



Vector Limited
[Retailer]

**Use-of-System Agreement
(Conveyance)**

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PARTIES

Distributor: Vector Limited	Retailer: [Insert full legal name of Retailer]
Distributor's Details: Street Address: 101 Carlton Gore Road, Newmarket, Auckland Postal Address: PO Box 99 882, Newmarket, Auckland 1149 Address for Notices: 101 Carlton Gore Road, Newmarket, Auckland Contact Person's Details: [●] Phone: [●] Fax: [●] Website: Website: www.vector.co.nz Email Address: [●]	Retailer's Details: Street Address: Postal Address: Address for Notices: Contact Person's Details: Phone: Fax: Website: Email Address:

COMMENCEMENT DATE:

SIGNATURES:

Signature

Signature

Name of authorised person signing for Distributor

Name of authorised person signing for Retailer

Position

Position

Date

Date

INTRODUCTION

- A. The Distributor has agreed to provide Distribution Services to its Connected Customers on the terms and conditions set out in the Distributor's Agreements with those Connected Customers.
- B. The Retailer has agreed to sell electricity to Consumers on the terms and conditions set out in the Retailer's Electricity Supply Agreements with those Consumers.
- C. The Distributor and the Retailer agree that the Distributor will convey electricity through the Network on a conveyance-only basis on the terms of this agreement, to allow the Retailer to supply electricity to Consumers.
- D. At Connected Premises in respect of which the Distributor provides Distribution Services and the Retailer supplies electricity, the Distributor's Connected Customer and the Retailer's Consumer will not always be the same person. For example, the Distributor's Connected Customer may be the property owner, and the Retailer's Consumer may be the tenant.
- E. Notwithstanding that the Distributor and the Retailer have separate contractual relationships with Connected Customers and Consumers respectively, the Distributor and the Retailer acknowledge that there will be situations in which the Distributor and the Retailer will be required to co-operate in respect of the Connected Customer and the Consumer (whether or not that person is the same person).
- F. The Distributor and the Retailer agree to exchange information and/or provide Services to one another on the terms and conditions set out in this agreement.
- G. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Code.

AGREEMENT

PART I – SERVICE COMMITMENTS

1. TERM OF AGREEMENT

- 1.1 **Term:** This agreement commences on the Commencement Date and continues until it is terminated under clause 12 or at law.

2. SERVICES

- 2.1 **General obligations:** Subject to the terms and conditions of this agreement, each party will endeavour in accordance with Good Electricity Industry Practice to:

- (a) fulfil its contractual obligations to its Connected Customers and Consumers, as the case may be; and
- (b) comply with the Service Standards.

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

- (a) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis and information service to Connected Customers in accordance with the terms of its Distributor Agreements. If the Consumer at an ICP in respect of which the Distributor provides Distribution Services is not a Connected Customer, the Distributor will also provide that service to the Consumer, and will treat the Consumer as if it was the Connected Customer in respect of the service;
- (b) provide disconnection and reconnection Services in accordance with schedule 4;
- (c) provide Load Management Services in accordance with schedule 5;
- (d) supply the Retailer with the following information, within the following timeframes (if any):
 - (i) Service Interruption information in accordance with schedule 3;
 - (ii) changes to Connected Customer details, within 2 Working Days of receipt of the new details;
 - (iii) notice that the Distributor intends, for credit reasons, to carry out the Temporary Disconnection of an ICP at which the Retailer is selling electricity for credit reasons, at least 2 Working Days before De-energising, if the Retailer is not already aware of such intention;
 - (iv) notice that the Distributor has De-energised or Re-energised an ICP within 2 Working Days of such action having been taken;

- (v) the protocols developed by the Distributor about the priorities for Load Shedding, restoration of load or similar events; and
 - (vi) changes to its Distributor Agreements that the Distributor reasonably believes may affect the Retailer; and
 - (e) provide the Additional Services set out in schedule 7 (if any).
- 2.3 **Pre-requisites for use of the Network by the Retailer:** The right of the Retailer to have electricity delivered by the Distributor through the Network to its Consumers is conditional upon the Retailer satisfying and continuing to satisfy the Vector Use of Network Pre-requisites.
- 2.4 **Retailer's services and obligations:** Subject to the terms and conditions of this agreement, the Retailer will endeavour in accordance with Good Electricity Industry Practice to:
- (a) provide Load Management Services in accordance with schedule 5;
 - (b) supply the Retailer with the following information, within the following timeframes (if any):
 - (i) changes to Consumer details, within 2 Working Days of receipt of the new details;
 - (ii) notice that the Retailer intends, for credit reasons, to carry out the Temporary Disconnection of an ICP, at least 2 Working Days before De-energising, if the Distributor is not already aware of such intention;
 - (iii) notice that the Retailer has De-energised or Re-energised an ICP, within 2 Working Days of such action having been taken;
 - (iv) changes to its Electricity Supply Agreements that the Retailer reasonably believes may affect the Distributor; and
 - (v) Disconnection of vacant energised sites if not occupied within [X] Working Days of final reading; and
 - (c) provide the Additional Services set out in schedule 7 (if any).
- 2.5 **Billing Services:** The Retailer will provide Billing Services in accordance with schedule 6.
- 2.6 **Protocols for exchanging information:** From time to time the Electricity Authority will publish certain EIEPs, including new or amended EIEPs, which specify recommended formats for the exchange of information between distributors and retailers. Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with the EIEPs listed in schedule 2 when exchanging information, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.
- 3. EQUAL ACCESS**
- 3.1 **Equal access:** The Distributor will make available to the Retailer the services that the Distributor provides to any other retailer under an agreement in accordance with which the Retailer is entitled to have electricity delivered by the Distributor

through the Network to its Consumers, but only if those services cannot be practicably provided by any other party (the "**Sole Provider Services**"), provided that:

- (a) the reference to "any other retailer" in this clause 3 will be construed as a reference to all retailers who have signed contracts on the same or substantially the same terms as this agreement; and
- (b) the Distributor may differentiate between retailers in a manner that properly reflects different financial or operational characteristics of such retailers or their businesses.

3.2 Nothing in this clause 3.1 will create any right or benefit to or for any retailer other than the Retailer, and in particular, the provisions of the Contracts (Privity) Act 1982 are excluded.

3.3 **Fees:** The fees for each Sole Provider Service provided:

- (a) are set out in schedule 78 (if any) or are as otherwise agreed by the parties in writing; and
- (b) will be itemised separately from the fees for any other Services on the same invoice.

3.4 **The Distributor will notify the Retailer of alternative services:** Within 20 Working Days after agreeing to provide a new Sole Provider Service to any other retailer or materially amending an existing Sole Provider Service provided to any other retailer, the Distributor will notify the Retailer of the availability of the new or amended Sole Provider Service, and invite the Retailer to take up the new or amended Sole Provider Service.

4. **LOAD MANAGEMENT**

4.1 Distributor may control load: If:

- (a) the Distributor provides, and the Connected Customer elects to take up, a Tariff Rate that provides a non-continuous level of service in respect of part or all of the load at an ICP ("**Controlled Load Tariff Rate**") and charges the Connected Consumer on the basis of the Controlled Load Tariff Rate; or
- (b) the Distributor provides any other service in respect of part of or all of the Connected Customer's load advised by the Distributor to the Retailer from time to time (an "**Other Load Control Option**") with respect to the Connected Customer, and the Connected Customer elects to take up such Other Load Control Option,

4.2 the Distributor may control the relevant part of the load in accordance with this clause 4 and schedule 5. If the Connected Customer is not also the Consumer, the Distributor will include in its Distributor's Agreement a requirement that the Connected Customer obtain the agreement of the Consumer before the Connected Customer elects to take up a Controlled Load Tariff Rate.

4.3 **Retailer may control load:** Subject to clause 4.4, if the Retailer offers to a Consumer, and the Consumer elects to take up, a price option that provides a deliberately non-continuous level of service in respect of part of or all of the Consumer's load, the Retailer may control the relevant part of the Consumer's load in accordance with this clause 4 and schedule 5. Prior to operating its Load Control System, the Retailer will enter into an agreement with the Distributor which sets out the protocols for the use of the load, including the co-ordination with the

Distributor of the disconnection and reconnection of load. Without limiting the foregoing, the Retailer will ensure that it does not operate its Load Control System in a manner that it knows will or may adversely affect the security of the Network.

- 4.4 **Control of load by the Retailer if some load is controlled by the Distributor:** If the Retailer wants to control part of a Consumer's load at the Consumer's ICP, but the Distributor has obtained the right to control part of the load at the same ICP in accordance with clause 4.1, the Retailer may only control the part of the Consumer's load that:
- (a) the Consumer has agreed that the Retailer may control under an Electricity Supply Agreement or another agreement; and
 - (b) is separable from, and not already subject to, the Distributor's right to control part of the Connected Customer's load at the ICP obtained in accordance with clause 4.1.
- 4.5 **No interference with or damage to existing Load Control Systems:** If either party (the "**Entrant**") seeks to control load at an ICP at which load is already controlled by the other party (the "**Incumbent**"), the Entrant will ensure that neither it nor its Load Control System interferes with the proper functioning of, or causes damage to, the Incumbent's Load Control System.
- 4.6 **Remedy if interference or damage:** If the Entrant or any part of the Entrant's Load Control System interferes with or causes damage to any part of the Incumbent's Load Control System, the Entrant will on notice from the Incumbent or on becoming aware of the situation, promptly and at its own cost remove the source of the interference and make good any damage.
- 4.7 **Retailer to make controllable load available to the Distributor for management of System Security:** If the Retailer has obtained the right to control part of a Consumer's load in accordance with clause 4.3, the Retailer will make available to the Distributor at all times, without charge, and in accordance with Good Electricity Industry Practice, all of the load that the Retailer has the right to control if the Distributor requires control of that load to enable it to:
- (a) comply with requests and instructions issued by the System Operator so as to manage System Security and the Network in accordance with the Code; and
 - (b) manage security on the Network in response to emergency situations,
 - (c) such purposes having priority over all other purposes for which load may be controlled.
- 4.8 **Limitations if Distributor elects to control the Retailer's load:** If the Distributor wishes to control the Retailer's controllable load in accordance with clause 4.7, it will do so:
- (a) only to the extent and for the duration necessary to fulfil its performance obligations as an asset owner in respect of managing System Security or managing the security of the Network; and
 - (b) in accordance with any protocol agreed with the Retailer and developed in accordance with Good Electricity Industry Practice.
- 4.9 **Maintenance of Load Control Equipment:** A party providing Load Control Equipment will endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Control Equipment:

- (a) receives and responds to the appropriate load control signals;
 - (b) properly controls the appropriate load; and
 - (c) is otherwise fit for purpose.
- 4.10 **Maintenance of Load Signalling Equipment:** A party providing Load Signalling Equipment will endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Signalling Equipment:
- (a) sends appropriate load control signals that are capable of being reliably received by the Load Control Equipment; and
 - (b) is otherwise fit for purpose.
- 4.11 **Access to demand and energy information:** The Distributor may from time to time request that the Retailer obtain demand and energy information from Consumers and provide such information to the Distributor in a format reasonably requested by the Distributor to assist the Distributor in managing and planning the Network. The Retailer will comply with such request as soon as practicable.

5. LOSSES AND LOSS FACTORS

- 5.1 **Retailer to provide information to enable calculation of Loss Factors by Distributor:** The Distributor will obtain information from the reconciliation manager for the purpose of calculating Loss Factors unless this information is provided by the Retailer. The Retailer hereby authorises the reconciliation manager to provide such information to the Distributor. The Retailer will provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors within 10 Working Days of the request from the Distributor.
- 5.2 **Calculation of Loss Factors:** Subject to clause 5.5, the Distributor will calculate Loss Factors in accordance with the Loss Factor Guidelines, if such guidelines are available.
- 5.3 **Change of Loss Factors:** If the Distributor wishes to change one or more Loss Category codes or Loss Factors, the Distributor will give the Retailer at least 40 Working Days' notice of the proposed change (including the reasons for the proposed change).
- 5.4 **Transparent Loss Factors methodology:** A notice provided to the Retailer in accordance with clause 5.3 will include details of the methodology and information used by the Distributor to determine the Loss Factors.
- 5.5 **Complaints about Loss Factors:** If, at any time, the Retailer considers that one or more Loss Factors notified by the Distributor are not appropriate, or that the methodology or information used to calculate those Loss Factors is incorrect, the Retailer may make a written complaint to the Distributor. The Distributor will consider the complaint in good faith, and may change the Loss Factors declared in its notice to reflect the Retailer's concerns in accordance with clause 5.3. The Distributor will decide whether to make the change and, if applicable, give notice under clause 5.3, no later than 20 Working Days after receipt of the complaint.
- 5.6 **Reference to the Electricity Authority:** If the Distributor does not change its notice under clause 5.3 after having received a complaint from the Retailer under clause 5.5, the Retailer may raise the issue with the Electricity Authority.

6. NOTIFICATION OF CHANGES TO NETWORK SUPPLY POINTS

- 6.1 **Changes to Network Supply Points:** If the Distributor permanently alters the Network Supply Point for an ICP at which the Retailer supplies electricity the Distributor will give the Retailer no less than 15 Working Days' notice after such change.

PART II – PAYMENT OBLIGATIONS

7. FEES

- 7.1 **Fees:** The fees payable by the Retailer to the Distributor for Sole Provider Services (if any) are set out in schedule ~~7~~8.

- 7.2 **Invoicing:** ~~By~~ **(Sole Provider Fees):** Other than invoicing in respect of Billing Services which are dealt with in schedule 6, by the 10th day of each month: (if applicable):

- (a) the Retailer will issue a Tax Invoice to the Distributor for any fees and any other amounts due under this agreement in respect of the previous month; and
- (b) the Distributor will issue a Tax Invoice to the Retailer for any fees and any other amounts due under this agreement in respect of the previous month.

~~7.3 **GST:** All amounts payable by one party to the other are stated exclusive of GST (if any) but inclusive of all taxes other than GST. The payee will add to such amounts GST and show the same on any Invoice rendered to the payer and such GST will be payable contemporaneously with the payment of the charges shown on the Tax Invoice.~~

~~7.4~~7.3 **Timing of payments:** The settlement date for each Tax Invoice issued by either party under clause 7.2 will be the 20th day of the month ~~in which, with the month being determined by reference to the date of~~ the Tax Invoice ~~is received~~. If the 20th day of the month is not a Working Day, the settlement date will be the first Working Day after the 20th day. However, if a party fails to ~~send~~issue a Tax Invoice to the other party by the 10th day of the month, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

~~7.5~~7.4 **Interest on late payment:** Subject to clause 7.6, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this clause 7 on the due date. If any part of a Tax Invoice that is properly due in accordance with this agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the invoice remains unpaid.

~~7.6~~7.5 **Other invoices:**

- (a) If applicable, the Distributor may issue a Tax Invoice to the Retailer for Additional Services, Service Guarantee payments and any other sums due to the Distributor under this agreement.
- (b) If applicable, the Retailer may issue a Tax Invoice to the Distributor for Service Guarantee payments and any other sums due to the Retailer under this agreement.
- (c) Any invoice under sub-clause (a) or (b) will be issued within 10 Working Days of the end of the month to which the Tax Invoice relates.

- (d) The ~~Settlement~~ settlement date for any Tax Invoice issued under sub-clause (a) or (b) is the 20th day of the month with the month being determined by reference to the date of the Tax 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 or the Retailer (as the case may be) fails to issue a Tax Invoice to the Retailer or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

~~7.7.6 Interest on late payment: Subject to clause 7, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this clause 7 on the due date. If any part of a Tax Invoice that is properly due in accordance with this agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the invoice remains unpaid.~~

~~7.8.7.7~~ **Disputed Tax Invoices:** If the Retailer or the Distributor disputes a Tax Invoice issued under this clause 7, the party disputing the Tax Invoice ("**Disputing Party**") will notify the other party ("**Non-disputing Party**") within 15 months of the date of the Tax Invoice ("**Invoice Dispute**") by a notice that is headed "Disputed Tax Invoice", which will refer to the fact it is given under this clause 7.5 and will contain full details as to the reasons why the Disputing Party disputes that Tax Invoice. On receiving an Invoice Dispute notice, the Non-disputing Party will:

- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute notice, promptly notify the Disputing Party thereof and:
- (i) if the disputed Tax Invoice has not been paid, the party that issued the disputed Tax Invoice will promptly issue a Credit Note ~~or Debit Note~~ to the other party, and any amount owed must be paid by the relevant party within 6 Working Days of receipt of the Credit Note ~~or Debit Note~~, but need not pay prior to the time set out in clause 1.1; or
 - (ii) if the disputed Tax Invoice has been paid, the party that issued the disputed Tax Invoice will calculate the amount that the relevant party has overpaid and promptly issue a Credit Note ~~or Debit Note~~ to the other party, which will include a Use of Money Adjustment. Any amount owed must be paid by the relevant party within 6 Working Days of the date of the Credit Note ~~or Debit Note~~. A Use of Money Adjustment will apply for the period commencing on the date the original Tax Invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clause 1.1;
- (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute notice, it will promptly notify the Disputing Party thereof and give full reasons and then either party may raise a Dispute in accordance with clause 16 and if the Retailer or the Distributor (as the case may be) has not paid the disputed invoice, it will pay the undisputed amount of the disputed invoice issued in accordance with clause 1.1; and
- (c) on the resolution of a Dispute under clause 16:
- (i) if the party that is found to have an outstanding amount has already issued a Tax Invoice, that party will promptly issue a Credit Note to the other party and this amount will be offset against future Tax Invoices, or a refund will be issued; or

- (ii) if the party that is found to have an outstanding amount was the recipient of a supply, that party will promptly pay any outstanding amount to the other party,

within 6 Working Days. A Use of Money Adjustment is payable for the period commencing on the date the disputed amount would have been due for payment under this clause 7, and ending when payment is made.

~~7.9~~7.8 **Interest on disputed amount:** If, as a result of the determination of a dispute, either party has to pay money to the other, Default Interest will be payable in addition to such payment.

~~7.10~~7.9 **Incorrect invoices:** If it is found at any time that a party has been overcharged or undercharged (not being as a result of inaccurate consumption or demand data) then within 20 Working Days after such error has been discovered and the amount has been agreed between the parties or determined under clause 16, the party that issued the Tax Invoice will issue a Credit Note or Debit Note as appropriate. If the party has paid the Tax Invoice containing such overcharge or undercharge then:

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

in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there will be no right to re-open invoices if more than 15 months has elapsed since the date of supply of the Services to which the Tax Invoice relates.

~~7.11~~ **Interest on late payment:** ~~Subject to clause , the Retailer or the Distributor will pay any Invoice issued under clause . If any part of a Tax Invoice that is properly due in accordance with this agreement is not paid by the due date, Default Interest may be charged.~~

~~7.12~~7.10 **No set off:** Both parties will make the payments required to be made to the other under this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in clause 7.5, and schedule 6, provided that a party may deduct from or set off against any amount that is or may become payable to it by the other party in relation to this agreement through that other party's default under the agreement.

~~7.13~~7.11 **Fee Review:** Either party may request a review of the fees. The party seeking the review will propose to the other party a new fee level, with evidence to support that proposal. The second party may, within 2 months of receiving the proposal respond with an alternative proposal, with supporting evidence. If the parties do not agree on the proposed changes at the expiry of 4 months from the date of the initial request then:

- (a) if there is a specific process for determining the fee, that process will apply; or
- (b) if there is no specific process for determining the fee, the party receiving the service will be entitled to terminate that service by giving 60 Working Days' notice to the other party. If the party receiving the service does not terminate the service within this timeframe, the price proposed by the party providing the service will be deemed to be accepted and will apply with immediate effect on expiry of the 60 Working Day period.

8. PRUDENTIAL REQUIREMENTS

8.1 **Retailer will satisfy prudential requirements:** The Retailer will comply with either one of the following prudential requirements:

- (a) the Retailer will maintain an acceptable credit rating, or
- (b) the Retailer will provide and maintain acceptable security by, at the Retailer's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 8.6 (as may be reviewed by the Distributor in accordance with clause 8.10) ("**Cash Deposit**") which the Distributor will hold in a trust account that the Distributor will establish and operate in accordance with clause 8.26; or
 - (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 8.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) or (ii) to the value specified in clause 8.6.

8.2 **Acceptable credit rating:** For the purposes of clause 8.1 an acceptable credit rating means that the Retailer or the third party (as the case may be):

- (a) carries a long term credit rating of at least:
 - (i) BBB- (Standard & Poors Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
- (b) if the Retailer or the third party (as the case may be) carries a credit rating at the minimum level required by sub-clause (a), is not subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.

8.3 Retailer may elect prudential requirements: The parties:

- (a) acknowledge that from the commencement of this agreement, the Retailer has elected to comply with the prudential requirements by maintaining an acceptable credit rating or providing acceptable security in the form of a cash deposit/third party security/a combination of a cash deposit and third party security; and
- (b) agree that the Retailer may elect to comply with the prudential requirements in either of the ways described in clause 8.1 at any time, by complying with clause 8.4.

8.4 **Change in prudential requirements complied with:** If the Retailer elects to change the way in which it complies with the prudential requirements in accordance with clause 8.3, the Retailer will notify the Distributor of its intention at least 2 Working Days before the change occurring and the parties will comply with clause 8.18. 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 8.1.

- 8.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) will provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.
- 8.6 **Value of security:** The value of security required for the purposes of this clause 8 as at the Commence Date is the amount advised by the Distributor to the Retailer in writing prior to the Commencement Date.
- 8.7 **Additional security:** The Distributor and the Retailer agree that the Distributor may, by notice to the Retailer, require the Retailer to provide further additional security in accordance with clause 12A.5 of the Code ("**Additional Security**"). If the Distributor requires the Retailer to provide Additional Security:
- (a) the Retailer may elect the type of security that it provides in accordance with clause 8.3; and
 - (b) the parties must comply with clause 8.14.
- 8.8 **Additional security requirements:** The following provisions apply in respect of any Additional Security provided:
- (a) if the Additional Security is in the form of a cash deposit, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(a) of the Code, and the Additional Security will be held as if it were part of the Cash Deposit under this agreement;
 - (b) if the Additional Security is in the form of security from a third party, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(b) of the Code;
 - (c) any money required to be paid by the Distributor to the Retailer in accordance with this clause 8.8 will be paid by the Distributor to the Retailer on a quarterly basis; and
 - (d) if the level of any Additional Security actually provided by the Retailer is greater than the level of Additional Security required by the Distributor, the charge referred to in sub-clause (a) will not be payable by the Distributor under this clause 8.8 in relation to the excess.
- 8.9 **Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will estimate the value of security required under clause 8.6 for the first 6 months of this agreement, subject to any reassessment of the value under this agreement, having regard to:
- (a) the Distributor's historical records of the Distribution Service charges in respect of the relevant ICPs; or
 - (b) in the absence of such records, a bona fide business plan prepared by the Retailer in good faith necessary for the Distributor to determine the value of security that it requires from the Retailer.
- 8.10 **Review of the value of security:** The Distributor may review or the Retailer may require the Distributor to review the value of security required to be provided by the Retailer at any time.
- 8.11 **Retailer to notify Distributor of changes affecting security:** Subject to clause 8.12, the Retailer will immediately notify the Distributor if any of the following occurs:

- (a) the Retailer no longer carries an acceptable credit rating; or
- (b) the Retailer has complied with prudential requirements by arranging for a third party to provide security in accordance with clause 8.1(b), and the Retailer learns that the third party no longer carries an acceptable credit rating; or
- (c) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to pay for Services will be affected.

Any information provided by the Retailer to the Distributor under this clause 8.11 will be Confidential Information.

8.12 **Public issuers and listed companies:** For the purpose of clause 8.11, if the Retailer:

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

8.13 **Distributor may make enquiries:** If the Distributor believes that the Retailer should have given notice under clause 8.11 and the Distributor has not received any such notice, the Distributor may enquire of the Retailer as to whether it should have given such notice. Any such enquiry will be in writing and be addressed to the Chief Executive of the Retailer. If notice should have been given, the Retailer will give notice immediately, or if no notice is required, the Retailer will respond to the Distributor in writing within 2 Working Days of receipt of the Distributor's notice under this clause 8.13. Correspondence sent or received by either party under this clause will be Confidential Information.

8.14 Change to the value or type of security: If:

- (a) the Distributor requires that the Retailer provide Additional Security in accordance with clause 8.7;
- (b) following a review of the Retailer's security in accordance with clause 8.10;
- (c) on receipt of information contemplated by clause 8.11 or 8.13; or
- (d) as a result of a failure of the Retailer to respond to a request made under clause 8.13 within the timeframe set out in clause 8.13;

8.15 the Distributor or the Retailer considers that the value of security should be increased or decreased, the Distributor will, acting reasonably, make a decision on what the value of security should be, and immediately notify the Retailer of its decision and the grounds for that decision and will include in the notification details of the part of the security that constitutes Additional Security. To avoid doubt, failure by the Retailer to respond to a request made under clause 8.13 within the required timeframe constitutes reasonable grounds for a Distributor to, change the value of security required to be provided by the Retailer.

8.16 Failure to maintain acceptable credit rating: If:

- (a) on receipt of information contemplated by clause 8.11 or 8.13; or
 - (b) as a result of a failure by the Retailer to respond to a request made under clause 8.13 within the timeframe set out in clause 8.13,
- 8.17 the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with clause 8.1(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor will notify the Retailer of the value of acceptable security required in accordance with clause 8.1(b).
- 8.18 **Distributor or Retailer to effect changes in the value or type of security:** The Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security, within 5 Working Days of notification under clause 8.4, 8.14 or 8.16. Refunds of Cash Deposits and reductions of the value of third party security required will be made in accordance with clause 8.19 or 8.20.
- 8.19 **Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it will refund all or part of the Cash Deposit into a bank account nominated by the Retailer on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.
- 8.20 **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; 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.
- 8.21 **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 8.1(b)(ii) which will replace the earlier third party security.
- 8.22 **When the Distributor may make a call on security:** The Distributor may make a call on security in accordance with clause 8.23 if:
- (a) the Retailer has provided acceptable security in accordance with clause 8.1(b);
 - (b) the Retailer fails to pay an amount due under this agreement; and
 - (c) the amount is not subject to a genuine dispute.
- 8.23 **Calls on security:** The Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under clause 8.25), call on the security as follows:
- (a) if the Retailer provided a Cash Deposit (which includes a deemed Cash Deposit), the Distributor may draw down and apply the amount owed (including Default Interest) from the Cash Deposit and full beneficial ownership of that amount (plus Default Interest) will automatically transfer solely to the Distributor before the draw down;

- (b) if the Retailer arranged for a third party to provide security, the Distributor may call on the provider of a third party security to pay the amount owed in accordance with the security; and
 - (c) in either case, the Distributor will immediately notify the Retailer that it has called on the security.
- 8.24 **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 will within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in clause 8.6 and the value of any Additional Security required by clause 8.7 (as each may be reviewed by the Distributor in accordance with clause 8.10), as required by clause 8.1(b).
- 8.25 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the third party security.
- 8.26 **Trust Account Rules:** If the Distributor receives a Cash Deposit:
- (a) the Cash Deposit will be held on trust for the benefit of both the Distributor and the Retailer, to be applied or distributed only on the terms of this agreement, or as otherwise agreed by the parties;
 - (b) the Distributor will establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding the Cash Deposit ("**Trust Account**");
 - (c) the Distributor will obtain acknowledgement from the Bank that the Cash Deposit is held on trust on the terms set out in clause 8.26(a) in the Trust Account for the purposes set out in clause 8.26(a) and that the Bank has no right of set-off or right of combination in relation to the Cash Deposit;
 - (d) the Retailer will inform the Distributor of the bank(s) the Retailer uses for its banking purposes and if the Retailer changes banks;
 - (e) the Trust Account will bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor will pay the Retailer the interest earned on the Cash Deposit (except for the amount of the Cash Deposit that is Additional Security, in respect of which a charge will be paid in accordance with clause 8.8) on a quarterly basis net of account fees and any amounts required to be withheld by law, unless the parties agree otherwise;
 - (f) if this agreement is terminated, the Distributor will refund the 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 8.19, provided that the Retailer:
 - (i) is not otherwise in default of this agreement;
 - (ii) is not subject to an Insolvency Event, in which case clause 8.20 applies;
 - (iii) has ceased to be bound by this agreement; and

- (iv) has discharged all obligations under this agreement to the Distributor, including payment of all outstanding amounts under this agreement,

and the Distributor will have no other contractual or equitable obligation to return the Cash Deposit to the Retailer otherwise than as set out in this sub-clause (f); and

- (g) the Distributor will provide the Retailer with an annual report in respect of the operation of the Trust Account if requested by the Retailer.

8.27 **Release of third party security:** If this agreement is terminated, the Distributor will release any third party security, provided that the Retailer has met all of the requirements set out in clause 8.26(f).

PART III – OPERATIONAL REQUIREMENTS

9. INTERFERENCE WITH EQUIPMENT AND THEFT OF ELECTRICITY

9.1 **Interference with or damage to the Distributor’s Equipment by the Retailer:** The Retailer will ensure that it and its employees, agents and invitees do not interfere with or damage the Distributor’s Equipment (including, without limitation, until the removal of the Distributor’s Equipment from the Connected Premises after the 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).

9.2 **Costs of making good any damage:** If any of the Distributor’s Equipment is damaged by the act or omission of the Retailer or the Retailer’s employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.

9.3 **Interference with or damage to the Retailer’s Equipment by the Distributor:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer’s Equipment (including, without limitation, for a period of 6 months after the termination of this agreement) without the prior written consent of the Retailer (except to the extent that emergency action has to be taken to protect the health or safety of persons, to prevent damage to property or for reasons relating to System Security or the security of the Network).

9.4 **Costs of making good any damage:** If the Retailer’s Equipment is damaged by the negligence or wilful act or omission of the Distributor or the Distributor’s employees, agents or invitees, then the Distributor will pay the cost of making good the damage to the Retailer.

9.5 Connection of Distributed Generation: The Retailer will:

- (a) purchase electricity from Distributed Generation connected to the Network only if the Retailer has confirmation from the Distributor that there is a Connection Contract in place between the Distributed Generator and the Distributor; and
- (b) notify the Distributor if the Retailer has reasonable grounds to suspect that a Distributed Generator does not have a Connection Contract with the Distributor and has connected its Distributed Generation directly or indirectly to the Network.

- 9.6 **Notification of interference, damage or theft:** If the Distributor or Retailer discovers any interference or damage to the other party's equipment or the Connected Customer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party will notify the affected party as soon as it is practicable to do so.
- 9.7 **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 does not interfere with any equipment owned or used by the other party. The party installing the Metering Equipment will ensure that it is installed and maintained in accordance with Good Electricity Industry Practice.
- 9.8 **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 certification of the other party, the First Party will:
- (a) meet the cost of making good the damage or recertifying the existing Metering Equipment (including the cost of any fines or penalties imposed under the Code); and
 - (b) if the damage invalidates the Existing Metering Equipment certification and the other party incurs costs because of its use of Metering Equipment during the period of non-certification, the First Party will pay those costs (including any fines or penalties imposed on the indemnified party under the Code and cost associated with defending against any such fines or penalties), except to the extent that the indemnified party knew or ought reasonably to have known that the Metering Equipment was uncertified.
10. **CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPs**
- 10.1 **Policies and procedures:** The Distributor and the Retailer will comply with the policies and procedures for establishing new ICPs, changing the capacity of existing ICPs, Decommissioning existing ICPs and De-energising and Energising existing ICPs set out in schedule 4 and the relevant provisions of the Code.
- 10.2 **Changes to ICP management system:** The Distributor may make a change to its ICP management system at any time, provided that it gives the Retailer 60 Working Days' prior notice of a change that materially affects the Retailer's obligations under this agreement. The Distributor will undertake reasonable consultation with the Retailer in relation to such change.
- 10.3 **Warranted Persons:** Each party will ensure that any person it engages to carry out any activity related to Energising, De-energising, and Decommissioning ICPs or performing any other works on the Network is a Warranted Person.

PART IV – OTHER RIGHTS

11. BREACHES AND EVENTS OF DEFAULT

- 11.1 **Breach of agreement:** Subject to clause 11.7, if either party (the "**Defaulting Party**") fails to comply with any of its obligations under this agreement, the other party may notify the Defaulting Party that it is in breach of this agreement. The Defaulting Party will remedy any breach within the following timeframe:
- (a) in the case of a Serious Financial Breach by the Retailer, within 2 Working Days after the date of receipt of such notice; and

- (b) in any other case, within 5 Working Days after the date of receipt of such notice.
- 11.2 **Distributor will exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with clause 8.1(b), and the Retailer has committed a Serious Financial Breach of the type described in sub-clause (a) of the definition of Serious Financial Breach, the Distributor may give notice to the Retailer under clause 11.1 and a notification under clause 11.4, but only if:
- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
 - (b) the Retailer has arranged for a third party to provide acceptable security in accordance with clause 8.1(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with clause 8.23(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.
- 11.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the timeframe set out in clause 11.1:
- (a) the breach is an “**Event of Default**” for the purposes of this agreement; and
 - (b) the other party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other party’s intention to exercise its rights under this clause 11; and
 - (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as possible.
- 11.4 **Notification of Events of Default:** If the Event of Default is any one of the following:
- (a) a Serious Financial Breach (in the case of the Retailer only);
 - (b) a material breach of the Defaulting Party’s obligations under this agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
 - (c) the Defaulting Party has failed on at least two previous occasions within the last 12 months to meet an obligation under this agreement within the time specified and has received notice of such failures from the other party in accordance with clause 11.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party’s rights or the other party’s ability to carry out its obligations under this agreement or, if the Defaulting Party is the Retailer, the Distributor’s ability to carry out its obligations under any agreement with any other electricity retailer,
- 11.5 then no earlier than 1 Working Day after the end of the timeframe set out in clause 11.1:
- (a) the other party may commence termination of this agreement in accordance with clause 12.2;
 - (b) if the Retailer is the Defaulting Party, the Distributor may undertake a Temporary Disconnection of some or all of the ICPs supplied by the Retailer,

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;

- (c) if the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code;
- (d) if the Retailer is the Defaulting Party, the Distributor may advise any one or more of the Consumers that a default event has occurred under this agreement and if it does so it will at the same time provide such Consumer(s) with details of the nature of the default (notwithstanding the provisions of clause 13);
- (e) if the Retailer is the Defaulting Party, the Distributor may prohibit the Retailer from using the Network to supply any Point of Connection which is not currently supplied by it;
- (f) exercise its rights, if applicable, under clauses 11.8 to 11.15; and/or
- (g) exercise any other legal rights available to it.

11.6 **Other Events of Default:** If a breach is not an Event of Default to which clause 11.4 applies, the non-Defaulting Party may:

- (a) refer the matter to Dispute resolution in accordance with clause 16 no earlier than 1 Working Day after the end of the timeframe set out in clause 11.1; and
- (b) exercise any other legal rights available to it.

11.7 **Insolvency Event:** Notwithstanding clause 11.1, if either party is subject to an Insolvency Event, the non-Defaulting Party may:

- (a) immediately commence termination of this agreement in accordance with clause 12.2; and
- (b) if the Retailer is the Defaulting Party, the Distributor may undertake a Temporary Disconnection of some or all of the ICPs supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will promptly provide the information required by the Distributor in relation to such ICPs;
- (c) if the Insolvency Event involves a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code;
- (d) if the Retailer is the Defaulting Party, the Distributor may advise any or all of the Consumers that a default event has occurred under this agreement and if it does so it will at the same time provide such Consumer(s) with details of the nature of the default (notwithstanding the provisions of clause 13);
- (e) if the Retailer is the Defaulting Party, the Distributor may prohibit the Retailer from using the Network to supply any Point of Connection not currently supplied by it at that time;
- (f) exercise its rights, if applicable, under clauses 11.8 to 11.15; and/or

(g) exercise any other legal rights available to it.

11.8 **Receivership Option:** The Retailer's initial election of either the provisions of clause 11.11 ("**Receivership Option A**") or the provisions of clause 11.12 ("**Receivership Option B**") is set out in schedule 10. If no initial election is made by the Retailer, Receivership Option A will be deemed to have been elected by the Retailer.

11.9 **Retailer Change Receivership Option:** During the term of this agreement the Retailer may, on notice in writing to the Distributor, such notice to expire no earlier than 12 months after the Commencement Date, elect that:

(a) immediately on the date of expiry of such notice, Receivership Option A will have effect and Receivership Option B will cease to have effect; or

(b) on the date three months after the date of expiry of such notice, Receivership Option B will have effect and Receivership Option A will cease to have effect,

provided that the Retailer will not be entitled to elect under clause 11.9(b) that Receivership Option B will have effect if, at the time such election would otherwise become effective, the Retailer is responsible under this agreement for sending invoices to Consumers which in aggregate include or represent 20% or more of the total Line Debts due to the Distributor in respect of that month from all Consumers of the Distributor. The Distributor will notify the Retailer if the Distributor is aware that the Retailer has reached such threshold.

11.10 **Effect of Option Election:** If and for so long as the Retailer's election of:

(a) Receivership Option A is effective, Receivership Option A will have effect and Receivership Option B will be of no effect; and

(b) Receivership Option B is effective, Receivership Option B will have effect and Receivership Option A will be of no effect.

11.11 **Receivership Option A:** Without prejudice to any other right of the Distributor whether under this agreement or otherwise, if an Event of Default constitutes a Serious Financial Breach, then:

(a) the Distributor may, following the period the Retailer has to remedy the breach under clause 11.1(a), give the Retailer a further notice that the relevant breach has not been remedied within the requisite time period and that the Distributor intends to appoint a receiver pursuant to this clause;

(b) if the Retailer has not, within a further period of 5 Working Days after the date of the notice under sub-clause (a), remedied such breach then the Distributor may appoint any person who may be appointed as a receiver pursuant to the Receiverships Act 1993 to be receiver and manager of the assets of the Retailer specified in clause 11.14 for the purpose of arranging for the Consumers to be supplied by any other retailer; and

(c) the Distributor will, during such 5 Working Day period, use its best endeavours to speak with the chief executive or another senior executive of the Retailer in relation to the appointment of a receiver under this clause.

11.12 **Receivership Option B:** Without prejudice to any other right of the Distributor whether under this agreement or otherwise, if an Event of Default constitutes a Serious Financial Breach, then:

- (a) the Distributor may, following the period the Retailer has to remedy the breach under clause 11.1(a), give the Retailer a further notice that the relevant breach has not been remedied within the requisite time period and that the Distributor intends to advise other retailers pursuant to this clause;
- (b) if the Retailer has not, within a further period of 5 Working Days after the date of the notice under sub-clause (a), remedied such breach then (notwithstanding clause 13) the Distributor may pass all relevant details relating to Consumers to all or any other retailer for the purpose of arranging for the Consumers to be supplied by any other retailer and may also advertise, disclose or publish by any means the Distributor considers appropriate the fact that the Retailer is in default under this agreement and that Consumers need to switch to any other retailer;
- (c) the Distributor will, during such 5 Working Day period, use its best endeavours to speak with the chief executive or another senior executive of the Retailer in relation to its intention to exercise its rights under this clause; and
- (d) the Retailer waives absolutely any claim or action against the Distributor howsoever arising relating to or arising from the advertisement, disclosure or publication of such information by the Distributor to other retailers, any other person or generally pursuant to this clause.

11.13 **Pre-conditions to Receivership Options A and B:** In exercising its right under Receivership Option A to appoint a receiver and manager or under Receivership Option B the Distributor will act in good faith and reasonably having regard to the other rights and remedies available to the Distributor in respect of such breach and will not exercise such rights:

- (a) if the amount of such default is ~~greater than~~ the lesser of \$100,000 or 20% of the Line Debts in respect of the month prior to the month in which such breach occurred unless such default is a breach of clause 8; or
- (b) if within 5 Working Days after the Distributor gives to the Retailer notice of such breach, any other retailer which is party to an agreement with the Distributor to the same effect as this agreement enters into arrangements reasonably satisfactory to the Distributor to assume all of the obligations of the Retailer to supply electricity to all Consumers.

11.14 **Property for Receiver:** The property of the Retailer in respect of which a receiver may be appointed under clause 11.11 is:

- (a) all rights and powers of any nature of the Retailer under or in respect of the Retailer's contracts and in respect of Consumers;
- (b) all equipment of the Retailer located in Connected Premises or used in connection with the supply of electricity to Consumers;
- (c) all records of any nature (including all records in electronic form) relating to or dealing with Consumers or use of the Network; and
- (d) all other property of any nature which in the reasonable opinion of the Distributor it may be necessary or desirable to control, for the purposes of arranging for the Consumers to be supplied by any other retailer.

11.15 **Receiver's acts:** A receiver appointed under clause 11.11 will be the agent of the Retailer, and the Retailer alone will be responsible for acts and defaults of the receiver. Every receiver will (in addition to any power at any time vested in a

receiver by law) have power to do all or any of the following things, in such manner and generally on such terms and conditions as the receiver thinks fit, provided they are only for the purposes of arranging for the Consumers to be supplied by any other retailer:

- (a) take possession of the property referred to in clause 11.14 (the "**Property**") or any part and exercise and enforce all or any of the rights, powers and remedies of the Retailer in respect thereof;
- (b) carry on or concur in carrying on the business of the Retailer relating to Consumers and the use of the Network;
- (c) employ and appoint managers, officers, employees and agents;
- (d) execute in the name and on behalf of the Retailer any document relating to the Retailer's contracts, Consumers, or the Network;
- (e) generally do and cause to be done such acts and things in respect of the Property or any part thereof as the receiver could do or cause to be done if the receiver had absolute ownership of the Property, without being answerable for any loss or damage which may happen thereby; and
- (f) generally do all things necessary or desirable to be done to cause Consumers to cease to be supplied by the Retailer and to be supplied by any other retailer.

12. TERMINATION OF AGREEMENT

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

- (a) **At will:** either party may terminate this agreement by giving at least 120 Working Days' notice in writing of termination and the date on which this agreement will terminate. The notice of termination may not be given under this clause 12.1 before 4 years and 6 months from the first commencement date of the first use of system agreement – conveyance version number [*insert*] entered into between the Distributor and any retailer; or
- (b) **Dispute resolution:** either party may terminate this agreement in accordance with any agreement reached or determination made as a result of the dispute resolution process set out in clause 16 if the other party has committed a breach; or
- (c) **Termination by the Retailer if the Retailer is not trading on the Network:** the Retailer may terminate this agreement immediately by notice to the Distributor if the Retailer is not supplying electricity to any Consumer through the Network; or
- (d) **Illegality:** either party may terminate this agreement on 1 Working Day's notice if performance of any material provision of this agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 20.4 it is not practicable for this agreement to continue; or
- (e) **Termination by the Distributor if the Retailer is not trading on the Network:** the Distributor may terminate this agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with

electricity using the Network or supplied the Distributor with any other Services under this agreement; 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 14.3; 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 14.3 and 14.4; ~~or~~

~~(iii)(ii) **Termination of billing arrangements:** the Distributor may terminate this agreement immediately by notice to the Retailer if the billing arrangements set out in schedule 6 are terminated in accordance with schedule 6.~~

12.2 **Termination of agreement for Event of Default or Insolvency Event:** In addition to any other termination right in this agreement, if a party has breached this agreement and the breach is an Event of Default, or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 11.1 in the case of an Event of Default) issue a notice of termination to the Defaulting Party, effective either:

(a) no less than 5 Working Days after the date of such notice; or

(b) immediately if the Retailer has ceased to supply electricity to all Consumers.

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

12.3 **Notice to Consumers:** Either party may copy any notice given under clause 12.2 to any or all of the Consumers (notwithstanding the provisions of clause 13).

12.4 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of that party, and all rights of that party accrued as at the date of termination.

12.5 **Obligations to continue until termination:** The parties will continue to meet their responsibilities under this agreement up to the effective date of termination.

12.6 **Events to occur on termination:** On the effective date of termination unless replaced by an alternative agreement:

(a) the parties will have returned or certified the destruction of the other party's Confidential Information; and

(b) the parties will cease to provide the Services to each other.

12.7 **Survival of terms:** Any terms of this agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

13. CONFIDENTIALITY

13.1 **Commitment to preserve confidentiality:** Each party to this agreement undertakes that it will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as provided for in clause 13.2; and
- (b) only use Confidential Information for the purposes expressly permitted by this agreement.

13.2 **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 information; or
- (b) **Provided in this agreement:** if disclosure is expressly provided for under the terms of this agreement; or
- (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 (unless it does so as a result of a breach by either party of its obligations under this clause 13 or a breach by any other person of that person's obligation of confidence); or
- (d) **Required to disclose:** if either party is required to disclose Confidential Information by:
 - (i) law (including the Code), or by any statutory or regulatory obligation, body or authority;
 - (ii) any judicial or 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; or
- (e) **Released to employees, directors, agents or advisors:** if the Confidential Information is released to the employees, directors, agents or advisors of the party, provided that:
 - (i) the information is disseminated only on a "need to know" basis;
 - (ii) recipients of the Confidential Information are 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; or
- (f) **Released to a bona fide potential purchaser:** if the Confidential Information is released to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Retailer, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form that reflects the obligations in this agreement; or

- (g) **Released to a Connected Customer or a Consumer:** if the Confidential Information relates to a Connected Customer or a Consumer, and the Connected Customer or Consumer (as the case may be) has requested the release of the information.

13.3 **Third party billing:** If the Distributor appoints a Generator or another retailer as its billing service provider, the Distributor will put all procedures in place that are necessary to ensure the Generator or the other retailer (as the case may be) does not use or pass on any Confidential Information supplied by the Retailer, except for the purposes expressly permitted by this agreement. The Retailer may appoint an independent, appropriately qualified, person to audit the procedures of the third party to ensure compliance with this clause. Such audit may not occur more than once in any 12 month period unless any audit report states that the procedures are not adequate or are not being observed in which case, without affecting any other rights of the Retailer, the Retailer may request an audit once every 3 months until the Retailer receives two audit reports confirming that the procedures are adequate and are being observed. The Distributor will ensure that the auditor is given full co-operation by the third party being audited including that the third party does not delay or restrict the audit. The costs of the audit will be met by the Retailer unless the auditor determines that the procedures are not adequate or are not being observed, in which case the cost of the audit and each successive audit until two audit reports have been received by the Retailer confirming that the procedures are adequate and are being observed, will be met by the Distributor.

13.4 **Unauthorised disclosure:** To avoid doubt, a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 13.2(f).

14. **FORCE MAJEURE**

14.1 **Force majeure:** Notwithstanding any other provision in this agreement, 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);
- (b) such failure is caused by:
 - (i) any event or circumstance occasioned by, or in consequence of, any act of God being an event or circumstance:
 - (A) due to natural causes; and
 - (B) that was not reasonably foreseeable; or
 - (C) if it was reasonably foreseeable, the failure did not occur as a result of the party invoking this clause 14 failing to act in accordance with Good Electricity Industry Practice; or;
 - (ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances; or
 - (iii) the binding order or requirement of any court, any government, any local authority, the Rulings Panel, the Electricity Authority, or

- the System Operator, which the party could not reasonably have avoided; or
- (iv) the partial or entire failure of supply or availability of electricity to the Network; or
 - (v) failure of the Network or any part of it; or
 - (vi) any other event or circumstance beyond the reasonable control of the party invoking this clause 14; and
- (c) the failure did not occur as a result of the party invoking clause 14 failing to act in accordance with Good Electricity Industry Practice.
- 14.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event.
- 14.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it will:
- (a) notify the other party as soon as reasonably practicable that it is invoking this clause 14; and
 - (b) provide full particulars of the potential or actual Force Majeure Event; and
 - (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 14.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking this clause 14 will:
- (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
 - (c) consult with the other party on the performance of the obligations referred to in sub-clauses (a) and (b).
- 14.5 **No obligation to settle:** Nothing in clause 14.4(a) is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.
- 14.6 **Charges continue:** If a Force Majeure Event occurs:
- (a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but
 - (b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event.

15. AMENDMENTS TO AGREEMENT

15.1 Agreement not to be changed except in certain circumstances: A change may be made to this agreement if:

- (a) if the change is to one or more of the Variable Provisions and the change is made in accordance with clause 15.2; or
- (b) the change is required by law or is necessary due to a change in law, including the Code or any mandatory rules or protocols of any industry association or body to which both the Distributor and the Retailer are members or signatories at the relevant time or is otherwise binding on the Distributor, and the change is made in accordance with clause 16.2; or
- (c) the change is a change to a fee set out in schedule 7 and the change is made in accordance with clause 15.3; or
- (d) the change does not fall into any of the categories set out above, and the change is made in accordance with clause 15.4.

15.2 Process to change any of the Variable Provisions: The Variable Provisions may be changed only:

- (a) in accordance with any applicable process in the Variable Provision; or
- (b) if there is no applicable process in the Variable Provision and the party seeking the change is the Distributor, in accordance with clause 15.3; or
- (c) by agreement in writing between the parties.

15.3 **Distributor seeks change to a Variable Provision:** If there is no applicable process in the Variable Provision, the Distributor may change the Variable Provision, provided that the proposed change is in accordance with Good Electricity Industry Practice and the Distributor has complied with the following:

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

15.4 **Procedures for other changes:** The following procedures will apply to changes contemplated by clauses 15.1(b) and 15.1(d):

- (a) **Notice of change:** either the Distributor or the Retailer may suggest a change by notice to the other. The Distributor may in its discretion choose to consult with all retailers (including the Retailer) jointly about the proposed change. The notice will:
 - (i) if the proposed change is contemplated by clause 15.1(b), specify the provisions of the Code, the mandatory rules or protocols, or the laws that are the basis for the proposed change;
 - (ii) if the proposed change is contemplated by clause 15.1(d), set out the reasons for the proposed change; and
 - (iii) set out the change in the form proposed to be incorporated in this agreement;
- (b) **Good faith:** the parties will negotiate the change in good faith;
- (c) **By agreement:** if the Distributor and the Retailer agree to the proposed change they will promptly sign a written variation to this agreement documenting the change and this agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation; and
- (d) **Procedure for changes required by law or is necessary due to a change in law, including the Code, if the parties have not agreed:** subject to clause 15.2(e), if the proposed change is contemplated by clause 15.1(b) and if the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under sub-clause (a), the matter will be referred to the decision of an independent, experienced and suitably qualified person agreed between the parties or failing agreement, appointed by the President for the time being of the New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
 - (i) will be the minimum necessary to effect the change required or necessary under clause 15.1(b);
 - (ii) subject to subparagraph (i), will be binding, absent obvious error; and
 - (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision is required to take immediate effect by law (including the Code) or mandatory rules or protocols.
- (e) **Procedure for changes if the parties have not agreed:** notwithstanding clause 15.2(d), if the proposed change is contemplated by clause 15.1(b) or 15.1(d) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under sub-clause (a), if retailers supplying at least 66.7% of ICPs at the commencement of the Year (expressed as a percentage of the total number of ICPs connected to the Network at the commencement of the Year) consent to such change, then such change will be deemed to also have been made to this agreement without any further action being required by the parties, notwithstanding the failure of the parties to agree to the change. Any change made to this agreement in accordance with the preceding sentence will become on the later of:
 - (i) the expiry of the 40 Working Day period referred to above; and

- (ii) the date on which retailers supplying 66.7% of ICPs at the commencement of the Year (being a percentage of the total number of ICPs connected to the Network at the commencement of the Year) consent to such change.

In respect of the Year in which the Commencement Date occurs, the reference above to the percentage of ICPs supplied by retailers at the commencement of the Year will be construed as a reference to the percentage of ICPs supplied by retailers at the Commencement Date (being a percentage of the total number of ICPs connected to the Network at the Commencement Date).

- 15.5 **Exception:** If a change to this agreement has a de minimis effect on the contractual undertakings of the parties (for example, without limitation, terminology changes to accord with new industry classifications or definitions), either party may effect the change by notice to the other party and nothing in clauses 15.1 to 15.2 will apply to the change. If the party receiving such a notice disagrees that the change has a de minimis effect, the party may raise a dispute in accordance with clause 16.

16. DISPUTE RESOLUTION PROCEDURE

- 16.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties will promptly meet to attempt to resolve the Dispute. If 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.
- 16.2 **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, the parties may agree that the Dispute be referred to mediation.
- 16.3 **Appointment of mediator:** Within 10 Working Days of receipt of an agreement by the parties to refer the Dispute to mediation in accordance with clause 16.2, the parties will agree on the identity of the mediator or, if they cannot agree within that timeframe, the mediator will be appointed by the President (or equivalent) of the New Zealand chapter of LEADR.
- 16.4 **Conduct of mediation:** In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.
- 16.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.
- 16.6 **Conduct during mediation:** In all matters relating to the mediation:
 - (a) **Act in good faith:** the parties and their representatives will act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;

- (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;
 - (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation; and
 - (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.
- 16.7 **Arbitration to resolve disputes:** Either party may refer the Dispute to arbitration if the Dispute:
- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
 - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with clause 16.1 within 15 Working Days of the matter being referred to them and if the Dispute was not referred to mediation within the time specified in clause 16.3.
- 16.8 **Arbitration:** A Dispute referred to arbitration under clause 16.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 16.9 **Choice of arbitrator:** The sole arbitrator will be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 16.7, the arbitrator will be appointed by the President for the time being of the New Zealand Law Society.
- 16.10 **No connection to previous mediator or previous mediation:** If the Dispute has been referred to mediation in accordance with clause 16.2, the mediator may not be called by either party as a witness, and no reference may be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent arbitration on the matter in Dispute.
- 16.11 **Urgent Relief:** Notwithstanding any other provision of this agreement each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.
- 17. LIABILITY**
- 17.1 **Payment of charges:** Nothing in this clause 17 will operate to limit the liability of either party to pay all charges and other sums due under this agreement.
- 17.2 **Direct damage:** Except in relation to liability under clauses 17.5, 17.11, 17.15(b) and 17.16(b), each party (and its officers, employees and agents) will be liable under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) to the other party for only direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this agreement, negligence, or failure to exercise Good Electricity Industry Practice.
- 17.3 **Excluded liability:** Except in relation to liability under clauses 17.5, 17.12 and 17.15(b), 17.16(b), neither the Distributor nor the Retailer will be liable for:

- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person; or
 - (b) any indirect or consequential loss (including, but not limited to, incidental or special damages); or
 - (c) any loss resulting from liability of a party to another person (except any liability for Direct Damage that arises under clause 17.2); or
 - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 17.4 **Liability in contract only:** Except as expressly provided in this clause 17, 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.
- 17.5 **Liability for Services:** Notwithstanding clause 17.3, a party (the "**First Party**") will be liable for loss of revenue suffered by the other party as a result of an error made by, or on behalf of, the First Party in providing the Services, provided that:
- (a) such error has not resulted from an error in information provided by the other party or the other party's agent (not being a party to this agreement) to prepare an Invoice; and
 - (b) notice of the loss of revenue is given by the other party to the First Party within 18 months of the date the error occurred.
- 17.6 **Distributor not liable:** Except as provided for in clause 17.11, the Distributor will not be liable for:
- (a) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or
 - (b) any Service Interruption or alteration to the supply of electricity to an ICP arising from any cause including:
 - (i) Load Shedding; or
 - (ii) Planned Service Interruptions; or
 - (iii) Unplanned Service Interruptions due to the partial or entire failure of the Network; or
 - (iv) any act or omission of any Connected Customer or Consumer or other person (excluding the Distributor and its officers, employees or agents); or
 - (v) a failure or reduction of injection or supply of electricity into the Network; or
 - (vi) any defect or abnormal conditions in or about any Connected Premises; or
 - (vii) action being taken by the Distributor in accordance with this agreement; or

- (viii) any act or omission of the System Operator, a Generator, or the Transmission Provider unless and to the extent that the Distributor has obtained an appropriate service guarantee from the System Operator or Transmission Provider and the System Operator or Transmission Provider has paid the Distributor under the relevant service guarantee, in which case the Distributor will only be liable to the Retailer to the extent of the Retailer's proportionate share of such payment having regard to all other conveyance retailers and all consumers affected by the relevant event, as determined by the Distributor (acting reasonably); or
 - (ix) if the Distributor is prevented from making necessary repairs (for example by police at an accident scene); or
 - (x) if the failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice,
except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this agreement; or
- (c) any failure to perform any obligation under this agreement caused by the Retailer's failure to comply with this agreement, except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this agreement.

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

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

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

17.8 **Distributor's limitation of liability:** Except in relation to liability under clauses 17.1, 17.11 and 17.16(b) and subject to clause 17.10, but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Distributor to the Retailer under or in connection with this agreement will:

- (a) subject to sub-clause (b), in respect of a single event or series of connected events, not in any circumstances exceed, in respect of each ICP on the Network, the lesser of \$[X] and the amount of the claimable loss or damage suffered; and
- (b) in respect of all events or circumstances during the period from 1 July each year until 30 June the following year ("**Year**") under all use of network agreements between the Distributor and the Retailer, the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

<p>No of ICPs supplied by the Retailer at the commencement of the Year (expressed as a percentage of the total number of ICPs connected to all electricity distribution networks owned by the Distributor, including the Network, at the</p>	<p>Maximum aggregate liability of the Distributor</p>
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commencement of the Year)	
0 to 5%	[\$X]
>5% to 10%	[\$X]
>10% to 15%	[\$X]
>15% to 20%	[\$X]
>20% to 25%	[\$X]
>25% to 30%	[\$X]
>30%	[\$X]

In respect of the Year in which the Commencement Date occurs, the reference in the above table to the number of ICPs supplied by the Retailer at the commencement of the Year will be construed as a reference to the number of ICPs supplied by the Retailer at the Commencement Date (expressed as a percentage of the total number of ICPs connected to all electricity distribution networks owned by the Distributor, including the Network, at the Commencement Date) and the maximum aggregate liability of the Distributor to the Retailer in the above table will be reduced on a proportionate basis to reflect the fact that the relevant period is less than 12 months.

17.9 **Retailer's limitation of liability:** Except in relation to liability under clauses 17.1 and 17.15(b), and subject to clause 17.10, the maximum total liability of the Retailer to the Distributor under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) is limited to:

- (a) \$[X] for any one event or circumstance or series of connected events or circumstances; and
- (b) \$[X] in the aggregate in respect of all events and circumstances in any Year, provided that in respect of the Year in which the Commencement Date occurs, the maximum aggregate liability of the Retailer to the Distributor in that Year will be reduced on a proportionate basis to reflect the fact that the relevant period is less than 12 months.

17.10 **Exclusion:** Clauses 17.8 and 17.9 do not limit a party's liability under clause 17.5 or 17.11.

17.11 **Distributor indemnity:** The Distributor indemnifies the Retailer as follows:

- (a) If:
 - (i) there has been a failure of the acceptable quality guarantee in section 6 of the Consumer Guarantees Act 1993 in the supply of electricity to a Consumer by the Retailer (a "**Failure**"); and
 - (ii) the Failure was wholly or partly the result of an event or conditions associated with the Distributor's Network;
 - (iii) the Failure was not a result of the Distributor complying with a rule or order with which it was legally obliged to comply;

- (iv) the Consumer obtains a remedy under Part 2 of the Consumer Guarantees Act 1993 in relation to the Failure against the Retailer; and
 - (v) that remedy is a cost to the Retailer (a "**Remedy Cost**"),
- the Distributor indemnifies the Retailer for the Remedy Cost.
- (b) The amount of the Distributor's liability under this indemnity is limited to the proportion of the Remedy Costs that is attributable to the event or condition associated with the Distributor's Network.
 - (c) However:
 - (i) if the Distributor pays compensation to a Consumer ("**Payment A**") in respect of a service provided directly by the Distributor to the Consumer; and
 - (ii) the Retailer incurs Remedy Costs in relation to the Consumer for a failure of acceptable quality that arose from the same event or circumstance that led to the payment of Payment A,

then the amount that the Retailer would otherwise recover from the Distributor in respect of that Consumer will be reduced by the amount of Payment A.
 - (d) If a Consumer makes a claim against the Retailer that the Retailer wishes to be indemnified for under this indemnity (a "**Claim**"), the Retailer will:
 - (i) as soon as reasonably practicable, give written notice of the Claim to the Distributor specifying the nature of the Claim in reasonable detail; and
 - (ii) consult with and keep the Distributor informed in relation to the Claim.

[Note to Retailer: Vector requires input into the Retailer's determination of whether an event constitutes a breach of the acceptable quality guarantee under clause 7A of the Consumer Law Reform Bill. If this matter is not dealt with under legislation, it would need to be dealt with through this agreement.]

17.12 **Distributor may make payment to property owner:** Where the Distributor is liable to pay the Retailer any amount in accordance with this clause 17 in respect of property damage which is not the property of the Retailer, the Distributor may, at its option, pay the amount directly to the property owner instead of to the Retailer. Where the Distributor elects to make payment directly to the property owner, the Retailer will, at the Distributor's request, give the Distributor such information as the Distributor may require (and which the Retailer may possess) to enable the Distributor to make payment directly to the property owner.

17.13 **Consumer Guarantees Act:** The following provisions apply:

- (a) ~~the~~The Retailer will, to the fullest extent permitted by law, including where the Consumer is acquiring, or holds itself as acquiring, electricity for the purpose of a business, exclude from all its Electricity Supply Agreements (which includes a contract between the Retailer and a purchaser of electricity that is not an end user~~)-~~):

- (i) all warranties, guarantees or obligations imposed on the Distributor to any Consumer ~~concerning the supply of electricity to the Consumer by the Distributor by~~ under the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity to the Consumer by the Distributor ("**Distributor Warranties**"); and
 - (ii) ~~if~~ all warranties, guarantees or obligations imposed on the Retailer to any Consumer under the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity to the Consumer by the Retailer ("**Retailer Warranties**").
- (b) If the Consumer on-sells electricity to an end-user the Retailer will, as a condition of any agreement between it and the Consumer, require the Consumer to include provisions in all agreements between the Consumer and an end-user, excluding all Distributor Warranties and Retailer Warranties to the fullest extent permitted by law; ~~and, including where the end-user is acquiring, or holds itself as acquiring, electricity for the purpose of a business.~~
- ~~(c) to avoid doubt, nothing in this clause affects the rights of any Consumer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Retailer from offering in its Electricity Supply Agreements its own warranties, guarantees or obligations pertaining to distribution services.~~

17.14 **Distributor liabilities and Consumer agreements:** The Retailer will procure in its Electricity Supply Agreements clear and unambiguous clauses to the effect that:

- (a) the Consumer will indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud, dishonesty or wilful breach of the Electricity Supply Agreements by the Consumer or its officers, employees, agents or invitees arising out of, or in connection with, the supply of electricity to the Consumer; and
- (b) to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Consumer.

17.15 **The Distributor will be indemnified:** Subject to clause 17.17, the Retailer indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis, but excluding all loss or damage of the kind described in clause 17.3 whether incurred by the Retailer or claimed by the person described in sub-clause (a) of this clause 17.15) suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Retailer has a contractual relationship in relation to the provision of Services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
 - (i) any breach by the Retailer of any of its obligations under this agreement; or
 - (ii) the disconnection by the Retailer, or disconnection requested by the Retailer, of any Connected Premises in accordance with this agreement; or

- (iii) the termination of this agreement by the Retailer, except when the termination is the result of a breach by the Distributor; or
 - (iv) any failure by the Retailer to perform any obligation under any agreement between the Retailer and any Generator or Consumer or other third party (or otherwise arising at law); or
 - (v) any action undertaken by the Distributor under or in connection with this agreement at the request of the Retailer (not being under this agreement); and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this agreement.

17.16 **The Retailer will be indemnified:** Subject to clause 17.17, the Distributor indemnifies and holds harmless the Retailer and will keep the Retailer indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis but excluding all loss or damage of the kind described in clause 17.3 whether incurred by the Retailer or claimed by the person described in sub-clause (a) of this clause 17.16), suffered, or incurred by the Retailer arising out of or in connection with:

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

17.17 **Conduct of claims:** If the party with a right of indemnity under clause 17.15 or 17.16 ("**Indemnified Party**") seeks, or may seek to be indemnified by the other party ("**Indemnifying Party**") under clause 17.15 or 17.16 in respect of a claim by any person of the kind described in sub-clause (a) of such clauses ("**Third Party Claim**"), the following will apply:

- (a) The Indemnified Party will 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.
- (b) The Indemnifying Party may, at its election, in the name of the Indemnified Party, but subject to prior 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 will make available to the

Indemnifying Party all such information, books and records, and give such other co-operation (including making available employees as witnesses), as the Indemnifying Party may reasonably require for the purpose.

- (c) If and for so long as the Indemnifying Party does not assume the defence of the Third Party Claim, the Indemnified Party will:
 - (i) keep the Indemnifying Party fully informed of the Indemnified Party's progress in defending the Indemnified Claim and of any related proceedings; and
 - (ii) at the Indemnifying Party's request, consult with, and take account of the reasonable views of, the Indemnifying Party so far as reasonably possible in the relevant Indemnified Party's defence of the Third Party Claim and any related proceedings.
- (d) The Indemnified Party will not, without the prior written consent of the Indemnifying Party, settle the Third Party Claim.
- (e) 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 will 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.

17.18 **Benefits to extend:** Each party agrees that its obligations under this clause 17 will constitute also promises conferring benefits on each party's officers, agents and employees that are intended to create, in respect of the benefit, an obligation enforceable by those officers, agents and employees and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this clause 17, but can be varied without the consent of such persons.

18. NOTICES

18.1 **Delivery of Notices:** Any notice given under this agreement will be deemed to be validly given if personally delivered, posted or forwarded by facsimile transmission or email to the address for notice set out on the execution page at the beginning of this agreement or to such other address as that party may notify from time to time.

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

- (a) in the case of personal delivery, when delivered;
- (b) in the case of facsimile transmission, when sent, provided that the sender has a facsimile confirmation receipt recording successful transmission;
- (c) in the case of posting, 2 Working Days following the date of posting; and
- (d) in the case of email, when sent to the email address of the recipient, provided that a delivery failure notice has not been received by the sender, in which case the notice will be deemed not to have been sent.

18.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice given in accordance with clause 18.2 that is personally delivered or sent by facsimile or email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

19. RIGHTS OF AUDIT AND INSPECTION

19.1 **Audit Report:** In this clause 19, "**Audit Report**" means a report from the Auditors addressed to the Distributor or produced by the Distributor or its agent ("**Reporter**"), which:

- (a) states that the Reporter has examined the books of account, records and systems of the Retailer;
- (b) states in respect of the relevant period whether so far as the Reporter is aware as a result of its investigations the Retailer is meeting the following requirements:
 - (i) the systems, processes and controls operated by the Retailer are adequate to ensure the existence, completeness and accuracy of all billing, metering and other transactional processing functions set out in this agreement insofar as they relate to the Distributor;
 - (ii) the Retailer has reported accurately to the Distributor in accordance with its obligations under this agreement;
 - (iii) the Retailer has complied with clause 8; and
 - (iv) the Retailer has complied with all tax and other relevant legislation in the performance of its obligations under this agreement; and
- (c) records any non-compliance by the Retailer with the terms of this agreement (whether or not material non-compliance) of which the Reporter has become aware.

19.2 **Bank statements:** Except where Option 2 has effect and the provisions of clauses 6.11.2 to 6.11.8 of schedule 6 do not have effect, the Retailer will procure that duplicates of all banks statements relating to the Account are delivered to the Distributor no less frequently than once each week.

19.3 **Inland Revenue / regulatory inspection:** The Retailer will facilitate the inspection of, or provide to the Distributor when requested, all records and books of account in the possession or control of the Retailer required to be inspected by, or provided to, Inland Revenue or other regulatory governmental organisation in relation to the Distributor. After notifying the Distributor of any such request and agreeing on the format and extent of the information to be provided, the Retailer will cooperate with Inland Revenue or such other regulatory governmental organisation or the Distributor to facilitate a timely inspection.

~~19.2~~19.4 **Retailer audit options:** The Retailer's initial election of either the audit option set out in clauses 19.5 to 19.9 (inclusive) ("**Audit Option A**") or the audit option set out in clauses 19.10 to 19.12 (inclusive) ("**Audit Option B**") is set out in schedule 8. During the term of this agreement, the Retailer may, on not less than 60 Working Days' prior written notice to the Distributor, elect Audit Option A rather than Audit Option B and vice versa. If and for so long as the Retailer elects:

- (a) Audit Option A, clauses 19.5 to 19.9 (inclusive) will apply and clauses 19.10 to 19.12 (inclusive) will be of no effect; and
- (b) Audit Option B, clauses 19.10 to 19.12 (inclusive) will apply and clauses 19.5 to 19.9 (inclusive) will be of no effect.

If no initial election is made by the Retailer, Audit Option A will be deemed to have been elected by the Retailer.

Audit Option A

~~19.3~~19.5 **Retailer Audit:** The Retailer will:

- (a) procure (at its own cost) that, no later than three calendar months after the end of each financial year of the Retailer, the Auditors deliver to the Distributor an Audit Report in respect of that financial year ("**Annual Audit Report**"); and
- (b) ensure that the Auditors are any one of Ernst & Young, KPMG, PricewaterhouseCoopers, Deloitte Touche Tohmatsu or any other firm of chartered accountants approved in writing by the Distributor.

~~19.4~~19.6 **Right to inspect if cause:** If the Distributor at any time reasonably believes that the Retailer has not met the requirements set out in clause 19.1(b), then the Distributor will have the right to request the Auditors to provide an Audit Report as at such date and in respect of such period as the Distributor reasonably specifies ("**Interim Audit Report**") and the Retailer will cooperate with the Distributor and the Auditors to facilitate a timely inspection.

~~19.5~~19.7 **Annual or Interim Audit Report for non-compliance:** If either the Annual Audit Report or an Interim Audit Report states that the Retailer has not met the requirements set out in clause 19.1(b), then the Retailer will:

- (a) as soon as possible agree with the Auditor the remedial action to be taken and take such steps (including providing the Auditor with access to the books of account, records and systems of the Retailer following the remedial action being taken) as are necessary to ensure that the Auditors are able to deliver, and procure that the Auditors deliver, an Interim Audit Report to the Distributor stating that the Retailer is complying in all material respects with the terms of this agreement; and
- (b) bear the costs of the Auditors incurred in relation to clause 19.6 and this clause 19.7.

~~19.6~~19.8 **Interim Audit Report of compliance:** If an Interim Audit Report states that the Retailer has complied in all material respects with the terms of this agreement during the relevant period then the Distributor will bear the costs of the Auditors incurred in relation to clause 19.6.

~~19.7~~19.9 **Frequency of Interim Audit Reports:** If the Auditors have delivered to the Distributor an Annual Audit Report or an Interim Audit Report which states that the Retailer has met the requirements set out in clause 19.1(b), whether under clause 19.5(a), 19.6 or 19.7 then the Distributor will not be entitled to request that the Auditors produce an Interim Audit Report within 60 Working Days of the date as at which that report is prepared.

Audit Option B

~~19.8~~19.10 **Distributor right to audit:** The Retailer will permit the Distributor and/or its agent access to the Retailer's books of account, records and systems and such assistance as is reasonably necessary to enable the Distributor or its agent to provide an Audit Report as at such date and in respect of such period as the Distributor reasonably specifies ("**Distributor's Audit Report**"). The Retailer will cooperate with the Distributor and/or the Distributor's agent to facilitate a timely inspection.

~~19.9~~19.11 **Distributor's Audit Report of non-compliance:** If a Distributor's Audit Report states that the Retailer has not met the requirements set out in clause 19.1(b), then the Retailer will:

- (a) as soon as possible agree with the Distributor or its agent the remedial action to be taken and take such steps (including providing the Distributor or its agent with access to the books of account, records and systems of the Retailer following the remedial action being taken) as are necessary to ensure that the Distributor or its agent is able to produce a Distributor's Audit Report stating that the Retailer has met the requirements set out in clause 19.1(b); and
- (b) bear the reasonable costs of the Distributor and/or its agent incurred in relation to clause 19.10 and this clause 19.11.

~~19.10~~19.12 **Frequency of Distributor's Audit Reports:** If the Distributor has received a Distributor's Audit Report which states that the Retailer has met the requirements set out in clause 19.1(b) under clause 19.11(b) then the Distributor will not be entitled to request that the Retailer assist or provide access for the production of a Distributor's Audit Report within 60 Working Days of the date as at which that report was prepared.

20. MISCELLANEOUS

- 20.1 **No Waiver:** Unless a party has signed an express written waiver of a right under this agreement, no delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.
- 20.2 **Entire agreement:** This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject.
- 20.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld. For the purposes of this clause, unless a party is listed on the New Zealand Stock Exchange, a direct or indirect change in effective control of a party will be deemed to be an assignment.
- 20.4 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.
- 20.5 **Extension of indemnities:** The indemnities provided under this agreement in favour of a party will be construed as also applying to the directors, officers, employees, agents, representatives and advisers of that party and are intended to be capable of enforcement by such persons in accordance with the Contracts (Privity) Act 1982.

21. INTERPRETATION

- 21.1 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:
 - (a) headings are to be ignored;
 - (b) "including" and similar words do not imply any limitation;

- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- (g) all amounts payable under this agreement are in NZ\$ and exclude GST, 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 include every other tax and duty unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement include it as varied, novated or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

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

"Act" means the Electricity Industry Act 2010;

"Additional Security" has the meaning given in clause 8.7;

"Additional Services" means the additional services that the Distributor or the Retailer will provide to the other as described in schedule 8 (if any);

"Annual Audit Report" has the meaning given in clause 19.5(a);

"Assessment Method" means any method of assessment of the electricity consumption and, if applicable, demand, in relation to a particular ICP as may be agreed in writing between the parties from time to time;

"Audit Option A" has the meaning given in clause 19.4;

"Audit Option B" has the meaning given in clause 19.4;

"Audit Report" has the meaning given in clause 19.1;

"Bank" has the meaning given in clause 8.26;

"Billing Services" means the Services described in schedule 6;

"Billing Period" means, in respect of each Point of Connection or group of Points of Connection, the period agreed between the Distributor and the Retailer at which invoices are to be sent in respect of that Point of Connection or group of Points of Connection, and failing such agreement, means a period of one month;

“**Cash Deposit**” has the meaning given in clause 8.1(b)(i);

“**Claim**” has the meaning given in clause 17.11(d);

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

“**Commencement Date**” means the date specified as such on the execution page of this agreement;

“**Confidential Information**” means all data and other information of a confidential nature provided by one party to the other under the terms of this agreement or otherwise that is identified by the party providing the information as being confidential or should reasonably be expected by the other party to be confidential, but excludes:

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (c) data supplied in accordance with clause 5; and
- (d) the existence and terms of this agreement, except schedule 7;

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

“**Connected Customer’s Installation**” includes an Electrical Installation and Distributed Generation;

“**Connected Customer**” means a person who purchases Distribution Services from the Distributor;

“**Connected Premises**” means the land and buildings owned or occupied by a Connected Customer and/or a Consumer, and any land over which the Connected Customer and/or the Consumer has an easement or right to pass electricity including:

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

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

“**Controlled Load Tariff Rate**” has the meaning given in clause 4.1;

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

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

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

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

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

"Default Interest Rate" means the Interest Rate plus [5]%;

"Defaulting Party" has the meaning given in clause 11.1;

"Direct Damage" has the meaning given to it in clause 17.2;

"Dispute" has the meaning given to it in clause 16.1;

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

"Disputing Party" has the meaning given in clause 7.5;

"Distribution Services" means the line function services provided by the Distributor to a Connected Customer as set out in the Distributor's Agreement with the Connected Customer;

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

"Distributor's Agreement" means the agreement for the provision of Distribution Services between the Distributor and a Connected Customer;

"Distributor's Audit Report" has the meaning given in clause 19.10;

"Distributor's Equipment" means the Fittings and Metering Equipment owned by the Distributor, the Distributor's agent or any other third party with whom the Distributor has contracted with for the use by the Distributor of the party's Fittings or Metering Equipment that are from time to time installed in, over or on Connected Premises;

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

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

"Distributed Generator" means a person who owns or operates Distributed Generation;

"Distributor Warranties" has the meaning given in clause 17.13(a);

“**EIEP**” means an electricity information exchange protocol approved by the Electricity Authority and published on the Electricity Authority's website <http://www.ea.govt.nz> listed in schedule 2;

“**Electrical Installation**” means:

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

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

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

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

“**Entrant**” has the meaning given in clause 4.5;

“**Event of Default**” has the meaning described in clause 11.3(a);

“**Failure**” has the meaning given in clause 17.11(a)(i);

“**First Party**” has the meaning given in clause 9.8 or 17.5, as the case may be;

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

“**Force Majeure Event**” has the meaning set out in clause 14.1;

“**Generator**” means any person that has assets that have the capability to generate electricity, including a Distributed Generator;

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

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

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

“**GST**” means goods and services tax payable under the GST Act;

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

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

- (a) a Point of Connection at which a Connected Customer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared unmetered load;

“**Incumbent**” has the meaning given in clause 4.5;

“**Indemnified Party**” has the meaning given in clause 17.17;

“**Indemnifying Party**” has the meaning given in clause 17.17;

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

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

“**Interim Audit Report**” has the meaning given in clause 19.6;

“**Invoice Dispute**” has the meaning given in clause 7.5;

“**Line Debts**” means, in relation to a period, the aggregate amount due to the Distributor under Distributor’s Agreements represented by ~~invoices~~[Tax Invoices](#) sent to Consumers during that period;

“Line Network Portion” in respect of any debt due by a Consumer, or amount received from a Consumer, means the portion of that debt or amount which represents the amount due to the Distributor. If a Consumer pays greater or less than the whole debt due from that Consumer, then the Line Network Portion of the amount actually paid by the Consumer will be deemed to be an amount which bears to the amount actually paid by the Consumer the same proportion as the amount due to the Distributor bears to the total amount due by the Consumer;

“Load Control Equipment” means the equipment (which may include, but is not limited to, ripple receivers and relays) that is from time to time installed in, over, or on Connected Premises for the purpose of receiving signals sent by Load Signalling Equipment and switching on and off, or otherwise controlling, controllable load;

“Load Control System” means a control and communications system for controlling parts of a Connected Customer’s or Consumer’s load and consisting of Load Signalling Equipment and Load Control Equipment;

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

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

“Load Shedding” means the act of deliberately reducing or interrupting the delivery of electricity to one or more ICPs;

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

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

“Loss Factor” means the scaling factor, applied by the reconciliation manager to volumes of electricity measured or estimated in respect of ICPs on the Distributor’s Network, in order to reflect the impact of the ICP on Losses within the Distributor’s Network;

“Loss Factor Guidelines” means the guidelines relating to the calculation and use of Loss Factors for reconciliation purposes issued by the Electricity Authority and updated from time to time;

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

“Network” means the Distributor’s lines, substations and associated equipment used to convey electricity in the Auckland Central, Manukau and Waiheke Island districts in Auckland, between:

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

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

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

“Non-disputing Party” has the meaning given in clause 7.5;

“Payment A” has the meaning given in clause 17.11(c)(i);

“Planned Service Interruption” means a Service Interruption that has been scheduled to occur in accordance with the relevant provisions of schedule 3;

“Point of Connection” means the point at which electricity may flow into or out of the Network, as described in the point of supply diagrams issued by the Distributor from time to time;

“Property” has the meaning given in clause 11.15(a);

“Re-energise” means to Energise an ICP after it has been De-energised;

“Receivership Option A” has the meaning given in clause 11.8;

“Receivership Option B” has the meaning given in clause 11.8;

“Registry” means the central database of ICP information maintained in accordance with the Code to assist switching and reconciliation;

“Remedy Cost” has the meaning given in clause 17.11(a)(v);

“Reporter” has the meaning given in clause 19.1;

~~**“Representation Letter”** has the meaning given in clause of schedule 6;~~

“Requesting Party” has the meaning given in clause S4.4 on schedule 4;

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

“Retailer’s Equipment” means the Fittings and/or Metering Equipment owned by the Retailer, the Retailer’s agent or any other third party with whom the Retailer has contracted with for the use by the Retailer of such third party’s Fittings or Metering Equipment, which are from time to time installed in, over or on Connected Premises;

~~**“Retailer Warranties”** has the meaning given in clause 17.14(b);~~

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

“Serious Financial Breach” means:

- (a) a failure by the Retailer to pay an amount due and owing that exceeds the lesser of \$100,000, or 20% of the actual charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with clause 7.5; or

(b) a material breach by the Retailer of schedule 6;

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

"Service Standards" means the set of standards that the Services will meet that are set out in schedule 1;

"Services" means any services provided by the Distributor to the Retailer or the Retailer to the Distributor in accordance with this agreement;

"Sole Provider Services" has the meaning given in clause 3.1;

"System Operator" means the person who is the system operator under the Act;

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

"Tariff Rate" means a tariff rate selected by the Distributor from its schedule of prices for Distribution Services, which determines the line charges that apply to an ICP;

"Tax Invoice" has the meaning given in the GST Act;

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

"Third Party Claim" has the meaning given in clause 17.17;

"Transmission Provider" means a person who provides the Distributor with services relating to injection or off-take of electricity into or out of a Network Supply Point;

"Trust Account" has the meaning given in clause 8.26(b);

"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 6.6.1(b) of schedule 6;

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

"Unplanned Service Interruption" means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Retailer or any affected Consumer, as anticipated in schedule 5 that relate to Unplanned Service Interruptions;

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

"Vacant Site Disconnection" means the De-energisation of the ICP at Connected Premises that has become vacant and the Retailer has changed the status in the Registry to "Inactive";

"Variable Provisions" means the provisions contained in the schedules except those provisions in schedule 6 and schedule 8;

"Vector Use of Network Pre-requisites" means the requirements set out in [schedule 8](#);

"Warranted" means qualified to the Distributor's reasonable standards and authorised by the Distributor to carry out the particular work on or in relation to the Network;

"Warranted Person" means a person who is Warranted or who is employed by a person who is Warranted;

"Working Day" means every day except Saturdays, Sundays and days that are statutory holidays in the city specified for each party's street address on the execution page at the beginning of this agreement; and

"Year" has the meaning given in clause 17.8(b).

SCHEDULE 1 – SERVICE STANDARDS

- S1.1 In accordance with clause 2.1(b), the Distributor and the Retailer will meet the Service Standards outlined in this schedule.
- S1.2 If either party becomes aware of or suspects a breach of the Service Standards by the other party, the party will give the other party notice of the reasons why it suspects that there has been a breach.
- S1.3 The parties acknowledge that notwithstanding any other provision of this agreement, the column "Service Guarantee" (if any) in the following table of Service Standards sets out the sole remedy (if any) of the Retailer in respect of the Distributor's failure to meet the relevant Service Standard. Any failure of the Distributor to meet the Service Standards does not constitute a breach of this agreement, including clause 2.1(b). Service Standards do not apply during a Force Majeure Event, except for any Service Standards relating to communication between the Distributor and the Retailer (which apply to the extent that the Force Majeure Event itself does not prevent the Distributor from meeting such Service Standards).
- S1.4 The parties will review annually the Distributor's performance in relation to the Service Standards with a view to determining whether there are any particular Service Standards which would benefit from the Distributor seeking to achieve a greater level of monitoring and performance in the following 12 month period. The Retailer acknowledges that any Service Guarantees set out therein are provided at the Distributor's discretion and may be revised by the Distributor from time to time.

SERVICE	SERVICE STANDARDS
COMMUNICATION SERVICES	
Unplanned Service Interruption communication services	The Distributor will provide Unplanned Service Interruption communication services in accordance with schedule 3.
Notification of Planned Service Interruption services	The Distributor will provide Planned Service Interruption communication services in accordance with schedule 3.
Information request services	Each party will consider all reasonable requests for information from the other party and within [5] Working Days after the request, respond to the request, or, if the request cannot be responded to within [5] Working Days, the party will provide an explanation and/or a new timeframe.
Connected Customer and Consumer Information services	If Connected Customer or Consumer information relevant to the other party changes, the party aware of the change will notify the other party within [5] Working Days after it becomes aware of the change using the appropriate EIEP (if any).
DISCONNECTION AND RECONNECTION SERVICES	
DATA COLLECTION SERVICES	

SCHEDULE 2 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

- S2.1 The table below lists the EIEPs published on the Electricity Authority website as at the date of signing this agreement.
- S2.2 These EIEPs, which may be amended or added from time to time by agreement between the Distributor and the Retailer, specify recommended formats for the exchange of information between distributors and retailers.
- S2.3 Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any relevant EIEPs listed below when exchanging information, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.

[Note to Retailers: The EIEPs are currently under consultation and therefore subject to change. A lead-in time would need to be built into this agreement for implementation of any amended or new EIEPs.]

Protocol Reference	From/To R means Retailer D means Distributor	Description
EIEP1	R → D	Detail Consumption Information As Billed Incremental Normalised Replacement Normalised
EIEP3	R → D	Half Hour Metering Information
EIEP4	R → D	Customer Information
EIEP7	R → D	General Installation Status Change
EIEP9	R → D and D → R	Customer Location Address Change Notification
EIEP12	D → R	Detailed Pricing Information Notification of Pricing changes

- S2.4 The following EIEPs have also been agreed between the Distributor and Retailer:

21.3 Consumer information

Title:	Consumer information (Incremental changes)
Application:	This protocol applies to all traders to provide specific Consumer information to distributors.
Participants:	Trader/Distributor
Code references:	
Dependencies:	The use of system agreement between the distributor and the trader may also set out requirements relating to the information that must be provided in this file that the distributor or the trader must comply with.

Description of when this protocol applies:

This protocol is used by traders to provide distributors with an incremental change of the trader's customer base at a specific point in time for the purposes as agreed between traders and distributors. Distributors will use this information to verify or update their records.

Business requirements:

1. The distributor and each trader must agree on the file transport mechanism by which the trader or distributor will provide information and the destination address. Whatever method is agreed must be in an approved format as published by the Authority
2. This protocol will be used in the timeframes as and when agreed between parties.
3. Where codes are stipulated these must be the EA approved published codes or those determined in the registry and reconciliation functional specifications.
4. Information provided in the file will be consistent with the terminology used in the Glossary of Standard Terms published by the Authority.
5. For address information the postal address is to be populated with the billing address including PO Box numbers and RD numbers). If the Trader uses the physical installation address as the billing address, then this is to be populated to the postal address fields.
6. When an international address is required the zip codes is to be applied in the post address post code field.
7. If either the trader or distributor becomes aware of an error in the file, that party must advise the other party as soon as practical after becoming aware of the error. For all errors that may occur in the file for any reason, the receiver has the choice to request a partial or full replacement file unless otherwise agreed by those parties.
8. If no agreement can be reached for the correction of the error a full replacement file is required.
9. Recipient of EIEP4 files should be prepared to receive 'I' (initial), 'R' (complete replacement) and 'X' (partial replacement) files.

Data Inputs:

(a)

Event data	Format	Trader to Distributor: Mandatory/ optional		Validation Rules
Header record type	Char 3	M		HDR – indicates the row is a header record type
File type	Char 7	M		Customer Information Listing - CUSIN
Sender Participant identifier	Char 4	M		Valid sender participant identifier
Sent on behalf of	Char 4	M/O		Party code of party on whose behalf consumption data is provided.
Recipient Participant identifier	Char 4	M		Valid recipient participant identifier
Report run date	DD/MM/YYYY	M		Date the report is run
Report run time	HH:MM:SS	M		Time the report is run
Unique File identifier	Char 15	M		Number that uniquely identifies the file
Number of detail records	NUM 8	M		Total number of DET records in report
Report period start date	DD/MM/YYYY	M		Report run start date (inclusive)
Report period end date	DD/MM/YYYY	M		Report run end date (inclusive)
Utility type	Char 1	M		G (Gas) or E (Electricity)
File status	Char 1	M		I (Initial) or R (Replacement) or X (replace only those ICPs contained in this replacement file)

Event data	Format	Trader to Distributor: Mandatory/ optional		Validation Rules
Detail record type	Char 3	M		DET – indicates the row is a detail record.

ICP identifier	Char 15	M		ICP identifier means a unique identifier for an ICP created by a distributor.
Customer name	Char 50	O/M		Legal name or the name of the customer. To Be Concatenated into one field
Physical address Unit	Char 20	O/M		Sub dwelling number; Level of sub dwelling
Physical Address Number	Char 25	O/M		RAPID Number, Street Number, Dairy Number; issued by government agency or local government authority that identifies a point or location on a street.
Physical address street	Char 30	O/M		Official road name issued by government agency or local government authority.
Physical address suburb	Char 30	O/M		A bounded locality within a city, town or shire principally of urban character and usually with a focus of a shopping centre, schools or transport facility.
Physical address town	Char 30	O/M		An officially recognised and named population centre, defined within a geographic boundary.
Physical Address Region	Char 20	O/M		The regions are based on phone book areas that are generally known by callers. (ref registry functional specs for list)
Physical Address Post Code	Char 30	O/M		The post code assigned by NZ post (zip code if outside NZ).
Physical address property Name	Char 75	O/M		Name given to the property or building by the owner or party with legal naming rights.
Phone Number Home	Char 15	O/M		Home Phone Number
Phone Number Work	Char 15	O/M		Number person can be contacted at during business hours.
Phone Number Mobile	Char 15	O/M		Cell phone number
Fax number	Char 15	O/M		Fax number
Email address	Char 50	O/M		Email address

Postal free form	Char 30	O/M		All postal fields can be Null. But are mandatory if available
Postal address unit	Char 4	O/M		Sub dwelling number; Level of sub dwelling
Postal address num	Char 6	O/M		Number issued by government agency or local government authority that identifies a point or location on a street for postal purposes.
Postal address street	Char 30	O/M		Official road name issued by government agency or local government authority.
Postal Box/RD	Char 30	O/M		Number assigned a postal delivery box or rural delivery number.
Postal address suburb	Char 30	O/M		A bounded locality within a city, town or shire principally of urban character.
Postal address town	Char 30	O/M		An officially recognised and named population centre, defined within a geographic boundary.
Postal address postcode	Char 30	O/M		The post code assigned by NZ post (zip code if outside NZ).
Postal address country	Char 30	O/M		The country for postal information
Event date	DD/MM/YYYY	M		In relation to an ICP, means the date on which an arrangement between a customer and a trader for the supply of electricity at the ICP comes into effect
ANZSIC code	Char 12	M		As per published table of codes.
Disconnection restriction	Char 3	O/M		"Y" for YES or "N" for No for confirmed Medically Dependent customers or other critical disconnection restrictions.
Customer no.	Num 15	O/M		Retailer's customer number. (the identifier that the retailer assigns to the customer which remains the same across all the connections for the customer)
Consumer no	Num 15	O/M		Retailer's consumer number Defined as the retailer's unique ID that links the premises and the customer. If not available

				then use null.
Customer title	Char 20	O/M		Separated customer title details
Surname	Char 50	O/M		Separated customer surname details (populate with separated company name(s) if customer includes a company)
First name	Char 50	O/M		Separated customer first name details

Protocol specifications:				
<ol style="list-style-type: none"> 1. The information is to be provided as a comma delimited text file. Commas are therefore prohibited within fields. 2. Matching of file names, code list values, etc, are to be case insensitive. 3. Each data file will contain one header or any number of detail records. 4. The first record of a file contains 'Header' information followed by zero or more detail lines. 5. The following file naming convention is to be used with this file: 6. Sender + Utility Type + Recipient + File Type + Report Month + Report Run Date + UniqueID# (e.g. hhmm run time, or ICP but limited to Char(60)) with an extension of .TXT and with the components concatenated using the underscore character, to assist readability. e.g. TRUS_E_UNET_CUSIN_200007_20000802_1232.TXT [Char4_Char1_Char4_Char7_yyyymm_yyyymmdd_UniqueID.TXT] 				

Data outputs:				

SCHEDULE 3 – SERVICE INTERRUPTION COMMUNICATION POLICIES

Unplanned Service Interruptions

S3.1 The Distributor will, as soon as reasonably practicable but no later than the periods specified below after first becoming aware of an Unplanned Service Interruption and that Unplanned Service Interruption is affecting 20 or more Consumers, communicate to the Retailer by providing relevant information that enables the Retailer to respond intelligently to calls from affected Consumers, in a manner reasonably determined by the Distributor from time to time. Such information should include a description of the reason for the interruption (if known), the general area affected, and estimated time for restoration (if known).

(a) Manned control room hours – 20 minutes

(b) On call control room hours – 40 minutes

S3.2 The Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Connected Customers and Consumers. The Retailer will, where it receives an Unplanned Service Interruption call from a Consumer,

Either:

[within 10 minutes of receiving information relating to a possible Unplanned Service Interruption, log the call with the Distributor in the manner reasonably requested by the Distributor from time to time. The Distributor will advise the Retailer if the Retailer should stop logging calls, in the manner reasonably determined by the Distributor from time to time.]

Or:

[transfer the call to the Distributor's call centre.]

Planned Service Interruptions

S3.3 For all Planned Service Interruptions, the Distributor will notify affected those Connected Customers or, where information has been provided by the Distributor under clause 2.2(b) of this agreement, those Consumers, which its information systems indicate will be 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 prior to the date on which the Planned Service Interruption is scheduled.

S3.4 The Distributor will provide the Retailer with notice of the Planned Service Interruption in the manner reasonably determined by the Distributor from time to time at least 4 Working Days before the Planned Service Interruption is scheduled.

SCHEDULE 4 – CONNECTION POLICIES

Introduction

- S4.1 The Distributor and the Retailer recognise that the process of managing connections and disconnections of ICPs on the Network requires significant co-ordination between them.
- S4.2 This schedule sets out the processes that the Distributor and Retailer will follow in respect of:
- (a) new connections;
 - (b) capacity changes to existing connections;
 - (c) Temporary Disconnections and associated Reconnections;
 - (d) Vacant Site Disconnections and associated Reconnections;
 - (e) Decommissioning ICPs; and
 - (f) Unmetered Load.

Information content and transmission media

- S4.3 The clauses set out below focus on the responsibilities of each party and do not deal with the particular content of the information transferred between the parties or the media by which the information is transferred. The information content and transmission media will be determined by the Distributor having regard to current practice and the capability of both parties to use the determined media.

Process for new connections or changes in capacity

- S4.4 The Distributor may receive applications from:
- (a) the owner of a premises not currently connected to the Network or the owner's agent (the "**Requesting Party**") for a new connection to be created; and
 - (b) a Connected Customer (the "**Requesting Party**") for an increase or decrease in the capacity of an existing connection.
- S4.5 The Distributor will undertake an impact assessment to determine whether the capacity required for the connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S4.6 If the Distributor agrees to supply a new connection or change the capacity of an existing connection, and the Requesting Party agrees to the terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 2 Working Days of the ICP

identifier, the NSP to which the ICP will be or is connected, the applicable Tariff Rate, and, if the ICP is a new ICP, that the ICP is ready to be electrically connected.

- S4.7 The Distributor will arrange for the ICP to be electrically connected (using a Warranted Person) once approval has been granted by the Distributor. The party electrically connecting the ICP will, unless otherwise agreed, notify the other party within 2 Working Days of the ICP being electrically connected.
- S4.8 The Distributor will update the status of the ICP in the Registry throughout this process in accordance with the Code.

Timeframe for electrically connecting standard new connections

- S4.9 The timeframe for electrically connecting a standard new ICP connection (if all necessary equipment is in place, line upgrade or extensions are not required and other requirements are met), is within 2 Working Days after a request is made by the Retailer. The timeframe for electrically connecting all other ICP connections will be as agreed between the parties.

Temporary Disconnections and associated reconnections

- S4.10 The parties agree that a Temporary Disconnection of an ICP at which the Retailer supplies electricity may be carried out in the following circumstances:

- (a) by either party:
- (i) in an emergency if it is necessary to avoid endangering persons or property;
 - (ii) for credit reasons;
 - (iii) if requested by the Connected Customer or the Consumer, for safety or other reasons; or
 - (iv) if the Connected Customer or the Consumer does not allow access of either party to the Connected Premises in accordance with the Distributor's Agreement of the Electricity Supply Agreement; or
- (b) by the Distributor:
- (i) if there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or transmission system;
 - (ii) if an Event of Default or Insolvency Event has occurred in relation to the Retailer;
 - (iii) if the Connected Customer or the Consumer:
 - (A) interferes with the Distributor's Equipment;
 - (B) injects or attempts to inject energy into the Network without the Distributor's consent;
 - (C) conveys or receives or attempts to convey or receive any signal or other form of communication or any other thing (other than energy in accordance with an Electricity

Supply Agreement and load control signals transmitted by, or with the written permission of, the Distributor) over the Network or causes or permits any other person to do so;

(D) has an Electrical Installation that does not comply with the Distributor's published network connection standards; or

(E) otherwise breaches the Distributor's Agreement with the Connected Customer; or

(iv) on termination of this agreement.

S4.11 If the Retailer carries out a Temporary Disconnection requiring the operation of Network equipment or Distributor's Equipment or the removal of conductors from Network equipment or Distributor's Equipment, the Retailer will use a Warranted Person for that purpose.

S4.12 The party performing the Temporary Disconnection will, unless otherwise agreed, notify the other party within 2 Working Days of the Temporary Disconnection having been completed. To avoid doubt, the status of the ICP in the Registry is not to be changed for Temporary Disconnections.

S4.13 If an ICP is subject to a Temporary Disconnection and all conditions for reconnection have been satisfied, the party that undertook the Temporary Disconnection will reconnect the ICP as soon as reasonably practicable, and no longer than 3 Working Days after the final condition is satisfied.

Vacant Site Disconnections and associated reconnections

S4.14 The Retailer may undertake a Vacant Site Disconnection of an ICP if:

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

and will undertake a Vacant Site Disconnection of an ICP without delay if the above criteria apply and the ICP has been inactive for more than one month.

S4.15 The Retailer may reconnect an ICP that is subject to a Vacant Site Disconnection if it wishes to supply electricity to that ICP[, but only if the Distributor advises that it agrees to the Re-energisation]. If the ICP has not been electrically connected for more than 6 months, the Retailer will either request an inspection from the Distributor (if the Distributor provides that service), or advise the Consumer to procure its own safety inspection using a person authorised to certify mains work. A copy of the certificate issued following such an inspection will either be provided to the Distributor, or held by the Retailer at the Retailer's offices for the later inspection by the Distributor, before the ICP can be electrically connected.

S4.16 The Retailer will ensure that Vacant Site Disconnections and associated reconnections are carried out by Warranted Persons and in accordance with the Distributor's reasonable operational work practices for managing vacant sites.

S4.17 The Retailer may give the Distributor notice that the Distributor is responsible for completing a Vacant Site Connection for an ICP if:

- (a) the Retailer wishes a Vacant Site Disconnection be undertaken for the ICP;
- (b) the Distributor has not provided an exclusive and accessible isolation device for that ICP;
- (c) the Retailer has not been able to complete a Vacant Site Disconnection in accordance with Good Electricity Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s).

S4.18 If the Retailer gives the Distributor notice under clause S4.17:

- (a) the Distributor will use reasonable endeavours in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;
- (b) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound to install such a device if it considers in its opinion that it would be impractical or unreasonably costly to do so; and
- (c) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.

S4.19 The party performing the disconnection or reconnection will, unless otherwise agreed, notify the other party within 2 Working Days of completion of the work.

S4.20 The Distributor will update the Registry throughout this process in accordance with the Code.

Decommissioning an ICP

S4.21 A Distributor may Decommission an ICP in the following circumstances, provided the requirements of section 105 of the Act and Part 11 of the Code are met:

- (a) the Distributor is advised by a Connected Customer, landowner or the Retailer that electricity is no longer required at the ICP;
- (b) it is necessary to Decommission the ICP because public safety is at risk;
- (c) the Registry notifies the Distributor that the ICP has the status of "Inactive" with reason given "De-energised - ready for decommissioning", the ICP has been De-energised, and the Retailer has attempted to recover the meters; or
- (d) if the Distributor has not supplied Distribution Services in respect of the ICP for 6 months or more.

S4.22 A Decommissioning will be performed by means of removing all or part of the service line to the ICP, or if a shared service line forms part of the supply, by isolating and removing of the load side cable from the main switch at the meter board and removing any associated meters. In all circumstances, the property will be left electrically safe.

S4.23 The party performing the Decommissioning will notify the other party within 2 Working Days of the Decommissioning having been completed.

S4.24 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier will not be used again and the process for new connections will be followed if supply is required again at the property.

S4.25 Both parties will update the Registry throughout this process in accordance with the Code.

Unmetered Load

S4.26 If the Retailer is responsible for an ICP that includes Unmetered Load, the Retailer will provide information about the ICP to the Registry in accordance with the Code.

S4.27 The Distributor will maintain a database of ICPs that include Unmetered Load and, if it becomes aware of changes to any Unmetered Load, the Distributor will update its database and the Registry and notify the Retailer of those changes in accordance with the Code. The detail included in the database will include, at a minimum, information necessary to support the Registry.

S4.28 If the Retailer notifies the Distributor that Unmetered Load is shared between several Consumers, the Distributor will, if requested, allocate the Unmetered Load to the appropriate ICP and will advise the Retailer and all other affected retailers in accordance with the Code.

S4.29 Both parties will align their processes and populate the Registry, in particular the format of Unmetered Load data populated in the Registry, in accordance with the Electricity Authority's "Guidelines for Unmetered Load Management – Version 2.1", dated 1 November 2010.

SCHEDULE 5 – LOAD MANAGEMENT

Rights to control load

S5.1 As provided for in clauses 4.1 and 4.3, control of the load at an ICP at which the Retailer supplies electricity may be undertaken by either the Distributor or the Retailer or, feasibly, by both parties. This schedule sets out additional obligations of the parties in each of these situations.

Use of controllable load

S5.2 To facilitate the use of a Load Control System to achieve the highest value, the party that has obtained the right to control a load may assign that right to another party (provided that the party obtains the right to make such an assignment from the relevant Consumer or Connected Customer).

S5.3 The purposes for which load control can be used (provided that the relevant party obtains the right to control the load in accordance with clause 4.1 or 4.3) include:

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

Coordination of split ownership Load Control Systems

S5.4 If the Retailer provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:

- (a) [The fee for this Service is set out in schedule 7.]
- (b) The Distributor will provide the Retailer with details of the technical characteristics of the Load Control Equipment appropriate for use with the Distributor's Load Signalling Equipment in each Network area.
- (c) If the Distributor has obtained a right to control load at an ICP in accordance with clause 4.1, the Retailer will install Load Control Equipment that reliably receives the Distributor's load control signals and controls the relevant load. If required by the Distributor's specific Controlled Load Tariff Rate, but subject to it not giving the Distributor a unilateral right to change its tariff structure and/or eligibility criteria to require a mass change of

existing metering arrangements, the Retailer will install additional Metering Equipment at the Distributor's request that separately measures and records controlled load electricity consumption.

- (d) If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it will first seek to negotiate suitable terms with the Retailer for the upgrade of the Retailer's Load Control Equipment. If agreement is not reached, the Distributor may, at its discretion, choose to procure and install, at its own cost, suitable Load Control Equipment.
- (e) The Distributor may periodically, but not more than once in any 12 month period, undertake an audit of Load Control Equipment performance within a Network area it defines. The audit will review the proper functioning of the Load Control Equipment for a randomly selected sample of ICPs to which the Retailer supplies electricity. The sampling technique will be consistent with the methodology outlined in the Part 10 of the Code that applies to selecting samples of meters.
- (f) If the sample audit shows that Load Control Equipment for which the Retailer is responsible is not functional in respect of a number that is greater than 5% of the sample, the Distributor and Retailer will, within 40 Working Days of the Distributor notifying the Retailer of the results of the audit, meet and agree a programme including scope and timeframe within which the non-functioning Load Control Equipment will be identified and repaired. The Retailer will pay the reasonable costs of any inspection (including the initial audit) and repair work identified.
- (g) If the audit identifies non-functional Load Control Equipment due to low signal levels or faults on a pilot wire network that are the responsibility of the Distributor, those failures will be excluded from the audit results;
- (h) If the audit shows that Load Control Equipment for which the Retailer is responsible is functional for 95% or more of the Consumers sampled, the cost of the audit will be the responsibility of the Distributor, but the Retailer will be required to remedy all defects found in respect of non-functional Load Control Equipment for which the Retailer is responsible.

Either party may obtain Load Management Services from the other

- S5.5 Either party, having obtained the right to control load at an ICP in accordance with clause 4.1 or 4.3, may provide Load Management Services to the other party as an Additional Service.
- S5.6 Where the parties seek to negotiate additional Load Management Services after the Commencement Date, they will do so in good faith.

SCHEDULE 6 – BILLING SERVICES

S6.1 BILLING

6.1.1 Service scope: This schedule 6 provides the terms on which the Retailer will provide Billing Services to the Distributor, as an agent of the Distributor. This schedule 6 requires that in all cases the Consumer and the Connected Customer at an ICP is the same person.

~~6.1.1~~**6.1.2 Interpretation:** In this schedule 6, references to clauses are to those in this schedule 6 unless otherwise identified.

6.1.3 [Note] Definitions: Capitalised terms in this schedule have the meanings given to those terms in clause 21 of the agreement, if applicable. In addition, in this schedule 6, unless the context otherwise requires:

“Account” means the bank account established pursuant to clause 6.8.1 or 6.11.3, as the case may be;

“AECT” means the Auckland Energy Consumer Trust;

“Assignment Payment” has the meaning given in clause 6.11.6(b)(ii);

“Billing Period” means in respect of each Point of Connection or group of Points of Connection, the period agreed between the Distributor and the Retailer at which invoices are to be sent in respect of that Point of Connection or group of Points of Connection, and failing such agreement means a period of one month;

“Change Date” has the meaning given in clause 6.6.4 or 6.9.14, as the case may be;

“Current Month” has the meaning given in clause 6.9.2 or 6.12.4, as the case may be;

“Default Date” has the meaning given in clause 6.9.2(b), 6.9.3(b) or 6.12.5(b), as the case may be;

“Disclosure Obligation” means an obligation to disclose information of whatever type imposed on the Distributor or the Retailer by law or regulation or under the Code or, in the case of the Distributor, as required for the purposes of the AECT or, pursuant to a contract entered into by the Distributor relating to the connection of the Network to the Grid in the normal course of carrying on its electricity lines business, in each case as the same may be altered or amended from time to time;

“Discount Factor” means the percentage factor of 90.00%, as varied by the Distributor in accordance with clause 6.9.8;

“Growth Factor” means the percentage factor of 95.00%, as varied by the Distributor in accordance with clause 6.9.13;

“Incremental Cost” has the meaning given in clause 6.4.6(b);

“Line Debts” means, in relation to a period, the aggregate amount due to the Distributor under a Distributor’s Agreement represented by Tax Invoices sent to Consumers during that period;

“Line Network Portion” in respect of any debt due by a Consumer, or amount received from a Consumer, means the portion of that debt or amount which

represents the amount due to the Distributor. If a Consumer pays greater or less than the whole debt due from that Consumer, then the Line Network Portion of the amount actually paid by the Consumer will be deemed to be an amount which bears to the amount actually paid by the Consumer the same proportion as the amount due to the Distributor bears to the total amount due by the Consumer;

"**Lines Charges Trust Account**" has the meaning given in clause 6.8.1(b) or 6.11.3(b), as the case may be;

"**Monthly Payment Amount**" has the meaning given in clause 6.12.3;

"**Non-Monthly Consumers**" has the meaning given in clause 6.12.2(a);

"**Notional Account**" has the meaning given in clause 6.11.6(b)(i) or 6.12.8, as the case may be;

"**Option 1**" means the provisions of clauses S6.6, S6.7 and S6.8;

"**Option 2**" means the provisions of clauses S6.9, S6.10, S6.11 and S6.12;

"**Prepaid Metering**" has the meaning given in clause 6.4.14;

"**Previous Month**" has the meaning given in clause 6.9.2 or 6.12.4, as the case may be;

"**Required Report**" has the meaning given in clause 6.4.2;

"**Tax**" means all forms of taxation, withholding, duties, dues, imposts, levies, rates or other statutory, governmental or local governmental impositions of whatever nature, imposed in New Zealand or elsewhere, including, income tax, withholding tax, approved issuer levy, fringe benefit tax, stamp duty, GST, gift duty, customs or excise duties, regional or local taxes, municipal taxes and accident compensation levies; and

"**Vector's Pricing Schedule and Policy**" means Vector's pricing schedule and policy available at <http://vector.co.nz/electricity/our-pricing> as amended from time to time.

S6.2 **OBJECTIVES**

6.2.1 **Objective:** The Distributor and the Retailer record that their objectives are that:

- (a) the invoicing function of the Retailer and the Distributor is combined to minimise the total costs of invoicing;
- (b) the Retailer will calculate, send Tax Invoices to Consumers for, and collect from Consumers, amounts due to the Retailer for the supply of electricity, and also amounts due to the Distributor for the supply of Distribution Services, so that the Consumer will receive one Tax Invoice only;
- (c) the Retailer should be free to decide whether to invoice Consumers at monthly intervals, or at other intervals being not greater than three months;
- (d) if the Retailer elects to invoice its Consumers at intervals of greater than one month, the Distributor should so far as possible be placed in the same financial position as if the Retailer were invoicing Consumers at monthly intervals;

- (e) notwithstanding sub-clause (b) there are certain Consumers whom the Distributor will invoice directly;
- (f) the Retailer should provide the Distributor with certain information relating to charges for Distribution Services and the units upon which such charges are based;
- (g) if the provisions of Option 1 have effect the Retailer will deal with payments received from Consumers, and hold portions of those payments on trust for the Distributor, so as to minimise any credit risk of the Distributor on the Retailer; and
- (h) if the provisions of Option 2 have effect the Distributor will assign to the Retailer the debt owing by Consumers for the supply of Distribution Services and receive from the Retailer a payment representing an agreed discounted value of that debt,

and that clauses S6.3 to S6.12 are intended to achieve those objectives.

S6.3 SELECTION OF OPTION

6.3.1 **Retailer Initial Election:** The Retailer's initial election of either Option 1 or Option 2 is set out in schedule 8.

6.3.2 **Retailer Change Option:** The Retailer may, at any time, by not less than three months' notice in writing to the Distributor, such notice to expire no earlier than 12 months after the Commencement Date, elect that:

- (a) Option 1 shall have effect and Option 2 shall cease to have effect; or
- (b) Option 2 shall have effect and Option 1 shall cease to have effect.

6.3.3 **Effect of Option Election:** Subject to clauses 6.6.4 and 6.9.14:

- (a) If and for so long as the Retailer has elected Option 1, Option 1 shall have effect and Option 2 shall be of no effect; and
- (b) If and for so long as the Retailer has elected Option 2, Option 2 shall have effect and Option 1 shall be of no effect.

6.3.4 **Electricity Supply Agreement:** The Retailer will ensure that each Electricity Supply Agreement is consistent with Option 1 or Option 2 whichever has effect at the relevant time.

S6.4 CONSUMER TAX INVOICE PROCEDURE

6.4.1 **Retailer Calculates Charges:** The Retailer will calculate the following charges payable by the Consumer in respect of each Point of Connection:

- (a) the energy charges payable under the relevant Electricity Supply Agreement for the supply of electricity; and
- (b) the total line charges payable by the relevant Consumer under the Distributor's Agreement.

The total line charges in sub-clause (b) will be calculated by the Retailer using the appropriate pricing option specified for the relevant ICP in the Registry in respect of the periods in which such pricing option applies and, unless the Point of Connection is an Unmetered Load, the relevant meter reading data or, if no such meter reading data is available, using an Assessment Method.

Nothing in this clause S6.4 will prevent the Retailer agreeing with a Consumer, and showing on a Tax Invoice prepared under this clause S6.4 ~~Authority: This schedule is being finalised internally and will be~~ and delivered to that Consumer, that:

- (c) the total amount due from the Consumer under that Tax Invoice is based on a formula; and
- (d) the amount due to the Retailer under that Tax Invoice is calculated by deducting the amount due to the Distributor under that Tax Invoice from the amount in sub-clause (c).

6.4.2 Report to the Distributor: The Retailer will, by the 5th Working Day of each month, and in accordance with EIEP1 and EIEP3, supply the Distributor with details of line charges billed by the Retailer on behalf of the Distributor during the previous month, together with supporting consumption and demand data ("Required Report"). The files noting such details will include any adjustments or corrections raised during the previous month in respect of line charges previously billed. The level of detail to be provided ~~upon completion. The schedule to be~~ to the Distributor in each Required Report is:

- (a) for all Points of Connection - there shall be a separate EIEP1 record for each separate component of the lines charge for each ICP. Where the price related to that component of the lines charge has changed during the period of supply there shall be a separate EIEP1 record for each separate pricing period. As a minimum there will be two EIEP1 records for every ICP which has been billed – one for the fixed daily line charge, and one for the consumption-based lines charge. If the price of each of these components has changed during the period of supply then there will be a minimum of four EIEP1 records per ICP. Additional EIEP1 records will be required in respect of each additional component of the lines charge where this is applicable;
- (b) for Points of Connection where time-of-use metering is installed – in addition to the EIEP1 records described above there shall be a separate EIEP3 record for each ICP where time-of-use metering is installed, containing the half-hourly consumption data for the billing period covered by the EIEP1 records provided under clause 6.4.2(a);
- (c) the aggregate of amounts due to the Distributor contained or represented in Tax Invoices sent to Consumers in the previous month, as detailed in EIEP1 records referred to in clause 6.4.2(a);
- (d) if Option 1 has effect or if Option 2 has effect and the Distributor has given notice to the Retailer under clause 6.11.1 and has not given notice to the Retailer under clause 6.11.2;
 - (i) all cash, cheques or other form of payment received from Consumers during the previous month; and
 - (ii) all unpaid Tax Invoices which, as at the last day of the previous month, were:
 - (A) overdue if the Retailer is no longer supplying the relevant Consumer; or
 - (B) more than 50 days overdue for all other Tax Invoices; or
 - (C) not being actively pursued by the Retailer; and

- (iii) an aged debtor summary including all amounts due under Tax Invoices issued to Consumers where such amounts are:
 - (A) between 0 and 30 days overdue;
 - (B) 31 to 60 days overdue; and
 - (C) 61 or more days overdue;
- (e) if Option 1 has effect, the aggregate of the Line Network Portion of each amount received from a Consumer, in respect of a Tax Invoice issued during the previous month, which exceeded the amount due from that Consumer in respect of that Tax Invoice; and
- (f) the aggregate of amounts received by the Retailer from Consumers in the Previous Month which, due to the timing of such payments, were equal to the lesser amount as shown on the Tax Invoice in accordance with clause 6.6.1(c) or 6.9.1(c), the aggregate of the discounts which such payments represented in relation to the greater amounts shown on the respective Tax Invoices and the aggregate of the discounts which were not taken by Consumers due to the timing of their payment.

6.4.3 Distributor Verification: If the Distributor calculates that the aggregate amounts due to the Distributor which should have been included in Tax Invoices sent to Consumers in the previous month, based on the units contained in the report delivered pursuant to clauses 6.4.2(a) and 6.4.2(b) is not equal to the amounts contained in the report delivered by the Retailer pursuant to clause 6.4.2 or otherwise requires clarification of issues in relation to the data included in the reports delivered pursuant to clause 6.4.2 then the Retailer will provide such assistance to the Distributor as the Distributor may reasonably require to enable the Distributor to understand such difference.

6.4.4 Reliance on Information: The Retailer will, so long as it acts in good faith and without knowledge of any error in information provided by the Distributor, be entitled to rely without inquiry on, and act upon, information provided by the Distributor pursuant to this clause S6.4 ~~will cover all~~.

6.4.5 Obligation to Read Meters: The Retailer will ensure that the data from all Metering Equipment installed in relation to all Points of Connection are collected by the Retailer:

- (a) no less frequently than once in each three month period; and
- (b) no less frequently than once each month in respect of a Point of Connection where the charges for Distribution Services in respect of that Point of Connection include a demand component,

unless, due to a failure of the relevant Metering Equipment or the Retailer's inability to gain access, the Retailer, having undertaken Good Electricity Industry Practice in seeking to collect the data from the relevant Metering Equipment, is unable to collect the relevant data. In such circumstances the Retailer will:

- (c) estimate the amount of electricity consumed and/or demanded in respect of the Point of Connection to which the relevant Metering Equipment relates during the relevant period using an Assessment Method and will notify the Distributor of such data in the same manner as it is obliged to communicate the meter reading data under this agreement; and
- (d) undertake Good Electricity Industry Practice to ensure that the data from that Metering Equipment is collected during the month following the date

when the failure occurred or the Retailer was unable to collect the relevant data.

6.4.6 Circulation of Material:

- (a) The Retailer may, if requested to do so by the Distributor, include such material as the Distributor may specify relating to Distributor Agreements or in relation to a Disclosure Obligation, in Tax Invoices, correspondence to Consumers or other notices or documents circulated from time to time to Consumers by the Retailer.
- (b) The Retailer will not be obliged to circulate material in response to a request under sub-clause (a) but will confirm whether or not the Retailer will comply with the Distributor's request within seven Working Days of receipt of the Distributor's request and will, at the same time, inform the Distributor of the incremental out of pocket expenses which will be incurred by the Retailer if it includes such material ("**Incremental Cost**").
- (c) If the Retailer chooses to circulate such material in response to a request under sub-clause (a) and the Distributor has confirmed to the Retailer that the Incremental Cost is acceptable:
 - (i) the Retailer will circulate such material as requested;
 - (ii) the Retailer will issue a Tax Invoice to the Distributor for the Incremental Cost of the Retailer;
 - (iii) any invoice under clause 6.4.6(c)(ii) will be issued within 10 Working Days of the end of the month to which the Tax Invoice relates;
 - (iv) the settlement date for any Tax Invoice issued under clause 6.4.6(c)(ii) is the 20th day of the month with the month being determined by reference to the date of the Tax Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Retailer fails to issue a Tax Invoice to the Distributor within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is issued late; and
 - (v) the Distributor will indemnify the Retailer against any costs, liability, loss or damage suffered by the Retailer relating to claims made by any third party against the Retailer in respect of material sent to Consumers at the request of the Distributor.

6.4.7 Final Bill: If the Retailer ceases to supply a Consumer at a Point of Connection, the Retailer will take account of charges already levied by the Distributor in respect of the period between the date of the last Tax Invoice issued and the date of either the Retailer ceasing to supply that Point of Connection or disconnection, in the Tax Invoice to be prepared by the Retailer in respect of that Point of Connection under either clause 6.6.1 or 6.9.1.

6.4.8 Storage: Recognising that the Distributor has obligations to retain records under the Tax Administration Act 1994 and the GST Act and in order for the Distributor to be able to comply with its obligations in relation to the retention of records under that legislation, the Retailer will ensure that copies of each Tax Invoice sent to Consumers under this agreement, together with all information on which such Tax Invoice is based, are retained electronically for itself and on behalf of the

Distributor in a secure storage facility for a period of not less than 7 years from the last date of the income tax year during which the Tax Invoice was issued.

6.4.9 Consumer Details:

(a) The Distributor may at any time, but no more than twice in any one year period, request the Retailer to provide the Distributor with the name, address, and the relevant pricing option for each Consumer as at a certain date in respect of each ICP number.

(b) The Retailer will comply with any request under sub-clause (a) within 10 Working Days of receipt, by providing data in an agreed format.

6.4.10 Inaccurate Metering: If at any time it is discovered that any Metering Equipment is not accurately recording metering data, the Retailer will repair or replace that Metering Equipment and will incorporate those adjustments in the next Tax Invoice issued to the relevant Consumer.

6.4.11 Corrections to Information:

(a) The Distributor may at any time, by notice to the Retailer correct or amend any information in relation to a Tax Invoice sent to a Consumer under clause 6.6.1 or 6.9.1, and advise the Retailer of adjustments which it requires to be made. The Retailer will incorporate those adjustments in the next Tax Invoice issued to the relevant Consumer.

(b) The Retailer will, if it becomes aware of an error, correct or amend any information in relation to a Tax Invoice sent to a Consumer under clause 6.6.1 or 6.9.1 if the error relates to the Line Network Portion.

(c) The Retailer may correct or amend any information in relation to a Tax Invoice sent to a Consumer under clause 6.6.1 or 6.9.1 in the event of:

(i) meter reading inaccuracy;

(ii) Metering Equipment inaccuracy;

(iii) incorrect calculation of charges using an Assessment Method; or

(iv) any other error relating to the calculation of charges to be included in such Tax Invoice.

6.4.12 Units for Tax Invoice: The Retailer will ensure that Tax Invoices sent to Consumers under clause 6.6.1 or 6.9.1 base the amounts due to the Retailer and the Distributor respectively on the same metering data.

6.4.13 Indemnity Not To Apply: If disconnection of a Point of Connection is effected by either party for non-payment, then the indemnities under this agreement relating to disconnection of a Point of Connection will not apply in respect of that disconnection.

6.4.14 Prepayment Meters: If any Point of Connection has Metering Equipment installed in respect of which the Consumer must pay the Retailer for electricity and line network services supplied by the Retailer and the Distributor respectively to that Consumer before such services are consumed or supplied ("Prepaid Metering") then, in respect of that Point of Connection:

(a) The Retailer will obtain the metering data no less frequently than once in each 12 month period and clause 6.4.5 shall be construed accordingly.

- (b) The Retailer will fulfil the Distributor's obligations under the GST Act and under any other laws which relate to the issue of Tax Invoices by the Distributor.
- (c) The Line Network Portion of each amount received from any such Consumer will be:
- (i) estimated by the Retailer on receipt of such payment by applying:
- (A) the pricing option in respect of that Point of Connection specified on the Registry in respect of the relevant ICP; and
- (B) the Retailer's pricing option,
- to the Retailer's estimate of that Consumer's electricity consumption calculated in accordance with an Assessment Method;
- (ii) if Option 1 has effect, treated as if such payment was made in respect of a Tax Invoice sent by the Retailer representing amounts due to both the Retailer and the Distributor and paid to the Distributor accordingly; and
- (iii) if Option 2 has effect, multiplied by the Discount Factor and the total shall be paid by the Retailer to the Distributor in accordance with clause 6.9.2(a).
- (d) If at any time it is discovered that the Metering Equipment is not accurately recording metering data, the Retailer will repair or replace that Metering Equipment and will, if applicable, incorporate the necessary adjustments into the next a Tax Invoice issued to the relevant Consumer in respect of the amounts due to the Distributor and to the Retailer.
- (e) The Retailer will, on the 5th Working Day of each month, and in accordance with EIEP1, advise the Distributor of the information referred to in clause 6.4.2(a) in respect of amounts received from any such Consumer during the previous month.
- (f) Following the Retailer obtaining the metering data under sub-clause (a), the Retailer will calculate the exact amount of the Line Network Portion of all payments received from the Consumer and will advise the Distributor of the same within the report to be delivered under clause 6.4.2 in the month following the month in which the Retailer obtained the relevant data.
- (g) The Retailer will pay or deduct such amount as is necessary to ensure that the exact amount of the Line Network Portion of all such payments received has been paid to the Distributor.

S6.5 TERMINATION OF BILLING ARRANGEMENTS

6.5.1 Termination of Billing Arrangements: The Distributor may on or before the Commencement Date or by not less than 20 Working Days' notice to the Retailer thereafter, terminate the arrangements in Option 1 or Option 2 or elect that such provisions shall not apply (as the case may be) in respect of any or all Points of Connection if:

- (a) an Annual Audit Report or Interim Audit Report delivered to the Distributor pursuant to clause 19 of the agreement states that the Retailer is in

material breach of any of its requirements under clauses S6.2 to S6.12 and the Retailer has failed to remedy that breach:

- (i) if the breach is a failure to pay money within 5 Working Days of receiving notice of the same; or
- (ii) if the breach is other than a failure to pay money, within 10 Working Days of receiving the same, or within such longer period as the Distributor may agree in terms of the last paragraph of this clause 6.5.1; or
- (b) the relevant Distributor's Agreement states that only the Distributor will issue Tax Invoices with respect to Distribution Services;
- (c) the Distributor is issuing Tax Invoices directly to the Consumer in relation to that Point of Connection at the Commencement Date; or
- (d) the Consumer to whom such Points of Connection relate has a Point of Connection which has connection capacity of not less than 1,000 kVA and such Consumer has requested that only the Distributor will issue Tax Invoices with respect to Distribution Services.

The Retailer may, if it is not practicable to remedy a breach of the nature referred to in clause 6.5.1(a)(ii) within 10 Working Days of receiving notice of the same, request the Distributor to allow a longer period for remedy. The Distributor will consider any such request in good faith.

6.5.2 Effect of Termination: If the Distributor gives the Retailer notice under clause 6.5.1 in respect of any Point of Connection or Points of Connection, then:

- (a) the provisions of Option 1 and Option 2 will cease to have effect in respect of that Point of Connection or those Points of Connection;
- (b) the Distributor will itself be responsible for the collection from the relevant Consumer or Consumers of amounts due to the Distributor in respect of Distribution Services;
- (c) the provisions of clause 6.5.4 will apply; and
- (d) the Distributor may elect to terminate this entire agreement by notice to the Retailer. If this notice is given, it will have immediate effect.

6.5.3 Recommencement: The parties may at any time after the Distributor has given notice under clause 6.5.1 in respect of any Point of Connection or Points of Connection agree in writing that the provisions of Option 1 or Option 2 (as the case may be) will again apply, whereupon those sections will again be applicable in respect of that Point of Connection or those Points of Connection.

6.5.4 Metering Data: If the Distributor has given notice in relation to a Consumer under clause 6.5.1, and the parties have not agreed under clause 6.5.3, the Retailer will:

- (a) continue to obtain the metering data in respect of the Point of Connection or Points of Connection to which that notice given under clause 6.5.1 relates; and
- (b) advise the Distributor of all such metering data within 2 Working Days of obtaining such data under clause 6.4.5.

6.5.5 Metering Data Default: If the Retailer defaults in respect of its obligations under clause 6.5.4(a) or 6.5.4(b), the Retailer will at the option of the Distributor:

- (a) procure that any third party which is obtaining such metering data on behalf of the Retailer provides that metering data directly to the Distributor at no cost to the Distributor in electronic format if that third party is reasonably able to do so; or
- (b) indemnify the Distributor in respect of the Distributor's reasonable costs and expenses in obtaining the relevant metering data itself or contracting a third party to do so on its behalf; or
- (c) if the Distributor elects to assess such metering data in respect of any Point of Connection, pay an Assessment Charge to the Distributor in respect of each such Point of Connection,

provided that the Distributor may not select the options under clause 6.5.5(a) or 6.5.5(b) unless the Retailer has defaulted in respect of its obligations under clause 6.5.4(a) or 6.5.4(b) in respect of two consecutive months.

6.5.6 Direct Billing Indemnity: If the Distributor has given notice in relation to a Point of Connection or Points of Connection under clause 6.5.1(a), the Retailer will indemnify the Distributor in respect of all reasonable costs and expenses incurred by the Distributor in respect of the reasonable charges of a third party in relation to the implementation and operation of:

- (a) an invoicing system which is capable of performing the obligations of the Retailer under Option 1 or Option 2 (as the case may be) in relation to the Point of Connection or Points of Connection in respect of which notice has been given by the Distributor under clause 6.5.1; and
- (b) the information exchange functions, processes and systems (including the information technology capability) requirements of the Retailer under this agreement.

The Retailer will not however be required to indemnify the Distributor for any changes of the third party representing the actual acquisition cost of computer hardware or software.

6.5.7 Period of Indemnity: The indemnity in clause 6.5.6 will apply in relation to each Consumer to which the notice given under clause 6.5.1(a) relates in respect of the period from the date of such notice until the earlier of:

- (a) the Distributor and the Retailer agreeing under clause 6.5.3 in relation to that Point of Connection;
- (b) the Retailer meeting the Tax Invoice production and information exchange functions, processes and systems (including the information technology capability) requirements of the Retailer under this agreement provided that the period of such indemnity will not be less than six months if terminated pursuant to this clause 6.5.7(b);
- (c) the Retailer ceasing to supply the Point of Connection to which that Consumer relates; and
- (d) the termination of this agreement.

OPTION 1

S6.6 OPTION 1 PROVISIONS – CONSUMER INVOICING PROCEDURE

6.6.1 **Retailer Prepares and Sends Tax Invoices:** The Retailer will, not later than 5 Working Days after the end of the Billing Period in respect of each Point of Connection, prepare and send to each Consumer a Tax Invoice in such format as may be agreed from time to time between the parties which:

- (a) records separately the total amount due to the Retailer and the total amount due to the Distributor, calculated in accordance with this agreement;
- (b) requires payment of the amounts referred to in sub-clause (a) not later than 30 days after the end of the Billing Period to which the Tax Invoice relates;
- (c) if the Distributor so advises the Retailer, shows the amount due to the Distributor will be a lesser amount if payment of the same is received in full within a certain number of days after the date of the Tax Invoice;
- (d) incorporates such other information as the Distributor or the Retailer may reasonably require relating to a Disclosure Obligation or, not more than twice in any year, relating to any other matter;
- (e) fulfils the Distributor's obligations under the GST Act, and any other laws which relate to the issue of Tax Invoices by the Distributor.

6.6.2 **Final Bill Collection:** If a Tax Invoice prepared under clause 6.4.7 remains unpaid the Retailer will as soon as possible after the due date of such Tax Invoice send a reminder to the relevant Consumer stating that the amounts set out in that unpaid Tax Invoice are overdue and requesting payment of the total amount of that Tax Invoice. If such Tax Invoice remains unpaid after the due date the Distributor may, at any time thereafter, by notice to the Retailer direct that both parties will be relieved of any obligation under this agreement to collect payment of amounts due to the other party under that unpaid Tax Invoice, and that clauses 6.7.3(b) and 6.7.3(c) will apply in respect of the collection by the Retailer and the Distributor respectively of any amounts due under that unpaid Tax Invoice.

6.6.3 **Outstanding Line Charges:** If the Distributor and the Retailer so agree, the Retailer will include in the amount due to the Distributor to be included in a Tax Invoice under clause 6.6.1, such amount as the Distributor may specify relating to unpaid Tax Invoices of that Consumer in respect of a period when that Consumer was being supplied by another retailer.

6.6.4 **Transitional Arrangements:** On the date (which will not fall before the expiry of such notice) ("**Change Date**") specified in a notice given by the Retailer under clause 6.3.2(a) or by the Distributor under clause 6.11.1 the provisions of Option 1 will have effect and the provisions of Option 2 will have no effect save that:

- (a) in relation to Tax Invoices issued by the Retailer prior to the Change Date which are corrected after the Change Date the Retailer will pay to the Distributor or the Distributor will pay to the Retailer as the case may be the amount by which the amount to be paid to the Distributor would have been increased or reduced respectively in accordance with clause 6.9.11;
- (b) the Retailer will not be relieved of any liability under Option 2 accrued as at the Change Date; and

(c) the Retailer will comply with the provisions of clause 8 of the agreement insofar as they relate to Option 2 until the Distributor has received payment in full in respect of all Line Debts during the period when Option 2 had effect. Thereafter, the Retailer and the Distributor will each take such action as is necessary to ensure that the security held by the Distributor is in accordance with the requirements of clause 8 of the agreement.

S6.7 COLLECTION

6.7.1 Follow Up Procedures: If a Tax Invoice, other than a Tax Invoice referred to in clause 6.6.2, is not paid in full by the Consumer by the date 30 days after the date of that Tax Invoice then, unless the Distributor and the Retailer otherwise agree, the Retailer will on that date send a reminder to that Consumer stating that the amounts set out in that unpaid Tax Invoice are overdue, and requesting payment of the total amount of that Tax Invoice. This reminder may be contained in a statement issued by the Retailer to the relevant Consumer and payment in respect of that reminder will be treated as if it were payment in respect of a Tax Invoice for the purposes of this clause S6.7.

6.7.2 Credit Control Procedures: The Retailer will advise the Distributor of its credit control procedures as amended from time to time. The Retailer will act in accordance with such credit control procedures.

6.7.3 Action After Disconnection:

(a) If Disconnection is effected by either party for non payment by the Consumer then five Working Days after that Disconnection, each party will be free to take such steps as it sees fit to recover the amount due to that party from the relevant Consumer, and will have no obligation to take any steps to recover the amounts due to the other party.

(b) If after the five Working Day period in sub-clause (a), the Retailer receives any amount from a Consumer in relation to the unpaid Tax Invoice, it will pay such amount into the Account immediately upon receipt. Notwithstanding the provisions of clause S6.8, the proportions of such amount to be paid out of the Account to each party under clause 6.8.4 will be adjusted so that the amount is applied:

(i) first, in or towards satisfaction of the amount due to the Retailer under the unpaid Tax Invoice; and

(ii) second, by payment of any excess to the Distributor in or towards satisfaction of the amount due to the Distributor under the unpaid Tax Invoice.

(c) If after the five Working Day period in sub-clause (a) the Distributor receives any payment from a Consumer in relation to amounts due under the unpaid invoice, it will:

(i) first, apply such amount received in or towards satisfaction of the amount due to the Distributor under the unpaid Tax Invoice; and

(ii) second, pay any excess to the Retailer in or towards satisfaction of the amount due to the Retailer under the unpaid Tax Invoice.

S6.8 TREATMENT OF PAYMENTS RECEIVED

6.8.1 Bank Account: The Retailer will immediately upon Option 1 having effect open, and throughout the term of this agreement maintain, a bank account with the following characteristics:

- (a) the account will be maintained with a New Zealand registered bank selected by the Retailer;
- (b) save as set out in clause 8 of the agreement the account will be identified by a name to the effect of "Retailer Name Limited/Vector Limited – Lines Charges Trust account" ("Lines Charges Trust Account"); and
- (c) moneys held in the account will bear interest at the best rate reasonably obtainable from time to time from the bank.

The bank with which the account is maintained will be notified by the Retailer of the existence of the trust created by clause 6.8.2, and the Retailer will procure that bank to provide to the Distributor an acknowledgement in writing, in a form acceptable to the Distributor, of the existence of that trust in respect of moneys held in the Account, and that the bank will not exercise any lien or right of set-off in respect of moneys held in the Account, or combine the Account with any other account.

6.8.2 Trust: The Retailer will hold on trust for the Distributor:

- (a) the Line Network Portion of each debt to be paid to the Retailer by Consumers;
- (b) all amounts referred to in clause 6.8.3 which have not yet been credited to the Account; and
- (c) amounts in the Account equal to the Line Network Portion of each amount which has been received from a Consumer and paid into the Account, but has not been disbursed to the Distributor in accordance with clause 6.8.4.

6.8.3 Payment Into Account: The Retailer will cause:

- (a) all amounts received from Consumers by way of any process which transfers money from the account of a Consumer to an account of the Retailer, to be transferred or credited directly from the account of the Consumer to the Account; and
- (b) all amounts received from Consumers by way of cheque or cash payment to be paid into the Account immediately upon receipt.

6.8.4 Payment Out Of Account:

- (a) On the Commencement Date, the Retailer will elect for daily or weekly settlement as set out in clauses 6.8.4(c)(i) and 6.8.4(c)(ii), subject to such election being changed in accordance with clause 6.8.4(b).
- (b) The Retailer may, on not less than one month's notice to the Distributor elect to change the election described in clause 6.8.4 provided that, on expiry of such notice, the Retailer has complied with the relevant requirements of clause 8 of the agreement.
- (c) If and for so long as:
 - (i) the Retailer has elected daily settlement, or the Distributor has given notice under clause 6.11.1 and the Retailer has not given notice under clause 6.3.2(b), the Retailer will procure that, not later than the close of each Working Day, there is paid to the Distributor from the Account the Line Network Portion of all amounts paid into the Account and which have become cleared

funds during that Working Day, subject to any adjustment in accordance with clause 6.7.3(b).

- (ii) the Retailer has elected weekly settlement the Retailer will procure that, not later than the close of the last Working Day of each week, there is paid to the Distributor from the Account the Line Network Portion of all amounts paid into the Account and which have become cleared funds during that week, subject to any adjustment in accordance with clause 6.7.3(b) provided that the Retailer will not be entitled to elect weekly settlement if the Distributor has given notice under clause 6.11.1 without the prior written consent of the Distributor, such consent may be subject to such conditions as the Distributor may determine.

Subject to clause 6.8.5, all payments under this clause 6.8.4 **aspects of schedule 6 of the EA Consultation Draft of February 2012** are to be made by electronic funds transfer without set-off deduction or withholding to an account nominated from time to time for such purpose by the Distributor.

6.8.5 Interest On Account:

- (a) All interest earned in respect of the Account together with resident withholding tax deducted therefrom (if any) will, at intervals of not less than one month, be divided between the Retailer and the Distributor in proportion to the amounts in the Account held by the Retailer on its own account, and on trust for the Distributor, and the periods for which those amounts were held. The Retailer will, at intervals of not less than one month, cause to be paid to the Distributor an amount equal to the Distributor's share of interest earned on the Account (net of resident withholding tax, if any), calculated in accordance with the preceding sentence and will at the same time provide to the Distributor details of the calculation of the amount of such payment.
- (b) Where resident withholding tax has been deducted from interest the Retailer will ensure that the Distributor receives all necessary information and documentation to claim a credit for the resident withholding tax.

6.8.6 Contents of Electricity Supply Agreement: The Retailer will ensure that every Electricity Supply Agreement provides that, except when the Consumer is in default under the Electricity Supply Agreement, any amount paid by the Consumer in respect of any Tax Invoice will be applied in proportion to the amounts due to the Distributor and the Retailer respectively from that Consumer.

6.8.7 Contents of Distributor Agreement: The Distributor will ensure that each Distributor's Agreement (except a Distributor's Agreement with a Consumer in respect of whom the Distributor has given notice to the Retailer under clause 6.5.1) provides that, except as otherwise agreed between the Distributor and the Retailer, any amount paid by the Consumer in respect of any Tax Invoice will be applied in proportion to the amounts due to the Distributor and the Retailer respectively from that Consumer.

OPTION 2

S6.9 OPTION 2 PROVISIONS – CONSUMER INVOICING PROCEDURE

6.9.1 **Retailer Prepares and Sends** Tax Invoices: The Tax Invoices which the Retailer prepares and sends to each Consumer will be in such format as may be agreed from time to time between the parties which:

- (a) if Inland Revenue has granted a dispensation to the Retailer under section 24(6) of the GST Act, does not require the Tax Invoice to record separately the total amount due to the Retailer and the total amount due to the Distributor (calculated in accordance with this agreement) and such amounts as being due to each such party but otherwise does require the Tax Invoice to so record those amounts separately and the party to which they are due;
- (b) unless a dispensation has been granted by Inland Revenue as referred to in sub-clause (a), if the Distributor so advises the Retailer, shows the amount due to the Distributor will be a lesser amount if payment of the same is received in full within a certain number of days after the date of the Tax Invoice;
- (c) fulfils the Distributor's obligations under the GST Act and under any other laws which relate to the issue of Tax Invoices by the Distributor.

6.9.2 **Payment if Report:** If the Retailer has delivered the Required Report under clause 6.4.2 by the 5th Working Day of the relevant month ("**Current Month**") in respect of the Tax Invoices issued by the Retailer to Consumers in the previous month ("**Previous Month**") then:

- (a) the Retailer will pay to the Distributor on or before the 20th day of the Current Month, an amount equal to the Line Debts in respect of the Previous Month multiplied by the Discount Factor; and
- (b) if the Retailer fails to pay the amount in sub-clause (a) on or before the 20th day of the Current Month, the Retailer will pay to the Distributor an amount equal to the amount in sub-clause (a) together with interest on that amount at the Default Rate from the 20th day of the Current Month ("**Default Date**") accruing and compounding daily for the period from the Default Date until the date of receipt in full by the Distributor,

provided that the amount of the Line Debts for the purposes of this clause 6.9.2 will, irrespective of the date of payment by the Consumer, be the amount due to the Distributor if payment is not received in full within the number of days after the date of the Tax Invoice as specified in the Distributor's advice (if any) under clause 6.9.1(b).

6.9.3 **Payment if No Report:** If the Retailer has not delivered the Required Report by the 5th Working Day of the Current Month in respect of the Tax Invoices issued by the Retailer to Consumers in the Previous Month then (notwithstanding the Retailer's obligations under clause 6.4.2):

- (a) the Retailer will pay to the Distributor an amount equal to the units represented by Line Debts in respect of the month prior to the Previous Month (or, if the Required Report was not delivered by the due date in respect of the month prior to the Previous Month and has still not been delivered, an amount equal to the units represented by the amount payable by the Retailer calculated pursuant to this clause 6.9.3(a) in respect of the month prior to the Previous Month multiplied by the Growth

Factor), applied against the appropriate pricing options of the Distributor in respect of the Previous Month and multiplied by the Growth Factor on or before the 20th of the Current Month; and

- (b) if the Retailer fails to pay the amount in sub-clause (a) on or before the 20th day of the Current Month, the Retailer will pay to the Distributor an amount equal to the amount in sub-clause (a) together with interest on that amount at the Default Rate from the 20th day of the Current Month ("Default Date"), accruing and compounding daily for the period from the Default Date until the date of receipt in full by the Distributor,

provided that if, by the 5th Working Day of the Current Month, the Retailer has not delivered the Required Report in respect of both the Previous Month and the month prior to the Previous Month, the units represented by Lines Debts in respect of the month prior to the previous month for the purposes of calculating the amount to be paid to the Distributor under clause 6.9.3(a) will be calculated by reference to the units represented by Lines Debts in the month two months prior to the previous month multiplied by the Growth Factor.

6.9.4 Payment Method: All payments by the Retailer under this clause S6.9 are to be made in cleared funds (unless the amount required to be paid is less than \$1 million) and by electronic funds transfer to the account nominated for such purpose from time to time by the Distributor without set off, deduction or withholding. The parties agree that:

- (a) failure by the Retailer to deliver the Required Report by the 5th Working Day of the Current Month or to pay the amount due under and in accordance with clause 6.9.2(a) will constitute a default by the Retailer under this agreement; and
- (b) payment under either clause 6.9.2(b) or 6.9.3(b) will not affect any other right or remedy of the Distributor.

6.9.5 Assignment of Line Debts: The Distributor will, simultaneously with and conditional upon receipt by the Distributor of:

- (a) a payment under clause 6.9.2 which has become cleared funds, assign to the Retailer all of the Distributor's interest in the amount of the Line Debts in respect of the Previous Month which, when multiplied by the Discount Factor, is equal to the amount so received by the Distributor (excluding the amount of any interest included in such payment); or
- (b) a payment under clause 6.9.3 which has become cleared funds,

assign to the Retailer:

- (c) all of the Distributor's interest in the amount of the Line Debts in respect of the Previous Month which, when multiplied by the Growth Factor, is equal to the amount so received by the Distributor (excluding the amount of any interest included in such payment); or
- (d) if the amount of the Line Debts in respect of the Previous Month, when multiplied by the Growth Factor, is less than the amount so received by the Distributor (excluding the amount of any interest included in such payment), the Distributor's interest in the amount of the Line Debts in respect of the Previous Month multiplied by the Growth Factor,

provided that if the Distributor receives payment from the Retailer in an amount less than the amount of the Line Debts in respect of the Previous Month, the

Distributor will assign to the Retailer the Distributor's interest in the Line Debts in respect of the Previous Month in accordance with the following:

- (e) the Distributor will assign its interest in the Line Debts in chronological order of the Tax Invoices representing such Line Debts (oldest first) and in Tax Invoice number order in respect of invoices with the same Tax Invoice date; and
- (f) the Distributor will not assign its interest in the Line Debts represented by part only of a Tax Invoice (to the intent that the Distributor will not assign its interest in a Tax Invoice in accordance with sub-clause (e) if to do so would result in the Distributor assigning to the Retailer the Distributor's interest in an amount of Line Debts which is greater than the amount received by the Distributor).

6.9.6 **Late Report:** If the Retailer has not delivered the Required Report by the 5th Working Day of the Current Month and has paid to the Distributor the amount due under clause 6.9.3, the amount by which such payment exceeds the amount which would have been payable by the Retailer under clause 6.9.2 if:

- (a) the Required Report had been delivered by the Retailer to the Distributor by the 5th Working Day of the Current Month; and
- (b) the payment by the Retailer to the Distributor under clause 6.9.3 had been made at the same time under clause 6.9.2,

will be retained by the Distributor and when the Distributor has received all outstanding Required Reports, the amount to be paid by the Retailer under clause 6.9.2 or 6.9.3 in respect of the relevant month in which that event occurs, will be reduced by an equivalent amount.

6.9.7 **Required Reports:** Notwithstanding and without prejudice to any other right of the Distributor whether under this agreement or otherwise, if the Retailer fails to deliver the Required Report by the 5th Working Day of any month in respect of the Previous Month and at that time the Retailer has not delivered the Required Report in respect of the month prior to the Previous Month then the Retailer will permit the Distributor and/or its agent access to such of the Retailer's books of account, records and systems as are reasonably necessary and will provide such assistance as is reasonably necessary to enable the Distributor or its agent to calculate the amount of the Line Debts in respect of both the Previous Month and the month prior to the Previous Month. The Retailer will cooperate with the Distributor and/or the Distributor's agent to facilitate a timely inspection and calculation and will pay the Distributor's reasonable costs in respect of the same. Nothing in this clause affects the Retailer's obligation to deliver all Required Reports.

6.9.8 **Review of Discount:** The Distributor may from time to time review and amend the Discount Factor such amendment to have effect on the date 3 months after the Distributor notifies the Retailer of the same, provided that the Distributor will not be entitled to amend such Discount Factor more frequently than once in any 12 month period. The Distributor will not amend the Discount Factor so that the level of the discount represented by such Discount Factor is less than the level of the discount offered by the Distributor under clause 6.9.1(b) if payment is received in full within a certain number of days after the date of the Tax Invoice.

6.9.9 **Form of Assignment:**

- (a) Neither party will give notice of the assignment of the Line Debts under clause 6.9.5 to any Consumer without the prior written consent of the other party provided that the Retailer may give such notice to a Consumer in

respect of Line Debts which are overdue in order to commence proceedings for the collection of such debt.

(b) In the event that at the time of assignment of a Line Debt under clause 6.9.5 the Retailer has already received payment from the Consumer in respect of the Tax Invoice in which that Line Debt was represented, the payment by the Retailer to the Distributor of the appropriate consideration in accordance with clause 6.9.2 or 6.9.3 as the case may be will satisfy any obligation of the Retailer to pay to the Distributor the Line Network Portion of that payment received from the Consumer.

6.9.10 Non Recourse: The Retailer will have no right of recourse to the Distributor in respect of the non-payment by a Consumer of all or part of any Line Debt.

6.9.11 Corrected Tax Invoices: If the Retailer corrects any Tax Invoice issued to a Consumer after the end of the month in which such Tax Invoice was issued, the amount payable by the Retailer to the Distributor in respect of the assignment of Line Debts in respect of the month in which the Tax Invoice was corrected will be reduced or increased as the case may be so that the total amount paid by the Retailer to the Distributor in respect of the assignment of the Line Debt is calculated by reference to the corrected Tax Invoice.

6.9.12 GST on assignment of Line Debts:

(a) It is the intention and understanding of the parties that the supply of the Line Debts by the Distributor to the Retailer is exempt from GST under the financial services exemption of the GST Act and that therefore the Distributor is not required to account to Inland Revenue for GST in relation to that supply.

(b) If this understanding is not correct and Inland Revenue determines that the supply by the Distributor to the Retailer is subject to GST, the Retailer will pay to the Distributor the amount of such GST (together with all penalties, interest, additional tax or the like), in addition to the amount payable under clause 6.9.2 or 6.9.3 as the case may be, provided that the Retailer's liability in respect of such GST together with penalties, interest, additional tax or the like will only extend to such GST together with penalties, interest, additional tax or the like arising on or in respect of supplies made after the date when the Distributor notified the Retailer that the supply by the Distributor to the Retailer was subject to GST.

(c) In the event that clause 6.9.12(b) is applicable, the Distributor will issue the Retailer with a Tax Invoice for the amount due in respect of the supply of the Line Debts, so that the Retailer has the documentation to claim a GST input tax deduction equal to the GST paid to the Distributor under clause 6.9.12(b).

6.9.13 Review of Growth Factor: The Growth Factor may be reviewed by the Distributor, and changed by notice to the Retailer if at any time the Distributor reasonably considers that:

(a) the Line Debts in respect of any month differ from the average monthly Line Debts contained in Tax Invoices in respect of the Previous Month; or

(b) in any month, the number of Consumers supplied by the Retailer differs from the average number of Consumers supplied by the Retailer during the Previous Month.

6.9.14 Transitional Arrangements: Provided the Retailer has first complied with the relevant provisions of clause 8 of the agreement relating to Option 2, on the date

(which will not fall before the expiry of such notice) (“Change Date”) specified in a notice given by the Retailer under clause 6.3.2(b), Option 2 will have effect and Option 1 will cease to have effect save that:

- (a) in relation to Tax Invoices issued prior to the Change Date (and any corrected Tax Invoices issued after that date but which relate to Tax Invoices issued prior to the Change Date) and payments received from Consumers in respect of such Tax Invoices the provisions of clauses S6.7 and S6.8 will continue to have effect;
- (b) the provisions of clause 6.6.2 will continue to apply; and
- (c) the Retailer will not be relieved of any liability under Option 1 accrued as at the Change Date.

6.9.15 Distributor Warranty: At the time of each assignment of Line Debts by the Distributor, the Distributor will be deemed to warrant to the Retailer in respect of each such Line Debt that:

- (a) the Distributor is the legal and beneficial owner of the Line Debt free from any mortgages, pledges, liens, charges or other encumbrances; and
- (b) the Distributor has not granted and will not grant any modification, extension, waiver or indulgence which would prejudice enforcement of, or would otherwise affect, the Line Debt.

6.9.16 Breach of Warranty: If the Distributor assigns to the Retailer a Line Debt in respect of which either warranty in clause 6.9.15 was not, at the time of such assignment, true, then notwithstanding clause 17 of the agreement, the Distributor will be liable to the Retailer for the direct, reasonably foreseeable loss or damage suffered or incurred by the Retailer as a result of the Distributor’s breach of such warranty provided that the Distributor’s liability in respect of such breach will not exceed the lesser of the amount of such Line Debt and the amount paid by the Retailer to the Distributor in respect of such Line Debt.

6.9.17 Disputed Line Debts: If there is a genuine dispute between the Distributor and a Consumer in respect of that Consumer’s liability to pay the Distributor an amount where such amount is included in a Line Debt and the Consumer has notified the Distributor of that dispute (it being agreed that a dispute between the Distributor and the Consumer as to the level of the Line Company’s charges, (other than a dispute relating to whether the Consumer is being charged on the correct pricing option where that dispute has not arisen as a result of any action by the Retailer), will not be considered to be a genuine dispute for the purpose of this clause), or a Consumer has notified the Distributor that it is seeking to set off that Consumer’s liability to pay all or part of a Line Debt against an amount due and owing by the Distributor to that Consumer in circumstances where the Consumer is entitled to make such a set-off: the Distributor will notify the Retailer of the fact of such dispute or proposed set-off, and the provisions of clause 6.9.18 or 6.9.19 will apply, as applicable.

6.9.18 Distributor to Resolve Dispute: If the Distributor notifies the Retailer of a dispute in accordance with clause 6.9.17:

- (a) the Distributor will seek to resolve the dispute with the Consumer within one month of the assignment of the relevant Line Debt to the Retailer by the Distributor;
- (b) if the dispute is resolved within the one month period referred to in sub-clause (a), the Distributor will notify the Retailer accordingly and the

Retailer will make such adjustment (if any) in the next Tax Invoice issued to the Consumer as the Distributor will request; and

(c) if the dispute is not resolved within the one month period referred to in sub-clause (a), the Distributor will notify the Retailer accordingly and:

(i) if the Consumer has not at that time paid the Line Debt in full to the Retailer:

(A) the Retailer will assign to the Distributor, by notice in writing to the Distributor, all of the Retailer's interest in the Line Debt the subject of the dispute. Upon the receipt by the Distributor of the notice of assignment, the Distributor will credit to the Retailer an amount equal to the amount previously paid by the Retailer to the Distributor in respect of the original assignment of that Line Debt by the Distributor to the Retailer and such amount will be deducted by the Retailer from the next payment due from the Retailer to the Distributor under this agreement; and

(B) following the assignment of the Line Debt by the Retailer to the Distributor, the Retailer will account to the Distributor for any amount it has received or at any time receives from the Consumer in payment of the Line Debt, at the time that it makes the next payment due to the Distributor under this agreement, or within one month of receiving the same, whichever is the earlier; and the Distributor will be entitled to take such steps as it considers appropriate to obtain payment of the Line Debt by the Consumer, including disconnecting the Point of Connection or Points of Connection of the Consumer that is or are relevant to the dispute; or

(ii) If the Consumer has at that time paid the Line Debt in full to the Retailer, the Retailer will be entitled to retain the funds received from the Consumer as the Retailer will have paid to the Distributor an amount equal to the amount of the Line Debt multiplied by the Discount Factor as part of the original assignment of the Lines Debt by the Distributor to the Retailer.

6.9.19 **Set-Off:** If the Distributor notifies the Retailer of a proposed set-off in accordance with clause 6.9.17;

(a) If at the time of such notice the Line Debt the subject of the proposed set-off has not been assigned to the Retailer, notwithstanding the other provisions of this agreement the Line Debt will not be assigned to the Retailer and the Retailer will not be obliged to pay to the Distributor any amount in relation to that Line Debt, except as provided in sub-clause (c);

(b) If at the time of such notice the Line Debt the subject of the proposed set-off has been assigned to the Retailer, the Retailer will assign to the Distributor all of the Retailer's interest in the Line Debt, by notice in writing to the Distributor. Upon the receipt by the Distributor of such notice, the Distributor will credit to the Retailer an amount equal to the amount previously paid by the Retailer to the Distributor in respect of the original assignment of that Line Debt by the Distributor to the Retailer and such amount will be deducted by the Retailer from the next payment due from the Retailer to the Distributor under this agreement;

(c) The Retailer will account to the Distributor for any amount it receives at any time from the Consumer in payment of the Line Debt, at the time that it makes the next payment due to the Distributor under this agreement, or within one month of receiving the same, whichever is the earlier; and

(d) The Distributor will be entitled to take such steps as it considers appropriate to obtain payment of the Line Debt by the Consumer or any part thereof to the extent that the Consumer does not set-off the Line Debt against amounts owing to it by the Distributor, including disconnecting the Point of Connection or Points of Connection of the Consumer that is or are relevant to the outstanding Line Debt or part of the Line Debt.

6.9.20 Information: The Distributor and the Retailer will each provide to the other of them on a timely basis such information as is reasonably necessary to enable the arrangements referred in clauses 6.9.17, 6.9.18 and 6.9.19 to operate in the manner referred to in those clauses, including (but not limited to) information relating to the existence of a dispute or proposed set-off and the name of the Consumer concerned, the amount involved, the relevant Point of Connection or Points of Connection to which the same relate, and any receipt of funds from the Consumer.

S6.10 DISCONNECTION RIGHTS

6.10.1 Distributor Disconnection: Subject to clauses 6.9.18 and 6.9.19, the Distributor will not effect disconnection for non-payment by the Consumer of Line Debts after the date of assignment of those Line Debts under clause 6.9.5 or clause 6.12.9.

S6.11 LINES CHARGES TRUST ACCOUNT

6.11.1 Retailer Credit-Worthiness: If at any time:

(a) the Retailer fails to pay an amount due to the Distributor under clause 6.9.2 or 6.9.3 as the case may be within 15 Working Days of the due date provided that such due amount is the lesser of \$100,000 or 20% of the Line Debts in respect of the prior month; or

(b) the Distributor acting reasonably considers that the Retailer has failed to comply with the requirements of clause 8 of the agreement,

then, without limiting any other right of the Distributor whether under this agreement or otherwise, the Distributor may, by notice in writing to the Retailer, elect that the provisions of clauses 6.11.2 to 6.11.8 (inclusive) will have effect.

6.11.2 Further Notice: The Distributor may, at any time after it has given notice to the Retailer under clause 6.11.1, by notice in writing to the Retailer elect that the provisions of clauses 6.11.3 to 6.11.8 (inclusive) will cease to have effect save that:

(a) such provisions will continue to apply in relation to Tax Invoices issued prior to the date of such notice and payments received from Consumers in respect of those Tax Invoices; and

(b) the Retailer will not be relieved of any liability under clauses 6.11.3 to 6.11.8 (inclusive) accrued as at the date of such notice.

6.11.3 Bank Account: The Retailer will immediately upon receipt of a notice under clause 6.11.1 open, and unless and until the Distributor notifies the Retailer in writing to the contrary, maintain, a bank account with the following characteristics:

(a) the account will be maintained with a New Zealand registered bank selected by the Retailer;

(b) save as set out in clause 8 of the agreement the account will be identified by a name to the effect of Retailer Name Limited/Vector Limited – Lines Charges Trust account” (“**Lines Charges Trust Account**”); and

(c) moneys held in the account will bear interest at the best rate reasonably obtainable from time to time from the bank.

The bank with which the account is maintained will be notified by the Retailer of the existence of the trust created by clause 6.11.4, and the Retailer will procure that bank to provide to the Distributor an acknowledgement in writing, in a form acceptable to the Distributor, of the existence of that trust in respect of moneys held in the Account, and that the bank will not exercise any lien or right of set-off in respect of moneys held in the Account, or combine the Account with any other account.

If the Distributor gives notice under clause 6.11.1 and the Distributor subsequently is satisfied that the Retailer has remedied the breach on the basis of which the Distributor gave that notice, and that breach or a similar breach is not likely to reoccur, the Distributor (without prejudice to its right to give a further notice under clause 6.11.1 at any time in the future) will notify the Retailer that the Retailer need no longer maintain a bank account in accordance with this clause 6.11.3.

6.11.4 Lines Charges Trust: The Retailer will hold on trust for the Distributor:

(a) the Line Network Portion of each debt to be paid to the Retailer by Consumers;

(b) all amounts referred to in clause 6.11.5 which have not yet been credited to the Account; and

(c) amounts in the Account equal to the Line Network Portion of each amount which has been received from a Consumer and paid into the Account and which has not been disbursed to the Distributor in accordance with clause 6.11.6 nor in respect of which the Retailer’s obligation to so disburse has been satisfied in accordance with clause 6.9.9(b).

6.11.5 Payment Into Account: The Retailer will cause:

(a) all amounts received from Consumers by way of any process which transfers money from the account of a Consumer to an account of the Retailer, to be transferred or credited directly from the account of the Consumer to the Account; and

(b) all amounts received from Consumers by way of cheque or cash payment to be paid into the Account on the day of receipt by the Retailer if a Working Day, or the first Working Day thereafter.

6.11.6 Payment Out Of Account:

(a) The Retailer will procure that, not later than the close of the last Working Day of each week, there is paid to the Distributor from the Account, an amount equal to the aggregate of the Line Network Portion of each amount which has been received from a Consumer and paid into the Account in respect of Tax Invoices issued by the Retailer after the date of expiry of the notice given by the Retailer under clause 6.11.1.

(b) If the Retailer has not given notice under clause 6.12.2:

(i) the Distributor will maintain and record a notional account (the “**Notional Account**”) to which:

- (A) there will be credited each payment made by the Retailer to the Distributor under sub-clause (a); and
- (B) there will be debited amounts applied by the Distributor in accordance with sub-clause (b)(ii)(A) or repaid to the Retailer under sub-clause (b)(ii)(C).
- (ii) Whenever the Retailer is liable to pay to the Distributor an amount under clause 6.9.2 or 6.9.3 (in either case "**Assignment Payment**"):
 - (A) the Distributor will apply the amount in the Notional Account in or towards payment of the Assignment Payment, and the payment will be treated as if it were a payment made under such clause;
 - (B) if the amount in the Notional Account is less than the Assignment Payment, the Retailer, will on the date provided in clause 6.9.2 or 6.9.3 (as the case may be) pay to the Distributor the balance of the Assignment Payment; and
 - (C) if the amount in the Notional Account is greater than the Assignment Payment, the Distributor will pay to the Retailer the amount of such excess on the date on which payment of the Assignment Payment is due to the Distributor under clause 6.9.2 or 6.9.3 (as the case may be).
- (iii) If the Retailer has given notice under clause 6.12.2 amounts paid by the Retailer under sub-clause (a) will be credited by the Distributor to the Notional Account under clause 6.12.8(a).

Subject to clause 6.11.8, all payments under this clause 6.11.6 are to be made by electronic funds transfer without set-off deduction or withholding to an account nominated from time to time for such purpose by the Distributor.

6.11.7 Retailer Proceeds: Nothing in this clause 6.11.7 will prevent the Retailer from withdrawing sums from the Account which represent in respect of any amount received from a Consumer, the portion of that amount which represents the amount which the Retailer is entitled to retain as opposed to the amount which the Retailer is obliged to pay to the Distributor.

6.11.8 Interest On Account:

- (a) If the Retailer does not pay the amount due to the Distributor by the due date under clause 6.11.6 in respect of any week, all interest earned in respect of the Account together with resident withholding tax deducted therefrom (if any) will, at intervals of not less than one week, be divided between the Retailer and the Distributor in proportion to the amounts in the Account held by the Retailer on its own account, and on trust for the Distributor and the periods for which those amounts were held. The Retailer will, at intervals of not less than one month, cause to be paid to the Distributor an amount equal to the Distributor's share of interest earned on the Account net of resident withholding tax (if any), calculated in accordance with the preceding sentence and will at the same time provide to the Distributor details of the calculation of the amount of such payment.

- (b) Where resident withholding tax has been deducted from interest the Retailer will ensure that the Distributor receives all necessary information and documentation to claim a credit for the resident withholding tax.

S6.12 PAYMENTS ON ACCOUNT

6.12.1 Objective: The Distributor and the Retailer record that it is their objective that:

- (a) the Retailer should be free to decide whether to invoice Consumers in respect of Points of Connection at monthly intervals, or at other intervals being not greater than 12 months; and
- (b) in respect of the Points of Connection if the Retailer elects to invoice at intervals of greater than one month, the Distributor should so far as possible be placed in the same position as if the Retailer were invoicing Consumers to whom those Points of Connection relate at monthly intervals and that either party may review the payments to be made under this clause S6.12 to ensure that this is achieved.

6.12.2 Notice: The Retailer will issue Tax Invoices to Consumers in respect of all Points of Connection at intervals not greater than monthly, unless the Retailer gives to the Distributor prior notice:

- (a) recording that the Retailer is to issue Tax Invoices to some or all Consumers in respect of Points of Connection at intervals greater than monthly ("**Non-Monthly Consumers**");
- (b) estimating the number of Points of Connection in respect of which the Retailer is to issue Tax Invoices at intervals greater than monthly, the intervals at which the Retailer is to issue Tax Invoices the Non-Monthly Consumers to whom those Points of Connection relate and the portion of charges due to the Distributor from Consumers represented by Non-Monthly Consumers, in each case separately in respect of each pricing option of the Distributor; and
- (c) specifying the date at which the Retailer will commence to issue Tax Invoices those Non-Monthly Consumers at those intervals.

If the Retailer gives notice under this clause 6.12.2, clauses 6.12.3 to 6.12.14(inclusive) will apply and the Retailer will thereafter report to the Distributor periodically in respect of the matters referred to in sub-clause (b).

6.12.3 Retailer Calculates Monthly Payment Amounts: The Retailer will calculate, using an Assessment Method, the amount of Line Debts which the Retailer reasonably anticipates would have been due each month from each Non-Monthly Consumer in respect of the relevant Points of Connection as if the Retailer was issuing Tax Invoices to those Consumers on a monthly basis. Such amount will be the "**Monthly Payment Amount**" for that Point of Connection in respect of the relevant month.

6.12.4 Report: The Retailer will:

- (a) include in the reports to be delivered pursuant to clause 6.4.2 each month ("**Current Month**"), the Monthly Payment Amounts in respect of the previous month and the amounts due to the Distributor contained or represented in Tax Invoices issued in the previous month ("**Previous Month**") to Non-Monthly Consumers in accordance with EIEP1; and
- (b) on request from the Distributor, deliver to the Distributor a report of the Monthly Payment Amounts received by the Distributor in respect of a Point

of Connection or a group of Points of Connection which relate to Non-Monthly Consumers and the Line Debts in respect of such Points of Connection in relation to a specified time period.

6.12.5 Payment: In addition to the Retailer's obligations in respect of Consumers to whom the Retailer is issuing Tax Invoices at intervals not greater than one month under clause S6.9, the Retailer will, in respect of Non-Monthly Consumers:

(a) pay to the Distributor on or before the 20th day of the Current Month, an amount equal to the aggregate of the Monthly Payment Amounts in respect of the Previous Month multiplied by the Discount Factor (subject to adjustment under clause 6.12.7; or

(b) if the Retailer fails to pay the amount in (a) on or before the 20th day of the Current Month, pay to the Distributor an amount equal to the amount in sub-clause (a) together with interest on that amount at the Default Rate from the 20th day of the Current Month ("Default Date") accruing and compounding daily for the period from the Default Date until the date of receipt in full by the Distributor.

6.12.6 Obligation to Invoice: The Retailer will issue a Tax Invoice to each Non-Monthly Consumer in respect of each relevant Point of Connection in accordance with this agreement no less frequently than once in any 12 month period.

6.12.7 Correction on Meter Reading: Each month, in relation to each Point of Connection which relates to a Non-Monthly Consumer in respect of which the Retailer has, during the Previous Month:

(a) obtained metering data; and

(b) not issued a Tax Invoice to the Non-Monthly Consumer to whom that Point of Connection Relates,

the Retailer will calculate the amount due to the Distributor by applying the relevant pricing option of the Distributor to such metering data multiplied by the Discount Factor and will adjust the Monthly Payment Amount to be paid by the Retailer to the Distributor under clause 6.12.5 in respect of that Point of Connection in relation to the Previous Month. This is to ensure that the total Monthly Payment Amounts received by the Distributor in respect of that Point of Connection since the date to which Tax Invoices sent to the Non-Monthly Consumer (to which that Point of Connection relates) were last reconciled in accordance with clause 6.12.11 is equal to the amount due to the Distributor by applying the relevant pricing option of the Distributor to such metering data multiplied by the Discount Factor.

6.12.8 Notional Account: The Distributor will maintain and record a notional account (the "Notional Account") to which:

(a) there will be credited amounts paid by the Retailer to the Distributor under clauses 6.12.5 and 6.12.11 but excluding the amount of any interest included in such payments;

(b) there will be debited amounts applied by the Distributor in accordance with clauses 6.12.9(b) and 6.12.11(c).

6.12.9 Assignment: On the date of receipt of payment from the Retailer under clause 6.12.5 which has become cleared funds:

(a) the Distributor will assign to the Retailer the Distributor's interest in such amount of the Line Debts in respect of the Previous Month, in relation to

the relevant Points of Connection which relate to Non-Monthly Consumers, as calculated in accordance with clause 6.12.10; and

(b) the Distributor will apply from the Notional Account an amount equal to such amount of the Line Debts multiplied by the Discount Factor in satisfaction of the amount due to the Distributor in respect of such assignment.

6.12.10 Assignment Calculation: The amount of the Distributor's interest in the Line Debts in respect of the Previous Month assigned to the Retailer under clause 6.12.9 will be the lesser of:

(a) such amount of the Distributor's interest in the Line Debts in respect of the Previous Month which, when multiplied by the Discount Factor, is equal to the amount received by the Distributor under clauses 6.12.5 (excluding the amount of any interest included in such payment); and

(b) the Distributor's interest in the amount of the Line Debts in respect of the Previous Month in relation to Non-Monthly Consumers,

and if (a) is the lesser:

(c) the Distributor will assign its interest in the Line Debts in chronological order of the Tax Invoices representing such Line Debts (oldest first) and in Tax Invoice number order in respect of Tax Invoices with the same Tax Invoice date; and

(d) the Distributor will not assign its interest in the Line Debts represented by part only of a Tax Invoice (to the intent that the Distributor will not assign its interest in a Tax Invoice if to do so would result in the Distributor assigning to the Retailer the Distributor's interest in an amount of Line Debts which is greater than the amount received by the Distributor (excluding any interest received by the Distributor)).

6.12.11 Balancing Payment: If the amount in the Notional Account in respect of a Point of Connection is less than the amount of the Distributor's interest in the Line Debts in respect of the Previous Month in relation to that Point of Connection multiplied by the Discount Factor:

(a) the Retailer will pay to the Distributor on the 20th day of the Current Month an amount equal to the amount by which such Line Debts when multiplied by the Discount Factor exceed such amount in the Notional Account;

(b) on the date of receipt of such payment from the Retailer under (a) which has become cleared funds, the Distributor will assign to the Retailer the Distributor's interest in the Line Debts in respect of the Previous Month in respect of that Point of Connection which have not been assigned to the Retailer and which, when multiplied by the Discount Factor, is equal to the amount so received under sub-clause (a), applying the principles in clauses 6.12.10(c) and 6.12.10(d) in respect of such assignment; and

(c) the Distributor will apply from the Notional Account an amount equal to the amount received from the Retailer under sub-clause (a) in satisfaction of the amount due to the Distributor in respect of such assignment.

6.12.12 Repayment of Excess: If, in respect of a Point of Connection:

(a) the Retailer has issued a Tax Invoice in the Previous Month;

(b) the Retailer has provided to the Distributor the Required Report in respect of the Previous Month; and

(c) the amount in the Notional Account is greater than the amount of the Distributor's interest in the Line Debts in respect of the Previous Month in relation to that Point of Connection multiplied by the Discount Factor,

the Distributor will repay the excess to the Retailer on or before the 20th day of the Current Month. If the Distributor fails to make the payment due under this clause on or before the 20th day of the Current Month, the Distributor will in addition pay to the Retailer interest on that amount at the Default Rate from the 20th day of the Current Month ("Default Date") accruing and compounding daily for the period from the Default Date until the date of receipt in full by the Retailer.

6.12.13 Retailer Enquiry: The Distributor will, upon request in writing from the Retailer, notify the Retailer of the transaction history of the Notional Account (to the extent that this has not already been provided to the Retailer) and the balance in the Notional Account.

6.12.14 Review of Monthly Payments: The Monthly Payment Amount may be reviewed:

(a) by the Distributor, and the Distributor may require the Retailer to use an alternative Assessment Method on notice to the Retailer at any time if the Retailer is required to pay an amount under clause 6.12.11(a) in respect of any Point of Connection equal to 10% or more of the relevant Line Debt; or

(b) by the Retailer on notice to the Distributor at any time if the Retailer reasonably considers that the current Monthly Payment Amounts will result in a payment by the Distributor to the Retailer of an amount under clause 6.12.12 in respect of any Point of Connection equal to 10% or more of the relevant Line Debt.

6.12.15 Alternative Assessment Method: If the Distributor receives notice from the Retailer under clause 6.12.14(b), the Distributor and the Retailer will negotiate in good faith to agree an alternative Assessment Method for the purposes of this section 20 having regard to the objective in clause 6.12.1(b).

6.12.16 Warranty and Disputed Line Debts: The provisions of clauses 6.9.15, 6.9.16, 6.9.17, 6.9.18 and 6.9.19 will apply in respect of Line Debts assigned by the Distributor to the Retailer pursuant to clause 6.12.9.

S6.13 TARIFF RATES AND TARIFF STRUCTURES

6.13.1 Tariff Rate changes: Unless otherwise agreed with the Retailer (such agreement not to be unreasonably withheld or delayed), the Distributor may change its Tariff Rates no more than once in any period of 12 consecutive months, unless a Tariff Rate change results from:

(a) a change in any "pass-through costs" and/or "recoverable costs" as defined in the Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010, as amended or substituted from time to time; or

(b) a change in the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed price change will only apply to ICPs affected by the change in Distribution Services; or

(c) a change in the law (including any regulations and the Code); or

(d) any recommendation, determination, direction or decision of a regulatory agency.

Nothing in this clause 6.13.1 prevents the Distributor from decreasing a Tariff Rate without the Retailer's agreement, or from increasing a Tariff Rate if agreed by the Retailer. Notwithstanding any other provision of this agreement, Vector's Pricing Schedule and Policy will be deemed to be amended to reflect the changes to the Tariff Rates pursuant to this clause 6.13.1.

6.13.2 Process to change tariff structures: Without limiting clause 6.13.1 if the Distributor intends to change its tariff structure (which may include a change to the eligibility criteria for one or more of the Tariff Rates, the introduction of a new Tariff Rate, or a change that means one or more Tariff Rates are no longer available but excludes any change in the Tariff Rate that is solely a change in price) that will materially affect one or more retailers or Consumers, the Distributor will notify and consult with the Retailer in good faith in relation to the same, prior to publishing its changed tariff structure and the reasons for its decision. Notwithstanding any other provision of this agreement, Vector's Pricing Schedule and Policy will be deemed to be amended to reflect changes to the tariff structure as published.

6.13.3 Notice of Tariff Rate change: The Distributor will give the Retailer notice of all Tariff Rate changes as specified in this clause 6.13.3. The Distributor will:

(a) provide 40 Working Days' notice of the change, unless the Distributor is required by law to implement the change earlier, in which case the Distributor will give as much notice as reasonably practicable;

(b) provide to the Retailer:

(i) an update of the Distributor's pricing schedule, policy, and plan, as appropriate, in a way that makes changes from the previous version clear; and

(ii) a mapping of the changes to each Tariff Rate including by ICP where appropriate;

(c) in addition to the requirements of sub-clause (b), if the change is in respect of ICPs that have either a category 1 or category 2 metering installation, notify the Retailer in accordance with EIEP12; and

(d) send the information required in sub-clauses (b) and (c) to the Retailer by email, as a minimum.

6.13.4 Standard tariff codes: If the Distributor changes a Tariff Rate, it will assign a standard tariff code to the Tariff Rate in accordance with clause 12A.10 of the Code.

6.13.5 Tariff structure change and Tariff Rate change disputes: Once a tariff structure or Tariff Rate is finalised and notified in accordance with clause 6.13.2 or 6.13.3 respectively, the Retailer may raise a Dispute under clause 16 in respect of the change only if the Retailer considers that the Distributor has not complied with clause 3.1 of the agreement. If a Dispute is raised, the Retailer will continue to pay the Distributor's invoices until the Dispute is resolved.

~~6.1.26.13.6~~ **6.13.6 Changes containing an arithmetic error:** If the Retailer identifies an error in a tariff structure finalised and notified in accordance with clause 6.13.5, and the error arises from an obvious arithmetic error in developing the tariff structure or calculating the Tariff Rate, the Retailer will bring that error to the Distributor's attention as soon as possible after becoming aware of the error. The Distributor may correct such an error, or an arithmetic error that it identifies itself, without following the process under clause 6.13.5 **relevant provisions have been moved**

~~to other~~. To avoid doubt, the parts of the tariff structure or Tariff Rates that are not affected by the error are not subject to this clause 6.13.6 ~~this agreement.~~

S6.14 APPLYING TARIFF RATES TO ICPs

6.14.1 Distributor allocates Tariff Rates: If there are different Tariff Rates within the Distributor's tariff structure that could be applied to an ICP, the Distributor will, acting reasonably, allocate one of those Tariff Rates to the ICP. In allocating a Tariff Rate, the Distributor will have regard to:

- (a) the qualification requirements for Tariff Rates that are set out in Vector's Pricing Schedule and Policy;
- (b) the Consumer's Installation; and
- (c) if known:
 - (i) the Metering Equipment and any Load Control Equipment installed for the ICP;
 - (ii) the ICP's historic demand profile;
 - (iii) the Consumer's capacity requirements; and
 - (iv) any other relevant factors.

If there is more than one Tariff Rate that can validly be allocated to the ICP, the Distributor may allocate any one of those Tariff Rates to the ICP.

6.14.2 Retailer may request allocation of an alternative Tariff Rate to an ICP: At any time, the Retailer may request the Distributor to allocate a different Tariff Rate to an ICP, and will provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the Tariff Rate requested by the Retailer should or could be allocated to the ICP, the Distributor will apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 5 Working Days after receipt of notice of the Retailer's request. If the Distributor declines the request, it will provide the reasons for its decision.

6.14.3 Retailer request for reallocation of a Tariff Rate if an incorrect allocation has been made: If the Retailer reasonably considers that a Tariff Rate has been incorrectly allocated to an ICP by the Distributor under clause 6.14.1 due to the Distributor's misapplication of Vector's Pricing Schedule and Policy, the Retailer will notify the Distributor as soon as practicable of the incorrect allocation including how it considers that the Distributor should have applied Vector's Pricing Schedule and Policy in allocating the correct Tariff Rate. If the Retailer, through such notice, demonstrates to the Distributor's reasonable satisfaction that the Tariff Rate had been incorrectly allocated under clause 6.14.1 due to the Distributor's misapplication of Vector's Pricing Schedule and Policy, then the Distributor will advise the Retailer within 10 Working Days after receipt of the Retailer's notice that it agrees to allocate a different Tariff Rate to the ICP, such agreement not to be unreasonably withheld, and will provide the reasons for its decision.

6.14.4 Commencement of charges following correction: If the Distributor allocates a different Tariff Rate to an ICP following notice from the Retailer given under clause 6.14.3, the Distributor will commence charging the Retailer in accordance with that Tariff Rate with immediate effect.

6.14.5 Distributor's right to change Tariff Rate: If the Distributor reasonably considers that a different Tariff Rate should be allocated to an ICP:

- (a) the Distributor will notify the Retailer accordingly including the reasons why it considers the Tariff Rate allocated to the ICP should be changed;
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Tariff Rate is appropriate, the Distributor may allocate the Tariff Rate that it considers appropriate to that ICP in accordance with clause 6.14.1, and may commence charging the Retailer for Distribution Services in accordance with that Tariff Rate from the first day of the calendar month immediately following the expiry of the 10 Working Day period noted above; and
- (c) the Distributor will provide to the Retailer information relevant to its decision.

S6.15 INDEMNITY FOR TAX PENALTIES AND INTEREST

6.15.1 Indemnity for Tax penalties and interest: Without limiting any other indemnity provided under this agreement, the Retailer acknowledges that the Distributor will rely on the Required Reports provided pursuant to clause 6.4.2 to determine, among other things, the Distributor's liability for Tax payable. Where it is determined that any Required Report supplied (or not supplied, as the case may be) by the Retailer to the Distributor pursuant to clause 6.4.2 is either:

- (a) incorrect; or
- (b) misleads the Distributor as to the correct position where the Required Report is not supplied,

and to the extent the Distributor is required to pay Inland Revenue any interest, penalty or fine imposed by the Tax Administration Act 1994 relating to, or arising in connection with, the non-payment or late payment or under-payment of any Tax, the Retailer indemnifies and undertakes to keep the Distributor at all times fully and effectively indemnified from and against the interest, penalty or fine the Distributor is required to pay.

APPENDIX A

Provide the format that the Retailer will use for Consumer invoices

[Note to Retailer: To be provided.]

APPENDIX B

Provide a list of ICPs in respect of which Billing Services are not required to be provided by the Retailer

[Note to Retailer: To be provided.]

SCHEDULE 7 – ADDITIONAL SERVICES

AECT Dividends and AECT Distributions

- S7.1 For the purposes of this schedule, “Dividends” includes AECT dividends and AECT distributions.
- ~~(a) “Dividends” includes AECT dividends and AECT distributions; and~~
- ~~(b) “AECT” has the meaning given in clause~~
- S7.2 The Distributor may require, no more than twice in any calendar year, the Retailer to pass a Dividend to qualifying Consumers by crediting the Consumers’ electricity accounts, by giving the Retailer at least 40 Working Days’ notice.
- S7.3 The notice will include:
- (a) the time period within which the eligibility date will be set;
 - (b) the criteria to identify qualifying ICPs or Consumers, including any specific exclusions;
 - (c) the proposed process and timelines for information to be exchanged to enable efficient implementation;
 - (d) whether the AECT wishes to include any promotional material with the Tax Invoice containing the credit;
 - (e) the format of the information to be exchanged; and
 - (f) the proposed basis of calculation (if known),
- and the Retailer will comply with the Distributor’s requirements set out in such notice.
- S7.4 If there are any changes to the information to be exchanged or the eligibility criteria compared to the last Dividend processed, the parties will test the information exchange process in advance.
- S7.5 The Distributor will advise the Retailer of the eligibility date as soon as reasonably practicable, and provide details of any proposed publicity information and media releases.
- S7.6 The Distributor will provide contact details for queries that cannot be addressed by the Retailer and a set of relevant FAQs.
- S7.7 The Retailer will provide a file to the Distributor containing any information reasonably requested by the Distributor to enable the Distributor to calculate the Dividend applicable to each qualifying ICP or Consumer.
- S7.8 The Distributor will return the file to the Retailer with the Dividend amounts added within 2 Working Days after receipt of the Retailer’s file.
- S7.9 The Retailer will as soon as reasonably practicable after receiving the file from the Distributor apply the Dividend to qualifying Consumers’ accounts.

- S7.10 The Dividend will be separately identified on invoices to qualifying Consumers, and will include words as specified by the Distributor along the following lines “[AECT] Dividend”. This requirement will only extend to the Retailer including wording within the existing limitations of the Retailer’s billing system and/or bill format.
- S7.11 If the Retailer agrees, the Retailer will if requested by the Distributor in advance include the Distributor’s promotional material as a bill insert with the Retailer’s invoice that includes the Dividend.
- S7.12 The Distributor will indemnify the Retailer against any costs, losses, liabilities, claims, charges, demands, expenses or actions that may be incurred by the Retailer or may be made against the Retailer as a result of or in relation to any illegal, defamatory or offensive content in the Distributor’s promotional material, except where such costs, losses, liabilities, claims, charges, demands, expenses or actions arise as a result of or in connection with any breach by the Retailer of its obligations under this agreement.
- S7.13 Any Dividends received in advance by the Retailer will be held as separately identifiable funds by the Retailer for the benefit of the Consumers who are entitled to receive the Dividends.
- S7.14 The AECT will pay the Retailer for the full amount of the Dividends credited by the Retailer within 5 Working Days (or an alternative agreed date) of the Retailer confirming the total amount credited to Consumers’ accounts. The Retailer will confirm this by providing a file itemising the Dividend credited to each Consumer.
- S7.15 If for any reason the Dividend payable to a Consumer is unable to be paid (by way of example but without limitation, because a qualifying consumer ceases to be a Consumer and its account with the Retailer has a credit balance after the date of processing of the Dividend), and the Retailer has received funds from the AECT in respect of the Dividend, the Retailer will as soon as practicable refund to the AECT the Dividend received for that qualifying consumer, or the net credit of the account for that qualifying consumer if this is less than the amount of the Dividend for that qualifying consumer or refund the consumer directly the remaining amount by cheque. The Retailer will also provide a supporting file to the AECT containing the ICP, refund amount, consumer name and forwarding address (if available).

AECT Information

- S7.16 The Retailer acknowledges that the Distributor is partially owned by the AECT and requires from time to time information from the Retailer to enable updating and maintenance of an accurate register of beneficiaries, and to allow communication with those persons.
- S7.17 If requested by the Distributor, the Retailer will provide, in a reasonable timeframe, relevant information (including names and addresses of all current Consumers) required by the Distributor to enable the AECT to meet its obligations under the trust deed pursuant to which the AECT is established, such information to be in a form reasonably specified by the Distributor from time to time. Any information provided by the Retailer under this clause S7.17 will be treated as confidential information.

SCHEDULE 8 – VECTOR PRE-REQUISITES AND RETAILER SPECIFIC INFORMATION

Vector Use of Network Pre-requisites

[Note to Retailers: The Vector Use of Network Pre-requisites will be inserted.]

Retailer Specific Information

Fees for Sole Provider Services – Refer clause 7.1

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Receivership Options – Refer clause 11.8 (Strike the option not applicable)

Receivership Option A (Default)

Receivership Option B

Audit Options – Refer clause 19.4 (Strike the option not applicable)

Audit Option A (Default)

Audit Option B

Billing Options – Refer clause 6.3.1 of schedule 6 (Strike the option not applicable)

Option 1

Option 2 (Default)