and other processes consistent with the Distributor’s operation of the Network. In this clause, references to “gas” also include blended gas injected in accordance with clause 14.2(d).

16.3 **Control and possession of gas:** Without limiting clause 16.4, the control and possession of gas delivered in accordance with this Agreement shall pass from the Retailer to the Distributor at the Gas Gate and will be held by the Distributor until gas is delivered at Points of Connection (for ICPs supplied by the Retailer) at which time the control and possession will revert to the Retailer.

16.4 **Risk in gas:** Except as expressly provided in this Agreement, risk in gas transported on the Network under this Agreement remains at all times with the Retailer.

16.5 **Deemed delivery of gas:** The parties agree that by delivering gas to the Point of Connection for the ICP in accordance with the terms of this Agreement, the Distributor will be deemed to have delivered the Retailer’s gas to it.

17. CONNECTIONS, CAPACITY CHANGES, DISCONNECTIONS, RECONNECTIONS AND DECOMMISSIONING

17.1 **Connection Policies:** The Distributor and the Retailer will comply with the Connection Policies set out in Schedule 6 in respect of carrying out new connections, capacity changes, disconnections, reconnections, and decommissioning. The Distributor may update the Connection Policies from time to time in accordance with clause 22. Any updates must be consistent with Good Gas Industry Practice.

17.2 **Costs of disconnection:** The Distributor will not be liable to the Retailer for any loss the Retailer may suffer or incur as a result of disconnection carried out at the instruction of the Retailer, or as permitted by this Agreement, although this will not exclude any liability the Distributor may have under this Agreement for physical damage caused by its negligence in the course of carrying out the disconnection. The Distributor may invoice for, and the Retailer will pay, all Network-Related Services Charges incurred by the Distributor for the purpose of, or in the course of, each disconnection carried out by the Retailer:

- (a) at the instruction of the Retailer; or

- (b) under clause S6.16(c), (d), (e), (f) or (g) of Schedule 6; or
- (c) under clause S6.16(h); or
- (d) if this Agreement is terminated by the Retailer under clause 19.1(a) or 19.1(f); or
- (e) if this Agreement is terminated by the Distributor under clause 19.1(e) or 19.2.

17.3 **Updating the Registry with ICP information:** If an ICP is created as a result of a new connection to the Network, or the connection status of an ICP is changed, the Distributor and Retailer must provide information to the Registry including updating the ICP status codes in accordance with the Switching Rules and determinations made by Gas Industry Co under the Switching Rules.

17.4 **Warranted Persons:** Each party will ensure that where it carries out any work on the Network related to Energising, De-energising, Re-energising, or Decommissioning an ICP, it uses only Warranted Persons to carry out that work.

PART IV – OTHER RIGHTS

18. BREACHES AND EVENTS OF DEFAULT

18.1 **Breach of Agreement:** Subject to clause 18.6, 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 must remedy a 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; or
- (b) in any other case, within 5 Working Days of the date of receipt of such notice.

18.2 **Distributor may exercise other remedies for Serious Financial Breaches:** If the Retailer is required to comply with clause 10.2 by providing and maintaining acceptable security in accordance with clause 10.2(b), and the Retailer has committed a Serious Financial Breach of the type described in paragraph (a) or (b) of the definition of Serious Financial Breach, the Distributor may give notice to the Retailer under clause 18.1 and a notification under clause 18.4, but only if:

- (a) the value of the acceptable security actually provided by the Retailer 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 10.2(b)(ii) or (b)(iii), and the Distributor has called on the third party to make payment in accordance with clause 10.23(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.

18.3 **Failure to remedy Event of Default:** If the Defaulting Party fails to remedy an Event of Default within the relevant timeframe set out in clause 18.1:

- (a) the other party must use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the breach, and to notify him or her of the other party's intention to exercise any further rights under this clause 18; and

- (b) the Defaulting Party must continue to do all things necessary to remedy the breach as soon as practicable.

18.4 **Options for Events of Default:** If the Defaulting Party fails to remedy an Event of Default within the relevant timeframe set out in clause 18.1 and the Event of Default is any 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 incapable of being remedied or which has not been remedied to the reasonable satisfaction of the other party within 30 Working Days of the other party giving the Defaulting Party notice under clause 18.1; or
- (c) a breach by the Defaulting Party, who has also been in breach of an obligation under this Agreement on at least 2 previous occasions within the last 12 months and has received notice of such breaches from the other party in accordance with clause 18.1 and, whether each individual breach is in itself material or not, if all such breaches 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 Direct Distribution Services User,

then no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1, the other party may subject to clause 18.3(a), do any 1 or more of the following:

- (d) issue a notice of termination in accordance with clause 19.2; and
- (e) if the Defaulting Party is the Retailer, the Distributor may:
 - (i) issue a notice prohibiting the Retailer from trading at any ICPs on the Distributor's Network at which the Retailer was not already trading on the date of the notice, in which case the Distributor will have no obligation to provide any Distribution Services to the Retailer in respect of those ICPs; and/or
 - (ii) undertake a Temporary Disconnection of some or all of the ICPs supplied by the Retailer by providing notice to the Retailer in accordance with Schedule 6, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and
 - (iii) if the breach is a Serious Financial Breach by the Retailer the Distributor must notify the Gas Industry Co in accordance with Part 5 of the Switching Rules unless the Distributor has reasonable cause to believe that the Retailer's default does not in any way suggest that the Retailer may be an insolvent retailer; and
- (f) exercise any other legal rights available to it.

- 18.5 **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 23 no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1; and
 - (b) exercise any other legal rights available to it.
- 18.6 **Either party subject to an Insolvency Event:** Despite clause 18.1, if either party is subject to an Insolvency Event, the other party may:
- (a) immediately issue a notice of termination in accordance with clause 19.2; and
 - (b) exercise any other legal rights available to it.
- 18.7 **Retailer subject to an Insolvency Event:** If the Retailer is subject to an Insolvency Event the Retailer must comply with the Switching Rules and Reconciliation Rules to the extent they apply, including by notifying the Gas Industry Co of the fact of the Insolvency Event as soon as practicable and:
- (a) as soon as practicable after becoming insolvent (and in any event within 3 Working Days of receiving a written request from Gas Industry Co), providing to Gas Industry Co a report that includes, in respect of each of its Customers, the data held by the Retailer for each of the parameters listed in Schedule 2 of the Switching Rules in the required format; and
 - (b) providing a complete set of revision files to the Distributor for the Consumption Months the Retailer was trading on the Network (aligned with the consumption information provided to the allocation agent in accordance with the Reconciliation Rules), either following the usual timeframes for providing revision files or provide all remaining required revision files at one time.

19. TERMINATION OF AGREEMENT

- 19.1 **Termination:** In addition to any other termination right in this Agreement, a party may terminate this Agreement as set out below:
- (a) **For convenience:**
 - (i) Subject to subparagraph (ii), either party may terminate this agreement by giving at least 120 Working Days' notice to the other party.
 - (ii) The Distributor will not give a termination notice under subparagraph (i) unless it has, in a manner consistent with clause 5.1:
 - (A) first given notice to the Retailer of its intention to replace the Distributor's existing use of system agreement with a new standard use of system agreement ("**Replacement Agreement**"); and
 - (B) jointly consulted with the Retailer and all other Direct Distribution Services Users that are affected by the proposed Replacement Agreement; and
 - (C) provided the Retailer with the terms of the proposed Replacement Agreement, the rationale for proposing a Replacement Agreement, and the date on which the Distributor proposes to publish the

Replacement Agreement as its standard use of system agreement;
and

- (D) allowed the Retailer a period of at least 40 Working Days from the date the Retailer is provided with the information described in (C) during which the Retailer may provide written submissions to the Distributor in relation to the terms of the proposed Replacement Agreement; and
 - (E) before finalising the terms of the Replacement Agreement, considered in good faith any submissions received from the Retailer and provided to the Retailer: (1) a summary of submissions received along with the Distributor's responses to those submissions and a mark-up of any amendments to the proposed Replacement Agreement; and (2) a further opportunity of 20 Working Days (from the date the materials described in (1) are provided) for the Retailer to provide feedback on the updated proposed Replacement Agreement; and
 - (F) by no earlier than the day after the 20 Working Days referred to in (E) has elapsed, notified the Retailer of the finalised Replacement Agreement; and
 - (G) at least 20 Working Days have passed since the date of the notification of the finalised Replacement Agreement, during which time the finalised Replacement Agreement has remained open for acceptance by the Retailer and the Distributor has made reasonable efforts to be available to discuss the finalised Replacement Agreement with the Retailer.
- (iii) If the Distributor gives a notice of termination in accordance with this clause 19.1(a), and the Retailer continues to use the Network following the effective date of termination, the Retailer will be bound by the terms of the Replacement Agreement from the effective date of termination.
- (b) **Termination by agreement:** both parties may agree in writing to terminate this Agreement;
- (c) **For incompatibility with Law:**
- (i) If the Distributor or Retailer comes to the view (supported by a legal opinion from an independent King's Counsel) that one or more of the requirements imposed on it by this Agreement are contrary to Law ("**Unlawful Requirement**"), then that party may give notice to the other party, providing reasonable details of the Unlawful Requirement and its impact on the first party.
 - (ii) Promptly following receipt of a notice under sub-paragraph (i) above, the parties will meet with a view to agreeing one or more amendments to this Agreement to address the Unlawful Requirements. Neither party will unreasonably withhold or delay its agreement to any amendments necessary for that purpose, although to avoid doubt a party need not agree to any amendment that would require it to assume any material risk, cost or

other burden that it would not also bear if the Unlawful Requirement was not contrary to Law.

- (iii) Either party may terminate this Agreement immediately on not less than 5 Working Days' notice to the other, if at the time of that notice:
 - (A) the terminating party is exposed (or is likely to be exposed) to a material risk, cost or other burden as a result of an Unlawful Requirement;
 - (B) not less than 30 Working Days have passed since receipt of a notice under sub-paragraph (i) in respect of that Unlawful Requirement;
 - (C) the parties have yet to agree amendments to this agreement addressing the Unlawful Requirement to their mutual satisfaction; and
 - (D) the terminating party is not in breach of sub-paragraph (ii) above.
- (iv) Neither party will have any liability to the other by reason of a termination under this clause 19.1(c), whether under clause 27 or otherwise.
- (d) **Termination by Retailer if Retailer not supplying gas on the Network:** the Retailer may terminate this Agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying gas to any Customer through the Network;
- (e) **Termination by Distributor if Retailer not supplying gas 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 Customers with gas through the Network; or
- (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 21.3; 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 21.3 and 21.4.

19.2 **Termination for Event of Default or Insolvency Event:** In addition to any other termination right in this Agreement, if: (i) a party has breached this Agreement and the breach is an Event of Default or (ii) a party has become subject to an Insolvency Event; then in either case 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 18.1 in the case of an Event of Default and subject to clause 18.3(a), 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 gas to all Customers.

- 19.3 **Extending effective date of notice of termination:** A party that has given a notice under clause 19.2 may give a notice extending the date on which the notice given under clause 19.2 takes effect.
- 19.4 **Notice of termination lapses:** A notice of termination given under clause 19.2 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 the effective date of its notice.
- 19.5 **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 either party accrued as at the date of termination.
- 19.6 **Retailer remains liable for charges for remaining Customers:** If this Agreement is terminated for any reason, the Retailer remains liable to pay any charges for Distribution Services that arise in relation to connected Customers that have not been switched to another retailer that is not a Third Party Retailer under this Agreement, 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 Distribution 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 Distribution Services at the prices that apply at the time of termination.
- 19.7 **Obligations to continue until termination:** The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination.
- 19.8 **Events to occur on and from termination:** If this Agreement is terminated, then unless this Agreement is replaced with another agreement signed by both parties for the provision of Distribution Services to all Active ICPs on the Network:
- (a) on the effective date of termination, the parties must have returned or certified the destruction of the other party's Confidential Information (provided that a party may retain a copy of the other party's Confidential Information to the extent and only for so long as this is necessary to comply with its obligations under Law); and
 - (b) from the effective date of termination, both parties must co-operate to transfer the Retailer's Customers to another retailer (excluding any Third Party Retailer under this Agreement, unless the Third Party Retailer is to become a Direct Distribution Services User under clause S9.34) as soon as possible after the date of termination so that the Retailer ceases to trade on the Network.
- 19.9 **Survival of terms:** Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

20. CONFIDENTIALITY

- 20.1 **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 any Confidential Information provided to it by the other party except as provided for in clause 20.2; and

- (b) only use Confidential Information provided to it by the other party for:
 - (i) the purposes of performing its obligations or exercising its rights under this Agreement which, to avoid doubt, in relation to the Distributor, includes use of the Retailer's Confidential Information to develop its pricing methodology, Price Categories and Prices for Distribution Services, and to plan and manage the Network (subject to any restrictions on the use of the information set out in this Agreement);
 - (ii) any specific purpose(s) for which the information was provided by the other party; and
 - (iii) any other purposes expressly permitted by this Agreement or agreed by the parties.

20.2 **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 20 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 or the rules of any stock exchange on which a party's (or a party's ultimate holding company's) shares are traded 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) **To employees, directors, contractors, agents, or advisors:** if the Confidential Information is disclosed to an employee, director, contractor, agent, or advisor of the party, provided that:
 - (i) the information is disseminated only on a "need to know" basis;
 - (ii) recipients of the Confidential Information must be made fully aware of the party's obligations of confidence in relation to the information; and
 - (iii) any copies of the information clearly identify it as Confidential Information.
- (f) **To bona fide potential purchaser:** if the Confidential Information is disclosed 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 in a form that reflects the obligations in the agreement; and

- (g) **To Customer:** if the Confidential Information relates to a Customer, and the Customer has requested the information.

20.3 **Limit for breach:** The exclusions and limitations in clause 24 will not apply to or take into account a party's liability for breach of this clause 20.

20.4 **Unauthorised disclosure:** To avoid doubt, a party will be responsible for any unauthorised use or disclosure of Confidential Information made by that party's employees, directors, contractors, agents, or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 20.2(f).

20.5 **Customer Information received in error:** Each party undertakes and agrees that if it or anyone acting on its behalf receives any Customer Information (including consumption data) directly or indirectly from the other party in connection with this Agreement, and the party knows or reasonably ought to know that Information has been received in error, it will:

- (a) promptly notify the other party in writing of the receipt of such information;
- (b) keep such information confidential;
- (c) not use that information for any purpose; and
- (d) promptly return the information to the other party or destroy the information upon request by the other party.

The parties acknowledge and agree that this clause 20.5 is for the benefit of all other Distribution Services Users on the Network and may be enforced by any of those other Distribution Services Users under the Contract and Commercial Law Act 2017. This clause 20.5 may be varied without the consent of any of those other Distribution Services Users.

20.6 **Consumption data and Registry data:** Consumption data provided by the Retailer, and Registry data for ICPs for which the Retailer is responsible, are Confidential Information of the Retailer, if and to the extent such data is in a form that allows it to be attributed to any individual, any Distribution Services User or any single ICP. However, nothing in this Agreement prevents the Distributor from preparing, using and disclosing information derived from consumption data and/or Registry data, if the information is sufficiently aggregated and anonymised such that it cannot be attributed to any individual, any Distribution Services User or any single ICP.

21. **FORCE MAJEURE**

21.1 **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 natural disaster, being an event or circumstance:
 - (A) due to natural causes, directly or indirectly and exclusively without human intervention; and
 - (B) that could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted;
 - (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, Gas Industry Co, or the Transmission System Owner under the Critical Contingency Regulations, which the party could not reasonably have avoided;
 - (iv) the partial or entire failure of supply or availability of gas to the Network; or
 - (v) any other event or circumstance beyond the control of the party invoking this clause 21.1; and
- (c) the failure did not occur because the party invoking this clause failed to act in accordance with Good Gas Industry Practice.

21.2 Third party Gas Specification and Odourisation: To avoid doubt, where the Retailer engages or relies on a third party (in full or part) to Odourise or treat gas in order to enable the Retailer to meet its obligations under clause 14.2 and/or 14.3, a failure by that third party to treat or Odourise gas cannot be relied on by the Retailer as a Force Majeure Event except to the extent due to external causes that the Retailer could rely on as a Force Majeure Event if the Retailer and the third party were one and the same legal entity.

21.3 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, including:

- (a) in the case of the Distributor, to the extent that on account of the Force Majeure Event the Distributor has not received at a Gas Gate or made available at a Point of Connection gas in the quantities required by the Retailer pursuant to this Agreement or has failed to perform any of its obligations under this Agreement; and
- (b) in the case of the Retailer, to the extent that on account of the Force Majeure Event the Retailer has not delivered gas to the Distributor or taken delivery of gas from the Distributor pursuant to this Agreement or has failed to perform any of its obligations under this Agreement.

To avoid doubt, a party's indemnification obligations under clause 14.4, 14.5, 15.3, 27.1 or 27.2 are subject to this clause 21.3.

21.4 Notice: If a party becomes aware that a Force Majeure Event may occur or has occurred, it must:

- (a) notify the other party as soon as reasonably practicable that it is invoking this clause;
- (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).

21.5 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 21.1 must:

- (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) keep the other party reasonably informed on the performance of the obligations referred to in paragraphs (a) and (b).

21.6 **No obligation to settle:** Nothing in clause 21.5(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.

21.7 **No relief from payment obligations:** Notwithstanding clause 21.2, nothing in this clause 21 shall relieve a party from liability to pay money due at the time of the Force Majeure Event, or to give any notice which may be required to be given pursuant to this Agreement.

22. AMENDMENTS TO AGREEMENT

22.1 **Overview:** A change may be made to this Agreement:

- (a) by the Distributor if the change is a change to the pricing information referred to in clause S7.1 of Schedule 7 and is made in accordance with clause 7;
- (b) by the Distributor if the change is made to the billing policies and processes set out in Schedule 2 and is made in accordance with clause 9.2;
- (c) by the Distributor if the change is made to one or more of the Variable Provisions and the change is made in accordance with clause 22.2;
- (d) by either party if the change is required by Law or any mandatory rules or protocols of any industry association or body of which both the Distributor and Retailer are members or signatories at the relevant time, and the change is made in accordance with clause 22.3;
- (e) by either party if the subject matter of the change is regulated by the Commerce Commission and the change is permitted or required as a result of a determination, decision, or direction of the Commerce Commission, and the change is made in accordance with clause 22.3;
- (f) if the change does not fall into any of the categories set out above, and the change is made in accordance with clause 22.3; or
- (g) when it is deemed in accordance with clause 12.16, following a Network Reduction.

22.2 Process to change any of the Variable Provisions: If no other process for making changes is specified within the Variable Provision itself, the Distributor may make an amendment to a Variable Provision on not less than 40 Working Days' notice, so long as:

- (a) the change is not inconsistent with Good Gas Industry Practice;
- (b) the change will not constitute a breach of clause 5.1;
- (c) the Distributor has made the proposed change available to the Retailer and other Direct Distribution Services Users trading on the Network for consultation, allowing not less than 20 Working Days for submissions, and has considered in good faith any submission that the Retailer makes regarding the proposed change;
- (d) the Distributor has provided the Retailer with a summary of submissions received from all Direct Distribution Services Users (but without identifying the Direct Distribution Services User or disclosing any confidential information if requested by the Direct Distribution Services User), along with the Distributor's responses to those submissions, and a clear indication whether Direct Distribution Services Users accounting for more than 50% of ICPs support or do not oppose the amendment. For the avoidance of doubt, the Distributor may change the Variable Provision whether or not Direct Distribution Services Users accounting for more than 50% of ICPs support the proposed change; and
- (e) if during the period allowed for submissions the Retailer provides reasonable evidence that it cannot comply with the proposed change without making material changes to its systems or processes, the Distributor must delay implementation of the change until at least 3 months after it notifies the finalised change to the Retailer under this clause 22.2.

At the expiry of the applicable notice period this Agreement will be deemed to be amended to reflect the updated Variable Provisions notified by the Distributor, and the Distributor will notify and provide copies of the updated Variable Provisions to the Retailer within 5 Working Days of the end of the notice period. To the extent the Variable Provisions conflict with any other express provisions of this Agreement, the latter will prevail.

22.3 Procedure for changes required by law and other changes: The following procedures will apply to changes contemplated by clauses 22.1(d) to 22.1(f):

- (a) Either party may propose a change by giving notice to the other party. The Distributor may in its discretion choose to consult with the Retailer and all other Direct Distribution Services Users jointly about the proposed change:
 - (i) if the proposed change is contemplated by clause 22.1(d), specify the provisions of the mandatory rules or protocols, or the law or regulation, that are the basis of the proposed change; or
 - (ii) if the proposed change is contemplated by clause 22.1(e), specify the determination, decision, or direction of the Commerce Commission that is the basis of the proposed change; or

- (iii) if the proposed change is contemplated by clause 22.1(f), set out the reasons for the proposed change; and
 - (iv) propose a draft amendment in the form that the change is proposed to be incorporated into this Agreement.
- (b) The parties must negotiate the change in good faith.
- (c) If the parties 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 was signed by the Distributor and Retailer or on such other date as specified in the variation.
- (d) Subject to clause (e), if the proposed change is contemplated by clauses 22.1(d) or (e) 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), then either party may give notice to the other referring the change to be determined by arbitration, in which case:
- (i) the arbitration will be conducted before a single arbitrator in Auckland;
 - (ii) the arbitrator will be agreed between the Parties or, failing agreement within 10 Working Days of the referral to arbitration, appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand;
 - (iii) the arbitration will be conducted in accordance with the Arbitration Act 1996;
 - (iv) the arbitrator will ask each party to submit its best proposal for the change, and will select the proposal which the arbitrator considers is the most fair, reasonable and consistent with Good Gas Industry Practice. The arbitrator's decision will be final and binding on the parties; and
 - (v) from the date of the arbitrator's decision the Agreement will be deemed to be amended accordingly.
- (e) Notwithstanding clause 22.3(d), if the proposed change is contemplated by clauses 22.1(d) or 22.1(e) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under paragraph (a), the Distributor may give notice making the change binding pending the outcome of arbitration under clause 22.3(d), provided that the change does not constitute a breach of clause 5.1.
- (f) If the proposed change is contemplated by clause 22.1(f) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under paragraph (a), the Distributor may give notice making the proposed change, provided that:
- (i) the change will not constitute a breach of clause 5.1; and
 - (ii) either:
 - (A) out of all the agreements for the supply of Distribution Services then in force between the Distributor and the Retailer or any third party (excluding any such agreement to the extent that the Distribution Services relate solely to gas consumed by that third party):

- (1) there are no more than two agreements that do not include substantially the same change or addition; and
 - (2) the agreements that do include substantially the same change or addition provide Distribution Services for not less than 85% of the total ICPs on the Network; or
- (B) the change or addition is expressed to come into effect only once the requirements of sub-paragraph (A) above have been satisfied.
- (g) The Distributor must notify the Retailer of its intention to exercise its rights under clause 22.3(e) or 22.3(f) no less than 5 Working Days prior to expiry of the 40 Working Days' period referred the relevant clause. Any change made to this Agreement in accordance with clause 22.3(e) or 22.3(f) will become effective on expiry of the 40 Working Days' period referred to in that clause.

22.4 **Minor changes:** Where a change to the Agreement has a de minimis effect on the contractual undertakings of the parties (for example terminology changes to accord with new industry classifications or definitions), either party will be entitled to effect the change by not less than 10 Working Days' notice to the other party, unless the party receiving the notice objects to the change within 5 Working Days of receipt, showing reasonable grounds as to why that change should not be implemented.

23. DISPUTE RESOLUTION PROCEDURE

23.1 **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 must 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.

23.2 **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.

23.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties must attempt to agree on the identity of the mediator and, if they cannot agree within that timeframe, the mediator will be appointed in accordance with the Resolution Institute Mediation Rules.

23.4 **Conduct of mediation:** In consultation with the mediator, the parties must 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.

- 23.5 **Appointment of representative:** Each party must appoint a representative for the purposes of the mediation who must have authority to reach an agreed solution and effect settlement.
- 23.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) **Act in good faith:** the parties and their representatives must 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.
- 23.7 **Arbitration:** If the Dispute is not resolved through mediation within 40 Working Days (or such other period agreed by the parties) of the appointment of a mediator, or has not been referred to mediation but remains unresolved 20 Working Days after the Dispute has been notified in accordance with clause 23.1, then either party may give notice referring the Dispute to arbitration ("**Arbitration Notice**"). The arbitration will be conducted in English before a single arbitrator in Auckland, New Zealand. The arbitrator will be agreed between the parties or, failing agreement within 5 Working Days of receipt of the Arbitration Notice, appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand. The arbitration will be conducted in accordance with the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 23.8 **No reference to previous mediator or previous mediation:** Where a party has referred a Dispute to arbitration which has previously been referred to mediation, the relevant mediator shall not be called by either party as a witness, and no reference shall be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent legal action on the matter in Dispute.
- 23.9 **Urgent relief:** Notwithstanding any other provision of this agreement, each party reserves the right to take steps to seek urgent injunctive or equitable relief before an appropriate court.
- 24. LIABILITY**
- 24.1 **Payments of charges:** Nothing in this clause 24 will operate to limit the liability of either party to pay all charges and other sums due under this Agreement, or in accordance with any requirements set under Part 4 of the Commerce Act 1986.
- 24.2 **Direct physical damage:** Except in respect of liability under clauses 14.4, 14.5, 15.3, 20, 24.9, 25, and 27, 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 Physical Damage**") that results from a breach of this Agreement, negligence, or failure to exercise Good Gas Industry Practice.

- 24.3 **Consequential loss excluded:** Except in respect of liability under clauses 14.4, 14.5, 15.3, 20, 24.9, 25, and 27, 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 Physical Damage that arises under clause 24.2); or
 - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 24.4 **No liability in tort, contract etc:** Except as expressly provided in clauses 14.4, 14.5, 15.3, 20, 24, 25, and 27, the Distributor's liability to the Retailer and the Retailer's liability to the Distributor, whether in tort (including negligence), contract, breach of statutory duty, equity, or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this Agreement is excluded to the fullest extent permitted by Law.
- 24.5 **Distributor not liable:** Except as provided in clause 25, the Distributor will not be liable for:
- (a) any failure to convey gas to the extent that such failure arises from:
 - (i) any act or omission of any Customer or other person excluding the Distributor and its officers, employees, or agents;
 - (ii) a failure to convey, or reduction in injection or supply of, gas into the Network; or
 - (iii) an interruption in the conveyance of gas in the Network pursuant to curtailment instructions issued by the Transmission System Owner in accordance with the Critical Contingency Regulations;
 - (iv) any defect or abnormal conditions in or about any Customer's Premises;
 - (v) the Distributor taking any action in accordance with this Agreement, including clause 4.4;
 - (vi) any act or omission of the Transmission System Owner unless and to the extent that the Distributor has obtained a service guarantee from the Transmission System Owner and the Transmission System Owner has paid the Distributor under the relevant service guarantee, in which case the Distributor will be liable to the Retailer only to the extent of the Retailer's proportionate share of such payment having regard to all other Direct Distribution Services Users and all customers affected by the relevant event, as determined by the Distributor (acting reasonably); or

- (vii) the Distributor being prevented from making necessary repairs (for example by police at an accident scene),

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

- (b) 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; or
- (c) any momentary fluctuations in the pressure or specification of gas conveyed over the Network which are within tolerances permitted by Law (including gas safety regulations); or
- (d) any failure originating with the Transmission System; or
- (e) any failure to the extent that such failure arises:
 - (i) due to the Retailer's breach of this Agreement, negligence or failure to exercise Good Gas Industry Practice;
 - (ii) out of any of the circumstances set out in clause 27.1(a)(i) - 27.1(a)(vi);
 - (iii) due to extreme weather, geological or seismic event, fire (originating from an external source) or flooding; or
 - (iv) due to a Force Majeure Event, subject to the requirements of clause 21,

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

24.6 **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;
- (c) any failure originating with the Transmission System, provided that this exclusion will not relieve the Retailer of any liability under clause 14 or clause 15; or
- (d) any failure to the extent that such failure arises:
 - (i) due to the Distributor's breach of this Agreement, negligence, or failure to exercise Good Gas Industry Practice; or
 - (ii) due to a Force Majeure Event, subject to the requirements of clause 21; or
 - (iii) out of any of the circumstances set out in clause 27.2(a); or
- (e) any failure, service interruption, loss of supply, malfunction or other event on the Network, to the extent that the event arises from the Retailer's actions to curtail or restore supply to Customers following instructions issued by the Transmission System Owner in accordance with the Critical Contingency Regulations (although to avoid doubt this will not relieve the Retailer of liability for a failure to comply with the requirements of this Agreement, except to the extent that the Retailer is

compelled under the Critical Contingency Regulations to take actions that cannot be performed in a manner consistent with this Agreement),

in each case, except to the extent that the failure is caused or contributed to by the Retailer not acting in accordance with this Agreement.

24.7 **Limitation of liability:** Subject to clauses 14.4, 14.5, 15.3, 24.1 and 24.8, but despite any other provision of this Agreement:

- (a) in respect of a party’s liability for Direct Physical Damage that arises from damage at one or more Customer Premises (“**Customer Premises Direct Physical Damage**”), 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:
 - (i) will not in any circumstances exceed \$10,000 per affected ICP (where the relevant ICP has a maximum flow rate less than or equal to 40 scmh) or \$20,000 per affected ICP (where the relevant ICP has a maximum flow rate greater than 40 scmh), applied as a cap at each ICP affected by the event; and
 - (ii) in any case will not in any circumstances exceed \$2,000,000 in total, and
- (b) in respect of events or circumstances during the period from 1 October each year until 30 September the following year (“**Current Year**”) the maximum aggregate liability of each party to the other under or in connection with this Agreement (whether in contract, tort (including negligence), or otherwise, but excluding Customer Premises Direct Physical Damage) will not in any circumstances exceed the amount determined in accordance with the following table:

Distribution Services Charges paid by the Retailer during the 12 months immediately preceding the Current Year (as a percentage of the total distribution services charges received by the Distributor in respect of the Network in the same 12 months, from all users of the Network)*	Maximum aggregate liability of the Distributor	Maximum aggregate liability of the Retailer
0 to 2.5%	\$500,000	\$500,000
>2.5% to 10%	\$1,000,000	\$1,000,000
>10% to 15%	\$2,000,000	\$2,000,000
>15% to 20%	\$3,000,000	\$3,000,000
>20%	\$4,000,000	\$4,000,000

* The Distributor will provide the Retailer with the information needed to determine its position under this table as reasonably requested by the Retailer from time to time. The Distributor will use reasonable efforts to ensure the accuracy of this

information, but any errors in this information will not prejudice the Distributor's position under this clause 24.7.

24.8 Exclusions from limitation of liability: Clause 24.7:

- (a) does not limit a party's liability under clauses 20, 24.9, 25, 27.1(b), or 27.2(b);
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme that cannot lawfully be overridden by this Agreement;
- (c) does not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Customer failing to comply with the Distributor's Network Connection Standards; and
 - (ii) the Retailer failed to include in each of its Supply Agreements a provision requiring the Customer to comply with those Network Connection Standards.

24.9 Consumer Guarantees Act: The following provisions apply:

- (a) subject to clause 29.1, the Retailer must, to the fullest extent permitted by Law and including if the Customer is acquiring or holds itself out as acquiring gas for the purpose of a business, exclude from each of its Supply Agreements (which includes a contract between the Retailer and a purchaser of gas 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 or any other law concerning the supply of gas by the Retailer under the Supply Agreement ("**Retailer Warranties**");
- (b) if the Customer on-supplies gas to an end-user the Retailer must, as a condition of any Supply Agreement, require the Customer to include provisions in all agreements between the Customer and an end-user, excluding all Distributor Warranties and Retailer Warranties to the fullest extent permitted by Law, including if the end-user is acquiring, or holds itself as acquiring, gas for the purposes of a business;
- (c) to avoid doubt, nothing in this clause 24.9 affects the rights of any Customer under the Consumer Guarantees Act 1993 that cannot be excluded by Law, nor does it preclude the Retailer from offering in its Supply Agreements its own warranties, guarantees, or obligations pertaining to Distribution Services; and
- (d) for the purposes of paragraph (a), the obligation to exclude warranties, guarantees, or obligations if the Customer is acquiring or holds itself out as acquiring gas for the purpose of a business only applies if such exclusion is permissible under section 43 of the Consumer Guarantees Act 1993.

24.10 Distributor liabilities and Supply Agreements: The Retailer must, subject to clause 29.1, include in each of its Supply Agreements clear and unambiguous clauses to the effect that:

- (a) the Customer must indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud of, dishonesty of, or wilful breach of the Supply Agreement by the Customer or any of its officers, employees, agents, or invitees arising out of, or in connection with, the Distribution Services provided under this Agreement; and
- (b) to the extent permitted by Law, the Distributor will have no liability to the Customer in contract, tort (including negligence), or otherwise in respect of the supply of gas to the Customer under the Supply Agreement.

24.11 **Benefits to extend:** Each party agrees that its obligations under this clause 24 and clauses 25 to 28 (and clause 29.3 in respect of the Retailer) 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 Part 2 of the Contract and Commercial Law Act 2017 apply to its promises under this clause 24. The clauses referred to in this clause may be varied without the consent of the beneficiaries described in this clause.

25. DISTRIBUTOR INDEMNITY

25.1 **Distributor indemnity:** Despite anything else in this Agreement, the Retailer is entitled to be indemnified by the Distributor as set out in section 46A of the Consumer Guarantees Act 1993.

26. CONDUCT OF CLAIMS UNDER DISTRIBUTOR INDEMNITY

26.1 **Claim against Retailer:** If a Customer makes a claim against the Retailer in relation to which the Retailer seeks (at the time of the claim or later) to be indemnified by the Distributor under section 46A of the Consumer Guarantees Act 1993 (a "Claim"), the Retailer must:

- (a) give written notice of the Claim to the Distributor as soon as practicable after the Retailer has become aware of the Claim and any facts or circumstances indicating that the underlying failure may be related to an event, circumstance, or condition associated with the Network, specifying the nature of the Claim in reasonable detail; and
- (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) not make any payment or admission of liability in respect of the Claim.

26.2 **Payment arrangements:** If the Distributor is required to indemnify the Retailer under section 46A of the Consumer Guarantees Act 1993, the Distributor must promptly pay the Retailer the amounts due under the Consumer Guarantees Act 1993.

26.3 **Dispute resolution:** Any dispute between the Distributor and the Retailer relating to the existence or allocation of liability under section 46A of the Consumer Guarantees Act 1993 must be dealt with by each party in accordance with the Dispute Resolution Scheme or, if the dispute is not accepted by the scheme, the parties must deal with the dispute in accordance with clause 23.

- 26.4 **Conduct of CGA claims:** Without limiting the foregoing provisions of clause 26, the provisions of clauses 28.3 to 28.6 shall apply to each Claim, as if the Retailer was the Indemnified Party, the Distributor was the Indemnifying Party and the Claim was the Third Party Claim. Additionally:
- (a) the Distributor must advise the Retailer as soon as reasonably practicable after being notified of the Claim if it intends to assume management and defence of the Claim;
 - (b) if the Distributor elects to assume management and defence of the Claim, the Retailer may advise the relevant Customer and Dispute Resolution Scheme that the Distributor is dealing with the Claim; and
 - (c) if, in respect of any Claim, the management and defence of which has been assumed by the Distributor pursuant to this clause 26.4, the Distributor intends (whether by reason of any fact or matter which is asserted or proven in such proceedings or otherwise) to assert that the Distributor's indemnity pursuant to section 46A of the Consumer Guarantees Act 1993 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 as it relates to the Retailer.

27. FURTHER INDEMNITY

27.1 **Distributor will be indemnified:** Subject to clauses 24.7 and 28, 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 suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim against the Distributor by any person with whom the Retailer or Distributor has a contractual relationship in relation to the provision of services or the conveyance of gas 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 Customer's Premises in accordance with this Agreement, unless the disconnection is due to this Agreement being terminated for the Distributor's breach or Insolvency Event;
 - (iii) the termination of this Agreement by the Retailer, except when the termination is the result of a breach by the Distributor or the Distributor suffering an Insolvency Event;
 - (iv) any failure by the Retailer to perform any obligation under any agreement between the Retailer and Customer or other third party;
 - (v) any failure by the Retailer to comply with its obligations required by Law; and/or

- (vi) any action undertaken by the Distributor under or in connection with this Agreement at the request of the Retailer, subject to paragraph (ii) above; and
 - (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this Agreement.
- 27.2 **Retailer will be indemnified:** Subject to clauses 24.7 and 28, 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 suffered, or incurred by the Retailer arising out of or in connection with:
- (a) any claim against the Retailer by any person with whom the Distributor or Retailer has a contractual relationship in relation to the provision of services or conveyance of gas on the Network 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 disconnection by the Distributor of any Customer's ICP in accordance with this Agreement, unless the disconnection is:
 - (A) necessary to comply with Good Gas Industry Practice; or
 - (B) due to this Agreement being terminated by either party under clause 19.1(a) (for convenience); or
 - (C) due to this Agreement being terminated by the Distributor under clause 19.1(c) (for incompatibility with the law), 19.1(e) (for the Retailer's non-supply of gas), 19.1(f) (for Force Majeure), or 19.2 (for the Retailer's breach or Insolvency Event);
 - (iii) any failure by the Distributor to perform any obligation under any agreement between the Distributor and the Transmission System Owner or any other third party;
 - (iv) any failure by the Distributor to comply with its obligations required by Law; and/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.
- 27.3 **Contribution:** Each party's liability under this clause 27 will be reduced to the extent that the loss, liability, damage, cost, expense or other amount claimed by the other party under this clause 27 is caused or contributed to by the other party's negligence, breach of this Agreement or failure to exercise Good Gas Industry Practice.
- 27.4 **Other rights and remedies not affected:** The indemnities in this clause 27 are in addition to, and without prejudice to, the rights and remedies of each party under this Agreement or under statute or in law, equity, or otherwise.

28. CONDUCT OF CLAIMS UNDER FURTHER INDEMNITY

- 28.1 **Third Party Claim:** This clause applies if a party with a right of indemnity under clause 27 (“**Indemnified Party**”) seeks (at the time or later) to be indemnified by the other party (“**Indemnifying Party**”) under clause 27 in respect of a claim by any person of the kind described in clause 27.1(a) or 27.2(a) (“**Third Party Claim**”).
- 28.2 **Indemnified Party to give Notice of Third Party Claim:** As soon as reasonably practicable on becoming aware of the 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 Indemnified 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 practicable 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. SUPPLY AGREEMENTS

- 29.1 **Retailer to include provisions in Supply Agreements:** The following clauses apply in respect of the Retailer’s Supply Agreements:
- (a) in respect of each Supply Agreement 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 Supply Agreement, within 12 months after the Commencement Date (whichever is earlier), the Retailer must issue a unilateral variation to the Supply Agreement to include provisions that have substantially the same effect as the provisions required to be included in the Supply Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017; or
- (ii) if the Retailer is unable to unilaterally vary 1 or more Supply Agreements as set out in subparagraph (i), the Retailer must:
 - (A) use all reasonable endeavours to obtain at the next review of each Supply Agreement, or within 12 months, whichever is earlier, the agreement of the Customer to enter into a variation of the Supply Agreement to include the provisions that have substantially the same effect as the provisions required to be included in the Supply Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 12 of the Contract and Commercial Law Act 2017; and
 - (B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Customer required in subparagraph (A); or
- (b) in respect of each Supply Agreement that has been entered into after the Commencement Date, include the provisions required to be included in the Supply Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017.

29.2 **Changes to Supply Agreements during term:** If this Agreement is changed in accordance with clause 22 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 Supply Agreements, the Retailer must take such steps as are necessary to amend those agreements. If the Retailer is required by the Distributor to change its Supply Agreements more than once in any 2 year period, the Retailer may recover its reasonable costs and expenses associated with such compliance from the Distributor except where the change is required under clauses 22.1(d) or 22.1(e).

29.3 **Retailer to indemnify Distributor:** Subject to clause 24, 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 to a party under this Agreement must 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. To avoid doubt, a "notice" referred to in this clause 30 includes any Invoice issued by the Distributor.

- 30.2 **Receipt of Notices:** 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 email, no later than 1 Working Day after leaving the sender's email system, unless during that time the sender's email system receives a delivery failure notification, in which case the notice will be deemed not to have been sent.
- 30.3 **Deemed receipt after 5pm or day that is not Working Day:** Any notice given in accordance with clause 30.2 that is personally delivered or sent by 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. INFORMATION EXCHANGE

- 31.1 **Protocols for exchanging information:** The Distributor and the Retailer must, when exchanging information to which a GIEP in Schedule 3 relates, comply with that GIEP. Where Gas Industry Co publishes any other GIEP not contemplated by Schedule 3, the Distributor and Retailer will, if they so agree, use the published GIEPs as soon as reasonably practicable. Where certain information is exchanged on a regular basis and there is no appropriate GIEP the Distributor and Retailer will use reasonable endeavours to agree a standard format to be used for exchange of such information.
- 31.2 **Customer information:** The Retailer will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with the information listed in Schedule 3 and such Customer Information as is reasonably available to the Retailer and necessary to enable the Distributor to exercise its rights or fulfil its obligations in accordance with this Agreement or to comply with the Law (including any reporting requirements). The information will be treated by the Distributor as Confidential Information. The Distributor may use such information to develop its pricing methodology, Price Categories and Prices for Distribution Services, to plan and manage the Network, and otherwise to perform its obligations and exercise its rights under this Agreement, but will not use such information for any other purpose.
- 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 "**Other Party**"), and/or to verify that the Other Party has complied with the restrictions and requirements in this Agreement regarding the protection, use and disclosure of Confidential Information provided by the Verifier, (in each case, the "**Verification**") the Other Party will allow the Verifier and its agents reasonable access to the Other Party's books and records (the "**Records**") to the extent that those Records are relevant to the Verification. 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. If the Retailer is the Other Party and any relevant information is held by a third party Metering Equipment owner or operator (or Third Party Retailer), the Retailer will use reasonable endeavours to procure access to the third party Metering Equipment owner or operator's (or Third Party Retailer's) books and records for the benefit of the Distributor (provided that doing so does not impose any additional costs on the Retailer). If the Retailer is the Other Party and information provided to the Distributor for billing of

Distribution Services Charges includes conversion of information provided by a Third Party Retailer to the Retailer, the Retailer will allow the Verifier and its agents reasonable access to review the conversion process. A party will not initiate more than one Verification in any six month period, although this limit will disregard any Verification that reveals a material breach of this Agreement.

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 the Verification; and
- (b) engage as its agent any person that is in competition with the Other Party, any person who is related to a person in competition with the Other Party, or any employee, director, or agent of such persons. For the purposes of this paragraph (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 Other Party 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 Other Party 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 New Zealand Law Society (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 confidential all information of the Other Party received by the Auditor in connection with the audit (including the Records). Where an Auditor is appointed under this clause 31.5, the requirements of clause 31.3 will apply to this clause with all necessary modification (with references to the “Verifier” to be read as the Auditor).

31.6 **Parties must co-operate:** The Other Party will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Other Party’s Records under clause 31.3 or 31.5 and will ensure that the Records are readily accessible and readable. The Verifier or the Auditor (as the case may be) will ensure that it conducts its activities reasonably and so as to minimise any disruption to the normal operations of the Other Party.

31.7 Parties to comply with Privacy Act:

- (a) Each party acknowledges and agrees that it will comply at all times with the Privacy Act 2020 to the extent it applies to its activities under this Agreement.
- (b) Without limiting the foregoing, the Retailer will make any disclosures, and obtain any authorisations, needed under the Privacy Act 2020 to enable the Distributor to use the Customer Information as permitted by this Agreement.
- (c) Whenever the Retailer discloses personal information to the Distributor in the course of its activities under this Agreement, the Retailer will ensure that the individual concerned is notified of the Distributor's name, contact details (as listed on the Distributor's website from time to time) and the purposes for which the personal information is being provided to the Distributor, if and to the extent such a notification is required of the Distributor under the Privacy Act 2020 by virtue of the Distributor being regarded as "collecting" that information from the Retailer.
- (d) Where the Distributor holds Confidential Information of the Retailer that consists of "personal information" under the Privacy Act 2020:
 - (i) the Distributor will implement and maintain such security safeguards as are reasonable in the circumstances to have against loss or unauthorised use, disclosure or destruction of that personal information;
 - (ii) if the Distributor becomes aware of a privacy incident affecting that personal information:
 - (A) the Distributor will promptly, and in any case within 72 hours, notify the Retailer, providing reasonable details of the privacy incident and the Distributor's proposed response;
 - (B) the Distributor and the Retailer will take reasonable steps to investigate and mitigate the privacy incident, and to provide each other with any information needed to determine the extent to which the Privacy Act requires the privacy incident to be notified to the Privacy Commissioner and/or affected individuals, recognising that the division of responsibility for investigation and mitigation should reflect which party is best placed to take any given step.

32. MISCELLANEOUS

32.1 **No implied warranties:** To the maximum extent permitted by Law, the Distributor excludes all warranties, representations and undertakings about the Distribution Services and the Network other than those warranties, representations and undertakings expressly set out in this Agreement. In particular but without limitation the Distributor does not warrant that conveyance of gas over the Network will be free from defects and interruptions.

32.2 **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.

- 32.3 **Entire agreement:** This Agreement records the entire agreement and prevails over any earlier agreement concerning its subject.
- 32.4 **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 32.4, 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.
- 32.5 **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.
- 32.6 **Third Party Retailers:** The Retailer may allow another gas retailer use of the Network and Distribution Services made available by the Distributor under this Agreement only subject to and in accordance with the terms of Schedule 9.

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) any reference to the Retailer being "responsible" for an ICP means being the responsible retailer as contemplated in the Switching Rules, or where Schedule 9 applies, having a Third Party Retailer who is the responsible retailer as contemplated in the Switching Rules;
 - (d) references to any form of law is to New Zealand Law, including as amended or re-enacted;
 - (e) if a party comprises more than 1 person, each of those person's liabilities are joint and several;
 - (f) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
 - (g) every right, power, and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
 - (h) all amounts payable under this Agreement are in New Zealand dollars and exclude GST and every other tax and duty, 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;
 - (i) New Zealand time and dates apply;
 - (j) any word or expression cognate with a definition in this Agreement has a meaning corresponding or construed to the definition;
 - (k) references to sections, clauses, Schedules, annexes, or other identifiers are to those in this Agreement unless otherwise identified; and
 - (l) references to a document or agreement includes it as varied or replaced.

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

“Active ICP” means an ICP which has a Registry ICP status of ACTC (Active-Contracted) or ACTV (Active-Vacant) and for which the Retailer (or where applicable, one of its Third Party Retailers) is the responsible retailer under the Switching Rules.

"Agreement" means this use of system agreement, including each Schedule and any other attachment or document incorporated by reference.

"Cash Deposit" has the meaning given in clause 10.2.

“CIV” means a customer isolation valve (also known as a riser valve), being the Distributor’s valve at the end of the Network service line which conveys gas to an ICP, which enables the Distributor to allow or prevent the flow of gas from the Network.

"Commencement Date" means the date specified in clause 1.1.

“Competent” means certified by virtue of completing the set of competency requirements created by the Gas New Zealand.

"Confidential Information" of a party means all data and other information of a confidential nature provided by that party (**“Providing Party”**) to the other party (**“Receiving Party”**) under the terms of this Agreement or otherwise that is identified by the Providing Party as being confidential, or which should reasonably be understood by the Receiving Party to be confidential, but excludes:

- (a) information known to the Receiving Party prior to the date it was provided to it by the Providing Party and not obtained directly or indirectly from the Providing 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 Providing Party under an obligation of confidence; and
- (c) the existence and terms of this Agreement.

“Connection Policies” means the new connection, capacity change, disconnection and re-connection policies set out in Schedule 6.

“Consumer” or **“consumer”** has the meaning given in section 2 of the Gas Act 1992.

“Consumption Month” in the context of any given charges, means the month in respect of which those charges are accumulated.

"Credit Note" means a document setting out the ‘supply correction information’ required by the GST Act in relation to the amounts being credited.

“Critical Contingency Regulations” means the Gas Governance (Critical Contingency Management) Regulations 2008.

"Customer" means a person that purchases gas from the Retailer that is delivered via the Network. Where the Retailer is responsible for an ICP in the Registry but does not

have a contract with any purchaser for the supply of gas to that ICP, the Customer is the occupier of the premises to which that ICP relates.

"Customer Information" means all information or data connected to, or which would identify, a Customer.

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

- (a) the land within the boundary within which the gas 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 or the Unit Titles Act 2010.

"Debit Note" means a document setting out the 'supply correction information' required by the GST Act in relation to the amounts being debited.

"Decommissioned" means the state of an ICP where the service line to the ICP has been permanently disconnected inside or outside the property boundary, and where the ICP status code in the Registry is recorded as DECR.

"De-energise" means the process of closing and capping or plugging the CIV at a Point of Connection to prevent further transportation of gas to 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% per annum.

"Delivery Pressure" means the nominal operating pressure at which gas is delivered to a Point of Connection (represented as "Network pressure" for the ICP on the Registry), and which for the avoidance of doubt is between the minimum and maximum pressure Published by the Distributor for the relevant part of the Network supplying the ICP.

"Direct Loss or Damage", in the context of any indemnity under this Agreement:

- (a) means loss or damage of a kind that flows naturally from the events giving rise to the entitlement to be indemnified;
- (b) includes any liability the indemnified party may have to a third party under the Consumer Guarantees Act 1993 as a result of those events;
- (c) includes any liability the indemnified party may have for regulatory fines and penalties as a result of those events, other than amounts that cannot lawfully be indemnified against;
- (d) includes the indemnified party's legal costs on a solicitor/own client basis;

- (e) excludes any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
- (f) except as provided in (b) and (c) above, excludes any liability the indemnified party may have to a third party for amounts that, as between the third party and the indemnified party, consist of any loss or damage of a kind intended to be excluded by clause 24.3(a), (b), (c) or (d).

"Direct Physical Damage" has the meaning given in clause 24.2.

"Direct Distribution Services User" means a Distribution Services User that is entitled to convey gas over the Network pursuant to an agreement directly between the Distribution Services User and the Distributor.

"Dispute" has the meaning given in clause 23.1.

"Dispute Resolution Scheme" means Utilities Disputes or such other dispute resolution scheme approved or provided for in accordance with section 43E of the Gas Act 1992.

"Distribution Services" means the provision, maintenance, and operation of the Network for the conveyance of gas from Gas Gates to Points of Connection.

"Distribution Services Charges" means the Distributor's charges made up of fixed and/or variable tariffs applied to each ICP on the basis of the ICP's status and applying the Prices in accordance with Schedule 2.

"Distribution Services User" means a party that is entitled to convey gas over the Network pursuant to an agreement with the Distributor, either as a contracting party to such an agreement, or as a third party claiming through such a contracting party under provisions substantially equivalent to Schedule 9 of this Agreement.

"Distributor" means the party identified as such in this Agreement.

"Distributor's Equipment" means the Fittings and Metering Equipment (if any) up to and including the CIV that are 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 third party's Fittings or Metering Equipment that are from time to time installed in, over or on Customer's Premises.

"Energise" means the operation of opening the CIV at a Point of Connection so that gas can flow to an ICP, including any associated checking and testing of the Customer's Gas Installation.

"Event of Default" has the meaning given in clause 18.4.

"Fittings" means everything used, or designed or intended for use, in or in connection with the supply, distribution, compression, or use of gas.

"Force Majeure Event" has the meaning given in clause 21.1.

"Gas Gate" means a facility at which gas is or will be taken (or is or will be made available to be taken) from a transmission pipeline into the Network.

"Gas Industry Co" means the entity for the time being approved as the industry body under Part 4A of the Gas Act 1992.

"Gas Installation" means all Fittings and appliances owned or operated by a consumer from the outlet of the GMS to any point on the consumer's premises where gas may be consumed, including where the consumer is a Customer.

"Gas Measurement Standard" means NZS 5259: 2015 Gas Measurement.

"Gas Specification" means NZS 5442:2008 Specification for Reticulated Natural Gas, as updated or replaced by Standards New Zealand from time to time.

"GIEP" means a gas information exchange protocol published by the Gas Industry Co as an industry standard for the exchange of specified information.

"GMS" or **"Gas Measurement System"** means the equipment and Fittings installed downstream of the CIV at a Point of Connection for the purposes of measuring the quantity of gas delivered to a Customer's Gas Installation.

"Good Gas Industry Practice" means:

- (a) in the case of the Distributor, the exercise of the same degree of skill, diligence, prudence, foresight, and economic management that would reasonably be expected from a skilled and experienced gas network owner engaged in New Zealand in the distribution of reticulated gas under conditions comparable to those applicable to the Network consistent with the applicable Law, safety, and environmental protection. The determination of comparable conditions is to take into consideration 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 or a Third Party Retailer, the exercise of the same degree of skill, diligence, prudence, foresight, and economic management that would reasonably be expected from a skilled and experienced gas retailer engaged in New Zealand in the same type of undertaking under comparable conditions consistent with the applicable Law, safety and environmental protection.

"GST" means goods and services tax payable under the GST Act.

"GST Act" means the Goods and Services Tax Act 1985.

"ICP" means installation control point being the point at which a consumer's installation is deemed to have gas supplied, and the corresponding ICP identifier represents the consumer's installation on the Registry.

“Indeterminate ICP” means an ICP listed on the Registry that has an ICP status of Active-Contracted (ACTC) and a responsible retailer code associated with an entity that is not a retailer (including an entity that used to be a retailer but has ceased retailing).

"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 3 Month bid rate in the Bank Bill Reference Rates Report published by the New Zealand Financial Markets Association (NZFMA) and applying on or about 10:30am on the day of calculation. If no such rate is displayed or that report is not available, then the 3 Month bid rate in the Bank Bill Reference Rates Report when the rate was last displayed or, as the case may be, that report was last available.

"Invoice" means an invoice containing all the 'taxable supply information' required under the GST Act in relation to the taxable supply that gave rise to the amounts invoiced and includes a Revision Invoice and a Scaling Invoice.

"Law" means all applicable laws and regulations, and all applicable rules, codes, orders, bylaws and ordinances made under the authority of any law or regulation (including under the Gas Act 1992).

"Load Shedding" means the act of reducing or interrupting the delivery of gas to 1 or more ICPs.

"Metering Equipment" means any apparatus for the purpose of measuring the quantity of gas delivered to an ICP along with associated communication facilities to enable the transfer of metering information.

"Maximum Hourly Quantity" or **"MHQ"** means, in relation to a Point of Connection or associated ICP, that quantity of gas (expressed on standard cubic metres per hour) which the Distributor has agreed is the maximum that may be received into the Network for conveyance to that Point of Connection in any hour of any day, as approved by the Distributor under clause 15 and recorded in the Registry against the relevant ICP.

"NCA" means a network charges agreement between the Distributor and the Retailer under which Distribution Services Charges in respect of a specific ICP are payable by the Retailer calculated based on a Non-Standard Price.

"Network" means the Distributor's pipelines, pressure regulating stations and associated equipment, in each case used to convey gas between Gas Gates and Points of Connection.

"Network Connection Standards" means the written technical and safety processes for connection of Gas Installations to the Network that are issued by the Distributor and updated from time to time, and which may include applicable references to regulations and industry standards relevant to the provision of Distribution Services.

"Network Reduction" has the meaning given in clause 12.16(a)(ii).

"Network-Related Services Charges" means the Distributor's charges for carrying out additional services related to the Network, including:

- (a) disconnections and associated reconnections;
- (b) site visit fees; and
- (c) any additional services specified in the price schedule Published by the Distributor on its website; and
- (d) other ad hoc services performed by the Distributor at the Retailer's request.

"Non-Specification Gas" means gas that does not comply with the Gas Specification.

"Non-Standard Price" means a Price in respect of a specific ICP that differs from the Standard Prices in the price schedule published by the Distributor on its website.

"Odorised" means, in relation to gas, that the gas:

- (a) has a distinctive and unpleasant odour so that the presence of gas in the atmosphere is readily detectable at concentrations equivalent to and in excess of one-fifth of the lower explosive limit of the gas; and
- (b) has been odorised in compliance with NZS 5263:2003 Gas Detection and Odourisation,

and **"Odourisation"** means the process of ensuring gas is Odorised.

"Permanent Disconnection" means the permanent disconnection of an ICP by removing the GMS and disconnecting the service line inside or outside the property boundary.

"Physical Isolation" has the meaning given in Schedule 6.

"Planned Service Interruption" means a Service Interruption that has been scheduled to occur in accordance with Schedule 5.

"Point of Connection" means the outlet of the CIV.

"Price" means a fixed or variable rate within a Price Category that determines the Distribution Services Charges that apply to an ICP.

"**Price Category**" means the price category and associated eligibility criteria referred to in Schedule 7 that determine the Price(s) that apply to an ICP.

"**Pricing Structure**" means the Distributor's policies and processes relating to setting Prices for Distribution Services referred to in Schedule 7.

"**Publish**" means to disclose information by making the information freely and publicly available on the Distributor's website and notifying the Retailer that the information has been disclosed on the website.

"**Reconciliation Rules**" means the Gas (Downstream Reconciliation) Rules 2008.

"**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 Switching Rules.

"**Restore**" in relation to the operation of the Network, includes controlling the restoration of supply of gas to consumers' gas installations, in co-ordination with Distribution Services Users, so as to enable safe and orderly resumption of supply, including relighting of pilots where applicable.

"**Retailer**" means the party identified as such on the execution page of 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 a Customer's Premises.

"**Revision Invoice**" has the meaning given in clause 9.7.

"**Scaling Invoice**" has the meaning given in clause 9.6.

"**Serious Financial Breach**" means:

- (a) a failure by the Retailer to pay an amount due and owing, where the overdue amount exceeds the greater of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month; or
- (b) a failure by the Retailer to pay one or more amounts due and owing, where the total amount overdue is greater than or equal to 100% of the actual charges payable by the Retailer for the previous two months; or
- (c) a material breach of clause 10 by the Retailer.

"**Service Guarantee Payment**" means any payment or other benefit that one party provides to the other party if it fails to meet a Service Standard in Schedule 1 for which a service guarantee payment is required to be paid if that Service Standard is not met.

"Service Interruption" means the cessation of gas supply to an ICP for a period of 1 minute or longer, other than by reason of De-energisation of that ICP:

- (a) for breach of the Supply Agreement by the Customer; or
- (b) as a result of a request from the Retailer or the relevant Customer for a Temporary Disconnection; or
- (c) as a result of a Retailer undertaking a Transitional Disconnection; or
- (d) for the purpose of De-energising a Customer's Gas Installation that does not comply with the Network Connection Standards; or
- (e) to Decommission the ICP.

"Service Interruption Communications Requirements" means the requirements and procedures for communications between the Distributor and Retailer in relation to Service Interruptions affecting the Network, as set out in Schedule 5.

"Service Level" means the required level of performance set out in Schedule 1 for a particular Service Measure.

"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, conditions and Service Guarantee Payments as set out in Schedule 1.

"Standard Price" means a standard Price included in the Distributor's price schedule published on its website.

"Supply Agreement" means an agreement between the Retailer or (where applicable, a Third Party Retailer) and a Customer that includes the supply and conveyance of gas over the Network.

"Switching Rules" means the Gas (Switching Arrangements) Rules 2008.

"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, in respect of the Network an event or circumstance that the Distributor acting in accordance with Good Gas Industry Practice determines to be an emergency, and otherwise a critical contingency declared in accordance with the Critical Contingency Regulations, which may include where:

- (a) public safety is at risk; or
- (b) safety of the Network is significantly at risk, or there is a risk of significant damage to any part of the Network; or
- (c) the Distributor is unable to maintain safe operating pressures to a substantial part of the Network, or the Distributor's ability to maintain safe operating pressures to a substantial part of the Network is threatened; or

- (d) an Unplanned Service Interruption affecting a substantial part of the Network is imminent or has occurred.

“Temporary Disconnection” means the disconnection of an ICP, generally for a short duration, where the ICP status code on the Registry remains ACTC (Active-Contracted).

“Third Party Retailer” means a gas retailer approved for the time being as a “Third Party Retailer” under Schedule 9.

“TOU Meter” means Metering Equipment with the capacity to accurately record “time of use information” or interval data relating to the quantity of gas supplied at an ICP and includes an “advanced meter” as defined in the Switching Rules.

“Transitional Disconnection” means the De-energisation of an ICP, generally for an unknown duration and excluding a Permanent Disconnection, where the ICP status code in the Registry is changed to INACT.

“Transmission System” means the pipelines, equipment and plant used for the transportation of gas through high pressure gas pipelines operated at a gauge pressure exceeding 2,000 kPa.

“Transmission System Owner” means the person or persons who provide use of a Transmission System for the transportation of gas and who have responsibility for the management and operation of the Transmission System, and includes any agent of such person or persons.

“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 10.26.

“UFG” means, for a particular period, the difference between the sum of all gas measured or estimated as having been injected into the Network and the sum of all gas measured or estimated as having exited the Network at ICPs.

“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 Customer.

“Use of Money Adjustment” means an amount payable at the Interest Rate plus two percentage points, from the due date of the original Invoice to the date of settlement of the relevant amount, accruing on a daily basis and compounded at the end of every month.

“Variable Provisions” means:

- (a) the Service Standards set out in Schedule 1;
- (b) the System Emergency Event management policy set out in Schedule 4;
- (c) the Service Interruption Communications Requirements as set out in Schedule 5;

(d) the Connection Policies set out in Schedule 6.

"Warranted Person" means an individual who is either (i) pre-qualified to the Distributor's reasonable standards (meeting the relevant qualification, certification, and other requirements for carrying out work in the gas distribution and/or GMS sectors, as per the New Zealand Gas Industry Certificate of Competency Criteria and Framework for Reticulated Gas (Natural Gas and/or LPG) Distribution & Gas Measurement System (GMS)), and holding a current authorisation from the Distributor to carry out the relevant type of work on or in relation to the Network or (ii) Competent.

"Working Day" means every day except Saturdays, Sundays, and days that are statutory holidays in Auckland.

PART V – SCHEDULES

SCHEDULE 1 – SERVICE STANDARDS

- S1.1 The Distributor may set Service Standards in relation to the provision of Distribution Services under this Agreement. The Service Standards applying at the date of this agreement are set out in this Schedule. No more than once in any 12-month period ending on 30 September, and subject to providing 60 Working Days' notice, the Distributor may withdraw, amend, or add Service Standards. Within this notice period, without limiting the Distributor's discretion to determine the Service Standards, the Distributor must consider in good faith any feedback provided by the Retailer.
- S1.2 Each party must use all reasonable endeavours in accordance with Good Gas Industry Practice to meet the Service Standards. For the avoidance of doubt, and without detracting from any other obligation under this Agreement, failure to meet any of the Service Levels does not of itself constitute a breach of this Agreement.
- S1.3 Some Service Standards may include Service Guarantee Payments that are provided by the Distributor in situations where the Service Level is not met. The Distributor aims to meet the Service Levels in all situations, however the Service Guarantee Payments are only applicable:
- (a) under normal operating conditions, excluding events that cause widespread or multiple outages (such as significant weather events, seismic activity), and
 - (b) where the fault originates within the Network, excluding events where the fault originates within the Transmission System, the affected Customer's Service Line or the affected Customer's Gas Installation, and
 - (c) where staff or contractor movements or access necessary to meet the Service Level is not restricted by authorities, for example where areas may be cordoned off following an event, or where movements are restricted as part of disease or pandemic control measures.
- S1.4 If the Retailer becomes aware of or suspects a breach of the Service Standards by the Distributor, the Retailer must advise the Distributor and provide the reasons why it considers that there has been a breach.
- S1.5 Where the Distributor is advised of a breach of the Service Standards under clause S1.4 it must investigate and respond to the Retailer within a reasonable period of time including:
- (a) providing the details of the circumstances that led to the breach, or apparent breach, and
 - (b) confirming if a Service Guarantee Payment is payable.
- S1.6 Where the Distributor determines that a Service Guarantee Payment is payable, it will provide details to the Retailer and make the appropriate payment to the Retailer by either:

- (a) including a credit within the next monthly billing cycle for Distribution Services Charges, or
- (b) issuing a Credit Note in respect of the amounts being credited, and making a corresponding payment to the Retailer's bank account (as nominated by the Retailer from time to time).

If the Distributor makes a Service Guarantee Payment in respect of an ICP, the Retailer must pass that payment on to the relevant Customer or Customers without deduction.

S1.7 Any payments made under any Service Guarantee Payment shall be counted towards the Distributor's maximum total liability stated in clause 24.7.

Service Standards

Service Measure	Service Level	Conditions	Service Guarantee Payment
Availability of Supply	Subject to the terms of this Agreement, Distributor to endeavour in accordance with Good Gas Industry Practice to maintain continuous supply to every Active ICP.		NIL
Restoration of Supply: Unplanned Service Interruptions	Distributor to endeavour in accordance with Good Gas Industry Practice to restore supply within 3 hours of notification.		NIL
Safety management system	Distributor to maintain a safety management system that complies with NZS 7901.	Audit certificate for safety management system available on request.	NIL
Odourisation documentation	Distributor will make its odourisation documentation available that demonstrates compliance with regulation 19 of the Gas (Safety and Measurement) Regulations 2010, including a quality assurance procedure for testing and monitoring whether the gas in the Network is odorised to the required level, a contingency plan for responding to emergencies (e.g. under/over odorised gas, odour masking), and that all persons carrying out testing and monitoring are competent to carry out those functions.	As reasonably requested by the Retailer from time to time.	NIL

Service Measure	Service Level	Conditions	Service Guarantee Payment
Odorant monitoring	Distributor to provide the Retailer with results of spot tests undertaken to determine whether odorised gas in the Network meets the detectability requirements set out in NZS 5263.	If requested by the Retailer. Frequency and form as determined by Distributor from time to time in accordance with Good Gas Industry Practice.	NIL
Notification of odorant outside detectability requirements	<p>Distributor to notify the Retailer as soon as reasonably practicable, but in any event within 24 hours, if odorant testing indicates odorant levels are outside the limits specified in NZS 5263.</p> <p>The Retailer to notify the Distributor as soon as reasonably practicable, but in any event within 24 hours, if it suspects odorant levels are outside the limits specified in NZS 5263.</p>	Distributor to provide enough detail including the Network area(s) affected to enable the Retailer to assess the likely effects on Customers.	NIL
Notification of non-specification gas	<p>Distributor to notify the Retailer within 3 hours if it believes that gas not complying with the Gas Specification may enter or has entered the Network.</p> <p>The Retailer to notify the Distributor within 3 hours if it suspects that gas not complying with the Gas Specification may enter or has entered the Network.</p>	Distributor to provide enough detail including the Network area(s) affected to enable the Retailer to assess the likely effects on Customers.	NIL
Notification of over-pressure event	Distributor to notify the Retailer within 3 hours if it is aware that the Network has operated above the Network's designated operating pressure range (defined as Low, Medium, or Intermediate pressure consistent with industry standards)	Distributor to provide enough detail including the Network area(s) affected to enable the Retailer to assess the likely effects on Customers.	NIL

Service Measure	Service Level	Conditions	Service Guarantee Payment
Notification of serious harm or significant property damage	Distributor to notify the Retailer within 3 hours of any action taken by the Distributor resulting in serious harm or significant property damage (as defined by the Gas Act 1992) affecting a Customer or Customer's Premises and if requested by the Retailer, provide the Retailer with a copy of associated reports as required by the Gas Act 1992.	None.	NIL
Unplanned Service Interruption communication	Both parties to comply with Service Interruption Communications Requirements for Unplanned Service Interruptions.	As per Schedule 5.	NIL
Notification of Planned Service Interruption	Both parties to comply with Service Interruption Communications Requirements for Planned Service Interruptions	As per Schedule 5.	NIL
Customer concerns regarding the gas quality (gas specification, odorization, pressure), reliability or safety of supply	Both parties will participate in the Disputes Resolution Scheme and work together to complete an investigation and provide information to the Customer to ensure resolution of the Customer's concern within the timeframes set out in the rules of the Disputes Resolution Scheme.	If a problem is confirmed, the Distributor must remedy any problems under its control in a timely manner and in accordance with Good Gas Industry Practice.	NIL

SCHEDULE 2 – BILLING POLICIES AND PROCESSES

S2.1 The charges for Distribution Services are invoiced monthly using a methodology known as “As-Billed Normalised” (as described in GIEP1).

S2.2 The Distribution Services Charges will commence and cease according to the ICP status codes and chargeable status rules set out in the following table:

ICP status code (in accordance with Switching Rules)	Connection status	Chargeable status
NEW	Pre-activation ICP is not ready for uplift by a retailer.	Non chargeable
READY	Gas ready to flow. ICP is ready for uplift by a retailer that the Distributor expects to be the first responsible retailer (“expected retailer” in the Registry)	Non chargeable
ACTC (Active-Contracted)	Gas able to flow. Responsible retailer in the Registry has a contract to supply gas to a Customer.	Chargeable to: <ul style="list-style-type: none"> • responsible retailer in the Registry; or • retailer acting as agent for the responsible retailer in the Registry where the retailer has advised in writing that it has an agreement with a Third Party Retailer (being the responsible retailer in the Registry) to on-sell to the Third Party Retailer the Distribution Services provided under this Agreement.

ICP status code (in accordance with Switching Rules)	Connection status	Chargeable status
ACTV (Active-Vacant)	Gas able to flow. Responsible retailer in the Registry does not have a current contract to supply gas to a Customer.	Chargeable to: <ul style="list-style-type: none"> responsible retailer in the Registry; or retailer acting as agent for the responsible retailer in the Registry where the retailer has advised in writing that it has an agreement with a Third Party Retailer (being the responsible retailer in the Registry) to on-sell to the Third Party Retailer the Distribution Services provided under this Agreement.
INACT (Inactive-Transitional)	Gas not able to flow due to a Transitional Disconnection.	Non chargeable
INACP (Inactive-Permanent)	Gas not able to flow due to a Permanent Disconnection.	Non chargeable
DECR (Decommissioned)	Service line disconnected from Network outside property and service abandoned.	Non chargeable

Note: For the avoidance of doubt, where the Retailer has notified the Distributor in writing that it has an agreement with a Third Party Retailer to on-sell to the Third Party Retailer the Distribution Services provided under this Agreement, any provision in clauses S2.3 to S2.13 which applies to the Third Party Retailer (being the expected retailer or responsible retailer in the Registry) will also apply to the Retailer acting as agent for the Third Party Retailer.

- S2.3 Notwithstanding the above table, the Distributor reserves the right to determine that an ICP is billable to the expected retailer in the Registry if the Registry ICP status code is READY, or the responsible retailer in the Registry if the Registry ICP status code is INACT or INACP, for any of the following periods:
- (a) any period where the ICP status code was READY, and the Distributor has reason to believe the expected retailer had already entered into a Supply Agreement and gas was able to flow to the Customer's Gas Installation; or
 - (b) any period where the ICP status code was INACT or INACP, if:

- (i) following a request to the responsible retailer, the retailer is unwilling or unable to provide details of fieldwork to prove that the ICP is De-energised (in which case the Distributor may bill on a backdated basis for the period from the date on which the ICP last had a status code other than INACT or INACP until the date those fieldwork details are provided); or
- (ii) the fieldwork details indicate the Transitional Disconnection or Permanent Disconnection (as the case may be) was completed on a later date to that recorded in the Registry (in which case the Distributor may bill on a backdated basis for the period from the date recorded in the Registry to the date on which the fieldwork was actually completed); or
- (iii) gas is recorded as being used during the period the ICP status code was set to INACT or INACP (in which case the Distributor may bill on a backdated basis for the period from the earliest date on which gas was recorded as being used in that status code until the Retailer provides details demonstrating that the ICP has since been De-Energised); or
- (iv) the Distributor has reason to believe the premises remains occupied by the previous Customer and the ICP was subject to a Transitional Disconnection and ICP status code was changed to INACT to avoid fixed charges for Distribution Services during the off season, i.e. within 12 months of when the Registry ICP status code was last ACTC (in which case the Distributor may bill on a backdated basis for the period from the date on which the ICP last had a status code other than INACT or INACP until the date the Retailer provides details demonstrating that another event has occurred that would halt the accumulation of charges under the table above); or
- (v) the ICP has been INACT for 12 or more of the immediately precedent 24 months, but only for those ICPs where the ICP status code was last changed to INACT after the Commencement Date (in which case the Distributor may bill for the period starting from when this criterion was first met, until the ICP status code has been changed to INACP, the Retailer has requested the Distributor to perform a Permanent Disconnection of that ICP in accordance with this Agreement and the date requested by the Retailer for the performance of that Permanent Disconnection has passed).

S2.4 The Retailer (including as agent for the Third Party Retailer where applicable) must provide consumption and billing information to the Distributor in accordance with the GIEP1 As-Billed Normalised reporting methodology (one GIEP1 file for each participant code including for each Third Party Retailer participant code) and the following timetable, and using the Registry GIEP transfer hub (via the Registry GIEP SFTP server):

- (a) by 5.00pm on the 5th Working Day of the month following the Consumption Month (“Initial month 0”);
- (b) by 5.00pm on the 14th Working Day of the 13th month that follows the Consumption Month to which the consumption information relates (noting that revised consumption information is required to be provided by the Retailer to the

allocation agent for the final allocation by 8.00am on the same Working Day (“Final revision month 13”); and

- (c) by 5.00pm on the 5th Working Day after the end of the month in which revised consumption information was provided by the Retailer to the allocation agent for a special allocation as directed by Gas Industry Co under the Reconciliation Rules (“Special revision month”).

S2.5 Any consumption and billing information provided to the Distributor under clause S2.4 must comply with the following:

- (a) each As-Billed Normalised revision month file must have a ‘file status’ of R (replacement) and fully replace the previous file;
- (b) the ‘start date’ and ‘end date’ in the GIEP1 files must align with the Registry ‘Active’ status such that:
 - (i) where an ICP has been Energised or Re-energised, the event date should be the day the ICP was Energised or Re-energised, and as the event is deemed to have occurred at 0:00:00 on the day of the event date the ‘start date’ for the purposes of retailer GIEP1 consumption information files and Distributor billing/GIEP1 files must be the day of the event date (when the Registry ICP status of ‘Active’ commences);
 - (ii) where an ICP has been De-energised or Decommissioned, the event date should be the day the ICP was De-energised or Decommissioned, but as the event is deemed to have occurred at 23:59:59 on the day before the event date the ‘end date’ for the purposes of retailer GIEP1 consumption information files and Distributor billing/GIEP1 files must be the date of the day before the event date (when the Registry ICP status of ‘Active’ ends before it changes to ‘Inactive’).

S2.6 To the extent that the Retailer fails to provide the information referred to in clause S2.4 within the required timeframe, or the information provided within that timeframe is materially incomplete or incorrect or does not comply with GIEP1, clause S2.5 or S2.13, the Distributor may estimate, in accordance with Good Gas Industry Practice, those Distribution Services charges for the Consumption Month that would otherwise be calculated based on that information.

S2.7 Subject to clauses S2.2, S2.3 and S2.6, the Distributor will calculate Invoices as follows:

- (a) a pro forma Invoice for the purposes of clause 9.6(a), shall include:
 - (i) fixed Distribution Services Charges based on information in the Registry; and
 - (ii) variable Distribution Services Charges by estimating such charges in accordance with Good Gas Industry Practice; and
- (b) Invoices for the purposes of clauses 9.6(b) and clause 9.7, shall include:
 - (i) fixed Distribution Services Charges based on information in the Registry;

- (ii) variable Distribution Services Charges based on consumption information in the GIEP1 files provided by the Retailer in accordance with clause S2.4; and
 - (c) a “Scaling Invoice”, shall scale the volumes in the GIEP1 file provided by the Retailer for that Consumption Month to the allocation agent’s assigned Gas Gate volumes for that Consumption Month.
- S2.8 Subject to receipt of the Retailer’s information in accordance with the timetable set out in clause S2.4 and S2.5, the Distributor will:
 - (a) always process GIEP1 files received for Initial month 0 and Final revision month 13; and
 - (b) only process GIEP1 files received for a Special revision month, if requested by the Retailer or the Distributor determines it is appropriate due to there being a material difference in the Distribution Services Charges between the previous Invoice or Revision Invoice and an invoice based on the Special revision month file.
- S2.9 Any GIEP1 file that is not received by the Distributor in accordance with the timetable set out in clause S2.4 shall only be processed on request by the Retailer if the Distributor determines it is appropriate due to there being a material difference in the Distribution Services Charges between the Invoice previously issued and any information in the revision month file provided by a Retailer.
- S2.10 The Distributor will issue Invoices for Distribution Services by email to the Retailer and at the same time, using the Registry GIEP transfer hub (via the Registry GIEP SFTP server) and, except in relation to Distribution Services Charges estimated in accordance with this Agreement, provide detailed billing information using GIEP1 to enable the Retailer to verify the charges at a detailed level, in accordance with the timetable in clauses 9.6 and 9.7.
- S2.11 The Distributor’s processing of an As-Billed Normalised revision file must result in full replacement of all data provided in the previous file, and for the avoidance of doubt there will be valid reasons (e.g. backdated switches) why some ICPs or ICP-days appear in a previous file but not in the replacement file, or appear in the replacement file but not in the previous file.
- S2.12 To the extent that an Invoice contains charges estimated in accordance with clause S2.6, the Distributor:
 - (a) is not required to provide detailed billing information using GIEP1; and
 - (b) is only required to revise the Distribution Services Charges and issue a Revision Invoice in accordance with clauses S2.8 and S2.9.
- S2.13 If any of the Retailer’s GIEP1 files fails the Distributor’s validation process, the Distributor will give the Retailer an opportunity to fix the file or individual records, otherwise the Distributor may estimate the volumes or charges (as the case may be) to be billed.

SCHEDULE 3 – GAS INFORMATION EXCHANGE PROTOCOLS

- S3.1 The Distributor and the Retailer must comply with the following GIEPs when exchanging information to which the relevant GIEP applies:
- (a) GIEP1 – Detailed ICP billing and volume information
 - (b) GIEP2 – Aggregated billing and volume information.
- S3.2 In addition to the GIEPs specified in clause S3.1, and to the extent relevant, the Distributor and the Retailer will use their reasonable endeavours to comply with the following GIEPs when exchanging information to which the relevant GIEP relates, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the GIEP is cost-effective for both parties:
- (a) GIEP7 – General installation status change
 - (b) GIEP8 – Network price category change.
- S3.3 Until such time as GIEP4 is published by the Gas Industry Co, the Retailer will maintain and keep complete and up to date records in an electronic format (in a format acceptable to the Distributor, acting reasonably) containing the information listed below for all Active ICPs:
- (a) ICP identifier
 - (b) Customer name (first and surname)
 - (c) Phone number
 - (d) Email address

Following the publication of GIEP4, the parties' obligations in this clause S3.3 will be superseded as soon as reasonably practicable by the requirements of GIEP4.

SCHEDULE 4 – SYSTEM EMERGENCY EVENT MANAGEMENT

- S4.1 Except (and to the extent that) the Retailer is required to direct its Customers to curtail demand in accordance with instructions from the Transmission System Owner following declaration of a critical contingency under the Critical Contingency Regulations, the Distributor will be responsible for managing emergencies affecting the Network.
- S4.2 Emergency management will include such actions as are necessary to:
- (a) assess and make safe any situation;
 - (b) control the flow of gas into and out of the Network, including:
 - (i) during a critical contingency declared in accordance with the Critical Contingency Regulations, curtailment of demand by retailers in accordance with instructions from the Transmission System Owner;
 - (ii) during other emergency events, coordination of resources with retailers to isolate or curtail individual consumer supplies to enable gas to be restored in the Network once the cause of the loss of supply has been rectified;
 - (c) make temporary or permanent repairs to any part of the Network;
 - (d) restore the Network back to its normal operating condition;
 - (e) control the order of restoration of gas supply to consumers' Gas Installations while ensuring Network security is not compromised, including:
 - (i) during a critical contingency, following receipt of notice from the Transmission System Owner that curtailed demand may be restored from the Transmission System, issuing instructions to the Retailer (and all other retailers) outlining when curtailed demand can be restored (together with any specific instructions with respect to the order of restoration) to enable the orderly restoration of supply to Customers' Gas Installations (including the relighting of pilots if applicable) in accordance with the Gas (Safety and Measurement) Regulations 2010;
 - (ii) during other emergency events, following repair of the cause of loss of supply and restoration of gas within the Network, co-ordination of resources with retailers to enable the orderly restoration of supply of gas to consumers' Gas Installations (including the relighting of pilots if applicable) in accordance with the Gas (Safety and Measurement) Regulations 2010;
 - (f) keep the Retailer informed of developments following termination of a critical contingency and throughout for other emergency events, including:
 - (i) arranging an initial conference call, and subsequent conference call meetings as appropriate, to discuss coordination of resources, communications and strategy to deal with the System Emergency Event;
 - (ii) updating the Retailer as soon as practicable of new information becoming available that would likely change the message to the Retailer's Customers;
 - (iii) providing a status update regularly (as agreed in the initial or subsequent conference call meetings);

- (iv) providing notification to the Retailer when the Network is fully restored and back to normal operation;
- (g) keep the public informed of developments:
 - (i) for critical contingency events, following termination of a critical contingency where the curtailed demand or loss of supply is more widespread than curtailment bands 3-5 and band 7 and requires coordination of resources to restore supply to consumers' Gas Installations (including the relighting of pilots, if applicable);
 - (ii) during other emergency events, throughout the period of the emergency until supply is restored to all consumers' Gas Installations (including the relighting of pilots, if applicable).

S4.3 The Distributor and the Retailer will each maintain emergency management plans outlining the responses and actions likely to be taken when handling critical contingencies and other gas supply emergencies. The plan will include demand curtailment and restoration principles, actions required, emergency liaison and contacts, and take into account the Critical Contingency Regulations and associated plans and guides (e.g. CCO communications plan, CCO information guide, Transmission System Owner critical contingency management plans). Each party will use reasonable endeavours to maintain sufficient resources to give effect to the plans described in this clause S4.3 and will provide a relevant summary of its emergency management plan for System Emergency Events to the other party within 20 Working Days of a request.

S4.4 Except for critical care, essential services, critical processing, and electricity supply designations, the Distributor will allocate ICPs to curtailment bands in accordance with the Critical Contingency Regulations. If the Retailer becomes aware that the curtailment band for an ICP is incorrect in the Registry, the Retailer must notify the Distributor, and the Distributor must within 5 Working Days of being notified of a change by the Retailer update the load shedding category on the Registry with the curtailment band for the relevant ICP. Consumers may apply to the Gas Industry Company for a designation. If the Gas Industry Company approves a designation for a consumer's Gas Installation it must give notice to the Distributor and responsible retailer, and the Distributor must within 5 Working Days update the load shedding category in the Registry for the associated ICP. A "C" or "E" suffix is added to the curtailment band number for consumers' Gas Installations where a critical processing or electricity supply designation is approved, while consumers' Gas Installations with an essential services or critical care designation are allocated to curtailment bands 5 or 7 respectively.

S4.5 The Distributor and the Retailer will provide each other with emergency contact details and will review and update the information as required (at least annually) including identification and advice of who will act as the key point of contact for each of the parties (and their contact details) when a System Emergency Event occurs.

S4.6 The Retailer must take all practicable steps during a System Emergency Event to assist the Distributor in managing the emergency, including isolating Customers' supplies and

restoring supply to Customers' Gas Installations, including the relighting of pilots (if applicable).

- S4.7 Where the emergency is a critical contingency declared in accordance with the Critical Contingency Regulations, the Retailer will meet the costs of isolating Customers' supplies and restoring supply to Customers' Gas Installations, including the relighting of pilots (if applicable).
- S4.8 Where the emergency has resulted from an event on the Network, the Distributor will meet the reasonable costs incurred by the Retailer in isolating Customers' supplies and restoring supply to Customers' Gas Installations, including the re-lighting of pilots (if applicable).
- S4.9 Both the Distributor and Retailer will ensure that appropriate records are maintained of communications received and actions taken during an emergency, including the date and time of all such communications and actions. This will enable a full debrief following the event, and provision of records should claims arise, or settlements be initiated, following the event.
- S4.10 The Distributor's responsibilities in the management of emergencies affecting the Network are without prejudice to any rights the Distributor may have against any third party who has caused or contributed to the cause of an outage or other event resulting in an emergency on the Network, including (but not limited to) the right to recover costs against the third party.
- S4.11 The Distributor and Retailer agree to undertake periodic testing of the arrangements for managing emergencies including the effectiveness of such party's own emergency management plan.

SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION REQUIREMENTS

S5.01 The Distributor and the Retailer will provide each other with appropriate contact details as they relate to service interruptions and will review and update the information as required (at least annually). Contact details include identification of, and advice regarding, who will act as the key point of contact for each of the parties (and their contact details) both during and outside normal office hours when a Service Interruption occurs.

Unplanned Service Interruptions

- S5.1 The Retailer is responsible for receiving Unplanned Service Interruption calls from Customers and managing further communication with Customers until normal service is restored. If agreed with the Distributor, the Retailer may provide the Distributor's contact details directly to the Customer instead of taking details and logging the call with the Distributor.
- S5.2 The Distributor must provide the Retailer with information about an Unplanned Service Interruption affecting 20 or more consumers that enables the Retailer to respond in an informed manner to calls from affected Customers.
- S5.3 The Distributor must provide information under clause S5.2 as soon as reasonably practicable after first becoming aware of the Unplanned Service Interruption.
- S5.4 The information provided under clause S5.2 must include, if known, a description of the reason for the interruption, the area affected, and the expected time for restoration.
- S5.5 Unless otherwise agreed, Distributor must, keep the Retailer reasonably updated of the status of the Unplanned Service Interruption, until a firm restoration time has been advised by the Distributor to the Retailer.
- S5.6 If the expected restoration time advised by the Distributor is likely to be exceeded, the Distributor must endeavour to inform the Retailer of the new expected restoration time as soon as reasonably practicable.
- S5.7 Unless otherwise agreed, the Distributor must provide the Retailer with details of the areas restored as soon as reasonably practicable.
- S5.8 The Retailer must, as soon as reasonably practicable after receiving information relating to a possible Unplanned Service Interruption, log the call with the Distributor using the distribution pipeline emergency phone number available on the Distributor's website.
- S5.9 The Distributor must implement its public and media communication process in the following situations:
- (a) a significant Unplanned Service Interruption that affects (without limitation):
 - (i) more than 1,000 consumers;
 - (ii) supply to critical facilities such as hospitals; or

- (iii) the Network to such an extent that a reasonable and prudent operator in the Distributor's position, acting in accordance with Good Gas Industry Practice, would initiate a disaster recovery plan (for example, a serious earthquake);
- (b) a Civil Defence emergency has been initiated (in this 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; or
- (d) the Distributor is contacted by media for comment regarding an Unplanned Service Interruption.

Planned Service Interruptions

Retailer to notify Customers (option if elected by the Distributor)

- S5.10 Notwithstanding clause S5.18, the Distributor may notify the Retailer that it shall be responsible for notifying Customers of Planned Service Interruptions and clauses S5.11 – S5.17 shall apply to such Planned Service Interruptions.
- S5.11 The Distributor must provide the Retailer with notice of a Planned Service Interruption using the agreed format at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICP identifiers that the Distributor's information system indicates will be affected by the Planned Service Interruption and the reason for the interruption.
- S5.12 The Retailer may no later than 8 Working Days prior to the date on which the Planned Service Interruption is scheduled, notify the Distributor of any Customers who would be adversely affected by the interruption and request an alternative date and/or time for the Planned Service Interruption.
- S5.13 If the Distributor receives a request from the Retailer for an alternative date and/or time for the Planned Service Interruption, the Distributor must consider in good faith the request and may, in its sole discretion, change the time and/or date of the Planned Service Interruption. If the Distributor makes such a change, the Distributor must provide the Retailer with notice of the new date and/or time at least 7 Working Days before the original date of the Planned Service Interruption.
- S5.14 On receipt of notice under clause S5.11, and/or notice of a new date and/or time under clause S5.15, the Retailer must promptly notify affected Customers of the Planned Service Interruption.
- S5.15 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor must provide the Retailer with a notice of the Planned Service Interruption in accordance with clause S5.13 as soon as reasonably practicable.
- S5.16 If the Planned Service Interruption will affect all consumers supplied from a Gas Gate the Distributor may, in addition to providing the notices required under clauses S5.11 S5.13 and S5.15, arrange for public notification on behalf of all retailers.

S5.17 The Distributor must meet the reasonable costs incurred by the Retailer in notifying Customers of Planned Service Interruptions.

Distributor to notify Customers (default)

S5.18 Unless clause S5.10 applies, the Distributor is responsible for notifying Customers of Planned Service Interruptions and clauses S5.19 – S5.23 shall apply.

S5.19 On request by the Distributor, the Retailer must provide Customer contact information to the Distributor within 5 Working Days of the end of each month. The information must be provided in accordance with the agreed format.

S5.20 For all Planned Service Interruptions where the Distributor has elected to notify is responsible for notifying affected Customers, the Distributor must provide each of the Customers 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 4 Working Days before the date on which the Planned Service Interruption is scheduled.

S5.21 Subject to S5.23, the Distributor must provide the Retailer with notice of the Planned Service Interruption using the agreed format at least 4 Working Days before the Planned Service Interruption is scheduled to occur.

S5.22 For Planned Service Interruptions that:

- (a) would affect 20 or less Customers;
- (b) have been scheduled with the prior consent of the Customers to be affected; or
- (c) have been scheduled with the prior consent of the body corporate or building manager of a multi-dwelling unit,

the Distributor is not obliged to notify the Retailer of the Planned Service Interruption.

S5.23 Notwithstanding clause S5.20, it is acknowledged and agreed that events or circumstances may prevent the Distributor from providing at least 4 Working Days' prior notice of a Planned Service Interruption to affected Customers, in which case the Distributor must provide the affected Customers with as much prior notice as reasonably practicable. The Distributor is not obliged to notify the Retailer of such Planned Service Interruptions.

SCHEDULE 6 – CONNECTION POLICIES

Introduction

- S6.1 The Distributor and the Retailer recognise that the process of managing connections to, and disconnections from, the Network requires significant co-ordination between them.
- S6.2 The Connection Policies in this Schedule 6 set out examples of the broad processes to be followed in respect of:
- (a) new connections to the Network;
 - (b) capacity changes to existing connections;
 - (c) Temporary Disconnections and associated reconnections (including, for clarity, any Temporary Disconnections and associated reconnections which are carried out remotely);
 - (d) Transitional Disconnections and associated reconnections ; and
 - (e) Permanent Disconnections and Decommissioning.
- S6.3 The Connection Policies focus on the broad responsibilities of each party and do not deal with the content of the information transferred between the parties or the media by which the information is transferred. The information content and transmission media must be consistent with the agreed format, where relevant.

General

- S6.4 In the interests of safety, all disconnections and reconnections undertaken by either party must be undertaken in accordance with the Gas Industry Disconnection and Reconnection Protocol GIP001.
- S6.5 Accordingly, notwithstanding any other provision of this agreement, the Retailer undertakes that neither it nor its agents will carry out any connections, capacity changes, disconnections, or reconnections on the Network, except:
- (a) Temporary Disconnections, as permitted by clause S6.15;
 - (b) Transitional Disconnections, as permitted by clause S6.25; and/or
 - (c) otherwise with the Distributor's prior consent, which may be given or withheld at its absolute discretion.
- S6.6 Nothing in this Agreement authorises the Retailer or its agents to remove or interfere with GMS assets where this is not otherwise authorised under any other agreement between the GMS owner and the Retailer.

Process for new connections or changes in capacity

- S6.7 The Distributor may receive applications from:

- (a) the owner of a premises not currently connected to the Network or the owner's agent that is or intends to be a Customer (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created; and
 - (b) the Retailer on behalf of a Customer (the "**Requesting Party**"), for an increase or decrease in capacity of an existing connection.
- S6.8 The Distributor will undertake an impact assessment to determine whether alterations to the Network are required to implement the application. If alterations to the Network are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works or may decline the Requesting Party's application. If the application is declined the Distributor must provide reasons why.
- S6.9 If the Distributor accepts the application, then once the Distributor and Requesting Party have agreed on the terms for a new connection or change in capacity of an existing connection, the Distributor will arrange for the work to be undertaken accordingly.
- S6.10 Once the work has been completed, and the Requesting Party has advised the Distributor of its retailer (if not already known), the Distributor will update the Registry in accordance with its obligations under the Switching Rules and (in the case of a new ICP) will advise the Retailer that the ICP is ready to be Energised.
- S6.11 Once the ICP is ready to be Energised, the Retailer will arrange for the ICP to be Energised by a Warranted Person.
- S6.12 Both parties will update the Registry throughout this process in accordance with Switching Rules.

Physical isolation

- S6.13 For Transitional Disconnections and Permanent Disconnections, unless otherwise agreed, the relevant Gas Installation must be physically isolated from the gas service. To achieve this, subject to clauses S6.4 and S6.5, the Retailer initiating the disconnection must:
- (a) where there is a Customer residing at the property, advise the Customer of the proposed disconnection if it was not initiated by or requested by the Customer;
- and for Transitional Disconnections, also:
- (b) arrange for a Warranted Person to close and cap or plug the CIV, and cap or plug the pipework downstream of the CIV; and
 - (c) fit status tags to the CIV.
- (referred to as "**Physical Isolation**").
- S6.14 To avoid doubt, a Temporary Disconnection may also include Physical Isolation provided the ICP status code in the Registry remains unchanged. If the Temporary Disconnection included Physical Isolation and is subsequently to be treated as a Transitional Disconnection the ICP status code must be changed to INACT in the Registry.

Temporary Disconnections and associated reconnections

- S6.15 The parties agree that Temporary Disconnection of an ICP at which the Retailer supplies gas may be carried out by the Retailer in the following circumstances:
- (a) to avoid or mitigate danger to persons or property;
 - (b) for credit reasons;
 - (c) if requested by the Customer, for safety or other reasons; or
 - (d) for maintenance or replacement of the Retailer's Equipment.
- S6.16 The Distributor may perform a Temporary Disconnection in relation to a particular ICP:
- (a) to avoid or mitigate danger to persons or property;
 - (b) to avoid or mitigate an event or circumstance that may adversely affect the proper working of the Network or any Transmission System;
 - (c) in the circumstances referred to in clauses 3.3(a) or (b), where the Retailer (or one of its Third Party Retailers) is the most recent responsible retailer in the Registry for the ICP;
 - (d) where an Event of Default has occurred in relation to the Retailer;
 - (e) where the Customer fails to allow the Distributor access to the Customer's Premises in accordance with the rights contemplated in clause 11;
 - (f) where a Customer breaches any of the provisions contemplated by clauses 12.1 or 12.7, or does anything which could have breached such provisions had the Retailer included the provisions in its Supply Agreement in accordance with the requirements of this Agreement;
 - (g) where a Customer has failed to comply with the Network Connection Standards;
 - (h) on termination of this Agreement;
 - (i) to maintain or replace the Distributor's Equipment; and/or
 - (j) where the retailer insolvency provisions in the Switching Rules have been triggered and the Gas Industry Co instructs the Distributor to disconnect certain Indeterminate ICPs.

The Retailer must, subject to clause 29.1, ensure that each of its Supply Agreements includes one or more provisions permitting the Distributor to perform Temporary Disconnections at a Customer's ICP in the circumstances set out in this clause S6.16.

- S6.17 If the Distributor intends to perform a Temporary Disconnection under clause S6.16 for any of the reasons other than S6.16(a) or (b), the Distributor must give the Retailer notice of the Temporary Disconnection as follows:
- (a) at least 5 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because:
 - (i) the Customer failed to provide the Distributor with access in accordance with its Supply Agreement; or

- (ii) the Customer damaged or interfered with the Distributor's Equipment or Network; or
 - (b) at least 10 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because the Customer failed to do any of the things required of it as contemplated in clause 11; or
 - (c) at least 10 Working Days' notice if any other limb of clause S6.16 applies.
- S6.18 The notice of Temporary Disconnection provided by the Distributor to the Retailer under clause S6.17 must specify:
- (a) the ICP identifier of the relevant Customer;
 - (b) the particulars of the Customer breach (if any);
 - (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.
- S6.19 On receipt of a notice under clause S6.17, the Retailer must promptly forward a notice to the relevant Customer and include mail, email, and telephone contact details that the Customer may use to contact the Retailer about the matter. The Retailer must promptly forward to the Distributor any response received from the Customer and the Distributor must consider in good faith all such responses it receives. The Retailer and the Distributor must work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.
- S6.20 If the Distributor intends to perform a Temporary Disconnection following giving notice under clause S6.17(a)(ii) and the grounds for the Temporary Disconnection have not been Disputed by the Retailer, the Distributor must give each affected Customer:
- (a) 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 Customer's last address provided to the Distributor by the Retailer, or if no address has been provided because the Retailer has no Customer at that ICP, the notice must be sent to the Customer's address on the Registry, and the Distributor must provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;
 - (b) a final warning not less than 48 hours nor more than 5 Working Days before the disconnection. The final warning must provide the timeframes for disconnection. This must be a separate notice to the notice provided at least 9 Working Days before disconnection;
 - (c) if disconnection is not completed within the timeframes notified, the Distributor must issue another final warning not less than 48 hours nor more than 5 Working Days before disconnection.
- S6.21 If the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.16(a) or S6.16(b), the Distributor must use its best endeavours to give each

Customer as much prior notice as reasonably practicable, but in any event must notify each Customer no later than 2 Working Days after the Temporary Disconnection.

- S6.22 Where the Distributor performs a Temporary Disconnection in respect of a Customer it must (unless otherwise agreed) notify the Retailer of that fact no later than 2 Working Days after the Temporary Disconnection.
- S6.23 The Retailer must update the connection status code on the Registry following each Temporary Disconnection in accordance with the Switching Rules. To avoid doubt, the ICP status code in the Registry is not to be changed for Temporary Disconnections, including Physical Isolations which the Retailer chooses to treat as Temporary Disconnections.
- S6.24 If either party has performed a Temporary Disconnection in respect of a Customer's ICP, the party that performed the Temporary Disconnection must take reasonable steps to arrange restoration of supply to the ICP as soon as reasonably practicable and in any case:
- (a) no later than 3 Working Days after conditions for reconnection have been satisfied; or
 - (b) by any other date agreed with the Customer.

However, in the case of a Temporary Disconnection performed by the Distributor:

- (c) the Distributor is not obliged to restore supply to the ICP, and the Retailer will not take any steps to restore supply to the ICP, until the grounds for the Temporary Disconnection have been remedied to the Distributor's reasonable satisfaction; and
- (d) if the Agreement has been terminated, the Distributor is not obliged to restore supply to the ICP, and the Retailer will not take any steps to restore supply to the ICP.

Transitional Disconnections and associated reconnections

- S6.25 The Retailer may undertake a Transitional Disconnection only when the Retailer no longer requires Distribution Services for an ICP.
- S6.26 The Retailer must not use Transitional Disconnections, or any Registry ICP status code associated with Transitional Disconnections, for disconnections carried out in response to non-payment by a Customer or for other credit control reasons unless and until the Retailer has closed the relevant Customer's account. This does not prevent the Retailer from carrying out a Physical Isolation as part of a Temporary Disconnection in accordance with clause S6.14, provided that the Retailer may only progress to a Transitional Disconnection where the requirements of this clause S6.26 are met.
- S6.27 The Retailer may undertake a reconnection in accordance with clause S6.28 when the Retailer requires Distribution Services for an ICP that had previously been subject to a Transitional Disconnection.

- S6.28 If a Transitional Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.
- S6.29 If the Retailer performs a Transitional Disconnection and/or associated reconnection it must update the Registry in accordance with the Switching Rules.
- S6.30 To avoid doubt, the Retailer will not update the ICP status code in the Registry where it carries out a Physical Isolation as part of a Temporary Disconnection unless and until the Retailer chooses to progress that ICP to a Transitional Disconnection in accordance with clause S6.26.

Permanent Disconnections

- S6.31 Only the Distributor may undertake a Permanent Disconnection.
- S6.32 The Distributor may only undertake Permanent Disconnection of an ICP in the following circumstances:
- (a) On receipt of a request from an appropriately authorised Customer or the property owner, advising that a gas supply is no longer required at the relevant ICP and requesting permanent disconnection of the supply; or
 - (b) On receipt of a service request from the Retailer, advising that a gas supply is no longer required at the relevant ICP, and requesting permanent disconnection of the supply; or
 - (c) Where public safety is at risk; or
 - (d) Where gas has not been taken at an ICP for a period of 6 months or more; or
 - (e) On receipt of a Registry notification of the ICP status INACP with reason "Disconnected – ready for decommissioning".
- S6.33 If the Distributor intends to perform a Permanent Disconnection as contemplated by clause S6.32(a), the Distributor will provide reasonable notice to the Retailer before undertaking any work.
- S6.34 If the Distributor performs a Permanent Disconnection it must notify the Retailer of completion of the work as soon as reasonably practicable and the Retailer must update the Registry in accordance with the Switching Rules. The Distributor may charge a Retailer the applicable Network-Related Service Charge for any Permanent Disconnection where the Retailer is recorded in the Registry, or was the last retailer recorded in the Registry for that ICP.
- S6.35 The Distributor may undertake Decommissioning of the service line outside the property and removal or abandonment of the service line on the property on receipt of a Registry notification of the ICP status INACP with reason "Disconnected – ready for decommissioning". When the Distributor completes Decommissioning of the ICP it must update the Registry in accordance with the Switching Rules.

S6.36 Except in the case of an administrative error, if an ICP has the ICP status code of DECR on the Registry, the ICP must not be used again and the process for new connections must be followed if supply is required again at the property.

SCHEDULE 7 – PRICES AND PRICING INFORMATION

- S7.1 The price schedule that applies to the Distribution Services provided by the Distributor to the Retailer is Published on the Distributor's website.
- S7.2 The Distributor also Publishes a schedule of Network-Related Services Charges on its website. To avoid doubt and despite anything else in this Agreement, the Distributor may amend the Network-Related Services Charges at its discretion from time to time by giving a minimum 40 Working Days' notice to the Retailer and Publishing a new schedule of charges (with the updated charges effective from the date of Publication).

SCHEDULE 8 – METERING

S8.1 The Retailer must:

- (a) ensure it has metering arrangements in place with each owner of GMS installed at a Customer's ICP, requiring the GMS owner to comply with the Gas Measurement Standard, the Reconciliation Rules and all applicable Law, and provide metering services in accordance with Good Gas Industry Practice;
- (b) ensure a GMS is installed at each Customer's ICP;
- (c) use reasonable endeavours to ensure that:
 - (i) in relation to each GMS, the measurement errors of the meter and/or any conversion device forming part of the GMS fall within the maximum permissible error limits set out in the Gas Measurement Standard;
 - (ii) each GMS is appropriately sized and designed for the Customer's Gas Installation MHQ requirements;
 - (iii) each GMS includes suitable equipment to regulate the delivery pressure to the Customer's Gas Installation (for non-TOU meters "Meter Pressure" on the Registry) taking into account the nominal operating pressure of that part of the Network to which the Customer's ICP is connected ("Network Pressure" on the Registry);
- (d) ensure meter readings are taken in accordance with the Reconciliation Rules;
- (e) promptly address any concerns that the Distributor may raise in relation to a GMS at an ICP, or generally about the quality of metering services being provided to, or by, the Retailer.

S8.2 The Retailer shall use reasonable endeavours to ensure that, within 20 Working Days of the Distributor's request, the Distributor is provided any GMS related information the Distributor may reasonably require for an ICP or ICPs directly from the GMS owner, including:

- (a) the set-point of the pressure regulator that controls the pressure of gas delivered to the Customer's Gas Installation;
- (b) make, model and size of the meter; and
- (c) minimum and maximum flow rates for which the GMS is designed.

Where the information is not available on the Gas Registry and not generally publicly available, the Distributor acknowledges that the GMS owner may require that the Distributor first enters into a confidentiality agreement with the GMS owner on terms reasonably satisfactory to the GMS owner. Where the GMS owner requires the Distributor to enter into a confidentiality agreement, the Retailer will provide reasonable assistance to facilitate the Distributor's and GMS owner's entry into such agreement.

SCHEDULE 9 – THIRD PARTY RETAILER RELATIONSHIP

Third Party Retailer arrangement

- S9.1 The Retailer may, from time to time, by notice in writing to the Distributor, request that a gas retailer be approved as a Third Party Retailer (“**Third Party Retailer Request**”).
- S9.2 The Retailer will provide to the Distributor such information as is reasonably required by the Distributor to assess the Third Party Retailer Request, including (but not limited to):
- (a) the gas retailer’s name and relationship person’s contact details; and
 - (b) the participant code used to identify the gas retailer within the Registry; and
 - (c) documentary evidence reasonably satisfactory to the Distributor that the gas retailer will be able to perform the obligations required under the agreement with the Retailer contemplated by this Schedule 9; and
 - (d) documentary evidence reasonably satisfactory to the Distributor that on approval of the request the gas retailer will be bound by a contract that includes all the terms contemplated in this Schedule 9 as being for the benefit of and enforceable directly by the Distributor against the Third Party Retailer; and
 - (e) evidence reasonably satisfactory to the Distributor that the gas retailer has the capability to comply with the Switching Rules and Reconciliation Rules (as applicable); and
 - (f) an outline of the process the Retailer intends using to provide the Distributor with GIEP1 files in relation to the gas retailer’s ICPs, including details of the type and format of consumption information the gas retailer will be providing to the Retailer and (if applicable) the details of any conversion that the Retailer is proposing to apply to the gas retailer’s data to ensure the data provided by the Retailer to the Distributor for billing of Network Services charges is compliant with Schedule 2.
- S9.3 The Distributor will, within 10 Working Days following the receipt of the Third Party Retailer Request, assess whether the information provided in accordance with clause S9.2 meets the Distributor’s reasonable expectations for the gas retailer to be accepted as a Third Party Retailer, and if so then subject to clause S9.30 the Distributor will approve the request and advise the Retailer of its decision. If the Distributor accepts the Third Party Retailer Request, the relevant gas retailer will be deemed to be a Third Party Retailer for the purposes of this Agreement from the date of the notice of acceptance, and all of the terms of this Schedule 9 will apply. If the Distributor declines the Third Party Retailer Request, it must provide the reasons for its decision. The Distributor will not unreasonably withhold its acceptance of the Third Party Retailer.
- S9.4 At all times during which the Third Party Retailer has use of the Network and/or Distribution Services, the Retailer must ensure that it has in place an agreement with each Third Party Retailer consistent with the obligations imposed on the Retailer under this Agreement and this Schedule 9. Promptly following the Distributor accepting a Third Party Retailer Request, the Retailer must at the Distributor’s request provide the Distributor within 10 Working Days with either:

- (a) a copy of the relevant provisions of the Retailer's agreement with the Third Party Retailer (excluding any pricing details) which demonstrate that that agreement complies with this Schedule 9, together with confirmation that the agreement remains in force, certified by the chief executive or senior executive or a director of the Retailer; or
- (b) a certificate from the chief executive or senior executive or a director of the Retailer confirming that the Retailer has an agreement with the Third Party Retailer that complies with this Schedule 9 and that remains in force.

S9.5 If the Retailer intends to terminate any agreement with a Third Party Retailer or the Third Party Retailer notifies the Retailer that it intends to do the same, or the agreement between the Third Party Retailer and the Retailer is due to expire within three months, the Retailer must notify the Distributor as soon as reasonably practicable of the proposed termination or expiry date together with the Third Party Retailer's name and relationship person's contact details.

Use of Network and Distribution Services for benefit of Third Party Retailer

S9.6 Subject to the terms of this Schedule 9, the Distributor will allow the Retailer to use the Network and Distribution Services to procure the conveyance of gas over the Network to each ICP for which the Third Party Retailer is the responsible retailer under the Switching Rules.

S9.7 Except to the extent this Schedule 9 specifically provides otherwise, the terms of this Agreement outside this Schedule 9 will be read with whatever modifications may be necessary to ensure that, in the context of any use of the Network and Distribution Services for the benefit of any Third Party Retailer, the Distributor's obligations and liabilities to the Retailer and all Third Party Retailers combined will be no greater, and the Retailer's obligations and liabilities to the Distributor will be no less, than would be the case if each Third Party Retailer was part of the same legal entity as the Retailer and the Agreement did not include this Schedule 9.

Retailer to procure compliance

S9.8 In the context of each Third Party Retailer's activities in connection with this Agreement and its use of the Network or the Distribution Services:

- (a) the Distributor will be entitled to deal directly with the Third Party Retailer in order to perform any obligations it owes to the Retailer, and will be deemed to have fulfilled its obligations to the Retailer to the extent its obligations would have been fulfilled had it performed the same directly with the Retailer;
- (b) the Retailer will ensure that:
 - (i) the Third Party Retailer takes all reasonable steps to comply with Good Gas Industry Practice, does not do anything that would breach the Retailer's obligations to the Distributor under this Agreement if done by the Retailer, and cooperates reasonably with the Distributor; and

- (ii) the Third Party Retailer includes provisions in each of its Supply Agreements permitting the Third Party Retailer to terminate the Supply Agreement where this Agreement is terminated by one of the parties;
- (c) Unless the context requires otherwise, the definitions of “Customer”, “Good Gas Industry Practice”, “Retailer’s Equipment”, and “Supply Agreement” in clause 33.2 will be read so that references to the Retailer are replaced with the Third Party Retailer; and
- (d) The definition of the “Retailer Warranties” described in clause 24.9(a)(ii) will also include all warranties, guarantees, or obligations imposed on the Third Party Retailer by the Consumer Guarantees Act 1993 or any other Law concerning the supply of gas by the Retailer under a Supply Agreement.

S9.9 Wherever the provisions of this Agreement refer to the “Retailer” or impose an obligation on the Retailer and the provisions relate to the activities that may reasonably be expected to be undertaken by the Third Party Retailer in connection with its use of the Network or Distribution Services, the provisions will also be read so to require the Retailer to procure that the Third Party Retailer complies with the same obligation that applies to the Retailer, including in relation to the following provisions:

- (a) clauses 3.1, 11.1, 11.3, 11.4, 12.1, 12.2, 12.7, 12.13, 12.14, 13.2, 24.9, 24.10, 29.1, 29.2 and S6.16 of Schedule 6 (relating to obligations that must be included in each Supply Agreement between the Third Party Retailer and the Customer); and
- (b) clause 8 (relating to the allocation of Price Category to ICPs);
- (c) clause 12.3 (relating to the obligation not to cause damage to the Distributor’s Equipment or Network);
- (d) clause 12.4 (relating to the costs of making good any damage to the Distributor’s Equipment or Network);
- (e) clause 12.8 (relating to notification of interference, damage, or theft);
- (f) clauses 12.9, 12.10, 12.11, and 12.13 (relating to metering);
- (g) clause 12.12 (relating to responsibility for damage if the Retailer installing or maintaining additional Metering Equipment causes damage to the Distributor’s existing Metering Equipment);
- (h) clause 13.3 (relating to the obligation to notify the Distributor of non-complying Gas Installations);
- (i) clause 14.2(a) and (b) (relating to Gas Specification obligations);
- (j) clause 14.3(a), 14.3(b) and 14.3(d) (relating to gas Odourisation obligations);
- (k) clause 14.6(c) (relating to obligation to notify the Distributor of Network pressure excursions);
- (l) clause 15.1(b), 15.1(c)(i) and 15.1(d), and 15.2 (relating to MHQ);
- (m) clause 17 and Schedule 6 (relating to connections and disconnections, and work on the Network by Warranted Persons);

- (n) clause 31 (relating to information use and auditing);
- (o) Schedule 4 (relating to System Emergency Event Management);
- (p) Schedule 5 (relating to Service Interruptions); and
- (q) Schedule 8 (relating to metering).

- S9.10 The Retailer will ensure that each of its agreements with a Third Party Retailer includes:
- (a) provisions that ensure the Third Party Retailer is required to comply with the obligations contemplated by clauses S9.8(b), S9.9, S9.18 and S9.19; and
 - (b) an acknowledgement that such provisions are for the benefit of the Distributor and directly enforceable by the Distributor in accordance with the Contract and Commercial Law Act 2017.

Benefits for Third Party Retailer

- S9.11 Each of the following provisions of this Agreement will be read so that each reference to the “Retailer” includes a reference to the Third Party Retailer:
- (a) clause 12.5 (relating to interference with the Retailer’s Equipment or Customer’s Gas Installation);
 - (b) clause 12.6 (relating to the costs of making good damage to Retailer’s Equipment or Customer’s Gas Installation);
 - (c) clause 12.12 (relating to responsibility for damage if the Distributor installing or maintaining additional Metering Equipment causes damage to the Retailer’s existing Metering Equipment);
 - (d) clause 12.13 (relating to the costs of making good damage due to the installation of metering equipment); and
 - (e) clauses 25 and 26 (relating to the Distributor indemnity and conduct of claims under the Distributor indemnity).
- S9.12 The Distributor acknowledges that the provisions contemplated by clause S9.11 are for the benefit of the Third Party Retailer and directly enforceable by the Third Party Retailer against the Distributor in accordance with the Contract and Commercial Law Act 2017.
- S9.13 This Agreement may be amended in accordance with its terms, or otherwise by agreement between the Distributor and Retailer, in each case without the consent of any Third Party Retailer.
- S9.14 Except as expressly stated above, no provision of this Agreement is enforceable by the Third Party Retailer against the Distributor.
- S9.15 If Distributor is liable to a Third Party Retailer under or in connection with this Agreement, the limitations and exclusions on the Distributor’s liability in this Agreement will be read as if the Third Party Retailer was part of the same legal entity as the Retailer.

Payment and prudential requirements.

- S9.16 The Distribution Services Charges will be calculated and paid as if the Retailer was responsible under the Switching Rules for all ICPs for which the Third Party Retailer is in fact responsible under the Switching Rules.
- S9.17 Nothing in this Schedule 9 limits the Retailer's obligation to pay any Distribution Services Charges incurred as a result of the Third Party Retailer's activities. To avoid doubt, such charges will be taken into account for the purpose of determining the value of security required by clause 10.6.
- S9.18 The Retailer will ensure that the Third Party Retailer provides the Retailer with all the information reasonably necessary to enable the Retailer to provide consumption and billing information to the Distributor in accordance with Schedule 2 so that the Distributor is able to calculate the Distribution Services charges and prepare Invoices and Revision Invoices for the purpose of clause 9 and Schedule 2. To avoid doubt, the Retailer is responsible for providing consumption and billing information to the Distributor in accordance with Schedule 2 for the Third Party Retailer's ICPs, and for payment of the Distribution Services charges in relation to the Third Party Retailer's ICPs.
- S9.19 Without limiting clause S9.9, the Retailer will ensure that the Distributor has reasonable access to the Third Party Retailer's books and records for the purpose of verifying any information provided to the Distributor as required by this Schedule 9.

Other matters

- S9.20 Despite anything in clause 20 and 33.2 of the Agreement:
- (a) for the purposes of the definition of Confidential Information in clause 33.2, information provided by a Third Party Retailer to the Distributor will be treated as if it has been provided by the Retailer to the Distributor, and information provided by the Distributor to a Third Party Retailer will be treated as if it has been provided by the Distributor to the Retailer;
 - (b) the Distributor may disclose information originally provided to the Retailer by the Third Party Retailer, where the Third Party Retailer has agreed in writing to the disclosure of that information;
 - (c) the Retailer will be responsible for the unauthorised disclosure of Confidential Information by the Third Party Retailer; and
 - (d) as between the Retailer and the Distributor, a Third Party Retailer's Confidential Information will be treated as Confidential Information of the Retailer, and the Distributor will be responsible for any unauthorised disclosure of that Confidential Information by the Distributor accordingly.
- S9.21 Despite anything else in this Agreement, where a failure described in clause 21.1 was due to an event or circumstance reasonably within the control of a Third Party Retailer or the failure could have been prevented by the exercise of Good Gas Industry Practice

by the Third Party Retailer, such an event or circumstance will not constitute a “Force Majeure Event” for the purposes of this Agreement.

- S9.22 To avoid doubt, the ICPs of Third Party Retailers’ Customers will be taken into account for the purpose of clause 24.7.
- S9.23 The reference to the “Retailer” in the following provisions of the Agreement will be read to include a reference to the Third Party Retailer:
- (a) clause 14.4(a) (relating to the Retailer’s obligation to indemnify the Distributor for non-compliance with Gas Specifications or Odourisation requirements), but only as used in paragraphs (i) and (ii);
 - (b) clause 14.5(b) (relating to the qualifications on the Distributor’s obligation to indemnify the Retailer for breach of clause 14.2 or 14.3);
 - (c) clause 24.8(c)(ii) (relating to the Distributor’s liability where there is a failure by the Retailer to include a provisions in its Supply Agreements requiring the Customer to comply with the Network Connection Standards);
 - (d) clause 27.1(a) (relating to the Retailer’s obligation to indemnify the Distributor for third party claims from persons with whom the Retailer has a contractual relationship); and
 - (e) clause 29.3, in relation to the reference to the “Retailer’s failure to meet its obligations...” (relating to the Retailer’s obligation to indemnify the Distributor for a failure to comply with certain obligations relating to Supply Agreements).

Liability

- S9.24 Nothing in this Schedule 9 relieves the Retailer of any of its obligations under this Agreement, and without limiting anything else in this Schedule 9 the Retailer will be liable for the acts or omissions of the Third Party Retailer as if it were its own, to the same extent the Retailer would be liable itself if it had performed the act or omission.
- S9.25 Except where this Agreement specifically entitles a Third Party Retailer to enforce a provision against the Distributor, and without limiting the Distributor’s obligations under this Agreement, the Retailer shall ensure that each Third Party Retailer unconditionally and irrevocably releases the Distributor from any and all liability that the Distributor may have to the Third Party Retailer in connection with this Agreement and/or any events, acts or omissions connected directly or indirectly with this Agreement, except for any liability that cannot lawfully be excluded by contract. The Retailer will ensure that each such release is given in writing for the benefit of the Distributor, in a form directly enforceable by the Distributor pursuant to the Contract and Commercial Law Act 2017.

Termination for unintended regulatory consequences

- S9.26 The parties expect that in performing the roles and responsibilities contemplated in this agreement, the Distributor will be classified under the Gas Act 1992 and associated rules and regulations as the “distributor” or “gas distributor”, and the Third Party Retailer under the Gas Act 1992 and associated regulations as the “retailer” or “trader”.

- S9.27 If the Distributor or Retailer comes to the view (supported by a legal opinion from an independent King's Counsel) that the Gas Act 1992 or associated rules or regulations apply in a manner that is inconsistent with the parties' expectations as described in clause S9.26 above ("**Unintended Regulatory Consequence**"), that party may give notice to the other party, providing reasonable details of the Unintended Regulatory Consequence and its impact on the first party.
- S9.28 Promptly following receipt of a notice under clause S9.27 above, the parties will meet with a view to agreeing one or more amendments to this agreement to address the Unintended Regulatory Consequence. Neither party will unreasonably withhold or delay its agreement to any amendments necessary for that purpose, although to avoid doubt a party need not agree to any amendment that would require it to assume any material risk, cost or other burden that it would not also bear if the Gas Act 1992 and associated rules and regulations applied as expected under clause S9.26.
- S9.29 A party may terminate the status of a gas retailer as a Third Party Retailer on not less than 30 Working Days' notice to the other, if at the time of that notice: the terminating party is exposed (or is likely to be exposed) to a material risk, cost or other burden as a result of an Unintended Regulatory Consequence; not less than 30 Working Days have passed since receipt of a notice under clause S9.27 in respect of that Unintended Regulatory Consequence; the parties have yet to agree amendments to this agreement addressing the Unintended Regulatory Consequence to their mutual satisfaction; and the terminating party is not in breach of clause S9.27 above. Neither party will have any liability to the other by reason of a termination under this clause S9.29.

Use of Schedule 9 subject to limits

- S9.30 Clauses S9.31 and S9.32 apply despite anything else in this Agreement.
- S9.31 Where all Third Party Retailers (treated together as a group) are responsible for more than 30% of the total ICPs on the Network, the Distributor will have sole and complete discretion to refuse any further Third Party Retailer Requests.
- S9.32 Where a Third Party Retailer, or a group of Third Party Retailers which are related entities, are responsible for more than 20% of the total ICPs on the Network (in each case a "**Mature Retailer**"), the Distributor may give notice to the Retailer requiring the Mature Retailer (including each related company, where the Mature Retailer is a group) to enter into an agreement directly with the Distributor as provided for in clause S9.34.
- S9.33 At any time while the Retailer is entitled to give notice terminating this Agreement under clause 19.2, the Distributor may give one or more notices to the Retailer requiring one or more Third Party Retailers (as specified by the Distributor in the notice) to enter into an agreement directly with the Distributor as provided for in clause S9.34. This does not prejudice any other rights or remedies of the Distributor.
- S9.34 If the Distributor gives the Retailer a notice under clause S9.32 or S9.33 ("**Transfer Notice**"), the Retailer will promptly notify the Third Party Retailer of the same. From the effective date specified in the Transfer Notice and falling no earlier than 30 days following the date of the Transfer Notice, each affected Third Party Retailer's status as a

Third Party Retailer under this Agreement will be terminated, and the Distributor will enter into an agreement with the former Third Party Retailer on the same terms as this Agreement, as updated or replaced from time to time in accordance with clauses 19 and 22. This clause S9.34 is for the benefit of the former Third Party Retailer and directly enforceable by the former Third Party Retailer in accordance with the Contract and Commercial Law Act 2017. This clause S9.34 can be amended without the consent of any Third Party Retailer.

- S9.35 The Retailer will ensure that its contract with each Third Party Retailer required by this Schedule 9 includes a provision providing that when the Distributor gives the Retailer a Transfer Notice in accordance with this Schedule 9, from the date specified in the Transfer Notice for that transfer: (i) the agreement between the Retailer and the Third Party Retailer will terminate; and (ii) the Third Party Retailer will be taken to have entered into an agreement with the Distributor as provided for in clause S9.34. The Retailer will ensure that this provision is expressed to be for the benefit of the Distributor and directly enforceable by the Distributor in accordance with the Contract and Commercial Law Act 2017.
- S9.36 For the purpose of clause S9.32, a related entity means a “related company” within the meaning of s 2(3) of the Companies Act 1993, but applied as if the word “company” included a body corporate of any kind, incorporated anywhere in the world.

SCHEDULE 10 – SUPPLY AGREEMENTS

S10.1 This schedule summarises the provisions required to be included in Supply Agreements by this Agreement.

Summary of right/obligation	Clause in this Agreement
Rights of entry onto Customer's Premises	11.1
Distributor may disconnect if access denied	11.3
Interference or damage to Distributor's Equipment by Customers	12.1
Costs of making good any damage to Distributor's Equipment by Customers	12.2
Interference with the Network	12.7
Safe housing of Distributor's Equipment	12.13
Property rights to the Network and Distributor's Equipment	12.14
Provisions in Supply Agreements in relation to Network Connection Standards	13.2
Consumer Guarantees Act in relation to Customers acquiring gas for the purpose of a business	24.9
Distributor's liabilities and Supply Agreements	24.10
Temporary Disconnections and associated Reconnections	S6.16
Retailer to procure compliance in relation to rights and obligations that must be included in each Supply Agreement between the Third Party Retailer and the Customer	S9.8, S9.9

**SCHEDULE 11 – RETAILER’S (AND, IF RELEVANT, THIRD PARTY RETAILER’S)
PARTICIPANT CODES AS AT COMMENCEMENT DATE**

Participant Code	Participant Name