

Vector Limited
[Retailer]

Use-of-System Agreement
- Electricity



[Logo of Retailer]

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AGREEMENT dated the later date recorded under the signature block below

PARTIES

Distributor: Vector Limited	Retailer: [●]
<p>Distributor's Details:</p> <p>Street Address: 101 Carlton Gore Road, Newmarket, Auckland</p> <p>Postal Address: PO Box 99 882, Newmarket, Auckland 1149</p> <p>Address for Notices: 101 Carlton Gore Road, Newmarket, Auckland</p> <p>Contact Person's Details: Company Secretary</p> <p>Phone: (09) 978 7788</p> <p>Website: www.vector.co.nz</p> <p>Email Address: companysecretary@vector.co.nz</p>	<p>Retailer's Details:</p> <p>Street Address: [●]</p> <p>Postal Address: [●]</p> <p>Address for Notices: [●]</p> <p>Contact Person's Details: [●]</p> <p>Phone: [●]</p> <p>Website: [●]</p> <p>Email Address: [●]</p>

COMMENCEMENT DATE: [●] 2013

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 owns and operates the Network and the Retailer wishes to supply electricity to Consumers on the Network.
- B. The Distributor and the Retailer agree to provide the Services to one another on the terms and conditions set out in this agreement.
- C. The Distributor and the Retailer agree to purchase the Services from one another on the terms and conditions set out in this agreement.
- D. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Code.

AGREEMENT

PART I - SERVICE COMMITMENTS

1. TERM OF AGREEMENT

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

2. SERVICES

- 2.1 **Distributor's services and obligations:** Subject to the terms and conditions of this agreement, the Distributor will endeavour in accordance with Good Electricity Industry Practice to:
 - (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
 - (b) deliver electricity in accordance with the Service Standards, but does not promise delivery of electricity that is free from defects and interruptions;
 - (c) provide for Warranted Persons to Energise and De-energise Points of Connection in accordance with this agreement, including clause 19 and schedule 6;
 - (d) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis, Network repair and information service, and provide service interruption information in accordance with schedule 5;
 - (e) make provision for Load Management Services on its Network to the extent required by clause 6;
 - (f) review and determine Loss Factors;
 - (g) follow the process set out in clause 24 if the Distributor proposes to make changes to the Network Supply Points supplying the Network;
 - (h) subject to Part III of this agreement, allow Consumers' Installations that comply with Network Connection Standards to remain connected (unless a Consumer's Installation is disconnected or decommissioned in accordance with this agreement), and consider applications for new connections and changes to capacity for existing connections in accordance with clause 19 and schedule 6;
 - (i) investigate concerns regarding the power quality (which means the frequency or voltage of the supply), reliability or safety of the Consumer's supply if a Consumer, or the Retailer on behalf of a Consumer, raises concerns with the Distributor in relation to the same, and, if appropriate, install equipment at the

Consumer's Point of Connection to measure power quality, and provide the results of such measurements to the Retailer. If such installation requires the Services to be interrupted, the Distributor will restore the Services as soon as reasonably practicable; and

(j) provide the Additional Services as set out in schedule 2 (if any).

2.2 **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.

2.3 **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) if it becomes aware that a Consumer's Installation does not comply with the Network Connection Standards, notify the Distributor of the ICP identifier of the Consumer's Installation and the details of the non-compliance as soon as reasonably practicable;

(b) process any applications for new connections or changes to the capacity of existing connections in accordance with clause 19 and schedule 6;

(c) comply with the Service Standards;

(d) provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information in accordance with schedule 5, except in relation to any Consumers or categories of Unplanned Service Interruption in respect of which the Distributor has notified the Retailer pursuant to clause 5.5 that it will provide such service and information;

(e) not enter into any arrangements whereby the Retailer agrees to procure Distribution Services for, or otherwise provide or subcontract Distribution Services to, any other retailer;

(f) enable the Distributor to provide Load Management Services on the Distributor's Network to the extent required by clause 6;

(g) provide information in accordance with clauses 7 and 11;

(h) investigate, in accordance with Good Electricity Industry Practice, non-technical Losses;

(i) respond to requests from the Distributor for Consumer details in accordance with clause 29; and

(j) provide the Additional Services as set out in schedule 2 (if any).

2.4 **Retailer's obligations - Consumers:** Subject to the terms and conditions of this agreement, the Retailer will:

(a) ensure that its Consumer Contracts prohibit Consumers from altering, impeding the use of, or otherwise interfering with or damaging the Network or any of the Distributor's property; and

(b) subject to clause 27, ensure that it has a Consumer Contract with each Consumer for the supply of electricity that contains terms that have substantially the same effect as schedule 4.

2.5 **Retailer's obligations in relation to Embedded Networks:** If the Retailer supplies electricity to an Embedded Network Consumer, the Retailer will comply with the provisions of schedule 11.

3. CONVEYANCE ONLY

3.1 **Distributor may enter into Distributor's Agreement with a Consumer:** The Distributor may enter into a Distributor's Agreement directly with a Consumer at the Consumer's written request. The Distributor acknowledges that its entry into a Distributor's Agreement with a Consumer does not override any obligations of the Consumer to the Retailer during the term of any fixed term Electricity Supply Agreement.

3.2 **Conveyance Only basis:** If a Consumer has, or enters into, a Distributor's Agreement, the Distributor will advise the Retailer accordingly and convey electricity through the Network to that Consumer on a Conveyance Only basis on the applicable terms of this agreement (with the Distributor or a third party acting on the Distributor's behalf being responsible for billing the Consumer for line charges) to enable the Retailer to supply electricity to that Consumer.

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

3.4 **The Retailer:** The Retailer:

(a) will not knowingly do or omit to do anything, or cause any person to do or omit to do anything, that is inconsistent with the obligations of the Consumer or the Distributor under any Distributor's Agreement. However, the technical requirements in a Distributor's Agreement may differ from the technical requirements in relation to Distribution Services set out in this agreement, in which case the Distributor will give the Retailer reasonable notice of those requirements; and

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

3.5 **Co-operate to resolve issues:** If either of the following issues arises, the Distributor and the Retailer will co-operate with each other to resolve the issue in a manner that delivers an agreeable outcome for all affected parties (including the Consumer) but that does not adversely impact on the integrity of the Network:

(a) if, in relation to the supply of electricity to any Consumer that is a party to a Distributor's Agreement, the Retailer does anything that is inconsistent with this agreement and that may have an impact on the Network or the provision of distribution services by the Distributor to that or any other Consumer; or

(b) if either the Retailer or the Distributor becomes aware that any provisions of a Distributor's Agreement and any Electricity Supply Agreement would conflict to the extent that a party would be in breach of contract.

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

(a) the Distributor will make all reasonable endeavours to notify the Retailer (or any other retailer) of the situation and suggest the Retailer (or any other retailer) take up the opportunity to supply the Consumer on an Interposed basis in relation to those ICPs; and

- (b) if the Distributor gives notice under clause 3.6(a), the Distributor may disconnect the ICPs if, within 20 Working Days of giving that notice, the Distributor has not received notice that the Retailer (or any other retailer) will immediately commence supplying the Consumer on an Interposed basis in relation to those ICPs.

4. EQUAL ACCESS AND EVEN-HANDED TREATMENT

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

- (a) the reference to "all retailers" in this clause 4 will be construed as a reference to all retailers who have signed contracts relating to the supply of Distribution Services 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.

Nothing in this clause 4.1 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.

4.2 The Distributor will notify the Retailer of alternative contracts: Within 20 Working Days after executing a contract or an amendment to a contract relating to the supply of Distribution Services with any retailer other than the Retailer (the contract or amended contract, as applicable, being an "**Alternative Contract**"), the Distributor will:

- (a) notify the Retailer in writing of the existence of that Alternative Contract;
- (b) make the Alternative Contract available on its website; and
- (c) invite the Retailer to adopt the Alternative Contract (with any changes necessary to reflect any differences between the financial or operational characteristics of the Retailer and the retailer that entered the Alternative Contract and the fact that the Retailer is a different party),

provided that:

- (d) the Distributor will not be required to perform its obligations under sub-clauses (a) to (c) if the changes made in the Alternative Contract have 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); and
- (e) the Distributor will not be required to disclose any commercially confidential information to the Retailer under this clause 4.2.

4.3 The Retailer has sole discretion to adopt Alternative Contracts: Within 12 months of the Distributor executing an Alternative Contract with any retailer other than the Retailer, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract (in the form referred to in clause 4.2(c)) in substitution for this agreement provided that:

- (a) the Retailer gives not less than 20 Working Days' notice to the Distributor of its intention to sign the Alternative Contract; and
- (b) the Retailer adopts the Alternative Contract in its entirety.

4.4 Adoption of Alternative Contract: If an Alternative Contract is adopted in accordance with clause 4.3, this agreement will terminate from the date of such adoption. The

provisions of clauses 21.3 to 21.8 also apply to a termination of this agreement under this clause 4.4.

5. SERVICE INTERRUPTIONS

General

- 5.1 **Communications policies:** The parties will use their reasonable endeavours to comply with the communication policies set out in schedule 5.
- 5.2 **The Distributor may Publish Service Interruption information:** The Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption. In disclosing such information, the Distributor will comply with its obligations under the Privacy Act 1993.
- 5.3 **Protocols for Service Interruptions:** The Distributor has developed a protocol on the priorities for Load Shedding, restoration of load, or other similar events where security of supply may be compromised, and will make a copy of the protocol available to the Retailer upon request. The Retailer acknowledges that such protocol, which may be amended by the Distributor from time to time in accordance with the terms of such protocol, will be binding between the parties and priorities for Load Shedding and restoration of load as applied to Consumers is Confidential Information under this agreement.
- 5.4 **Load Shedding:** The Distributor may carry out Load Shedding in any of the following circumstances:
- (a) **Maintenance of Network equipment:** if the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 5.5 and 5.8 and schedule 5 as applicable.
 - (b) **Provision of supply within the Service Standards:** as permitted by the Service Standards, if the Consumer has elected to receive an interruptible or otherwise non-continuous supply of electricity.
 - (c) **Compliance with instructions from the System Operator:**
 - (i) to comply with a request or instruction received from the System Operator in accordance with the Code; or
 - (ii) if communication with the System Operator has been lost, and the Distributor reasonably believes that, had communication with the System Operator been maintained, the Distributor would have received a request or instruction from the System Operator to shed load in accordance with the Code.
 - (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
 - (i) maintain a safe environment (including for the purpose of maintaining public health and safety), consistent with the Distributor's health and safety policies;
 - (ii) prevent unexpected short term overloading of the Network;
 - (iii) prevent voltage levels rising or falling outside of statutory requirements;
 - (iv) manage System Security; and/or
 - (v) avoid or mitigate damage to the Network or any equipment connected to the Network.

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

Unplanned Service Interruptions

- 5.5 **Retailer to receive Unplanned Service Interruption calls:** The Retailer is responsible for receiving Unplanned Service Interruption calls from Consumers and managing further communication with affected Consumers until normal service is restored, as necessary, unless the Distributor provides to the Retailer 60 Working Days' written notice that the Distributor is responsible for receiving and managing communication with any or all Consumers in relation to any or all Unplanned Service Interruptions in which case the Retailer shall ensure that references to the Distributor's phone number, 0508 VECTOR, and its website, www.vector.co.nz, are included on all Tax Invoices sent to such Consumers as being the contact details for Consumers in relation to Unplanned Service Interruptions.
- 5.6 **Notification of Unplanned Service Interruptions:** After the occurrence of an Unplanned Service Interruption, the Distributor and Retailer will comply with the relevant service interruption communication policy as set out in schedule 5.
- 5.7 **Consumer requests for restoration of Distribution Services:** During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Retailer will forward to the Distributor any requests it receives from Consumers for the restoration of the Distribution Services as set out in schedule 5.

Planned Service Interruptions

- 5.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor will, as far as is reasonably practicable, schedule Planned Service Interruptions in a safe and efficient manner and with consideration to minimising disruption to Consumers.
- 5.9 **Distributor to comply with communication policies:** The Distributor will use its reasonable endeavours to comply with the Service Interruption communication policy set out in schedule 5 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Distribution Services.
- 5.10 **Costs of communication:** If the Distributor asks the Retailer to notify Consumers of a Planned Service Interruption in accordance with schedule 5, the Retailer will comply with such requests at its own cost, except:
 - (a) where re-notification of the Planned Service Interruption to Consumers is required solely due to the act or omission of the Distributor or its contractors. In such circumstances, the Distributor will pay the Retailer's direct out of pocket costs associated with renotifying the Consumers of the Planned Service Interruption. For clarity, Planned Service Interruptions rescheduled:
 - (i) at the request of the Consumer or another retailer; or
 - (ii) due to adverse weather conditions, major Network outages or access issues,

are Planned Service Interruptions which are considered not to be caused by the act or omission of the Distributor or its contractors (without limiting the meaning of this phrase); or

- (b) where the Distributor and the Retailer have agreed otherwise in writing.

Restoration of Distribution Services

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

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

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

5.12 **Retailer's remedy:** Except as provided in clause 11.15, the Retailer's only remedy if the Distributor fails to meet the timeframes in clause 5.11 is recovery of a Service Guarantee in accordance with schedule 1, if applicable.

6. LOAD MANAGEMENT

6.1 **Distributor may control load:** If:

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

the Distributor may control the relevant part of the Consumer's load in accordance with clause 6 and schedule 7.

6.2 **Retailer may control load:** Subject to clause 6.3, if the Retailer offers to a Consumer, and the Consumer elects to take up, a price option that provides a deliberately non-continuous level of service by allowing the Retailer to control part of or all of the Consumer's load, the Retailer may control the relevant part of the Consumer's load in accordance with clause 6 and schedule 7. 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, such protocols being intended to ensure that the security, safety and integrity of the Network is not adversely affected by such load control. The Retailer shall ensure that such protocols are followed when operating its Load Control System. 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, safety or integrity of the Network.

6.3 **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 a Consumer's ICP, but the Distributor has obtained the right to control part of the load at the same ICP in accordance with clause 6, the Retailer may only control the part of the Consumer's load that:

- (a) the Consumer has agreed the Retailer may control under a Consumer Contract or another agreement; and
 - (b) is separable from, and not already subject to, the Distributor's right to control part of the Consumer's load at the ICP obtained in accordance with clause 6.1.
- 6.4 **No interference with or damage to an Incumbent's Load Control System:** 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.
- 6.5 **Remedy if interference or damage:** If the Entrant or any part of the Entrant's Load Control System interferes with or causes damage to any part of the Incumbent's Load Control System, the Entrant will, on receiving notice from the Incumbent or on becoming aware of the situation, promptly and at its own cost remove the source of the interference and make good any damage.
- 6.6 **Retailer to make controllable load available to the Distributor for management of system security:** If the Retailer has obtained the right to control part of a Consumer's load in accordance with clause 6.2, the Retailer will:
- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Retailer has obtained the right;
 - (b) 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:
 - (i) comply with requests and instructions issued by the System Operator so as to manage System Security in accordance with the Code; and
 - (ii) manage security on the Network in response to emergency situations, such purposes having priority over all other purposes for which load may be controlled; and
 - (c) at all times operate its controllable load as a reasonably and prudent operator in accordance with Good Electricity Industry Practice.
- 6.7 **Limitations if Distributor elects to control the Retailer's load:** If the Distributor elects to control the Retailer's controllable load in accordance with clause 6.6, 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.
- 6.8 **Maintenance of Load Control Equipment:** A party providing Load Control Equipment will endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Control Equipment:
- (a) receives and responds to the appropriate load control signals;
 - (b) properly controls the appropriate load; and
 - (c) is otherwise fit for purpose.

- 6.9 **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.
- 6.10 **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 and the Distributor will pay the Retailer's reasonable out of pocket costs in doing so.
- 6.11 **Inclusion in Consumer Contracts:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement for the Consumer to ensure that, if it enters into any agreement or arrangement with any third party in relation to control of its load:
- (a) the load is not already subject to the Distributor's right of control;
 - (b) the third party does not interfere with or damage the Distributor's or the Retailer's Load Control Systems;
 - (c) if any damage occurs due to the actions of the third party, the Consumer will promptly and at its own cost remove the source of the interference and make good the damage;
 - (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner in respect of managing System Security in accordance with the Code and to meet the Service Standards for Distribution Services; and
 - (e) prior to controlling the load, the third party has entered into an agreement with the Distributor which sets out the protocols for the use of the load, including the coordination with the Distributor of the disconnection and reconnection of load.

7. LOSSES AND LOSS FACTORS

- 7.1 **Retailer to provide information to enable calculation of Loss Factors by Distributor:** The Distributor will obtain information 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 (it being intended that the reconciliation manager can rely on this authorisation pursuant to the Contracts (Privity) Act 1982). The Retailer will provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors, within 15 Working Days of the request from the Distributor.
- 7.2 **Calculation of Loss Factors:** Subject to clause 7.5, the Distributor will calculate Loss Factors in accordance with the Loss Factor Guidelines, if such guidelines are available.
- 7.3 **Change of Loss Factors:** If the Distributor wishes to change one or more Loss Category codes or Loss Factors, the Distributor will give the Retailer notice of the proposed change in accordance with the Code (including the reasons for the proposed change).
- 7.4 **Transparent Loss Factors methodology:** A notice provided to the Retailer in accordance with clause 7.3 will include details of the methodology and information used by the Distributor to determine the Loss Factors.

- 7.5 **Complaints about Loss Factors:** If, at any time, the Retailer considers that one or more Loss Factors notified by the Distributor are not appropriate, or that the methodology or information used to calculate the Loss Factor is incorrect, the Retailer may make a written complaint to the Distributor. The Distributor will consider the complaint in good faith, and may change the Loss Factors declared in its notice to reflect the Retailer's concerns in accordance with clause 7.3. The Distributor will decide whether to make the change and, if applicable, give notice under clause 7.3, no later than 20 Working Days after receipt of the complaint.
- 7.6 **Reference to the Electricity Authority:** If the Distributor does not change its notice under clause 7.3 after having received a complaint from the Retailer under clause 7.5, the Retailer may raise the issue with the Electricity Authority.

8. SERVICE PERFORMANCE REPORTING

- 8.1 **Performance reports:** Either party (the "Requester") may from time to time request that the other party (the "Provider") provide performance reports, including reports containing:
- (a) a comparison between the actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
 - (b) an explanation of the reasons for any significant under-performance by either party identified under clause 8.1(a), together with an explanation of the actions the party proposes to undertake to rectify that under-performance; and
 - (c) if a party claimed during the relevant reporting period that it was unable to meet the Service Standards due to the occurrence of a Force Majeure Event for which it invoked clause 23, give a full account of the nature of the Force Majeure Event and the impact of the Force Majeure Event on that party's performance in relation to the Service Standards.

The Provider will comply with such requests if it is reasonable to do so. The Provider may charge the Requester for the costs reasonably incurred in preparing and supplying such reports, provided that if a report is requested due to a suspected failure by the Provider to meet a Service Standard, and the report demonstrates that such failure existed, no charge may be levied.

- 8.2 **Commercial sensitivity and insurance not to be compromised:** Nothing in this clause 8 requires either party to disclose commercially sensitive information or other information that may adversely affect an insurance policy held by that party.

PART II - PAYMENT OBLIGATIONS

9. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 9.1 **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 9.1 prevents the Distributor from decreasing a Tariff Rate without the Retailer's agreement, or from increasing a Tariff Rate if agreed by the Retailer. Schedule 8 to this agreement will be deemed to be amended to reflect changes to the Tariff Rates pursuant to this clause 9.

9.2 **Process to change tariff structures:** Without limiting clause 9.1, 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. Schedule 8 to this agreement will be deemed to be amended to reflect changes to the tariff structure as Published. In consulting with the Retailer, the Distributor will endeavour to:

- (a) comply with the Tariff Structure Consultation Guidelines, including by implementing the good consultation practices set out in those guidelines; and
- (b) publish the final Tariff Structure and the reason for its decision, not later than the notice period specified in clause 9.3(a).

9.3 **Notice of Tariff Rate change:** The Distributor will give the Retailer notice of all Tariff Rate changes as specified in this clause 9.3. The Distributor will:

- (a) provide 60 Working Days' notice of the change, unless the Distributor is required by law to implement the change earlier or the Distributor has itself been given less than 60 Working Days' notice of the change, in which case the Distributor will give as much notice as reasonably practicable;
- (b) provide to the Retailer:
 - (i) an update of the pricing schedule and policy in schedule 8 in a way that makes changes from the previous version clear; and
 - (ii) without limiting clause 10, if an ICP, or a group of ICPs is to be allocated to a different Price Category, a mapping table that clearly shows the new Price Category to which each ICP or group of ICPs is to be allocated;
- (c) in addition to the requirements of 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.

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

9.5 **Tariff structure change and Tariff Rate change disputes:** Once a tariff structure or Tariff Rate is finalised and notified in accordance with clause 9.2 or 9.3 respectively, the Retailer may raise a Dispute under clause 25 in respect of the change only if the Retailer considers that the Distributor has not complied with clause 4.1. If a Dispute is raised, the Retailer will continue to pay the Distributor's invoices until the Dispute is resolved. When the Dispute is resolved, the Distributor will issue a Credit Note if required. The Retailer agrees that the pricing methodology and factual basis used to determine the Tariff Rate will not be subject to challenge or dispute in any way, including by means of the Dispute resolution procedure under clause 25.

- 9.6 **Changes containing an arithmetic error:** If the Retailer identifies an error in a tariff structure finalised and Published in accordance with clause 9.2, or a Tariff Rate notified in accordance with clause 9.3(a), 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 practicable 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 9.2 or giving notice under clause 9.3(a) (as the case may be), provided that the Distributor gives 40 Working Days' notice of such correction to the Retailer. 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 9.6.

10. APPLYING TARIFF RATES TO ICPs

- 10.1 **Distributor allocates Price Category:** The Distributor will allocate a Price Category to each ICP on its Network. 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 the eligible Price Categories to the ICP. In allocating a Price Category, the Distributor will have regard to:

- (a) the eligibility criteria for each Price Category that are set out in its pricing schedule and policy set out or referred to in schedule 8;
- (b) the attributes of the ICP; and
- (c) if known and relevant:
 - (i) the meter register configuration(s) of the Metering Equipment and any Load Control Equipment installed for the ICP, which may determine the Tariff Option or Tariff Options that apply if more than one Tariff Option is defined for the relevant Price Category;
 - (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.

- 10.2 **Retailer may request allocation of an alternative eligible Price Category to an ICP:** At any time, but no more than once a Year, the Retailer may request that the Distributor allocate an alternative Price Category to an ICP, and will provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor will apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 5 Working Days after receipt of notice of the Retailer's request. If the Distributor declines the request, it will provide the reasons for its decision.
- 10.3 **Retailer to select Tariff Option to match meter register configuration:** If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("**Tariff Options**"), the Retailer will select the Tariff Option that corresponds to the configuration of each meter register installed at the relevant ICP and notify the Distributor of that selection within 10 Working Days after its selection using the appropriate EIEP. If the meter register configuration at an ICP is changed at any time, the Retailer will change the Tariff Option to match the new configuration and notify the Distributor of the change using the appropriate EIEP within 10 Working Days after the change.
- 10.4 **Retailer request for reallocation of a Price Category if it considers a Price Category has been incorrectly allocated:** Under this clause 10.4 and clauses 10.5 and

10.7, a Price Category is “**Incorrectly Allocated**” to an ICP only if the ICP was not eligible for the Price Category allocated by the Distributor based on the relevant information available to the Distributor at the time it made the allocation. If the Retailer reasonably considers that a Price Category was Incorrectly Allocated, the Retailer will notify the Distributor as soon as practicable of the reasons why it considers that the Price Category was Incorrectly Allocated and identify a Price Category that the Retailer considers should have been allocated to the ICP, which must be a Price Category for which the ICP is eligible. If the Retailer, through such notice, demonstrates to the Distributor’s reasonable satisfaction that the Price Category has been Incorrectly Allocated, 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 Price Category to the ICP (the “**Corrected Price Category**”). If the Distributor does not consider that the Price Category has been Incorrectly Allocated, it will provide the reasons for its decision to the Retailer.

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

- (a) commence charging the Retailer in accordance with that Tariff Rate(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to clause 10.6, credit the Retailer with an amount (if positive) equivalent to:
 - (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
 - (A) the Commencement Date;
 - (B) the date the Distributor Incorrectly Allocated the Price Category to that ICP; and
 - (C) the Switch Event Date for that ICP recorded for the Retailer,up to the date on which the Distributor allocates a Corrected Price Category to that ICP; less
 - (ii) the charges that would have applied if the Corrected Price Category had been allocated to that ICP during the period referred to in subparagraph (i),provided that:
 - (iii) the amount of the charges to be credited to the Retailer under this clause 10.5 (if any) shall be calculated through the “wash-up” adjustment described in clause 11.6; and
 - (iv) the maximum period for which credit will be payable under this clause 10.5 is 14 months, unless otherwise agreed.

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

- (a) clause 10.7 applies to the ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer has not provided the Distributor with correct or complete information about the ICP or the Consumer necessary to determine Price Category eligibility (provided that information was not already known by the Distributor); or
- (c) the Price Category correction was necessary because the Retailer provided the Distributor with incorrect or incomplete information in relation to the ICP or the

Consumer or any other factors in respect of that ICP that were relevant to the allocation of a Price Category; or

- (d) if the initial Price Category was allocated on the basis of information provided by the Consumer or the Consumer's representative.

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

- (a) the Distributor will notify the Retailer accordingly including notification of the reasons why it considers that the Price Category has been Incorrectly Allocated, and identify the Price Category or Price Categories it considers the ICP is eligible for;
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Price Category has been correctly applied, the Distributor may allocate the Price Category that it considers appropriate to that ICP in accordance with clause 10.1, and may commence charging the Retailer for Distribution Services in accordance with that Price Category after a further 40 Working Days; and
- (c) the Distributor will provide to the Retailer information relevant to its decision.

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

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

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

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

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

11. BILLING INFORMATION AND PAYMENT

11.1 **Payment methodology:** The Distributor and the Retailer have agreed that the Distributor's charges for Distribution Services will be invoiced using a methodology known as [RM Normalised][As-Billed Normalised].

11.2 **Pro forma Tax Invoice:** Within 5 Working Days of the commencement of each calendar month, the Distributor will issue to the Retailer a pro forma Tax Invoice setting out the estimated Distribution Service charges payable by the Retailer in respect of the previous calendar month based on the Tariff Rate that applies to each ICP to which the pro forma Tax Invoice relates.

- 11.3 **Provision of data by Retailer:** Within 5 Working Days of the commencement of each calendar month, the Retailer will provide to the Distributor, using the relevant EIEPs, all information that the Distributor reasonably requires to enable it to calculate and verify the Distribution Services charges payable by the Retailer to the Distributor in respect of the previous month including consumption data in respect of all Energised or Re-Energised ICPs (including reporting zero consumption where the meter has been read and has not recorded any consumption since the previous reading).
- 11.4 **Late, incomplete, or incorrect information:** If the Retailer does not provide information to the Distributor in accordance with clause 11.3, or any information provided by the Retailer is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Electricity Industry Practice, the Retailer's charges for Distribution Services.
- 11.5 **Issuing of final Tax Invoice:** Before the end of each calendar month, the Distributor will:
- (a) calculate the final Distribution Services charges for the previous month based on the Tariff Rate that applies to each ICP and the information received from the Retailer in accordance with clause 11.3 or estimated by the Distributor in accordance with clause 11.4, and will issue a Tax Invoice for the final Distribution Services charges; and
 - (b) at the same time as it issues the Tax Invoice, provide to the Retailer, using the relevant EIEP, sufficiently detailed information to enable the Retailer to verify the accuracy of the Tax Invoice. The Tax Invoice may, at the Distributor's option, either:
 - (i) be issued as a Tax Invoice that replaces the pro forma Tax Invoice provided by the Distributor to the Retailer pursuant to clause 11.2 (in which case the Distributor will issue a full Credit Note in relation to such pro forma Tax Invoice before the final Tax Invoice is issued); or
 - (ii) be a Tax Invoice (or Credit Note) which adjusts the amount of the pro forma Tax Invoice to result in the correct charges being levied by the Distributor to the Retailer.
- 11.6 **Wash-Ups:** Both the Distributor and the Retailer recognise that due to the cyclical nature of meter reading it is impractical (within those limitations only) to provide completely accurate data for consumption and demand (as applicable) in relation to each ICP within the timeframe required for the provision of data by the Retailer under clause 11.3. The parties therefore agree that it is necessary to provide a structure for a subsequent "wash-up" adjustment to be made following the updated data being provided to the Distributor.
- (a) **Fixed Charges:** With regard to the fixed charges, where the Distributor's database or the Registry is updated retrospectively subsequent to the 4th Working Day following the current month, the Distributor will re-allocate fixed line charges between retailers within 3 months and 14 months of the retrospective changes being made. No re-allocation of charges will be retrospectively adjusted after more than 14 months has elapsed from the original billing date.
 - (b) **Variable Charges:** With respect to the variable charges, where the Retailer provides a new file of consumption data after the due dates specified in 11.3, the Distributor will re-allocate variable charges within 3 months and 14 months after the original billing date based on any retrospective data that becomes available. No re-allocation of charges will be retrospectively adjusted after more than 14 months has elapsed from the original billing date.

The Tax Invoice may, at the Distributor's option, either be:

- (c) issued as a Tax Invoice that replaces the final Tax Invoice provided by the Distributor to the Retailer pursuant to clause 11.5 (in which case the Distributor will issue a full Credit Note in relation to such final Tax Invoice before the replacement Tax Invoice is issued); or
- (d) a Tax Invoice (or Credit Note) which adjusts the amount of the final Tax Invoice to result in the correct charges being levied by the Distributor to the Retailer.

The Distributor will apply a Use of Money Adjustment in relation to the underpayment or overpayment by the Retailer, and will issue a Tax Invoice or Credit Note (as appropriate) to the Retailer in respect of the same.

11.7 **Due date for payment of pro forma Tax Invoice:** The settlement date for each pro forma Tax Invoice issued by the Distributor pursuant to clause 11.2 will be the 20th day of the month with the month being determined by reference to the date of the pro forma 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 fails to issue a pro forma Tax Invoice to the Retailer within 10 Working Days after the last day of the month to which the pro forma Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the pro forma Tax Invoice is issued late.

11.8 **Due date for payment of final Tax Invoice:** The settlement date for each final Tax Invoice issued by the Distributor pursuant to clause 11.5(b) will be the 20th day of the month following the date of the final Tax Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. The Distributor will credit the Retailer's account with the amount paid by the Retailer in respect of the relevant pro forma Tax Invoice so that only the net amount is payable by the Retailer to the Distributor pursuant to this clause. If the Distributor issues:

- (a) a Credit Note that adjusts the amount of the pro forma Tax Invoice; or
- (b) a full Credit Note and a new Tax Invoice to replace the pro forma Tax Invoice and the amount for payment in the new Tax Invoice is less than that in the pro forma Tax Invoice,

then this amount will be off-set against future invoices, or a refund issued by the Distributor to the Retailer within 6 Working Days upon written request from the Retailer.

11.9 **Due date for payment of wash-up Tax Invoice/Credit Note:** The settlement date for each wash-up Tax Invoice/Credit Note will be 20th day of the month following the date of the wash-up Tax Invoice/Credit Note, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day.

11.10 **Other invoices/credits:**

- (a) If applicable, the Distributor may issue a Tax Invoice or a Credit Note to the Retailer for the Services and any other sums due to the Distributor under this agreement (as the case may be).
- (b) If applicable, the Retailer may issue a Tax Invoice or a Credit Note to the Distributor for Service Guarantee payments which have accrued at any time during the period of three months prior to the date of the Tax Invoice or Credit Note (and which have not previously been issued) and any other sums due to the Retailer under this agreement (as the case may be).
- (c) If applicable, the Distributor may issue a Tax Invoice or a Credit Note to the Retailer for other charges or credits set out in the Distributor's pricing schedule and policy set out or referred to in schedule 8 in the manner advised by the Distributor to the Retailer from time to time.

- (d) Any Tax Invoice or Credit Note under clause 11.10(a) or (b) will be issued within 10 Working Days of the end of the month to which the Tax Invoice or Credit Note relates.
 - (e) The settlement date for any Tax Invoice issued under clause 11.10(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 issued late.
- 11.11 **Interest on late payment:** Subject to clause 11.12, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this clause 11 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.
- 11.12 **Disputed Tax Invoices:** If the Retailer or the Distributor disputes a Tax Invoice issued under this clause 11, the party disputing the Tax Invoice ("**Disputing Party**") will notify the other party ("**Non-disputing Party**") within 15 months of the date of supply of the Services to which the Tax Invoice relates ("**Invoice Dispute**") by a notice that is headed "Disputed Tax Invoice", which will refer to the fact it is given under this clause 11.12 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 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, but the amount need not be paid prior to the time set out in clause 11.8 or 11.9; 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 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. 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 11.8 or 11.9;
 - (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 25 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 11.8 or 11.9; and
 - (c) on the resolution of a Dispute under clause 25:
 - (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 11, and ending when payment is made.

11.13 **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, which is dealt with under clause 11.6) then within 20 Working Days after such error has been discovered and the amount has been agreed between the parties or determined under clause 25, 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.

11.14 **No set off:** Both parties will make the payments required to be made to the other under this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in clause 11.12, 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.

11.15 **Refund of charges:** If:

- (a) as a consequence of a fault on the Network (not being a Force Majeure Event or resulting from third party damage to the Network), there is a continuous interruption affecting a Consumer's Point of Connection for 24 hours or longer; and
- (b) the Retailer within 60 days of the interruption requests the Distributor to refund the charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which the loss of supply continued,

the Distributor will issue a Credit Note and refund the Distribution Services charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which supply was interrupted.

12. PRUDENTIAL REQUIREMENTS

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

- (a) the Retailer will maintain an acceptable credit rating; or
- (b) the Retailer will provide and maintain acceptable security by, at the Retailer's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 12.6 (as may be reviewed by the Distributor in accordance with clause 12.10) ("**Cash Deposit**"), which the Distributor will hold in a trust account that the Distributor will establish and operate in accordance with clause 12.24; 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 12.6. The security must not expire prior to the date on which all amounts owing under this agreement by the Retailer to the Distributor have been paid; or
- (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in clause 12.6.

12.2 **Acceptable credit rating:** For the purposes of clause 12.1, an acceptable credit rating means that the Retailer or the third party (as the case may be):

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

12.3 **Retailer may elect prudential requirements:** The 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 12.1 at any time, by complying with clause 12.4.

12.4 **Change in prudential requirements complied with:** If the Retailer elects to change the way in which it complies with the prudential requirements in accordance with clause 12.3, 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 12.16. The change will come into effect on the intended date, provided that the Retailer has complied with all its obligations under this agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of clause 12.1.

12.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) will provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.

12.6 **Value of security:** The value of security required for the purposes of this clause 12 as at the Commencement Date is the amount advised by the Distributor to the Retailer in writing prior to the Commencement Date.

12.7 **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 12.3; and

(b) the parties must comply with clause 12.14.

12.8 **Additional security requirements:** The following provisions apply in respect of any Additional Security provided:

- (a) if the Additional Security is in the form of a cash deposit, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(a) of the Code, and the Additional Security will be held as if it were part of the Cash Deposit under this agreement;
- (b) if the Additional Security is in the form of security from a third party, the Distributor will pay a charge to the Retailer calculated in accordance with clause 12A.5(3)(b) of the Code;
- (c) any money required to be paid by the Distributor to the Retailer in accordance with this clause 12.8 will be paid by the Distributor to the Retailer on a quarterly basis net of any amounts required to be withheld by law; 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 charges referred to in sub-clause (a) will not be payable by the Distributor under this clause 12.8 in relation to the excess.

12.9 **Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will estimate the value of security required under clause 12.6 for the first 6 months of this agreement, subject to any reassessment of the value under this agreement, having regard to:

- (a) the Distributor's historical records of the Distribution Service charges in respect of the relevant ICPs; or
- (b) in the absence of such records, a bona fide business plan prepared by the Retailer in good faith necessary for the Distributor to determine the value of security that it requires from the Retailer.

12.10 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review, the value of security required to be provided by the Retailer at any time.

12.11 **Retailer to notify Distributor of changes affecting security:** Subject to clause 12.12, the Retailer will immediately notify the Distributor if any of the following occurs:

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

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

12.12 **Public issuers and listed companies:** For the purpose of clause 12.11, 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.

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

12.14 **Change to the value of security:** If:

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

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

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

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

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

12.16 **Distributor or Retailer to effect changes in value or type of security:** The Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security, within 5 Working Days of notification under clause 12.4, 12.14 or 12.15. Refunds of Cash Deposits and reductions of the value of third party security required will be made in accordance with clause 12.17 or 12.19.

12.17 **Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it will refund all or part of the Cash Deposit into a bank account nominated by the Retailer on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.

- 12.18 **Cash Deposit on Insolvency Event:** If an Insolvency Event occurs in relation to the Retailer:
- (a) the Retailer will not be entitled to a return of the Cash Deposit; and
 - (b) if the Retailer fails or has failed to pay an amount owing under this agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest), on 2 Working Days' notice to the Retailer.
- 12.19 **Reduction of third party security:** If the Distributor decreases the value of third party security required in accordance with this agreement, the Retailer may arrange for the issuing of new third party security for the lesser value, in satisfaction of clause 12.1(b)(ii), which will replace the earlier third party security.
- 12.20 **When the Distributor may make a call on security:** The Distributor may make a call on security in accordance with clause 12.21 if:
- (a) the Retailer has provided acceptable security in accordance with clause 12.1(b);
 - (b) the Retailer fails to pay an amount due under this agreement; and
 - (c) the amount is not subject to a genuine dispute.
- 12.21 **Calls on security:** If this clause 12.21 applies in accordance with clause 12.20, the Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under clause 12.23), call on the security as follows:
- (a) if the Retailer provided a Cash Deposit (which includes a deemed Cash Deposit), 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.
- 12.22 **Requirement to maintain security:** To avoid doubt, if the Distributor draws down some or all of a Cash Deposit held by the Distributor under this agreement, or calls on the provider of a third party security, the Retailer will within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in clause 12.6 and the value of any Additional Security required by clause 12.7 (as each may be reviewed by the Distributor in accordance with clause 12.10), as required by clause 12.1(b).
- 12.23 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the third party security.
- 12.24 **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 12.24(a) in the Trust Account for the purposes set out in clause 12.24(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) that the Retailer uses for its banking purposes and if the Retailer changes banks;
- (e) the Trust Account will bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor will pay the Retailer the interest earned on the Cash Deposit (except for the amount of the Cash Deposit that is Additional Security, in respect of which a charge should be paid in accordance with clause 12.8) on a quarterly basis net of account fees and any amounts required to be withheld by law, unless the parties agree otherwise;
- (f) if this agreement is terminated, the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Retailer) to the Retailer in accordance with clause 12.17, provided that the Retailer:
 - (i) is not otherwise in default of this agreement;
 - (ii) is not subject to an Insolvency Event, in which case clause 12.18 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.

12.25 **Release of third party security:** If this agreement is terminated, the Distributor will release any third party security, provided that the Retailer has met all of the requirements set out in clause 12.24(f).

PART III - OPERATIONAL REQUIREMENTS

13. ACCESS TO THE CONSUMER'S PREMISES

13.1 **Rights of entry onto Consumer's Premises:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement that the Consumer provide the Distributor and its agents with safe and unobstructed access onto and within the Consumer's Premises for all of the following purposes:

- (a) to inspect, maintain, operate or replace the Distributor's Equipment;
- (b) to install, read, maintain or replace Metering Equipment;
- (c) to Energise, Re-Energise, disconnect or reconnect the Consumer in accordance with this agreement;

- (d) to access the Retailer's Equipment to verify metering information, including, in the event of termination of this agreement, to determine any charges outstanding at the time of termination;
- (e) for the safety of persons or property;
- (f) to ensure that the Consumer fulfils its obligations in accordance with clause 14.6;
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Consumer Contract; and
- (h) for any other purpose related to the provision of Services under this agreement or to enable the Distributor to comply with law.

13.2 **Exercise of access rights:** In exercising its access rights under clause 13.1, the Distributor will, except to the extent that the Distributor has any other binding agreement setting out its access rights directly with the Consumer or if not reasonably practicable in the circumstances:

- (a) comply with sections 23A to 23D, 57 and 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 13.1, provided that the Distributor will give notice to a Consumer if the Distributor intends to access the Consumer's Premises for any reason (except if the Distributor requires access to carry out a routine inspection or operation of the Distributor's Equipment, or for reasons relating to System Security or the security of the Network, or in an emergency situation);
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Consumer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer (including minimising any direct impact on the Consumer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate and professional manner at all times while on the Consumer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor or provide details of who the Consumer may call to confirm that such personnel are undertaking actions on behalf of the Distributor; and
 - (iii) if practicable, identify themselves to the Consumer before entering the Consumer's property; and
- (d) comply with the Consumer's reasonable requirements, practices and procedures as disclosed by the Consumer or as generally practised for health and safety, and security requirements.

13.3 **Distributor may disconnect:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts a provision to the effect that if the Consumer breaches the provisions of its Consumer Contract that require it to give the Distributor access to the Distributor's Equipment on the Consumer's Premises, and the breach is material or persistent, the Distributor may disconnect the Consumer's ICP from the Network and access the Consumer's Premises to reclaim the Distributor's Equipment, provided that:

- (a) if access was required for a purpose described in clause 13.1(a), (b), (d), (g) or (h), the Distributor or Retailer gave the Consumer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 13.1(c), (e) or (f), such notice is not required); and

- (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with the relevant provisions of clause 19 and schedule 6.
- 13.4 **Costs of disconnection:** The Distributor will not be liable for any loss the Retailer may suffer or incur as a result of disconnection carried out because the Consumer has not given the Distributor access in accordance with the relevant Consumer Contract. The Retailer will reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.
- 13.5 **Existing agreement will prevail:** In the event of a conflict between clause 13 and any provision of any existing agreement between the Consumer and Distributor with respect to the Distributor's access rights to the Consumer's Premises, the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.
- 14. GENERAL OPERATIONAL REQUIREMENTS**
- 14.1 **Interference or damage to Distributor's Equipment by Consumers:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement that, during the term of the Consumer Contract and until the end of the period ending 6 months after the termination of the Consumer Contract, the Consumer:
- (a) will not interfere with or damage, and will ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property);
- (b) will take all reasonable precautions necessary to protect the Distributor's Equipment from damage;
- (c) will pay the cost of making good the damage to the Distributor if the Distributor's Equipment is damaged by the act or omission of the Consumer or the Consumer's agents or invitees; and
- (d) will provide the Distributor with a reasonable opportunity to recover the Distributor's Equipment prior to any destruction of the Consumer's Premises.
- 14.2 **Interference or damage to Distributor's Equipment or Network by the Retailer:** The Retailer will ensure that it and its employees, agents and invitees do not:
- (a) interfere with or damage the Distributor's Equipment (including, without limitation, for the period of 6 months after termination of this agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property); or
- (b) interfere with the Network or cause or permit any person, material or device to do so.
- 14.3 **Costs of making good any damage:** If any of the Distributor's Equipment is damaged by an act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.
- 14.4 **Interference or damage to Retailer's Equipment or Consumer's Installations:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Consumer's Installation (including, without limitation, for a period of 6 months after termination of this agreement) without the prior written consent of the Retailer or the Consumer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons, to prevent damage to property or for reasons relating to System Security or the security of the Network).

- 14.5 **Costs of making good any damage:** If the Retailer's Equipment or the Consumer's Installation is damaged by the Distributor or the Distributor's employees, agents or invitees, the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause 14.5 is for the benefit of the Consumer and may be enforced by the Consumer under the Contracts (Privity) Act 1982.
- 14.6 **Interference with the Network:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts a provision to the effect that the Consumer will not, without the prior written agreement of the Distributor:
- (a) inject or attempt to inject any energy into the Network; or
 - (b) convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy in accordance with this agreement and load control signals transmitted by or with the written consent of the Distributor) over the Network or cause or permit any other person to do so.
- 14.7 **Connection of Distributed Generation:** The Retailer will:
- (a) purchase electricity from Distributed Generation connected to the Network only if the Retailer has confirmation from the Distributor that there is a Connection Contract in place between the Distributed Generator and the Distributor; and
 - (b) notify the Distributor if the Retailer has reasonable grounds to suspect that a Distributed Generator does not have a Connection Contract with the Distributor and has connected its Distributed Generation directly or indirectly to the Network.
- 14.8 **Notification of interference, damage or theft:** If the Distributor or Retailer discovers any interference or damage to the other party's equipment or the Consumer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party will notify the affected party as soon as it is practicable to do so. The Retailer will notify the Distributor of any other incident or matter that has, or could have, an adverse effect on the Network or the supply of electricity to or from the Network.
- 14.9 **Additional Metering Equipment:** Either party may, at its own cost, install and maintain additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that:
- (a) the additional Metering Equipment does not interfere with any other equipment owned or used by the other party; and
 - (b) the party installing the Metering Equipment ensures that it is installed and maintained in accordance with Good Electricity Industry Practice.
- 14.10 **Responsibility for damages:** If the party installing or maintaining additional Metering Equipment (the "**First Party**") causes damage to the equipment or invalidates the existing Metering Equipment certification of the other party, the First Party will:
- (a) meet the cost of making good the damage or recertifying the existing Metering Equipment (including the cost of any fines or penalties imposed under the Code as a result of the damage or invalidation of certification); and
 - (b) if the damage invalidates the existing Metering Equipment certification, and the other party incurs costs because of its use of the Metering Equipment during the period of non-certification, the First Party will reimburse the other party for those costs (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.

14.11 **Safe Housing of Equipment:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts (subject to any alternative written agreement between the Retailer and the Distributor) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Consumer's Premises that the Distributor determines is necessary.

14.12 **The Network:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts an agreement by the Consumer that:

- (a) the Network, including any part of the Network situated on Consumer's Premises, is and will remain the sole property of the Distributor;
- (b) no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Equipment that is used to provide any such services; and
- (c) no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Metering Equipment owned by any person other than the Consumer.

15. NETWORK CONNECTION STANDARDS

15.1 **Publication of Network Connection Standards:** The Distributor will publish its Network Connection Standards on its website.

15.2 **Undertaking in Consumer Contracts:** The Retailer will:

- (a) subject to clause 27.1, include in its Consumer Contracts an undertaking that the Consumer will comply with the Distributor's Network Connection Standards; and
- (b) include in its Consumer Contracts a statement that the Network Connection Standards can be found on the Distributor's website.

16. MOMENTARY FLUCTUATIONS

16.1 **Momentary Fluctuations:** Subject to clause 27.1, the Retailer will:

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

17. CONSUMER SERVICE LINES

17.1 **Responsibility for Consumer Service Lines:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts a statement to the effect that it is the Consumer's responsibility to maintain the Consumer Service Lines in a safe condition using a suitably qualified person (except if and to the extent that the Distributor is required by law to

provide and maintain those lines or the Distributor agrees to maintain the Consumer Service Lines).

18. TREE TRIMMING

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

18.2 **Distributor's right and obligations:** The Distributor will comply with the Electricity (Hazards from Trees) Regulations 2003.

19. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPs

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

PART IV: OTHER RIGHTS

20. BREACHES AND EVENTS OF DEFAULT

20.1 **Breach of agreement:** Subject to clause 20.6, if either party (the "**Defaulting Party**") fails to comply with any of its obligations under this agreement the other party may notify the Defaulting Party that it is in breach of this agreement. The Defaulting Party will remedy any breach within the following timeframe:

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

20.2 **Distributor will exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with clause 12.1(b), and the Retailer has committed a Serious Financial Breach of the type described in sub-clause (a) of the definition of Serious Financial Breach, the Distributor may give notice to the Retailer under clause 20.1 and a notification under clause 20.4, but only if:

- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
- (b) the Retailer has arranged for a third party to provide acceptable security in accordance with clause 12.1(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with clause 12.21(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.

20.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 20.1:

- (a) the breach is an "**Event of Default**" for the purposes of this agreement;
- (b) the other party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 20; and

- (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as possible.

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

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

then no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1:

- (d) the other party may issue a notice of termination in accordance with clause 21.2;
- (e) 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;
- (f) if the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority in writing that the Retailer is in breach of this agreement and, if relevant, notify the clearing manager in accordance with Part 14 of the Code;
- (g) if the Retailer is the Defaulting Party and the Event of Default is a Serious Financial Breach, the Distributor may advise, or require the Retailer to 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 22), how it might affect their electricity supply and what steps the Consumer must or will have the option to take in the circumstances;
- (h) 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;
- (i) exercise its rights, if applicable, under clauses 20.7 to 20.14; and/or
- (j) exercise any other legal rights available to it.

20.5 **Other Events of Default:** If a breach is not an Event of Default to which clause 20.4 applies, the non-Defaulting Party may:

- (a) refer the matter to Dispute resolution in accordance with clause 25 no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1; and
- (b) exercise any other legal rights available to it.

20.6 **Insolvency Event:** Notwithstanding clause 20.1, if either party is subject to an Insolvency Event, the non-Defaulting Party may:

- (a) immediately issue a notice of termination in accordance with clause 21.2;
- (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 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, or require the Retailer to 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 22), how it might affect their electricity supply and what steps the Consumer must or will have the option to take in the circumstances;
- (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 20.7 to 20.14; and/or
- (g) exercise any other legal rights available to it.

20.7 **Receivership Option:** The Retailer's initial election of either the provisions of clause 20.10 ("**Receivership Option A**") or the provisions of clause 20.11 ("**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.

20.8 **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 20.8(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 paying charges for Distribution Services which in aggregate include or represent 20% or more of the total charges for Distribution Services due to the Distributor in respect of that month from all retailers. The Distributor will notify the Retailer if the Distributor is aware that the Retailer has reached such threshold.

20.9 **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.

20.10 **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 20.1(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 20.13 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.

20.11 **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 20.1(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 the provisions of clause 22) 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 another 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 another 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.

20.12 **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 less than the lesser of \$100,000 or 20% of the charges for Distribution Services payable by the Retailer in respect of the month prior to the month in which such breach occurred unless such default is a breach of clause 12; 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.

20.13 **Property for Receiver:** The property of the Retailer in respect of which a receiver may be appointed under clause 20.10 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 Consumer's 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.

20.14 **Receiver's acts:** A receiver appointed under clause 20.10 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 an other retailer:

- (a) take possession of the property referred to in clause 20.13 (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.

21. TERMINATION OF AGREEMENT

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

- (a) **At will:** either party may terminate this agreement by giving at least 120 Working Days' notice in writing of termination and the date on which this agreement will terminate. The notice of termination may not be given under this clause 21.1 before 4 years and 6 months from the commencement date of the first use of system agreement – electricity 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 25 if the other party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach; or
- (c) **Illegality:** either party may terminate this agreement on 1 Working Day's notice if the 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 31.5 it is not practicable for this agreement to continue; or

- (d) **Termination by the Retailer if the Retailer is not supplying electricity on the Network:** the Retailer may terminate this agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying electricity to any Consumer through the Network; or
- (e) **Termination by the Distributor if the Retailer is not supplying electricity on the Network:** the Distributor may terminate this agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with electricity through the Network; 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 23.3; and
 - (ii) the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice of termination to remain bound by its obligations under this agreement, provided that if the party who wishes to terminate this agreement is the party that gave notice of the Force Majeure Event, the party has complied with clauses 23.3 and 23.4.

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

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

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

21.3 **Notice to Consumers:** Either party may copy any notice given under clause 21.2 to any or all of the Consumers (notwithstanding the provisions of clause 22).

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

21.5 **Retailer remains liable for charges for remaining Consumers:** If this agreement is terminated, the Retailer remains liable to pay any charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Retailer will not be liable to pay any charges for Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP). Within 5 Working Days of this agreement being terminated, the Retailer must notify the Distributor of all ICPs that have not been disconnected or switched to another retailer. The Distributor may charge for such Services at the prices that apply at the time of termination, including any applicable disconnection fees.

21.6 **Obligations to continue until termination:** The parties will continue to meet their responsibilities under this agreement up to the effective date of termination. If the Distributor continues to charge the Retailer for Services after the effective date of termination of this agreement in accordance with clause 21.5, then the Retailer will

continue to be bound by all of the terms of this agreement as if the agreement had not been terminated for so long as the Retailer is liable to pay such charges.

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

- (a) the parties 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.

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

22. CONFIDENTIALITY

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

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as provided for in clause 22.2; and
- (b) only use Confidential Information for the purposes expressly permitted by this agreement.

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

- (a) **By agreement in writing:** if the Retailer and Distributor agree in writing to the disclosure of the information; 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 (except where it does so as a result of a breach by either party of its obligations under this clause 22 or a breach by any other person of that person's obligation of confidence); 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 body or authority; or
 - (ii) any judicial or other arbitration process; or
 - (iii) the regulations of any stock exchange on which the share capital of either party is from time to time listed or dealt in; 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 will be made fully aware of the party's obligations of confidence in relation thereto; and

- (iii) any copies of the information clearly identify it as Confidential Information; 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 the agreement; or
 - (g) **Released to a Consumer:** if the Confidential Information relates to a Consumer and the Consumer has requested the release of the information.
- 22.3 **Public notice of Retailer's default:** Notwithstanding clauses 22.1 and 22.2, the Distributor may disclose Confidential Information to Consumers following an Event of Default that is a Serious Financial Breach or following an Insolvency Event in relation to the Retailer, for the purpose of notifying the Consumers that they may wish to engage another retailer for supply of electricity.
- 22.4 **Unauthorised disclosure:** For the avoidance of doubt, a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 22.2(f).

23. FORCE MAJEURE

23.1 Force Majeure Event: A "Force Majeure Event" occurs if:

- (a) a party fails to comply with or observe any provision of this agreement (other than payment of any amount due); and
- (b) such failure is caused by:
 - (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
 - (A) due to natural causes; and
 - (B) that was not reasonably foreseeable; or
 - (C) if it was reasonably foreseeable, the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with Good Electricity Industry Practice; or
 - (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) the failure of the Network or any part of it which can be reasonably proven by the Distributor to be an event that did not arise from the Distributor's failure to act in accordance with Good Electricity Industry Practice; or
 - (vi) any other event or circumstance beyond the reasonable control of the party invoking this clause 23; and

- (c) the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with Good Electricity Industry Practice.
- 23.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event.
- 23.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it will:
 - (a) notify the other party as soon as reasonably practicable that it is invoking this clause 23;
 - (b) provide the full particulars of the potential or actual Force Majeure Event; and
 - (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 23.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking this clause 23 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).
- 23.5 **No obligation to settle:** Nothing in clause 23.4(a) is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.
- 23.6 **Charges continue:** If a Force Majeure Event occurs:
 - (a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but
 - (b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event.

24. AMENDMENTS TO AGREEMENT

- 24.1 **Changes to agreement:** A change may be made to this agreement:
 - (a) if the change is to one or more of the Variable Provisions and the change is made in accordance with clause 24.2; or
 - (b) if the change is a change to schedule 8 and the change is made in accordance with clause 9; or
 - (c) if 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 of 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 24.4; or
 - (d) if the change is made in accordance with clause 24.5 and involves:

- (i) permanent disconnection of all or part of the Network from a GXP; or
- (ii) the construction of a new GXP; or
- (e) if the change does not fall into any of the categories set out above, and the change is made in accordance with clause 24.4.

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

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

24.3 **Distributor seeks change to 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 30 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.

24.4 **Procedure for changes required by law or necessary due to change in law, including the Code, and other changes:** The following procedures will apply to changes contemplated by clauses 24.1(c) and 24.1(e):

- (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 24.1(c), specify the provisions of the Code, the mandatory rules or protocols, or the laws that are the basis for the proposed change; or
 - (ii) if the proposed change is contemplated by clause 24.1(e), set out the reasons for the proposed change; and
 - (iii) set out the change in the form that the change is proposed to be incorporated in this agreement;

- (b) **Good faith:** the parties will negotiate the change in good faith;
- (c) **By agreement:** if the Distributor and the Retailer agree to the proposed change they will promptly sign a written variation to this agreement documenting the change, and this agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation;
- (d) **Procedure for changes required by law or necessary due to change in law, including the Code, if the parties have not agreed:** subject to clause 24.4(e), if the proposed change is contemplated by clause 24.1(c) and 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 any independent, experienced and suitably qualified person agreed between the parties or failing agreement, appointed by the President for the time being of the New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
 - (i) will be the minimum necessary to effect the change required or necessary under clause 24.1(c);
 - (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; and
- (e) **Procedure for changes if the parties have not agreed:** notwithstanding clause 24.4(d), if the proposed change is contemplated by clause 24.1(c) or 24.1(e) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under sub-clause (a), if retailers supplying at least 66% 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 effective 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% 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).

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

- (a) **Notice of Proposal:** the Distributor will notify the Retailer that it proposes to:
 - (i) construct and operate, or agree with a Transmission Provider to have constructed and operated, a new GXP; or
 - (ii) permanently disconnect the Network from a GXP,

such proposed change being a “**Proposal**”;

- (b) **Information about Proposal:** the Distributor will provide in writing to the Retailer the details of the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal;
- (c) **Notification:** the Distributor will notify the Retailer about the Proposal a reasonable period of time before it is implemented; and
- (d) **Implementation:** The Distributor will provide the Retailer at least 20 Working Days’ notice of the date on which the commissioning of or permanent disconnection from the GXP is expected to be complete, and this agreement will be deemed to be varied from that date to the extent necessary as a result of the commissioning or permanent disconnection.

24.6 **Exception:** If a change to the agreement has a de minimis effect on the contractual undertakings of the parties (for example, 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 24.1 to 24.5 will apply to the change. If the party receiving such a notice disagrees that the change has a de minimis effect, the party may raise a dispute in accordance with clause 25.

25. DISPUTE RESOLUTION PROCEDURE

25.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination (“**Dispute**”), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties will promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) of the parties for resolution.

25.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, the parties may agree that the Dispute be referred to mediation.

25.3 **Appointment of mediator:** Within 10 Working Days of an agreement by the parties to refer the Dispute to mediation in accordance with clause 25.2, 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.

25.4 **Conduct of mediation:** In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.

25.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.

25.6 **Conduct during mediation:** In all matters relating to the mediation:

- (a) **Act in good faith:** the parties and their representatives will act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
- (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;

- (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation; 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.
- 25.7 **Arbitration to resolve disputes:** Either party may refer the Dispute to arbitration if the Dispute:
- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
 - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with clause 25.1 within 15 Working Days of the matter being referred to them and the Dispute was not referred to mediation within the time specified in clause 25.2.
- 25.8 **Arbitration:** A Dispute referred to arbitration under clause 25.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 25.9 **Choice of arbitrator:** The sole arbitrator will be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 25.7, the arbitrator will be appointed by the President of the New Zealand Law Society.
- 25.10 **No connection to previous mediator or previous mediation:** If the Dispute has been referred to mediation in accordance with clause 25.2, 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.
- 25.11 **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.

26. LIABILITY

- 26.1 **Payments of charges:** Nothing in this clause 26 will operate to limit the liability of either party to pay all charges and other sums due under this agreement.
- 26.2 **Direct damage:** Except in relation to liability under clauses 26.10, 26.15, 26.16(b), 26.17, 26.18(b) and 27.3, 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 only for direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this agreement.
- 26.3 **Excluded liability:** Except in relation to liability under clauses 26.10, 26.15, 26.16(b), 26.17, 26.18(b) and 27.3, 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 26.2); or

- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

26.4 **Liability in contract only:** Except as expressly provided in this clause 26, 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.

26.5 **Distributor not liable:** Except as provided in clause 26.10, the Distributor will not be liable for:

- (a) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or

- (b) any failure to convey electricity to the extent that:

- (i) such failure arises from any act or omission of any Consumer or other person excluding the Distributor and its officers, employees or agents; or

- (ii) such failure arises from:

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

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

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

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

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

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

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

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

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

- (c) any failure to perform any obligation under this agreement caused by the Retailer's failure to comply with this agreement, except to the extent that the

failure is caused or contributed to by the Distributor not acting in accordance with this agreement.

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

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

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

26.7 **Distributor’s limitation of liability:** Except in relation to liability under clauses 26.1, 26.10 and 26.18(b) and subject to clause 26.9, but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Distributor to the Retailer under or in relation to this agreement (whether in contract, tort (including negligence) or otherwise) will:

- (a) subject to the further limitation of the maximum total liability of the Distributor to the Retailer in any Year under 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:
 - (i) \$10,000, where the ICP is a Residential ICP or \$20,000, where the ICP is a Non-Residential ICP; and
 - (ii) 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 system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Distributor
0 to 2.5%	\$700,000
>2.5% to 5%	\$1,400,000
>5% to 7.5%	\$2,100,000
>7.5% to 10%	\$2,800,000
>10% to 12.5%	\$3,500,000
>12.5% to 15%	\$4,200,000
>15% to 17.5%	\$4,900,000
>17.5% to 20%	\$5,600,000

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Distributor
>20% to 22.5%	\$6,300,000
>22.5% to 25%	\$7,000,000
>25% to 27.5%	\$7,700,000
>27.5% to 30%	\$8,400,000
>30%	\$9,100,000

26.8 **Retailer's limitation of liability:** Except in relation to liability under clauses 26.1, 26.15, 26.16(b), 26.17 and 27.3 and subject to clause 26.9, but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Retailer to the Distributor under or in relation to this agreement (whether in contract, tort (including negligence) or otherwise) will:

- (a) subject to the further limitation of the maximum total liability of the Retailer to the Distributor in any Year under 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:
 - (i) \$10,000, where the ICP is a Residential ICP or \$20,000, where the ICP is a Non-Residential ICP; and
 - (ii) the amount of the claimable loss or damage suffered; and
- (b) in respect of all events or circumstances during any Year under all use of system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Retailer
0 to 2.5%	\$700,000
>2.5% to 5%	\$1,400,000
>5% to 7.5%	\$2,100,000
>7.5% to 10%	\$2,800,000
>10% to 12.5%	\$3,500,000
>12.5% to 15%	\$4,200,000

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Retailer
>15% to 17.5%	\$4,900,000
>17.5% to 20%	\$5,600,000
>20% to 22.5%	\$6,300,000
>22.5% to 25%	\$7,000,000
>25% to 27.5%	\$7,700,000
>27.5% to 30%	\$8,400,000
>30%	\$9,100,000

26.9 **Exclusion:** Clauses 26.7 and 26.8:

- (a) do not limit a party's liability under clause 26.10, 26.15, 26.16(b), 26.17, 26.18(b) or 27.3; and
- (b) do not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Consumer failing to comply with the Distributor's Network Connection Standards;
 - (ii) the Retailer is required by this agreement to include in its Consumer Contracts a provision requiring the Consumer to comply with those Network Connection Standards; and
 - (iii) the Consumer Contract between the Retailer and the Consumer did not include such a provision.

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

- (a) If:
 - (i) there has been a failure of the acceptable quality guarantee in the Consumer Guarantees Act 1993 in relation to the supply of electricity to a Consumer by the Retailer (a "**Failure**");
 - (ii) the Failure was wholly or partially the result of an event, circumstance or condition associated with the Network;
 - (iii) the Failure was not a result of the Distributor complying with a rule or an order with which it was legally obliged to comply;
 - (iv) the Failure was not a result of action taken by the System Operator under the Act;
 - (v) the Consumer obtains a remedy under Part 2 of the Consumer Guarantees Act 1993 in relation to the Failure against the Retailer; and
 - (vi) that remedy is a cost to the Retailer (a "**Remedy Cost**"),

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 Cost that is attributable to the event, circumstances 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, circumstance or condition 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 comply with clause 26.11 in respect of the Claim.

The parties agree that the indemnity contained in this clause 26.10 (together with the provisions of clauses 26.11 and 26.12) shall apply instead of the form of indemnity specified in Schedule 12A.1 of the Code, which the parties agree pursuant to clause 12A.6(4) of the Code will be omitted from this agreement.

26.11 Claims provisions: The following provisions shall apply in respect of each Claim:

- (a) The Retailer will:
 - (i) give written notice of the Claim to the Distributor, within 5 Working Days of receipt of the Claim, specifying the nature of the Claim in reasonable detail and will make available to the Distributor all information, books and records relevant to the Claim;
 - (ii) not incur any costs or expenses for which indemnification will be sought, or make any determination, admission, settlement or compromise in respect of the Claim, without first obtaining the Distributor's written consent, which may not be unreasonably withheld or delayed;
 - (iii) cooperate with the Distributor, in such manner as the Distributor may reasonably require, in respect of the Claim;
 - (iv) if the Distributor so requests, permit the Distributor to communicate directly with the relevant Consumer in relation to the Claim; and
 - (v) without limiting subparagraphs (iii) and (iv), take such action at such time as the Distributor may reasonably require in respect of any determination to be made by the Retailer in relation to the Claim or to avoid, resist, dispute, defend or appeal any action in respect of the Claim.
- (b) If the Distributor is notified of any potential Claim, the Distributor will be entitled to determine whether the event, circumstance or condition giving rise to the Claim constitutes a Failure of the kind referred to in clauses 26.10(a)(ii), 26.10(a)(iii) and 26.10(a)(iv) and to assume management and defence of the Claim. The Distributor will advise the Retailer as soon as practicable after being notified of the Claim whether or not it intends to assume the management and defence of the Claim. Where the Distributor assumes the management and

defence of the Claim it will, subject to the terms of this agreement, be entitled to determine the conduct of that Claim. If the Distributor assumes management of the Claim, the Retailer shall be entitled to make it clear to the relevant Consumer that the Distributor is dealing with the Claim as it relates to the Network. Whoever conducts the management and defence of the Claim will ensure that:

- (i) the other party is kept informed on a timely basis of any development in relation to the Claim; and
 - (ii) to the extent practicable, the other party and its legal counsel (to the extent applicable) are consulted in a timely manner prior to taking any significant steps in relation to the Claim.
- (c) If, in respect of any Claim brought against the Retailer, the management and defence of which has been assumed by the Distributor pursuant to sub-clause (b), the Distributor intends (whether by reason of any fact or matter which is asserted or proven in such proceedings or otherwise) to assert that the indemnity in clause 26.10 does not apply, the Distributor will promptly notify the Retailer accordingly. In that event, the Retailer shall be entitled to resume the conduct of such parts of such Claim as relate to matters for which the Distributor disputes its liability to indemnify the Retailer, and it shall be agreed or determined, as between the Retailer and the Distributor, whether the indemnity in clause 26.10 applies. Neither the Distributor nor the Retailer shall compromise or settle any such Claim until that matter is agreed or determined.
- (d) Notwithstanding sub-clause (c), any adjudication of a Claim prior to agreement or determination as to whether the indemnity in clause 26.10 does, or does not, apply will not prejudice the right of the Retailer or the Distributor to assert that the indemnity in clause 26.10 does, or does not, apply.
- (e) The Retailer may by written notice to the Distributor at any time assume the unrestricted conduct of the management and defence of the Claim on the basis that the Retailer thereby waives all rights to be indemnified by the Distributor in relation to that Claim, provided that in doing so, the Retailer ensures that the goodwill of the Distributor is not unfairly harmed.
- (f) The following payment arrangements apply:
- (i) The Retailer may require the Distributor to pay to the Retailer the out of pocket costs incurred by the Retailer in managing and defending or settling the Claim, at not less than monthly intervals upon presentation of documentation supporting the claim, as and when those costs are incurred by the Retailer.
 - (ii) The Retailer must promptly repay amounts paid by the Distributor (including under subparagraph (i)) in respect of any liability to or on behalf of the Retailer under clause 26.10 to the extent that:
 - (A) the Claim is or becomes a Claim for which the Retailer could not be indemnified under clause 26.10; or
 - (B) a court of competent jurisdiction determines that the Retailer is not entitled to be indemnified by the Distributor for the Claim; or
 - (C) the Retailer receives payment under a contract of insurance in respect of the Claim, or the insurer pays, discharges or satisfies the Claim directly; or

(D) the Retailer receives payment from a person other than the Distributor in respect of the Claim, or that person pays, discharges or satisfies the Claim directly; or

(E) it is established in relation to the Claim that the Retailer did not perform an obligation referred to in this clause 26.11 and the Distributor's liability is or would have been reduced in accordance with clause 26.12.

26.12 **Indemnity reduced if Retailer in breach:** The amount of the Distributor's liability under clause 26.10 shall be reduced by the amount of any additional liability or expense suffered or incurred by the Distributor as a result of any breach of any of the Retailer's obligations under clause 26.11.

26.13 **Distributor may make payment to property owner:** Where the Distributor is liable to pay the Retailer any amount in accordance with this clause 26 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. The Distributor shall inform the Retailer as soon as reasonably practicable after making such payment directly to the property owner.

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

(a) Subject to clause 27.1, 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 Consumer Contracts (which includes a contract between the Retailer and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations:

(i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this agreement ("**Distributor Warranties**"); and

(ii) imposed on the Retailer by the Consumer Guarantees Act 1993 or any other law concerning the goods to be provided by the Retailer under the Consumer Contract ("**Retailer Warranties**").

(b) If the Consumer on-supplies electricity to an end-user the Retailer will, as a condition of any 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, 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 26.14 affects the rights of any Consumer under the Consumer Guarantees Act 1993 that cannot be excluded by Law, nor does it preclude the Retailer from offering in its Consumer Contracts its own warranties, guarantees or obligations pertaining to distribution services where such warranties, guarantees or obligations are not of the kind referred to in sub-clause (a)(ii).

26.15 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts clear and unambiguous clauses to the effect that:

(a) the Consumer will indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud of, dishonesty of or wilful breach of the Consumer Contract by the Consumer or any of its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and

- (b) to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply or non-supply of electricity to the Consumer under the Consumer Contract.

26.16 **The Distributor will be indemnified:** Subject to clause 26.19, 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 26.3 whether incurred by the Retailer or claimed by the person described in sub-clause (a) of this clause 26.16) 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 Consumer's 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
 - (v) any failure by the Retailer to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Distributor under or in connection with this agreement at the request of the Retailer (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.

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

- (a) incorrect; or
- (b) misleads the Distributor as to the correct position in connection with Tax,

and to the extent the Distributor is required to pay Inland Revenue any interest, penalty or fine imposed by the law 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.

26.18 **The Retailer will be indemnified:** Subject to clause 26.19, 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 26.3 whether

incurred by the Retailer or claimed by the person described in sub-clause (a) of this clause 26.18), 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 termination 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
 - (iv) any failure by the Distributor to comply with its obligations required by law or regulation; or
 - (v) any action undertaken by the Retailer under or in connection with this agreement at the request of the Distributor (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.

26.19 **Conduct of claims:** If the party with a right of indemnity under clause 26.16 or 26.18 ("**Indemnified Party**") seeks, or may seek to be indemnified by the other party ("**Indemnifying Party**") under clause 26.16 or 26.18 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.

26.20 **Benefits to extend:** Each party agrees that its obligations under this clause 26 (and in the case of the Retailer, its obligations under clause 27.3), will also constitute 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 26 (and in the case of the Retailer, its obligations under clause 27.3) but can be varied without the consent of such persons.

27. CONSUMER CONTRACTS

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

- (a) in respect of each Consumer Contract that has been entered into prior to the Commencement Date:
 - (i) at the next review date, or, if the Retailer is able to unilaterally vary the Consumer Contract, within 12 months after the Commencement Date (whichever is earlier), the Retailer will issue a unilateral variation to the Consumer Contract to include provisions that have substantially the same effect as the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982; or
 - (ii) if the Retailer is unable to unilaterally vary one or more Consumer Contracts as set out in subparagraph (i), the Retailer will:
 - (A) use all reasonable endeavours to obtain at the next review of each Consumer Contract, or within 12 months, whichever is earlier, the agreement of the Consumer to enter into a variation of the Consumer Contract to include the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 4 of the Contracts (Privity) Act 1982; and
 - (B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Consumer required in subparagraph (A); or
- (b) in respect of each Consumer Contract that has been entered into after the Commencement Date, include the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982.

27.2 **Changes to Consumer Contracts during term:** If this agreement is changed in accordance with clause 24 and the change results in the addition of a new provision to this agreement that requires the Retailer to include a new provision in its Consumer Contracts, the Retailer will take such steps as are necessary to comply with that provision. If the Retailer is required by the Distributor, to change its Consumer Contracts more than once in any 2 year period, the Retailer may recover all reasonable costs and

expenses associated with such compliance from the Distributor, provided that the Retailer may not recover such costs if the change is required by the Distributor under:

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

27.3 **Retailer to indemnify Distributor:** The Retailer indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations in accordance with clauses 27.1 and 27.2.

27.4 **Evidence of compliance:** If the Distributor requests the Retailer to do so, the Retailer will provide the Distributor as soon as practicable with such evidence as the Distributor may reasonably request to satisfy the Distributor that the Retailer is complying with its obligations under this clause 27.

28. NOTICES

28.1 **Delivery of Notices:** Any notice given under this agreement will be in writing and will be deemed to be validly given if personally delivered, posted or sent by email to the address for notice set out on the execution page of this agreement or to such other address as that party may notify from time to time.

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

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, 2 Working Days following the date of posting; and
- (c) in the case of email, when 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.

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

29. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

29.1 **Protocols for exchanging information:** From time to time the Electricity Authority will publish certain EIEPs, including new or amended EIEPs, which specify recommended formats for the exchange of information between distributors and retailers. Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with the EIEPs listed in schedule 3 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.

29.2 **Consumer information:** The Retailer will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Consumer information as is reasonably available to the Retailer and necessary to enable the Distributor to exercise its rights or fulfil its obligations under this agreement (including under clause 20). The information will be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and will not, use such information in any way or form other than as permitted by this clause 29.2.

30. RIGHTS OF AUDIT AND INSPECTION

30.1 **Audit Report:** In this clause 30, "**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 12; and
 - (iv) the Retailer has complied with all 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.

30.2 **Retailer audit options:** On the Commencement Date, the Retailer may elect one of the audit options set out in:

- (a) clauses 30.3 to 30.7 (inclusive) ("**Audit Option A**"); or
- (b) clauses 30.8 to 30.10 (inclusive) ("**Audit Option B**"); or
- (c) clause 30.11 ("**Audit Option C**").

During the term of this agreement, the Retailer may, on not less than 60 Working Days' prior written notice to the Distributor, elect a different audit option. If and for so long as the Retailer elects:

- (d) Audit Option A, clauses 30.3 to 30.7 (inclusive) will apply and clauses 30.8 to 30.11 (inclusive) will be of no effect;
- (e) Audit Option B, clauses 30.8 to 30.10 (inclusive) will apply and clauses 30.3 to 30.7 (inclusive) and clause 30.11 will be of no effect; and
- (f) Audit Option C, clause 30.11 will apply and clauses 30.3 to 30.10 (inclusive) will be of no effect.

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

Audit Option A

30.3 **Retailer Audit:** The Retailer will:

- (a) procure (at its own cost) and ensure 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, PwC, Deloitte Touche Tohmatsu or any other firm of chartered accountants approved in writing by the Distributor.
- 30.4 **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 30.1(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.
- 30.5 **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 30.1(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 30.4 and this clause 30.5.
- 30.6 **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 30.4.
- 30.7 **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 30.1(b), whether under clause 30.3(a), 30.4 or 30.5 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

- 30.8 **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.
- 30.9 **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 30.1(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 30.1(b); and
 - (b) bear the reasonable costs of the Distributor and/or its agent incurred in relation to clause 30.8 and this clause 30.9.

- 30.10 **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 30.1(b) under clause 30.9(a) 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.

Audit Option C

- 30.11 **RM Normalised data:** The Retailer will provide the Distributor with an auditor's report prepared for the purposes of the Code, at the same time as the auditor's report is provided to the Electricity Authority under the Code. In addition to the requirements of the Code, the auditor's report shall confirm that:

- (a) the RM Normalised data provided by the Retailer to the Distributor; and
- (b) the energy information provided by the Retailer to the reconciliation manager,

are the same, or the Retailer will do such acts and things as are reasonably requested by the Distributor to enable the Distributor to obtain the Retailer's specific consumption information at the GXP level, so that the Distributor may satisfy itself that the information and data described in sub-clauses (a) and (b) are the same.

- 30.12 **Non-compliance:** If:

- (a) the Retailer fails to comply with clause 30.11; or
- (b) the auditor's report prepared under clause 30.11:
 - (i) does not confirm that the information and data described in clauses 30.11(a) and 30.11(b) are the same; or
 - (ii) states that the Retailer has not met the requirements of the Code,

the Retailer will:

- (c) 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 enable the Distributor to obtain the Retailer's specific consumption information at the GXP level, so that the Distributor may satisfy itself that the information and data described in clauses 30.11(a) and 30.11(b) are the same and that the Retailer has met the requirements of the Code in relation to the consumption data; and
- (d) bear the reasonable costs of the Distributor and/or its agent incurred in relation to exercise of its rights under this clause 30.12.

31. MISCELLANEOUS

- 31.1 **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.

- 31.2 **Entire agreement:** This agreement records the entire agreement between the parties concerning its subject matter, and prevails over the Agreement for Use of Networks. Notwithstanding any provision to the contrary contained in the Agreement for Use of Networks, the Agreement for Use of Networks is hereby varied such that all provisions contained in that agreement relating to electricity ("**UNA Electricity Provisions**") cease to apply with effect from the Commencement Date and that accordingly, that agreement continues in full force and effect solely in relation to the conveyance of gas on the Gas

Network (as that term is defined in that agreement). Notwithstanding any other provision in the Agreement for Use of Networks, with effect from the date of this agreement:

- (a) each party waives all rights and entitlements it may have under the UNA Electricity Provisions, or at law in relation to the subject matter of the UNA Electricity Provisions, and irrevocably and unconditionally releases the other party in relation to the other party's obligations and liabilities in respect of the same; and
- (b) neither party will be entitled to, and will not, bring any claim against the other party under the UNA Electricity Provisions, or at law in relation to the subject matter of the UNA Electricity Provisions.

For the avoidance of doubt, this clause settles and releases all rights, entitlements and claims of either party, whether known or unknown, under the Agreement for Use of Networks which had accrued prior to or at the date of this agreement, other than in relation to gas.

Notwithstanding the foregoing provisions of this clause 31.2, the right of the Retailer to make a claim under the Agreement for Use of Networks in respect of damage to a Consumer's physical property prior to the date of this agreement is preserved and unaffected by this clause.

- 31.3 **UNA Electricity Provisions Charges:** Notwithstanding clause 31.2, the UNA Electricity Provisions in respect of line charges payable by the Retailer to the Distributor in relation to the period prior to the Commencement Date, including the wash-up provisions in respect of such line charges, shall continue in full force and effect until such time as all payments for line charges have been made in accordance with those provisions.
- 31.4 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld (where the proposed assignee demonstrates to the Distributor's reasonable satisfaction that it is able to meet the requirements of clause 12 and schedule 9). For the purposes of this clause 31.4, unless a party is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.
- 31.5 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.
- 31.6 **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.

32. INTERPRETATION

32.1 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;

- (g) all amounts payable under this agreement are in New Zealand dollars and exclude GST and every other Tax and duty (except in schedule 1), but if GST is payable on any amount (other than the amounts specified in schedule 1) it will be added to that amount and will be payable at the time the amount itself is payable, and unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement includes it as varied or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

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

"Act" means the Electricity Industry Act 2010;

"Additional Services" means the additional services that the Distributor or the Retailer will provide to the other in accordance with clause 2.1(j), as described in schedule 2 (if any);

"Agreement for Use of Networks" means the agreement entitled Agreement for Use of Networks in force between the parties at the date of this agreement relating to the conveyance of electricity and gas;

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

"Annual Audit Report" has the meaning given in clause 30.3(a);

"As-Billed Normalised" is a billing methodology that estimates the variable line charge quantities that would have occurred had the Retailer invoiced the Consumer on a calendar month basis where variable quantities are calculated from the Retailer's as billed to the Consumer data. Fixed charges will be charged as per the applicable pricing schedule and policy set out or referred to in schedule 8 and the relevant Registry record. Invoicing to the Retailer by the Distributor will be for both variable and fixed charges with wash-ups in terms of clause 11.6;

"Auckland 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 and parts of the Papakura district in Auckland;

"Audit Option A" has the meaning given in clause 30.2(a);

"Audit Option B" has the meaning given in clause 30.2(b);

"Audit Option C" has the meaning given in clause 30.2(c);

"Audit Report" has the meaning given in clause 30.1;

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

"Bank" has the meaning given in clause 12.24(b);

"Cash Deposit" has the meaning given in clause 12.1;

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

"Claim" has the meaning given in clause 26.10(d);

"Code" means the Electricity Industry Participation Code 2010 made under the Act;

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

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

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (c) reports prepared in accordance with clause 8; and
- (d) the existence and terms of this agreement, except schedule 2;

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

"Consumer" means a person who purchases electricity from the Retailer that is delivered via the Network or an Embedded Network, as the case may be;

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

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

"Consumer's Installation" means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Consumer's Installation;

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

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

"Controlled Load Tariff Rate" has the meaning given in clause 6.1(a);

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

"**Corrected Price Category**" has the meaning given to that term in clause 10.4;

"**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, and to avoid doubt, does not include an outage that does not result from an act of the Distributor or its agents or contractors;

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

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

"**Defaulting Party**" has the meaning given to it in clause 20.1;

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

"**Disclosure Requirements**" means the Electricity Distribution (Information Disclosure) Requirements 2008 issued by the Commerce Commission under sections 57T and 57U of the Commerce Act 1986 as amended or replaced from time to time;

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

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

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

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

"**Distributor's Agreement**" means an agreement between the Distributor and a Consumer for the provision of distribution services and, unless otherwise agreed with the Retailer, includes the direct billing of line charges by the Distributor (or a third party acting on behalf of the Distributor) to the Consumer and responsibility for associated debt;

"**Distributor's Audit Report**" has the meaning given in clause 30.8;

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

"**Distributor Warranties**" has the meaning given in clause 26.14(a)(i);

"**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 an Embedded Network, or to an Electrical Installation; and

- (b) in addition to supplying electricity to the Consumer, may also be used for injecting electricity into the Network or an Embedded Network for supply to another person;

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

"EIEP" means:

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

"Electrical Installation" means:

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

"Electricity Authority" has the meaning given to it in section 5 of the Act;

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

"Embedded Network" means the lines, substations and associated equipment owned by a person other than the Distributor and used to convey electricity between:

- (a) an NSP or a point of connection with another Embedded Network; and
- (b) any one or more of:
 - (i) a point of connection with the Fittings of an Embedded Network Consumer, where such Fittings are not connected directly to the Network;
 - (ii) a point of connection with the Fittings of a Distributed Generator, where such Fittings are not connected directly to the Network; and/or
 - (iii) a point of connection with another Embedded Network;

"Embedded Network Consumer" means a Consumer with Fittings connected to an Embedded Network;

"Embedded Network Consumer Contract" means an agreement between the Retailer and an Embedded Network Consumer that includes the supply of electricity and distribution services on an Embedded Network;

"Embedded Network Owner" means the owner or operator of an Embedded Network;

"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 6.4;

"**Event of Default**" has the meaning described in clause 20.3(a);

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

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

"**Failure**" has the meaning given in clause 26.10(a)(i);

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

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

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

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

"**Good Electricity Industry Practice**" means:

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

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

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

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

"**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 Consumer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an Embedded Network;
- (c) a Point of Connection between the Network and shared Unmetered Load;

"Incorrectly Allocated" has the meaning given to that term in clause 10.4;

"Incumbent" has the meaning given in clause 6.4;

"Indemnified Party" has the meaning given in clause 26.19;

"Indemnifying Party" has the meaning given in clause 26.19;

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

"Insolvency Event" means a party:

- (a) has had a receiver, administrator or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets; 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 nearest fourth decimal place) displayed on the Reuter's screen page BKBM (or its successor page) at or about 10.45 a.m. on that day, as the bid rate for three month bank accepted bills of exchange or, if no such rate is displayed or that page is not available, the average (expressed as a percentage per annum and rounded up to the nearest fourth decimal place) of the bid rates for three-month bank accepted bills of exchange quoted at or about 10.45 a.m. on that day by each of the entities listed on that Reuter's screen page when the rate was last displayed or, as the case may be, that page was last available;

"Interim Audit Report" has the meaning given in clause 30.4;

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

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

"Load Control System" means a control and communications system for controlling parts of a Consumer's load and consisting of Load Signalling Equipment and Load Control Equipment;

"Load Management Service" means providing a signal for the purpose of reducing or interrupting delivery of electricity to all or part of Consumer's Premises, including as an

example, but without limitation, delivery to a water heater, on a basis agreed between the Distributor and the Retailer;

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

“Load Shedding” means the act of 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 provided by the Distributor and applied by the reconciliation manager to volumes of electricity measured or estimated in respect of ICPs on the Network, in order to reflect the impact of the ICP on Losses within the Network;

“Loss Factor Guidelines” means the 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 the quantity of electricity transported through an ICP along with any associated communication facilities to enable the transfer of metering information;

“Network” means the Auckland Network and the Northern Network;

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

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

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

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

“Non-Residential ICP” means an ICP that is not a Residential ICP;

“Northern Network” means the Distributor’s lines, substations and associated equipment used to convey electricity in the Waitakere, Rodney and North Shore districts in Auckland;

“Other Load Control Option” has the meaning given in clause 6.1(b);

“Payment A” has the meaning given in clause 26.10(c)(i);

“**Performance Report**” has the meaning set out in clause 8.1;

“**Planned Service Interruption**” means a Service Interruption that has been scheduled to occur in accordance with schedule 5;

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

“**Price Category**” means the price category and associated eligibility criteria of the Distributor as provided to the Retailer from time to time that determines the Tariff Rate(s) that apply to an ICP;

“**Property**” has the meaning given in clause 20.14(a);

“**Proposal**” has the meaning given in clause 24.5(a);

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

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

“**Receivership Option A**” has the meaning given in clause 20.7;

“**Receivership Option B**” has the meaning given in clause 20.7;

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

“**Reporter**” has the meaning given in clause 30.1;

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

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

“**Remedy Cost**” has the meaning given in clause 26.10(a)(vi);

“**Residential ICP**” means an ICP connected to a Consumer’s Installation that is a private dwelling intended for occupation mainly as a place of residence and not normally used for any business activity;

“**Retailer Warranties**” has the meaning given in clause 26.14(a)(ii);

“**RM Normalised**” is a billing methodology that estimates the variable line charge quantities that would have occurred had the Retailer invoiced the Consumer on a calendar month basis where variable quantities are calculated from the Retailer’s reconciliation manager (RM) submissions. Fixed charges will be charged as per the applicable pricing schedule and policy set out or referred to in schedule 8 and the relevant Registry record. The data from advanced Metering Equipment is anticipated to be used from a future date following the Commencement Date. Invoicing to the Retailer by the Distributor will be for both variable and fixed charges with wash-ups in terms of clause 11.6;

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

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

“**Serious Financial Breach**” means:

- (a) a failure by the Retailer to pay an amount due that exceeds the lesser of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with clause 11.12; or
- (b) a material breach of clause 12 by the Retailer;

"Service Guarantee" means any payment or other benefit that one party provides to the other party when it fails to meet a Service Standard for which a guarantee payment is provided should that Service Standard not be met;

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

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

"Service Measure" means the characteristics or features of a Service Standard as set out in schedule 1;

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

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

"Switch Event Date" means the date recorded in the Registry as being the date on which a retailer assumes responsibility for an ICP;

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

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

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

"Tariff Options" has the meaning given to that term in clause 10.3;

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

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

"Tax" includes all forms of taxation, withholding, dues, imposts, levies, charges, fees, deductions and rates;

"Tax Invoice" has the meaning given to that term 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 to that term in clause 26.19;

"Transition Date" has the meaning given to that term in clause 33.2;

"Transmission Charge" means:

- (a) an amount charged by a Transmission Provider for use of that Transmission Provider's transmission system for the purpose of providing Transmission Services to the Distributor, and includes any amounts received from or payable to that Transmission Provider in relation to:
- (i) connection, interconnection and economic value adjustments;
 - (ii) new investment;
 - (iii) the provision of System Operator Services;
 - (iv) loss and constraint rentals;
 - (v) the settlement of financial transmission rights; and
 - (vi) any other charge component that is introduced into, or substitutes for, an existing component of the Transmission Provider's transmission pricing methodology from time to time; and
- (b) Avoided Transmission Charges;

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

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

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

"Trust Account" has the meaning given in clause 12.24(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 12.20;

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

"UNA Electricity Provisions" has the meaning given to that term in clause 31.2;

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

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

"Vacant Site" means a property that has become vacant;

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

"Variable Provisions" means the provisions contained in the schedules except those provisions in schedule 8 which may be changed in accordance with clauses 9 and 10, and schedule 9;

"Vector Use of Network Pre-requisites" means the requirements set out in schedule 9;

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

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

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

"Year" has the meaning given in clause 26.7(b).

33. TRANSITION

33.1 **Transitional provisions:** Until the Transition Date, the parties agree that the provisions set out in schedule 12 shall apply instead of the corresponding clauses referenced therein.

33.2 **Transition Date:** For the purpose of this agreement, **"Transition Date"** means the date that is 40 Working Days (or such lesser period as may be agreed in writing between the parties) after the day on which the Distributor notifies the Retailer in writing that the scope of the agreement will be expanded to include the Auckland Network as well as the Northern Network.

SCHEDULE 1 – SERVICE STANDARDS

Introduction

- S1.1 The Distributor and the Retailer will meet the Service Standards outlined in this schedule in accordance with the terms of this schedule.
- S1.2 If either party becomes aware of or suspects a breach of the Service Standards by the other party, the party will give the other party notice of the reasons why it suspects that there has been a breach.
- S1.3 If either party breaches a Service Level that is subject to a Service Guarantee, it will notify the other party as soon as possible and no later than 20 Working Days after becoming aware of the breach. The notification will include:
- (a) the identity of the ICPs affected and the Service Guarantee amount by ICP and in total (if applicable); and
 - (b) the reason for the breach.
- A Credit Note, or order number if the payer requires an invoice from the payee for the amount payable in respect of the breach will be sent in the next payment cycle.
- S1.4 All Service Guarantee amounts in this schedule are inclusive of GST (if any). All Service Guarantee invoices will state clearly the amount of GST (if any) that is payable.
- S1.5 If the Distributor makes a Service Guarantee payment in respect of an ICP, the Retailer will pass that payment on to the Consumer.
- S1.6 The parties acknowledge that the Service Guarantees are set at a level to provide reasonable compensation to the Consumer in respect of the Distributor's or the Retailer's failure to meet the relevant Service Levels, and are not a penalty.
- S1.7 The parties acknowledge that notwithstanding any other provision of this agreement, the column "Service Guarantee" 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 (with such term being construed disregarding clause 23.1(a)), except for any Service Standards relating to communication between the Distributor and the Retailer (which apply to the extent that such Force Majeure Event itself does not prevent the Distributor from meeting such Service Standards).
- S1.8 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 all Service Guarantees set out therein are provided at the Distributor's discretion and may be revised by the Distributor from time to time.

Items for service standards relating to electricity supply

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
A. DISTRIBUTOR'S SERVICE STANDARDS RELATING TO ELECTRICITY SUPPLY					
UNCONTROLLED SUPPLY CATEGORY					
Time period when electricity supply is available	24 hour Continuous Supply Supply is in normal supply circumstances continuously available 24 hours each day, 7 days each week.	Refer to schedule 7.	General residential and business usage where a continuous supply of electricity is required.	SAIDI	The Distributor will comply with its statutory reporting requirements under the law, including the Code, except if the Distributor is subject to default/customised price-quality regulation under the Commerce Act 1986.
CONTROLLED SUPPLY CATEGORY					
Time period when electricity supply is available	1. 19 hour Controlled Supply Supply is in normal supply circumstances available for a minimum of 19 hours each day, 7 days per week.	Refer to schedule 7.	Supply to appliances where periodic supply interruptions, up to the daily maximum duration specified in this category, have no material impact on the overall performance of the appliance. Residential hot water cylinders and spa pool heaters are the most common appliances controlled	SAIDI	The Distributor will comply with its statutory reporting requirements under the law, including the Code, except if the Distributor is subject to default/customised price-quality regulation under the Commerce Act 1986.

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

Use of System Agreement – Electricity between Vector Limited and [Name of Retailer]

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
			in this category of supply.		
Time period when electricity supply is available	<p>2. Controlled Night Supply</p> <p>Supply is in normal supply circumstances available within the following time periods, 7 days each week:</p> <ul style="list-style-type: none"> • Supply available from 11pm to 7am and from 1pm to 3:30pm • At other times the supply is De-energised 	Refer to schedule 7.	Residential night store space heaters and some residential hot water cylinders, where adequate performance is provided by the limited periods of supply provided in this category.	SAIDI	The Distributor will comply with its statutory reporting requirements under the law, including the Code, except if the Distributor is subject to default/customised price-quality regulation under the Commerce Act 1986.

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

Use of System Agreement – Electricity between Vector Limited and [Name of Retailer]

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
DISTRIBUTOR'S SERVICE STANDARDS					
RELIABILITY					
Restoration of supply: Unplanned Service Interruptions.	<p>The Distributor will:</p> <p>Urban: restore supply within 3 hours of notification of an Urban Unplanned Service Interruption;</p> <p>Rural: restore supply within 6 hours of notification of a Rural Unplanned Service Interruption; and</p> <p>Remote Rural: restore supply within 12 hours of notification of a Remote Rural Unplanned Service Interruption.</p> <p>However, the Distributor does not need to pay a Service Guarantee payment in the following situations:</p> <ul style="list-style-type: none"> substantial third party or weather-related damage to the Network (e.g. affecting 3 or more poles on a line); an Unplanned Service Interruption 	<p>Service area:</p> <p>Urban: Distributor to define geographically;</p> <p>Rural: all areas other than Urban and Remote Rural; and</p> <p>Remote Rural: Distributor to define geographically.</p>	<p>\$40 in respect of each ICP up to 60 Amps directly affected by the Unplanned Service Interruption to the extent the Service Level is not met, plus a further \$40 for each completed 24hr period in excess of the time limit, subject to the general limit of liability.</p> <p>\$100 in respect of each ICP greater than 60 Amps directly affected by the Unplanned Service Interruption to the extent the Service Level is not met, plus a further \$100 for each completed 24hr period in excess of the time limit, subject to the general limit of liability.</p>	Not applicable.	Nil

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
	<p>caused by the Transmission Provider;</p> <ul style="list-style-type: none"> • an Unplanned Service Interruption caused by the System Operator; • the Distributor (or its contractors) being prevented from making repairs (e.g. by police at accident scene). 				
<p>Frequency of Service Interruptions and short interruptions at ICPs.</p>	<p>Urban: No more than 4 in any period between 1 July in a calendar year and 30 June in the following calendar year recorded by the Distributor or reported by the Consumer;</p> <p>Rural: No more than 10 in any period between 1 July in a calendar year and 30 June in the following calendar year recorded by the Distributor or reported by the Consumer; and</p> <p>Remote Rural: No more than 20 per annum recorded by the Distributor or reported</p>	<p>Includes cessation of supply to a Consumer of greater than 1 minute to the extent advised by that Consumer, but excludes subsequent interruptions that relate to an intermittent system fault.</p>	<p>Nil.</p>	<p>Not applicable.</p>	<p>Nil</p>

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
	<p>by the Consumer.</p> <p>However, Service Interruption would not be deemed to have occurred in the following situations:</p> <ul style="list-style-type: none"> substantial third-party damage to the Network (e.g. affecting 3 or more poles on a line); an Unplanned Service Interruption caused by the Transmission Provider; an Unplanned Service Interruption caused by the System Operator; the Distributor (or its contractors) being prevented from making repairs (e.g. by police at accident scene). 				
Steady State Voltage Range at ICPs.	± 6% of nominal at Point of Connection.	Measurement will be triggered by notification of a voltage sag under the 'Power Quality and service	Nil.	Not applicable.	Nil

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
		interruption investigation' Service Measure (unless the measurement is proactively taken by a smart meter or other Meter Equipment capable of proactively measuring the 'Power quality and service interruption investigation' Service Measure).			
Load Management Service.	The Distributor to operate and maintain its Load Management Service in accordance with schedule 7.		Nil.	Not applicable.	Nil
INVESTIGATIONS OF POWER QUALITY AND SERVICE INTERRUPTIONS					
Power quality, reliability, safety or Service Interruption investigations.	The Distributor will, within 5 Working Days of receiving notification from the Retailer of a problem on the Network, investigate the complaint and respond to the Retailer detailing the nature of the problem. If the investigation cannot be completed within such	Power quality investigations include, but are not limited to momentary voltage fluctuations, flicker, harmonics, voltage imbalance and sags. It is acknowledged that power quality solutions commonly	Nil.		

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
	<p>5 Working Days, the Distributor will provide within a further 7 Working Days an estimate of the time it will take to complete such an investigation and the reason for requiring extra time. However, in any event, the Distributor will complete its investigation and provide information to the Retailer so that the Retailer can offer a resolution to the Consumer within the timelines set out in the Dispute Resolution Scheme and avoid referral to the Office of the Electricity and Gas Complaints Commission. The Distributor will remedy any problems for which it is responsible in a timely manner, in accordance with Good Electricity Industry Practice.</p>	<p>rest with the Consumer (e.g. upgrading sensitive control equipment in the factory, etc) and the Consumer may choose not to invest in such solutions. The Distributor can make recommendations but cannot force the Consumer to act.</p>			
COMMUNICATION					
Unplanned Service Interruption communication.	As defined in schedule 5.	For the purposes of this Service Standard an	Nil.		Nil

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
		Unplanned Service Interruption applies to feeder faults.			
Notification of Planned Service Interruption.	As defined in schedule 5.		Nil.		Nil
Information Requests.	The Distributor will consider all reasonable requests for information from the Retailer (if they are stated to be made under this schedule 1 of this agreement, unless the Distributor's ability to communicate the information is directly affected by a Force Majeure Event) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, the Distributor will provide an explanation and/or a new timeframe.		Nil.		

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

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

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SCHEDULE 2 – ADDITIONAL SERVICES

ADDITIONAL SERVICE TO BE PROVIDED BY THE RETAILER

AECT dividends and AECT distributions

- S2.1 For the purposes of this schedule:
- (a) “**Dividends**” includes AECT dividends and AECT distributions; and
 - (b) “**AECT**” means the Auckland Energy Consumer Trust.
- S2.2 The Distributor may require the Retailer, no more than twice in any calendar year, to pass a Dividend to qualifying Consumers by crediting the Consumers’ electricity accounts, by giving the Retailer at least 40 Working Days’ notice.
- S2.3 The Distributor’s notice under clause S2.2 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 for calculation (if known),
- and the Retailer will comply with the Distributor’s requirements set out in such notice.
- S2.4 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.
- S2.5 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.
- S2.6 The Distributor will provide contact details for queries that cannot be addressed by the Retailer and a set of relevant “frequently asked questions”.
- S2.7 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.
- S2.8 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.
- S2.9 The Retailer will as soon as reasonably practicable after receiving the file from the Distributor apply the Dividend to qualifying Consumers’ accounts.
- S2.10 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.

- S2.11 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.
- S2.12 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.
- S2.13 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.
- S2.14 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.
- S2.15 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

- S2.16 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.
- S2.17 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 S2.17 will be treated as confidential information.

SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

- S3.1 The table below lists EIEPs published on the Electricity Authority website as at the date of signing this agreement.
- S3.2 These EIEPs, which may be amended or added to from time to time in accordance with this agreement, specify recommended formats for the exchange of information between distributors and retailers.
- S3.3 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.

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

SCHEDULE 4 – CONSUMER CONTRACTS

S4.1 This schedule summarises the obligations that this agreement requires the Retailer to include and the rights that the Retailer must include in every Consumer Contract. Please refer to the clauses referenced in the schedule for the actual obligations and rights that the Retailer must include in every Consumer Contract.

Summary of right/obligation	Clause in this agreement
<p>If the Consumer enters into any agreement or arrangement with any third party in relation to control of its load, the Consumer will ensure that:</p> <ul style="list-style-type: none"> (a) the load is not already controlled by the Distributor; (b) the third party does not interfere with or damage load control systems owned by the Distributor or Retailer; (c) if any damage occurs due to the third party's actions, the Consumer will promptly remedy the damage at their own cost; (d) the third party makes the load available to the Distributor to enable it to fulfil its performance obligations as an asset owner to meet the Service Standards for Distribution Services; and (e) prior to controlling the load, the third party enters into an agreement with the Distributor regarding protocols for the use of their load. 	Clause 6.11
<p>The Consumer will provide the Distributor and its agents with safe and unobstructed access onto the Consumer's Premises for certain purposes (eg inspection and maintenance of the Distributor's Equipment) at reasonable times).</p>	Clause 13.1
<p>The Distributor may disconnect the Consumer's ICP and reclaim its equipment if the Consumer does not give the Distributor access to the Distributor's Equipment on the Consumer's Premises on notice from the Distributor.</p>	Clause 13.3
<p>The Consumer will not interfere with or damage the Distributor's equipment.</p>	Clause 14.1
<p>The Consumer will not inject energy into or attempt to convey or receive signals over the Network.</p>	Clause 14.6
<p>The Consumer will provide suitable space for the secure housing of the Distributor's Equipment.</p>	Clause 14.11
<p>The Consumer acknowledges that the Network on the Consumer's Premises is the Distributor's property.</p>	Clause 14.12
<p>The Consumer undertakes to comply with the Distributor's Network Connection Standards.</p>	Clause 15.2
<p>The Consumer acknowledges that the Consumer recognises that surges or spikes are momentary fluctuations in voltage or frequency, may cause damage to the Consumer's sensitive equipment and are not treated as interruptions.</p>	Clause 16.1

Summary of right/obligation	Clause in this agreement
It is the Consumer's responsibility to maintain Consumer Service Lines (unless the Distributor is required or agrees to provide and maintain those lines).	Clause 17.1
The Consumer is responsible for ensuring that the Electricity (Hazards from Trees) Regulations 2003 are complied with in respect of any trees that the Consumer has an interest in that are near the Grid or any line that forms part of the Network.	Clause 18.1
The Consumer will ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards.	Clause 19.1 and clause S6.10– of schedule 6
The Distributor may perform a Temporary Disconnection in relation to a Consumer's ICP in certain circumstances.	Clause 19.1 and clause S6.14 of schedule 6
All warranties, guarantees or obligations imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law are excluded.	Clause 26.14(a)(i)
All warranties, guarantees or obligations imposed on the Retailer by the Consumer Guarantees Act 1993 or any other law are excluded.	Clause 26.14(a)(ii)
If the Consumer on-supplies electricity to an end-user, the Consumer's agreement with the end-user will include provisions that exclude all Distributor Warranties and Retailer Warranties.	Clause 26.14(b)
The Consumer will indemnify the Distributor against any direct loss or damage caused or contributed by the fraud, dishonesty or wilful breach of the Consumer Contract between the Retailer and the Consumer.	Clause 26.15(a)
The Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Consumer under the Consumer Contract.	Clause 26.15(b)

S4.2 In addition, the Retailer must include in every Embedded Network Consumer Contract the requirements set out in clause S11.3 of schedule 11.

SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION POLICIES

Unplanned Service Interruptions

- S5.1 The Distributor will, as soon as reasonably practicable but no later than the periods specified in sub-clauses (a) and (b) below after first becoming aware of an Unplanned Service Interruption and that Unplanned Service Interruption is a feeder fault, communicate to the Retailer by providing relevant information that enables the Retailer to respond in an informed manner to calls from affected Consumers, in a manner reasonably determined by the Distributor from time to time. Such information should include, if known, a description of the reason for the interruption, the general area affected and an estimated time for restoration.
- (a) Staffed control room hours – 20 minutes
 - (b) On-call control room hours – 40 minutes
- S5.2 The Distributor will, within 10 minutes of new information becoming available, provide the Retailer with an update of the status of Unplanned Service Interruptions.
- S5.3 If the Retailer is responsible for receiving and managing Unplanned Service Interruption calls from Consumers it will, 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.
- S5.4 When communicating with the Retailer in accordance with this schedule, the Distributor will advise the Retailer if the Retailer should stop logging calls with the Distributor, in the manner reasonably determined by the Distributor from time to time.
- S5.5 If the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Consumers, the Retailer may provide the Distributor's contact details to the Consumer rather than taking details and logging the call with the Distributor, in the manner reasonably requested by the Distributor from time to time.

Planned Service Interruptions

Option A – Retailer to notify Consumers (Default)

- S5.6 The Distributor will provide the Retailer with notice at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICPs which the Distributor's information systems indicate will be affected. Such notice will be provided in a manner reasonably determined by the Distributor from time to time.
- S5.7 The Retailer may within 2 Working Days after receipt of such notice, notify the Distributor of any Consumers who would be adversely affected by the interruption and request an alternative date and/or time, in a manner reasonably requested by the Distributor from time to time.
- S5.8 If the Distributor receives a response from the Retailer requesting an alternative date and/or time for the Planned Service Interruption, the Distributor will consider in good faith the request and may, at its sole discretion, change the time and/or date of the Planned Service Interruption. If a change is contemplated, the Distributor will provide an updated notice at least 7 Working Days in advance of the original date of the Planned Service Interruption, in a manner reasonably determined by the Distributor from time to time.
- S5.9 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor will provide the Retailer with a notice on a daily basis, in a manner reasonably determined by the Distributor from time to time.
- S5.10 If the Distributor's information systems indicate that the Planned Service Interruption will affect all consumers supplied from a Network Supply Point, the Distributor may arrange

for public notification through the local newspaper, or other effective method, on behalf of all retailers.

Option B – Distributor to notify Consumers

- S5.11 If required, and subject to clause 29.2, the Retailer will provide Consumer contact information to the Distributor on a daily basis. The information will be provided in the manner reasonably requested by the Distributor from time to time.
- S5.12 For all Planned Service Interruptions, the Distributor will notify 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. Such notice will be provided in a manner reasonably determined by the Distributor from time to time.
- S5.13 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 6 – CONNECTION POLICIES

Introduction

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

Information content and transmission media

- S6.3 The clauses set out below focus on the responsibilities of each party and do not deal with the particular content of the information transferred between the parties or the media by which the information is transferred. The 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

- S6.4 The Distributor may receive applications from:
- (a) the owner of a premises not currently connected to the Network or the owner's agent (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created; and
 - (b) a Consumer (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for an increase or decrease in the capacity of an existing connection.
- S6.5 The Distributor will undertake an impact assessment to determine whether the capacity required for the connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S6.6 If the Distributor agrees to supply a new connection or change the capacity of an existing connection, and the Requesting Party agrees to terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 2 Working Days of the ICP identifier, the NSP to which the ICP is or will be connected, the allocated Price Category, and, if the ICP is a new ICP, that the ICP is ready to be electrically connected.
- S6.7 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 using a process advised by the Distributor for this purpose.
- S6.8 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

- S6.9 The timeframe for electrically connecting an approved standard new ICP connection (if all necessary equipment is in place, line upgrades 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

- S6.10 **Consumers' Installations to be compliant:** The Retailer will, subject to clause 27.1, ensure that its Consumer Contracts require the Consumer to ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards, including (if applicable) by ensuring that any alteration is certified by a suitably qualified person.
- S6.11 **ICPs not Decommissioned without notice:** Subject to section 105 of the Act and any agreement the Distributor may have with a Consumer, the parties agree that neither party will seek to have an ICP Decommissioned without first giving the other party 24 hours' notice or any other notice period agreed by the parties.
- S6.12 **Warranted Persons:** Each party will ensure that any person that it engages to carry out any activity related to Energising, De-energising, and Decommissioning ICPs, or performing any other work on the Network, is a Warranted Person.
- S6.13 **Disconnection by the Retailer:** The parties agree that a Temporary Disconnection of an ICP at which the Retailer supplies electricity may be carried out by the Retailer in the following circumstances:
- (a) if in an emergency is necessary to avoid endangering persons or property;
 - (b) for credit reasons, if the Retailer has not been able to complete a Temporary 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); or
 - (c) if requested by the Consumer, for safety or other reasons.

The Retailer will ensure that Temporary Disconnections of ICPs are carried out by Warranted Persons and in accordance with the Distributor's reasonable operational work practices for managing Temporary Connections. If a Temporary Disconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.

- S6.14 **Disconnection by the Distributor:** The Retailer will, subject to clause 27.1, ensure that its Consumer Contracts require that, subject to S6.15 to S6.17, the Distributor may perform a Temporary Disconnection in relation to a Consumer's ICP in the following circumstances:
- (a) it is necessary to avoid endangering persons or property; or
 - (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or the transmission system; or
 - (c) the Distributor has planned maintenance activities to complete; or
 - (d) an Event of Default or Insolvency Event has occurred in relation to the Retailer; or
 - (e) in the circumstances set out in clause 3.6; or
 - (f) in accordance with clause 13.3; or

- (g) if a Consumer does any of the things prohibited under clauses 14.1 or 14.6, or fails to do any of the things required of it under clause 15; or
 - (h) on termination of this agreement.
- S6.15 **Notice of disconnection if event is within Consumer's control:** If the Distributor intends to perform a Temporary Disconnection as contemplated in clause S6.14, the Distributor will give the Retailer notice of the Temporary Disconnection as follows:
- (a) The Distributor will give the Retailer at least 5 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because:
 - (i) the Consumer failed to provide the Distributor with access in accordance with its Consumer Contract; or
 - (ii) the Consumer damaged or interfered with the Distributor's Equipment or Network; or
 - (b) The Distributor will give the Retailer at least 10 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection where the Consumer fails to do any of the things required of it under clause 13.
- S6.16 **Content of notice of disconnection for events within Consumer's control:** The notice of Temporary Disconnection provided by the Distributor to the Retailer under clause S6.15 will specify:
- (a) the ICP identifier relating to the Consumer breach;
 - (b) the particulars of the Consumer breach;
 - (c) the remedy required if disconnection is to be avoided; and
 - (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.
- S6.17 **Retailer to provide notice of disconnection to Consumer:** On receipt of a notice of breach by a Consumer under clause S6.15, the Retailer will promptly forward a physical notice to the relevant Consumer and include mail, email and telephone contact details that the Consumer may use to communicate with the Retailer over the matter. The Retailer will promptly forward to the Distributor any response received from the Consumer and the Distributor will consider in good faith all such responses it receives. The Retailer and the Distributor will work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.
- S6.18 **Notice of disconnection if event is outside the Consumer's control:** Subject to clause S6.19, if:
- (a) the Distributor intends to perform a Temporary Disconnection under clause S6.14(c), (d) or (h) and the grounds for the Temporary Disconnection are not being reasonably Disputed by the Retailer and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor will give each Consumer:
 - (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such notice to include the reason for the Temporary Disconnection and be sent to each Consumer's last address provided to the Distributor by the Retailer, or if no address has been provided as the retailer has no Consumer at that ICP, the notice will be sent to the Consumer's address on the Registry, and the Distributor will provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;

- (ii) a final warning not less than 48 hours nor more than 7 days before the disconnection. The final warning will provide the timeframes for disconnection. This will be a separate notice to the one provided at least 9 Working Days prior to disconnection; and
 - (iii) if disconnection is not completed within the timeframes notified, the Distributor will issue another final warning not more than 7 days before disconnection.
- (b) If the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.14(a) or S6.14(b), the Distributor will use reasonable endeavours to give each Consumer as much prior notice as reasonably practicable, but in any event will notify the Consumer no later than 2 Working Days after the Temporary Disconnection.

S6.19 **Authority guidelines:** Notwithstanding clauses 3.6(b), 13.3, S6.14 or any other relevant provision of this agreement, if in respect of a proposed Temporary Disconnection notified to the Retailer the Retailer identifies a Consumer as being either a medically dependent or a vulnerable consumer for the purposes of the Electricity Authority guidelines on arrangements to assist vulnerable and medically dependent consumers, then in respect of that proposed Temporary Disconnection the notice requirements of those guidelines will be complied with to the fullest extent practicable in the circumstances having regard to the reason for, and level of urgency required in relation to, the relevant Temporary Disconnection. To avoid doubt, the Retailer shall identify the consumer referred to in this clause to the Distributor on a Temporary Disconnection by Temporary Disconnection basis only and the Retailer shall not provide to the Distributor, or expect the Distributor to act in relation to, any general notification in relation to the characteristics of a consumer at any particular ICP.

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

S6.21 **Restoration of connection:** If either party has performed a Temporary Disconnection in respect of a Consumer's ICP, the party that performed the Temporary Disconnection will take reasonable steps to arrange restoration of supply to the connection as soon as reasonably practicable and not longer than 3 Working Days after conditions for reconnection have been satisfied.

Vacant Site Disconnections and associated reconnections

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

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

and will use its best endeavours to undertake a Vacant Site Disconnection of an ICP without delay if the above criteria apply and the ICP has been inactive for at least 3 months.

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

- S6.24 The Retailer will ensure that Vacant Site Disconnections and associated reconnections are carried out by Warranted Persons and in accordance with the Distributor's reasonable operational work practices for managing vacant sites. If a Vacant Site Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.
- S6.25 The Retailer may give the Distributor notice that the Distributor is responsible for completing the Vacant Site Disconnection for an ICP if:
- (a) the Retailer wishes to carry out a Vacant Site Disconnection for the ICP;
 - (b) the Distributor has not provided an exclusive and accessible isolation device for that ICP; and
 - (c) the Retailer has not been able to complete a Vacant Site Disconnection in accordance with Good Electricity Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s).
- S6.26 If the Retailer gives the Distributor notice under clause S6.25:
- (a) the Distributor will endeavour in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;
 - (b) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound to install such a device if it considers in its opinion that it would be impractical or unreasonably costly to do so; and
 - (c) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.
- S6.27 The party performing the disconnection or reconnection will, unless otherwise agreed, notify the other party within 2 Working Days of completion of the work.
- S6.28 Both parties will update the Registry throughout this process in accordance with the Code.

Decommissioning an ICP

- S6.29 A Distributor may Decommission an ICP in the following circumstances, provided that the requirements of section 105 of the Act and Part 11 of the Code are met:
- (a) the Distributor is advised by a Consumer, 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 the reason given "De-energised – ready for decommissioning", the ICP has been De-energised and the Retailer has attempted to recover the meters; or
 - (d) if the Distributor has not supplied Distribution Services in respect of the ICP for 6 months or more,
- provided that in respect of sub-clauses (a) and (d), the Distributor will, unless advised by the Retailer, notify the Retailer before Decommissioning the ICP to enable the Retailer to arrange for removal of the Metering Equipment (if appropriate) and updating of the Registry.
- S6.30 A Decommissioning will be performed by removing all or part of the Consumer Service Line to the ICP, or if a shared Consumer Service Line forms part of the supply, by isolating and removing the load side cable from the main switch at the meter board and removing any associated meters. In all circumstances, the property will be left electrically safe.

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

Unmetered Load

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

SCHEDULE 7 – LOAD MANAGEMENT

Rights to control load

S7.1 As provided for in clauses 6.1 and 6.2, control of the load at an ICP at which the Retailer supplies electricity may be undertaken by either the Distributor or the Retailer or, feasibly, by both parties. This schedule sets out additional obligations of the parties in each of these situations.

Use of controllable load

S7.2 To facilitate the use of a Load Control System to achieve the highest value, the party that has obtained the right to control a load may assign that right to another party (provided that the party obtains the right to make such an assignment from the Consumer).

S7.3 The purposes for which load control can be used (provided that the relevant party obtains the right to control the load in accordance with clause 6.1 or 6.2) include:

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

Coordination of split ownership Load Control Systems

S7.4 If the Retailer provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:

- (a) The Distributor will provide the Retailer with details of the technical characteristics of the Load Control Equipment appropriate for use with the Distributor's Load Signalling Equipment in each Network area.
- (b) If the Distributor has obtained the right to control load at an ICP in accordance with clause 6.1, the Retailer will install Load Control Equipment that reliably receives the Distributor's load control signals and controls the relevant load. If the Distributor's specific Controlled Load Tariff Rate makes it necessary for the Retailer to install additional Metering Equipment that separately measures and records controlled load electricity consumption, then at the Distributor's request, the Retailer will install the Metering Equipment (provided that the parties acknowledge that such installation does not give the Distributor the right to change the eligibility criteria for Price Categories or Tariff Options in a manner that would require a mass change to existing metering installations).
- (c) If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it will first seek to negotiate suitable terms with the Retailer for the upgrade of the Retailer's Load Control Equipment. If agreement is not reached, the Distributor

may, at its discretion, choose to procure and install, at its own cost, suitable Load Control Equipment.

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

Either party may obtain Load Management Services from the other

- S7.5 Either party that has obtained the right to control load at an ICP in accordance with clause 6.1 or 6.2 may provide Load Management Services to the other party as an Additional Service.
- S7.6 If a party requests Load Management Services from the other party, the parties will negotiate the provision of additional Load Management Services in good faith.

SCHEDULE 8 – PRICING SCHEDULE AND POLICY

- S8.1 The pricing schedule and policy set out in this schedule 8 will apply to the Services provided by the Distributor to the Retailer under this agreement.
- S8.2 Notwithstanding clause S8.1, the Distributor may give to the Retailer 60 Working Days' written notice to replace the pricing schedule and policy set out in this schedule 8 with a pricing schedule and policy set out in <http://vector.co.nz/electricity/our-pricing>.

Calculation of scaled and variable charges

- (a) Where the sum of electricity consumption for all Consumers in the Northern Network (after adjustments for estimated electricity consumption and losses) does not reconcile with the total electricity injected into the Northern Network each month, the Distributor may factor up or down the Loss-adjusted electricity consumption for each customer identified by the Distributor as not being half hourly metered or un-metered so that the total electricity consumption of all Consumers reconciles with the total electricity injected into the Northern Network.
- (b) The electricity consumption for each Consumer derived from this calculation will be the basis for calculating variable charges.

SCHEDULE 9 – VECTOR USE-OF-NETWORK PRE-REQUISITES

The pre-requisites

S9.1 Before the Distributor conveys any electricity on the Network to any Point of Connection for the Retailer, the Retailer must satisfy the following pre-requisites. The Retailer must also continue to satisfy the following pre-requisites throughout the Term.

Information about pre-requisites

Sign a Use of System Agreement (UoSA)

S9.2 The Distributor's commercial manager is the primary contact for the Retailer in signing a UoSA with the Distributor. The Retailer acknowledges that there are also other employees of the Distributor who the Retailer must engage with in relation to certain specific requirements of the UoSA.

Satisfy credit requirements

S9.3 The Retailer must provide to the Distributor appropriate authorities to allow the Distributor to undertake credit checks of the Retailer from time to time with a collection company of the Distributor's choice.

S9.4 Clean credit checks will need to be obtained on:

- (a) the Retailer;
- (b) the directors of the Retailer; and
- (c) the senior management of the Retailer.

S9.5 In addition, if the Retailer, any of its directors or senior management have been previously involved with any of the Distributor's group and any contractual obligations, including payment, have not been met during such involvement, then the Distributor can refuse to allow access to the Network by the Retailer.

Demonstrate to the Distributor that it can communicate and exchange information in an acceptable manner

S9.6 The Retailer must demonstrate to the reasonable satisfaction of the Distributor that it has an acceptable system for receiving and responding to Consumer queries 24 hours a day, seven days a week.

S9.7 The Retailer and the Distributor's customer service manager will meet from time to time to discuss their respective communications systems. The Distributor's customer service manager will advise the Retailer whether the existing or proposed communication systems are acceptable and arrange for testing of such systems once they are installed (if required). The Distributor's customer service manager will also be entitled to explain some of the developments that the Distributor is currently undertaking to improve communication to and from retailers.

Demonstrate to the Distributor that it will be able to provide mass-market and time-of-use data billing data as per the UoSA

S9.8 The Retailer will need to demonstrate to the reasonable satisfaction of the Distributor that it has the systems in place to be able to comply with the Distributor's information exchange requirements for the billing cycle and the Electricity Authority's standard information exchange protocols. Assistance can be provided with testing the Retailer's files prior to the Retailer commencing trading.

Ensure its Consumer Contracts comply with the Agreement

S9.9 The Retailer will provide the Distributor with such evidence as the Distributor may reasonably request to satisfy the Distributor that it meets the terms of this agreement in relation to Consumer Contracts, including by providing the Distributor examples of Consumer Contracts that comply with the terms of the Agreement, as requested from the Distributor from time to time.

Be an audited Retailer under the Code

S9.10 The Retailer will need to confirm in writing to the Distributor's commercial manager that it is a reconciliation participant under the Code and it has obtained and maintained certification under the Code.

S9.11 The Retailer will confirm in writing it has been audited and approved by the Electricity Authority pursuant to the Code.

Be a financial member of the Electricity and Gas Complaints Commissioner Scheme

S9.12 The Retailer must have been accepted as a financial member of the Electricity and Gas Complaints Commissioner Scheme.

Demonstrate that its Consumer website complies with the Agreement

S9.13 The Retailer will provide the Distributor details of their Consumer website to ensure that the website complies with the terms of this agreement.

SCHEDULE 10 – RETAILER SPECIFIC INFORMATION

Receivership Options – Refer clause 20.7 (Strike the option not applicable)

Receivership Option A (Default)

Receivership Option B

Audit Options – Refer clause 30.2 (Strike the option not applicable)

Audit Option A (Default if As-Billed Normalised billing methodology is selected under clause 11.1)

Audit Option B

Audit Option C (Default if RM Normalised billing methodology is selected under clause 11.1)

SCHEDULE 11 – EMBEDDED NETWORK PROVISIONS

Introduction

- S11.1 This schedule sets out the obligations of the Retailer in relation to the supply of electricity to Embedded Network Consumers.
- S11.2 The Retailer acknowledges and agrees that as Embedded Networks are not owned or operated by the Distributor, the Embedded Network Owner (and not the Distributor) is responsible for the conveyance of electricity via the Embedded Network and that, to the fullest extent permitted by law, the Distributor shall have no liability to the Retailer of any kind, whether in contract, tort (including negligence) or otherwise, in relation to any Embedded Network.

Embedded Network Consumer Contracts

- S11.3 The Retailer must, subject to clause 27.1 of the agreement, ensure that all Embedded Network Consumer Contracts include the following:
- (a) An acknowledgement and agreement by the Embedded Network Consumer that the Embedded Network Owner (and not the Distributor) is responsible for the conveyance of electricity via the Embedded Network and that, to the fullest extent permitted by law, the Distributor shall have no liability to the Embedded Network Customer of any kind, whether in contract, tort (including negligence) or otherwise, in relation to the Embedded Network.
 - (b) An acknowledgement and agreement by the Embedded Network Consumer that, without limiting the acknowledgement and agreement in sub-clause (a) above, to the fullest extent permitted by law, including where the Embedded Network Consumer is acquiring, or holding itself as acquiring, electricity for the purpose of a business any and all warranties, guarantees or obligations imposed on the Embedded Network Owner and/or the Distributor (if any) to the Embedded Network Consumer by the Consumer Guarantees Act 1993 or any other law concerning:
 - (i) the services to be provided by the Embedded Network Operator; and
 - (ii) the goods to be provided by the Retailer,are excluded, and as a condition of the Embedded Network Consumer being entitled to on-sell electricity to an end user, the Retailer will require the Embedded Network Consumer to include provisions in all agreements between the Embedded Network Consumer and an end user that exclude all warranties, guarantees and obligations of the kind referred to in this sub-clause (b) to the fullest extent permitted by law, including where the end user is acquiring, or holds itself as acquiring, electricity for the purpose of a business.
 - (c) An indemnity from the Embedded Network Consumer in favour of the Distributor in relation to all direct loss or damage caused or contributed by the fraud, dishonesty or wilful breach of the Embedded Network Consumer Contract by the Embedded Network Consumer.
 - (d) An acknowledgement and agreement by the Embedded Network Consumer that the Distributor will have no liability to the Embedded Network Consumer in contract, tort (including negligence) or otherwise in relation to the supply to the Embedded Network Consumer under the Embedded Network Consumer Contract.
 - (e) An acknowledgement and agreement by the Embedded Network Consumer that the acknowledgement and agreements referred to in sub-clauses (a) to (d) above are given by the Embedded Network Consumer for the benefit of the

Distributor and are enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982.

Payment to Distributor

- S11.4 The Retailer acknowledges that it is the Distributor's policy to directly contract with Embedded Network Owners in relation to the connection of Embedded Networks to the Network and the Embedded Network Owners are required to pay charges to the Distributor under such contracts.
- S11.5 Where the Retailer has agreed with an Embedded Network Owner that it will collect payment by Embedded Network Consumers of line charges in respect of an Embedded Network, the Distributor may issue the monthly Tax Invoice in respect of distribution services charges in relation to the connection of the relevant Embedded Network to the Network to the Retailer who will receive the same as agent for the relevant Embedded Network Owner, and the Retailer will pay such distribution service charges to the Distributor on behalf of the Embedded Network Owner by the time specified in the Tax Invoice.
- S11.6 Irrespective of whether clause S11.5 applies, if the Distributor gives notice to the Retailer at any time advising that an Embedded Network Owner is in default in relation to the payment of charges owed to the Distributor under a contract of the kind referred to in clause S11.4 and requesting that the Retailer pay to Distributor for the time being all amounts that the Retailer is otherwise required to pay to the Embedded Network Owner, the Retailers will comply with such request from the date of receipt of such notice until the Distributor notifies the Retailer that it is no longer required to do so in respect of the relevant Embedded Network Owner.
- S11.7 The Distributor will apply all amounts received from the Retailer pursuant to clause S11.5 to the amounts owed by the Embedded Network Owner to the Distributor and will account to the Embedded Network Owner for the balance (if any).
- S11.8 The Distributor will indemnify the Retailer upon demand from and against all liabilities, claims, costs and expenses that the Retailer suffers or incurs as a result of complying with any request made by the Distributor pursuant to clause S11.5. The provisions of clause 26.19 of the agreement (with all necessary amendments) apply in relation to any indemnity claim made by the Retailer under this clause S11.8.

SCHEDULE 12 – TRANSITIONAL PROVISIONS

S12.1 The parties agree that from the Commencement Date until the Transition Date, the following provisions will apply instead of the corresponding clauses in the agreement listed below:

(a) Clause 26.7(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 system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Distributor
0 to 2.5%	\$400,000
>2.5% to 5%	\$800,000
>5% to 7.5%	\$1,200,000
>7.5% to 10%	\$1,600,000
>10% to 12.5%	\$2,000,000
>12.5% to 15%	\$2,400,000
>15% to 17.5%	\$2,800,000
>17.5% to 20%	\$3,200,000
>20% to 22.5%	\$3,600,000
>22.5% to 25%	\$4,000,000
>25% to 27.5%	\$4,400,000
>27.5% to 30%	\$4,800,000
>30%	\$5,200,000

(b) Clause 26.8(b):

in respect of all events or circumstances during any Year under all use of system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

No of ACTIVE ICPs supplied by the Retailer 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)	Maximum aggregate liability of the Retailer
0 to 2.5%	\$400,000
>2.5% to 5%	\$800,000
>5% to 7.5%	\$1,200,000
>7.5% to 10%	\$1,600,000
>10% to 12.5%	\$2,000,000
>12.5% to 15%	\$2,400,000
>15% to 17.5%	\$2,800,000
>17.5% to 20%	\$3,200,000
>20% to 22.5%	\$3,600,000
>22.5% to 25%	\$4,000,000
>25% to 27.5%	\$4,400,000
>27.5% to 30%	\$4,800,000
>30%	\$5,200,000

(c) Clause 32.2 – Definition of “Network”:

“**Network**” means the Distributor’s lines, substations and associated equipment used to convey electricity in the Waitakere, Rodney and North Shore districts in Auckland;

(d) Schedule 2:

Nil.

S12.2 The parties agree that on and from the Transition Date, the definition of “Transition Date” in clause 32.2, clause 33 and this schedule 12 cease to form part of this agreement and are deemed to be removed from this agreement with effect from that date but only in relation to the rights and obligations of the parties from that date.