



USE OF SYSTEM AGREEMENT

Between

Network Waitaki Limited
(As Distributor of Electricity)

And

(As Retailer of Electricity)

Version 2.7 – November 2010

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THE PARTIES AGREE as follows:

1. Definitions and Construction

1.1 In this Agreement, unless the context otherwise requires:

“Asset Management Plan” means the Distributor’s plan of capital expenditure, maintenance priorities and system development in respect of the Distribution Network, in the form that will be made publicly available by way of regulation as varied by the Distributor from time to time.

“Agreement” means this Use of System Agreement, and Schedules as amended from time to time.

“Associated Services” means those services described in Schedule E.

“Bank Base Rate” means the 90-day Commercial Bill Rate as published by Reuters Press Agency and applying at 10.30 am on the day of calculation.

“Business Day” means any day on which registered banks are open for business in Oamaru.

“Charges” means the charges payable under this Agreement to the Distributor for the Delivery Services which at the time of execution of this Agreement, are the prices in Schedule C, and such amended charges as are made pursuant to Clause 15 or otherwise.

“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, excluding:

- a) information known to the other party prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party; and
- b) information obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the first party under an obligation of confidence.

“Connection Agreement” means an agreement between the Distributor and another party for establishing a new ICP or modification of an existing ICP.

“Connection Services” means the Disconnection Reconnection and Decommissioning of the Connected Customer’s Installation to or from the Distribution Network.

“Connection Services Authorisations” means the authorisation of certain personnel to carry out Disconnection and Reconnection of the Connected Customer’s Installation to the Distribution Network.

“Connected Customer” means a purchaser of electricity from the Retailer that is delivered via the Distribution Network.

“Connected Customer’s Installation” means any Fittings owned or used by a Connected Customer (except Distributor’s Equipment) and that form part of a system for conveying electricity from the Connected Customer’s Network Connection Point to where the electricity may be consumed.

“Connected Customer’s Premises” means the land and buildings owned or occupied by a Connected Customer, and any land over which the Connected Customer has an easement or right to pass electricity.

“Consumer Dispute Resolution Protocol” means the dispute resolution protocol defined by the ECC.

“Contract Capacity” means the maximum capacity of a Connected Customer’s Installation and is the basis for the Line Charges associated with the corresponding ICP. This Contract Capacity is either controlled through the Metering Installation or the Connected Customer’s Installation protection device owned by the Distributor.

“Date of Commencement” means **1 December 2010**.

“Delivery” means the transportation of electrical energy to the Connected Customer via the Distribution Network.

“Delivery Services” means the provision of Line Function Services and the provision of the Associated Services and where applicable the Discretionary Services.

“Discretionary Services” means the services set out in Schedule F and such other services as the Distributor may offer from time to time.

“Disconnection” means the removal of a fuse or link or the opening of a switch to prevent further Delivery through the ICP and is equivalent to De-energisation under MARIA.

“Distribution Network” means the Distributor’s system for the conveyance of electricity including all Fittings comprising that system and which terminates at the Connected Customers’ Network Connection Points.

“Distributor’s Equipment” means the Fittings belonging to the Distributor or the Distributor’s Agent which is from time to time installed in, over or upon a Connected Customer’s premises.

“Electricity Complaints Commission” or “ECC” means the body established by the Constitution for the Electricity Complaints Commissioner Scheme covering the Electricity Consumer Code of Practice and the Consumer Dispute Resolution Protocol.

“Electricity Consumer Code of Practice” means the code of practice defined by the ECC.

“Fittings” means everything used, or designed or intended for use in, or in connection with the conversion, transformation, conveyance or use of electricity.

“Force Majeure” means any event or circumstance which is beyond the reasonable control of either Party and which could not have been prevented by a Party complying with Good Industry Practice, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including, but not limited to acts of god, strike, lock-out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act; blockade, revolution, riot; insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, wind, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, lack of adequate fuel resources, explosion, fault or failure of any plant; apparatus or equipment, governmental restraint, act of parliament, other legislation, bylaw, or the failure or deficiency of any Generator, Transpower or the Distributor to supply electricity to the Connection and the discontinuance or deficiency of supply or failure to convey electricity or to do so in the required quantity which occurs as a result of the Distributor selecting at its discretion the connection for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party.

“Generator” means any organisation that generates or wholesales electricity supplied to the Retailer or any Other Retailer.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced distributor engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time.

“Grid Exit Point” or “GXP” has the same meaning as Point of Supply.

“ICP” means Installation Control Point and has the same meaning as defined in MARIA.

“Incumbent Retailer” has the same meaning as defined in MARIA.

“Line Function Services” is as defined in the Electricity Act 1992. In the context of this agreement; Line Function Services includes the responsibility for procuring contracts with Transpower for the connection of the Distributor’s Network to Transpower’s Network, the allocation of the transmission charges, the provision of a Load Management Service and the allocation of Losses incurred during Delivery.

“Load Group” means the group applied by the Distributor to a particular Connected Customer Installation for the purposes of assigning Charges for Delivery Services.

“Load Management Service” means providing a signal for the purpose of reducing or interrupting Delivery to a part of a Connected Customer’s Installation, including as an example, but without limitation, Delivery to a water heater, on a basis previously agreed between the Retailer and Distributor and as appropriate to the Load Management Service selected by the Retailer.

“Losses” means electricity unaccounted for on the Distribution Network, being the difference between the sum of the electricity delivered to the Distributor measured at the Network Points of Supply and the sum of the electricity measured or calculated as delivered to all ICPs.

“Loss Factor” means the ratio of electricity delivered into the network at the Network’s Points of Supply to the corresponding electricity delivered from the network at an ICP.

“MARIA” means the “Metering and Reconciliation Information Agreement” administered by The Marketplace Company Limited (M-co) for the purpose of assigning electricity purchased by Retailers.

“Metering Equipment” means any apparatus for the purpose of measuring the quantity of electricity Delivered through an ICP, but for the purposes of this definition shall exclude apparatus in HV metered installations such as current and voltage transformers, wiring connections, test terminals and panels considered to be Fittings owned by the Connected Customer or the Distributor.

“Metering Installation” has the same meaning as that attributed to the term in MARIA.

“National Reconciliation Manager” or **“NRM”** has the same meaning as that attributed to the term in MARIA.

“Network Waitaki Connection Standard” means the relevant standards, issued by the Distributor and amended by the Distributor from time to time which set out the standards, in accordance with Good Industry Practice, which must be met by Connected Customers’ Installations for continuing connection to the Distribution Network, and other related matters.

“Network Connection Point” means each point of connection at which a supply of electricity may flow between the Network and the Customer’s Installation as defined by the Distributor and normally near the boundary of the premises on which the Customer’s Installation is situated and or where the Customer’s Installation inter-connects with a circuit breaker, switch, fuse or other isolation device owned by the Distributor (refer to Network Waitaki Connection Standard for more detailed information).

“NZEM” means the New Zealand Electricity Market.

“Other Retailer” means a retailer, other than the Retailer, who purchases or wishes to purchase Delivery Services from the Distributor which in circumstances where a Connected Customer is purchasing electricity directly from the NZEM or a generator and includes, where appropriate the Connected Customer.

“Party, Parties, or Other Party” means each or either of the Distributor or the Retailer, or both the Distributor and the Retailer.

“Performance Targets” means those targets set out in Schedule D.

“Period of Inaccuracy” means the period between the most recent test confirming accurate operation of the Metering Equipment, or the date at which the parties agree that all evidence suggests that the Metering Equipment was measuring accurately, and the time at which it is determined that the Metering Equipment measures inaccurately but is limited to a maximum of 12 months retrospectively from the latter.

“Point of Supply” means the points of connection between the Distribution Network and Transpower’s Network or any Generator or any other distribution network where electricity is injected into the Distribution Network.

“Power Factor” has the meaning ascribed by the following formula:

$$\frac{A}{\sqrt{A^2 + R^2}}$$

Where:

- a) A = active power being the measured value of the product of the current and the component of the voltage in phase with the current (expressed as kilowatts “kW”); and
- b) R = reactive power, being the measured value of the product of the current and the component of the voltage in quadrature with the current (expressed as kilovolt amperes reactive “kVAR”).

Both A and R being the instantaneous values over one and the same half hour period beginning or ending on the hour. For the purposes of this agreement the Power Factor will be considered lagging if reactive power is generated or supplied by an over-excited synchronous machine or by a static capacitor and used by inductive loads such as induction motors, reactors and under-excited synchronous machines.

“Reconnection” means the reinstatement of a fuse or link or the closing of a switch to allow further Delivery through the established ICP and is equivalent to “Energisation” under MARIA.

“Registry” means the national register of all ICPs as per MARIA.

“Transpower” means Transpower New Zealand Limited its successors and assigns.

“Transpower’s Network” means the electricity transmission system owned and operated by Transpower.

- 1.2 Clause and other headings are for ease of reference only.
- 1.3 Any reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.
- 1.4 References to Clauses and Schedules are references to clauses of and schedules to this Agreement.
- 1.5 Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.6 Any reference in this Agreement to the Retailer, Distributor or Connected Customer includes where context permits, the agents or employees of the same.

2 Conditions Precedent

- 2.1 Prior to the conveyance of electricity through the Network to the Connected Customer’s Network Connection Point, and the provision of Delivery Services pursuant to this Agreement:
 - 2.1.1 The Retailer and the Distributor shall have executed this Agreement; and
 - 2.1.2 The Retailer shall be bound by and comply with the conditions and requirements of MARIA as amended from time to time. Provided that if the Retailer is a member of the NZEM and as a result is able to obtain reconciliation services, it shall not be necessary for the Retailer to be a party to MARIA; and
 - 2.1.3 The Retailer shall have provided to the Distributor the list of ICPs initially covered under this agreement to be recorded in Schedule A; and
 - 2.1.4 The Retailer shall have an agreement with the Connected Customer to supply electricity which, where appropriate, includes the conditions stated in this Use of System Agreement; and
 - 2.1.5 The Retailer shall have ensured that functioning Metering Equipment which complies with MARIA is associated with the ICP as per Clause 12.1; and
 - 2.1.6 The Retailer shall have complied with the prudential requirements set out in Clause 16.

3 Term of the Agreement

- 3.1 The Agreement shall commence on the Date of Commencement and, except in the case of any early termination agreed by the Parties in writing or in the case of termination pursuant to Clauses 17, shall expire on the earlier of:
 - a) the first Business Day three months after notice from the Distributor to the Retailer, such date not to be earlier than 24 months following the Date of Commencement; or
 - b) the first Business Day, one month after notice from the Retailer to the Distributor; or
 - c) the date this Agreement is replaced by a new agreement offered by the Distributor and accepted by the Retailer.

- 3.2 If the Agreement expires in accordance with Clause 3.1(a), the Distributor shall offer a new agreement to the Retailer no later than 2 months prior to the date of expiry.
- 3.3 If the Agreement expires in accordance with Clause 3.1(b), the Retailer shall either:
- a) disconnect the Connected Customer Installations from the Distribution Network (and upon such disconnection the Retailer shall be liable for all Charges which have accrued as due prior to and as result of the disconnection); or
 - b) arrange for all Connected Customer Installations to be transferred to an Other Retailer that holds a valid Use of System agreement with the Distributor (and upon such transfer the Retailer shall be liable for all Charges which have accrued as due prior to the transfer).

4 Review of the Agreement

- 4.1 Notwithstanding the term of the Agreement, and without limiting either Party's rights in relation to termination, the Parties shall, on notice from either Party, review the provisions of this Agreement for the purposes of considering and reaching agreement on any amendments to this Agreement necessary to give effect to any change in circumstances relating to the supply of Line Function Services or the use by the Retailer of the Distribution Network.
- 4.2 The party requesting the review shall propose in writing to the other party amendments to the Agreement and the basis on which such amendments are sought. The other party shall respond within 15 Business Days of receipt, with agreement to the proposed amendments or an alternative proposal.
- 4.3 The parties shall negotiate in good faith to reach prompt agreement on proposed amendments. If agreement is not reached within 30 Business Days of initiation of the review, the review shall be at an end and any disagreement on the review shall not be a matter to be referred to the Dispute Resolution procedures pursuant to Clause 20.
- 4.4 For the avoidance of doubt; this Clause 4 does not provide for reviews of the Distributor's Charges which may be reviewed by the Distributor in accordance with Clause 15.

5 Delivery Services

- 5.1 The Distributor shall, in accordance with this Agreement:
- 5.1.1 provide Delivery Services including the provision of the Associated Services and such of the Discretionary Services as the Retailer may elect to acquire, to the Retailer in accordance with Good Industry Practice, subject to Clause 5.2; and
 - 5.1.2 use its reasonable endeavours to meet the Performance Targets.
- 5.2 The Distributor shall use reasonable endeavours to provide continuous Delivery, but does not guarantee that the Distribution Network will provide Delivery which is free from defects or interruptions. The Retailer is advised to include in its contracts with Connected Customers, a similar provision to the effect that the Distributor does not guarantee continuous Delivery.
- 5.3 The Distributor shall accommodate the Retailer and all Other Retailers equitably with regard to the Delivery Services.
- 5.4 If a Retailer requests the Distributor to upgrade its Delivery Service or extend its Distribution Network, the Distributor may require the Retailer or the Connected Customer to enter into a Connection Agreement to record the terms agreed between the Distributor and the Retailer or Connected Customer in relation to the upgrade and/or extension.

6 Interruption to Delivery

The Distributor may interrupt or reduce Delivery at any time the Distributor considers it appropriate to do so for planned or unplanned interruptions as follows:

- 6.1 Planned Interruptions are situations where the Distributor determines the need for the interruption in advance, such as:
- 6.1.1 to enable the Distributor to inspect, effect alterations, maintenance, repairs or additions to any part of the Distribution Network; or

- 6.1.2 to avoid the risk of danger to persons, damage to property or interference with the regularity or efficiency of Delivery; or
 - 6.1.3 to preserve and protect the proper working of the Distribution Network, and meeting the Distributor's obligations to Transpower or any other network owner through which the Distributor directly or indirectly takes a supply of electricity; or
 - 6.1.4 for the Distributor's Load Management Service as specified in Clause 7; or
 - 6.1.5 if supply of electricity to a Network Supply Point is or will be reduced, impaired or interrupted; or
 - 6.1.6 in the event of an occurrence of Force Majeure; or
 - 6.1.7 in accordance with Good Industry Practice; or
 - 6.1.8 to accommodate the Retailer in the event of an envisaged shortage of electricity; or
 - 6.1.9 to allow the Retailer to inspect, effect alterations, maintain or repair any fittings owned by the Retailer.
- 6.2 Unplanned Interruptions are situations where the Distributor does not know of the need for the interruption sufficiently in advance for notification of Connected Customers, such as:
- 6.2.1 faults on the Distribution Network caused by equipment failure, accident, storm or similar event; or
 - 6.2.2 overloading arising from a capacity shortage in the Distribution Network or Transpower's Network; or
 - 6.2.3 emergencies.
- 6.3 Where the Distributor interrupts Delivery pursuant to Clause 6.1, the Distributor shall initiate notification of Connected Customers. To effect this the Distributor may either:
- 6.3.1 provide the Retailer a minimum of 7 business days notice for the planned interruption including details of ICPs affected. Upon receiving such notice, the Retailer will arrange appropriate notice to Connected Customers at least 4 days in advance; or
 - 6.3.2 provide direct notification of the planned interruption to Connected Customers at least 4 days in advance. The form of the notice shall either be in writing (including a generic delivered notice) or by advertisement in appropriately circulated newspapers.
- 6.4 Where the Distributor interrupts Delivery pursuant to Clause 6.1.8 the Retailer shall be responsible for dealing with the Generators and Other Retailers and the Distributor shall use its best endeavours to co-operate with the Retailer and all Other Retailers who have electricity conveyed over the Network.
- 6.5 Where the Delivery is interrupted pursuant to Clause 6.2, the Distributor shall report to the Retailer the area affected by and reasons for the interruption and its expected duration as per Schedules D3.
- 6.6 In all situations of interruptions, the Distributor shall use all reasonable endeavours to minimise the period of interruption.
- 6.7 If there is a capacity shortage in the Distribution Network or Transpower's Network associated with an interruption which creates a difficulty in Delivery and/or the transmission over the Transpower Network, the Distributor shall determine the priorities for maintaining and restoring Delivery. The Distributor shall not make any determination under this Clause 6.7 for the purposes of discriminating between the Retailer and Other Retailers.
- 6.8 The Retailer shall forthwith advise the Distributor of any defect or interruption to the electricity supply or other Distribution Network abnormality known to the Retailer, as soon as practicable after receiving such knowledge.

7 Load Management Services

- 7.1 The Charges as at the Date of Commencement are dependent on the Distributor's Load Management Service, current at the Date of Commencement being maintained. The Distributor shall continue to operate its current Load Management Service, until such time as a new basis is implemented by the Distributor following consultation with the Retailer and Other Retailers. Among other reasons, any new Load Management Service may be implemented to address the following:
 - 7.1.1 to alleviate congestion on the Distribution Network and manage demand for electricity at Network Supply Points;
 - 7.1.2 to reduce the Distribution Network load in the event of emergencies occurring on the Distribution Network or on Transpower's Network.
- 7.2 The Distributor may extend the use of its current Load Management Service or provide other Load Management Services to the Retailer, at the Distributor's discretion.

8 Installation Control Points (ICP)

- 8.1 The ICPs to which this Agreement relates at the Commencement Date, and any updates thereof shall be advised by the Retailer to the Distributor in accordance with this Agreement.
- 8.2 For each established Connection from which the Retailer intends to supply electricity, the Retailer shall:
 - 8.2.1 provide notice to the Distributor within three Business Days of that intention by forwarding to the Distributor a completed Schedule B (or equivalent information, acceptable to the Distributor);
 - 8.2.2 provide any Other Retailer associated with the ICP notice of that intention;
 - 8.2.3 procure from the Connected Customer on a continuing basis, an undertaking to provide and maintain suitable space for the safe and secure housing of all Distributor's Equipment, deemed necessary by the Distributor, to be housed at the Connected Customer's Premises; and
 - 8.2.4 subject to the Distributor's approval, arrange and effect at its own expense Reconnection, if not already connected.
- 8.3 Notwithstanding Clauses 8.1 and 8.2, the Distributor may establish the sites to which this Agreement applies based on information held on the MARIA Registry.
- 8.4 The Distributor will not agree to connection to the Distribution Network any new or modified Connected Customer's Installation unless, acting reasonably, it is satisfied that all of the requirements of the Network Waitaki Connection Standard and any other current legislation have been complied with.
- 8.5 The Retailer may, on giving at least one Business Day's written notice to the Distributor require the Distributor to delete any ICP from this Agreement with effect from the date specified in that notice (the "Deletion Date"). Thereupon the Retailer at its own expense shall make arrangements to physically disconnect the Connected Customer's Installation from the Distribution Network on the Deletion Date and confirm this action to the Distributor. The Retailer shall incur no charges for Delivery Services to that Connected Customer beyond the date of Disconnection. The Retailer shall not Disconnect the Connected Customer's Installation if, prior to the Deletion Date, an Other Retailer advises the Retailer that it has entered into an agreement with the Connected Customer for supply of electricity, which is effective from the Deletion Date. In this case the Retailer shall incur no charges for Delivery Services to that Connected Customer beyond the Deletion Date. This transaction will be confirmed through the Registry by the Retailer.
- 8.6 The Retailer shall not agree to or approve any interconnection between separate Network Connection Points without the prior written consent of the Distributor.

- 8.7 The Retailer shall ensure that every agreement between it and its Connected Customers contains conditions requiring compliance of the Connected Customer and the Connected Customer's Installation with all statutory and regulatory requirements, the Network Waitaki Connection Standard, and the Distributor's requirements of Connected Customers as set out in this Agreement as amended from time to time, and shall ensure that such conditions will be expressed to be for the benefit of and enforceable by the Distributor in accordance with the Contracts (Privity) Act 1982.
- 8.8 If the Retailer becomes aware that a Connected Customer's Installation does not comply with the requirements of this Agreement, the Retailer shall arrange for the Disconnection of the Connected Customer at the ICP unless the Connected Customer has taken all actions necessary for the Connected Customer's Installation to comply with such requirements within 10 Business Days of the Retailer's becoming aware of such circumstances. The cost of Disconnection and any Reconnection shall be borne by the Retailer.
- 8.9 The Distributor may seek to recover assets from ICPs that have been disconnected for a continuous period of three months. The Distributor will advise the last Retailer associated with the ICP of its intention to recover assets at least 10 Business Days prior to removal.

9 Equipment Protection and Access

- 9.1 The Distributor shall not interfere with the Retailer's or Connected Customer's Equipment without the prior written consent of the Retailer, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In the event of such interference the Distributor will as soon as practicable inform the Retailer of the occurrence and circumstances involved.
- 9.2 The Retailer and Connected Customer shall not interfere with the Distributor's Equipment, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In the event of such interference the Retailer will as soon as practicable inform the Distributor of the occurrence and circumstances involved.
- 9.3 The Retailer shall require the Connected Customer to provide reasonable mechanical protection to the Distributor's Equipment against interference and damage. The Retailer shall be liable to the Distributor for any damage to the Distributor's equipment caused by the negligence, wilful act or omission of the Connected Customer or Retailer, or their agents or invitees. Where such damage is caused by the Connected Customer, the Retailer's liability is removed where the Retailer provides an enforceable contractual right of recovery against the Connected Customer.
- 9.4 Subject to Clause 19 the Distributor shall be liable to the Retailer for any damage to the Retailer's equipment caused by the negligence, wilful act or omission of the Distributor, or its agents or invitees.
- 9.5 Should the Distributor or the Retailer discover evidence of interference with the Distributor's or Retailer's Equipment, or evidence of theft of electricity, the Party discovering the interference or evidence shall notify the other Party as soon as possible but at the latest within 24 hours. In the event of suspected interference with the Distributor's Equipment at a Connected Customer's Installation the Distributor may itself, or may require the Retailer to, carry out an investigation at the Retailer's expense and present the findings to the Distributor within a reasonable period. If no interference is found then the costs of the investigation shall be borne by the Distributor.
- 9.6 The Retailer shall procure that the Connected Customer shall provide the Distributor, at all reasonable times, safe and unobstructed access:
 - 9.6.1 to any of the Distributor's Equipment for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing the same and for any other purpose related to this Agreement; and
 - 9.6.2 to any of the Retailer's Equipment for the purpose of verification of metering information; and
 - 9.6.3 onto the Connected Customer's Premises to ascertain the cause of any interference to the quality of Delivery Services being provided by the Distributor to the Retailer or any Other Retailer; and
 - 9.6.4 onto the Connected Customer's Premises for the purpose of protecting or preventing danger or damage to persons or property; and

- 9.6.5 onto the Connected Customer's Premises for the purposes of reconnecting or disconnecting the Connection to any Connected Customer's Installation; and
- 9.6.6 onto the Connected Customer's Premises for any other purpose relevant to the Distributor providing Delivery Services to Connected Customer's Premises in accordance with Good Industry Practice and/or for the purpose of maintaining the integrity of the Distribution Network.
- 9.7 If a Connected Customer fails to grant to the Distributor access in accordance with the requirements of Clause 9.6, the Retailer shall, within 5 Business Days of written notice from the Distributor, arrange for access for the Distributor or for the Disconnection of that Connected Customer's Installation provided that the Distributor shall be at liberty to take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to persons or property. The Retailer is required to provide for access by the Distributor, consistent with this Agreement, in its contract with the Connected Customer.
- 9.8 The Distributor shall exercise its right of access by:
 - 9.8.1 wherever practicable, giving to the Retailer and Connected Customer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
 - 9.8.2 causing as little inconvenience as practicable to the Retailer and Connected Customer in carrying out such work;
 - 9.8.3 observing Good Industry Practice at all times; and
 - 9.8.4 observing any security or site safety requirements of the Connected Customer made known to the Distributor.
- 9.9 The rights of access conferred by this Agreement are in addition to any right of access the Distributor may have under any statute or regulation.
- 9.10 In exercising any right to disconnect or in requiring the Retailer to disconnect any Customer under clause 9.7, 11.1 or 11.4, the Distributor will give the Retailer:
 - (a) a minimum of 14 days written notice of the requirement to disconnect; or
 - (b) written notice of the disconnection as soon as practicable after the disconnection has occurred in the event that the Distributor decides not to give notice due to there being serious risk to life or property

10 Connection Services Authorisations

- 10.1 Although a full range of these services can be arranged by the Distributor, the Distributor may also authorise employees of the Retailer, or its agent to undertake LV Connection Services.
- 10.2 Connection Service Authorisations will only be issued to employees of the Retailer or its agent who have complied with the requirements set out in the Network Waitaki Connection Services Authorisation Standard.
- 10.3 Authorisation of a Retailer's employee or agent's employee may be withdrawn at any time by the Distributor if the Distributor reasonably forms the view that the employee or agent's employee should no longer be authorised for the purposes of performing Connection Services. Authorisation to carry out this function is not automatically granted by obtaining authorisation to operate or work on the Distribution Network. Connection Services Authorisation also includes requirements regarding full understanding of Line Charge principles and applications.
- 10.4 The Retailer shall, whether itself or through its agent, perform Connection Services in accordance with Good Industry Practice, and in accordance with all reasonable requests made by the Distributor.

11 Quality of Demand

- 11.1 Where, as a result of changes by a Connected Customer to its Fittings or demand after Commencement Date, the characteristics of the Customer's Fittings or demand materially interferes with the quality of supply to any other Connected Customer, or customer of the Distributor, or materially interferes with the operation of the Distributor's Load Management Service or the Distribution Network, the Retailer shall, upon notice from the Distributor, arrange for the Connected Customer to remedy the interference or arrange for disconnection of the Connected Customer's Premises (at the Retailer's cost) as soon as practicable. Where such action to remedy or disconnect is not taken within a reasonable time, the Distributor may disconnect the Connected Customer's Premises (at the Retailer's cost).

- 11.2 The Retailer shall procure that each Connected Customer uses all reasonable endeavours to ensure that the levels of harmonic voltages and currents injected back into the Distribution Network from the Connected Customer's Premises conform with the New Zealand Electrical Code of Practice for Harmonic Levels NZECP 36: 1993, and NWL Network Harmonics Standard NS15/05, in so far as the harmonic disturbance results from a cause within the control of the Connected Customer.
- 11.3 The Power Factor of the demand placed by a Connected Customer's Installation on the Distribution Network shall not be less than 0.95 lagging on the whole supply to that Connected Customer during any period where the demand exceeds half the maximum demand determined by the Distributor. If the Power Factor falls below this minimum, the Distributor may give notice to the Retailer to take any necessary measures to ensure that the Power Factor meets the prescribed minimum within the reasonable period specified by the Distributor.
- 11.4 In the event that the Connected Customer fails to restore the Power Factor to the minimum described in Clause 11.3 within the period prescribed in any notice given to the Retailer pursuant to Clause 11.3, the Retailer shall pay to the Distributor the Power Factor penalty prescribed in Schedule C. Any such penalty is to be calculated from the date that the notice period described in Clause 11.3 expires. In addition the Distributor may, at his discretion, disconnect the Connected Customer's Installation or take other action to procure compliance of the Connected Customer's Installation. The cost of Disconnection and any Reconnection or any other action to procure compliance shall be born by the Retailer.

12 Metering and Control

- 12.1 For each ICP the Retailer shall ensure that there is a Metering Installation which complies with MARIA and the Network Waitaki Installation Connection Standard. This includes the Incumbent Retailer as defined in MARIA. In the event of a conflict between MARIA and the Network Waitaki Installation Standard, MARIA shall prevail.
- 12.2 The Distributor may at its own cost maintain and service an additional set of Metering Equipment for each ICP for verification of consumption and demand, and for Distribution Network management purposes.
- 12.3 The Retailer or its agent shall provide and maintain load control and meter-switching receiver relays for each ICP as appropriate for responding to the signals provided by the Distributor under its Load Management Service, subject to the selection of the particular Load Management Service by the Retailer which may not require such equipment.
- 12.4 If used in the calculation of Charges, the measurements taken by the Retailer from the Metering Equipment shall be binding on the Parties for the purpose of determining these Charges, unless either of the Parties disputes the accuracy of the Metering Equipment by giving written notice to the other Party. In the event such written notice is given:
 - 12.4.1 each Party shall provide the other with any available information relevant to the checking of the Metering Equipment;
 - 12.4.2 the Metering Equipment shall be checked for defective or inaccurate functioning or calibration in accordance with Good Industry Practice; and
 - 12.4.3 if the Metering Equipment is found to be defective or inaccurate then the Party responsible for the Metering Equipment will bear the cost of the testing. If the Metering Equipment is found not to be defective or inaccurate then the Party requesting the test will bear the cost of the testing.
- 12.5 If it is discovered that the Metering Equipment used in the determination of Charges is not measuring accurately then the quantity of electricity conveyed or the demand during the Period of Inaccuracy shall be determined by the Parties:
 - 12.5.1 in accordance with MARIA; or
 - 12.5.2 by using the measurements of any check metering equipment, if installed pursuant to Good Industry Practice; or
 - 12.5.3 by calculation of a corrected quantity of electricity conveyed during the Period of Inaccuracy if the percentage of inaccuracy is ascertainable by calibration, re-calibration, tests or mathematical calculation; or

- 12.5.4 by the Retailer estimating the appropriate quantity to the satisfaction of the Distributor during periods of similar conditions when the Metering Equipment was measuring accurately; or
- 12.5.5 by such other method as is agreed between the Parties.
- 12.6 Where the Parties are unable to agree over the determination of the appropriate quantity under Clause 12.5, the matter shall be referred to Dispute Resolution under Clause 20.
- 12.7 The Retailer shall provide the Distributor with access to the data from the Metering Equipment at all reasonable times, in a format advised by the Distributor (acting reasonably).
- 12.8 If used in the calculation of Charges, the Retailer's allocation (including any wash up or correction for up to two years) from the National Reconciliation Manager shall be binding on the Parties for the purpose of determining these Charges. It is acknowledged that this allocation is based on metering information provided by Transpower and Other Retailers as well as metering information provided by the Retailer.

13 Reconciliation - Loss Factors

- 13.1 For the purposes of this Agreement all electricity entering the Distribution Network shall be deemed to be the property of the Retailer and Other Retailers.
- 13.2 The parties acknowledge that electricity in transit over the Distribution Network cannot physically be identified as the property of any particular Retailer.
- 13.3 For the purposes of this Agreement, electricity shall be deemed:
- 13.3.1 the property of the Retailer; and
- 13.3.2 to have been taken at the time it is Delivered through an ICP.
- 13.4 Subject to any MARIA or other regulatory requirements, the Distributor shall establish and maintain the declared Loss Factors applying to each ICP. Modifications to Loss Factors shall be notified to the Retailer at least one month in advance of their application. Loss Factors shall apply equally to all Connections which have similar Delivery circumstances as provided for in MARIA. They shall apply equitably between the Retailer and Other Retailers. The Retailer shall provide the Distributor with all information the Distributor may reasonably require to enable the Distributor to determine the Loss Factors. If the Retailer does not consider the Loss Factors declared by the Distributor to be appropriate, the Distributor will meet with the Retailer and in good faith consider any submissions made by the Retailer. To assist the Retailer, the Distributor will provide details of the methodology and information used by the Distributor to determine the Loss Factors.
- 13.5 To account for the amount of electricity for which the Retailer is responsible at the ICPs, the MARIA Data Administrator shall apply the appropriate Loss Factor to the quantity of electricity measured at each ICP for all MARIA compliant half hour metered Connected Customer Installations as required by MARIA.
- 13.6 To account for the amount of electricity for which the Retailer is responsible at non MARIA compliant half hour metered or non-metered ICP's, the NRM shall apply the appropriate Loss Factor to the aggregated quantity of electricity per Profile per Network Supply Point as required by MARIA.
- 13.7 The Distributor will not knowingly deliver electricity to any connections, which are connected to the Distribution Network, unless a Retailer has first confirmed it will sell electricity to that particular ICP.

14 Calculation and Payment of Charges

- 14.1 In consideration for the Distributor providing Delivery Services to the Retailer in respect of the ICPs, the Retailer shall pay the Charges.
- 14.2 By 4pm on the 5th Business Day of the month the Distributor shall invoice the Retailer for the Charges payable by the Retailer in respect of the preceding month (the "Invoice"). Either with the Invoice or in a separate file, the Distributor shall provide a full break down of all Charge components.
- 14.3 The Distributor shall make available to the Retailer all additional information reasonably requested by the Retailer in connection with the calculation of the Charges in respect of any Invoice or individual ICP.

- 14.4 The Invoice prepared by the Distributor in accordance with Clause 14.2 will be based on the information available to the Distributor at the date of preparation of the Invoice regarding the ICPs supplied by the Retailer. In addition, the Invoice will include any revisions applying to the previous months' Invoices that have arisen from revised consumption figures or corrections to data since the previous Invoices were issued.
- 14.5 The Retailer shall pay the Distributor the total amount due on the Invoice by 4pm on the 20th day of the month in which the Invoice was issued, provided that, if that day is not a Business Day, payment shall be made on the next Business Day. In the event the Distributor has failed to provide the Invoice by the date specified in Clause 14.2, the due date for payment shall be extended by one Business Day for each Business Day (or part thereof) that the Invoice is late. All Charges payable by the Retailer are stated exclusive of Goods and Services Tax, which tax shall be payable by the Retailer at the same time as payment for the Charges shown in the Invoice.
- 14.6 Where the Retailer notes a manifest error (including an obvious arithmetic error, the inclusion of charges where there is no doubt that charges have already been paid and the application of charges where there is no doubt that the level is incorrect but excluding Invoices that have been reasonably estimated by the Distributor in the absence of necessary information), the Retailer shall immediately notify the Distributor. Upon receiving such notice, the Distributor shall issue a corrected Invoice with the due date extended by one Business Day for each Business Day (or part thereof) that the issue date of the corrected Invoice is late in terms of the Clause 14.2.
- 14.7 If the Retailer disputes any or all of an amount contained in an Invoice:
- 14.7.1 the Retailer will immediately notify the Distributor of the dispute and provide reasons for the dispute; and
- 14.7.2 the Retailer will pay the full amount of the Invoice including the disputed amount by the due date specified in the Invoice; and
- 14.7.3 the parties will comply with the provisions of Clause 20 in order to resolve any dispute. Interest on any amount to be paid by either party following the resolution of any dispute will accumulate and will be payable at the Bank Base Rate plus three per cent from the due date until the date of payment.
- Provided that no Invoice may be disputed under this Clause 14.7 after 12 months after the date of rendering the Invoice.
- 14.8 If the Retailer has failed to pay any amount contained in an invoice by the due date specified in Clause 14.5 then, without prejudice to the Distributor's right to terminate this Agreement, the Retailer will pay to the Distributor default interest on that amount at the Bank Base Rate plus five per cent from the due date until the date of payment.

15 Charge Variations

- 15.1 Subject to the following conditions, the Distributor may vary the prices which give rise to the Charges:
- 15.1.1 to effect an equitable pass through of any increase or decrease in the prices by Transpower relating to its transmission charges; or
- 15.1.2 to effect an equitable pass through of any charges, levies, taxes or other such costs imposed by regulatory authority applied to charges in respect of the provision of Delivery Services relating to Connected Customers' ICPs, upon giving a minimum of 5 Business Days' notice to the Retailer. Any such variation shall be fairly applied between the Retailer and Other Retailers as appropriate; or
- 15.1.3 by the giving of 40 Business Days' notice in writing to the Retailer. The notice shall include details of the new prices, and details of any variations to the methodology. The Distributor shall not increase the prices for any one ICP pursuant to this Clause 15.1.3, more than once during any 12 month period.
- 15.2 The Distributor in making any variations to the prices or charging methodology under Clause 15 shall have regard to the following criteria:
- 15.2.1 the objective to treat the Retailer and Other Retailers in an economically equivalent manner;

- 15.2.2 to pass through transmission charges in what the Distributor considers to be a fair and equitable manner (acting reasonably);
- 15.2.3 what the Distributor considers to be a fair and reasonable return on its assets, having due regard to the industry information published under any disclosure regulations applying from time to time; and
- 15.2.4 such other matters as the Distributor may reasonably consider appropriate.

16 Prudential Requirements

- 16.1 In order to purchase Delivery Services from the Distributor, the Retailer will either:
 - 16.1.1 maintain an acceptable credit rating in accordance with Clause 16.2; or
 - 16.1.2 provide and maintain an unconditional guarantee or letter of credit in favour of the Distributor for the amount specified in Clause 16.3. The guarantee or letter of credit must be in a form satisfactory to the Distributor (acting reasonably) and the third party guarantor must maintain an acceptable credit rating in accordance with Clause 16.2; or
 - 16.1.3 pay a cash deposit to the Distributor for the amount specified in Clause 16.5 (“the Cash Deposit”).
- 16.2 For the purpose of Clause 16.1.1, an acceptable credit rating means that the Retailer, or guarantor, as the case may be, must carry a long term Standard & Poors Rating Group credit rating of at least BBB- (or equivalent) as applying at the commencement of this Agreement or such other rating or standard as may be satisfactory to the Distributor.
- 16.3 For the purpose of Clause 16.1.2, the guarantee or letter of credit should be maintained at a level equivalent to the Distributor’s estimate of two months of Charges payable by the Retailer to the Distributor. The level may be reviewed at intervals of six months by the Distributor having regard to the average level of Charges over that period, subject to seasonal variations. The guarantee or letter of credit shall be maintained on the following terms:
 - 16.3.1 in the event that monies remain outstanding following the expiry of this Agreement, the Distributor may request payment of some or all of the guarantee or letter of credit toward the outstanding amount. Following such payment, the Distributor shall release the provider of the guarantee or letter of credit from any further obligations; or
 - 16.3.2 at the expiry of this Agreement, after the Retailer has paid all monies owing under this Agreement to the Distributor, the Distributor shall release the provider of the guarantee or letter of credit from their obligations.
- 16.4 In the event the Retailer is not in full compliance with the prudential requirements set out in this Clause 16, this shall represent an event of default for the purposes of Clause 17.
- 16.5 For the purpose of Clause 16.1.3, the Cash Deposit shall be maintained at a level equivalent to the Distributor’s estimate of two months of Charges payable by the Retailer to the Distributor. The level may be reviewed at intervals of six months by the Distributor having regard to the average level of Charges over that period, subject to seasonal variations. The Distributor will establish a trust account with its Bank for the purpose of holding the Cash Deposit. The trust account will bear interest at the best rate reasonably obtainable from time to time from the Distributor’s Bank. Interest will be paid out to the Retailer on a quarterly basis net of account fees and any withholdings required by law.
- 16.6 If a Cash Deposit is paid under Clause 16.1.3, in the event that monies remain outstanding following the expiry of this Agreement, the Distributor may request payment of some or all of the Cash Deposit toward the outstanding amount. Following such payment, the Distributor shall pay the balance of the Cash Deposit (if any) to the Retailer.”

17 Default and Termination

- 17.1 Subject to Clause 16.4 for the purposes of this Clause 17 an event of default occurs if:
 - 17.1.1 either Party (“the Defaulting Party”) fails to pay any amount due and owing from the Defaulting Party under this Agreement and the default is unremedied at the expiry of 2 Business Days immediately following the giving of notice by the other Party to the Defaulting Party of such non payment; or

- 17.1.2 the Defaulting Party fails in the reasonable opinion of the other Party in any material respect to perform or comply with any of its obligations under this Agreement and (if it is capable of remedy) it is not in the process of being remedied to the reasonable satisfaction of the other Party within 10 Business Days of receiving a written notice from the other Party specifying the failure and requiring it to be remedied; or
- 17.1.3 The Defaulting Party:
- a) becomes subject to any distress, attachment, execution or other legal process levied, enforced, issued on or against any material part of its property and is not discharged or stayed within ten Business Days; or
 - b) has a receiver appointed to the whole or any substantial part of its undertaking, property or assets; or
 - c) is deemed or presumed to be unable to pay its debts within the meaning of the Companies Act 1993, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a consignment, or an arrangement or composition with or for the benefit of its creditors; or
 - d) is removed from the register of companies or is subject to liquidation, either where an application for an order is made for or an effective resolution is passed for its liquidation; or
 - e) sells its business, or its undertaking, property or assets comprising the major part of its business without the prior consent of the other Party, which consent shall not be unreasonably withheld.
- 17.1.4 If an event of default has occurred and the Defaulting Party is the Distributor, then for the avoidance of doubt, it is acknowledged by the Distributor that damages may not be an adequate remedy and therefore the Retailer is entitled to equitable relief, including (without being limited to) an order for specific performance, in addition to damages.
- 17.2 If an event of default has occurred in accordance with Clause 17.1.2 which relates to a particular ICP and which remains unremedied then, in addition to any other rights under this Agreement, the Distributor, after giving prior notice to the Retailer, may disconnect the ICP to which the default relates.
- 17.3 If an event of default has occurred the other Party may give the Defaulting Party a further notice of the default, giving the Defaulting Party a further five Business Days to remedy the default. In the event the default remains unremedied at the expiry of the five Business Days then:
- 17.3.1 in the event of default by the Retailer, the Distributor may apply any cash bond or enforce any other form of security for payment provided under Clause 16, to payment of all or part of the Invoice; and/or
 - 17.3.2 the other Party may terminate this Agreement, without prejudice to any other rights and remedies of that other Party in which event the Distributor shall cease providing Delivery Services and the Distributor may at the Retailer's cost Disconnect all or any of the Connected Customer Installations supplied by the Retailer from the Distribution Network and cease to provide Delivery Services.
- 17.4 Further to Clause 17.3 in addition to any other rights the Distributor may have the Distributor may from the date of termination arrange for Other Retailers to supply electricity to the Connected Customers, subject to the consent of the Connected Customers. For this purpose the Retailer shall provide such information to the Distributor as it may reasonably require, anytime from an event of default occurring, for the purpose of negating inconvenience to the Connected Customers arising from the termination of this Agreement. For the avoidance of doubt, this Clause 17.4 allows the Distributor to place advertisements in local newspapers advising of the termination and requesting Connected Customers to switch to other Retailers.
- 17.5 Prior to taking remedial action under Clauses 17.3.2 or 17.4, the Distributor shall make all reasonable efforts to ensure that the Retailer's Chief Executive Officer is aware of the intended action.
- 17.6 The Retailer shall ensure that every agreement between the Retailer and a Connected Customer provides for automatic termination of supply of electricity by the Retailer through the Distribution Network to the Connected Customer upon termination of this agreement.
- 17.7 Termination of this Agreement in no way negates the rights and obligations of the parties up to the time of termination with respect to services and Charges specified as part of the Agreement.

18 Force Majeure

- 18.1 If either Party is unable to carry out any of its obligations under this Agreement because of an event or circumstances of Force Majeure, this Agreement shall remain in effect but except as otherwise provided, both Parties' obligations, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure, shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- 18.1.1 the non-performing Party gives the other Party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
 - 18.1.2 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - 18.1.3 no obligations of either Party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure; and
 - 18.1.4 the non-performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 18.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either Party to resume its obligations under this Agreement, a Party may on not less-than 10 Business Days' prior written notice terminate this Agreement.

19 Limitation of Liability

- 19.1 Neither Party shall be liable to the other for any breach of this Agreement, which is directly or indirectly caused by a circumstance of Force Majeure.
- 19.2 The Retailer shall not be liable to the Distributor for any damage caused to the Distributor's Equipment on a Connected Customer's premises, where that damage was caused by unauthorised interference by other than the Connected Customer or Retailer their agents or invitees and provided that the premises were properly secured prior to the interference. Where it is found that the premises were not properly secured, the Retailer's liability is removed where the Retailer provides an enforceable contractual right of recovery against the Connected Customer.
- 19.3 The Distributor shall not be liable to the Retailer or Connected Customers for any loss which may be sustained by the Retailer (including as a result of a claim by a Connected Customer) unless such loss was due to the Distributor's breach of this Agreement, the Distributor's breach of the Electricity Consumer Code of Practice, or the Distributor's breach of the Consumer Guarantees Act 1993.
- 19.4 Neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party, in contract or in tort, for:
- 19.4.1 any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - 19.4.2 any loss resulting from the liability of the other Party to another person (other than a Connected Customer); or
 - 19.4.3 any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.
- 19.5 Any claims for loss arising from a breach of its obligations by Either Party under this Agreement must be lodged with the Other Party within twelve months from the damage or loss occurring and within one month from the breach being brought to the attention of the Other Party.
- 19.6 The maximum total liability of the Distributor to the Retailer in respect of any single event shall not exceed \$10,000. A series of breaches arising from the same event or circumstance shall be accepted by the Parties as being a single event or circumstance of breach.
- 19.7 The maximum total liability of the Retailer to the Distributor in respect of any single event shall not exceed \$10,000. A series of breaches arising from the same event or circumstance shall be accepted by the Parties as being a single event or circumstance of breach.
- 19.8 The benefit of this Clause 19 shall be extended to the officers, employees and agents of both Parties and may be enforced by these persons pursuant to the Contracts (Privity) Act 1982.

- 19.9 The Retailer shall ensure that every agreement between it and its Connected Customers contains clear and unambiguous clauses supporting the limitations of liability in this Clause 19.
- 19.10 This Agreement has been prepared on the basis that the provision of Delivery Services is outside the scope of the Consumer Guarantees Act 1993 (*the CGA*). In the event the CGA is amended to cover Delivery Services, then the Distributor and the Retailer agree to contract out of the provisions of the CGA to the full extent permitted under the CGA. The Retailer shall further ensure all agreements for supply of electricity with Connected Customers which are obtaining the delivered electricity for the purposes of a business, exclude the application of the CGA pursuant to section 43(2) of the CGA for the benefit of the Distributor.
- 19.11 The Retailer shall indemnify the Distributor from reasonable losses, costs and claims arising from the Retailer's failure to comply with Clauses 17.6, 19.9 and 19.10.
- 19.12 Each party shall indemnify the other from reasonable losses, costs, and claims arising from the first party's failure to comply with its legal obligations to any Connected Customer.
- 19.13 The limitations of liability in Clauses 19.6 and 19.7 shall not apply to compensation established under the Consumer Dispute Resolution Protocol.

20 Dispute Resolution

- 20.1 The Distributor and the Retailer shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference, which may arise between them concerning any matter arising under this Agreement.
- 20.2 Every dispute or difference that is not resolved by discussion between the Distributor and the Retailer may be referred by either party to mediation.
- 20.3 If a dispute has been referred to mediation then the Parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the Parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The Parties shall each bear the Party's own costs in the mediation, and shall each pay half the costs of the mediator.
- 20.4 The matter in dispute shall be referred to arbitration if:
- 20.4.1 the parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
- 20.4.2 mediation has taken place and no agreement has been reached.
- 20.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Distributor and the Retailer agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.
- 20.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- 20.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this Clause 20 and the decision of the arbitrator will be final and binding on the parties.
- 20.8 This Clause 20 does not apply to the Distributor's Charges which may be set at the discretion of the Distributor in accordance with Clause 15.
- 20.9 Complaints made by Connected Customers shall be resolved in accordance with the Consumer Dispute Resolution Protocol.

21 Information Requirements

- 21.1 The Retailer will provide to the Distributor the information as specified in Schedule H (Information Requirements).

- 21.2 At the Distributor's request, the Retailer shall as soon as reasonably practicable provide such other information as the Distributor may reasonably require for the performance of its obligations. Requests for information under this clause are limited to information held and readily attainable by the Retailer.
- 21.3 Where the Retailer becomes aware of anticipated material consumption changes by Connected Customers that could impact on the capacity of the Distribution Network, the Retailer shall forthwith notify the Distributor accordingly.
- 21.4 At the Retailer's request, the Distributor shall as soon as reasonably practicable provide such information relating to the Distribution Network and Transpower's Network as may be reasonably required by the Retailer, and to the extent that it affects the Retailer's Connected Customers.
- 21.5 The information required under this Clause 21 shall be provided by the Parties as part of each Party's obligations to the other under this Agreement, at no additional cost.

22 Confidentiality

- 22.1 Each Party undertakes with the other Party that it shall preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as set out in Clause 22.2.
- 22.2 Either Party may disclose Confidential Information in the following circumstances:
 - 22.2.1 Where at the time of receipt by the Party the Confidential Information is in the public domain;
 - 22.2.2 Where after the time of receipt by either Party the Confidential Information enters the public domain except where it does so as a result of a breach by either Party of its obligations under Clause 21.1 or a breach by any other person of that person's obligation of confidence and the Party is aware of such breach;
 - 22.2.3 Where either Party is required to disclose Confidential Information:
 - 22.2.3.1 by any statutory or regulatory obligation, body or authority;
 - 22.2.3.2 any judicial or other arbitration process;
 - 22.2.3.3 by the regulations of any stock exchange upon which the share capital of either Party or the Other Party is from time to time listed or dealt in;
 - 22.2.4 Where the Confidential Information is released to the employees, directors, agents or advisers of the Party provided that:
 - 22.2.4.1 the information is disseminated only on a "need to know" basis; and
 - 22.2.4.2 recipients of the Confidential Information shall be made fully aware of the Party's obligations of confidence in relation thereto; and
 - 22.2.4.3 any copies of the information clearly identify it as Confidential Information.

23 Assignment and Agents

- 23.1 Neither Party shall assign, encumber, novate nor otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 23.2 Any such consent granted under Clause 23.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned.
- 23.3 Subject to approval of the appointment of a Retailer's agent in accordance with Clause 10, the Parties may appoint agents to act on the Party's behalf. Any such appointment shall not relieve the parties making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents.
- 23.4 Either Party, upon giving reasonable notice, may assign its benefits and obligations under this Agreement to a wholly owned subsidiary without the consent of the other Party provided that the assignor provides an unconditional guarantee of the obligations assumed by the assignee.

24 Non-Waiver

- 24.1 None of the provisions of this Agreement shall be considered to be waived by either party except when such waiver is given in writing.
- 24.2 No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

25 Entire Agreement

Subject to Clause 27, this Agreement, including the Schedules, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.

26 Savings Clause

If any provision of this Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of the jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

27 Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the law of New Zealand.

28 Notices

- 28.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement shall be in writing and delivered personally, or by pre-paid post, by courier delivery, by facsimile, or by electronic mail.
- 28.2 The required addresses, facsimile numbers and electronic mail addresses of the Parties for the purposes of this Clause 28 are set out in Schedule G.
- 28.3 A notice or other form of communication shall be deemed to have been received as follows:
 - 28.3.1 if given or delivered personally when so delivered;
 - 28.3.2 if sent by courier delivery at the time when given or delivered;
 - 28.3.3 if sent by pre-paid post at the expiration of 48 hours after the document was delivered into the custody of the postal company; or
 - 28.3.4 if sent by facsimile or electronic mail, on the time and day of sending if the sending machine confirms transmission is successful and if the electronic mailing system does not advise that the transmission was unsuccessful.

29 Variations

- 29.1 No variations or modifications to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties or otherwise effected in accordance with this Agreement.
- 29.2 Either Party may at any time propose variations to this Agreement by notice in writing to the other Party for incorporation in negotiations and discussions under the terms of Clause 4.

30 Costs

Each party shall bear its own costs of and incidentals to the preparation of this Agreement.

31 Option to Adopt the Standard Use of System Agreement

The parties acknowledge that the Distributor may have at any point of time a standard Use of System Agreement (being a contract which has the same purpose as this Agreement and called the "*Standard Use of System Agreement*"). If the Distributor's standard Use of System Agreement is amended in the course of the term of the Agreement, the Distributor shall on an annual basis notify the Retailer of the Standard Use of System Agreement (as changed) whereupon the Retailer may by notice to the Distributor require the Distributor to enter into the Standard Use of System Agreement (as changed) in lieu of this Agreement.

SCHEDULE A

(Clause 8.1)

Connected Customer's Network Connection Points (ICPs)

SCHEDULE B

Notice of Change of Retailer

(Clause 8.2.1)

From: _____ Name of Retailer

Date: _____ Retailer Reference No.: _____

To: Network Waitaki Ltd Attention: _____

Consumer Information

Network Waitaki Ltd ICP:

0000 ◆ ◆ ◆ ◆ ◆ ◆ WT- ◆ ◆ ◆

Address of ICP: _____

Commencement Date: _____

Termination Date (if available): _____

Signed: _____ Date: _____
Authorised Signatory of Retailer

SCHEDULE C

Schedule of Charges

Schedule C specifies the Use of System charges, terms and conditions for the Line Function Services of the Distributor which are effective from the Date of Commencement until amended or substituted charges are determined in accordance with Clause 15.

Terms and Conditions

- C1. Current charges are available at www.networkwaitaki.co.nz. Charges are reviewed annually.
- C2. Network Waitaki determines the allocation of each site to a load group. In addition to other factors, the following will be considered in making this allocation:
- Sites in the 0 kVA to 50 kVA range will qualify for the *Controlled* load group where Network Waitaki is satisfied that the site has night storage heaters or storage water heaters that are controlled by Network Waitaki on an approved control code. Currently, network control codes 08, 14 and 16 are approved for this purpose.
 - At the election of the Connected Customer, and subject to the conditions noted below, a site may move to and from the "Low Fixed Charge" load group.
 - Network Waitaki reserves the right to place connections with a capacity of more than 100 kVA in the Individually Assessed load group and apply individually calculated charges. Charges for individually assessed customers will be notified as required and may be varied in accordance with this Agreement.
- C3. Low Fixed Charge conditions:
- Low Fixed Charge load groups are only available for *primary domestic* sites; they are not available for holiday homes and non-domestic installations.
 - Customers wishing to move to a Low Fixed Charge load group must apply to both their Retailer and Network Waitaki Ltd. Note this will require a Network application to be completed.
 - Applicants must satisfy their Retailer and Network Waitaki that they qualify for approval to shift to the Low fixed charge load group.
 - The Retailer must collate Connected Customer load group change requests and advise these changes within 14 days of the effective date using the format describe in Schedule H (Information Requirements).
 - Electricity usage for sites in the "Low Fixed Charge" load group must be reported by the Retailer to the Distributor on a monthly basis in the format described in Schedule H (Information Requirements).
 - Where a site in the "Low Fixed Charge" load group does not meet the requirements for that load group, e.g. is found not to be a *primary domestic* connection (determined by the Distributor, acting reasonably) or where reporting or audit requirements described in Schedule H (Information Requirements) in relation to the site are not satisfactory to the Distributor, the site will be removed from the load group with immediate effect and the Retailer will be notified accordingly.
- C4. Where a customer disconnects, then seeks to reconnect the same ICP, within a 12 month period, all network charges for the disconnected period must be paid prior to reconnection. This provision does not apply where the property has been destroyed by fire etc.
- C5. Power Factor penalty - the fixed charges will be increased by 10% for every 0.05 or part thereof that the Power Factor falls below 0.95 during any half hour period where the demand exceeds half the peak demand as assessed by the Distributor.
- C6. Variable charges are based on the National Reconciliation Manager's reconciliation at the Grid Exit Points reduced by:
- the declared network loss factor (1.06 at the date of this schedule), and
 - usage by sites in the "Individually Assessed" load group.

The Distributor will initially estimate this usage in respect of a charging period and will then correct this estimate (with the NRM's reconciliation and wash-ups) in subsequent invoices.

The additional variable charges for sites in the "Low Fixed Charge" load group are based on site metering

information reported by electricity retailers. Where site metering information is not available (for any reason), site usage will initially be estimated at 22 kWh per day and will then be corrected in subsequent invoices as information becomes available.

- C7. The following Loss Factors are to be used by Retailers to multiply the kWh recorded at each Connected Customer's Installation in order to determine the Retailer's responsibility usage at the Grid Exit Point.

Sites with low voltage metering (◆ 415 V): 1.060

Sites with high voltage metering (◆ 11 kV): 1.025

- C8. Distribution *and* Transmission charges are charged in respect of each site. Charges are invoiced to electricity retailers monthly in arrears. Fixed charges accrue on a daily basis at the rate of $\frac{1}{365}^{\text{th}}$ ($\frac{1}{366}^{\text{th}}$ in a leap year) of the annual amount.
- C9. The Retailer should note that the Distribution and Transmission charges are dependent on the level of controlled load available to the Distributor at the commencement of this agreement being maintained.
- C10. From time to time, the charges above may be subject to discounts.

SCHEDULE D

Performance Targets

D1 Network Performance:

- D1.1 The Distributor shall use reasonable endeavours to:
- D1.1.1 Maintain the voltage at Network Connection Points to within the range specified in Clause 53 of the Electricity Regulations 1997. The Electricity Retailer acknowledges that maintenance of voltage within the tolerance range may depend in part on the maintenance of the Power Factor at Connected Customers' Installations as set out in the Connection Standard.
- D1.1.2 Ensure that the levels of harmonic voltages and currents passed into Connected Customers' Installations conform with the Limitation of Harmonic Levels Notice 1993, Electrical Code of Practice 36, or any other notice in substitution thereof in so far as the harmonic disturbance results from problems arising from a cause within the control of the Distributor.
- D1.1.3 Meet the reliability performance targets on a five yearly rolling average basis as published in its Asset Management Plan. At the Commencement Date these are at the level of 65 supply interruption minutes per connected customer (SAIDI) including interruptions sourced from the Distribution Network; Transpower Network and generators.
- D1.1.4 Meet the following performance standards: Restore electricity supply after a fault within 2 hours for loads over 1MW, within 8 hours for loads between 500kW and 1MW, or within 24 hours for all other connections.
- D1.1.5 Ensure that the total number of proven customer voltage complaints per year, where non compliance with Clause D1.1.1 is proven, does not to exceed 10.
- D1.1.6 On request, provide the Retailer with reports on the Distributor's performance against the Distribution Network performance targets set out in Clauses D1.1.3 to D1.1.5 of this Schedule.

D2 Response to Enquiries:

- D2.1 The Distributor shall use reasonable endeavour to respond to the Retailer's enquiries and:
- D2.1.1 Provide acknowledgment to the Retailer of an enquiry or complaint from the Retailer within 3 Business Days.
- D2.1.2 Complete an investigation relating to such enquiry or complaint within 10 Business Days (where reasonably practicable to do so).
- D2.1.3 Provide a report on the findings of an investigation within 5 Business Days of the completion of the investigation, if requested.

D3 Reporting Unplanned Interruptions to Supply:

- D3.1 Pursuant to Clause 6.5, the Distributor shall use reasonable endeavours to report such interruptions to the Retailer to the following timetable. Such reporting shall be by a process which is agreed between the Parties:
- D3.1.1 For interruptions which involve Connected Customers with a connection capacity of 500 kVA or greater.
- (a) for interruptions occurring between 8 am and 5 pm on a Business Day, within 60 minutes of the Distributor becoming aware of the situation;
- (b) otherwise by 9 am on the next Business Day;
- (c) Provide updated reports during extended outages to nominated Retailer staff as frequently as appropriate.
- D3.1.2 Interruptions to other Connected Customers and operation of the Load Management Service shall be reported in summary format by 9 am on the next Business Day.

SCHEDULE E

Associated Services

E1 Fault Call Receipt and Field Service Dispatch

The Distributor shall provide a service to receive fault calls from Connected Customers and the Retailer and to dispatch faults persons and repair crews, as appropriate. Incoming information may be via telephone or other appropriate means. In providing this service, the Distributor shall:

- E1.1 Receive incoming calls.
- E1.2 Advise the caller of any information known to the Distributor regarding the event, including cause and expected duration.
- E1.3 Advise the Retailer if more than forty of its Domestic Connected Customers are affected and provide information known to the Distributor regarding the event, including cause and expected duration.
- E1.4 Advise the news media if a significant number of customers are affected by the event.
- E1.5 Liaise with Transpower, if Transpower's plant is involved.
- E1.6 Dispatch fault services, as required.

In situations where a significant number of Connected Customers are affected, the Retailer shall assist the Distributor by processing the calls from Connected Customers and providing the Distributor with filtered information.

E2 New Network Connection Points and ICPs

The Distributor shall undertake negotiations with the owners of future Connected Customers Installations or their agents with respect to the establishment of new Network Connection Points and ICPs. This will include settling a Connection Agreement with the party who is wanting to establish the new Network Connection Point. A Retailer may be the agent for an intended or future Connected Customer in negotiations with the Distributor. A Retailer shall become contractually involved when a supply of energy is required, including a metered temporary supply. At this time the Distributor will supply the relevant connection details as required by the MARIA rules to the Retailer.

E3 Modification of an Existing ICP

The Distributor shall liaise with the Connected Customers or their agents with respect to modifications to established ICPs. This will include settling a Connection Agreement with the Connected Customer. The Retailer may be the agent for the Connected Customer. A modification could include, but is not limited to, an upgrading or downgrading of the capacity or a conversion from an overhead to an underground mains and Network Connection Point.

E4 Temporary Isolation

The Distributor shall arrange for the temporary isolation of a Retailer Connected Customer's Installation in response to a request from the Connected Customer or the Retailer provided that where the request is from the Retailer, the Retailer shall indemnify the Distributor from all losses or costs arising from the Distributor's complying with the request, provided the Distributor acts in accordance with Good Industry Practice. The Distributor may charge the party requesting the service.

E5 Advance Notice of Planned Interruptions

Prior to implementing a planned interruption per Clause 6.1, the Distributor shall use reasonable endeavours to identify the ICPs involved and dispatch an appropriate notice to the Electricity Retailer. See also Discretionary Services.

SCHEDULE F

Discretionary Services

The Distributor offers to undertake further discretionary services which are subject to negotiation and separate contract and are specifically chargeable to the party using the service.

F1 No Hot-Water Complaints

In response to a complaint from a Connected Customer or the Retailer, regarding an unexpected lack of hot-water at a Connected Customer's Premises, the Distributor will dispatch a faults person to investigate and rectify, if possible. If the problem is with the Connected Customer's Installation, the faults person shall advise the Connected Customer and advise the options available to rectify the problem, including fixing the problem on-site, if possible, at the Connected Customer's expense. If the problem arises from a fault within the Retailer's equipment or the Distributor's equipment, then the faults person shall immediately advise the appropriate party and negotiate the solution or follow a procedure that has previously been agreed with the Retailer or the Distributor.

F2 Provision of Additional Ripple Signals

The Distributor will negotiate with the Retailer to provide additional ripple signals over and above those that are already established for the Load Management Service. The Distributor shall use its best endeavours to provide these as required by the Retailer, subject to the availability of time slots and the limitations of the Distributor's ripple injection plants. Signals required for the Load Management Service shall have priority and all additional signals provided for the Retailer shall be chargeable.

F3 Dispatch Services — Disconnections/Reconnections etc

If the Retailer desires, the Distributor will provide dispatch services including, but not limited to, customer disconnections and reconnections for an agreed charge.

SCHEDULE G

Notices Provision

The Distributor: Network Waitaki Limited
10 Chelmer Street
P O Box 147
Oamaru 9444

PH: (03) 433 0065
Fax: (03) 434 8845
Email: service@networkwaitaki.co.nz

The Retailer:

Attention: Operations Manager

PH:
Fax:
Email:

SCHEDULE H

Information Requirements

The Retailer (at its own cost) shall provide to the Distributor

H.1 Information in Respect of All ICPs

- the
- (a) For all ICPs subject to Individually Assessed Charges and ICPs with MARIA compliant half hour Time of Use metering:
 - (i) Customer details as prescribed in Table H-1 (below) updated as and when required.
 - (ii) By the tenth working day each calendar month, the half hour kWh, and half hour kVArh demands for the previous calendar month, excluding losses, relating to the supply of electricity to each ICP that the Retailer uses for calculating the consolidated result to be addressed to the national reconciliation manager under MARIA. The information should be presented in a single vertical format electronic file acceptable to the Distributor. On a case-by-case basis, the Distributor may accept this information in an alternative or summarised format.
 - (b) For all connected ICPs including Time of Use, non-Time of Use and unmetered sites:
 - (i) By the tenth working day each calendar month, the kWh for the previous calendar month (excluding losses) being the total consumption of all ICPs that were supplied by the Retailer during the previous month. Where appropriate, usage should be accrual adjusted, estimated or normalised (according to acceptable industry standards) to match usage with the calendar month. This process shall be such that any corrections or wash-ups are applied to future months, so that the original figure supplied in respect of any month remains valid.
 - (c) For all ICP Changes:

Where the Retailer or its agent is authorised to perform Connection Services under Clause 10 of this Agreement, the Retailer will notify the Distributor by facsimile or agreed electronic means in the form of a schedule those ICPs that have been Disconnected, Reconnected, Connected or Decommissioned within 5 working days of the action being executed. On receipt of this schedule, the Distributor will amend its records accordingly.

Contract Capacity changes will be actioned by the Distributor on receipt by the Distributor of a completed "Application for Supply" form. Any costs associated with effecting the change will be chargeable to the Customer. The Distributor will notify the Retailer by facsimile or agreed electronic format of any Contract Capacity changes and the effective date there from.

- (d) For all ICPs
By the tenth working day each calendar month, a schedule of all energised ICPs as at the last working day of the previous month including ICP, Customer name (in a format suitable for addressing correspondence and for compiling an electoral roll) and customer postal address in up to 5 fields with post codes separated.

Unless otherwise agreed in advance with the Retailer, the information provided will only be used by the Distributor for the following purposes:

To fulfil Trust ownership functions such as ownership reviews, electoral rolls and distribution of profits.

To maintain Connected Customer contact details for issuing and managing network maintenance and fault restoration advice on an on-going basis.

To assist in the management and replacement of metering assets where these assets are owned by the Distributor or a related company.

For line charge reconciliation and switching problem resolution.

To assist with ICP/site identification.

Information provided by the Retailer shall not be used for any purpose which is detrimental in any way to the Retailer or the Retailer's Supply Business.

The Distributor will indemnify the Retailer against any costs, liability, loss or damage suffered by the Retailer relating to claims made by any third party against the Retailer resulting from the Retailer having provided Customer information under this provision and the Distributor having failed to comply with Clause 22.

Where appropriate, information provided under (a), (b), (c) or (d) above should be emailed to service@networkwaitaki.co.nz

H.2 Information in Respect of ICPs in the Low Fixed Charge Load Group

(a) Load Group Changes - Notification of load group changes to and from the "Low Fixed Charge" load group shall be in the following format:

- Individual emailed notifications will be accepted at any time; these notifications should include the site ICP, the effective date and should clearly indicate the load group the ICP is moving to.

- or

Where there are a number of notifications in any one day, details should be entered in a text file with the following format (it is the Distributor's preference to receive all notifications in this format):

File Format The file should include (as a minimum) the 3 following comma delimited fields:

The 15 character ICP

The Four character code of the load group that the ICP is to move to.

The effective date of the change (in format dd/mm/yyyy)

(b) Consumption -Reporting of consumption for ICPs in the "Low Fixed Charge" load group shall be provided by the 15th of each month in the file format described below. Usage should be estimated, accrual adjusted, or normalised to reflect site usage for the previous calendar month. The estimation, accrual adjustments, or normalisation of usage shall be such that, over any long period of time, the reported usage will match actual usage.

File Format: The file should indicate the month to which usage applies and should include (as a minimum) the 2 following comma delimited fields:

The 15 character ICP

The usage (in accordance with this Agreement) in kWh for the month

A header or field confirming the month to which the usage applies

(c) Audit Requirements -On request, the Retailer shall provide the Distributor with a letter covering the previous 12 months to 31 March, confirming that information and the monthly schedules supplied in accordance with (a) and (b) above were accurate and that the estimation algorithm was consistent with accepted industry standards. Should the Distributor wish to verify the accuracy of information provided under (a) or (b), the Retailer will allow the Distributor or its agents access to the Retailer's books and records (including metering and consumption data) to the extent those books and records relate to the obligations of the Retailer under (a) and (b) above.

Information provided under (a) and (b) above should be emailed to service@networkwaitaki.co.nz

Table H-1

Retailer:	
ICP:	
Name Of Customer: Street Address: Postal Address:	
Site Contact:	Name: Telephone: Fax: Email:
Emergency After Hours Contact:	Name: Telephone: Fax: Email:
Connection Capacity Required:	kVA
Projected /Actual Annual Usage:	kWh
Projected /Actual Any Time Demand:	kVA
Metering Equipment Provider:	
Data Administrator	Name: Telephone: Fax: Email:

Further information may be required depending on customer profile, capacity, and location.