

# **Model Arrangements For Electricity Distribution Services**

## **Model Use of System Agreement - Conveyance**

### **Model Distribution Arrangements Project**

#### **Practice Note**

**This model use of systems agreement has been approved by the Electricity Commission Board for information only as it has yet to be aligned with the model domestic contracts and the transmission benchmark agreement. The Electricity Commission will review this agreement in 12 months.**

# Contents

<b>CONTENTS</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>2</b>
<b>AGREEMENT</b> .....	<b>3</b>
<b>PART I - SERVICE COMMITMENTS</b> .....	<b>3</b>
<b>1</b> <b>TERM OF AGREEMENT</b> .....	<b>3</b>
<b>2</b> <b>GENERAL OBLIGATIONS</b> .....	<b>3</b>
<b>3</b> <b>EQUAL ACCESS</b> .....	<b>3</b>
<b>4</b> <b>INFORMATION EXCHANGE</b> .....	<b>4</b>
<b>5</b> <b>SERVICES</b> .....	<b>5</b>
<b>6</b> <b>LOAD MANAGEMENT</b> .....	<b>5</b>
<b>7</b> <b>LOSSES AND LOSS FACTORS</b> .....	<b>6</b>
<b>8</b> <b>NOTIFICATION OF CHANGES TO NETWORK SUPPLY POINTS</b> .....	<b>8</b>
<b>9</b> <b>FEEES</b> .....	<b>8</b>
<b>PART III - OPERATIONAL REQUIREMENTS</b> .....	<b>9</b>
<b>10</b> <b>INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY</b> .....	<b>9</b>
<b>11</b> <b>CONNECTIONS AND DISCONNECTIONS</b> .....	<b>10</b>
<b>PART IV - OTHER RIGHTS</b> .....	<b>10</b>
<b>12</b> <b>EVENTS OF DEFAULT</b> .....	<b>10</b>
<b>13</b> <b>TERMINATION OF AGREEMENT</b> .....	<b>11</b>
<b>14</b> <b>CONFIDENTIALITY</b> .....	<b>13</b>
<b>15</b> <b>FORCE MAJEURE</b> .....	<b>14</b>
<b>16</b> <b>AMENDMENTS TO AGREEMENT</b> .....	<b>16</b>
<b>17</b> <b>DISPUTE RESOLUTION PROCEDURE</b> .....	<b>17</b>
<b>18</b> <b>LIABILITY</b> .....	<b>18</b>
<b>19</b> <b>NOTICES</b> .....	<b>21</b>
<b>20</b> <b>MISCELLANEOUS</b> .....	<b>21</b>

<b>21</b>	<b>INTERPRETATION:</b> .....	<b>22</b>
	<b>SCHEDULE 1</b> .....	<b>29</b>
	<b>SERVICE STANDARDS</b> .....	<b>29</b>
	<b>INFORMATION EXCHANGE PROTOCOLS</b> .....	<b>31</b>
	<b>SCHEDULE 3</b> .....	<b>32</b>
	<b>SERVICE INTERRUPTION COMMUNICATION POLICIES</b> .....	<b>32</b>
	<b>SCHEDULE 4</b> .....	<b>34</b>
	<b>CONNECTION POLICIES</b> .....	<b>34</b>
	<b>SCHEDULE 5</b> .....	<b>38</b>
	<b>LOAD MANAGEMENT SERVICE</b> .....	<b>38</b>
	<b>SCHEDULE 6</b> .....	<b>40</b>
	<b>SCHEDULE 7</b> .....	<b>41</b>
	<b>LOAD MANAGEMENT POLICY</b> .....	<b>41</b>
	<b>SCHEDULE 8</b> .....	<b>42</b>
	<b>BILLING SERVICES</b> .....	<b>42</b>
	<b>SCHEDULE 9</b> .....	<b>57</b>
	<b>DATA COLLECTION SERVICES</b> .....	<b>57</b>
	<b>SCHEDULE 10</b> .....	<b>58</b>
<b>FEES</b>	<b>58</b>	

**AGREEMENT** dated

200[ ]

**PARTIES**

<b>Distributor: [Insert full legal name of Distributor]</b>	<b>Retailer: [Insert full legal name of Retailer]</b>
Distributor's Details: Street Address: Postal Address: Address for Notices: Contact Person's Details: Phone: Fax: Website: Email Address:	Retailer's Details: Street Address: Postal Address: Address for Notices: Contact Person's Details: Phone: Fax: Website: Email Address:

**COMMENCEMENT DATE:**

**SIGNATURES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Introduction

- A. The Distributor has agreed to provide Distribution Services to Consumers on the terms and conditions set out in the Distributor's Agreements with those Consumers.
- B. The Retailer has agreed to sell electricity to Consumers on the terms and conditions set out in the Retailer's Agreements with those Consumers.
- C. Notwithstanding that the Distributor and Retailer have separate contractual relationships with Consumers, the Distributor and the Retailer acknowledge that there will be situations where the Distributor and the Retailer will be required to work together in respect of those Consumers. The Distributor and the Retailer agree to exchange information and purchase Services from one another on the terms and conditions set out in this agreement.
- D. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Rules.

# Agreement

## Part I - Service Commitments

### 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 13.

### 2 GENERAL OBLIGATIONS

- 2.1 Each party shall:

- (a) act in accordance with Good Industry Practice in fulfilling its contractual obligations to the Consumers;
- (b) comply with the Rules; and
- (c) comply with the Service Standards.

- 2.2 The Distributor will provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis and information service.

### 3 EQUAL ACCESS

*[Practice Note: There are 2 versions of clause 3 as MDARP was not able to reach consensus].*

*[Distributor version]*

- 3.1 **Equal access:** The Distributor will make available to the Retailer the services it offers to any other retailer. It is acknowledged that the fees negotiated under this agreement and the Distributor's agreements with other retailers are based on the package of services provided under the particular agreement, and that the Distributor is not obliged to charge the Retailer the same fee as any other retailer for the same service.
- 3.2 **The Distributor will notify the Retailer of alternative services:** Within [20] Working Days after agreeing to the supply of a new service with any retailer other than the Retailer, the Distributor will notify the Retailer in writing of the existence of the service and invite the Retailer to take up the service.

*[Retailer version]*

- 3.1 **Equal access and even-handed treatment:** Where either party ("**first party**") is the only possible provider of a service ("**a monopoly service**") to the other party ("**second party**"), the first party will give the second party equal access to the monopoly service and will treat the second party even-handedly relative to other parties to whom the monopoly service is provided on the Network.
- 3.2 **Each party will notify the other of alternative monopoly service terms:** Within [20] Working Days of the first party having agreed terms for, or an amendment to terms for, the supply of a monopoly service on the Network, with

any person other than the second party (the terms or amended terms, as applicable, being “**Alternative Monopoly Service Terms**”), the first party will notify the second party in writing of the existence and details of the Alternative Monopoly Service Terms, make the Alternative Monopoly Service Terms available on its website and invite the second party to adopt the Alternative Monopoly Service Terms.

#### **4 INFORMATION EXCHANGE**

4.1 **Distributor’s obligations:** The Distributor shall supply the Retailer with the following information:

- (a) [Service Interruption information in accordance with schedule 3;
- (b) Changes in Consumer details within [2] Working Days of receiving the information;
- (c) Any Meter readings taken by the Distributor, within [2] Working Days of receipt of the reading;
- (d) Intention to temporarily De-energise an ICP at which the Retailer is selling electricity for credit reasons at least [2] Working Days prior to De-energising;
- (e) Notification of De-energisation or Re-energisation of an ICP by the Distributor within [2] Working Days of such action having been taken;
- (f) Any protocols developed by the Distributor on the priorities for Load Shedding, restoration of load or similar event;
- (g) The Distributor’s tariff schedule, and any changes thereto at least [20] Working Days before the changes come into effect, provided that the Distributor shall give [40] Working Days notice of any intention to change the fixed charge under the regulated distributor tariff option that the Distributor is required to make available pursuant to the Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004;
- (h) The service levels for the Load Management Service, and any changes thereto at least [40] Working Days before the changes come into effect;
- (i) Changes to standard Distributor’s Agreements and to terms of other Distributor’s Agreements that the Distributor reasonably believes may affect the Retailer;
- (j) Any interference with or damage to the Retailer’s equipment discovered by the Distributor within [2] Working Days of discovery by the Distributor; and
- (k) Any evidence of theft of electricity or loss of electricity, within [2] Working Days of the discovery, and, when any assessment of the loss has been made, that assessment.]

4.2 **Retailer’s obligations:** The Retailer will supply the Distributor with the following information:

- (a) [any Meter readings received by the Retailer, within [2] Working Days of receipt of the reading;

- (b) Changes to Consumer details, within [5] Working Days of receipt of the new details;
- (c) Intention to temporarily De-energise an ICP for credit reasons at least [2] Working Days prior to De-energising;
- (d) Notification of De-energisation or Re-energisation of an ICP by the Retailer within [2] Working Days of such action having been taken;
- (e) The Retailer's tariff schedule, and any changes thereto at least [20] Working Days before the changes come into effect;
- (f) The service levels for Retailer controlled Load Management Services, and any changes thereto at least [40] Working Days before the changes come into effect;
- (g) Changes to standard Retailer's Agreements and to terms of other Retailer's Agreements that the Retailer reasonably believes may affect the Distributor;
- (h) Any interference with or damage to the Distributor's equipment discovered by the Retailer within [2] Working Days of discovery by the Retailer; and
- (i) Any evidence of theft of electricity or loss of electricity, within [2] Working Days of the discovery, and, when any assessment of the loss has been made, that assessment.]

4.3 **Protocols for exchanging information:** Where the Electricity Commission publishes new or amended Information Exchange Protocols, the Distributor and the Retailer will, unless otherwise agreed, use these 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.

## 5 SERVICES

5.1 **Retailer Services:** The Retailer shall provide the following services to the Distributor:

- (a) [Billing: As set out in schedule 8]
- (b) [Data collection: As set out in schedule 9]

5.2 **Distributor services:** The Distributor shall provide the following services to the Retailer:

- (a) [Data collection: As set out in schedule [9] ]
- (b) [Load Management Service: As set out in schedule 5]
- (c) [Disconnection and Reconnection Services: As set out in schedule [ ] ]

## 6 LOAD MANAGEMENT

6.1 **Ensure that Load Control Equipment to be maintained:** The party providing Load Control Equipment shall use reasonable endeavours in accordance with Good

Industry Practice to ensure that the required Load Control Equipment will respond to the appropriate load control signals for the Price Category.

- 6.2 **Ensure that Load Signalling Equipment to be maintained:** The party providing Load Signalling Equipment shall use reasonable endeavours in accordance with Good Industry Practice to ensure that the required Load Signalling Equipment will send the appropriate load control signals for the Price Category.
- 6.3 **Change to Load Signalling Equipment:** 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.
- 6.4 **Installation of new load management system:** If the Retailer wishes to install a type of load management system different to that used by the Distributor and wishes to allocate Customers to a controllable load tariff option offered by the Distributor, it must seek agreement from the Distributor prior to installation to ensure the new system also meets the Distributor's requirements.
- 6.5 **Audit:** The Distributor may audit the Load Control Equipment for which the Retailer is responsible and its connections to Consumers' appliances in accordance with schedule 7.

## 7 LOSSES AND LOSS FACTORS

- 7.1 **Acknowledgement of Losses:** The Retailer:
- (a) acknowledges that the distribution of electricity across the Network involves the creation of Losses (whether due to use estimation procedures, meter inaccuracies, Network losses or otherwise);
  - (b) acknowledges that the Rules contain principles for the allocation of Losses between retailers; and
  - (c) agrees and accepts that the Distributor shall not be liable to pay for Losses.
- 7.2 **Optimisation of technical losses:** Where the Distributor identifies that a network investment would significantly lower Losses then:
- (a) the Distributor shall prepare a proposal for such investment and provide a copy of that proposal to the Retailer;
  - (b) the Retailer shall advise the Distributor within [40] Working Days if it agrees with the proposal and if it is willing to guarantee a price reduction to Consumers if the proposal is implemented (and, if so, the amount of such price reduction); and
  - (c) the Distributor shall consult with the Consumers affected as to whether they would be willing to fund the investment in consideration of the Retailer's comments.

Notwithstanding anything in this clause 7.2, the Distributor shall be under no obligation to undertake any investment if the funding of that investment would cause the Distributor to exceed the Commerce Commission's price threshold.

- 7.3 **Retailer to provide consumption information:** Within [20] Working Days of the end of each month, the Retailer shall provide to the Distributor, or cause a third party to provide to the Distributor:
- (a) its [reconciled purchases and/or data submitted to the national reconciliation manager]; and
  - (b) [summary][ICP] consumption information,
- for each Network Supply Point relevant to the Network using the appropriate Information Exchange Protocol.
- 7.4 **Distributor to report on Losses:** Within [40] 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.
- 7.5 **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 shall use reasonable endeavours to identify the cause of the abnormal movement. If the abnormal movement is clearly due to substandard data provision 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 inquiries 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.
- 7.6 **Retailer to provide information to enable calculation of Loss Factors by the Distributor:** The Retailer shall provide the Distributor with any additional information the Distributor may reasonably require to enable it to calculate Loss Factors.
- 7.7 **Calculation and notification of Loss Factors:** Subject to clause 7.9, the Distributor shall review Loss Factors annually. The Distributor may change Loss Factors in conjunction with a price review. If any change of Loss Factors is proposed, the Distributor will notify the Retailer of the new Loss Factors by giving the Retailer no less than [40] Working Days written notice of the change (including the reasons for the change).
- 7.8 **Transparent Loss Factors methodology:** Any notice provided to the Retailer in accordance with clause 7.7 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 7.4 and the Loss Factors notified under clause 7.7.
- 7.9 **Disputes over Loss Factors:** If, at any time, the 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, the Retailer may make a written complaint to the Distributor. The Distributor will consider the complaint in good faith within [20] Working Days and may change the Loss Factors declared in its notice accordingly. If the Distributor fails to change its notice, the Retailer may refer the matter to the dispute resolution process set out in clause 17. In the event that the outcome of dispute resolution 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 [40] Working Days from the date on which the dispute is finally resolved.

## **8 NOTIFICATION OF CHANGES TO NETWORK SUPPLY POINTS**

- 8.1 **Changes to Network Supply Points:** Where the Distributor proposes to permanently alter the Network Supply Point for any ICP the Distributor shall notify the Retailer in writing of such change, provided that such notification shall be given sufficiently in advance of the change being made so that the time limits in clause 8.2 can be reasonably complied with.
- 8.2 **Material effect on the Retailer:** If the Distributor has given the Retailer notice in accordance with clause 8.1 and the Retailer reasonably believes and notifies the Distributor no later than [5] Working Days after receiving notice in accordance with clause 8.1 that the change will have a material adverse effect on the Retailer, then the Retailer shall be entitled to make submissions to the Distributor in writing in respect of that change no later than [5] Working Days prior to the change taking effect, and the Distributor shall consider such submissions in good faith, when making its final decision in respect of the change.

## **9 FEES**

- 9.1 **Fees:** The fees payable by the Parties to each other are set out in Schedule 11.
- 9.2 **Invoicing:** Each month:
- (a) the Retailer will invoice the Distributor for any fees and any other amounts due under this agreement in respect of the previous month; and
  - (b) the Distributor will invoice the Retailer for any fees and any other amounts due under this agreement in respect of the previous month.

Each invoice will be sent on or about the 10<sup>th</sup> day of the month.

- 9.3 **GST:** All amounts payable by one party to the other are stated exclusive of GST (if any) but inclusive of all taxes other than GST. The payee shall add to such amounts GST and show the same on any invoice rendered to the payer and such GST shall be payable contemporaneously with the payment of the charges shown on the invoice.
- 9.4 **Timing of payments:** All payments shall be made by one party to the other (or to the credit of a New Zealand bank account nominated by the payee) no later than the 20<sup>th</sup> day of the month in which the invoice is rendered. However, if a party fails to send an invoice to the other party by the 10<sup>th</sup> day of the month, the due date for payment will be extended by 1 Working Day for each Working Day that the invoice is late.
- 9.5 **Disputed invoices:** In the event of any dispute concerning an invoiced amount, the party disputing the invoice (“**Complainant**”) shall notify the other party in writing identifying the amount in dispute and giving full reasons for the dispute. Where the invoice has not been paid the Complainant shall pay the full amount of any portion of the invoice that is not in dispute. Where the party in receipt of the dispute notice disagrees with the amount or reasons identified by the Complainant, the dispute will be resolved pursuant to the dispute resolution procedure set out in clause 17.

- 9.6 **Interest on disputed amount:** Where, as a result of the determination of a dispute of the nature referred to in clause 9.5, either party has to pay money to the other, then in addition to such payment, Default Interest shall be payable.
- 9.7 **Incorrect invoices:** If it is found at any time that a party has been overcharged or undercharged and a party has actually paid the invoices containing such overcharge or undercharge, then within [20] Working Days after such error has been discovered and the correct amount has been agreed between the parties or determined pursuant to clause 17, the party which has been overpaid shall refund to the other party the amount of any such overcharge or the party which has been underpaid shall pay to the other party the amount of any such undercharge in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there shall be no right to re-open invoices if more than [18] months has elapsed since the date of the invoice.
- 9.8 **Interest on late payment:** Subject to clause 9.5, the Retailer or the Distributor, will pay any invoice issued under clause 9.2. 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.
- 9.9 **No set off:** Both parties will make all 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 9.5 and paragraph 5.6 of schedule 8.
- 9.10 **Fee Review:** Either party may request a review of the fees, provided that no fee shall be reviewed more than once in any period of [12] consecutive months. The party seeking the review shall propose to the other party a new fee level, with evidence to support that proposal. The second party may, within [2] months of receiving the proposal respond with an alternative proposal, with supporting evidence. If the parties do not agree on the proposed changes at the expiry of [4] months from the date of the initial request then:
- (a) if there is a specific process for determining the fee then that process shall apply; or
  - (b) if there is no specific process for determining the fee the party receiving the service will be entitled to terminate that service by 60 Working Days notice to the other party. If the party receiving the service does not terminate the service within this timeframe, the price proposed by the party providing the service shall be deemed accepted and shall apply with immediate effect on expiry of this timeframe.

## Part III - Operational Requirements

### 10 INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY

- 10.1 **Interference or damage to the Distributor's Equipment:** The Retailer will ensure that its employees, agents and invitees do not interfere with or damage the Distributor's Equipment (including, without limitation (for a period of [6] months), after termination of this agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health 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.

- 10.2 **Interference or damage to the Retailer's Equipment:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment (including, without limitation (for a period of [6] months), after termination of this agreement) without the prior written consent of the Retailer (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect the Retailer's Equipment from damage. If the Retailer's Equipment is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, then the Distributor shall pay the cost of making good the damage to the Retailer.
- 10.3 **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.

## 11 CONNECTIONS AND DISCONNECTIONS

- 11.1 **Policies:** The Distributor and the Retailer will comply with the policies for establishing new ICPs, changing the capacity of existing ICPs, Permanently Disconnecting existing ICPs and De-energising or Energising existing ICPs set out in schedule 4.
- 11.2 **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.

## Part IV - Other Rights

### 12 EVENTS OF DEFAULT

- 12.1 **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 with 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.
- 12.2 **Failure to remedy breach:** If the defaulting party fails to remedy a breach within the relevant timeframe set out in clause 12.1 then the other party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the defaulting party in relation to the breach and to notify him or her of and the other party's intention to exercise its rights under this clause, and
- (a) Where:
    - (i) the breach is a Serious Financial Breach (in the case of the Retailer only);

- (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 12.1 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 12.1, the other party may commence termination of this agreement in accordance with clause 13.2 and, where the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Commission in writing that the Retailer is in breach of this agreement and Part H of the Rules; 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 17 within [1] Working Day after the end of the timeframe set out in clause 12.1;

and

- (c) the other party may exercise any other legal rights available to it.

**12.3 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 13.2; 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 Commission in writing that the Retailer is in breach of this agreement and Part H of the Rules.

## **13 TERMINATION OF AGREEMENT**

**13.1 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 13.1 before [4 years and 6 months] from the first commencement date of the first use of system agreement – conveyance version number [ ] entered into between the Distributor and any retailer; or

- (b) **Dispute resolution:** either party may terminate this agreement in accordance with any agreement reached or determination made as a result of the dispute resolution process set out in clause 17 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 20.4 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 supplied the Distributor with any other services under this agreement; 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 15.2 and 15.3.

13.2 **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 12.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:

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

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

13.3 **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.

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

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

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

- (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.

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

## 14 CONFIDENTIALITY

14.1 **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 14.2; and
- (b) only use Confidential Information for the purposes expressly permitted by this agreement.

14.2 **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 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 14 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 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 Rules;
- (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 a party, 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.

14.3 **Third party billing:** If the Distributor appoints a Generator or retailer as its billing provider, the Distributor shall ensure that appropriate chinese walls are established so that that person does not use or pass on any Confidential Information supplied by the Retailer. The Retailer shall be entitled to appoint an independent, appropriately qualified, person to undertake an audit of the chinese wall procedure of the third party to ensure compliance with this clause. Such audit may not occur more than once in any 12 month period unless any audit report states that the chinese wall procedures are not adequate or are not being observed in which case, without affecting any other rights of the Retailer, the Retailer may request an audit once every 3 months until the Retailer receives two audit reports confirming that the chinese wall procedures are adequate and are being observed. The Distributor will ensure that the auditor is given full co-operation by the third party being audited including that the third party does not delay or restrict the audit. The costs of the audit shall be borne by the Retailer unless the auditor determines that the chinese wall procedures are not adequate or are not being observed, in which case the cost of the audit and each successive audit until two audit reports have been received by the Retailer confirming that the chinese wall procedures are adequate and are being observed, will be borne by the Distributor.

*[Practice Note: clause 14.3 is restricted to Confidential Information supplied by the Retailer only]*

14.4 **Limit for breach:** A party's liability for breach of this clause 14 shall not be limited by clause 18.

14.5 **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 14.2(f).

## 15 FORCE MAJEURE

15.1 **Force majeure:** 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:

- A. due to natural causes, directly or indirectly and exclusively without human intervention; and
  - B. 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, government, local authority the Rulings Panel or the Electricity Commission, and not within the reasonable control of the affected party;
  - (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 15.1, and
- (b) such party could not have prevented such failure by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced distributor or retailer engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time, 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.
- 15.2 **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 15.1, it must as soon as reasonably practicable notify the other party that it is invoking clause 15.1 and the full particulars of the Force Majeure Event relied upon.
- 15.3 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 15.1 must:
- (a) **Endeavour to avoid or overcome the Force Majeure Event:** use all reasonable endeavours 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.
- 15.4 **No obligation to settle:** Nothing in clause 15.3 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.

## 16 AMENDMENTS TO AGREEMENT

16.1 **Agreement not to be changed except in certain circumstances:** A change may be made to this agreement where:

- (a) **Required by law or Rules:** the change is required by law, the Rules 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 16.2; and
- (b) **Change in Loss Factor:** the change is a change to schedule 6, and the change is made in accordance with clause 7; and
- (c) **Change to Fees:** the change is a change to a fee set out in schedule 10 and the change is made in accordance with clause 9; and
- (d) **Other changes:** the change does not fall into any of the categories set out above, and the change is made in accordance with clause 16.2.

16.2 **Procedures for other changes:** The following procedures will apply to changes contemplated by clauses 16.1(a) and 16.1(d):

- (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 16.1(a) specify the provisions of the Rules, the mandatory rules or protocols, or the laws which are the basis for the proposed change;
  - (ii) if the proposed change is contemplated by clause 16.1(d) set out the reasons for the proposed change; and
  - (iii) set out the change in the form proposed to be incorporated in this agreement.
- (b) **Good faith:** The parties will negotiate the change in good faith.
- (c) **By agreement:** If the Distributor and the Retailer agree to the proposed change they 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 Rules where the parties have not agreed:** If the proposed change is contemplated by clause 16.1(a) and if the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under clause 16.2(a) above, then the matter will be referred to the decision of an independent, experienced and suitably qualified person agreed between the parties or failing agreement, appointed by the President for the time being of the Auckland District Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
  - (i) must be the minimum necessary to effect the mandatory change required pursuant to clause 16.1(a);
  - (ii) subject to clause 16.2(d)(i) above, will be binding, absent obvious error;

and

- (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision must take immediate effect by law or by operation of Rules or mandatory rules or protocols.

16.3 **Exception:** Where a change to this 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 written notice to the other party and nothing in clauses 16.1 to 16.2 will apply to any such change.

## 17 DISPUTE RESOLUTION PROCEDURE

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

17.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within [15] Working Days of the matter being referred to them, either party may give a notice to the other requiring that the Dispute be referred to mediation.

17.3 **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 President (or equivalent) of the New Zealand chapter of LEADR.

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

17.5 **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.

17.6 **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.

*[Practice note: parties to delete either the arbitration clauses or the court proceedings clause on entry into the agreement. Either:]*

17.7 **[Arbitration to resolve disputes:** If the Dispute:

- (a) is not resolved through mediation within [40] Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
- (b) is not resolved by negotiation of the Chief Executives in accordance with clause 17.1 within [15] Working Days of the matter being referred to them and if neither party referred the Dispute to mediation;

the Dispute shall be referred to and finally resolved by arbitration before a sole arbitrator under the Arbitration Act 1996.

17.8 **Choice of arbitrator:** The sole arbitrator shall be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within [10] Working Days of the referral in clause 17.7 above, the arbitrator shall be appointed by the President for the time being of the New Zealand Law Society.]

*[Or:]*

17.7 **[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) is not resolved by negotiation of the Chief Executives in accordance with clause 17.1 within [15] Working Days of the matter being referred to them and, if neither party referred the Dispute to mediation,

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

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

17.10 **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.

## 18 LIABILITY

18.1 **Payment of charges:** Nothing in this clause 18 shall operate to limit the liability of either party to pay all charges and other sums due under this agreement.

18.2 **Direct Damage:** Except as provided in clause 14.4, paragraph 4 of schedule 5 and paragraph 2.6 of schedule 8, 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:

- (a) 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; and
- (b) loss of revenue suffered by a party (the “**First Party**”) as a result of an error made by, or on behalf of, the other party in performing its obligations under clause 5 provided that:
  - (i) such error has not resulted from an error in information provided by the First Party or the First Party’s agent to prepare an invoice; and
  - (ii) notice of the loss of revenue is given by the First Party to the other within [18] months of the date the error occurred.

*[Practice note: There are concerns within the Panel that the loss of revenue for which parties may be liable under clause 18.2(b) could be significant. Parties may wish to consider capping their liability under clause 18.2(b).]*

18.3 **Consequential loss:** Except as provided in clause 14.4, paragraph 4 of schedule 5 and paragraph 2.6 of schedule 8, 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 (except any liability under clause 18.2(b)), loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
- (b) any indirect or consequential loss (including, but not limited to, incidental or special damages);
- (c) any loss resulting from the liability of a party to another person (except any liability under clause 18.2(a)); or
- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

18.4 **Distributor not liable:** The Distributor will not be liable for:

- (a) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or
- (b) any Service Interruption or alteration to the supply of electricity to an ICP arising from [any cause including]:
  - (i) Load Shedding;
  - (ii) Planned Service Interruptions;
  - (iii) Unplanned Service Interruptions due to the partial or entire failure of the Network;
  - (iv) any act or omission of any Consumer or other person (excluding the Distributor and its officers, employees or agents);

- (v) a failure or reduction of injection or supply of electricity into the Network;
- (vi) any defect or abnormal conditions in or about any Consumer's Premises;
- (vii) action being taken by the Distributor in accordance with this agreement;
- (viii) any act or omission of the System Operator, a Generator, or the Transmission Provider unless and to the extent that the Distributor has obtained an appropriate Service Guarantee from the Transmission Provider; or
- (ix) where 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.

**18.5 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 pursuant to this agreement arising from any defect or abnormal conditions in the Network,

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

**18.6 Other liabilities:** Except as provided in clauses 14.4 and 18.2, all other liability of each party, including any liability in tort (including negligence), contract, breach of statutory duty, equity or otherwise is excluded to the fullest extent permitted by law.

**18.7 Limitation of liability:** Subject to clauses 18.1 and 18.8 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) the amount set out in the table below beside the number of Consumers which the party bringing the claim against the other party has at the time that the event (or, in the case of a series of related events, the first of such events) giving rise to the liability occurred.

Number of Consumers of the Retailer or Distributor (whichever is applicable)	Maximum total liability
0 - 50,000	[\$100,000]
50,001 - 100,000	[\$150,000]
100,001 - 150,000	[\$200,000]
150,001 - 200,000	[\$250,000]
200,001 - 250,000	[\$300,000]

More than 250,000	[\$500,000]
-------------------	-------------

18.8 **Exclusion:** Clause 18.7:

- (a) will not apply to a breach of clause 14.4 by either party, nor shall it limit the liability of either party under clause 18.2(b), paragraph 4 of schedule 5 or paragraph 2.6 of schedule 8; and
- (b) is subject to any contrary requirements of the Electricity and Gas Complaints Commission.

*[Practice note: see earlier practice note at the end of clause 18.2(b).]*

## 19 NOTICES

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

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

- (a) in the case of delivery, when delivered;
- (b) in the case of facsimile transmission, when sent, provided the sender has a facsimile confirmation receipt recording successful transmission;
- (c) in the case of posting, on the 2<sup>nd</sup> Working Day following the date of posting; and
- (d) in the case of email, the date of deemed receipt shall be at such time as the parties agree in writing. Notices may not be given pursuant to this agreement by email unless such agreement is reached and recorded in writing.

19.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice in accordance with clause 19.2 that is personally delivered or sent by facsimile 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.

## 20 MISCELLANEOUS

20.1 **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.

20.2 **Entire agreement:** This agreement records the entire agreement, and prevails over any earlier agreement, concerning its subject.

20.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. For the purposes of this clause except

where a party is listed on the New Zealand Stock Exchange, a direct or indirect change in effective control of a party will be deemed to be an assignment.

20.4 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.

## 21 INTERPRETATION:

21.1 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, 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 but include every other tax and duty unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement include it as varied, novated or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

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

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

“**Billing Services**” means the Services described in schedule 8;

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

“**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, including all information supplied pursuant to clause 4 but excludes:

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (c) data supplied in accordance with clause 5; and
- (d) the existence and terms of this agreement, except schedule 10;

**“Consumer”** means a purchaser of Distribution Services from the Distributor or a purchaser of electricity from the Retailer that, in either case, is delivered via the Network;

**“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.

**“Data Collection Services”** means data collection services provided by one party to the other in accordance with schedule 9;

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

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

**“Default Interest Rate”** means the Interest Rate plus [5]%;

**“Direct Damage”** has the meaning given to it in clause 18.2;

**“Dispute”** has the meaning given to it in clause 17.1;

**“Distribution Services”** means the line function services provided by the Distributor to a Consumer as set out in the Distributor’s Agreement with the Consumer;

**“Distributor”** means the party identified as such on the execution page at the beginning of this agreement;

**“Distributor’s Agreement”** means the agreement for the provision of Distribution Services between the Distributor and a Consumer;

**“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;

**“Event of Default”** means a breach referred to in clause 12.2(a);

**“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 15.1;

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

**“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled, diligent and experienced operator engaged in New Zealand in the same type of undertaking under the same or similar circumstances, but subject to the terms of this agreement.

**“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;

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

**“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 agreed by the Industry for the exchange of certain information, as held on the New Zealand Electricity Commission website ([www.electricitycommission.govt.nz](http://www.electricitycommission.govt.nz)) and as otherwise agreed by the parties including those recorded in schedule 2;

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

- (a) has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with

or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or

- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

**“Installation Control Point” (“ICP”)** means a point that 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 Rules;

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

**“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, on a basis agreed between the Distributor and the Retailer;

**“Load Signalling Equipment”** means the equipment (which may include, but is not limited to, ripple injection plant) installed for the purpose of 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 Factor(s)”** means the factor(s) expressed as 1.XXXX 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 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 for the purpose of 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;

**“Network Connection Standards”** means the Distributor’s written 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;

**“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;

**“Permanent Disconnection”** means a De-energisation of an ICP where the property is permanently disconnected from the Network, and where the Registry status has been altered to “decommissioned”;

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

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

**“Prepaid Metering”** has the meaning ascribed to that term in paragraph 1.4 of schedule 8;

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

**“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 Rules to assist switching and reconciliation;

**“Required Report”** has the meaning ascribed to that term in paragraph 4.1 of schedule 8;

**“Retailer”** means the party identified as such on the execution page at the beginning of this agreement;

**“Retailer’s Agreement”** means an agreement for the sale of electricity between the Retailer and a Consumer;

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

**“Rules”** means Electricity Governance Rules 2003 including any codes of practice issued pursuant to the Rules;

**“Rulings Panel”** has the same meaning as set out in the regulations made pursuant to subpart 2 of Part 14 of the Electricity Act 1992, as amended from time to time;

**“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 9.5; or
- (b) a material breach by the Retailer of paragraph 6 of schedule 8;

**“Service Interruption”** means in relation to the supply of electricity to an ICP the cessation of supply to that ICP for a period of 1 minute or longer, 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 Service Standards as set out in schedule 1;

**“Service Standards”** means the set of Service Measures and Service Levels as set out in schedule 1;

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

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

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

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

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

**“Trust Account Rules”** means the rules relating to the establishment and operation of a trust account set up by the Distributor in accordance with paragraph 6.1(b) of schedule 8;

**“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 other than a Planned Service Interruption;

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

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

**“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 on the execution page at the beginning of this agreement.

# SCHEDULE 1

## Service Standards

*[The following are samples of Service Standards]*

### 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.

Service Measure	Service Level
<b>RELIABILITY</b>	
Load Management Service & Load Signalling Equipment	The Distributor to operate its Load Management Service and maintain its Load Signalling Equipment in accordance with schedule 5.
Load Control Equipment	The party providing Load Control Equipment to maintain its Load Control Equipment in accordance with schedule 5.
<b>COMMUNICATION</b>	
Unplanned Service Interruption communication	As defined in schedule 3.
Notification of Planned Service Interruption	As defined in schedule 3.
Information requests	Each party will consider all reasonable requests for information from the other party (where they are noted that they are requests under schedule 1 of this agreement) and within [5] Working Days meet that request. If the request cannot be met within [5] Working Days, within [5] Working Days the requested party must provide an explanation and/or a new timeframe.
Consumer Information	If Consumer information considered relevant to the other party changes (including where a Consumer at an ICP changes) the party aware of the change shall notify the other party within [5] Working Days using the appropriate Information Exchange Protocol.
<b>LOSSES &amp; LOSS FACTORS</b>	
Retailer to provide consumption information	The Retailer to provide the Distributor, or cause a 3 <sup>rd</sup> party to provide to the Distributor, monthly sales and reconciled purchase quantities, in accordance

	with clause 7.3.
Distributor to provide Loss Ratio information	The Distributor to provide the Retailer, or cause a 3 <sup>rd</sup> party to provide to the Retailer, monthly and moving annual Loss Ratio information in accordance with clause 7.4.
<b>BILLING SERVICES</b>	
Consumption information	The Retailer to provide the Distributor information in respect of invoices for Distribution Services issued by the Retailer to Consumers in the previous month, within [7] Working Days of the end of the month. The format and content to be in accordance with the relevant Information Exchange Protocol.

## SCHEDULE 23

### Information Exchange Protocols

This schedule 2 identifies the primary information exchange transactions between the parties, and references Information Exchange Protocols published by the Electricity Commission.

<b>Protocol Reference</b>	<b>Description</b>
EIEP1	Detail Consumption Information (HHR & NHH)
EIEP2	NHH Summary Consumption Information
EIEP3	HHR Metering Information
EIEP4	Customer Information
EIEP5	Service Interruption Information to Retailer (Planned and Unplanned)
EIEP6	Fault and Service Requests
EIEP7	General Installation Status Change
EIEP8	Notification of Network Price Category and Tariff Change
EIEP9	Customer Location Address Change Notification
EIEP11	New Connections

Protocols to be agreed:

1. Discount/rebate files (where applicable); and
2. Meter readings (where applicable).

## SCHEDULE 3

### Service Interruption Communication Policies

#### Introduction

*[The following are examples of communication policy terms for Service Interruptions]*

#### Unplanned Service Interruptions

1. The Distributor will, as soon as reasonably practicable but no later than [5] 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 [10] 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 [10] minutes of a full or partial restoration of supply, details of the areas restored.
5. Unless otherwise agreed, the Distributor will be responsible for receiving and managing Unplanned Service Interruption calls from Consumers. However, where the Retailer receives a call from a Consumer relating to Unplanned Service Interruptions it may either:
  - (a) within [5] minutes of receiving information relating to a possible Unplanned Service Interruption, log the call and communicate by electronic file transfer in accordance with the relevant Information Exchange Protocol; or
  - (b) provide the Distributor's contact details to the Consumer.

Where the Retailer logs calls for the Distributor, the Distributor will include in its communications whether to stop logging calls.

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, 30 minutes in duration, and that affects, but is not necessarily limited to:
    - (i) more than [1,000] Consumers;
    - (ii) a central business district;
    - (iii) an industrial area;
    - (iv) supply to critical facilities such as hospitals, pumping stations, dairy farms; or
    - (v) 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**

- 7. For Planned Service Interruptions, the Distributor will decide whether option A or B will apply.

#### **Option A - Distributor to notify Consumers (Default)**

- A1. If required by the Distributor, the Retailer will provide Consumer contact information to the Distributor on a [monthly] basis. The information provided shall be in accordance with the relevant Information Exchange Protocol.
- A2. For all Planned Service Interruptions, the Distributor will provide affected Consumers with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least [4] Working Days prior to the date on which the Planned Service Interruption is scheduled.
- A3. The Distributor will provide the Retailer with a list of affected ICPs and details of the Planned Service Interruption using the appropriate Information Exchange Protocol at least [4] Working Days prior to the date on which the Planned Service Interruption is scheduled.

#### **Option B - Retailer to notify Consumers**

- B1. The Distributor will provide the Retailer with a notice using the appropriate Information Exchange Protocol at least [10] Working Days prior to the date on which the Planned Service Interruption is scheduled.
- B2. 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.
- B3. 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.
- B4. 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 using the appropriate Information Exchange Protocol as soon as reasonably practicable.
- B5. Where a Planned Service Interruption will affect all Consumers supplied from a Network Supply Point, the Distributor will arrange for public notification through the local newspapers on behalf of all retailers.

# **SCHEDULE 4**

## **Connection Policies**

### **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 4 sets out 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 2, or in the absence of an appropriate Information Exchange Protocol 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 (the 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 will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
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 that the Point of Connection 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 Point of Connection 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 of completion of the Energisation. Upon being advised of livening, including receipt of meter details, the Distributor shall advise the Retailer of the ICP number, the NSP it will be connected to and the applicable Price Category.

8. Both parties will update the Registry throughout this process in accordance with the Rules.

### **TEMPORARY DISCONNECTIONS AND ASSOCIATED RE-CONNECTIONS**

9. A Temporary Disconnection may be carried out in the following circumstances:
  - (a) by either party in an emergency where the interests of public safety require an immediate disconnection;
  - (b) on the instructions of the Retailer or the Distributor, for credit reasons;
  - (c) on the instructions of the Retailer or the Distributor, where requested by the Consumer, for safety or other reasons; or
  - (d) by the Distributor in the following circumstances:
    - (i) it is necessary to avoid endangering persons or property;
    - (ii) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or transmission system;
    - (iii) an Event of Default or Insolvency Event has occurred in relation to the Retailer;
    - (iv) where the Consumer fails to allow the Distributor access to the Consumer's premises as required by the Distributor's Agreement with that Consumer;
    - (v) where a Consumer interferes with the Distributor's Equipment, attempts to inject energy into the Network without the Distributor's consent or otherwise breaches the Distributor's Agreement with that Consumer; or
    - (vi) on termination of this agreement.
10. 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.
11. 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 instruct a Vacant Site Disconnection when it no longer sells electricity to an ICP.
13. If the Retailer chooses not to instruct a Vacant Site Disconnection when it no longer sells electricity to an ICP the Retailer shall reimburse the Distributor for the loss of any line charges incurred due to the site being Energised.
14. The Retailer may instruct a Vacant Site Reconnection when it requires Distribution Services for an ICP that had previously been De-energised as a Vacant Site, subject to the Distributor advising that it consents to the Reconnection. The Distributor will refuse consent, inter alia, if the Installation has not been Energised within the past 6 months, unless a safety inspection using a certified person has

been undertaken and a copy of the certificate issued following such an inspection is provided to the Distributor.

*[Practice note: the above assumes the Distributor has an interest in the energisation status of the property]*

15. The Retailer shall ensure that Vacant Site Disconnections and Reconnections are carried out by Warranted Persons in full compliance with the Distributor's reasonable operational work practices for managing vacant sites.

16. Where:

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

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 use reasonable endeavours in accordance with Good Industry Practice to complete the Vacant Site Disconnection;
- (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; 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.

17. The party performing the De-energisation or Re-energisation will, unless otherwise agreed, notify the other party within [2] Working Days of completion of the work.

18. Both parties will update the Registry throughout this process in accordance with the Rules.

## **PERMANENT DISCONNECTIONS**

19. Permanent Disconnection of an ICP may be carried out by the Distributor in the following circumstances, provided the requirements of section 62 of the Electricity Act 1992 are met:

- (a) on receipt of a request from a Consumer, land-owner or Retailer when electricity is no longer required at a particular ICP;
- (b) where public safety is at risk;
- (c) on receipt of the Registry "Inactive" status with reason "De-energised - ready for decommissioning" where a Retailer has Disconnected a site,

attempted to recover the meters, and updated the Registry to that status;  
or

- (d) where the Distributor has not supplied Distribution Services to an ICP for a considerable period (usually in excess of 6 months).
20. 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 and removal of any associated meters). In all circumstances the property is to be left electrically safe.
  21. The party performing the Permanent Disconnection must notify the other party within [2] Working Days of the work having been completed.
  22. 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 Point of Connection.
  23. Both parties will update the Registry throughout this process in accordance with the Rules.

#### **UNMETERED SUPPLIES**

24. Where the Retailer is responsible for an ICP that includes Unmetered Supply, the Retailer will manage the Registry functions required for the Unmetered Supply in accordance with the Rules.
25. The Distributor will maintain a database of ICPs that include Unmetered Supply and where it becomes aware of changes to any Unmetered Supply, the Distributor will update its database and notify the Retailer of those changes, and the Retailer will update the Registry in accordance with the Rules. The detail included in the database shall include at a minimum, information necessary to support the Registry. Where the Retailer becomes aware of changes to an Unmetered Supply associated with an ICP, it will notify the Distributor of those changes and update the Registry in accordance with the Rules.
26. Where the Retailer notifies the Distributor that Unmetered Supply is shared between several Consumers, the Distributor will if requested allocate the Unmetered Supply to the appropriate ICP and advise the Retailer and all other affected retailers. The Retailer will update the Registry in accordance with the Rules.

## SCHEDULE 5

### Load Management Service

1. **Distributor to provide a Load Management Service:** The Distributor will provide a Load Management Service for the Retailer for the following purposes:
  - (a) optimising energy costs of the Retailer;
  - (b) providing the Retailer with signals to switch meters or loads; or
  - (c) providing a price signal.
2. **[Priority:** The Retailer acknowledges that:
  - (a) the Distributor will only accept instructions for the above purposes when the Load Management is not required for any other purpose; and
  - (b) the Distributor may supply a Load Management Service to other parties, who may receive higher priority than the Retailer.]

*[Practice note: the priority is a matter of negotiation and will presumably reflect the agreed price for the service and any existing terms and conditions]*

3. **Instructing Retailer:** The parties acknowledge that for the purposes of taking the above service the Retailer has appointed the retailer that supplies the majority of ICPs which are under load management (the “**Instructing Retailer**”) as its agent to issue instructions for the activation of a Channel that manages load at ICPs supplied by multiple retailers. Where the right to issue instructions has been established the Distributor will provide specific Load Management Services to the Instructing Retailer during periods when the Distributor does not need to operate load management for network related purposes on the following basis:
  - (a) To enable this service to be provided the Instructing Retailer 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.
  - (b) 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 Retailer and the Distributor.
  - (c) 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 Retailer 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.
  - (d) Both the Distributor and Retailer will act in accordance with any industry protocol for extended hot water cuts.
  - (e) The Distributor shall comply with the additional Load Management Services request unless it otherwise notifies the Instructing Retailer at least 4 hours prior to commencement of the instruction.

- (f) 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.
  - (g) Due to the nature and constraints of the existing load management equipment, the Distributor may not be able to offer the Instructing Retailer 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 Retailer's requests.
  - (h) Where the Distributor cannot accommodate a request using existing equipment, it will supply a price to install new Load Signalling Equipment that can meet the Instructing Retailer's requirements.
4. The Retailer indemnifies the Distributor against any claims made by Consumers or other retailers for any loss incurred by the Distributor in acting under paragraph 3(c).
5. **Retailer may purchase services to shift load between network supply points:** Where practical, and requested by the Instructing Retailer, the Distributor will shift load between Network Supply Points provided that all retailers receiving services from the Distributor in the relevant Network area have signed an agreement equivalent to this agreement or have agreed to terms that have substantially the same effect as paragraphs 3 and 5 of this schedule 5.

## **SCHEDULE 6**

1 Loss Factors

## SCHEDULE 7

### Load Management Policy

**(Audit clause)**

- 1.1. 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 Consumers' appliances.
- 1.2. Where a sample audit shows that Load Management is not functional for in excess of [2]/[5]% of the Retailer's Consumers sampled, 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. Subject to paragraph 1.4 of this schedule 7, the Retailer agrees that the reasonable costs of any inspection (including the initial audit) and repair work identified will be at its cost.
- 1.3. 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.
- 1.4. Where a sample audit shows that Load Management is functional for [98]/[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.

# SCHEDULE 8

## Billing Services

*[Practice Note: The settlement frequency, which has been left blank in this model, needs to be negotiated by the respective parties. The parties should take relevant issues into account, such as cash flow implications.]*

### 1. BILLING

- 1.1 **Monthly billing.** Each month the Retailer will, on behalf of the Distributor, invoice each Consumer of the Retailer, unless requested otherwise under paragraph 1.6, the line and other charges as nominated by the Distributor, in accordance with the Distributor's schedule of charges.
- 1.2. **Retailer calculates charges:** The Retailer will calculate the Distributor's charges payable by the relevant Consumer under the relevant Distributor's Agreement for the provision of Distribution Services in respect of each ICP. The charges will be calculated by the Retailer using the appropriate Price Category and capacity as advised by the Distributor in respect of the periods in which such Price Category applies and, unless the ICP is an Unmetered Supply or otherwise paying a fully fixed line charge, the relevant meter reading data in the possession of the Retailer or, if no such meter reading data is available, using an Assessment Method.
- 1.3. **Retailer prepares and sends invoices:** The invoices which the Retailer prepares and sends to each Consumer will be:
- (a) sent monthly unless otherwise agreed between the parties; and
  - (b) in the format set out in Appendix A. Should the Distributor wish to have the format changed, it will first give the Retailer [60] Working Days notice of its proposed format. The Distributor will consider, in good faith, any representations the Retailer shall make on the billing practicalities of effecting the format change, and make any amendments it considers necessary to its proposed format in light of those representations.
- 1.4. **Prepayment meters:** If any ICP has Metering Equipment installed in respect of which the Consumer must pay for electricity and Distribution Services before such Services are consumed or supplied and does not receive invoices in respect of such Services ("**Prepaid Metering**") then, in respect of that ICP:
- (a) the Retailer will not be required to send a bill to the Consumer;
  - (b) the total charge for Distribution Services included in the amount received from that Consumer will be estimated by the Retailer on receipt of such payment by applying the Price Category in respect of that ICP as advised by the Distributor to the Retailer's estimate of that Consumer's electricity consumption calculated in accordance with an Assessment Method;
  - (c) the above will be re-calculated by the Retailer on receipt of a meter reading with any alteration being made to the information provided under paragraph 3.1.
- 1.5. **Invoice amendments:**
- (a) Where the Distributor notifies the Retailer pursuant to paragraph 3.6 that it requires an amendment the Retailer will, where practical, incorporate those

adjustments in the next invoice sent to the relevant Consumer and otherwise in the invoice following the next invoice sent to that Consumer.

- (b) The Retailer will, if it becomes aware of an error, correct or amend any information in relation to an invoice sent to a Consumer if the error relates to the Distributor. The Retailer will, where practical, incorporate those adjustments in the next invoice sent to the relevant Consumer and otherwise in the invoice following the next invoice sent to that Consumer.
- (c) Notwithstanding paragraphs 1.5(a) and 1.5(b) above, the Retailer's obligations under this paragraph 1.5 are subject to the Distributor warranting to the Retailer that it has the right under its Distributor's Agreement to adjust Consumer invoices as a result of corrected or amended information.
- (d) If, at any time, it is discovered that the Metering Equipment is not accurately recording metering data, the Retailer will, if applicable, send an invoice to that Consumer in respect of the amounts due to or by the Distributor provided the Distributor has the right under its Distributor's Agreements to adjust Consumer invoices as a result of inaccurate metering data.

1.6. **Exempt ICPs:** Billing Services shall not be supplied to the ICPs set out in Appendix B. The Distributor, on giving [20] Working Days notice, may add or retract any ICP from Appendix B.

## 2. PRICES AND PRICE CATEGORIES

2.1. **Notice of price changes:** The Distributor will give the Retailer [20] Working Days written notice of any price adjustment to existing Price Categories.

2.2. **Notice of Price Category Consumer changes:** The Distributor will give the Retailer [20] Working Days notice of the change of any Consumer to a different Price Category.

2.3. **Notice of adoption of new Price Categories:** The Distributor will give the Retailer [40] Working Days notice of the introduction of any new, and the abandonment of any existing, Price Category, which will include a list of the ICPs affected.

2.4. **Retailer request for correction of Price Category:** If the Retailer reasonably considers that a Price Category has been inappropriately allocated to an ICP, the Retailer will notify the Distributor and the Distributor will advise the Retailer, within [10] Working Days, as to whether or not it agrees to allocate a different Price Category to that ICP. The Retailer will provide the Distributor with the reasons why it considers the Price Category has been inappropriately allocated to an ICP, and the Distributor will provide to the Retailer information relevant to its decision.

2.5. **[Payment] [Credit] following correction:** If the Distributor allocates a different Price Category to an ICP then the Distributor will calculate the credit due to any Consumer, if any, under the Distributor's Agreement and *[option 1 – pay that amount directly to the Consumer] [option 2 – notify the Retailer, who will credit the amount to the Consumer]*.

2.6. **Indemnity:** The Retailer shall indemnify the Distributor for loss suffered by the Distributor where the Distributor has allocated a lower Price Category to an ICP than the Price Category which should have applied because the Retailer has:

- (a) 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

- (b) provided the Distributor at any time 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,

and the Distributor is unable to recover from the Consumer the difference between the charges which were applied under the lower Price Category and the charges which should have applied under the correct Price Category.

- 2.7. **Changes due to metering:** The Retailer shall notify the Distributor of the need to change the Pricing Category applying at an ICP where the change results from a change in Metering Equipment (and/or Load Control Equipment where applicable) within [10] Working Days of the equipment change.

### 3. INFORMATION

- 3.1 **Retailer to report invoice information to the Distributor:** The Retailer will provide to the Distributor within [7] Working Days of the end of each [*specify period*] (the "**Billing Period**") the information in respect of invoices for Distribution Services issued by the Retailer to Consumers in that Billing Period, the format and content to be in accordance with the appropriate Information Exchange Protocol.
- 3.2 **Distributor verification:** If the Distributor calculates that the aggregate amounts due to the Distributor which should have been included in invoices sent to Consumers in the Billing Period, is not equal to the amounts actually charged by the Retailer, or the Distributor otherwise requires clarification of any of the information provided to the Distributor pursuant to paragraph 3.1, then the Retailer will provide such assistance to the Distributor as the Distributor may reasonably require.
- 3.3 **Reliance on information:** The Retailer will, so long as it acts in good faith and without knowledge of any error in information provided by the Distributor, be entitled to rely without inquiry on, and act upon, information provided by or on behalf of the Distributor.
- 3.4 **Final bill:** If the Retailer ceases to be the Retailer for an ICP, the Retailer will take account of charges by the Distributor in respect of the period between the date of the last invoice and the date of either the Retailer ceasing to be the Retailer or Disconnection, in the final invoice to be prepared by the Retailer in respect of that ICP.
- 3.5 **Storage:** Recognising that the Distributor has obligations to retain records under the Tax Administration Act 1994 and the Goods and Services Act 1985 and in order for the Distributor to be able to comply with its obligations in relation to the retention of records under this legislation, the Retailer will ensure that copies of each invoice sent to Consumers under this agreement, together with all information on which such invoice is based, are retained electronically for itself and on behalf of the Distributor in a secure storage facility for a period of not less than 7 years from the last date of the income tax year during which the invoice was issued.
- 3.6 **Corrections to information:** The Distributor may, at any time, by notice to the Retailer correct or amend any information in relation to an invoice sent to a Consumer and advise the Retailer of adjustments which it requires to be made in accordance with paragraph 1.5(a).

#### 4. PAYMENT

4.1. **Payment if report:** If the Retailer has delivered the report required under paragraph 3.1 (“**Required Report**”) by the 7th Working Day following the Billing Period (“**Reporting Date**”) in respect of the invoices issued by the Retailer to Consumers in the previous Billing Period, then the Retailer will pay to the Distributor on or before the 20<sup>th</sup> day following the Billing Period (“the **Payment Date**”) an amount equal to the total amount invoiced to Consumers for the provision of the Distribution Services for the Billing Period.

4.2. **Payment if no report:** If the Retailer has not delivered the Required Report by the Reporting Date the Retailer will pay to the Distributor on or before the Payment Date an amount reasonably determined by the Distributor to be the total amount that should have been invoiced by the Retailer to Consumers for the provision of the Distribution Services in the Billing Period.

4.3. **Payment if no or incorrect invoice:** If:

- (a) the Distributor reasonably believes that the Retailer should have invoiced a Consumer in the Billing Period for the provision of Distribution Services to an ICP but the Retailer did not invoice that Consumer in respect of that ICP; or
- (b) the Distributor advises the Retailer under paragraph 3.6 that an invoice is incorrect, and the correction is not due to new information,

then the Distributor may reasonably determine the amount payable by the Retailer to the Distributor for the provision of Distribution Services to that Consumer in respect of the relevant ICP, and the Retailer will pay to the Distributor that amount on or before the next Payment Date.

4.4. **Overpayment or underpayment for Distribution Services:** If:

- (a) paragraph 4.2 applies and the Retailer subsequently delivers the Required Report and the Required Report shows that the amount determined by the Distributor under paragraph 4.2 has resulted in the Retailer overpaying or underpaying the Distributor in respect of Distribution Services for the relevant month; or
- (b) paragraph 4.3 applies and the Retailer subsequently invoices the Consumer, and the Required Report shows the amount determined by the Distributor under paragraph 4.3 has resulted in the Retailer overpaying or underpaying the Distributor in respect of Distribution Services for the relevant ICP for the relevant month,

then:

- (c) in the case of overpayment, the Distributor shall repay to the Retailer the amount of such overpayment together with a Use of Money Adjustment from the date of the overpayment to the date of repayment; or
- (d) in the case of underpayment, the Retailer shall pay to the Distributor the amount of such underpayment together with a Use of Money Adjustment from the date the payment should have been made to the date of payment,

in each case such payment to be made within 10 Working Days of provision of the Required Report or invoicing (as applicable).

#### 4.5. **Payment:**

- (a) All payments by the Retailer are to be made by electronic funds transfer to the New Zealand dollar bank account nominated for such purpose from time to time by the Distributor without set off, deduction or withholding except as permitted by paragraph 5.6.
- (b) Where any payment is not received by the due date, a late payment charge may be applied, calculated by applying the Default Interest Rate on the daily balance outstanding for each day after the due date until, and including, the day of payment and compounded monthly.

### 5. **ASSIGNMENT OF DEBT**

5.1. **Assignment:** The Distributor will, simultaneously with and conditional upon receipt by the Distributor of:

- (a) a payment under paragraph 4.1 which has become cleared funds, assign to the Retailer all of the Distributor's interest in the amount payable by Consumers for the provision of Distribution Services in the previous month;
- (b) a payment under paragraph 4.2 which has become cleared funds, assign to the Retailer all of the Distributor's interest in the amount determined by the Distributor to be the amount payable by Consumers for the provision of the Distribution Services in the previous month;
- (c) a payment under paragraph 4.3 which has become cleared funds, assign to the Retailer all of the Distributor's interest in the amount determined by the Distributor to be the amount payable by the Consumer for the provision of the Distribution Services in the previous month.

5.2. **Non recourse:** Subject to paragraph 5.6, from the time that the Distributor's interest in an amount is assigned in accordance with paragraph 5.1, the Retailer will have no right of recourse to the Distributor in respect of the non-payment by a Consumer of all or part of any amount payable by that Consumer for the provision of Distribution Services.

5.3. **Corrected invoices:** If the Retailer corrects any invoice to a Consumer after the end of the Billing Period in which such invoice was issued, the amount payable by the Retailer to the Distributor pursuant to paragraph 4 in respect of the Billing Period in which the invoice was corrected shall be reduced or increased (as the case may be) so that the total amount paid by the Retailer to the Distributor pursuant to paragraph 4 in respect of that month is increased or reduced (as the case may be) by an amount equal to the increase or reduction arising from correcting the invoice.

#### 5.4. **GST:**

- (a) It is the intention and understanding of the parties that the supply constituted by the assignment of all the Distributor's interest in the amounts referred to in paragraph 5.1 by the Distributor to the Retailer is exempt from GST under the "financial services" exemption contained in the Goods and Services Tax Act 1985 and that therefore the Distributor is not required to account to the Inland Revenue Department for GST in relation to that supply.
- (b) If this understanding is not correct and the Inland Revenue Department determines that the supply constituted by the assignment of all the

Distributor's interest in the amounts referred to in paragraph 5.1 by the Distributor to the Retailer is subject to GST, the Retailer will pay to the Distributor the amount of such GST (together with all penalties, interest, additional tax or the like), in addition to the amount payable under paragraphs 4.1, 4.2 or 4.3(a) (as the case may be), provided that the Retailer's liability in respect of such GST together with penalties, interest, additional tax or the like shall only extend to such GST together with penalties, interest, additional tax or the like arising on or in respect of supplies constituted by assignments made after the date when the Distributor notified the Retailer that the supply constituted by the assignment of the amounts referred to in paragraph 5.1 of the Distributor to the Retailer was subject to GST.

- (c) In the event that paragraph 5.4(b) is applicable, the Distributor will issue the Retailer with a GST invoice for the amount due in respect of the supply constituted by the assignment of the amounts referred to in paragraph 5.1, in order that the Retailer has documentation so that it may seek to claim a GST input tax credit equal to that GST paid to the Distributor.

5.5. **Distributor warranty:** At the time of each assignment of the amounts referred to in paragraph 5.1 or 5.8 by the Distributor pursuant to paragraph 5.1 or the Retailer pursuant to paragraph 5.8 (the "**Assignor**"), the Assignor shall be deemed to warrant to the other party in respect of each such amount that:

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

5.6. **Genuine Consumer disputes:** A genuine Consumer dispute ("**Genuine Consumer Dispute**") between the Distributor and a Consumer in respect of that Consumer's liability to pay the Distributor an amount for Distribution Services shall be deemed to occur when:

- (a) the Consumer has notified the Distributor of a dispute for an amount for Distribution Services; and
- (b) the dispute is genuine (e.g. the dispute is as to the level of the capacity assigned to the Consumer, as to whether the Consumer is being charged on the correct Pricing Category or as to whether the Distributor's tariff has been correctly applied to the Consumer's ICP but does not include where the Consumer is disputing the prices charged where such prices are in accordance with the Distributor's Agreement with that Consumer) and the dispute has not arisen as a result of the action of a Retailer.

5.7. Where a Genuine Consumer Dispute has occurred, then the Retailer will not be obliged to make any payment to the Distributor in respect of the amount to which the Genuine Consumer Dispute relates, and the Distributor will not assign its interests in the amount payable for Distribution Services by that Consumer, in accordance with the terms of this agreement until such time that the Genuine Consumer Dispute is resolved and the terms of the resolution are advised to the Retailer and then the amount payable by the Retailer and assignable by the Distributor shall be adjusted to reflect the resolution of the Genuine Consumer Dispute.

5.8. If the Retailer makes payment notwithstanding the Genuine Consumer Dispute (including because the Retailer was not aware of the Genuine Consumer Dispute

prior to the payment being made or was aware of the Genuine Consumer Dispute but was not able to remove such payment from the aggregate sum paid to the Distributor) then the Retailer shall be entitled to require the Distributor to repay the amount in Genuine Consumer Dispute to the Retailer and simultaneously with and conditional upon receipt by the Retailer of such payment the Retailer will re-assign to the Distributor all the Retailer's interest in the sum in Genuine Consumer Dispute assigned to the Retailer by the Distributor.

## 6. PRUDENTIAL REQUIREMENTS

6.1 **Circumstances where the Retailer must satisfy prudential requirements:** The Retailer will comply at its election with one of the following prudential requirements when required by the Distributor:

- (a) **Holding and maintaining an acceptable credit rating:** holding and maintaining an acceptable credit rating in accordance with paragraph 6.2;
- (b) **Paying a cash deposit:** paying a cash deposit (or transferring or granting security over equivalent assets if agreed by the parties) of the amount required in accordance with this paragraph ("**Cash Deposit**"). If a Cash Deposit is paid, the Distributor will deal with such funds in accordance with the Trust Account Rules specified in paragraph 6.17;
- (c) **Third party security:** arranging 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 in accordance with this paragraph, provided the party providing the security maintains an acceptable credit rating in accordance with paragraph 6.3:
  - (i) **Guarantee or letter of credit:** an unconditional guarantee or letter of credit in favour of the Distributor;
  - (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:** providing any combination of the securities listed in paragraphs 6.1(b) or (c) above or any similar securities approved by the Distributor.

6.2 **Acceptable credit rating:** For the purposes of paragraph 6.1(a) an acceptable credit rating means that the Retailer must carry a long-term credit rating:

- (a) of at least [Baa2] (Moody's Investor Services Inc), [BBB] (Standard & Poors Ratings Group), [B] (AM Best), or an equivalent rating from any other reputable rating agency which is acceptable to the Distributor; and
- (b) if the Retailer has the minimum acceptable credit rating, this rating is not subject to negative credit watch.

6.3 **Acceptable credit rating:** For the purposes of paragraph 6.1(c) an acceptable credit rating means that the third party security provider must carry a long-term credit rating:

- (a) of at least [A2] (Moody's Investor Services Inc.), [A] (Standard & Poors Ratings Group), [B++] (AM Best), or an equivalent rating from any other reputable rating agency which is acceptable to the Distributor; and
  - (b) if the third party security provider has the minimum acceptable credit rating, this rating is not subject to negative credit watch.
- 6.4 **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 defined in paragraph 6.2 or 6.3) as the Distributor or its agent may from time to time reasonably require.
- 6.5 **Level of security:** Where the Retailer provides a Cash Deposit, or has a third party provide a guarantee, letter of credit or bond to satisfy the prudential requirements in paragraph 6.1, the maximum amount of the Cash Deposit, or maximum amount which may be payable pursuant to the guarantee, letter of credit or bond, is the Distributor's reasonable estimate of the charges for Distribution services payable by Consumers for [2] months (GST inclusive) payable by the Retailer plus any disputed amount withheld by the Retailer in the case of a disputed invoice.
- 6.6 **Distributor to calculate new Retailer's level of security:** If the Retailer has not previously entered into a contract with the Distributor for Billing Services, the Distributor will calculate the requisite level of security required pursuant to paragraph 6.5 for the first [6] 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 paragraph 6.6(a) a bona fide business plan prepared in good faith to permit a realistic estimate of the Retailer's level of security defined in clause 6.5.
- 6.7 **Review of security level:** At any time, the Distributor may review or the Retailer may require the Distributor to review and, if appropriate, change the level of security required to be held by the Retailer in accordance with paragraph 6.5 or if no security has been provided by the Retailer due to the Retailer having an acceptable credit rating in accordance with paragraph 6.2 and the Retailer has failed to maintain an acceptable credit rating under paragraph 6.2, require the Retailer to provide additional security in accordance with this paragraph 6. Where either party has by written notice required the other to review the level of security, the other party must make any appropriate changes to that level within [20] Working Days of receiving the notice.
- 6.8 **Retailer to notify Distributor of changes affecting security:** Subject to paragraph 6.9, the Retailer is to immediately notify the Distributor should any of the following occur:
- (a) the Retailer gives a notice (in accordance with rules 4.2.2 or 4.3.2 of Part H of the Rules) of a change to its security status; or
  - (b) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to purchase Services will be consequentially affected; or

- (c) the Retailer learns that a third party security provider (upon which its current satisfaction of the prudential requirements in this paragraph 6 is dependent) no longer holds an acceptable credit rating in terms of paragraph 6.3.

Any information provided by the Retailer to the Distributor under this paragraph shall be Confidential Information.

**6.9 Public issuers and listed companies:** For the purpose of paragraph 6.8 below, if the Retailer:

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

**6.10 Distributor may make enquiries:** Where the Distributor believes that the Retailer should have given notice under paragraphs 6.8(a) to 6.8(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. Any such enquiry shall be in writing and be addressed to the Chief Executive of the Retailer. 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 paragraph 6.10. Correspondence sent or received by either party under this paragraph shall be Confidential Information.

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

- (a) following a review of the Retailer’s security level pursuant to paragraph 6.7;
- (b) on receipt of information contemplated by paragraph 6.8 or 6.10; or
- (c) as a result of a failure of the Retailer to respond to a letter in terms of paragraph 6.10 within the timeframe set out above,

considers on reasonable grounds that the level of security should subject to paragraph 6.5, be increased or decreased or that reliance on an acceptable credit rating is no longer sufficient security, the Distributor will immediately notify the Retailer of its decision and the grounds for that decision. For the avoidance of doubt, failure by the Retailer to respond to a request made under paragraph 6.10 within the required timeframe shall constitute reasonable grounds for a Distributor to, subject to paragraph 6.5, alter the security required to be provided by the Retailer.

**6.12 Distributor or Retailer to effect changes in the 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 the type of security notified by the Distributor, within [5] Working Days of notification under paragraph 6.11. Refunds of Cash Deposits and reductions of guarantees, letters of credit and bonds will be made in accordance with paragraphs 6.13 or 6.14.

**6.13 Refund of Cash Deposits:** If the Distributor refunds a Cash Deposit in accordance with this paragraph 6, 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 made the decision to refund the Cash Deposit, or is required to refund the Cash Deposit in accordance with the Trust Account Rules.

**6.14 Reduction in guarantees etc:** If the Distributor decreases the level of 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 paragraph 6.1(c) which will replace the earlier guarantee, letter of credit or bond.

**6.15 Change of security by Retailer:** If the Retailer elects to substitute a form of security or a combination of securities (which, in either case, would satisfy the requirements of paragraph 6.1) for the existing form of security or combination of securities, provided in accordance with this paragraph 6, then the Retailer will notify the Distributor of its intention at least [2] Working Days prior to the change occurring and such change will come into effect on the intended date provided the Retailer has complied with all its obligations under this agreement, and upon confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided which satisfies the requirements of paragraph 6.1. Any refund of a Cash Deposit, or any release or replacement of a guarantee, letter of credit or bond provided in accordance with paragraph 6.1, that results from such a change will take place in accordance with paragraphs 6.13 or 6.14.

**6.16 Calls on security and deemed change of security:** If the Retailer fails to pay an amount pursuant to this agreement which is not subject to a genuine dispute, the Distributor may on [2] Working Days notice to the Retailer call on the provider of the guarantee, letter of credit or bond to make payment in accordance with the guarantee, letter of credit or bond. Where the provider of a guarantee, letter of credit or bond makes a payment to the Distributor in order to be released from its obligations pursuant to the guarantee or letter of credit or bond, such payment will be deemed to constitute a Cash Deposit provided in substitution for the letter of credit or guarantee or bond (as the case may be) and paragraph 6.1 will apply accordingly.

**6.17 Trust Account Rules:** The Distributor will comply with the following rules in relation to the establishment and operation of the trust account set up in accordance with paragraph 6.1(b):

- (a) the Distributor will establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding cash deposits received from retailers in accordance with the relevant prudential requirements agreed with any retailer ("**Trust Account**");
- (b) the Retailer's Cash Deposit will be credited into a sub-account, separate from all other amounts deposited into the Trust Account and clearly identified as relating to the Retailer's funds;
- (c) the Distributor must obtain acknowledgement from each Bank with which has a Trust Account that the Cash Deposits are held on trust in the Trust Account for the purposes set out in paragraph 6.17(a) and that the Bank has no right of set-off or right of combination in relation to the Cash Deposits;

*[Practice note: MDARP asked the New Zealand Bankers' Association (NZBA) whether, in the event the Retailer went into receivership (or similar event) and the*

*Retailer is a customer of the bank, the bank would be prepared to waive any right of set-off.*

*The NZBA was not in a position to advise on this. Accordingly, the Distributor is advised to check this point with the bank if the Retailer uses the same bank. Paragraph 6.17 below requires the Retailer to inform the Distributor of the bank(s) the Retailer uses.]*

- (d) the Retailer will inform the Distributor of the bank(s) the Retailer uses for its banking purposes and if the Retailer changes banks;
- (e) the Trust Account will bear interest at the best rate reasonably obtainable from time to time from the Bank. Interest will be paid out to the Retailer on a quarterly basis net of account fees and any withholdings required by law, unless agreed otherwise;
- (f) the Distributor will refund the Cash Deposit (less any amount owed to the Distributor plus interest) to the Retailer in accordance with paragraph 6.13 in the event that this agreement is terminated, provided that the Retailer:
  - (i) is not otherwise in default of this agreement;
  - (ii) has ceased to be bound by this agreement; and
  - (iii) has discharged all its obligations to the Distributor, including payment of all outstanding amounts under this agreement;
- (g) in the event that the Retailer fails to pay an amount pursuant to this agreement, which is not subject to a genuine dispute, the Distributor may, on [2] Working Days notice (provided that this notice requirement shall not apply to deemed Cash Deposits under paragraph 6.16) draw down that amount, plus Default Interest from the Cash Deposit and the Distributor will immediately notify the Retailer of the amount drawn down;
- (h) The Distributor will provide the Retailer with an annual report in respect of the operation of the relevant subaccount of the Trust Account if requested by the Retailer.

**6.18 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 the requirements set out in paragraph 6.17(f).

## **7. REPRESENTATION LETTER**

**7.1 Representation Letter:** Representation letter (“**Representation Letter**”) means a letter from the Retailer addressed to the Distributor’s auditors which:

- (a) confirms in respect of the relevant period whether so far as the Retailer is aware the Retailer meets the following requirements:
  - (i) the systems, processes and controls operated by the Retailer are adequate to ensure the completeness and accuracy of all billing and other transactional processing functions set out in this agreement insofar as they relate to the Distributor;
  - (ii) the Retailer has reported accurately to the Distributor in accordance with its obligations under this agreement;

- (iii) the Retailer has complied with its obligations under paragraph 6; and
- (iv) the Retailer has complied with all tax and other relevant legislation in the performance of its obligations under this agreement;

and

- (b) records any material non-compliance by the Retailer with the terms of this agreement of which the Retailer has become aware.

## 7.2 **Provision of Representation Letter:**

- (a) Prior to the end of the Distributor's financial year, the Distributor may if the Retailer is providing Billing Services, request in writing that the Retailer deliver to the Distributor a Representation Letter in respect of that financial period.
- (b) The Retailer will provide the Representation Letter to the Distributor within the period specified, which will be not less than [10] Working Days from receipt of the request.

## 8. **INFORMATION INSPECTION**

8.1. **IRD and regulatory inspection:** The parties will facilitate the reasonable inspection of all relevant records and books of account in the possession or control of that party (including those matters held on behalf of the Distributor under paragraph 3.5) required to be inspected by the Inland Revenue Department or other regulatory organisation (provided the Inland Revenue Department or such regulatory organisation is entitled by law to require such inspection) in relation to the Distributor or Retailer for the periods which that party is providing these Services. The Retailer or Distributor will cooperate with the Inland Revenue Department or such other regulatory organisation to facilitate a timely inspection and shall be entitled to seek reasonable costs from the requesting party.

8.2. **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, 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 provided the Verifier has given the Provider not less than [10] Working Days prior notice.

8.3. **Limitations on the Verifier:** In relation to its review of the Records, 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, or agent of such persons. For the purposes of this paragraph 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.

8.4. **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 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 paragraph 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.

8.5 **Provider must co-operate:** The Provider must co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider’s Records under paragraph 8.2 and will ensure that the Records are readily accessible and readable.

## 9. TERMINATION OF BILLING ARRANGEMENTS

- 9.1. **By Notice:** Either party may by giving [3] months notice terminate the Billing Service provided that no notice is given before *[date to be inserted]*.
- 9.2. **Fee review:** Notwithstanding clause 9.10 of this agreement, neither party may seek a review of the fee for billing service until the expiry of the date contained in paragraph 9.1.
- 9.3. **Retailer in breach:** If the Retailer fails to comply with any of its obligations under this schedule, or a Representation Letter provided in accordance with paragraph 7 indicates that the Retailer is in material breach of any of its obligations under this schedule and the Retailer has failed to remedy that breach then clauses 12 and 13 will apply, provided that the Distributor may terminate the Billing Service only rather than the whole agreement.
- 9.4. **Data:** The Retailer will grant the Distributor or a third party contracted to provide billing services to the Distributor access to, or provide, all the metering data obtained by the Retailer in respect of the ICPs previously billed by the Retailer together with, if held by, or under the control of, the Retailer, the metering data for the previous 12 months in respect of that ICP or those ICPs so as to enable the Distributor or that third party to invoice the relevant Consumer or Consumers. The Retailer will be entitled to charge the Distributor the actual and reasonable cost for supplying this data. If the parties do not agree to this amount this dispute shall be resolved in accordance with the dispute resolution procedure in clause 17 and if the Retailer fails to provide or grant the Distributor or the third party access to metering information, then the Retailer will be liable for all reasonable costs and/or expenses incurred, payable or suffered by the Distributor as a result of such failure.

## **APPENDIX A**

*[Format which Retailer must use for Consumer invoices]*

**APPENDIX B**

*[List of ICPs exempt from Billing Services]*

## SCHEDULE 9

### Data Collection Services

1. The parties listed below agree to provide data collection services to each other on the terms set out in this schedule.
2. Either party (the “**Requesting Party**”) may request the other party (the “**Data Collector**”) to undertake any or all of the following:
  - (a) Regular meter reading(s) of the Metering Equipment at (an) ICP(s), in which case the Data Collector will ensure that the requested data from the Metering Equipment installed in relation to the ICPs nominated is collected no less frequently than [once in each 3 month period].
  - (b) Special meter reading(s) of the Metering Equipment at (an) ICP(s). Such a request must be given at least 48 hours prior to the proposed read.
  - (c) Other data as nominated by the Requesting Party.
3. If there is no fee provided in Schedule 10 for the data collection requested, the Data Collector shall, prior to undertaking the collection, provide to the Requesting Party a price for the work. No work shall be undertaken unless the Requesting party confirms the request following receipt of the price.
4. On receipt of a request under paragraph 2, and subject to paragraph 3, the Data Collector will endeavour in accordance with Good Industry Practice to collect the requested data in accordance with the request. If the Data Collector is unable to collect the data, the Data Collector shall notify the Requesting Party.
5. Where the Data Collector collects the data and provides it to the Requesting Party, the Requesting Party will pay the appropriate fee as set out in Schedule 10, or as agreed in accordance with paragraph 3.
6. Where the Rules apply to the collection of the data, the data collection services will be undertaken in accordance with the Rules.
7. The Data Collector will provide the data in accordance with the appropriate Information Exchange Protocol unless otherwise agreed.
8. Listing of parties: *[insert name(s) of party/parties agreeing to provide data collection services]*
9. Either party may by giving [3] months notice terminate the data collection services, provided that no notice is given before *[date to be inserted]*.

## **SCHEDULE 10**

### **Fees**

Fees for the provision of information:

Fees for Services: