

# Model Use of System Agreement (Interposed) - Electricity

Powerco Limited

[Retailer name]

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**PARTIES**

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<p><b>Distributor's Details:</b></p> <p><b>Street Address:</b></p> <p>L2-84 Liardet St, New Plymouth</p> <p><b>Postal Address:</b></p> <p>Private Bag 2061, New Plymouth</p> <p><b>Address for Notices:</b></p> <p>84 Liardet Street, New Plymouth</p> <p>Email: <a href="mailto:contracts@powerco.co.nz">contracts@powerco.co.nz</a></p> <p><b>Contact Person's Details:</b></p> <p>Retailer Relationship Manager</p> <p><b>Phone:</b> 06 759 6200</p> <p><b>Website:</b> <a href="http://www.powerco.co.nz">www.powerco.co.nz</a></p>	<p><b>Retailer's Details:</b></p> <p><b>Street Address:</b></p> <p><b>Postal Address:</b></p> <p><b>Address for Notices:</b></p> <p>Email:</p> <p><b>Contact Person's Details:</b></p> <p><b>Phone:</b></p> <p><b>Website:</b></p> <p><b>Email:</b></p>

**COMMENCEMENT DATE:** [ ]

**SIGNATURES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of authorised person signing for Distributor

\_\_\_\_\_  
Name of authorised person signing for Retailer

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## INTRODUCTION

- A. The Distributor and the Retailer agree to provide the Services to one another on the terms and conditions set out in this agreement.
- B. The Distributor and the Retailer agree to purchase the Services from one another on the terms and conditions set out in this agreement.
- C. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Code.

## AGREEMENT

### PART I - SERVICE COMMITMENTS

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#### 1. TERM OF AGREEMENT

- 1.1 **Term:** This agreement shall commence on the Commencement Date and shall continue until it is terminated pursuant to clause 21.

#### 2. SERVICES

- 2.1 **Distributor's services and obligations using Good Industry Practice:** Subject to the terms of this agreement, the Distributor will endeavour in accordance with Good Industry Practice to:
  - (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
  - (b) provide delivery of electricity to the quality level specified in the Service Standards but the Distributor does not guarantee delivery of electricity that is free from defects and interruptions;
  - (c) where the Distributor has the right to control load, operate its Network in order to optimise Transmission Charges and Transmission Services faced by it and those using its Network;
  - (d) optimise the level of technical losses on its Network where economically efficient to do so; and

- (e) operate a policy that permits parties other than the Distributor to Energise and De-energise Points of Connection in accordance with this agreement, including clause 19 and Schedule 7.

2.2 **Distributor's other services and obligations:** Subject to the terms of this agreement, the Distributor will:

- (a) comply with the Service Standards and any applicable service standards specified in Schedule 10 (Pricing Schedule);
- (b) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis, Network repair and information service;
- (c) where a Consumer is allocated to a controlled Price Category or controlled Tariff Option in accordance with this agreement and the Instructing Retailer and other retailers have agreed to assign to the Distributor and the Instructing Retailer all rights necessary to provide a Load Management Service, make provision for Load Management Services on its Network to the extent required by clause 6;
- (d) work with the Retailer to identify the level of Losses in accordance with clause 7;
- (e) where it proposes to make changes to the Network Supply Points supplying the Network, follow the process set out in clause 24;
- (f) allow Consumer's Installations that comply with Network Connection Standards to remain connected and to consider applications for new connections and changes to capacity for existing connections in accordance with clause 19 of this agreement and the Network Connection Standards; and
- (g) provide the Additional Services as set out in Schedule 3.

2.3 **Transmission Services:** The Distributor will comply with the provisions relating to Transmission Services as set out in Schedule 2.

2.4 **Retailer's services and obligations:** The Retailer will:

- (a) ensure Consumer's Installations that comply with Network Connection Standards remain connected and process any applications for new

connections or changes to capacity for existing connections in accordance with clause 19 of this agreement;

- (b) comply with the Service Standards;
- (c) provide a 24 hour, seven day a week, Unplanned Service Interruption information service;
- (d) subject to clause 27, have a Retailer's Agreement with each Consumer for the supply of electricity which contains terms that have substantially the same effect as Schedule 5;
- (e) provide consumption information in accordance with clauses 7 and 11;
- (f) adopt a process of revenue assurance to minimise, in accordance with Good Industry Practice, non-technical Losses;
- (g) respond to requests from the Distributor for Consumer details in accordance with clause 29; and
- (h) provide the Additional Services as set out in Schedule 3.

### **3. CONVEYANCE ONLY, DISTRIBUTION PRICE AGREEMENT AND INDIVIDUAL SITE AGREEMENT**

**3.1 Distributor may enter into Distributor's Agreement with a Consumer:** The Distributor shall be entitled to enter into a Distributor's Agreement with a Consumer, provided that:

- (a) the Distributor's Agreement is in relation to an ICP or group of ICPs with an aggregate connection capacity of not less than 300 kVA or it is in relation to connection of distributed generation; and
- (b) the Distributor's Agreement does not interfere with any existing Retailer's Agreement with that Consumer.

**3.2 Conveyance Only basis:** If a Consumer has, or enters into, a Distributor's Agreement, the Distributor agrees with the Retailer to convey electricity through the Network on a Conveyance Only basis on the terms of that agreement to allow 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 in relation to any ICP unless there is a valid Distributor's Agreement in force in relation to that 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 or in relation to any Distributor's Agreement provided that where there are technical requirements in a Distributor's Agreement that differ from the technical requirements in relation to Distribution Services set out in this agreement, the Distributor has given the Retailer reasonable notice of those requirements; and

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

3.5 **Co-operate to resolve issues:** If:

(a) 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 which may have an impact on the Network or the provision of distribution services by the Distributor to that or any other Consumer; or

(b) either the Retailer or the Distributor becomes aware of any provisions of a Distributor's Agreement and any Electricity Supply Agreement that conflict to the extent that performance of one contract may give rise to breach of the other contract,

then the Distributor and the Retailer will meet, as soon as reasonably practicable after receiving notice of the issue, at a mutually acceptable time and venue, to resolve the issue in a manner which delivers the best outcome for all affected parties (including the Consumer) but which does not adversely impact on the integrity of the Network. If the issue is not resolved within 20 days of any party receiving notice from the other (and whether or not a meeting has been convened or commenced), the issue shall be deemed to be a Dispute in accordance with clause 25 and either party may, notwithstanding clause 25.1 and 25.2, at any time thereafter give notice to the other party referring the issue to mediation to be resolved in accordance with clause 25.

3.6 **Consumer not party to a valid Distributor's Agreement:** If at any time it is found that a consumer is not being supplied on an Interposed basis in relation to particular 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 use best endeavours to notify the Retailer and suggest the Retailer take up the opportunity to supply the relevant 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 10 Working Days of giving that notice the Distributor has not received notice that the Retailer will immediately commence supplying the Consumer on an Interposed basis in relation to those ICPs.

3.7 **Distributor may enter into Distribution Price Agreement:** For the avoidance of doubt, nothing in this agreement shall prevent the Distributor entering into, performing, and exercising its rights and obligations under, a Distribution Price Agreement. The parties agree that in the event of any inconsistency between a Distribution Price Agreement and this agreement (including the Pricing Schedule), the provisions of the Distribution Price Agreement shall prevail.

3.8 **Distributor may enter into Individual Site Agreement:** For the avoidance of doubt, nothing in this agreement shall prevent the Distributor entering into, performing, and exercising its rights and obligations under, an Individual Site Agreement. The parties agree that in the event of any inconsistency between an Individual Site Agreement and this agreement (including the Pricing Schedule), the provisions of the Individual Site Agreement shall prevail.

#### 4. **EQUAL ACCESS AND EVEN-HANDED TREATMENT**

4.1 **Equal access and even-handed treatment:** The Distributor will give all retailers equal access to Distribution Services and will treat all retailers even-handedly in relation to access to Distribution Services provided that nothing in this clause 4.1 shall preclude, limit or otherwise affect the Distributor's right, subject to any other provisions of this agreement and any Code, to freely:

- (a) determine and apply its pricing and price methodology for Distribution Services on any terms it considers fit (but may not price discriminate between retailers if such price discrimination breaches the Commerce Act 1986) in accordance with clauses 9 and 10 as well as Schedules 8 and 10;
- (b) determine and allocate Losses (including unaccounted for electricity) between the Retailer and other retailers on any terms it considers fit, in accordance with clause 7 and Schedule 11;
- (c) enter into an agreement with any retailer that also carries on business as a distributor in competition with the Distributor on any terms it considers fit;
- (d) enter into an Individual Site Agreement on any terms it considers fit.

4.2 **The Distributor will notify the Retailer of alternative contracts:** Within 20 Working Days after executing an agreement or an amendment to an agreement, relating to the supply of distribution services with any retailer (other than either the Retailer or any other retailer which also carries on business as a distributor in competition with the Distributor) (the contract or amended contract, as applicable, being an “**Alternative Contract**”), the Distributor will notify the Retailer in writing of the existence of that Alternative Contract, make the Alternative Contract available on its website and invite the Retailer to adopt the Alternative Contract.

4.3 **The Retailer has sole discretion to adopt Alternative Contracts:** Within 12 months of the Distributor executing an Alternative Contract, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract in substitution for this agreement provided that:

- (a) **The Retailer gives notice to the Distributor:** the Retailer gives notice to the Distributor of its intention to sign the Alternative Contract; and
- (b) **The Retailer adopts the contract in its entirety:** the Retailer gives notice to the Distributor that it adopts the Alternative Contract in its entirety.

If an Alternative Contract is adopted in accordance with this clause 4.3, this agreement will terminate, the Distributor and the Retailer shall sign the Alternative Contract and the Alternative Contract will commence as between the Distributor and Retailer from the date that is 20 Working Days following receipt by the Distributor of the notice in clause 4.3(b). The provisions of clauses 21.4 to 21.8 shall also apply in respect of a termination of this agreement under this clause 4.3.

## 5. SERVICE INTERRUPTIONS

### General

- 5.1 **Communications policies:** The Distributor, in consultation with the Retailer, shall develop and maintain communication policies to give effect to this clause 5. The communications policies are set out in Schedule 6.
- 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:** If 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, the Distributor will Publish that protocol. Any such protocol shall not be legally binding.
- 5.4 **Load Shedding:** The Distributor may carry out Load Shedding in the following circumstances and/or for the following purposes (as the case may be):
- (a) **Maintenance of Network equipment:** where the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 5.5, 5.7, 5.8 and Schedule 6 as applicable;
  - (b) **Provision of supply within the Service Standards:** as permitted by the Service Standards;
  - (c) **Compliance with instructions from the System Operator:**
    - (i) to comply with any request or instruction received from the System Operator; or
    - (ii) where communication with the System Operator has been lost, where 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;

- (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
  - (i) **Public safety:** maintain a safe environment, consistent with the Distributor's health and safety policies.
  - (ii) **Overloading:** prevent unexpected short term overloading of the Network.
  - (iii) **Abnormal voltage levels:** prevent voltage levels rising or falling outside statutory requirements.
  - (iv) **Preserve security:** preserve the security of the Network.
  - (v) **Avoid damage:** avoid or mitigate damage to the equipment of any person connected to the Network.
- (e) **Deficit of electricity flowing into the Network:** where called upon by a Relevant Authority through a regionally or nationally co-ordinated process to ration electricity in response to an anticipated shortage of electricity;
- (f) **Compliance with the Code:** to comply with the Code or other legislative requirements;
- (g) **Automatic Load Shedding:** where automatic under-frequency Load Shedding is implemented in accordance with the Code; or
- (h) **Other circumstances:** for any other purpose which in the Distributor's reasonable opinion and in accordance with Good Industry Practice requires Load Shedding.

### **Unplanned Service Interruption**

5.5 **Notification of Unplanned Service Interruptions:** After the occurrence of an Unplanned Service Interruption, the Distributor and Retailer will each use all reasonable endeavours to comply with the relevant service interruption communication policy as set out in Schedule 6.

5.6 **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 soon as practicable, and where

possible the Distributor shall acknowledge such receipt unless the Retailer requests otherwise.

### **Planned Service Interruptions**

**5.7 Distributor to schedule Planned Service Interruptions to minimise disruption:**

The Distributor shall, as far as is reasonably practicable, schedule Planned Service Interruptions to minimise disruption to Consumers.

**5.8 Distributor to comply with communications policies:**

The Distributor will comply with the Service Interruption communications policy set out in Schedule 6 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Distribution Services.

**5.9 Costs of communication:**

Where the Distributor asks the Retailer to notify Consumers in accordance with Schedule 6, the Retailer shall bear its own costs in complying with such requests, unless:

- (a) re-notification is required due to changes to the timing of interruptions caused solely by the Distributor or its contractors (and, without limitation, not due to Consumer requests, weather conditions, major network outages or access issues) in which case the Distributor shall meet the reasonable costs incurred in re-notifying; or
- (b) agreed otherwise in writing.

### **Restoration of Distribution Services**

**5.10 Distributor to restore Distribution Services as soon as practicable:**

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

- (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,

provided that the Retailer's only remedy for failure by the Distributor to meet the timeframes in this clause 5.10 shall be recovery of a Service Guarantee payment in accordance with Schedule 1.

## 6. LOAD MANAGEMENT

- 6.1 **Distributor entitled to control load:** Where a Consumer is allocated to a controlled Price Category or a controlled Tariff Option in accordance with this agreement, the Distributor may control the relevant part of the Consumer's load in accordance with Schedule 9.
- 6.2 **Distributor may provide Load Management Services:** Where a Consumer is allocated to a controlled Price Category or a controlled Tariff Option in accordance with this agreement and the Instructing Retailer and other retailers have agreed to assign to the Distributor and the Instructing Retailer all rights necessary to provide a Load Management Service then the Distributor may, subject to Schedule 9, provide that service in accordance with any such agreement with the Instructing Retailer, provided that except in the circumstances permitted under clause 5.4, in providing Load Management Services the Distributor shall not interrupt supply for a period longer than the period for interruption permitted by the applicable controlled Price Category or the controlled Tariff Option, set out in the applicable Service Standard or Schedule 9 (and in the event of an inconsistency between the applicable Service Standard and Schedule 9, the applicable Service Standard shall prevail).

## 7. LOSSES AND LOSS FACTORS

- 7.1 **Distributor to report on Losses:** Within 60 Working Days of the end of each month, the Distributor shall provide to the Retailer, or cause a third party to provide to the Retailer, monthly and moving annual Loss Ratio information relating to each Network Supply Point (or aggregated group of Network Supply Points where these fall within the same pricing/Loss Factor region) relevant to the Network for each of the previous 12 months. This information shall also identify the average Loss Ratio implicit in the current Loss Factors.
- 7.2 **Distributor to investigate adverse trends in Losses:** If over time the actual Loss Ratio moves abnormally away from the average Loss Ratio implicit in the current Loss Factors, the Distributor will use reasonable endeavours to identify the cause of the abnormal movement. If the abnormal movement is due to incomplete or incorrect data provided by the Retailer or any other retailer, the Distributor shall address the matter with the retailer(s) concerned in order to remedy the situation. If the Distributor is unable to identify the cause of the abnormal movement, or its enquiries fail to remedy the situation, then the Distributor shall provide relevant information to all affected retailers and will, if requested by the Retailer, facilitate a meeting of all affected retailers to attempt to resolve the matter.

7.3 **Retailer to provide information to enable calculation of Loss Factors by the Distributor:** The Retailer shall provide the Distributor with any additional information, as and when the Distributor may reasonably require, having regard to the scope and timing of the request, to enable it to calculate Loss Factors.

7.4 **Calculation and notification of Loss Factors:** Subject to clause 7.6, the Distributor:

- (a) shall review Loss Factors annually; and
- (b) may change Loss Factors in conjunction with any change in pricing in accordance with clause 9.

The Distributor will give the Retailer at least 40 Working Days notice of any change to the Loss Factors (including the reasons for the change) and will, as soon as reasonably practicable after this period, update Schedule 11 to reflect such changes.

7.5 **Transparent Loss Factors methodology:** Any notice provided to the Retailer in accordance with clause 7.4 will contain details of the methodology and information used by the Distributor to determine the Loss Factors, including an explanation of the relationship between the Loss Ratio reported under clause 7.1 and the Loss Factors notified under clause 7.4.

7.6 **Disputes over Loss Factors:** If, at any time, a Retailer considers that the Loss Factors notified by the Distributor are not appropriate, or considers the methodology or information used to calculate those Loss Factors is incorrect, a Retailer may make a written complaint to the Distributor specifying the nature and grounds for the complaint. The Distributor will consider the complaint and may issue an amended notice under clause 7.4 within 20 Working Days of receipt of the complaint. If the Distributor does not issue an amended notice within such period, the Retailer may refer the matter to the dispute resolution process set out in clause 25. In the event that the outcome of the dispute resolution process is to change the Loss Factors declared in the Distributor's notice, and such change leads to a change in the level of revenue received by the Distributor, the Distributor reserves the right to determine the time from which that change is to apply, provided that the time of application does not exceed 60 Working Days from the date on which the Dispute is finally resolved.

7.7 **Correction of Loss Category:**

- (a) Where a Retailer considers on reasonable grounds that a Loss Category has been inappropriately allocated to an ICP, the Retailer may give notice

requesting the Distributor to correct the Loss Category in respect of that ICP. Any such notice must include a statement of the Retailer's grounds for considering that a Loss Factor has been inappropriately allocated. The Distributor will advise the Retailer within 10 Working Days of receipt of the Retailer's notice whether or not it will reallocate the ICP to a different Loss Category, and if not, the reasons for that decision. If the Distributor does not reallocate the ICP to a different Loss Category, the Retailer may refer the matter to dispute resolution in accordance with clause 25.

- (b) Where a Distributor considers on reasonable grounds that a Loss Category has been inappropriately allocated to an ICP, the Distributor may give the Retailer notice advising that the Distributor proposes to correct the Loss Category in respect of that ICP. Any such notice must include a statement of the Distributor's grounds for considering that the Loss Factor has been inappropriately allocated. The Retailer may then advise the Distributor within 10 Working Days of receipt of the Distributor's notice whether it agrees with the Distributor's proposal, and if not, the reasons why. If the parties do not agree on the reallocation of the ICP, either party may refer the matter to dispute resolution in accordance with clause 25.
- (c) If a different Loss Category is reallocated to an ICP in accordance with 7.7(a) or 7.7(b), the Distributor will apply that Loss Category with immediate effect and will credit or invoice the Retailer (as appropriate) with any difference between:
- (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
    - 1) the date the Distributor allocated the previously applied Loss Category; and
    - 2) the Switch Event Date for that ICP recorded for the Retailer;up to the day before the date on which the Distributor allocated a different Loss Category to that ICP; and
  - (ii) the charges that would have applied if the new Loss Category had been allocated to that ICP during the period referred to in paragraph (i), provided that the maximum period for which credit or payment will be required under any circumstances pursuant to

this clause is the later of 12 months and the date ending on the final day of the last reconciliation wash up month.

## 8. SERVICE PERFORMANCE REPORTING

8.1 **Parties to report on performance relative to Service Levels:** Each party will, unless it is required under legislation to publish such information elsewhere, report on its performance relative to Service Levels in accordance with the reporting measures and frequency of reporting as set out in Schedule 1.

8.2 **Contents of performance report:** Each party will prepare a performance report ("**Performance Report**") in accordance with clause 8.1, which will:

- (a) compare actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
- (b) explain the reasons for any significant under-performance, and explain what actions the party will undertake to rectify that under-performance; and
- (c) for the avoidance of doubt, in the event that the 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 such event on the party's performance in relation to the Service Standards,

in accordance with the frequency of reporting set out in Schedule 1.

8.3 **Additional reports:** Either party (the "requester") may request the other party (the "provider") to provide additional performance reports, including reports containing information in addition to that specified in clause 8.2 or more frequent reports containing the same information. The provider shall comply with such requests if it is reasonably able to do so. The provider may charge the requester (and the requestor shall pay) for the costs reasonably incurred by the provider in preparing and supplying such additional reports, except where an additional report is requested due to a suspected failure by the provider to meet a Service Standard which has not been reported in accordance with clause 8.2, and the additional report demonstrates that such failure existed.

- 8.4 **Insurance not to be compromised:** Nothing in this clause 8 requires either party to disclose information which in its reasonable opinion may adversely affect an insurance policy held by that party.

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## PART II - PAYMENT OBLIGATIONS

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### 9. PROCESS FOR SETTING AND APPLYING PRICES

9.1 **Price Adjustment:** The Distributor may alter its pricing (e.g. a change under clause 9.2 to its pricing methodology or a change to the prices for Distribution Services) no more than once in any period of 12 consecutive months except where a proposed price change results from a change in:

- (a) local authority rates; or
- (b) Transmission Charges; or
- (c) Distribution Services (provided that any proposed price change will only apply to Consumers affected by the change in Distribution Services); or
- (d) a legislative requirement.

Nothing in this clause 9.1 prevents a price decrease at any time (and from time to time) or a price change if agreed by the Retailer.

9.2 **Process to change pricing methodology:** If the Distributor proposes to change its pricing methodology, the following process shall be followed:

- (a) **Advise the proposal:** The Distributor will notify the Retailer of its proposed changes and rationale for the same. The Retailer may provide written submissions to the Distributor within 20 Working Days of such notification;
- (b) **Notify submissions and responses:** Prior to Publication of the pricing methodology under clause 9.2(d), the Distributor will provide the Retailer with a summary of any submissions received and its response to them;
- (c) **Consider certain matters:** The Distributor will while developing any new pricing methodology consider in good faith any submissions or other information received as part of the process set out in this clause:
- (d) **Publish changes to pricing methodology and prices:** The Distributor will Publish its final pricing methodology and consequent changes to its Pricing Schedule and the reasons for the changes.

9.3 **Notice of price adjustment:** The Distributor will give the Retailer notice (and notice by email, where email is not an agreed method of notice under clause 28.2(c) of this agreement) of any price adjustment as specified below:

- (a) **Existing pricing methodology:** in the case of new prices calculated using an existing pricing methodology, 40 Working Days written notice;
- (b) **New pricing methodology:** in the case of new prices calculated using a new pricing methodology, in accordance with clause 9.2 and Published under clause 9.2(d), 40 Working Days written notice.

9.4 **Pricing methodology and prices cannot be disputed:** Once price methodology and prices are Published and notified in accordance with clauses 9.2 and 9.3, the pricing methodology and prices cannot be challenged except on the grounds of clause 4.1. Where a dispute is raised under clause 4.1, the Retailer will continue to pay invoices until the dispute is resolved.

9.5 **Pricing methodology identified as containing manifest error:** Where the Retailer identifies an error in the pricing methodology or prices notified in accordance with clauses 9.2 and 9.3 and the error arises from an obvious arithmetic error in calculating prices or pricing methodology, the Retailer shall bring that error to the Distributor's attention as soon as possible. Where the Distributor or Retailer identifies an error in the pricing methodology or prices, the Distributor may at its discretion revise and reissue the Pricing Schedule to the Retailer.

9.6 **Pricing Schedule to be updated:** As soon as practicable after Publishing its final methodology under clause 9.2(d), the Distributor will provide the Retailer with an updated Pricing Schedule reflecting the changes.

## 10. PRICE CATEGORY AND TARIFF OPTIONS

10.1 **Distributor determines Price Category:** Where the Pricing Schedule includes different Price Categories (as opposed to the Tariff Options within a Price Category where such a Price Category provides for Retailer choice amongst two or more alternatives), the Distributor will be entitled to determine, acting reasonably, which Price Category will apply to an ICP and notify the Retailer accordingly. In determining which Price Category should apply to an ICP, the Distributor will have regard to the Consumer's Installation, the Consumer's demand profile and capacity requirements, the criteria for the Price Category and any other relevant factors.

10.2 **Retailer request for correction of Price Category:** If the Retailer considers on reasonable grounds that a Price Category has been inappropriately allocated to an ICP under clause 10.1, the Retailer may give notice requesting the Distributor to correct the Price Category in respect of that ICP. Any such notice by the Retailer must be given within 10 Working Days of receipt of the Distributor's notice under clause 10.1 and must include a statement of the Retailer's reasonable grounds for considering that a Price Category has been inappropriately allocated. The Distributor will advise the Retailer within 10 Working Days of receipt of the Retailer's notice under this clause 10.2, as to whether or not it will reallocate the ICP to a different Price Category, and if not, the reasons for that decision. For the avoidance of doubt, the Distributor shall not be obliged under this clause 10.2 to reallocate a different Price Category to an ICP.

10.3 **Credit following correction:** If the Distributor allocates a different Price Category to an ICP following notice from the Retailer pursuant to clause 10.2, the Distributor will:

(a) commence charging the Retailer in accordance with that Price Category with immediate effect; and

(b) subject to clause 10.4, credit the Retailer with the difference (if any) between:

(i) the charges paid by the Retailer in respect of that ICP in the period from the later of:

(27) the date the Distributor allocated the previously applied Price Category to that ICP;

(28) the Switch Event Date for that ICP recorded for the Retailer,

up to the day before the date on which the Distributor allocates a different Price Category to that ICP; and

(ii) the charges that would have applied if the new Price Category had been allocated to that ICP during the period referred to in paragraph (i),

provided that the maximum period for which credit will be required under any circumstances pursuant to this clause is the later of 12 months and the date ending on the final day of the last reconciliation wash up month.

10.4 **Limitations on credits for Price Category corrections:** Paragraph (b) of clause 10.3 will not apply in respect of an ICP where:

- (a) clause 10.5 applies to that ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer has failed to provide the Distributor with correct or complete information in relation to the Consumer's Installation, the Consumer's demand profile and capacity requirements and any other factors in respect of that ICP relevant to the allocation of a Price Category (provided that information was not already known by the Distributor); or
- (c) the Retailer has, at any time, provided the Distributor with incorrect or incomplete information in relation to the Consumer's Installation, the Consumer's demand profile and capacity requirements or any other factors in respect of that ICP relevant to the allocation of a Price Category.

10.5 **Distributor's right to allocate different Price Category:** Where the Distributor reasonably considers that for any reason a different Price Category should be allocated to a particular ICP:

- (a) the Distributor will notify the Retailer accordingly including the reasons why the Distributor considers a different Price Category should be allocated to the ICP; and
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction that the current Price Category is appropriate within 10 Working Days of the Distributor's notice under clause 10.5(a), the Distributor may by notice to the Retailer allocate the Price Category that the Distributor considers appropriate to that ICP and to commence charging the Retailer for Distribution Services in accordance with that Price Category after 40 Working Days from the date of the allocation of the different Price Category; and
- (c) the Distributor will provide to the Retailer the reasons for the Distributor's decision.

10.6 **Allocation of different Price Category where available as a Consumer elected alternative:** If the Retailer by notice to the Distributor requests a different Price Category be allocated to an ICP as a result of a Consumer exercising a right to elect a different Price Category, and the ICP satisfies the eligibility criteria for that Price

Category contained in the Pricing Schedule, then the Distributor will allocate to that ICP the Price Category requested. The different Price Category shall apply in respect of the ICP from the later of the effective date in the Retailer's notice or 10 Working Days after the date on which the Retailer's notice is received by the Distributor.

10.7 **Tariff Options within a Price Category:** The Retailer may allocate an ICP to a different Tariff Option applicable to any Distribution Services within the same Price Category for any other reason whatsoever (including as a result of a change to the Consumer's Installation, Metering Equipment or Load Control Equipment (whether owned by the Consumer, Retailer or otherwise) or a change in the demand profile or capacity requirements) provided that;

- (a) all applicable eligibility criteria in respect of that Tariff Option as set out in the Pricing Schedule are satisfied;
- (b) the re-allocation is consistent with the Code; and
- (c) the Retailer gives the Distributor not less than 10 Working Days notice of any proposed change in accordance with the appropriate Information Exchange Protocol.

10.8 **Commencement of charges:** Charges will commence at an ICP:

- (a) on the day the ICP is Energised or Re-energised; or
- (b) where the Retailer is assuming responsibility for an ICP, from the later of the Switch Event Date and the date that the ICP is Energised.

10.9 **Cessation of charges:** Charges will cease at an ICP:

- (a) on the day an ICP is De-energised (except where this occurs as a result of a Temporary Disconnection); or
- (b) from the Switch Event Date where another retailer takes responsibility for the ICP; or
- (c) 3 Working Days after the Distributor receives notice from the Retailer requesting the Distributor take responsibility for completing a Vacant Site Disconnection that is in accordance with paragraph 15 of Schedule 7.

10.10 **Amendment to Price Categories and Tariff Options:** The Distributor may at any time:

- (a) change any Price Category or Tariff Option; and
- (b) change the eligibility criteria for any Price Category or Tariff Option; and
- (c) close any Price Category or Tariff Option,

(each a “Price Category Change”) and the Price Category Change shall come into effect upon completion of the following change process:

- (d) **Advise the proposal:** The Distributor will notify the Retailer of its proposed Price Category Change and the rationale for the same. The Retailer may provide written submissions to the Distributor within 20 Working Days of such notification;
- (e) **Notify submissions and responses:** Prior to Publication of any Price Category Change under clause 10.10(g), the Distributor will provide the Retailer with a summary of any submissions received and its responses to them;
- (f) **Consider certain matters:** The Distributor will, while developing its proposed Price Category Change, consider in good faith any submissions or other information received during the process;
- (g) **Publish Price Category Changes:** The Distributor will Publish its final Price Category Changes and the reasons for its decision, and as soon as possible the Distributor will provide the Retailer with an updated Pricing Schedule reflecting the changes.

10.11 **Closed Price Categories and Tariff Options:** The Retailer must as soon as practicable move all ICPs in a closed Price Category or Tariff Option into the most appropriate available Price Category or Tariff Option (as the case may be) by reference to the Consumer’s Installation, the Consumer’s demand profile and capacity requirements, the eligibility criteria for the Price Category and any other relevant factors.

10.12 **Distributor may move ICPs:** The Distributor will give notice in writing to the Retailer requesting the Retailer move an ICP from a closed Price Category or Tariff Option to the most appropriate available Price Category or Tariff Option (as the case may be) by reference to the Consumer’s Installation, the Consumer’s demand profile and

capacity requirements, the criteria for the Price Category and any other relevant factors. If the Retailer does not move the ICP to a different Price Category or Tariff Option within 40 Working Days of receipt of such written notice, the Distributor may move the ICP and immediately commence charging the Retailer for Distribution Services in accordance with that Price Category or Tariff Option (as applicable).

## **11. BILLING AND PAYMENT**

- 11.1 **Retailer to provide consumption information:** The Retailer will provide to the Distributor within 5 Working Days of the end of the month (or such later date as the Distributor may specify) all information the Distributor may reasonably require to enable it to calculate its invoice for Distribution Services. Such information shall be provided in the format specified in clause 11.10 (or as otherwise changed in accordance with clause 24). Where consumption information is used in the calculation of charges, the information shall be provided using the appropriate Information Exchange Protocol.
- 11.2 **Late, incomplete, or incorrect provision of information:** If the Retailer fails to provide all the information the Distributor requires to enable it to calculate its invoice for Distribution Services within the period provided in clause 11.1 or, the information provided in that period is incomplete or materially incorrect, or not in the specified format, the Distributor may estimate the Retailer's invoice for Distribution Services using Good Industry Practice. The Distributor's current practice for estimating the charges is as set out in Schedule 12.
- 11.3 **Charges, invoices and due date for payment:** The Distributor's invoice for Distribution Services shall be based on the information provided by the Retailer pursuant to clause 11.1, or as estimated by the Distributor as provided in clause 11.2, and on the Pricing Schedule, and shall be sent to the Retailer within 10 Working Days of the end of the month to which the invoice relates. Where consumption information is used in the calculation of charges, at the same time the Distributor shall provide sufficiently detailed information, using the appropriate Information Exchange Protocol, to enable the Retailer to verify the accuracy of the invoice. The settlement date for the invoice shall be the 20<sup>th</sup> day of the month in which the invoice is received. However if the Distributor fails to send an invoice to the Retailer by the 10<sup>th</sup> Working Day then the due date for payment will be extended by 1 Working Day for each Working Day that the invoice is late.
- 11.4 **Wash-ups:** Where complete and accurate information (including, without limitation, consumption information or adjusted reconciliation information (as applicable to the

pricing methodology)) is received by the Distributor after the period provided for in clause 11.1, or corrected consumption information and/or reconciliation information to replace the earlier information used for invoicing is provided, the Distributor will provide an invoice or credit note (as the case may be) for the wash-up amount for settlement plus a Use of Money Adjustment (as set out in Schedule 12). The settlement date for the wash-up amount will be the 20<sup>th</sup> day of the month after the date of the invoice, or credit note (as the case may be).

**11.5 Other invoices:**

- (a) The Distributor may issue the Retailer with an invoice for payment for Additional Services, Services Guarantee payments and any other sums due to the Distributor under this agreement.
- (b) The Retailer may issue the Distributor with an invoice for Service Guarantee payments and any other sums due to the Retailer under this agreement.
- (c) Any invoice under clause 11.5(a) or (b) shall be issued within 12 months of the services or Service Standards being applicable.
- (d) The Settlement date for any invoice under clause 11.5(a) or (b) shall be the 20<sup>th</sup> day of the month in which the invoice is received. However if the Distributor or the Retailer (as applicable) fails to send an invoice to the Retailer or the Distributor (as applicable) by the 10<sup>th</sup> Working Day of the month then the due date for payment will be extended by 1 Working Day for each Working Day that the invoice is late.

**11.6 Interest on late payment:** Subject to clause 11.7, the Retailer or the Distributor, as appropriate, will pay any invoice issued under clauses 11.3, 11.4 or 11.5. Where any part of an invoice that is due in accordance with this agreement is not paid by the due date, Default Interest may be charged.

**11.7 Disputed invoices:** If the Retailer or the Distributor disputes an invoice issued under clauses 11.3, 11.4 or 11.5, the party disputing the invoice ("**disputing party**") shall notify the other party ("**non-disputing party**") in writing and provide details as to the reasons why the disputing party disputes that invoice within 18 months of the date of supply of the Services ("**Invoice Dispute**") On receiving the Invoice Dispute notice, the non-disputing party shall:

- (a) where the non-disputing party agrees with the matters set out in the Invoice Dispute notice and:
- (i) the Retailer or the Distributor, as appropriate, has not paid the disputed invoice, promptly issue a new invoice and the relevant party will pay the new invoice within 10 Working Days of receiving it, but need not pay prior to the time set out in clause 11.3, 11.4 or 11.5; or
  - (ii) the Retailer or the Distributor, as appropriate, has paid the disputed invoice, calculate the amount that the relevant party has over paid and promptly issue an invoice to the disputing party for the over paid amount, and that invoice plus a Use of Money Adjustment is to be settled within 10 Working Days of the non-disputing party's invoice for the over paid amount. A Use of Money Adjustment will apply for the period commencing on the date the original invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clauses 11.3, 11.4 or 11.5; or
- (b) where the non-disputing party disagrees with the matters set out in the Invoice Dispute notice, the matter will be referred to dispute resolution in accordance with clause 25 and if the Retailer or the Distributor, as appropriate, has not paid the disputed invoice, it will pay the undisputed amount of the disputed invoice issued in accordance with clauses 11.3, 11.4 or 11.5; and
- (c) upon the resolution of any Invoice Dispute under clause 11.7(b), the party which is found to have an outstanding amount will pay that amount within 10 Working Days, plus Default Interest to the other party. The Default Interest will apply for the period commencing on the date the disputed amount would have been due for payment under clauses 11.3, 11.4 or 11.5, and ending when payment is made.

**11.8 Incorrect invoices:** If at any time a party is overcharged or undercharged and that party paid the invoice containing such overcharge or undercharge, then within 20 Working Days after such error has been discovered, and the amount has been agreed to between the parties or determined pursuant to clause 25;

- (a) the party which has been overpaid shall refund to the other party the amount of any such overcharge; or

- (b) the party which has underpaid shall pay to the other party the amount of any such undercharge,

as applicable, in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there shall be no right to re-open an invoice if more than 18 months has elapsed since the date of that invoice.

- 11.9 **No set off:** Both parties will make the payments required to be made to the other pursuant to this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in clause 11.7.
- 11.10 **Format and changes to format of information:** The information to be provided by the Retailer in accordance with this clause 11 shall be provided in EIEP1, EIEP3 and EIEP4 format unless changed in accordance with clause 24.3 or, if applicable clause 24.4.
- 11.11 **Guide to billing and settlement processes:** Schedule 12 sets out the processes for the implementation of this clause 11.

## 12. PRUDENTIAL REQUIREMENTS

- 12.1 **Retailer must satisfy prudential requirements:** The Retailer will comply at its election with one of the following prudential requirements within 10 Working Days of notice from the Distributor requiring the Retailer to comply (and will within the same period provide evidence in all respects satisfactory to the Distributor of such compliance):
- (a) **Hold and maintain an acceptable credit rating:** hold and maintain an acceptable credit rating in accordance with clause (e); or
- (b) **Paying a cash deposit:** pay to the Distributor a cash deposit of the amount required by the Distributor in accordance with this clause 12 (“**Cash Deposit**”) which the Distributor will deal with in accordance with clause 12.16 or as otherwise agreed in writing by the parties (or, if agreed by the parties, transfer or grant security over assets in favour of the Distributor of equivalent value which the Retailer will deal with as agreed in writing by the parties); or
- (c) **Third party security:** arrange for a third party to provide one or a combination of the following securities, in a form acceptable to the Distributor, for the amount required by the Distributor in accordance with

this clause 12, provided the party providing the security maintains an acceptable credit rating in accordance with clause (f);

- (i) **Guarantee or letter of credit:** an unconditional guarantee or letter of credit in favour of the Distributor; or
  - (ii) **Third party guarantee:** an unconditional third party guarantee in favour of the Distributor; or
  - (iii) **Bond:** a security bond in favour of the Distributor;
- or
- (d) **Providing a mixture of security:** provide any combination of the securities listed in clauses 12.1(b) and 12.1(c) (or any similar securities approved by the Distributor).
  - (e) **Acceptable credit rating:** For the purposes of clause (a), an acceptable credit rating means that:
    - (i) the Retailer must carry a long-term credit rating of at least BBB- (Standard & Poor's Ratings Group), or an equivalent rating from any other rating agency which is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
    - (ii) if the Retailer has the minimum acceptable credit rating, this rating is not subject to negative credit watch or any similar arrangement by the agency that gave it that credit rating.
  - (f) **Acceptable credit rating (Third Party Security):** For the purposes of clause 12.1(c), an acceptable credit rating means that:
    - (i) the third party security provider must carry a long-term credit rating of at least BBB- (Standard & Poor's Ratings Group), or an equivalent rating from any other rating agency which is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
    - (ii) if the third party security provider has the minimum acceptable credit rating, this rating is not subject to negative credit watch or any similar arrangement by the agency that gave it that credit rating.

- 12.2 **Evidence of acceptable credit rating:** The Retailer, or third party security provider (as the case may be) will provide such evidence of the acceptable credit rating (as set out in clause 12.1(e) or 12.1(f)), as the Distributor may from time to time reasonably require.
- 12.3 **Level of security:** Where the Retailer provides a Cash Deposit or has a third party provide a guarantee, letter of credit or bond, (in each case, "**Security**") to satisfy the prudential requirements in clause 12.1:
- (a) the maximum amount of the Security is the Distributor's reasonable estimate of the charges for 2 months (GST inclusive) payable by the Retailer.
  - (b) where the Distributor requires that the Security is greater than the Distributor's reasonable estimate of the charges for 2 weeks (GST inclusive) payable by the Retailer, then in relation to the Security above that threshold ("**Additional Security**"):
    - (i) 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;
    - (ii) if the Additional Security is in the form of security from a third party, the Distributor will pay a charge to the Retailer, calculated in accordance with clause 12A.5(3)(b) of the Code; and
    - (iii) any charges required to be paid by the Distributor to the Retailer in accordance with this clause 12.3(b) will be paid by the Distributor to the Retailer on a quarterly basis, on the last Working Day of March, June, September and December respectively.
- 12.4 **Distributor to calculate new Retailer's level of security:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will calculate the requisite level of security required pursuant to clause 12.3 for the first 12 months, subject to any reassessment of the security level pursuant to this agreement having regard to:
- (a) **Historical records:** the Distributor's historical records of the consumption of relevant consumers; and/or
  - (b) **Retailer's business plan:** in the absence of records satisfying the requirements of clause 12.4(a), a bona fide business plan prepared by the

Retailer in good faith to permit a realistic estimate of the Retailer's level of security as defined in clause 12.3.

12.5 **Review of security level:** At any time, the Distributor may review, or the Retailer may by notice to the Distributor require the Distributor to review, and if the Distributor considers appropriate, change, the level of security which the Distributor requires the Retailer to hold in accordance with clause 12.3. If no security has been provided by the Retailer due to the Retailer having an acceptable credit rating in accordance with clause 12.1(e) but the Retailer has failed to maintain an acceptable credit rating under clause 12.1(e), the Distributor may require the Retailer to provide additional security in accordance with this clause 12, subject to the limitations in clause 12.3. The Retailer shall comply with any change to the level of security or shall provide additional security (as the case may be), within 10 Working Days of notice from the Distributor advising of any change which the Distributor requires to the level of security or the requirement of additional security.

12.6 **Retailer to notify Distributor of changes affecting security:** Subject to clause 12.9, the Retailer shall immediately notify the Distributor should any of the following occur:

- (a) the Retailer gives a notice (in accordance with clause 14.24 of the Code) of a change to its security status; or
- (b) the Retailer has cause to believe that its financial position is likely to be impaired such that its ability to pay for the Services will be consequently affected; or
- (c) the Retailer becomes aware that a third party security provider (upon which its current satisfaction of the prudential requirements in this clause 12 is dependent) no longer holds an acceptable credit rating in terms of clause 12.1(f).

Any notification under this clause 12.6 shall provide full particulars of the circumstances, including, without limitation:

- (i) in respect of a notification under paragraph (a), particulars as to the reason for the change in security status;
- (ii) in respect of a notification under paragraph (b), particulars as to the reason for the Retailer's belief; and

- (iii) in respect of a notification under paragraph (c), particulars as to the current credit rating of the third party security provider.

12.7 **Public issuers and listed companies:** For the purpose of clause 12.6 above, if the Retailer:

- (a) is a listed issuer for the purposes of the Financial Markets Conduct Act 2013, the Retailer may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement to the reasonable satisfaction of the Retailer prior to the giving of notice and disclosure of any information under clause 12.6 if, and for so long as, the Retailer reasonable considers any such information to be inside information as defined in that Act; or
- (b) is listed on a "licensed market" as defined in the (Financial Markets Conduct Act 2013), the Retailer may withhold any notice or information to the extent that the Retailer is not required to disclosure such information under the applicable Listing Rules of that licensed market.

12.8 **Distributor may make enquiries:** Where the Distributor reasonably believes that the Retailer should have given notice under clauses 12.6(a) to (c) and the Distributor has not received a copy of any such notice, the Distributor may enquire of the Retailer as to whether it should have given such notice. If such notice should have been given, the Retailer shall give notice immediately, or if no notice is required, the Retailer must respond to the Distributor in writing within 2 Working Days of receipt of the Distributor's notice under this clause 12.7(b).

12.9 **Change in the level or type of security:** If the Distributor:

- (a) following a review of the Retailer's security level pursuant to clause 12.5; or
- (b) on receipt of information contemplated by clauses 12.6 or 12.7(b); or
- (c) as the result of a failure by the Retailer to respond to a request in terms of clause 12.7(b) within the timeframe set out above,

considers on reasonable grounds that the level of security should, subject to clause 12.3, be increased or decreased, the Distributor will immediately notify the Retailer of its decision and the grounds for that decision. For the avoidance of doubt, failure by a Retailer to respond to a request made under clause 12.7(b) within the required timeframe shall constitute reasonable grounds for a Distributor to, subject to clause 12.3, alter the security required to be provided by the Retailer, provided that the choice of the form of security under clause 12.1 will remain at the Retailer's election.

- 12.10 **Distributor or Retailer to effect changes in level 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 level of security or change in type of security notified by the Distributor, within 5 Working Days of notification under clause 12.9. Refunds of Cash Deposits and reductions of guarantees, letters of credit and bonds will be made in accordance with clauses 12.11 or 12.12 (as appropriate).
- 12.11 **Refund of Cash Deposits:** If the Distributor refunds a Cash Deposit in accordance with this clause 12, it will refund all or part of the Cash Deposit, as the case may be, into a bank account nominated by the Retailer on the Working Day following the day on which the Distributor notified the Retailer of the decision to refund the Cash Deposit, or is required to refund the Cash Deposit in accordance with clause 12.16.
- 12.12 **Reduction of guarantees etc:** If the Distributor decreases the level of a guarantee, letter of credit or bond in accordance with this agreement, the Retailer may arrange for the issuing of a guarantee, letter of credit or bond as the case may be, for the lesser amount in satisfaction of clause 12.1(c) which will replace the earlier guarantee, letter of credit or bond.
- 12.13 **Change of security by Retailer:** The Retailer may at any time change its election under clause 12.1 as to the manner in which it complies with the prudential requirements in this clause 12, and such change will come into effect on the date on which the Retailer notifies that change to the Distributor, provided the Retailer has complied with all its obligations under this agreement, and has provided evidence in all respects satisfactory to the Distributor, that the new arrangements proposed by the Retailer will satisfy the requirements of clause 12.1. Any refund of a Cash Deposit, or any release or replacement of a guarantee, letter of credit or bond provided in accordance with clause 12.1, that results from such a change will take place in accordance with clauses 12.11 or 12.12 (as applicable), provided that where such a change requires the Distributor to refund any part of a Cash Deposit, the Distributor will not be required to refund that Cash Deposit any earlier than 10 Working Days after the date on which the Retailer gave notice of the change under this clause 12.13.
- 12.14 **Calls on security:** If the Retailer fails to pay an amount pursuant to this agreement, the Distributor may on 2 Working Days' notice to the Retailer draw down and apply the amount owing (plus Default Interest) from the Cash Deposit, or enforce in accordance with its terms any guarantee, letter of credit or bond which has been provided under this agreement.

- 12.15 **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 12.3, as required by clause **Error! Reference source not found.**
- 12.16 **Third party security may be released:** Where the provider of a guarantee or letter of credit or bond makes a payment to the Distributor in order to be released from its obligations pursuant to a guarantee or letter of credit or bond, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the letter of credit or guarantee or bond (as the case may be) and clause 12.1 will apply accordingly.
- 12.17 **Distributor holding of cash deposit:** The Distributor will hold any Cash Deposit paid to it by the Retailer for the purposes of this agreement on the following basis:
- (a) the Distributor will hold the Cash Deposit in a trust account in accordance with clause 12A.4(6) of the Code, at an interest rate that is the best on-call rate reasonably available at the time;
  - (b) unless the parties agree otherwise, the Distributor will pay interest to the Retailer on the amount (from time to time) of the Cash Deposit (except for any portion of the Cash Deposit which the Retailer has elected to provide in order to satisfy a requirement for Additional Security) as follows:-
    - (i) interest will be calculated on a daily basis;
    - (ii) interest will not be compounded; and
    - (iii) unless the parties agree otherwise, interest will be paid on a quarterly basis (on the last working day of March, June, September and December, respectively) net of account fees and any amount required to be withheld by law;
  - (c) the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus accrued but unpaid interest) to the Retailer in accordance with clause 12.11 in the event that this agreement is terminated, provided that the Retailer:
    - (i) is not otherwise in default of this agreement; and

- (ii) has ceased to be bound by this agreement, excluding the terms which survive termination of this agreement in accordance with clause 21.8; and
- (iii) has discharged all such obligations to the Distributor, including payment of all outstanding amounts under this agreement, but excluding terms which survive termination of this agreement in accordance with clause 21.8; and
- (d) if the Retailer fails to pay an amount pursuant to this agreement, the Distributor may on notice (provided that this notice requirement shall not apply to deemed Cash Deposits under clause 12.16) draw down that amount, plus Default Interest from the Cash Deposit and the Distributor will immediately notify the Retailer of the amount drawn down.

12.18 **Release of guarantees, letters of credit and bonds:** If this agreement is terminated, the Distributor will release any guarantee, letter of credit or bond provided that the Retailer has met all of its requirements set out in clause 12.17(c).

## PART III - OPERATIONAL REQUIREMENTS

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### 13. ACCESS TO THE CONSUMER'S PREMISES

13.1 **Rights of entry onto Consumer's Premises:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers access onto the Consumer's Premises by the Distributor, its employees or its agents for the following purposes:

- (a) to inspect, maintain, or operate the Distributor's Equipment; or
- (b) to install, read or maintain Metering Equipment for measuring the use being made of the Network; or
- (c) to disconnect and reconnect in accordance with this agreement; or
- (d) to access any of the Retailer's Equipment for the purpose of verification of metering information, including, in the event of termination of this agreement, access to any Retailer's Equipment to determine any charges outstanding at the time of termination; or
- (e) for safety of persons and property; or
- (f) to ensure that obligations under clause 14.3 are carried out; or
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment for up to 6 months following the termination of the agreement with the Consumer.

13.2 **Exercise of access rights:** In exercising the access rights under clause 13.1, the Distributor shall, subject to clause 13.5:

- (a) comply with sections 23A to 23D, section 57 and section 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 13.1;
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to, and/or other security information for, the Consumer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer and ensure its personnel behave in a courteous and

considerate manner and carry identification at all times while on the Consumer's Premises; and

- (d) comply with the Consumer's reasonable 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, procure in its agreements with Consumers that if the Consumer fails to reasonably grant to the Distributor access rights to the Distributor's Equipment on the Consumer's Premises:

- (a) where access is required under clause 13.1(a), (b), (d) or (g), after the Distributor or Retailer has given the Consumer 10 Working Days' written notice of access being required; or
- (b) where access is required under clause 13.1(c), (e) or (f), immediately,

the Distributor may disconnect the Consumer's Point of Connection from the Network and go onto the Consumer's Premises to reclaim the Distributor's Equipment provided that where the Distributor requires access under clause 13.1(a), (b), (d) or (g), the Distributor will only take such action between the hours of 8:00am and 7:00pm on Working Days.

13.4 **Costs of Disconnection:** The Distributor shall not be liable for any loss the Retailer may suffer or incur as a result of a disconnection carried out in accordance with the Retailer's agreement with the relevant Consumer. The Retailer shall reimburse the Distributor for all reasonable costs relating to the disconnection and reconnection.

13.5 **Existing agreement will prevail:** In the event of a conflict between the provisions of 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, then the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

## 14. INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY

14.1 **Interference or damage to Distributor's Equipment:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers that the Consumer will not interfere with or damage, and ensure that its employees, agents and invitees do not interfere with or damage, the Distributor's Equipment (including, (for a period of 6 months), after termination of this agreement) without the prior written consent of the

Distributor (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect the Distributor's Equipment from damage. If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer shall pay the cost of making good the damage to the Distributor.

**14.2 Interference or damage to Retailer's Equipment or Consumer's Installation:**

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, during the term of this agreement or for a period of six months after termination or expiry of this agreement, without the prior written consent of the Retailer or the Consumer (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 or as otherwise required to exercise the Distributor's rights under this agreement) and shall take all reasonable precautions necessary to protect the Retailer's Equipment, the Consumer's Installation and the Consumer's Premises from damage. If the Retailer's Equipment, Consumer's Installation, or the Consumer's Premises is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, then the Distributor shall pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause is for the benefit of the Consumer and may be enforced by the Consumer pursuant to the Contracts (Privity) Act 1982.

**14.3 Interference with the Network:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers that they will not without the prior 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 pursuant to 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.

**14.4 Notification of interference, damage or theft:** If the Distributor or Retailer discover any interference or damage to the other party's equipment or the Consumer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party will notify the affected party as soon as it is practicable to do so.

- 14.5 **Metering Equipment:** Either party may at its own cost, install and maintain additional Metering Equipment for metering data verification purposes or other purposes, provided that it does not interfere with any other Metering Equipment and any consent to install and maintain the additional Metering Equipment required under this agreement has been given. For the avoidance of doubt, any such consent will not be unreasonably withheld by either party.
- 14.6 **Safe Housing of Equipment:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers (subject to any alternative agreed between the Retailer and the Distributor in writing) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space of a reasonable size for the 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 which the Distributor determines is necessary.
- 14.7 **The Network:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers an acknowledgement by the Consumer that:
- (a) the Network, including any part of the Network situated on a Consumer's Premises, is and will remain the sole property of the Distributor; and
  - (b) no provision of the Consumer's agreement with the Retailer 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 Fittings owned or controlled by the Distributor which are used to provide any such services.

## 15. NETWORK CONNECTION STANDARDS

The Retailer will, subject to clause 27.1, procure in its agreements with its Consumers an undertaking that the Consumer will comply with the Network Connection Standards.

## 16. MOMENTARY FLUCTUATIONS

- 16.1 The Retailer will, subject to clause 27.1, procure in its agreements with its Consumers undertakings that the Consumer:
- (a) recognises that surges or spikes are momentary fluctuations in voltage or frequency and are not treated as interruptions; and

- (b) has been advised to protect the Consumer's sensitive equipment from such surges or spikes.

## **17. CONSUMER SERVICE LINES**

- 17.1 **Responsibility for Consumer Service Lines:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers a statement that neither the Retailer nor the Distributor has responsibility for Customer Service Lines (except if and to the extent there is a legislative requirement for the Distributor to provide and maintain those lines).

## **18. TREE TRIMMING**

- 18.1 **Retailer's Agreements to provide for tree trimming:** Subject to any prior written agreement between the Retailer and a Consumer or a Consumer and the Distributor, or any statutory provision, the Retailer shall ensure that every agreement in relation to the supply and transportation of electricity between the Retailer and a Consumer provides for the matters set out in clauses 18.2 and 18.3.

- 18.2 **Consumer responsible for Consumer Service Lines:** The Consumer is responsible for ensuring, at its cost, that its Consumer Service Lines are unobstructed by trees or vegetation so as not to create an unsafe situation.

- 18.3 **Consumer responsible for complying with Tree Regulations:** The Consumer is responsible for complying with the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Consumer has an interest in that are near the Grid or any line that forms part of the Network.

- 18.4 **Distributor's right and obligations:** The Distributor will comply with the requirements of the Electricity (Hazard From Trees) Regulations 2003.

## **19. CONNECTIONS AND DISCONNECTIONS**

- 19.1 **Policies:** The Distributor and the Retailer will each comply with the policies for establishing new ICPs, changing the capacity of existing ICPs, Permanently Disconnecting existing ICPs and for De-energising or Energising existing ICPs set out in Schedule 7.

- 19.2 **All of the Consumer's Installations to be compliant:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers a requirement that all of the

Consumer's Installations are compliant, and are operated in compliance with Schedule 7 and the Network Connection Standards.

- 19.3 **Consumers' Installations not Permanently Disconnected without notice:** Subject to section 105 to section 108 of the Electricity Industry Act 2010 and any agreement the Distributor may have with a Consumer, the parties agree that neither party shall seek to have a Consumer's Installation Permanently Disconnected without first giving the other party 30 days' notice.
- 19.4 **Warranted Persons:** Only a Warranted Person may carry out any activity related to Energising, De-energising, and Permanently Disconnecting ICPs or performing any other works on the Network.
- 19.5 **Disconnection:** Subject to clause 19.6 and 19.7, the Distributor may perform a Temporary Disconnection in relation to a particular ICP in the following circumstances:
- (a) it is necessary to avoid endangering persons or property;
  - (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or transmission system;
  - (c) an Event of Default or Insolvency Event has occurred in relation to the Retailer;
  - (d) in the circumstances set out in clause 3.6;
  - (e) in accordance with clause 13.3 (where the Consumer fails to allow the Distributor access to the Consumer's premises);
  - (f) where a Consumer does any of the things prohibited under clauses 14.1 or 14.3, or fails to do any of the things required of it pursuant to clause 15; or
  - (g) on termination of this agreement.
- 19.6 **Notice of disconnection where event is within Consumer's control:** Where the Distributor intends to perform a Temporary Disconnection under clause 19.5(e) or (f), the Distributor will give the Retailer:
- (a) at least 10 days' notice of warning of disconnection before any disconnection;
  - (b) a final warning not less than 48 hours before disconnection;

- (c) if disconnection is not prevented by the Retailer and is not completed by the Distributor within the timeframes notified under clauses 19.6(a) and 19.6(b), the Distributor will issue another final warning not less than 48 hours nor more than 5 days before disconnection.

19.7 **Notice of disconnection where event is outside the Consumer's control:** Where the Distributor intends to perform a Temporary Disconnection under clause 19.5(c) or (g), the Distributor will give each Consumer:

- (a) at least 10 days' notice of warning of disconnection before any disconnection;
- (b) a final warning not less than 48 hours before disconnection;
- (c) if disconnection is not completed within the timeframes notified, the Distributor will issue another final warning not less than 48 hours nor more than 5 days before disconnection.

## PART IV: OTHER RIGHTS

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### 20. EVENTS OF DEFAULT

20.1 **Breach of agreement:** If either party (the “defaulting party”) fails to comply with any of its obligations under this agreement the other party may notify the defaulting party that it is in breach of this agreement. The defaulting party must remedy any breach within the following timeframe:

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

20.2 **Failure to remedy breach:** If the defaulting party fails to remedy a breach within the relevant timeframe set out in clause 20.1:

- (a) where:
  - (i) the breach is a Serious Financial Breach (in the case of the Retailer only); or
  - (ii) the breach is a material breach of the defaulting party’s obligations under this agreement and the failure is not in the process of being remedied to the reasonable satisfaction of the other party; or
  - (iii) 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, where 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, where the defaulting party is the Retailer, the Distributor’s ability to carry out its obligations under any agreement with any other electricity retailer,

then after at least 1 Working Day following the end of the timeframe set out in clause 20.1, the other party may commence termination of this agreement in accordance with clause 21.2 and, where 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 clause 14 of the Code; or

- (b) where the breach is not an Event of Default, the other party may refer the matter to dispute resolution in accordance with clause 25 within 1 Working Day after the end of the timeframe set out in clause 20.1; and
- (c) the other party may exercise any other legal rights available to it.

20.3 **Insolvency Event:** Where either party is subject to an Insolvency Event:

- (a) the other party may:
  - (i) immediately commence termination of this agreement in accordance with clause 21.2; and
  - (ii) exercise any other legal rights available to it; and
- (b) where 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 clause 14 of the Code.

## 21. TERMINATION OF AGREEMENT

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

- (a) **At will:** either party may terminate this agreement by giving not less than 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 the date that is 5 years from the commencement date of this agreement; 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 where 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 1 Working Day after notice is given by either party to the other party terminating this agreement

for the reason that performance of any material provision of this agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 30.4 it is not practicable for this agreement to continue; or

- (d) **No consumers:** either party may terminate this agreement 5 Working Days after notice is given by either party to the other party terminating this agreement following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with electricity using the Network; or
- (e) **Force Majeure:** either party may terminate this agreement 10 Working Days after notice is given by either party to the other terminating this agreement for the reason of a Force Majeure Event, which has resulted in the party's failure to perform a material obligation under this agreement, and which is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice to remain bound by its obligations under this agreement, provided that the party seeking to rely on the Force Majeure Event has complied with clauses 23.2 and 23.3.

21.2 **Termination of agreement for Event of Default or Insolvency Event:** In addition to any other termination right in this agreement, where 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 of 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 **Retailer's termination of agreement:** In addition to any other termination right in this agreement, the Retailer may terminate this agreement provided that it is not supplying electricity to any Consumer through the Network.

- 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:** Where this agreement is terminated by the Distributor for any reason, the Retailer remains liable for any charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, and for which the Distributor has not received a notice requesting disconnection of the relevant ICP(s) or the relevant ICP(s) is not disconnected. The Retailer will procure in its agreements with Consumers the right to terminate supply of electricity by the Retailer through the Network to the Consumer upon termination of this agreement.
- 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.
- 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 must 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 which 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 shall:
- (a) preserve the confidentiality of, and shall 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 for which it is provided, and otherwise as 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:** where the Retailer and Distributor agree in writing to the disclosure of the information;
- (b) **Provided in this agreement:** where disclosure is expressly provided for under the terms of this agreement;
- (c) **Public domain:** where at the time of receipt by the party the Confidential Information is in the public domain or 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 this clause 22 or a breach by any other person of that person's obligation of confidence);
- (d) **Required to disclose:** where either party is required to disclose Confidential Information by:
  - (i) any statutory or regulatory obligation, body or authority; or
  - (ii) any judicial or other arbitration process; or
  - (iii) the regulations of any stock exchange upon which the share capital of either party is from time to time listed or dealt in; or
  - (iv) the Code;
- (e) **Released to employees, directors, agents or advisors:** where 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; and
  - (ii) recipients of the Confidential Information shall 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:** where 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 approved by the other party, such approval not to be unreasonably withheld.

22.3 **Limit for breach:** Each party's liability to the other party arising out of or in connection with a breach of this clause 22, shall be limited to a maximum amount of \$[ ] ([ ] dollars), in respect of a single event or series of events arising from the same event or circumstance, excluding legal costs on a solicitor/own client basis which shall be unlimited.

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:** If either party fails to comply with or observe any provision of this agreement (other than payment of any amount due) and:

(a) such failure is caused by:

(i) **Specific events or circumstances:** any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:

(1) due to natural causes, directly or indirectly and exclusively without human intervention, and

(2) which could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted;

(ii) **Strikes, lockouts etc:** strikes, lockouts, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances;

(iii) **Orders or requirements:** the binding order or requirement of any court, any government, any local authority, the Rulings Panel or

the Electricity Authority, which the party could not reasonably have avoided;

(iv) **Failure of supply:** the partial or entire failure of supply or availability of electricity to the Network; or

(v) **Other event or circumstance:** any other event or circumstance beyond the control of the party invoking this clause 23.1; and

(b) such party could not have prevented such failure by the exercise of Good Industry Practice,

that failure shall be deemed to be a "**Force Majeure Event**" and shall not give rise to any cause of action or liability based on default of the provision.

23.2 **Notice:** If a party becomes aware of a prospect of a forthcoming Force Majeure Event, it must notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 23.1, it must as soon as reasonably practical notify the other party that is invoking clause 23.1 and the full particulars of the Force Majeure Event relied upon.

23.3 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 23.1 must:

(a) **Use Good Industry Practice:** demonstrate that it exercised Good Industry Practice to overcome or avoid the Force Majeure Event;

(b) **Endeavour to mitigate the Force Majeure Event:** use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and

(c) **Consult the other party:** consult with the other party on the performance of the obligations referred to in sub clauses (a) and (b) above.

23.4 **No obligation to settle:** Nothing in clause 23.3 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.

23.5 **Refund of charges:** If:

(a) for any reason, 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 shall refund in the next monthly billing cycle 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.

## 24. AMENDMENTS TO AGREEMENT

24.1 A change may be made to this agreement:

- (a) **Variable Provisions changes:** where the change is a change to the Variable Provisions, and the change is made in accordance with clause 24.2; and
- (b) **Price changes/Price Category changes:** where a change is a change to the Pricing Schedule and the change is made in accordance with clause 9 or clause 10; and
- (c) **Change in Loss Factor:** where the change is a change to Schedule 11 (Loss Factors) and the change is made in accordance with clause 7; and
- (d) **Required by law or Code:** where the change is required by law, the Code or any mandatory rules or protocols of any industry association or body to which both the Distributor and the Retailer are members or signatories at the relevant time, and the change is made in accordance with clause 24.4; and
- (e) **Grid Network Supply Point:** where the change involves:
  - (i) Permanent Disconnection of a Grid Network Supply Point; or
  - (ii) the construction of a new Grid Network Supply Point,and the change is made in accordance with clause 24.5; and
- (f) **Other changes:** where 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:** A change to any of the Variable Provisions may only be made:

- (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 any of the Variable Provisions:** If there is no applicable process in the Variable Provision the Distributor may change any of the Variable Provisions by giving the Retailer not less than 40 Working Days' notice prior to the date on which the Distributor wishes the change to take effect ("**Change Notice**"), provided that the proposed change is in accordance with Good Industry Practice and further provided the Distributor has before giving a Change Notice to the Retailer complied with the following:

- (a) consulted with the Retailer in respect of the proposed change for a period of not less than 20 Working Days; and
- (b) provided the Retailer with a summary of any submissions received from retailers and the responses to the submissions which indicates whether the majority of retailers by number of ICPs trading on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor shall not be prevented from changing the Variable Provision as proposed in the Change Notice if a majority of retailers does not support, or opposes, the change proposed.

24.4 **Procedure for changes required by law or Code and other changes:** The following procedures will apply to changes contemplated by clauses 24.1(d) and 24.1(f):

- (a) **Notice of change:** Either the Distributor or the Retailer may suggest a change by notice to the other. The notice must:
  - (i) if the proposed change is contemplated by clause 24.1(d) specify the provisions of the Code, the mandatory rules or protocols, or the laws which are the basis for the proposed change; or
  - (ii) if the proposed change is contemplated by clause 24.1(f) set out the reasons for the proposed change; and

- (iii) set out the change in a form proposed to be incorporated in this agreement.
- (b) **Good faith:** The parties will negotiate the change in good faith.
- (c) **By agreement:** If the Distributor and the Retailer agree to the proposed change they must 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 Code where the parties have not agreed:** If the proposed change is contemplated by clause 24.1(d) and the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under paragraph (a) above, then 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 or his or her nominee. The person appointed will act as an expert and not as an arbitrator and the decision of that person will be final and binding.

24.5 **Change to Network Supply Points to the Grid:** The following procedure will apply to changes contemplated by clause 24.1(e):

- (a) **Notice of Proposal:** The Distributor may notify the Retailer that it proposes to:
  - (i) construct and operate a new Grid NSP; or
  - (ii) Permanently Disconnect a Grid NSP,such proposed change being a "Proposal".
- (b) **Information about Proposal:** The Distributor will provide the following details in writing to the Retailer: the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal.
- (c) **Consultation:** The Distributor will:
  - (i) consult with the Retailer over the Proposal for a reasonable period of time; and

(ii) comply with its legislative obligations for consumer engagement regarding the quality threshold of the services it provides.

(d) **Implementation:** At the conclusion of the process set out in clause 24.5(a) to (c), the Distributor may proceed with the Proposal (including incorporating any changes to the original version of the Proposal arising out of consultation with the Retailer or other electricity retailer). The Distributor will notify the Retailer of the date on which the construction or Permanent Disconnection of the Network Supply Point is complete and this agreement will be deemed to be varied from that date to the extent necessary as a result of the construction or Permanent Disconnection.

24.6 **Exception:** Where a change to the agreement has a de minimis effect on the contractual undertakings of the parties (for example terminology changes to accord with new industry classifications or definitions), either party will be entitled to effect the change by not less than 10 Working Days written notice to the other party, provided that if the party receiving the notice objects to the change within 5 Working Days of receipt of the notice then 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 or his or her nominee. The person appointed will act as an expert and not as an arbitrator and the decision of that person will be binding.

## 25. DISPUTE RESOLUTION PROCEDURE

25.1 **Internal dispute resolution processes:** The parties intend that, where possible, any differences between them concerning this agreement will be resolved amicably by 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 a written notice describing such Dispute to the other party. Upon giving of such notice, the parties shall meet as soon as practicable to attempt to resolve the Dispute.

25.2 **Right to refer dispute to mediation:** If the Dispute is not resolved within 15 Working Days of a party being notified under clause 25.1 of the Dispute, and notwithstanding the parties may have not yet met or concluded a meeting to attempt to resolve the Dispute, either party may give a notice to the other requiring that the Dispute be referred to mediation.

- 25.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties shall agree on the identity of the mediator or, where they cannot so agree within that timeframe, the mediator shall be appointed by the Chair (or equivalent) for the time being of the Resolution Institute.
- 25.4 **Conduct of mediation:** In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation to be conducted under the terms of the Resolution Institute standard Mediation Agreement (NZ version). Or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.
- 25.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.
- 25.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) **Act in good faith:** the parties and their representatives will act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
  - (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;
  - (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
  - (d) **Costs of mediation borne equally:** the costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 25.7 **Court proceedings:** 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) has not been referred to mediation but remains unresolved 20 Working Days after the Dispute has been notified in accordance with clause 25.1 ,

then either party may initiate court proceedings in relation to the Dispute.

25.8 **No connection to previous mediator or previous mediation:** Where a party has initiated court proceeding in relation to a Dispute which has previously been referred to mediation, the relevant mediator shall not be called by either party as a witness, and no reference shall be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent legal action on the matter in Dispute.

25.9 **Urgent Relief:** Notwithstanding any other provision of this agreement, each party reserves the right to take steps to seek urgent injunctive or equitable relief before an appropriate court.

## 26. LIABILITY

26.1 **Payments of charges:** Nothing in this clause 26 shall operate to limit the liability of either party to pay all charges and other sums due under this agreement.

26.2 **Direct Damage:** Except as expressly provided in clauses 22.3, 26.9, 26.11, 26.12 and 27.3 each party (and its respective officers, employees or agents) will only be liable to the other party under this agreement or otherwise arising from the relationship between them for any direct loss to or damage to the physical property of any person (together "**Direct Damage**") where the Direct Damage results from the breach of this agreement, negligence or failure to use Good Industry Practice by the first party or any of its officers, employees, agents or invitees.

26.3 **Consequential loss:** For the avoidance of doubt, except as expressly provided in clauses 22.3, 26.9, 26.9A, 26.11, 26.12 and 27.3, neither party (nor any of their respective officers, employees or agents) will be liable to the other party for:

- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person; 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 under clause 26.2); or
- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

26.4 **Distributor not liable:** Except as provided in clause 26.9A, 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:
    - (1) a failure to convey or reduction of injection or supply of electricity into the Network; or
    - (2) an interruption in the conveyance of electricity in the Network,  
at the request of the System Operator or 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 (except, and to the extent, that the Distributor has obtained an appropriate Service Guarantee from the Transmission Provider, in which case the Distributor's liability shall be capped at the amount it recovers from the Transmission Provider under the Service Guarantee); or
  - (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene),

except to the extent caused or contributed to by the Distributor in circumstances where the Distributor was not acting in accordance with this agreement.

- 26.5 **Retailer not liable:** The Retailer will not be liable for:
- (a) any failure to perform any obligation pursuant to this agreement caused by the Distributor's failure to comply with the same; or
  - (b) any failure to perform any obligation to this agreement arising from any defect or abnormal conditions in the Network,
- except to the extent caused or contributed by the Retailer in circumstances where the Retailer was not acting in accordance with this agreement.
- 26.6 **Other liabilities:** Except as expressly provided in clauses 22.3, 26.9, 26.9A, 26.11, 26.12 and 27.3, all other liability of each party, including any liability in tort (including negligence), contract, breach of statutory guarantee or warranty, breach of statutory duty, equity or otherwise is excluded to the fullest extent permitted by law.
- 26.7 **Limitation of liability:** Subject to clauses 22.3, 26.9A, 26.1 and 26.8 but otherwise notwithstanding any other provision of this agreement, the maximum total liability of each party, whether as a result of a breach of this agreement or on any other ground or basis whatsoever, shall not in any circumstances exceed, in respect of a single event or series of events arising from the same event or circumstance, the lesser of:
- (a) the Direct Damage suffered; or
  - (b) an amount which is equal to the aggregate amount per Consumer available under the constitution for the Electricity and Gas Complaints Commission or any similar procedures or scheme that may be approved by the Electricity Authority in respect of the event (or series of events) giving rise to the liability; and
  - (c) \$[REDACTED].
- 26.8 **Exclusion:** Clause 26.7 will not apply to clauses 22.3, 26.9, 26.9A, 26.11, 26.12 or 27.3 and is subject to any contrary requirements of the constitution of the Electricity and Gas Complaints Commission or any similar scheme that may be approved by the Electricity Authority.
- 26.9 **Consumer Guarantees Act:**
- (a) subject to clause 27.1, the Retailer will, to the fullest extent permitted by law, exclude from all its Consumer Contracts (which includes a contract

between the Retailer and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations:

- (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this agreement ("**Distributor Warranties**"); and
  - (ii) imposed on the Retailer by the Consumer Guarantees Act 1993 concerning the supply of electricity by the Retailer under the Consumer Contract ("**Retailer Warranties**");
- (b) if the Consumer on-supplies electricity to an end-user the Retailer will, as a condition of any Consumer Contract, require the Consumer to include provisions in all agreements between the Consumer and an end-user, excluding all Distributor Warranties and Retailer Warranties to the fullest extent permitted by law; and
- (c) for the avoidance of doubt, nothing in this clause affects the rights of any Consumer under the Consumer Guarantees Act 1993, nor does it preclude the Retailer from offering in its contracts with Consumers its own warranties, guarantees or obligations pertaining to Distribution Services.

26.9A **Distributor indemnity:** This Agreement includes the indemnity clause set out in Schedule 12A.1 of the Code, for so long as this is required in order for the Agreement to comply with clause 12A.6 of the Code.

26.10 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to clause 27.1, procure in its agreements with Consumers clear and unambiguous clauses that:

- (a) the Consumer will be liable to the Distributor (including liable in tort (including negligence)) for any direct loss or damage which is caused or contributed to by the fraud, dishonesty or wilful breach of the agreement between the Retailer and the Consumer or its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and
- (b) without limiting the rights of Consumers under the Consumer Guarantees Act 1993, all claims by Consumers will be subject to the limitations of liability set out in clause 26.7 and otherwise in this agreement.

26.11 **The Distributor will be indemnified:** The Retailer hereby indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis) suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim by any person with whom the Retailer has a contractual relationship in relation to the provision of Services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
  - (i) any breach by the Retailer of any of its obligations under this agreement; 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 pursuant to a notice by the Retailer, except when the notice is the result of a breach by the Distributor; or
  - (iv) any failure by the Retailer to perform any obligation pursuant to any agreement between the Retailer and any Generator or Consumer or other third party (or otherwise arising at law); or
  - (v) any action undertaken by the Distributor under or in connection with this agreement at the request of the Retailer; and
- (b) any action by the Distributor to recover any unpaid charges or interest payable under this agreement,

provided that the Retailer's liability under this clause 26.11 shall not in any circumstance exceed, in respect of a single event or series of events arising from the same event or circumstance, \$[REDACTED].

26.12 **The Retailer will be indemnified:** The Distributor hereby indemnifies and holds harmless the Retailer and will keep the Retailer indemnified and held harmless from

and against any direct loss or damage (including legal costs on a solicitor/own client basis), suffered, or incurred by the Retailer arising out of or in connection with:

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

provided that the Distributor's liability under this clause 26.12 shall not in any circumstance exceed, in respect of a single event or series of events arising from the same event or circumstance, \$[REDACTED].

**26.13 Rights of indemnity:** The indemnities in clauses 26.9A, 26.11 and 26.12 are in addition to and without prejudice to the rights and remedies of each party under this agreement, the Code or under statute, in law, equity or otherwise. However, the indemnity in clause 26.12 will not in any circumstances entitle the Retailer to recover any Remedy Cost referred to in clause 26.9A.

**26.14 Benefits to extend:** Each party acknowledges that its obligations under this clause 26, excluding clause 26.9A, constitute promises conferring benefits on each party's officers, agents and employees which 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.

## **27. CONSUMER AGREEMENTS**

**27.1 Retailer to include required provisions in Consumer agreements:** The Retailer shall, with respect to agreements between the Retailer and a Consumer in relation to the supply and transportation of electricity:

- (a) that have been entered into prior to the Commencement Date either:
  - (i) within 6 months after the Commencement Date, issue a unilateral variation to those agreements to include the provisions required to be included in such agreements by this agreement, as summarised in Schedule 5, and those provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982; or
  - (ii) where the Retailer is unable to unilaterally vary the agreements, use all reasonable endeavours to obtain at the next review date of the agreement between the Retailer and the Consumer, the agreement of the Consumer to enter into a variation of that agreement with the Retailer to include the provisions required to be included in such agreements by this agreement, as summarised in Schedule 5, and those provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982; or
- (b) where the agreements have been entered into after the Commencement Date, include the provisions required to be included in such agreements by this agreement, as summarised in Schedule 5, and those provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.

**27.2 Changes to Consumer agreements during term:** In the event that this agreement is changed in accordance with clause 24 and such change results in the addition of a new provision to this agreement that requires the Retailer to include a new provision in its agreements with Consumers, 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 agreements with Consumers 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 shall not have the right to recover such costs where the change is required by the Distributor pursuant to:

- (a) clause 24.1(b), where the Pricing Schedule is changed as a result of a change in:
  - (i) a change in local authority rates;
  - (ii) a change in line charges;
  - (iii) a change in Transmission Charges; or
  - (iv) a legislative requirement;
- (b) clause 24.1(c), where a Loss Factor is changed in response to a complaint by a Retailer under clause 7.6; or
- (c) clause 24.1(d).

27.3 **Retailer to indemnify Distributor:** The Retailer will indemnify the Distributor against any loss or damage incurred by the Distributor as a result of its failure to meet its obligations in accordance with clause 27.1, provided that the Retailer's liability under this clause 27.3 shall not in any circumstance exceed, in respect of a single event or series of events arising from the same event or circumstance, \$[REDACTED].

## 28. NOTICES

28.1 **Delivery of Notices:** Any notice given pursuant to this agreement will be deemed to be validly given if personally delivered, posted or emailed 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 pursuant to this agreement will be deemed to have been received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, on the 2<sup>nd</sup> Working Day following the date of posting;

- (c) in the case of email, no later than 1 Working Day after the email is dispatched from the sender's email server, unless within that time the sender's email server receives a notification that the email has not been delivered.

28.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice in accordance with clause 28.2 that is personally delivered or sent by email either 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. INFORMATION EXCHANGE

29.1 **Protocols for exchanging information:** Where the Electricity Authority publishes new or amended Information Exchange Protocols, the Distributor and the Retailer will, if they so agree, use the new or amended Information Exchange Protocols as soon as reasonably practicable. Where certain information is exchanged on a regular basis and there is no appropriate Information Exchange Protocol the Distributor and the Retailer will agree on the protocol to be used to exchange such information.

29.2 **Consumer information:** The Retailer will upon request, and in a reasonable timeframe, provide the Distributor with Consumer information to fulfil its obligations in accordance with this agreement. The information is to be treated by the Distributor as Confidential Information.

29.3 **Auditing information provided:** To enable either party to this agreement (being the "Verifier") to verify the accuracy of information provided to it by the other party to this agreement (being the "Provider"), the Provider will allow the Verifier and its agents reasonable access to the Provider's books and records (including where the Retailer is the Provider of metering or consumption data) (collectively the "Records") to the extent that those Records relate to the obligations of the Provider under this agreement. Access to such Records will be given at all reasonable times providing the Verifier has given the Provider not less than 10 Working Days prior notice.

29.4 **Limitations on the Verifier:** In relation to its review of the Records pursuant to clause 29.3, the Verifier will not:

- (a) use the information obtained for any purpose other than verifying the accuracy of information provided by the Provider under this agreement; and
- (b) engage as its agent any person that is in competition with the Provider, any person who is related to a person in competition with the Provider or any

employee, director, agent of such persons. For the purposes of this clause 29.4(b) a person is related to another person if it is a related company (as that term is defined in section 2(3) of the Companies Act 1993) of that other person.

29.5 **Independent Auditor:** Where the Provider is the:

- (a) Distributor and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from the information relating to the Retailer or that the information is commercially sensitive; or
- (b) Retailer and, acting reasonably, gives notice that the Records contain information about other Industry participants that cannot reasonably be severed from information relating to the Distributor or that the information is commercially sensitive,

then the Distributor or the Retailer, as appropriate, will permit an independent auditor (the “**Auditor**”) appointed by the other party to review the Records and the other party must not itself directly review any of the Records. The Distributor or the Retailer, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Retailer, as appropriate, reasonably objects to the identity of the Auditor, the parties will request the President of the Institute of Chartered Accountants (or a nominee) to appoint a person to act as the Auditor. The party which is permitted pursuant to this clause 29.5 to appoint an Auditor will pay the Auditor’s costs, except where the Auditor discovers a material inaccuracy in the Records in which case the other party shall pay the Auditor’s costs. The terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

29.6 **Provider must co-operate:** The Provider will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider’s Records under clause 29.3 and will ensure that the Records are readily accessible and readable.

### 30. MISCELLANEOUS

30.1 **No Waiver:** Except where 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.

- 30.2 **Entire agreement:** This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject.
- 30.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. For the purposes of this clause, except where a party is listed on the NZX, a change in control of a party will be deemed to be an assignment.
- 30.4 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.

## 31. INTERPRETATION

31.1 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, permitted assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- (g) amounts are in NZ\$ and exclude GST and every other tax and duty, unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, Schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;

- (k) references to a document or agreement includes it as varied or replaced;
- (l) each Schedule and any other attachment is part of this agreement;
- (m) a term that is not defined in this agreement but is defined in the Code, shall have the meaning given to it in the Code; and
- (n) the singular includes the plural and the plural includes the singular unless the context otherwise requires.

31.2 **Interpretation:** In this agreement, unless the context otherwise requires:

"**Additional Services**" means those optional services that the Distributor or the Retailer will provide to the other party as described in Schedule 3;

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

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

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

"**Channel**" means a code that operates the Load Control Equipment;

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

"**Code**" means the Electricity Industry Participation Code 2010;

"**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, but excludes:

- (a) Information that is publicly available, other than by way of breach of the confidentiality obligations under this agreement;
- (b) 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;

- (c) 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;
- (d) reports prepared in accordance with clause 8;
- (e) the existence and terms of this agreement, except Schedule 3;

"**Consumer**" means a purchaser of electricity from the Retailer where the electricity is delivered via the Network;

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

"**Consumer's Installation**" means any items which are used or designed or intended for use in, or in connection with the conversion, transformation, transportation or use of electricity and which are owned or used by a Consumer and that form part of a system for transporting electricity between the Network and the ICP, and excludes Distributor's Equipment;

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

"**Conveyance Only**" means a situation where 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;

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

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

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

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

"**Disclosure Requirements**" means the Electricity Information Disclosure Requirements 2004 issued by the Commerce Commission pursuant to sections 57T and 57U of the Commerce Act 1986 as such disclosure requirements may be amended or replaced from time to time;

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

"**Distribution Price Agreement**" means an agreement (not being a Distributor's Agreement) between the Distributor and a Consumer in relation to the price of distribution services provided to that Consumer in respect of specified ICPs;

"**Distribution Services**" means those services described in clauses 2.1 to 2.2 (excluding 2.2(g)) provided by the Distributor to the Retailer under this agreement;

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

"**Distributor's Agreement**" means an agreement between the Distributor and a Consumer for the provision of Distribution Services and unless otherwise agreed with the Retailer, includes the direct billing of lines charges to the Consumer and responsibility for associated debt;

"**Distributor's Equipment**" means the Fittings and/or 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 such third party's Fittings or Metering Equipment which are from time to time installed in, over or upon a Consumer's Premises;

"**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;

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

"**Event of Default**" means a breach referred to in clause 20.2(a);

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

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

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

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

**"Good Industry Practice"** means

- (a) in the case of the Distributor, the exercise of that degree of skill, diligence, prudence foresight and economic management which would be reasonably be expected from a skilled, and experienced operator engaged 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.
- (b) In the case of the Retailer, the exercise of that degree of skill, diligence, prudence, foresight and economic management which 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;

**"Grid Exit Point"** or **"GXP"** means the point of connection between the Grid and the Network;

**“Grid Network Supply Point”** or **“Grid NSP”** means an NSP described in paragraph (a) of the definition of **“Network Supply Point”**;

**“GST”** means goods and services tax charged pursuant to the Goods and Services Tax Act 1985;

**“Individual Site Agreement”** means an agreement between the Distributor and the Retailer in relation to the price of Distribution Services provided to a Consumer in respect of specified ICPs;

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

**“Information Exchange Protocol”** means an information exchange protocol approved by the Electricity Authority for the exchange of certain information, as held on the Electricity Authority website ([www.ea.govt.nz](http://www.ea.govt.nz)) or as otherwise agreed by the parties including those recorded in Schedule 4;

**“Insolvency Event”** means in relation to a party:

- (a) the party has a receiver, administrator or manager or similar official appointed to or in respect of the whole or any substantial part of its undertaking, property or assets; or
- (b) the party is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, a statutory manager is appointed or any step is taken with a view to any such appointment under that Act or any other person is appointed to manage any of that party’s affairs; or
- (c) any step is taken to levy or enforce a security interest or to distrain, attach or execute any legal process against the whole or any substantial part of that party’s property; or
- (d) the party is unable to pay its debts as they fall due, is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (e) the party proposes or makes a compromise, arrangement or composition with or for the benefit of its creditors or proposes an amalgamation (except with the prior written consent of the other party); or

- (d) a liquidator is appointed, an order is made, resolution is passed, notice is given, an application or petition is filed in any court or any other step is taken by any person, for the dissolution, winding up or liquidation of that party, or any meeting is convened for the purposes of considering taking any of these steps; or
- (e) being a company, the party is removed from the register of companies (otherwise than as a consequence of an amalgamation which the other party has provided its consent to).

**"Installation Control Point" ("ICP")** means a point which the Distributor nominates as the point at which a Retailer is deemed to supply electricity to a Consumer, and has the attributes set out in the Code;

**"Instructing Retailer"** means, with respect to a Distribution Network, the retailer that supplies the majority of ICP's in a region; which are under load management unless the retailers and Distributor otherwise agree;

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

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

**"Load Control Equipment"** means the equipment (which may include, but is not limited to, ripple receivers and relays) which is from time to time installed in, over, or upon a Consumer's Premises for the purpose of receiving Load Management Service signals;

**"Load Management Service"** means providing a signal for the purpose of reducing or interrupting delivery to all or part of a Consumer's Premises, including as an example, but without limitation, delivery to a water heater;

**“Load Signalling Equipment”** means the equipment (which may include, but is not limited to, ripple injection plant) for the purpose of providing a Load Management Service;

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

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

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

**“Loss Factor”** means the factor(s) expressed as 1.XXXX appearing in Schedule 11 (or as separately notified to the Retailer) to be applied to the electricity measured or estimated as having been delivered to an ICP (or NSP for an embedded network) in order to allocate a share of the expected Losses within the network to that ICP, such loss factor(s) to be determined by the Distributor in accordance with this agreement and published from time to time;

**“Loss Ratio”** means, for a particular period and network, the Losses expressed as a percentage of the electricity injected into the network;

**“Metering Equipment”** means any apparatus which may be used for measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable transfer of metering information;

**“Network”** means lines, equipment and plant owned by the Distributor that are used to transport electricity between Network Supply Points and ICPs and includes the following networks (and/or such other networks as the Distributor may notify the Retailer in writing from time to time):

	<b>DISTRIBUTION NETWORKS</b>
<b>EASTERN REGION</b> (the “Eastern Region”)	<p><b>Valley</b> – the distribution network connected to the Grid at the GXPs at:</p> <ul style="list-style-type: none"> <li>▪ Waihou</li> <li>▪ Kinleith</li> <li>▪ Kopu</li> <li>▪ Hinuera</li> <li>▪ Waikino</li> <li>▪ Piako</li> </ul>

	<p><b>Tauranga</b> – the distribution network connected to the Grid at the GXP's at:</p> <ul style="list-style-type: none"> <li>▪ Tauranga</li> <li>▪ Mt Maunganui</li> <li>▪ Te Matai</li> <li>▪ Kaitimako</li> </ul>
<p><b>WESTERN REGION</b> (the "Western Region")</p>	<p><b>Wairarapa</b> – the distribution network connected to the Grid at the GXP's at:</p> <ul style="list-style-type: none"> <li>▪ Greytown</li> <li>▪ Masterton</li> </ul>
	<p><b>Manawatu</b> – the distribution network connected to the Grid at the GXP's at:</p> <ul style="list-style-type: none"> <li>▪ Bunnythorpe</li> <li>▪ Linton</li> <li>▪ Mangamaire</li> </ul>
	<p><b>Taranaki</b> – the distribution network connected to the Grid at the GXP's at:</p> <ul style="list-style-type: none"> <li>▪ Carrington</li> <li>▪ Huirangi</li> <li>▪ Hawera</li> <li>▪ New Plymouth</li> <li>▪ Opunake</li> <li>▪ Stratford</li> </ul>
	<p><b>Wanganui</b> – the distribution network connected to the Grid at the GXP's at:</p> <ul style="list-style-type: none"> <li>▪ Brunswick</li> <li>▪ Marton</li> <li>▪ Mataroa</li> <li>▪ Ohakune</li> <li>▪ Wanganui</li> <li>▪ Waverley</li> </ul>

**"Network Connection Standards"** means the Distributor's written technical standards for connection to the Network as issued (and as may be amended from time to time) by the Distributor in accordance with Good Industry Practice. For the avoidance of doubt, the Network Connection Standard does not include pricing or any information protocol;

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

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

**“NZX”** means New Zealand Exchange Limited;

**“Permanent Disconnection”** means the disconnection of an ICP where the property is permanently disconnected from the Network, and where the Registry status has been altered to “decommissioned” (but does not include a Vacant Site Disconnection);

**“Performance Report”** has the meaning set out in clause 8.2;

**“Planned Service Interruption”** means a Service Interruption that has been scheduled to occur in accordance with the relevant provisions of Schedule 6;

**“Point of Connection”** means the point at which electricity may flow between the Network and the Consumer's Installation;

**“Price Category”** means the relevant price category selected by the Distributor from the Pricing Schedule to unambiguously define the line charges applicable to a particular ICP;

**“Pricing Schedule”** means the schedule of prices for Distribution Services as set out in Schedule 10;

**“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;

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

**“Relevant Authority”** means the Electricity Authority or any other relevant authority from time to time;

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

**“Retailer's Agreement”** means an agreement between the Retailer and the Consumer which includes the supply of electricity and Distribution Services;

**“Retailer's Equipment”** means the Fittings, Load Control Equipment 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, Load Control Equipment or Metering Equipment, which are from time to time installed in, over, or upon a Consumer's Premises;

"**Rulings Panel**" has the same meaning as set out in the regulations made pursuant to section 23 to section 26 of the Electricity Industry Act 2010, as amended from time to time;

"**SAIDI**" means the system average interruption duration index;

"**Schedule**" means a schedule to this agreement.

"**Serious Financial Breach**" means:

- (a) a failure by the Retailer to pay an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with clause 11.7; or
- (b) a material breach of clause 12 by the Retailer.

"**Service Guarantees**" means any payments or other benefits which one party provides to the other party when it fails to meet certain Service Standards;

"**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 Level, other than in accordance with this agreement;

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

"**Service Measures**" means the characteristics or features of the services in the Service Standards as set out in Schedule 1;

"**Service Standards**" means the applicable 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 in respect of an ICP, the date recorded in the Registry as being the date on which a retailer assumes reconciliation responsibility for that ICP;

**“System Operator”** means the system operator appointed pursuant to the Code;

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

**“Tariff Option”** means the price option within a Price Category where such a Price Category provides for Retailer choice amongst two or more options, subject to a particular configuration of Metering and Load Control Equipment;

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

**“Transmission Charge”** means any amount in respect of:

- (a) the use by a Transmission Provider of that Transmission Provider’s transmission system for the purpose of providing Transmission Services to the Distributor, and includes any amounts received from or payable to that Transmission Provider in relation to:
  - (i) connection, interconnection, and economic value adjustments;
  - (ii) new investment;
  - (iii) the provision of System Operator Services;
  - (iv) loss and constraint rentals; and
  - (v) the settlement of financial transmission rights; or
- (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;

**"Unmetered Supply"** means a supply of electricity to an ICP with a predictable energy usage and in respect of which the Distributor's pricing option for Distribution Services does not require metering data;

**"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 appropriate), as anticipated in the provisions of Schedule 6 relevant to Unplanned Service Interruptions;

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

**"Vacant Site"** means a property which has become vacant;

**"Vacant Site Disconnection"** means the De-energisation of an ICP where the property has become vacant, and where the Retailer is required to change the status in the Registry to "inactive";

**"Variable Provisions"** means provisions contained in the Schedules, except those provisions in Schedule 10 (Pricing Schedule) and Schedule 11 (Loss Factors) which may only be changed in accordance with clauses 7, 9 or 10 (as applicable) of this agreement;

**"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; and

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

## SCHEDULE 1 - Service Standards

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### Introduction

In accordance with clause 2, the Distributor and the Retailer undertake to meet the Service Standards outlined in this Schedule.

Each party will provide the other with information demonstrating a breach of Service Standards, or the reasonable grounds for suspecting that there has been a breach of Service Standards.

Where either party has breached a Service Level that is subject to a Service Guarantee it will proactively notify the other party, at the earliest possible occasion within 10 Working Days, of the breach and the notification shall include:

- the identity of the ICPs affected and Service Guarantee amount by ICP (if acceptable);
- reason for the breach and the Service Guarantee amount in total; and
- a credit invoice, or order number if it requires an invoice from the affected party for the amount payable in respect of the breach.

All Service Guarantee amounts in this Schedule 1 are exclusive of GST (if any). All Service Guarantee invoices shall state clearly the amount of GST (if any) which is payable.

Where the Distributor makes payment for Service Guarantees in respect of an ICP, the Retailer will make a payment to the Consumer.

Service Measure	Service Level	ICP Affected	Service Performance Reporting Measure	Frequency of Reporting	Service Guarantee
<b>UNCONTROLLED SUPPLY CATEGORY- AVAILABILITY OF SUPPLY</b>					
	Subject to the terms of this agreement, the Distributor will endeavour in accordance with Good Industry Practice to maintain continuous supply <b>24 hours, 7 days each week</b> to every ICP allocated to an uncontrolled Price Category or uncontrolled Tariff Option.	ICPs allocated to an uncontrolled Price Category or uncontrolled Tariff Option.	SAIDI	The Distributor will comply with its statutory reporting obligations and the Rules.	Nil
<b>CONTROLLED SUPPLY CATEGORIES - AVAILABILITY OF SUPPLY</b>					
	Where the ICP is allocated to a controlled Price Category or controlled Tariff Option in accordance with this agreement, the Distributor may control supply to the ICP and/or street lights (if applicable) for the maximum period specified in Schedule 10 for the allocated Price Category or Tariff Option	ICPs allocated to a controlled Price Category or controlled Tariff Option.	The number of excess hours of control on average in a calendar month.  For streetlights only: The number of hours on any day where supply is not provided during the hours of darkness.	The Distributor will report to the Retailer where the maximum period of control is exceeded on average in a calendar month.  For streetlights only: The Distributor will report to the Retailer where supply is not provided during the hours of darkness.  Reports to be provided 6 monthly	Nil

Service Measure	Service Level	Service Guarantee	Service Performance Reporting Measure	Frequency of Reporting
<b>ALL SUPPLY CATEGORIES – RELIABILITY</b>				
Restoration of supply: Unplanned Service Interruptions	The Distributor to comply with Unplanned Service Interruption Policies in Schedule 6 and use best endeavours to restore supply: to urban areas affected, within 3 hours of notification to rural areas affected, within 6 hours of notification	Nil	The number of ICPs by service area where the Service Level has not been met	List of affected ICPs where required by Retailer.
CAIDI, SAIDI & SAIFI (distribution network only).	The Distributor to provide to the Retailer annually the 3 year rolling average data and latest year's data at the Feeder level for: <ul style="list-style-type: none"> <li>Customer Average Interruption Frequency Index (CAIDI).</li> <li>SAIDI (System Average Interruption Duration Index)</li> </ul> SAIFI (System Average Interruption Frequency Index)	Nil	Disclose the previous 2 years' data if available and latest year's data.	Annually
Power quality or Service Interruption investigations	The Distributor will, within 20 Working Days of receiving notification from the Retailer of a problem on the Network (including momentary voltage fluctuations, flicker, harmonics, voltage imbalances and sags) investigate the complaint and respond to the Retailer detailing the nature of the problem. If the investigation cannot be completed within 20 Working Days, the Distributor will provide 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 shall complete its investigation and provide information to the Retailer such that the Retailer will be able to offer a resolution to the Consumer within the timelines set out in the Electricity Commission Scheme and avoid referral to the Office of the Electricity and Gas Complaints Commission. The Distributor will remedy any problems under its control in a timely manner, in accordance with Good Industry Practice.	Nil	As detailed in the service level	As detailed in the service level
<b>COMMUNICATION</b>				
Unplanned Service Interruption communication	Distributor to comply with Schedule 6	Nil		
Notification of Planned Service Interruption.	Distributor to comply with Schedule 6	Nil		

<b>MUTUAL OBLIGATIONS</b>				
<b>Service Measure</b>	<b>Service Level</b>	<b>Service Guarantee</b>	<b>Service Performance Reporting Measure</b>	<b>Frequency of Reporting</b>
Information Requests	Each party will consider all reasonable requests for information from the other party with respect to this Schedule 1 and within 20 Working Days meet that request. If the request cannot be met within this period the party who is unable to provide the information must provide an explanation and/or a new timeframe.	Nil		
End Consumer Complaints	Both parties will participate in the Complaints Resolution Scheme approved under section 158G of the Electricity Act 1992 and work together to ensure compliance with all timeframes set out in the rules of that Scheme.			

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## SCHEDULE 2 - Transmission Services

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1. The parties acknowledge that the Distributor is a party to certain agreements with Transpower pursuant to which the Network is connected to the Grid and the Distributor obtains services relating to injection or off-take of electricity ("**Transmission Agreement**").
2. If the Retailer requests the Distributor to negotiate service levels and/or service measures which are different to those provided in, or required of Transpower, under part F of the Rules, the Distributor will consider whether those service levels and/or service measures are appropriate having regard to the Distributor's own requirements and those of other users of the Network. If the Distributor considers any of the requested service levels and/or service measures are appropriate, the Distributor will use reasonable endeavours to negotiate those service levels and/or service measures with Transpower. The Retailer acknowledges that the Distributor's ability to negotiate and/or implement those service levels and/or service measures may be subject to obligations or constraints imposed on either the Distributor or Transpower under part F of the Rules.
3. If requested the Distributor will provide the Retailer with a copy of the service measures and service levels (if any) specified in the Transmission Agreement.
4. The Distributor will use reasonable endeavours to monitor Transpower's performance against those service measures and service levels (if any) and will inform the Retailer of any material or persistent breach by Transpower of them in the performance report provided to the Retailer in accordance with clause 8. The performance report will also specify what steps, if any, the Distributor has taken, or is proposing to take, in relation to such breaches.
5. If requested by the Retailer, the Distributor will consider whether to take any particular steps in relation to any material or persistent breach by Transpower of the service measures and service levels. Without limiting the Distributor's discretion as to whether or not it considers it appropriate to take any action requested by the Retailer, the Distributor may require, as a condition of doing so where the Distributor reasonably believes there is little or no chance of success, that the Retailer pay all of the Distributor's costs relating to the exercise of the Distributor's rights in relation to such breach.

### SCHEDULE 3 - Additional Services

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This Schedule contains any Additional Services agreed between the parties.

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## SCHEDULE 4 - Information Exchange Protocols

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This Schedule 4 identifies the primary information exchange transactions between the parties, and references Information Exchange Protocols.

The following table lists the Information Exchange Protocols published by the Electricity Commission.

<b>Protocol Reference</b>	<b>Description</b>
EIEP1	Consumption Information Protocols
EIEP2	Non half hour Summary
EIEP3	Half hour metering Information
EIEP4	Customer Information
EIEP5	Service Interruptions
EIEP6	Fault and service requests
EIEP7	General installation status change
EIEP8	Notification tariff change
EIEP9	Customer location change notification
EIEP10	Network trust rebate
EIEP11	New connections
EIEP12	Tariff rate change notification

## SCHEDULE 5 - Consumer Agreements

This Schedule 5 summarises the obligations, which the Retailer must include in every agreement for the supply and transportation of electricity entered into between the Retailer and the Consumer.

Summary of contractual obligation required	Clause reference in this agreement
The Retailer will provide a 24 hour, seven day a week, Unplanned Service Interruption information service.	Clause 2.4(c)
If 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, the Distributor will Publish that protocol. Any such protocol shall not be legally binding.	Clause 5.3
The Consumer will provide Distributor with safe and unobstructed access at reasonable times for the purposes detailed.	Clause 13.1
The Distributor may access Consumer's Premises without the Consumer's permission, and take all reasonable steps to gain such access, where it believes there is immediate danger to persons or property.	Clause 13.1
<p>If the Consumer fails to reasonably grant the Distributor access rights to the Distributor's Equipment:</p> <p>(a) where access is required under clause 13.1(a), (b), (d) or (g), after the Distributor or the Retailer has given the Consumer 5 Working Days written notice of access being required; or</p> <p>(b) where access is required under clause 13.1(c), (e) or (f), immediately,</p> <p>the Distributor may, subject to clause 19.6, disconnect the Consumer's Point of Connection from the Network and go onto the Consumer's Premises to reclaim the Distributor's Equipment.</p>	Clause 13.3
The Distributor is not liable for any loss the Retailer may incur as a result of a disconnection carried out in accordance with the Retailer's agreement with the relevant consumer. The Retailer shall reimburse the Distributor for all reasonable costs relating to disconnection and reconnection.	Clause 13.4
In the event of a conflict between the provisions of clause 13 and any provision of any existing agreement between the Consumer and the Distributor with respect to the Distributor's access rights to the Consumer's premises, then the provisions of the existing agreement between the Consumer and the Distributor will prevail to the extent of such conflict.	Clause 13.5
The Consumer shall protect the Distributor's Equipment against interference and damage as detailed.	Clause 14.1
The Consumer will not without the prior agreement of the Distributor inject or attempt to inject any energy into the Network and convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy and load control signals) over the Network, or employ any equipment (including Metering Equipment, Load Control Equipment and Load Signalling Equipment) to convey or receive, any load management signal or service other than the Load Management Service provided by the Distributor except where the Distributor and Retailer agree on the terms in accordance with Schedule 9.	Clause 14.3
The Consumer will provide and maintain, at no cost to the Distributor, suitable space for the 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 which the Distributor determines is necessary.	Clause 14.6
The Consumer acknowledges that the Network, including any part of the Network situated on a Consumer's Premises, is and will remain the sole property of the Distributor. No provision of the Consumer's agreement with the Retailer 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 Fittings owned or controlled by the Distributor which are used to provide any such services.	Clause 14.7

Summary of contractual obligation required	Clause reference in this agreement
The Consumer will comply with the Distributor's Network Connection Standards.	Clause 15
The Consumer recognises that surges or spikes are momentary fluctuations in voltage or frequency and are not treated as interruptions. The Consumer has been advised to protect the Consumer's sensitive equipment from such surges or spikes.	Clause 16.1
The Consumer acknowledges the Consumer's responsibility for its Consumer Service Lines.	Clause 17
The Consumer is responsible for ensuring, at its cost, that its Consumer Service Lines are unobstructed by trees or vegetation so as not to create an unsafe situation.	Clause 18.2
The Consumer is responsible for complying with the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Consumer owns that are near the Grid or any line that forms part of the Network.	Clause 18.3
The Consumer's Installation to be compliant and to be operated in compliance with Schedule 7 and the Network Connection Standards.	Clause 19.2
Subject to section 62 of the Electricity Act 1992 and any agreement the Distributor may have with the Consumer, neither party shall seek to have a Consumer's Installation Permanently Disconnected without giving 30 working days notice to the other party.	Clause 19.3
<p>The Distributor may temporarily disconnect a particular ICP if:</p> <ul style="list-style-type: none"> <li>• it is necessary to avoid endangering persons or property;</li> <li>• there has been an occurrence or circumstances that may adversely affect the proper working of the Network or transmission system;</li> <li>• an Event of Default or Insolvency Event in relation to the Retailer has occurred;</li> <li>• in the circumstances in clause 3.6;</li> <li>• the Consumer fails to allow the Distributor access;</li> <li>• where the Consumer does anything prohibited under clause 14 or fails to do anything required under clause 15;</li> <li>• on termination of this agreement.</li> </ul>	Clause 19.5
Where the Distributor intends to perform a Temporary Disconnection under clause 19.5(e) or (f), the Distributor must give notice as set out in clause 19.6.	Clause 19.6
Where the Distributor intends to perform a Temporary Disconnection under clause 19.8(a) or (b), the disconnection may be undertaken immediately without notice as set out in clause 19.8.	Clause 19.8
The right to terminate supply by the Retailer through the Network to the Consumer upon termination of this agreement.	Clause 21.5
If there is a continuous interruption affecting a Consumer's Point of Connection for 24 hours the Distributor, at the Retailer's request, shall refund the line charges paid by the Retailer in the next monthly billing cycle.	Clause 23.5
The Retailer is to exclude, to the fullest extent permitted by law, all warranties, guarantees or obligations imposed on the Distributor concerning the services to be provided by the Distributor pursuant to this agreement, by the Consumer Guarantees Act 1993 or any other law ("Distributor Warranties").	Clause 26.9(a)
Consumers who on-sell electricity to an end-user must include provisions in agreements between it and end-users to exclude all Distributor Warranties to the fullest extent permitted by law.	Clause 26.9(b)
The Consumer will be liable to the Distributor (including liable in tort) for any direct loss or damage caused by fraud, dishonesty or wilful breach of the agreement between the Retailer and the Consumer arising out the Services provided under this agreement.	Clause 26.10(a)

Summary of contractual obligation required	Clause reference in this agreement
<p>All claims by Consumers will be limited to the lesser of:</p> <p>(a) Direct damage suffered</p> <p>(b) an amount which is the lesser of an amount equal to the aggregate amount per Consumer determined under the Electricity and Gas Complaints Commission and</p> <p>(c) \$[ ].</p>	<p>Clauses 26.10(b) and 26.7</p>
<p>The Retailer is required, within 6 months of the Commencement Date of this agreement, to unilaterally vary Consumer agreements in accordance with this agreement and explicitly state that such amendments are for the benefit of the Distributor and are enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.</p>	<p>Clause 27.1(a)(i)</p>
<p>Where the Retailer is unable to unilaterally vary Consumer agreements, and is required to do so by this agreement, it must use all reasonable endeavours to obtain at the next review date between the Retailer and the Consumer, the agreement of the Consumer to vary the Consumer agreement as detailed.</p>	<p>Clause 27.1(a)(ii)</p>
<p>The Retailer is required to include all provisions as summarised in Schedule 5 of this agreement in its Consumer agreements. Those provisions shall be stated to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.</p>	<p>Clause 27.1(b)</p>
<p>If this agreement is changed pursuant to clause 24 and the Retailer is required to include a new provision in its Consumer agreements, the Retailer must take all necessary steps to comply with that provision.</p>	<p>Clause 27.2</p>

## SCHEDULE 6 - Service Interruption Communication Policies

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### Introduction

### Unplanned Service Interruptions

1. The Distributor will, as soon as reasonably practicable but no later than 30 minutes after first becoming aware of an Unplanned Service Interruption affecting 20 or more Consumers, communicate to the Retailer by electronic file transfer in accordance with the appropriate Information Exchange Protocol.
2. The Distributor will, within 30 minutes of new information becoming available and at intervals of no longer than 60 minutes, unless otherwise agreed or as reasonable in the circumstances, until a firm restoration time has been advised, provide the Retailer with an update of the status of the Unplanned Service Interruption.
3. Where the expected restoration time is likely to be exceeded, the Distributor will inform the Retailer of the new expected restoration time. This will be done no less than 10 minutes before the expected restoration time elapses.
4. The Distributor will supply the Retailer, within 30 minutes of a full or partial restoration of supply, details of the areas restored.
5. Unless otherwise agreed, the Retailer will be responsible for receiving and managing Unplanned Service Interruption calls from Consumers. In such circumstances the Retailer will, within 30 minutes of receiving information relating to a possible Unplanned Service Interruption, log the call by electronic file transfer in accordance with the relevant Information Exchange Protocol.

The Distributor will include in its communications to the Retailer under clause 1 of this Schedule 6 above whether to stop logging calls.

Where 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.

6. The following situations will trigger the Distributor's media communication process:
  - (a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 60 minutes in duration, and that affects, but is not necessarily limited to:
    - more than 1,000 Consumers;

- a central business district;
  - an industrial area;
  - supply to critical facilities such as hospitals, pumping stations; or
  - the Network to such an extent that a disaster recovery plan should be triggered by a severe storm or natural disaster;
- (b) a Civil Defence emergency has been initiated (in such situation communication may be via Civil Defence Headquarters); or
- (c) any other major event that has a material adverse effect on the delivery of Distribution Services.

### **Planned Service Interruptions**

For Planned Service Interruptions, the following will apply.

- A1. The Distributor will provide the Retailer with a notice in accordance with the relevant Information Exchange Protocol at least 10 Working Days prior to the date on which the Planned Service Interruption is Scheduled.
- A2. Upon receipt of the notice, the Retailer may within 2 Working Days notify the Distributor of any Consumers who would be adversely affected by the interruption and request an alternative date and/or time.
- A3. Where 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, in its sole discretion, change the time and/or date of the Planned Service Interruption. In all circumstances where 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.
- A4. Where 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 in accordance with the relevant Information Exchange Protocol as soon as reasonably practicable.
- A5. Where the Planned Service Interruption will affect all Consumers supplied from a Network Supply Point, the Distributor will arrange for public notification through the local newspaper on behalf of all retailers.

## SCHEDULE 7 - Connection Policies

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### Introduction

1. The Distributor and the Retailer recognise that the process of managing connections to and disconnections from the Network requires significant co-ordination between them.
2. This Schedule 7 sets out examples of the broad processes to be followed in respect of:
  - new connections;
  - capacity changes;
  - temporary disconnections and associated re-connections;
  - vacant site disconnections and associated re-connections;
  - permanent disconnections; and
  - Unmetered supplies.

### Information content and transmission media

3. The policies set out below focus on the broad 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. It is agreed that the information content and transmission media will be consistent with Schedule 4, or in the absence of an appropriate Information Exchange Protocols or energy service transaction standards as agreed between the parties.

### Process for New Connections or Changes in Capacity

4. The Distributor will receive applications from the owner of a Consumer's Premises, either directly or through the Retailer, (Requesting Party) for the capacity for a new connection or an increase or decrease in capacity for an existing connection.
5. The Distributor will undertake an impact assessment to determine whether the capacity is already available or whether Network expansion is required. If Network expansion is required, or other works are required to decrease the connection capacity, as the case may be, the Distributor may advise the Requesting Party of the terms on which the Distributor

will undertake the required works or may decline the Requesting Party's application. If the application is declined the Distributor will provide reasons why.

6. Upon the Distributor agreeing to supply the changed capacity, the Requesting Party agreeing to take the changed capacity on the terms offered by the Distributor, the agreed work being undertaken, and the Requesting Party advising the Distributor of its Retailer (if not already known), the Distributor will advise the Retailer of the ICP number, the NSP it will be connected to, the applicable Price Category, and that the ICP is ready to be livened (if it pertains to a new ICP).
7. The Distributor or the Retailer (if authorised to do so by the Distributor) will arrange for the ICP to be livened once livening approval has been granted by the Distributor. The party performing the energisation will, unless otherwise agreed, notify the other party within 2 Working Days.
8. Both parties will update the Registry throughout this process in accordance with the Rules.

#### **Reconnections**

9. Once a Consumer has satisfied the conditions for reconnection a reconnection will occur as soon as reasonably practicable.

#### **Temporary Disconnections and Associated Reconnections**

10. A Temporary Disconnection may be carried out in the following circumstances:
  - by either party in an emergency where the interests of public safety require an immediate disconnection;
  - by the Retailer, for credit reasons;
  - by the Retailer or Distributor, where requested by the Consumer, for safety or other reasons;
  - by the Distributor acting in accordance with clause 19.5; or
  - by the Retailer or Distributor or their agents for equipment maintenance or change.
11. The party performing the De-energisation or Re-energisation will, unless otherwise agreed, notify the other party within 2 Working Days of the work having been completed. For the avoidance of doubt, the status in the Registry is not to be changed for Temporary Disconnections.

## VACANT SITE DISCONNECTIONS AND ASSOCIATED RECONNECTIONS

12. The Retailer may undertake a Vacant Site Disconnection when it no longer requires Distribution Services for an ICP.
13. The Retailer may undertake a Vacant Site Reconnection when it requires Distribution Services for an ICP that had previously been De-energised as a Vacant Site. If the ICP has not been Energised within the previous 6 months, the Retailer must 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 certified person. A copy of the certificate issued following such an inspection must either be provided to the Distributor if requested from the Retailer or their agents, or be held by the Retailer or their agents at the Retailer's offices or offices of their agents for the later inspection by the Distributor, before the ICP can be Re-energised.
14. The Retailer shall ensure that Vacant Site Disconnections and Reconnections are carried out by Warranted Persons in compliance with the Distributor's reasonable operational work practices for managing Vacant Sites.

15. Where:

- (a) the Retailer wishes to carry out a Vacant Site Disconnection for a specific ICP; and
- (b) the Distributor has not provided an exclusive and accessible isolation device for that ICP; and
- (c) the Retailer, having made reasonable endeavours (including by seeking to disconnect at the ICP at the meter(s)), has not been able to complete a Vacant Site Disconnection by a Warranted Person for that purpose; then

the Retailer will on request by the Distributor, provide suitable evidence of findings in the attempt(s) to disconnect, following which the Retailer may notify the Distributor to take responsibility for completing the Vacant Site Disconnection for that ICP.

In this case:

- (i) the Distributor will endeavour in accordance with Good Industry Practice to complete the Vacant Site Disconnection; and
- (ii) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound to install such a device where it considers in its opinion that it would be impractical or unreasonably costly to do so, after having regard to the Retailer's ongoing costs in meeting its obligations under the Rules; and

- (iii) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Rules.
16. The party performing the De-energisation or Re-energisation will, unless otherwise agreed, notify the other party within 2 Working Days of the work having been completed.
17. Both parties will update the Registry throughout this process in accordance with the Rules.

### **Permanent Disconnections**

18. Permanent Disconnections of an ICP may be carried out by the Distributor in the following circumstances, provided the requirements of section 62 Electricity Act 1992 are met:
- on receipt of a request from a Consumer, land-owner or Retailer when electricity is no longer required at a particular ICP; or
  - where public safety is at risk; or
  - on receipt of the Registry “Inactive” status with reason “De-energised - ready for decommissioning” where a Retailer has Disconnected a site, recovered the meters, and updated the Registry to that status; or
  - where the Distributor has not supplied Distribution Services to an ICP for a considerable period (usually in excess of 6 months).
19. A Permanent Disconnection is performed by means of removal of all or part of the service main to an ICP, or where a shared service main forms part of the supply, by isolation and removal of the load side cable from the main switch at the meter board. In all circumstances the property is to be left electrically safe.
20. The party performing the Permanent Disconnection must notify the other party within 3 Working Days of the work having been completed.
21. Once having the status of decommissioned on the Registry, the ICP will not be used again, and the process for new connections must be followed should supply be again required at this site.
22. Both parties will update the Registry throughout this process in accordance with the Rules.

### **Unmetered Supplies**

23. The Retailer and Distributor will be responsible for maintaining and updating unmetered load information into the Registry as required by the Rules.

**SCHEDULE 8 - Pricing Principles**

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## SCHEDULE 9 - Load Management Policy

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### 1. Introduction

Load management is the process of reducing electricity demand on the Network by controlling the supply of electricity to specific Consumer appliances. This normally occurs during peak load periods when the demand for electricity is at its highest. Examples of load management practices include the temporary interruption of supply to hot water storage heaters, spa pool heaters, and space heaters such as night store heaters.

In addition to load management this policy also covers the shifting of load between Network Supply Points.

The value of load management lies in the ability to reduce energy and transportation costs. Those who might benefit from load management capability include:

- The Distributor, by assisting in managing asset utilisation;
- The Retailer, by optimising electricity purchase costs and by matching energy demand to supply in the event of a supply shortage;
- The Consumer, through lower electricity charges where they choose to make some of their appliances controllable by Load Control Equipment.

### 2. Entirely Voluntary

The decision whether all or any part of a Consumer's load is available for load management ("controllable load") is that of the Consumer. The Distributor does not require Consumers to allow their appliances to be controlled. Instead, the Distributor incentivises the provision of controllable load by Consumers by offering lower line pricing options (known as controllable load tariff options) to Consumers via their Retailer. The options and eligibility criteria for controllable load tariff options are set out in the Pricing Schedule. A Retailer may choose whether to make these controllable load tariff options available to its Consumers. Where the Retailer allocates a Consumer to a controllable tariff option, the Distributor is entitled to rely on that allocation as an election by the Consumer, and the Retailer acknowledges that, in consideration of the controllable load tariff options the Distributor has purchased the right to control load for itself and its successors and assigns.

A Consumer (via its Retailer) elects to make controllable load available to the Distributor by choosing a controllable load tariff option set out in the Pricing Schedule. Such a Consumer election is subject to installation of the appropriate metering and Load Control Equipment for the elected controllable load tariff option. The options and eligibility criteria are set out in the Pricing Schedule.

### **3. Rights To Undertake Load Management**

Where a controllable load tariff option applies to any part of the Consumers load the Distributor (and its successors and assigns) has the right to control the load of the Consumer for any purpose, subject to any time constraints relevant to the particular controllable load tariff option as detailed in the Pricing Schedule.

### **4. Uses For Load Management**

The load management system is able to be used for a variety of purposes. Having been purchased by the Distributor, the right to load control has a value to the Distributor. At any point in time, for example a half hour trading period, the value to the Distributor of the right to load control may be less than the value to another party, for example, the Retailer. To enable load control to be used for the highest value use, the Distributor has the right to assign the right to load control to another party, for example, the Instructing Party.

### **5. Load Management Equipment**

5.1 The load management system is comprised of:

- i. Load Signalling Equipment; and
- ii. Load Control Equipment; and
- iii. Consumers' controllable load.

5.2 The Retailer may own or lease Load Control Equipment and the Distributor owns and manages the Load Signalling Equipment. Load Signalling Equipment and Load Control Equipment may be based on a number of technologies. Current technologies employed include pilot wire and ripple control systems. The Distributor will provide the Retailer with details of the technical characteristics of the Load Control Equipment appropriate to each of the Network areas in which load management is provided.

5.3 If the Distributor seeks to change the operating characteristics (including the operating frequency) of its Load Signalling Equipment it will seek to negotiate suitable terms with the Retailer for the upgrade of the 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. An additional service charge may then be applicable for the Distributor's provision of Load Control Equipment.

5.4 If the Retailer wishes to install a type of load management system or equipment different to that used by the Distributor and wishes to allocate Consumers to a controllable load tariff option offered by the Distributor, it must meet the controlled price category and controlled tariff option provisions as detailed in the Pricing Schedule and the Network Connection Standards.

## **6. Line Charges**

- 6.1 To qualify for a controlled load Price Category or Tariff Option, the Retailer must ensure that the relevant ICP has Load Control Equipment that is in working order and controlling the appropriate Consumer's appliances on which the controlled load Price Category or Tariff Option is based.
- 6.2 The Distributor may periodically no more than once a year undertake an audit using a representative sample of the Load Control Equipment for which the Retailer is responsible and its connections to Consumer's appliances.
- 6.3 Where a sample audit shows that load management is not functional for in excess of 5% of the Load Control Equipment for which the Retailer is responsible, the Distributor and Retailer will, within 40 Working Days, meet and agree a programme including scope and timeframe within which non-functioning Load Control Equipment will be identified and made functional. Where confirmed to be non-functioning Load Control Equipment, the Retailer agrees that the reasonable costs of any inspection (including the initial audit) and repair work identified will be at its cost.
- 6.4 Where the audit identifies non-functional Load Control Equipment due to low signal levels or faulty pilot wires that are the responsibility of the Distributor then these failures shall be excluded from the audit results.
- 6.5 Where a sample audit shows that load management is functional for 95% or more of the Retailer's Consumers sampled, the cost of the audit will lie with the Distributor but the Retailer will still be required to remedy all defects found in respect of the non-functional Load Control Equipment.

## **7. Distributor May Assign Right To Control Load**

- 7.1 The Distributor may assign all or any part of its rights in respect of controllable load to the Instructing Retailer or any other retailer using Distribution Services on the Network (the "Instructing Party") for any such period, and on such conditions as may be agreed with the Instructing Party provided that such assignment shall reserve the exclusive right of the Distributor to operate load management for network purposes (including Load Shedding) and shall, unless otherwise excluded, be deemed to contain the terms set out in paragraphs 7.2 to 7.11 below in respect of a load management service to be provided by the Distributor.
- 7.2 Where the right to issue instructions has been established the Distributor will provide specific load management Services to the Instructing Party during periods when the Distributor does not need to operate load management for network related purposes (including Load Shedding).

- 7.3 To enable this service to be provided the Instructing Party shall provide a proposed load management Schedule to the Distributor. The Schedule will set out the proposed off/on times for each day for the period the additional load management Services are being sought, at least one Working Day prior to the period when the requested service is to commence.
- 7.4 Any deviations (by either party) from the off/on hours or days specified in the initial load management request will be established by mutual agreement between the Instructing Party and the Distributor.
- 7.5 Where the additional load management service is requested by the Instructing Retailer for more time in any one day than that which is agreed for the relevant Price Category or Tariff Option the Instructing Party shall advise all other retailers selling to consumers on the Network of its intentions and any changes thereto immediately or at least one Working Day prior to the control being implemented.
- 7.6 Both the Distributor and Instructing Party will act in accordance with any industry protocol for extended hot water cuts.
- 7.7 The Distributor shall comply with the additional load management services request unless it otherwise notifies the Instructing Party at least 4 hours prior to commencement of the instruction.
- 7.8 The off/on times and days applicable to the additional load management Services is not Confidential Information and the Distributor is able to convey the information to other retailers.
- 7.9 Due to the nature and constraints of the existing load management equipment, the Distributor may not be able to offer the Instructing Party the load management Services it requires, but will seek, where possible (but without additional cost to the Distributor), to configure the equipment to accommodate the Instructing Party's requests.
- 7.10 Where the Distributor cannot accommodate request using existing equipment, it will supply a price to install new Load Signalling Equipment that can meet the Instructing Party's requirements.
- 7.11 The Distributor may charge a fee for providing the additional load management Services, such fee to be advised by the Distributor and agreed by the Instructing Party prior to providing the service.

## **8. Retailer May Purchase Services To Shift Load Between Network Supply Points**

- 8.1 Where practical, and requested by the Instructing Party, the Distributor will shift load between Network Supply Points provided that all retailers receiving Distribution Services from the Distributor in the relevant Network region have signed an agreement equivalent

to this agreement or have agreed to terms that have substantially the same effect as clauses 7 and 8 of this Schedule 9.

8.2 The Distributor may charge a fee for doing so, such fee to be advised by the Distributor and agreed by the Instructing Party prior to providing the service.

### **9. Cooperation**

Where either party becomes aware of any situation that may affect the supply into the Network, the parties shall cooperate to identify the most appropriate load management or load shifting response and clause 7 and 8 will apply, as appropriate.

### **10. Precedence**

Load Management provisions contained in this Schedule 9 are subject to the Pricing Schedule. In the event of conflict between the provisions of this Schedule 9 and the Pricing Schedule, the provisions of the Pricing Schedule shall prevail.

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**SCHEDULE 10 – Electricity Pricing Schedule**

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**SCHEDULE 11 - Loss Factors**

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