

Use of System Agreement

Powerco Limited (Distributor)

[insert name] (Retailer)

draft

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draft

USE OF SYSTEM AGREEMENT

PARTIES

Distributor	Retailer
Powerco Limited (trading as The Gas Hub) Company number 1021162	[insert name] Company number []
Level 4, 1 Grey St PO Box 62 Wellington 6140	[address 1] [address 2] [address 3]
Attention: [] Email: []	Attention: [] Email: []

BACKGROUND

A The Distributor owns and operates the Network, and provides line function services enabling the conveyance of Gas over that Network. The Retailer wishes to sell Gas to consumers at ICPs connected to the Network.

B This agreement sets out the terms on which the Distributor will provide the Services, enabling the conveyance of Gas over the Network, to Consumers purchasing that Gas from the Retailer at each relevant ICP.

COMMENCEMENT DATE

[]

SIGNATURES

Signed for Powerco Limited by:	Signed for [insert name] by:
_____	_____
Name:	Name:
Position:	Position:
Date:	Date:

THE PARTIES AGREE as follows:

PART I: SERVICES

1 OVERVIEW

1.1 Term

This agreement shall commence on the Commencement Date and shall continue until it is terminated pursuant to clause 17.

1.2 Services

Subject to the terms of this agreement, the Distributor will take all steps generally expected as a matter of Good Industry Practice to:

- (a) maintain and operate the Network in compliance with relevant Laws;
- (b) provide conveyance of Gas over the Network to each Active ICP;
- (c) provide a 24 hour, seven day a week, diagnosis, repair and information service to deal with Unplanned Service Interruptions; and
- (d) meet each Service Standard applicable to the Distributor.

To avoid doubt, the Services do not include any services in relation to GMS assets, or the right to use any GMS assets.

1.3 Retailer obligations

Subject to the terms of this agreement, the Retailer will take all steps generally expected as a matter of Good Industry Practice to:

- (a) provide a 24 hour, seven day a week, information service to deal with Unplanned Service Interruptions;
- (b) maintain and operate a process of revenue assurance to minimise Losses at the Retailer's Points of Connection; and
- (c) meet each Service Standard applicable to the Retailer.

1.4 Connections

- (a) Subject to the terms of this agreement, the Distributor will allow each Consumer's Installation that complies with the Network Connection Standards to remain connected to the Network, and will consider applications for new connections and changes to capacity for existing connections in accordance with the Connection Policies and Network Connection Standards.
- (b) Except as permitted by the terms of this agreement, the Retailer will not disconnect or isolate from the Network any Consumer's Installation that complies with the Network Connection Standards. Subject to the terms of this agreement, the Retailer will process any applications for new connections or changes to capacity for existing connections in accordance with the Connection Policies.

2 **RELATIONSHIPS WITH CONSUMERS**

2.1 **Consumer Contract**

The Retailer will ensure that it has a current Consumer Contract with each Consumer, on terms consistent with the requirements of clause 20.

2.2 **Orphan ICPs**

Where the Distributor becomes aware that a consumer is being supplied with Gas over the Network without being party to a current Line Services Agreement or a current Consumer Contract that includes the provision of Line Function Services, or that a Line Services Agreement with that consumer is about to expire or be terminated, then without limiting any other right of the Distributor under this agreement, the Distributor will give notice to the Retailer (along with any other retailers operating in the relevant region) suggesting that they take up the opportunity to enter into a Consumer Contract with that consumer in respect of the corresponding ICP. Unless within 10 Working Days of receiving that notice the Retailer has entered into a Consumer Contract providing for the immediate commencement of Gas supply and Line Function Services at that ICP, and notified the Distributor accordingly, the Distributor may disconnect the consumer's installation at that ICP, subject to clause 13.

2.3 **Distribution Services Agreements**

Nothing in this agreement will prevent the Distributor from entering into a Distribution Services Agreement with any Consumer, or performing, varying, enforcing and/or terminating any such agreement. A Distribution Services Agreement may include undertakings from the Consumer that the Network will be the only distribution network used to convey Gas to one or more specified sites.

2.4 **Line Services Agreements**

- (a) The Distributor will not enter into a Line Services Agreement with a Consumer where this will interfere with an existing Consumer Contract between the Consumer and the Retailer. Otherwise, nothing in this agreement will prevent the Distributor from entering into a Line Services Agreement with any Consumer, or performing, varying, enforcing and/or terminating any such agreement. Within 5 working Days of entering into a Line Services Agreement in respect of one or more ICPs, the Distributor will notify the Retailer accordingly, identifying the ICPs.
- (b) For so long as any ICP is subject to a current Line Services Agreement, the Distributor will not be responsible or liable for the provision of any Distribution Services under this agreement in respect of that ICP, and will not apply any Charges under this agreement in respect of that ICP. The Line Services Agreement will provide the Consumer with the right to have Gas purchased from the Retailer conveyed over the Network to the relevant ICP, on the terms of that agreement.
- (c) Where the Distributor enters into or terminates a Line Services Agreement that involves the Distributor direct billing the Consumer for daily, monthly or other periodic charges for Line Function Services, the Distributor will reflect this change in the Registry by inserting or removing (as appropriate) the words "Direct Billed" in the "Network Price Details" field.

- (d) The Retailer will not knowingly commit, or knowingly cause any person to commit, any act or omission that is inconsistent with the obligations of the Consumer or the Distributor under or in relation to any Line Services Agreement, provided that where a Line Services Agreement contains technical requirements that differ from the technical requirements in relation to Distribution Services set out in this agreement, the Distributor has given the Retailer reasonable notice of those requirements.
- (e) The Retailer will not knowingly supply Gas in respect of any ICP, except while there is a Line Services Agreement or Consumer Contract currently in force for that ICP.

3 **EQUAL ACCESS AND EVEN-HANDED TREATMENT**

3.1 **Access to Distribution Services**

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

- (a) this will not apply to the exercise of any discretion the Distributor may have under clause 10 (Prudential requirements), 12 (Responsibility for Network and other assets), 16 (Force Majeure), 17 (Termination) or 18 (Confidentiality);
- (b) this will not require the Distributor to offer the Retailer any terms or conditions agreed by the Distributor with another retailer for the provision of Line Function Services, except in accordance with clauses 3.2 and 3.3.

For this purpose, the Retailer acknowledges that the pricing and price methodologies may vary according to factors such as network region, consumer type, connection type, term and/or volume commitments, and any other criteria that the Distributor considers relevant, so that in practice the overall impact of the pricing and price methodologies may vary between retailers.

3.2 **Notification of Alternative Contracts**

Within 20 Working Days after executing a contract, or an amendment to a contract, with another retailer relating to the supply of Line Function Services covering all or any part of the Network, other than an ISA (the contract or amended contract being an *Alternative Contract*), the Distributor will notify the Retailer of the existence of the Alternative Contract, provide the Retailer with a hard copy of the Alternative Contract, and invite the Retailer to adopt the Alternative Contract in accordance with clause 3.3. To avoid doubt, the exercise of a discretion referred to in clause 3.1(a) or 3.1(b) will not give rise to any Alternative Contract. Notwithstanding the foregoing, incremental amendments to a contract that was originally entered into before 1 May 2013 will not give rise to an Alternative Contract.

3.3 **Adoption of Alternative Contracts**

At any time during the 12 months after the Distributor executes an Alternative Contract, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract in its entirety in substitution for this agreement. The Retailer may exercise this choice by giving notice to the Distributor identifying the Alternative Contract that it wishes to adopt, in which case this agreement will be deemed to have been terminated and replaced with a new contract on the same terms as the Alternative Contract, with effect from the date that is 20 Working Days after the day on which

the Distributor receives that notice, and each party will promptly execute a copy of that new contract if requested by the other. The provisions of clause 17.5 shall also apply in respect of a termination of this agreement under this clause 3.3.

4 **SERVICE INTERRUPTIONS**

4.1 **Communication policies**

The Distributor will develop and maintain Service Interruption Communications Policies in consultation with the Retailer. The Distributor may update and replace its Service Interruption Communications Policies from time to time in accordance with clause 19.2.

4.2 **Information disclosure**

The Distributor may disclose to the media or any other person any information relating to any Service Interruption, subject only to compliance with the Privacy Act 1993.

4.3 **Planned Service Interruptions**

As far as is reasonably practicable, the Distributor will schedule any Planned Service Interruptions so as to minimise disruption to Consumers. The Distributor will comply with the Service Interruption Communications Policies in relation to the notification of Planned Service Interruptions and any changes to the planned date and time for restoration of supply on the Network.

4.4 **Unplanned Service Interruptions**

After the occurrence of an Unplanned Service Interruption, the Distributor and Retailer will each use all reasonable endeavours to comply with the applicable Service Interruption Communications Policies. During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Retailer will forward to the Distributor as soon as practicable any requests it receives from Consumers for the restoration of supply on the Network, and unless the Retailer requests otherwise the Distributor shall where possible acknowledge such receipt to the Retailer.

4.5 **Costs of communication**

Unless the parties agree otherwise, where the Distributor asks the Retailer to update Consumers on a Service Interruption in accordance with the Service Interruption Communications Policies, the Retailer will do so at its own cost, except where additional updates are required due to a change in the timing of an interruption, where the change is caused solely by the negligence or default of the Distributor or its contractors (and not due to consumer requests, weather conditions, major network outages, access issues or other events beyond the reasonable control of the Distributor and its contractors) in which case the Distributor will meet the reasonable additional costs incurred by the Retailer in providing the additional updates.

4.6 **Load Shedding**

Without limiting its obligations under this clause 4, the Distributor may carry out Load Shedding:

- (a) where the Distributor wishes to inspect any part of the Network, or effect alterations, maintenance, repairs or additions to any part of the Network, in each case subject to clauses 4.3 and 4.4;
- (b) as permitted by the Service Standards;
- (c) to maintain a safe environment, consistent with the Distributor's health and safety policies;
- (d) to preserve the security and/or integrity of the Network;
- (e) to avoid or mitigate damage to any equipment directly or indirectly connected to the Network;
- (f) where directed by a Transmission Operator in accordance with the Critical Contingency Regulations, or any Relevant Authority pursuant to any Law that replaces or supplements the Critical Contingency Regulations;
- (g) to comply with Law; and/or
- (h) for any other purpose which in the Distributor's reasonable opinion and in accordance with Good Industry Practice requires Load Shedding.

If the Distributor has developed a protocol on the priorities for Load Shedding, restoration of Gas supply, or other similar events where security of supply may be compromised, the Distributor will make that protocol available to the Retailer. Any such protocol will not be legally binding.

4.7 **Restoration after Unplanned Service Interruptions**

In the event of an Unplanned Service Interruption, the Distributor will endeavour in accordance with Good Industry Practice to Restore the operation of the Network as soon as practicable, and within the timeframes set out in the applicable Service Standards. The Retailer's only remedy for failure by the Distributor to meet these timeframes shall be recovery of the applicable Service Guarantee (if any) in accordance with Schedule 1.

4.8 **Restoration after Planned Service Interruptions**

In the event of a Planned Service Interruption, the Distributor will endeavour in accordance with Good Industry Practice to Restore the operation of the Network as soon as practicable, and within the timeframe set out in the Distributor's original notice informing the Retailer of the Planned Service Interruption. The Retailer's only remedy for failure by the Distributor to meet these timeframes shall be recovery of the applicable Service Guarantee (if any) in accordance with Schedule 1.

5 **PERFORMANCE REPORTING**

5.1 **Service Level reporting**

Unless required by Law to publish such information elsewhere, each party will report on its performance relative to Service Levels in accordance with the reporting measures and frequency of reporting as set out in Schedule 1. Each report prepared for this purpose must:

- (a) compare actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
- (b) explain the reasons for any significant under-performance, and explain what actions the party will undertake to rectify that under performance; and
- (c) where the reporting party has claimed during the relevant reporting period that it was unable to meet the Service Standards due to the occurrence of a Force Majeure Event, give a full account of the nature of the Force Majeure Event and the impact of the event on the party's performance in relation to the Service Standards.

5.2 **Additional reports**

Either party (the *Requester*) may reasonably request the other party (the *Provider*) to provide additional performance reports, including reports containing information in addition to that specified in clause 5.1 or more frequent reports containing the same information. The Provider shall comply with such requests if it is reasonably able to do so. The Provider may charge the Requester (and the Requestor will pay) for the costs reasonably incurred by the Provider in preparing and supplying such additional reports, except where the additional report reveals a failure by the Provider to meet a Service Standard, where the failure was not duly disclosed in the report submitted by the Provider under clause 5.1 for the relevant reporting period.

5.3 **Insurance not to be compromised**

Nothing in this clause 5 requires either party to disclose information which in its reasonable opinion may adversely affect an insurance policy held by that party.

PART II: PRICING AND PAYMENT

6 PRICE CHANGES

6.1 Frequency

The Distributor may effect a Price Change by giving notice to the Retailer in accordance with this clause 6. The Distributor will not exercise this power more than once in any 12 month period, aside from any Price Change that results from:

- (a) a material change in local authority rates;
- (b) a material change in Distribution Services, where:
 - (i) the Price Change is limited to Consumers affected by the change in Distribution Services; and
 - (ii) the change in Distribution Services has been requested or approved by the Retailer, or the Price Change applies even-handedly to all Retailers supplying the ICPs affected by the change in Distribution Services; and/or
- (c) a change in any Laws.

This clause 6.1 will not apply to or take into account any price decrease implemented from time to time, or any change specifically agreed by the parties from time to time.

6.2 Consultation

If and whenever the Distributor proposes to implement a Core Price Change that could reasonably be expected to have a material impact on one or more Consumers, then before the Distributor notifies that Core Price Change under clause 6.3:

- (a) the Distributor will notify the Retailer of the details of, and rationale for, the proposed change, and the date on which it is to take effect;
- (b) the Distributor will allow the Retailer a period of not less than 20 Working Days from the date of that notification during which the Retailer may provide written submissions to the Distributor in relation to the proposed change;
- (c) when revising and finalising the proposed change, the Distributor will consider in good faith the submissions and other information received as part of the process set out in this clause 6.2; and
- (d) the Distributor will provide the Retailer with a summary of any submissions received from retailers affected by the proposed change (but without identifying those retailers, and without disclosing any of their confidential information), along with the Distributor's responses to those submissions.

When it notifies the finalised Core Price Change under clause 6.3, the Distributor will also provide the Retailer with the reasons for that Core Price Change.

6.3 **Notice**

The Distributor will give the Retailer notice of each finalised Price Change no later than 40 Working Days before it is due to take effect. Each Price Change notified by the Distributor will take effect on the date specified in that notice, provided the Distributor has obtained from each Relevant Authority any approvals that are required by Law for that purpose.

6.4 **Finality**

Subject only to Law and the express provisions of this agreement, the Distributor retains absolute and sole discretion over each Price Change. Once a Price Change has been Published and notified in accordance with clause 6.2, it cannot be challenged except to the extent that it is contrary to any Law, or the requirements of clause 3, or contains a manifest error.

7 **LOSSES AND LOSS FACTORS**

7.1 **Distributor may update Loss Factors**

The Distributor will review Losses and update Loss Factors in accordance with Good Industry Practice, but not more than once in any 12 month period, and only in conjunction with one or more Price Changes implemented under clause 6. The Distributor will notify the Retailer not less than 40 Working Days in advance of any change to the Loss Factors, and the updated Loss Factors will take effect at the end of the corresponding notice period. Each such notice must set out details of the change, the reasons for the change, and the methodology and information used by the Distributor in calculating the updated Loss Factors.

7.2 **Retailer to provide information**

The Retailer will provide to the Distributor the reports and files (if any) specified in the Price Book for the purpose of enabling the Distributor to calculate Loss Factors, within the applicable timeframes specified in the Price Book. The Retailer will provide the Distributor with any additional information, as and when the Distributor may reasonably require, having regard to the scope and timing of the request, to enable it to calculate Loss Factors.

8 **LOAD GROUPS**

8.1 **Distributor allocates ICPs to Load Groups**

The Distributor will be entitled to allocate each ICP to a Load Group, in accordance with the rules and criteria set out in the Price Book, based on the most up-to-date information and evidence held by the Distributor at the relevant time.

8.2 **Distributor may re-allocate ICPs between Load Groups**

The Distributor will be entitled to re-allocate from time to time any ICP or group of ICPs from one Load Group to another (including where one or more Load Groups are being closed and replaced), by giving not less than 40 Working Days' notice to the Retailer, so long as the re-allocation is in accordance with the rules and criteria set out in the Price Book, based on the most up-to-date information and evidence held by the Distributor at the time of the notice.

8.3 Retailer may require Load Group change

The Retailer may from time to time give notice to the Distributor requiring it to re-allocate any ICP or group of ICPs from one Load Group to another. The Retailer can exercise this power no more than once in relation to any particular ICP in any 12 month period, except where the Retailer demonstrates (through independent documentary evidence reasonably satisfactory to the Distributor) that re-allocation is required as a direct result of an increase or decrease in the maximum capacity at that ICP, or a new consumer taking control of the relevant Consumer Premises. The Retailer can only exercise this power where all applicable eligibility criteria as set out in the Price Book are satisfied, and the Retailer gives the Distributor not less than 10 Working Days' notice, and provides the Distributor with any evidence or confirmations required by the Price Book as a pre-requisite for that change.

8.4 Retailer to provide Load Group information

Within 20 Working Days of the Retailer becoming the responsible retailer for a particular ICP, the Retailer will provide the Distributor with any information and/or evidence requested by the Distributor and required by the Price Book to enable the Distributor to allocate that ICP to the correct Load Group. Within 20 Working Days of the Retailer becoming aware of any change to a Consumer's Installation which would entitle the Distributor to allocate the corresponding ICP to a different Load Group, the Retailer will promptly notify the Distributor and provide any information or evidence requested by the Distributor and required by the Price Book to enable the Distributor to allocate that ICP to the correct Load Group. The Retailer will ensure that any information and/or evidence provided under this clause 8.4 is accurate and complete.

8.5 Effect of allocation

- (a) Except to the extent this clause 8.5 provides otherwise, the Charges for each ICP for any given period will be calculated by reference to the Load Group to which that ICP was allocated during that period, without any subsequent revision or backdating for any reason whatsoever.
- (b) As part of the wash-up process set out in the Price Book, the Distributor will revise the Charges to credit the Retailer with the difference between the Charges applied for each ICP for the relevant period and any lower Charges that would have applied for that same period but for the Distributor failing to re-allocate the ICP in breach of clause 8.3 or the Distributor allocating or re-allocating the ICP in a manner not permitted by clause 8.1 or 8.2.
- (c) As part of the wash-up process set out in the Price Book, the Distributor may revise the Charges to bill the Retailer for the difference between the Charges applied for each ICP for the relevant period and any higher Charges that the Distributor would have been entitled to apply for that same period by re-allocating the ICP to a different Load Group, but for a breach by the Retailer of clause 8.4.
- (d) Notwithstanding the foregoing, the Charges for a particular Consumption Month cannot be revised at any time after the close of 13 months following the end of that Consumption Month.

9 **BILLING AND PAYMENT**

9.1 **Obligation to pay**

The Distributor may invoice and the Retailer will pay the Charges accumulated in accordance with this agreement, subject to and in accordance with this clause 9.

9.2 **Commencement and cessation of Charges**

The Charges will commence and cease at each ICP in accordance with the rules set out for that purpose in the Price Book. The Retailer must maintain and update the ICP status and connection status in the Registry for each ICP in accordance with the Switching Rules.

9.3 **Billing and Settlement Policies**

The Charges will be calculated, invoiced and revised from time to time in accordance with the Billing and Settlement Policies. Each party will comply with the applicable requirements of the Billing and Settlement Policies, although to the extent these conflict with the express provisions of this clause 9, the express provisions of this clause 9 will prevail.

9.4 **Retailer to provide billing information**

Within 5 Working Days of the end of each Consumption Month, the Retailer will provide to the Distributor all information the Distributor may reasonably require to enable it to calculate the Charges for that Consumption Month, including the files and information specified for that purpose in the Price Book. Such information shall be provided in the applicable Agreed Format. To the extent that the Retailer fails to provide such information within that timeframe, or the information provided within that timeframe is incomplete, materially incorrect or not in the specified format, the Distributor may estimate the Charges for the Consumption Month, in accordance with the Billing and Settlement Policies, and applying Good Industry Practice.

9.5 **Distributor to invoice**

The Distributor will invoice the Retailer for the Charges based on the information provided by the Retailer pursuant to clause 9.4, and any estimation by the Distributor permitted under clause 9.4. The Distributor will endeavour to send each invoice to the Retailer on or before the 10th Working Day of the Billing Month. The Distributor will ensure that the invoice is accompanied by sufficiently detailed supporting information, in the Agreed Format, to enable the Retailer to verify the accuracy of the invoice.

9.6 **Wash-ups**

Subject to clause 8.5, the Distributor will revise the Charges from time to time to reflect more complete and accurate billing information provided to the Distributor after the period provided for in clause 9.4, at the frequency and to the extent set out in the Billing and Settlement Policies. The Distributor will issue invoices, debit notes and credit notes (as the case may require) to reflect any resulting revisions to the Charges, plus a Use of Money Adjustment applied in accordance with the Billing and Settlement Policies.

9.7 Other invoices

The Distributor may issue the Retailer with an invoice for any other sums payable to the Distributor under this agreement. The Retailer may issue the Distributor with an invoice for any other sums payable to the Retailer under this agreement. Any such invoice must be issued within 12 months of the date on which the sum is incurred under this agreement, and cannot be issued after the end of that period.

9.8 GST invoices

If and whenever a party issues an invoice, debit note or credit note, that includes any amount on account of GST, that party will ensure that the document complies with the requirements of the Goods and Services Tax Act 1985.

9.9 Payment

Subject to clause 9.11, each party will pay each invoice issued in accordance with this agreement on or before the due date. The due date will be the 20th day of the month in which the invoice is received (or where that day is not a Working Day, the next Working Day), provided that where the invoice is received after the 10th Working Day of the month, the due date will be extended by one Working Day for each Working Day of that delay.

9.10 Interest on late payment

Subject to clause 9.11, where a party fails to pay an invoice issued in accordance with this agreement in full by the due date, the other party may charge Default Interest on the outstanding amount from the due date up to but excluding the date that payment is received in full.

9.11 Disputing or correcting invoices

- (a) At any time within 18 months following the date of an invoice issued under this agreement, the party to which that invoice was issued (*Recipient*) may dispute the invoice by giving notice to the other party (*Issuer*) setting out reasonable details of the dispute (in each case, an *Invoice Dispute Notice*).
- (b) Where the Recipient issues an Invoice Dispute Notice before the due date for payment, it may withhold payment of the disputed portion of the invoice until the dispute has been resolved, so long as it has given the Invoice Dispute Notice in good faith, and pays any undisputed portion of the invoice by the applicable due date.
- (c) When the correct amount of the disputed invoice is finally agreed by the parties or determined by an arbitrator, court or other tribunal of competent jurisdiction (*Resolution Date*), except to the extent the parties agree otherwise:
- (i) where the Recipient has withheld payment of an amount that was correctly included in the disputed invoice, the Recipient will pay the amount within 10 Working Days of the Resolution Date, together with Default Interest applied from the original due date up to but excluding the date of payment;
 - (ii) where the Issuer has undercharged the Recipient, the Issuer may issue a debit note for the amount of the undercharge, together with a Use of Money Adjustment applied to that amount from the due date of the original invoice up to but excluding the date of the new invoice, and the Recipient will pay

that invoice within 10 Working Days of receipt, so long as that invoice is accompanied by reasonably detailed supporting information;

- (iii) where an amount has been incorrectly included in the disputed invoice, the Issuer will promptly issue a corresponding credit note to the Recipient, and if the Recipient has already paid some or all of that amount, then within 10 Working Days of the Resolution Date, the Issuer will refund the overpayment to the Recipient, together with:
 - (A) a Use of Money Adjustment, applied from the date of overpayment up to but excluding the date of the refund, or (if earlier) the date 15 Working Days after receipt of the Invoice Dispute Notice; and
 - (B) unless the overpayment is refunded to the Recipient within 15 Working Days after receipt of the Invoice Dispute Notice, Default Interest, applied from the date 15 Working Days after receipt of the Invoice Dispute Notice up to but excluding the date of the refund.

9.12 **No set off**

Both parties will make the payments required to be made to the other pursuant to this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise, except as otherwise set out in clause 9.11, or otherwise as required by any Laws.

9.13 **Refund of Charges**

If as a consequence of a fault on the Network, there is a continuous interruption affecting a Consumer's Point of Connection for 24 hours or longer, and the Retailer submits a request to the Distributor for a refund of the Charges for the affected ICP(s) for the days during which the loss of supply continued, then provided the request is submitted to the Distributor within 60 days of the start of the interruption, the Distributor shall refund those Charges to the Retailer in the next monthly billing cycle.

10 **PRUDENTIAL REQUIREMENTS**

10.1 **Distributor may require prudential assurance**

The Distributor may from time to time give notice to the Retailer requiring the Retailer to provide Acceptable Prudential Assurance, and the Retailer will comply with that notice within 10 Working Days of receipt.

10.2 **Form**

Subject to clause 10.7, the Retailer may provide Acceptable Prudential Assurance by holding and maintaining an Acceptable Credit Rating, or providing the Distributor with Acceptable Security to a combined value equal to the Acceptable Security Amount, at the Retailer's option. Except where the Distributor is entitled to give notice under clause 10.7, the Retailer may from time to time substitute one form of Acceptable Prudential Assurance for another, by giving not less than 10 Working Days' notice to the Distributor, so long as the substitution complies in all respects with the requirements of this clause 10.

10.3 Evidence

The Retailer will provide the Distributor with such evidence as the Distributor may reasonably require from time to time, demonstrating that the Acceptable Prudential Assurance is in place, including (where applicable) evidence of any Acceptable Credit Rating needed to meet the requirements for that Acceptable Prudential Assurance.

10.4 Acceptable Security Amount

- (a) Where the Retailer provides Acceptable Prudential Assurance in the form of Acceptable Security, the Distributor will be entitled to specify the Acceptable Security Amount from time to time by giving notice to the Retailer, subject to the requirements of this clause 10.4.
- (b) The Distributor will not initiate a review of the Acceptable Security Amount under this clause 10.4 more than once in any 12 month period, except where the Distributor considers that the total number of Active ICPs under this agreement has increased by more than 20% since that amount was last reviewed or determined.
- (c) The Distributor will not give notice of an Acceptable Security Amount exceeding the Distributor's reasonable estimate (at the time of the notice) of the aggregate amount of Charges (including GST) that are likely to become payable by the Retailer in respect of any two month period in the 12 months following that notice, plus any disputed amount withheld by the Retailer in respect of a disputed invoice.
- (d) If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will calculate the Acceptable Security Amount having regard to the Distributor's historical records of the consumption of relevant Consumers, and any bona fide business plan prepared by the Retailer in good faith to permit a realistic estimate of the aggregate amount of Charges (including GST) that are likely to become payable by the Retailer in respect of any two month period in the forthcoming 12 months.
- (e) The Retailer may give notice to the Distributor not more than once in any 12 month period requiring the Distributor to review the Acceptable Security Amount, and following that review the Distributor will determine and give notice of the Acceptable Security Amount in accordance with this clause 10.4. Otherwise, the Distributor has no obligation to monitor or review the Acceptable Security Amount.
- (f) Without limiting clause 10.7, if and whenever the Distributor gives notice increasing the Acceptable Security Amount in accordance with this clause 10.4, the Retailer will provide a corresponding increase in the Acceptable Security within 10 Working Days of receiving that notice.

10.5 Notification obligations

- (a) Subject to clauses 10.5(b) and 10.5(c), the Retailer shall notify the Distributor as soon as reasonably practicable (and in any case within 2 Working Days) if and whenever:
 - (i) the Retailer has cause to believe that its financial position is likely to be impaired such that its ability to pay for the Services will be consequently affected; and/or

- (ii) the Retailer becomes aware that a third party provider of Acceptable Security needed to satisfy the Retailer's obligations under clause 10.1 no longer holds an Acceptable Credit Rating.

Each notification must provide full particulars of the relevant circumstances, including their underlying causes and likely consequences.

- (b) If the Retailer (or its ultimate parent company) is a public issuer for the purposes of the Securities Markets Act 1988, the Retailer may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement on terms reasonably satisfactory to the Retailer prior to the giving of notice and disclosure of any information under this clause 10.5, if and for so long as, the Retailer reasonably considers any such information to be inside information as defined in that Act.
- (c) If the Retailer (or its ultimate parent company) is listed on the NZX Main Board or the NZX Debt Market, the Retailer may withhold any notice or information to the extent that the Retailer reasonably considers such information is material information under the applicable Listing Rules, except to the extent that the notice and accompanying disclosure under this clause 10.5 can be brought within one or more exceptions under the applicable Listing Rules so as to allow disclosure to the Distributor without those Listing Rules requiring the Retailer to disclose that information to any third party.

10.6 **Distributor enquiries**

Where the Distributor has reasonable grounds to suspect that the Retailer has failed or is failing to give notice as required under clause 10.5, the Distributor may enquire of the Retailer as to whether the Retailer is complying with clause 10.5, and the Retailer will promptly remedy any breach of clause 10.5. If the Retailer is not in fact in breach of clause 10.5, the Retailer must respond to the Distributor in writing within 2 Working Days of the Distributor's enquiry, confirming that this is the case and addressing the Distributor's concerns. Correspondence sent or received by either party under this clause will be deemed to be Confidential Information.

10.7 **Urgent Distributor changes**

- (a) If at any time the Distributor has reasonable grounds to consider that there has been a deterioration in the Retailer's financial position such that an Acceptable Credit Rating provided by the Retailer may no longer provide sufficient security, then the Distributor may give notice to the Retailer outlining those reasonable grounds, and requiring the Retailer to provide Acceptable Security to a combined value equal to the Acceptable Security Amount (subject to clause 10.4(c)).
- (b) If at any time the Distributor has reasonable grounds to consider that there has been a deterioration in the financial position of the Retailer or any third party providing Acceptable Security on behalf of the Retailer, such that the existing Acceptable Security may no longer be sufficient, then the Distributor may give notice to the Retailer outlining those reasonable grounds, increasing the Acceptable Security Amount (subject to clause 10.4(c)), and requiring the Retailer to provide a corresponding increase in the Acceptable Security.

- (c) The Retailer will comply with each notice given under this clause 10.7 within 5 Working Days of receipt. Any failure to do so will be deemed an Event of Default. However, the Retailer need not comply with a notice given under this clause 10.7 if within 3 Working Days of receiving that notice the Retailer provides the Distributor with evidence demonstrating to the Distributor's reasonable satisfaction that there has not been a deterioration in the financial position of the Retailer or any third party sufficient to support a notice under this clause 10.7.
- (d) To avoid doubt, any breach of clause 10.5 or 10.6 will be deemed "reasonable grounds" for the Distributor to give notice under this clause 10.7.

10.8 Decreases and substitutions

If and whenever the Acceptable Security Amount is decreased pursuant to clause 10.4, or the Retailer substitutes one form of Acceptable Prudential Assurance for another pursuant to clause 10.2, the Distributor will not unreasonably withhold or delay its agreement to any release and/or substitution of Acceptable Security to the extent necessary to give effect to that change. To the extent this involves the refund of any part of a Cash Deposit, the Distributor will carry out the refund within 5 Working Days of agreeing to that refund.

10.9 Calls on third party security

If the Retailer fails to pay an amount due under this agreement (excluding amounts which the Retailer is entitled to withhold under clause 9.11(b)), the Distributor may on 2 Working Days' notice to the Retailer proceed at any time thereafter to enforce any Acceptable Security provided under this clause 10 (other than any Cash Deposit) to recover the outstanding amount plus Default Interest, in which case the Distributor will promptly notify the Retailer of the amount enforced, and the Retailer will immediately provide any additional Acceptable Security required to ensure that the Retailer remains in compliance with this clause 10. Any breach by the Retailer of this clause 10.9 will be deemed an Event of Default.

10.10 Discharge of third party security

A third party provider of Acceptable Security may make a cash payment to the Distributor equal to the value of that Acceptable Security in order to be released from its obligations pursuant to the underlying guarantee, letter of credit or bond (as the case may be), in which case the payment will be deemed to constitute a Cash Deposit provided by the Retailer.

10.11 Distributor holding of Cash Deposit

Except to the extent that parties agree otherwise, the Distributor will hold any Cash Deposit as follows:

- (a) The Distributor will hold the Cash Deposit in a trust account with a New Zealand registered bank, at an interest rate that is the best on-call rate reasonably available at the time.

- (b) The Distributor will pay interest to the Retailer on the current balance of the Cash Deposit as follows:
 - (i) interest will be calculated on a daily basis;
 - (ii) interest will not be compounded; and
 - (iii) unless the parties agree otherwise, interest will be paid on a quarterly basis (on the last working day of March, June, September and December, respectively) net of account fees and any amount required to be withheld by Law.
- (c) If the Retailer fails to pay an amount due under this agreement, the Distributor may at any time following notice to the Retailer draw down that amount plus Default Interest from the Cash Deposit, in which case the Distributor will immediately notify the Retailer of the amount drawn down, and the Retailer will immediately provide any additional Acceptable Security required to ensure that the Retailer remains in compliance with this clause 10. Any breach by the Retailer of this clause 10.11(c) will be deemed an Event of Default.
- (d) In the event this agreement is terminated, the Distributor will refund the Cash Deposit to the Retailer (less any amount owed to the Distributor plus accrued but unpaid interest) within 10 Working Days of a request by the Retailer, but only if and when the Retailer has discharged all its obligations and liabilities to the Distributor accrued up to the time of, or arising as a result of termination, including all outstanding amounts under this agreement.

10.12 **Release on termination**

If this agreement is terminated, the Distributor will release any Acceptable Security provided by a third party, but only if and when the Retailer is not otherwise in default of this agreement and has discharged all its obligations and liabilities to the Distributor accrued up to the time of, or arising as a result of termination, including all outstanding amounts under this agreement.

PART III: OPERATIONAL REQUIREMENTS

11 ACCESS TO THE CONSUMER'S PREMISES

11.1 Rights of entry onto Consumers' Premises

The Retailer will procure in its agreements with each Consumer rights of access onto the Consumer's Premises, for the Distributor and its employees and agents:

- (a) to install, inspect, upgrade, downgrade, operate, maintain and/or replace the Distributor's Assets, including any Metering Equipment for measuring the use being made of the Network;
- (b) to disconnect and reconnect in accordance with this agreement;
- (c) to access any of the Retailer's Assets for the purpose of verification of metering information, including, in the event of termination of this agreement, access to any Retailer's Assets to determine or confirm any Charges yet to be paid at the time of termination;
- (d) to take any steps which the Distributor considers necessary for the safety of persons and/or property;
- (e) to investigate and/or prevent interference with the Distributor's Assets or the Network; and/or
- (f) to enable the Distributor to gain access to and remove any of the Distributor's Assets at any time within 6 months following the termination of the agreement with the Consumer.

11.2 Exercise of access rights

In exercising the access rights under clause 11.1, the Distributor will:

- (a) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to, and/or other security information for, the Consumer's Premises;
- (b) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer and ensure its personnel behave in a courteous and considerate manner and carry identification at all times while on the Consumer's Premises; and
- (c) comply with the Consumer's reasonable practices and procedures as disclosed by the Consumer or as generally practised for health and safety, and security requirements.

In the event of a conflict between the provisions of clause 11 and any provision of any existing agreement between the Consumer and Distributor with respect to the Distributor's access rights to the Consumer's Premises, then the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

12 RESPONSIBILITY FOR NETWORK AND OTHER ASSETS

12.1 Interference or damage to Distributor's Assets

Subject to clause 20, the Retailer will procure in its agreements with Consumers that during the term of those agreements and the immediately following 6 months, the Consumer will refrain from interfering with or damaging the Distributor's Assets (and will ensure its employees, agents and invitees do the same), except to the extent that emergency action is necessary to prevent or mitigate dangers to property or persons, and the Consumer will take all reasonable steps to protect the Distributor's Assets, including providing secure housing for the assets at no cost to the Distributor. Subject to clause 15, if any of the Distributor's Assets are damaged by the negligence, wilful act or wilful omission of the Retailer or its employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.

12.2 Interference or damage to Retailer's Assets or Consumer's Installation

The Distributor will ensure that, during and after the term of this agreement, the Distributor and its employees, agents and invitees do not interfere with or damage the Retailer's Assets or the Consumer's Installation, except to the extent that emergency action is necessary to prevent or mitigate dangers to property or persons, or otherwise as necessary for the Distributor to perform its obligations and/or exercise its rights under this agreement, and the Distributor will take reasonable precautions to protect the Retailer's Assets, Consumer's Installation and Consumer's Premises from damage that may arise from their work at a Consumer's Premises. Subject to clause 15, if any of the Retailer's Assets, Consumer's Installation or Consumer's Premises are damaged by the negligence, wilful act or wilful omission of the Distributor or its employees or agents or invitees, then the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause is for the benefit of the Consumer (in addition to the Retailer) and may be enforced by the Consumer pursuant to the Contracts (Privity) Act 1982. This clause may be amended in accordance with the terms of this agreement without the consent of any Consumer.

12.3 Interference with the Network

Subject to clause 20, the Retailer will procure in its agreements with Consumers that during the term of those agreements (and this agreement) the Consumer will not without the prior agreement of the Distributor inject or attempt to inject any substance into the Network.

12.4 Notification of interference or damage

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

12.5 Additional Metering Equipment

Either party may at its own cost, install and maintain additional Metering Equipment for metering data verification purposes or other purposes, provided that it does not interfere with any other Metering Equipment and any consent to install and maintain the additional Metering Equipment required under this agreement has been given.

For the avoidance of doubt, any such consent will not be unreasonably withheld by either party. If a party installing or maintaining its additional Metering Equipment causes damage to the Metering Equipment of the other party, the party causing the damage will meet the cost of making good the damage.

12.6 Safe housing for Distributor's Assets

Subject to clause 20, and to any alternative specifically agreed between the Retailer and the Distributor, the Retailer will procure in its agreements with Consumers an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space of a reasonable size (complying with the Network Connection Standards) for the secure housing of any of the Distributor's Assets relating primarily to the connection to the Network of Points of Connection at the Consumer's Premises which the Distributor determines is necessary.

12.7 Property rights in the Network

Subject to clause 20, the Retailer will procure in its Consumer Contracts an acknowledgement by the Consumer that:

- (a) the Network, including any part of the Network situated on a Consumer's Premises, is and will remain the sole property of the Distributor; and
- (b) neither the Consumer Contract nor the supply of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Assets used to provide any such services.

12.8 Network work

The Retailer will notify the Distributor in writing in advance of the Retailer undertaking work on the Network, wherever possible no later than 2 Working Days before the work commences. The Distributor or its auditors, advisors or authorised representatives may inspect the work being performed by the Retailer on the Network to confirm whether the Retailer is complying with its obligations under this Agreement. The Retailer must reasonably co-operate with the Distributor (and its auditors, advisors and authorised representatives) in respect of such audit.

13 CONNECTIONS AND DISCONNECTIONS

13.1 Policies

The Distributor and the Retailer will each comply with the Connection Policies. The Distributor may update and replace the Connection Policies from time to time in accordance with clause 19.2, although the Distributor will ensure that any updates are consistent with Good Industry Practice and the GANZ Disconnection and Reconnection Protocol GIP001 (including any updates to that protocol published by GANZ and endorsed by the Distributor).

13.2 Consumer compliance

Subject to clause 20, the Retailer will procure in its agreements with Consumers a requirement that all of the Consumer's Installations are compliant, and are operated in accordance with the Network Connection Standards.

13.3 Warranted Persons

Only a Warranted Person may carry out any activity related to Energising, De-energising, or Permanently Disconnecting ICPs, or performing any other works on the Network.

13.4 Distributor's right to disconnect

Subject to compliance with the Connection Policies, the Distributor may perform a Temporary Disconnection in relation to a particular ICP:

- (a) to avoid or mitigate danger to persons or property;
- (b) to avoid or mitigate an event or circumstances that may adversely affect the proper working of the Network or any Transmission System;
- (c) in the circumstances referred to in clause 2.2, where the Retailer was the most recent responsible-retailer for the ICP;
- (d) where an Event of Default has occurred in relation to the Retailer;
- (e) where the Consumer fails to allow the Distributor access to the Consumer's premises in accordance with the rights contemplated in clause 11.1;
- (f) where a Consumer has breached any of the provisions contemplated in clause 12.1 or 12.3;
- (g) where a Consumer has breached the Network Connection Standards; and/or
- (h) on termination of this agreement.

13.5 Costs of Disconnection

- (a) The Distributor will not be liable to the Retailer for any loss the Retailer may suffer or incur as a result of disconnection carried out at the instruction of the Retailer, or as permitted by this agreement, although this will not exclude any liability the Distributor may have under this agreement for physical damage caused by its negligence in the course of carrying out the disconnection.
- (b) The Retailer will reimburse the Distributor for all reasonable costs relating to each disconnection carried out:
 - (i) at the instruction of the Retailer; or
 - (ii) under clause 13.4 (c), (d), (e), (f) or (g); or
 - (iii) under clause 13.4(h), where this agreement is terminated by the Retailer under clause 17.1 or 17.3, or by the Distributor under clause 17.4.

PART IV: DISPUTES, LIABILITY AND TERMINATION

14 DISPUTE RESOLUTION PROCEDURE

14.1 Internal dispute resolution processes

The parties intend that, where possible, any differences between them concerning this agreement will be resolved amicably by discussion. When a difference or dispute arises in connection with this agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination (*Dispute*), either party may give notice to the other party outlining the Dispute. Upon giving of such notice, the parties shall meet as soon as practicable to attempt to resolve the Dispute.

14.2 Right to refer dispute to mediation

If the Dispute is not resolved within 15 Working Days of a party being notified of the Dispute under clause 14.1, and notwithstanding the parties may have not yet met or concluded a meeting to attempt to resolve the Dispute, either party may give a notice to the other requiring that the Dispute be referred to mediation.

14.3 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 or his or her nominee.

14.4 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. Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement. In all matters relating to the mediation:

- (a) 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) 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) 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) 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.

14.5 Court proceedings

If the Dispute is not resolved through mediation within 40 Working Days (or such other period agreed by the parties) of the appointment of a mediator, or has not been referred to mediation but remains unresolved 20 Working Days after the Dispute has been notified in accordance with clause 14.1, then either party may initiate court proceedings in relation to the Dispute.

14.6 No reference to previous mediator or previous mediation

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

14.7 Interim relief

Notwithstanding any other provision of this agreement, each party reserves the right to take steps to seek urgent interim or interlocutory relief before an appropriate court.

15 LIABILITY

15.1 Payments under agreement

Nothing in this clause 15 shall apply to or take into account any liability that either party may have to pay Charges and other sums due under this agreement.

15.2 Categories of Recoverable Loss

Neither party will be liable to the other under or in connection with this agreement for any damages, losses, costs, expenses or other amounts whatsoever, other than:

- (a) Direct Physical Loss arising from any physical destruction of, or damage to, real property or tangible personal property, caused by that party breaching this agreement, failing to apply Good Industry Practice, or otherwise committing a negligent act or negligent omission;
- (b) damages, losses, costs and expenses arising from that party's breach of the obligations of confidentiality imposed by this agreement; and/or
- (c) any amounts payable under the indemnities in clauses 15.7(b), 15.9 and 15.10,

(collectively *Recoverable Loss*). All other liability of each party, including any liability in tort (including negligence), contract, breach of statutory guarantee or warranty, breach of statutory duty, equity or otherwise is excluded to the fullest extent permitted by law.

15.3 **Consequential loss**

To avoid doubt, except for Recoverable Loss, neither party (nor any of their respective officers, employees or agents) will be liable to the other party for:

- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
- (b) any indirect or consequential loss (including incidental or special damages);
- (c) any loss resulting from liability of the other party to another person; or
- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

15.4 **Distributor not liable**

The Distributor will not be liable to the Retailer for:

- (a) any momentary fluctuations in the pressure or specification of Gas conveyed over the Network; or
- (b) any failure, error, outage, loss of supply, malfunction or other event on the Network, to the extent that the event arises from:
 - (i) any act or omission of any Consumer or other person excluding the Distributor and its officers, employees or agents; or
 - (ii) an interruption in the conveyance of Gas in the Network pursuant to curtailment directions issued by a Transmission Operator (or any other Relevant Authority) in accordance with the Critical Contingency Regulations; or
 - (iii) any defect or abnormal conditions in or about any Consumer's Premises; or
 - (iv) an action taken by the Distributor in accordance with this agreement, including under clause 4.6;
 - (v) any act or omission of a Transmission Operator; and/or
 - (vi) the Distributor being prevented from making necessary repairs (for example by police at an accident scene), provided the Distributor has used reasonable endeavours to overcome the obstacle in question,

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

15.5 **Retailer not liable**

The Retailer will not be liable to the Distributor for:

- (a) any failure to perform any obligation pursuant to this agreement caused by the Distributor's failure to comply with this agreement;
- (b) any failure to perform any obligation to this agreement arising from any defect or abnormal conditions in the Network; or
- (c) any failure, outage, loss of supply, malfunction or other event on the Network, to the extent that the event arises from the Retailer's actions to curtail or restore supply to Consumers following directions issued by a Transmission Operator (or any other Relevant Authority) in accordance with the Critical Contingency Regulations (although to avoid doubt this will not relieve the Retailer of liability for a failure to comply with the requirements of this agreement, except to the extent that the Retailer is compelled under the Critical Contingency Regulations to take actions that cannot be performed in a manner consistent with this agreement);

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

15.6 **Limitation of liability**

Notwithstanding any other provision of this agreement, as far as permitted by law, the total liability of each party to the other under or in connection with this agreement, in respect of any single event or series of events arising from the same event or circumstance, will not exceed the lesser of \$10,000,000 and the aggregate of the maximum per-Consumer amounts that could be awarded as a binding decision for all Consumer claims in respect of that event or series of events under the applicable complaints resolution scheme referred to in section 43E of the Gas Act 1992 (or that could be so awarded if all resulting Consumer claims were resolved through that complaints resolution scheme as binding decisions). This limitation will not apply to or take into account any liability either party may have to the other for any breach of the obligations of confidentiality imposed by this agreement, and/or any amounts payable under the indemnities in clauses 15.7(b), 15.9 and 15.10.

15.7 **Consumer Guarantees Act**

- (a) Subject to clause 20, to the fullest extent permitted by law, the Retailer will exclude from all agreements between it and a Consumer (which, for the avoidance of doubt, includes a purchaser of gas that is not an end user) all warranties, guarantees or obligations in favour of any Consumer, imposed on the Distributor or the Retailer by the Consumer Guarantees Act 1993 or any other Law, that relate to the supply of Gas by the Retailer and/or the services to be provided by the Distributor pursuant to this agreement (*Statutory Warranties*).
- (b) To the extent the Retailer is not permitted by law to contract out of any Statutory Warranties imposed on the Retailer by the Consumer Guarantees Act 1993 or any other Law (*Retailer Warranties*), the Distributor indemnifies the Retailer to the extent of any liability under any Retailer Warranties that the Retailer would not have incurred but for a breach by the Distributor of this agreement, provided that if the

Retailer wishes to claim against the Distributor under this clause the Retailer must comply with the following procedure:

- (i) as soon as practicable after the Retailer receives the claim from the Consumer (in any event no later than 10 Working Days after receiving the claim), the Retailer must give the Distributor notice of the claim, together with as much detail of the event or occurrence giving rise to the claim as is reasonably available to the Retailer, and the amount for which the Retailer is seeking to be indemnified;
- (ii) before settling the claim (and in any event no later than 20 Working Days after receiving the claim), the Retailer must give the Distributor full details of the event or occurrence giving rise to the claim, together with updated information on the amount for which the Retailer is seeking to be indemnified; and
- (iii) the Retailer must give the Distributor a reasonable opportunity to consider the claim and use all reasonable endeavours to discuss the resolution of the claim in good faith with the Distributor.

However, this clause 15.7(b) will not apply in relation to any Consumer claim against the Retailer which arises at a time when the Distributor is subject to any Law requiring it to indemnify the Retailer for some or all of the liabilities, losses, costs and/or expenses arising from that claim.

- (c) Where the Consumer on-sells gas to an end-user the Retailer must, as a condition of any agreement between it and the Consumer, require the Consumer to include provisions in all agreements between it and an end-user, excluding all Statutory Warranties to the fullest extent permitted by law.
- (d) In communicating with, or marketing to, current and prospective Consumers, the Retailer will not make any express or implied statements that would lead a reasonable consumer to expect that the quality or reliability of the supply of Gas through the Network will be materially higher than the levels of quality and reliability which the Distributor is contractually obliged to deliver under this agreement.
- (e) To avoid doubt, nothing in this clause affects the rights of any consumer under the Consumer Guarantees Act 1993.

15.8 **Distributor liabilities and Consumer Contracts**

Subject to clause 20, the Retailer will procure in all its Consumer Contracts clear and unambiguous clauses to the effect that:

- (a) the Consumer will be liable to the Distributor (including in tort (including negligence)) for any direct loss or damage incurred by the Distributor that is caused or contributed to by:
 - (i) the fraud or dishonesty of the Consumer or its officers, employees, agents or invitees; or

- (ii) a wilful breach of the Consumer Contract committed by the Consumer or its officers, employees, agents or invitees;

in either case arising out of or in connection with the Services; and

- (b) without limiting the rights of Consumers under the Consumer Guarantees Act 1993, the liability of the Distributor for any claim by a Consumer will not in any circumstances exceed the maximum amount that can be awarded for that claim as a binding decision under the applicable complaints resolution scheme referred to in section 43E of the Gas Act 1992 (or that could be so awarded if the claim was resolved through that complaints resolution scheme as a binding decision), although the Retailer may include a lower limitation on the Distributor's liability.

15.9 **The Distributor will be indemnified**

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

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

provided that the Retailer's liability under this clause 15.9 shall not in any circumstance exceed, in respect of a single event or series of events arising from the same event or circumstance, \$10,000,000.

15.10 **The Retailer will be indemnified**

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

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

provided that the Distributor's liability under this clause 15.10 shall not in any circumstance exceed, in respect of a single event or series of events arising from the same event or circumstance, \$10,000,000.

15.11 **Rights of indemnity**

The indemnities in clauses 15.7, 15.9 and 15.10 are in addition to and without prejudice to the rights and remedies of each party under this agreement, under any applicable Law, in equity or otherwise.

15.12 **Benefits to extend**

Each party acknowledges that its obligations under this clause 15 constitute promises conferring benefits on each party's officers, agents and employees which are intended to create, in respect of the benefit, an obligation enforceable by those officers, agents and employees and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this clause 15. This clause 15 may be amended in accordance with the terms of this agreement without the consent of any of those officers, agents or employees.

16 **FORCE MAJEURE**

16.1 **Force Majeure Event**

If either party fails to comply with or observe any provision of this agreement (other than payment of any amount due and payable), then to the extent that:

- (a) such failure is caused by:
 - (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
 - (A) due to natural causes, 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, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances;
 - (iii) the binding order or requirement of any court, government, local authority or regulator, which the party could not reasonably have avoided;
 - (iv) the partial or entire failure of supply or availability of Gas to the Network; and/or
 - (v) any other event or circumstance beyond the control of the party invoking this clause 16.1; and
- (b) such party could not have prevented such failure by the exercise of Good Industry Practice,

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

16.2 **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 16.1, it must as soon as reasonably practical notify the other party that it is invoking clause 16.1 and the full particulars of the Force Majeure Event relied upon.

16.3 **Avoidance and mitigation**

The party invoking clause 16.1 must:

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

- (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
- (c) consult with the other party on the performance of the obligations referred to in sub clauses (a) and (b) above.

16.4 **No obligation to settle**

Nothing in clause 16.3 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.

17 **TERMINATION**

17.1 **For convenience**

- (a) Subject to clauses 17.1(b) and 17.1(c), either party may terminate this agreement on not less than 120 Working Days' notice, but no such termination can take effect at any time before the end of 5 years from the Commencement Date.
- (b) The Distributor will not give a termination notice under clause 17.1(a) unless it has first given notice to the Retailer offering to enter into a replacement Use of System Agreement on the Distributor's then-current standard terms (*Replacement Offer*), and at least 40 Working Days have passed since the date of that offer, during which time the offer has remained open for acceptance by the Retailer and the Distributor has made reasonable efforts to be available to discuss the offer with the Retailer.
- (c) At any time during the 40 Working Days after the date of the Replacement Offer, unless the Retailer has accepted the Replacement Offer or the parties have executed an alternative replacement Use of System Agreement, either party may give notice to the other requiring the parties to enter mediation under the terms of the standard mediation agreement of LEADR New Zealand, with a view to agreeing the terms of a replacement Use of System Agreement. If the parties cannot agree on a mediator within 10 Working Days of receipt of that notice, the mediator will be selected by the then-current Chair of LEADR New Zealand or his or her nominee. Unless the parties agree otherwise, the mediation will be conducted in Wellington. Each party will bear its own costs and expenses in connection with the mediation, and the costs and expenses of the mediator in conducting the mediation will be shared equally by the parties unless the mediator determines otherwise. Either party can terminate the mediation at any time, after consultation with the mediator. Neither party will exercise the termination right in clause 17.1(a) while the mediation is underway. If in the course of mediation the parties agree in full on the terms of a replacement Use of System Agreement, then the parties will promptly execute a Use of System on the terms agreed.

17.2 **For lack of supply**

The Distributor may terminate this agreement on 5 Working Days' notice, if at the time of the notice the Retailer has not supplied any Gas over the Network for a continuous period of 180 Working Days or more. The Retailer may terminate this agreement immediately on notice to the Distributor if at the time of the notice the Retailer is not contracted to supply Gas to any person through the Network.

17.3 For Force Majeure

Either party may terminate this agreement on 10 Working Days' notice, if a Force Majeure Event hinders one or both of the parties in the performance of their obligations under this agreement to an extent, and for a duration, which makes it unreasonable or impracticable for the terminating party to be required to continue with this agreement. A party may only terminate under this clause 17.3 if it has complied in all material respects with its obligations under clause 16 in relation to the relevant Force Majeure Event.

17.4 For Events of Default

- (a) Either party may terminate this agreement on not less than 5 Working Days' notice if the other party has committed or undergone an Event of Default. From time to time during the ensuing notice period the terminating party may give further notices withdrawing the termination or extending the effective date. The termination will be deemed to have been withdrawn if the other party rectifies the Event of Default before the effective date.
- (b) The Distributor may terminate this agreement immediately on notice to the Retailer if the Retailer has committed or undergoing an Event of Default and at the time of the notice the Retailer has ceased altogether to supply Gas over the Network.
- (c) The Distributor may terminate this agreement immediately on notice to the Retailer if the Retailer undergoes an Event of Default pursuant to clause 10.9 or 10.11(c), and the Event of Default has not been rectified within 5 Working Days of the Distributor giving notice to the Retailer requesting that it be rectified.

17.5 Effect of termination

- (a) Termination or expiry of this agreement will not affect any rights accrued up to the time of, or as a result of, that termination or expiry.
- (b) Where this agreement is terminated by the Distributor for any reason, the Retailer will remain liable for any Charges that arise in relation to connected Consumers, except where the relevant ICP has been switched to another Gas retailer, or the Distributor has received a notice requesting disconnection of the relevant ICP. The Retailer will procure in its agreements with Consumers the right to terminate supply of Gas by the Retailer through the Network to the Consumer upon termination of this agreement.
- (c) On the effective date of termination, unless this agreement is replaced by an Alternative Contract, each party must have returned or certified the destruction of the other party's Confidential Information, and the parties will cease to provide any services to each other under this agreement.
- (d) Unless this agreement is replaced by an Alternative Contract, any terms of this agreement which expressly or by their nature extend beyond the expiry or termination of this agreement will remain in effect until fulfilled.

PART V: OTHER MATTERS

18 CONFIDENTIALITY

18.1 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 of the other party's Confidential Information except as provided for in clause 18.2; and
- (b) only use the other party's Confidential Information for the purposes for which it is provided, and otherwise as expressly permitted by this agreement.

18.2 Disclosure of Confidential Information

Either party may disclose the other party's Confidential Information:

- (a) where the parties agree in writing to the disclosure of the information;
- (b) where disclosure is expressly provided for under the terms of this agreement;
- (c) 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 18 or a breach by any other person of that person's obligation of confidence);
- (d) where either party is required to disclose Confidential Information:
 - (i) by any Law, or any Relevant Authority;
 - (ii) by any judicial or other arbitration process, for the purposes of that process;
 - (iii) by the regulations of any stock exchange upon which the share capital of either party is from time to time listed or dealt in;
 - (iv) to a shareholding Minister (or advisors acting on his or her behalf), if the disclosing party is a "State enterprise" as defined in the State Owned Enterprises Act 1986; or
 - (v) to the Crown as shareholder, if the disclosing party is a "mixed ownership model company" as defined in the Public Finance Act 1989
- (e) 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; and/or
- (f) where the Confidential Information is released to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Retailer, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party on terms reflecting the confidentiality requirements of this agreement.

18.3 **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 or by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 18.2(f).

19 **AMENDMENTS TO THIS AGREEMENT**

19.1 **Overview**

This agreement may be amended as follows:

- (a) the Distributor may amend the Loss Factors in accordance with clause 7.1;
- (b) the Distributor may implement Price Changes in accordance with clause 6;
- (c) the Distributor may amend the Variable Provisions in accordance with clause 19.2;
- (d) either party may amend this agreement to the extent required by Law or any mandatory industry rules or protocols which are binding on both parties at the relevant time, in each case in accordance with clause 19.3;
- (e) either party may request a change to this agreement, and require the other party to enter into good faith negotiations regarding that change, in each case in accordance with clause 19.3; and
- (f) in any case, any provision of this agreement may be amended by agreement between the parties.

19.2 **Distributor may change Variable Provisions**

The Distributor may make an amendment to the Variable Provisions (other than a Price Change) on not less than 40 Working Days' notice to the Retailer, so long as:

- (a) the change is not inconsistent with Good Industry Practice; and
- (b) the change will not constitute a breach of clause 3.1;

- (c) the Distributor has made the proposed change available to the Retailer for consultation, allowing not less than 20 Working Days for a response;
- (d) the Distributor has supplied the Retailer with a summary of any submissions received as a result of consultation with other Gas retailers, along with the Distributor's responses to those submissions, and a clear indication of whether the majority of retailers (by number of ICPs supplied on the Network) support or do not oppose the amendment, although the level of support will not affect the Distributor's right to implement the change; and
- (e) if during the period of 20 Working Days above, the Retailer provides reasonable evidence that it cannot comply with the proposed change without making material changes to its systems or processes, the Distributor will delay the implementation of the change until at least 3 months after it notifies the finalised change to the Retailer under this clause 19.2.

At the expiry of the applicable notice period, this agreement will be deemed to be amended to reflect the updated Variable Provisions notified by the Distributor. To the extent the Variable Provisions conflict with any other express provisions of this agreement, the latter will prevail. However, each change to the ISA Terms will apply only to ISAs entered into after the change takes effect.

19.3 **Negotiation process**

- (a) Either party may from time to time request one or more changes to any part of this agreement, by giving notice to the other explaining the proposed changes, setting out the reasons for the request, and including a draft amendment to this agreement. The parties will enter into good faith negotiations for a reasonable period in respect of those changes.
- (b) If the proposed change is required by Law or any mandatory industry rules or protocols which are binding on both parties at the relevant time, and the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under paragraph (a) above, then either party may give notice to the other referring the change to be determined by arbitration, in which case:
 - (i) the arbitration will be conducted before a single arbitrator in Wellington;
 - (ii) the arbitrator will be agreed between the Parties or, failing agreement within 10 Working Days of the referral to arbitration, appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand;
 - (iii) the arbitration will be conducted in accordance with the Arbitration Act 1996; and
 - (iv) the arbitrator will ask each party to submit its best proposal for the change, and will select the proposal which the arbitrator considers is the most fair, reasonable and consistent with Good Industry Practice, and from the date of the arbitrator's decision the agreement will be deemed to be amended accordingly.

- (c) The Retailer will be deemed to have accepted a change or addition to this agreement requested by the Distributor under this clause 19.3, so long as the change will not constitute a breach of clause 3.1, and provided that:
- (i) substantially the same change or addition has been incorporated into contracts for supply of Line Function Services between the Distributor and one or more retailers who at that time are the responsible retailers at not less than 66% of the ICPs on the Network; or
 - (ii) the change or addition is expressed to come into effect only once the requirements of paragraph (i) above have been satisfied.

19.4 **Minor changes**

Where a change to the agreement has a de minimis effect on the contractual undertakings of the parties (for example terminology changes to accord with new industry classifications or definitions), either party will be entitled to effect the change by not less than 10 Working Days' notice to the other party, unless the party receiving the notice objects to the change within 5 Working Days of receipt, showing reasonable grounds as to why that change should not be implemented.

20 **CONSUMER CONTRACTS**

20.1 **Retailer to include required provisions**

- (a) In the case of any Consumer Contract entered into prior to the Commencement Date, the Retailer will either:
- (i) issue a unilateral variation to those agreements within 12 months after the Commencement Date, to include the provisions required to be included in such agreements by this agreement, or provisions with substantially the same effect, as summarised in *Schedule 3: Requirements for Consumer Contracts*; or
 - (ii) where the Retailer is unable to unilaterally vary those agreements in accordance with paragraph (i) above, the Retailer will use all reasonable endeavours to obtain at the next review date of the agreement between the Retailer and the Consumer, the agreement of the Consumer to vary that agreement to include the provisions required to be included in such agreements by this agreement, or provisions with substantially the same effect, as summarised in *Schedule 3: Requirements for Consumer Contracts*.
- (b) In the case of any agreement between the Retailer and a Consumer entered into after the Commencement Date, the Retailer will include the provisions required to be included in such agreements by this agreement, or provisions with substantially the same effect, as summarised in *Schedule 3: Requirements for Consumer Contracts*. However, to the extent that the Retailer's applicable standard terms and conditions did not comply with this clause 20.1(b) as at the Commencement Date, the Retailer will not be obliged to remedy that non-compliance until the date that is 12 months after the Commencement Date.

- (c) The Retailer will ensure that all provisions which this agreement requires the Retailer to include in its agreements with Consumers are expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.

20.2 **Changes during term**

- (a) In the event that this agreement is changed in accordance with clause 19 and this amends or adds to the provisions which this agreement requires the Retailer to include in its agreements with Consumers, the Retailer will take such steps as are necessary to comply with that provision.
- (b) If the Retailer is required by the Distributor to change its agreements with Consumers more than once in any 2 year period, the Retailer may recover all reasonable costs and expenses for the administrative effort required to implement such changes, provided that the Retailer will not be entitled to such costs where the change is required by the Distributor:
 - (i) as part of a change to this agreement required by Law or any mandatory industry rules or protocols which are binding on both parties at the relevant time; or
 - (ii) as part of a Price Change or other change to the Price Book, resulting from a change in local authority rates or a change in Law.

21 **NOTICES**

21.1 **Delivery**

Any notice, consent, permission, approval, agreement, request or instruction given by a party for the purposes of this agreement will be of no effect unless given in writing and personally delivered, posted or forwarded by email to the address for notice set out on the execution page of this agreement or to such other address as the recipient party may notify from time to time.

21.2 **Deemed receipt**

Any notice given pursuant to this agreement will be deemed to have been received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, on the 2nd Working Day following the date of posting;
- (c) in the case of email, on the 1st Working Day after the day of sending, unless before that time the sender's email server receives a message stating that the email has not been delivered.

Any notice that is received 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.

22 INFORMATION, AUDIT AND VERIFICATION

22.1 Protocols for exchanging information

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

22.2 Consumer information

The Retailer will upon request, and in a reasonable timeframe, provide the Distributor with any Consumer information reasonably required by the Distributor to fulfil its obligations in accordance with this agreement. The information is to be treated by the Distributor as the Retailer's Confidential Information. To avoid doubt, Registry data and consumption data are not Confidential Information, except while they are linked to other information recording the identity of individual Consumers or Retailers.

22.3 Health and safety policy

The Distributor will upon request, and in a reasonable timeframe, provide the Retailer with a copy of its health and safety policy, but in any case no more than once in any 12 month period. The Distributor's health and safety policy is to be treated by the Retailer as the Distributor's Confidential Information.

22.4 Auditing information provided

To enable either party (*Verifier*) to verify the accuracy of information provided to it by the other party (*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) records of metering or consumption data (collectively, *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 so long as the Verifier has given the Provider not less than 10 Working Days' prior notice.

22.5 Limitations on the Verifier

In relation to its review of the Records pursuant to clause 22.4, the Verifier will not:

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

22.6 Independent Auditor

Where the Provider, acting reasonably, gives notice that any Records requested by the Verifier contain information which is commercially sensitive, or is about other Industry participants, or is confidential to other Industry participants, and which

cannot reasonably be severed from the information relating to the Provider, then the Verifier will appoint an independent auditor (the *Auditor*) to review those Records instead of the Verifier reviewing them directly for itself. The Provider will not unreasonably object to the Auditor appointed by the Verifier. In the event that the Provider reasonably objects to the identity of the Auditor, the Auditor will be replaced with a person appointed by the President of the Institute of Chartered Accountants (or a nominee). The Verifier will pay the Auditor's costs, except where the Auditor discovers a material inaccuracy in the Records in which case the Provider shall pay the Auditor's costs. The terms of appointment of the Auditor will require the Auditor to treat the Records as Confidential Information.

22.7 **Provider must co-operate**

The Provider will provide reasonable co-operation with the Verifier or the Auditor (as the case may be) in its review of the Provider's Records under this clauses 22.4, 22.5 and 22.6, and will ensure that the Records are readily accessible and readable.

23 **MISCELLANEOUS**

23.1 **No implied warranties**

To the maximum extent permitted by Law, the Distributor excludes all warranties, representations and undertakings about the Services and the Network other than those warranties, representations and undertakings expressly set out in this agreement. In particular, but without limitation, the Distributor does not warrant that conveyance of Gas over the Network will be free from defects and interruptions.

23.2 **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.

23.3 **Contract privity**

Except where this agreement specifically states otherwise, the agreement is not intended to be enforceable by any person other than the Retailer and Distributor.

23.4 **Entire agreement**

This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject matter. To avoid doubt, this agreement will not extinguish any "Individual Site Agreement" which as at the date of this agreement is in force between the Distributor and the Retailer.

23.5 **No assignment**

Neither party may assign any benefit or burden under or in relation to this agreement without the prior consent of the other party. Neither party will unreasonably withhold or delay such consent. For the purposes of this clause, a Change of Control of a party will be deemed to be an assignment. A breach of this clause is deemed to be a material breach of this agreement.

23.6 **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.

24 **DEFINITIONS AND CONSTRUCTION**

24.1 **Defined terms**

In this agreement, unless the context otherwise requires:

Acceptable Credit Rating in relation to the Retailer or any third party that provides Acceptable Security on the Retailer's behalf (*Relevant Entity*), means that:

- (a) the Relevant Entity holds a long-term credit rating of at least BBB- (Standard & Poor's Ratings Group), Baa3 (Moody's), or an equivalent rating from a reputable rating agency acceptable to the Distributor; and
- (b) where the Relevant Entity holds only the minimum of these ratings, the Relevant Entity is not subject to negative credit watch or any similar arrangement imposed by the agency that gave that credit rating.

Acceptable Prudential Assurance means prudential assurance as described in clause 10.2, and complying with all the requirements of clause 10.

Acceptable Security means, at the Retailer's option:

- (a) a Cash Deposit paid to the Distributor and held on trust in accordance with clause 10.11 or otherwise on terms agreed by the parties;
- (b) an unconditional guarantee, unconditional letter of credit, or security bond, in each case provided by a third party who holds and maintains an Acceptable Credit Rating, given in favour of the Distributor and in a form acceptable to the Distributor; or
- (c) any combination of (a) and (b) above.

Acceptable Security Amount means the amount specified by the Distributor from time to time by notice to the Retailer in accordance with clauses 10.4 and 10.7(b).

Active ICP means an ICP which has a Registry ICP status of "Active-Contracted" or "Active-Vacant" and for which the Retailer is the "responsible retailer" under the Switching Rules.

Agreed Format means the relevant format required by any Law or otherwise as agreed by the parties from time to time, including any Information Exchange Protocol which the parties have agreed to use for that purpose.

Alternative Contract has the meaning given in clause 3.2.

Billing and Settlement Policies means the billing and settlement policies set out in the Price Book from time to time.

Billing Month in the context of any given Charges, means the calendar month immediately following the Consumption Month for those Charges.

Cash Deposit means a cash deposit paid to the Distributor as Acceptable Security.

Change of Control in respect of an entity, means:

- (a) a single person who did not previously have Control over that entity acquiring such Control; and/or
- (b) a single person who previously had Control over that entity ceasing to have such Control, except where that cessation of Control occurs through transactions carried out while that entity is listed on the NZX Main Board.

Charges means the charges for the Services, as specified in the Price Book.

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

Confidential Information means all data and other information of a confidential nature provided by one party to the other under the terms of this agreement or otherwise, but excludes:

- (a) information that is publicly available, other than by way of breach of the confidentiality obligations under this agreement;
- (b) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (c) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (d) reports prepared in accordance with clause 5;
- (e) the existence and terms of this agreement.

Connection Policies means the new connection, disconnection and re-connection policies attached as Schedule 5: Connection Policies.

Consumer means a purchaser of Gas from the Retailer where the Gas is delivered via the Network.

Consumer Contract means a contract between the Retailer and a Consumer for the supply of Gas, which may also include the provision of Line Function Services.

Consumer Service Lines means the lines used or intended to be used for the conveyance of Gas between the Point of Connection and any part of the Consumer's Premises.

Consumer's Installation means the gas installation and associated appliances connected to the outlet of a GMS.

Consumer's Premises means the land and buildings at each ICP owned or occupied by the person who is for the time being the Consumer at that ICP, and any land over which that Consumer has an easement or right to pass Gas being conveyed to that ICP, including:

- (a) the land within the boundary where the Gas 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.

Consumption Month in the context of any given Charges, means the month in respect of which those Charges are accumulated.

Control in relation to an entity, means the capacity to appoint the majority of directors on the board of that entity, and/or to control not less than 50% of the voting power at a meeting of that entity's members or shareholders. For this purpose, one entity is deemed to *Control* another entity if the first entity Controls a third entity which in turn Controls that other entity.

Core Price Change means a Price Change that involves a change to a pricing methodology used to determine the prices in the Price Book, or a change to the structure of the prices in the Price Book, including a change to the eligibility criteria for one or more Load Groups, introduction of a new Load Group or closure of an existing Load Group.

Critical Contingency Regulations means the Gas Governance (Critical Contingency Management) Regulations 2008.

Decommissioned means the ICP status in the Registry once a Permanent Disconnection has been completed with the service line to the ICP disconnected outside the property and the service line on the property abandoned.

De-energise means carrying out the process for closing and capping or plugging the service valve at the Point of Connection to prevent further transportation of Gas to an ICP.

Default Interest means interest on the amount payable at the Interest Rate plus five percentage points, from the due date for payment until the date of payment of that amount to the relevant party accruing on a daily basis and compounded monthly.

Direct Physical Loss in relation to any breach of contract or any negligent act or omission, means loss or damage arising in the ordinary course, as a direct, natural and probable result of the breach or negligence, but does not include any amounts on account of diminution in value, or loss of use, profit, or revenue.

Disconnection means a Temporary Disconnection, Transitional Disconnection or Permanent Disconnection, as the context requires.

Dispute has the meaning given to it in clause 14.1.

Distribution Services means the services described in clause 1.2.

Distribution Services Agreement means an agreement between the Distributor and a consumer, which (among other things) obliges the consumer not to have Gas transported to one or more sites other than by way of the Network, but does not involve the supply of Line Function Services under that agreement.

Distributor means the party identified as such on the execution page of this agreement.

Distributor's Assets means any Fittings and/or Metering Equipment that are for the time being installed in, over or upon a Consumer's Premises, and are either owned by the Distributor or its agents, or made available by a third party solely or predominantly for use by the Distributor or its agents.

Energise means carrying out the process for opening the service valve at the Point of Connection to allow Gas to flow to an ICP, including any associated checking and testing of the Consumer's Installation.

Event of Default:

- (a) in relation to either party, means that party:
- (i) undergoing an Insolvency Event;
 - (ii) committing a material breach and failing to remedy it within 5 Working Days following receipt of notice from the other party pointing out the breach and stating that it regards the breach as material, except where that party is currently engaged in ongoing efforts to remedy the breach which are reasonably satisfactory to the other party; and/or
 - (iii) committing a breach (whether material or not) and failing to remedy it within 5 Working Days following receipt of notice from the other party pointing out the breach, in circumstances where that party has already committed two or more breaches (whether material or not) during the immediately preceding 12 months and the cumulative effect of all these breaches on the other party is material; and

- (b) in relation to the Retailer only, means the Retailer:
 - (i) committing a material breach of clause 10;
 - (ii) undergoing or suffering any event or circumstance which this agreement deems to be an Event of Default by the Retailer; and/or
 - (iii) failing to pay an amount due and payable under this agreement (and not validly withheld under clause 9.11) that exceeds the greater of \$100,000 or 20% of the actual Charges payable by the Retailer for the month preceding the month in which the outstanding amount fell due.

Fitting means everything used, designed or intended for use, in or in connection with the extraction, processing, transformation, transmission, conveyance, measurement, or use of Gas.

Force Majeure Event has the meaning set out in clause 16.1.

Gas means reticulated natural gas.

GMS or Gas Measurement System means the facilities installed downstream of the service valve to measure the quantity of Gas delivered to that point.

Good Industry Practice means:

- (a) in the case of the Distributor, the exercise of the same degree of skill, diligence, prudence, foresight and economic management as would reasonably be expected from a skilled and experienced operator engaged in the distribution of reticulated gas in New Zealand, operating under the same Laws as those applying to the Distributor and the Network, and in comparable conditions (taking into account the relative size, duty, age and technological status of the Network and any other relevant factors); and
- (b) in the case of the Retailer, the exercise of the same degree of skill, diligence, prudence, foresight and economic management as would reasonably be expected from a skilled and experienced retailer of reticulated gas in New Zealand, operating under the same Laws as those applying to the Retailer and its operations, and in comparable conditions.

GST means goods and services tax charged pursuant to the Goods and Services Tax Act 1985.

ICP or Installation Control Point means an "ICP" as defined in the Gas (Downstream Reconciliation) Rules 2008.

Industry means those parties involved in the extraction, processing, transmission, distribution, measurement and retailing of Gas in New Zealand.

Information Exchange Protocol means an information exchange protocol approved by the Gas Industry Company Limited as an Industry standard for the exchange of specified information.

Injection Point means a point of connection between the Network and a Transmission System.

Insolvency Event means in relation to a party:

- (a) the party has a receiver, administrator or manager or similar official appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) the party is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, a statutory manager is appointed or any step is taken with a view to any such appointment under that Act or any other person is appointed to manage any of that party's affairs;
- (c) any step is taken to levy or enforce a security interest or to distrain, attach or execute any legal process against the whole or any substantial part of that party's property;
- (d) the party is unable to pay its debts as they fall due, is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due or fails to comply with a statutory demand under section 289 of the Companies Act 1993;
- (e) the party proposes or makes a compromise, arrangement or composition with or for the benefit of its creditors or proposes an amalgamation (except with the prior consent of the other party);
- (f) a liquidator is appointed, an order is made, resolution is passed, notice is given, an application or petition is filed in any court or any other step is taken by any person, for the dissolution, winding up or liquidation of that party, or any meeting is convened for the purposes of considering taking any of these steps; and/or
- (g) being a company, the party is removed from the register of companies (otherwise than as a consequence of an amalgamation which the other party has provided its consent to).

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

ISA means an "Individual Site Agreement", as prepared by the Distributor and signed by the Retailer after the date of this agreement, regulating one or more aspects of the Charges to be billed to the Retailer under this agreement.

ISA Terms means the terms in Schedule 7: ISA Terms.

Laws means all applicable laws and regulations, and all applicable rules, codes, orders, bylaws and ordinances made under the authority of any law or regulation.

Line Function Services means "line function services" in relation to a "distribution system", as those terms are defined in the Gas Act 1992.

Line Services Agreement means an agreement between the Distributor and a consumer under which the Distributor is contracted to supply Line Function Services to that consumer (either alone or with other goods or services).

Listing Rules means the listing rules binding on issuers listed on the NZX Main Board or NZX Debt Market, as issued by NZX Limited from time to time.

Load Group means a "load group" defined in the Price Book.

Load Shedding means the act of reducing or interrupting the conveyance of Gas over the Network to one or more ICPs.

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

Loss Factor means the factor(s) expressed as 1.XXX appearing in the Price Book, and as amended by the Distributor from time to time in accordance with this agreement.

Metering Equipment means any apparatus which may be used for measuring the quantity of Gas 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 Gas between Injection Points and ICPs.

Network Connection Standards means the Distributor's written technical standards for connection to the Network available on the Distributor's website as amended and replaced by the Distributor from time to time in accordance with Good Industry Practice. For the avoidance of doubt, the Network Connection Standards do not include any pricing or any information exchange protocols.

Permanent Disconnection means the disconnection of an ICP where the GMS and/or service riser are to be permanently removed from the site, and the four letter ICP status code on the Registry is changed to INACP or DECR (or equivalent).

Performance Report has the meaning set out in clause 5.

Physical Isolation has the meaning given in the Connection Policies.

Planned Service Interruption means a Service Interruption that has been scheduled to occur in accordance with the Service Interruption Communications Policies.

Point of Connection means a "point of supply" (as defined in the Gas Act 1992) located at a Consumer's Premises.

Price Book means the pricing schedule and policy document titled "Powerco Gas Pricing – Distribution Services", in the form available on the Distributor's website as at the date of this Agreement, as amended or replaced from time to time by the Distributor in accordance with this agreement, and read subject to the provisions of Schedule 2 of this Agreement.

Price Change means:

- (a) an amendment to the rates and/or prices in the Price Book;
- (b) an amendment to the definition in the Price Book of any costs or charges which the Distributor is entitled to pass through to the Retailer;
- (c) an amendment to any pricing methodology used to determine the prices in the Price Book;
- (d) an amendment to the definition of any Load Group, or the eligibility criteria for any Load Group;
- (e) the creation of a new Load Group, and/or the closure and deletion of an existing Load Group; and/or
- (f) any other amendment to the Price Book (including the replacement of the Price Book),

but excludes any review of Loss Factors under clause 7, any allocation or re-allocation of ICPs to Load Groups under clause 8, any exercise of a power expressly set out in the Price Book (including any setting of a price which the Price Book identifies as being agreed or determined on a case-by-case basis), and any exercise of a power pursuant to any applicable ISA Terms.

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.

Reconciliation Rules means the Gas (Downstream Reconciliation) Rules 2008.

Reconnection means the reconnection of a Point of Connection to the Network, so as to reverse a prior Temporary Disconnection or Transitional Disconnection.

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 Switching Rules.

Relevant Authority means the Gas Industry Company Limited or any other regulatory authority exercising powers conferred by Law.

Restore in relation to the operation of the Network, includes controlling the restoration of supply of Gas to Consumers' Installations, in co-ordination with retailers, so as to enable safe and orderly resumption of supply, including relighting of pilots where applicable.

Retailer means the party identified as such on the execution page of this agreement.

Retailer's Assets means any Fittings and/or Metering Equipment that are for the time being installed in, over or upon a Consumer's Premises, and are either owned by the Retailer or its agents, or made available by a third party solely or predominantly for use by the Retailer or its agents.

Service Guarantees means a payment to be made by one party where it fails to meet a particular Service Standard, as that payment is set out in Schedule 1: Service Standards.

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

Service Interruption Communications Policies means the policies attached as Schedule 4: Service Interruption Communications Policies and updated and replaced by the Distributor from time to time in accordance with this agreement, setting out requirements and procedures for communications between the Distributor and the Retailer, and between the Retailer and Consumers, in relation to Service Interruptions affecting the Network.

Service Level means the required level of a Service Measure as set out in Schedule 1.

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

Service Standards means the applicable set of Service Measures, Service Levels, Service Guarantees, service performance reporting measures and frequency of reporting, in each case as set out in Schedule 1.

Services means the Distribution Services and any other services provided by the Distributor to the Retailer in accordance with this agreement.

Switching Rules means the Gas (Switching Arrangements) Rules 2008.

Switch Event Date means in respect of an ICP, the date recorded in the Registry as being the date on which a retailer assumes reconciliation responsibility for that ICP.

Temporary Disconnection means the disconnection of an ICP, generally for a short duration, where the four letter ICP status code on the Registry remains ACTC (or equivalent).

Transitional Disconnection means the disconnection of an ICP, generally for an unknown duration, where the four letter ICP status code in the Registry is changed to INACT (or equivalent), but excludes a Permanent Disconnection.

Transmission System means the lines, equipment and plant that form part of a system used for "gas transmission" as defined in the Gas Act 1992.

Transmission Operator means a person who provides the use of a Transmission System for transportation of gas to an Injection Point.

Unplanned Service Interruption means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Retailer or any affected Consumer (as appropriate), including any urgent maintenance where it is not reasonably practicable to give the prior warning or notice required in respect of Planned Service Interruptions under this agreement.

Use of Money Adjustment means an amount payable at the Interest Rate plus two percentage points, from the due date of the original invoice to the date of settlement of the relevant amount, accruing on a daily basis and compounded at the end of every month.

Variable Provisions means:

- (a) the Service Standards;
- (b) the Service Interruption Communications Policies;
- (c) the Connection Policies; and
- (d) the ISA Terms.

Warranted Person means an individual meeting the relevant qualification, certification and other requirements for carrying out the type of work in question, as per the *New Zealand Gas Industry Certificate of Competency Criteria and Framework for Reticulated Gas (Natural Gas and/or LPG) Distribution & Gas Measurement System (GMS)*. As at the date of this agreement, the most current version of these requirements is dated April 2011.

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

24.2 **Construction**

In the construction of this agreement, unless the context requires otherwise:

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;

Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this agreement;

Inclusions: the word "including" will be read as "including (without limitation)", and the words "include", "includes" and "included" will be read in a like manner;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this agreement;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules: the schedules form part of this agreement;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations; and

Writing: a reference to "written" or "in writing" includes a reference to email and all common electronic document formats.

SCHEDULE 1: SERVICE STANDARDS

- 1 The Service Standards are set out the table below.
- 2 Where either party breaches a Service Level that is subject to a Service Guarantee, the breaching party will proactively notify the other party, as soon as reasonably practicable following the breach, and in any case within 10 Working Days of becoming aware of the breach. The notification must:
 - (a) identify the ICPs affected by the breach;
 - (b) set out the total Service Guarantee amount payable in respect of the breach, in aggregate and where applicable broken down by ICP; and
 - (c) outline the reasons for the breach; and
 - (d) include a credit invoice for the amount payable in respect of the breach, or an order number for that amount if the breaching party requires an invoice from the other party for the Service Guarantee amount payable in respect of the breach.
- 3 All Service Guarantee amounts are expressed before the addition GST (if any). Where a Service Guarantee serves to decrease or increase the consideration payable under this agreement for a taxable supply, the amounts of GST payable under this agreement in relation to that taxable supply will be adjusted, and the parties will issue a debit note or credit note to each other accordingly, ensuring that each debit note or credit note complies with the requirements of the Goods and Services Tax Act 1985, and states clearly the amounts payable on account of GST (if any).
- 4 Where the Distributor pays a Service Guarantee amount calculated on a per ICP basis, the Retailer will pay a corresponding amount to the Consumer at each of the ICPs included in the calculation of the Service Guarantee amount, but may deduct an amount that reflects the actual and reasonable cost to the Retailer of administering the payment.

Service Standards

Service Measure	Service Level	Service Guarantee	Service Performance Reporting	Frequency of Reporting Measure
Availability of Supply	Subject to the terms of this agreement, the Distributor will endeavour in accordance with Good Industry Practice to maintain continuous supply 24 hours, 7 days each week to every Active ICP	NIL	SAIDI	As per Distributor's reporting obligations under applicable Laws
Restoration of Supply: Unplanned Service Interruptions	The Distributor to endeavour in accordance with Good Industry Practice to restore supply: <ul style="list-style-type: none"> • to Urban¹ areas affected, within 3 hours of notification • to Rural² areas affected, within 6 hours of notification 	NIL	As per Service Interruption Communications Policies for Unplanned Service Interruptions	As per Service Interruption Communications Policies for Unplanned Service Interruptions
Safety management systems	The Distributor to maintain a safety management system that complies with NZS 7901	NIL	Audit certificate for safety management systems	Current certificate available on website
Odorant monitoring*	The Distributor to provide the Retailer with monthly data on odorant levels, as compiled by the Distributor for its own internal purposes, to at least the same level of detail and completeness as generally provided by Distributor to retailers during the 12 months prior to the date of this agreement.	NIL	As determined by Distributor from time to time in accordance with Good Industry Practice	Monthly
Notification of odorant outside specification*	The Distributor to notify the Retailer within 24 hours in response to odorant monitoring indicating odorant levels being outside the limits specified in NZS 5263 The Retailer to notify the Distributor within 24 hours if it suspects odorant levels are outside the limits specified in NZS 5263	NIL	None	None

¹ "Urban" refers to a location within the city limits of Wellington, Lower Hutt, Upper Hutt, Porirua, Palmerston North, Hastings, Napier or New Plymouth.

² "Rural" refers to a location that is not Urban.

Service Measure	Service Level	Service Guarantee	Service Performance Reporting	Frequency of Reporting Measure
Notification of non-specification gas*	The Distributor to notify the Retailer within 3 hours if it is aware that non-specification gas has entered a gas network The Retailer to notify the Distributor with 3 hours if it suspects that non-specification gas has entered a gas network	NIL	None	None
Notification of over-pressure event*	The Distributor to notify the Retailer within 3 hours if it is aware that the gas network as operated above the network's designated operating pressure range (defined as Low, Medium or Intermediate pressure per industry standards)	NIL	None	None
Odourisation documentation*	At the reasonable request of the Retailer, the Distributor will make its odourisation documentation available that includes a quality assurance procedure for testing and monitoring whether the gas is odourised at all times to the required level, contingency plans, and staff competency documentation.	NIL	None	As reasonably requested by the Retailer from time to time.
Notification of serious harm or significant property damage	The Distributor to notify the Retailer within 3 hours of incidents resulting in serious harm or significant property damage as defined by the Gas Act. The Distributor to provide the Retailer with a copy of associated reports as required by the Gas Act.	NIL	None	None
Unplanned Service Interruption communication	Distributor to comply with Service Interruption Communications Policies for Unplanned Service Interruptions	NIL	As per Service Interruption Communications Policies for Unplanned Service Interruptions	As per Service Interruption Communications Policies for Unplanned Service Interruptions
Notification of Planned Service Interruption	Distributor to comply with Service Interruption Communications Policies for Planned Service Interruptions	NIL	As per Service Interruption Communications Policies for Planned Service Interruptions	As per Service Interruption Communications Policies for Planned Service Interruptions
Consumer Complaints	Both parties will participate in the dispute resolution scheme referred to in section 43E of the Gas Act 1992 and work together to ensure compliance with all timeframes set out in the rules of that scheme.	NIL	Not applicable	Not applicable

Service Measure	Service Level	Service Guarantee	Service Performance Reporting	Frequency of Reporting Measure
Pricing Information	Transparency of changes to pricing policy to be achieved through a mark-up of policy changes with the final Price Book as well as a clean version.	NIL	Not applicable	Not applicable

* The industry is currently working to develop a Gas Quality Information Protocol. Once this Protocol has been finalised and approved by the Gas Industry Company Ltd, following a consultation process consistent with administrative law standards for exercise of a regulatory discretion, the Service Standards marked with an asterisk above will be updated to reflect the information-sharing requirements of the Protocol.

draft

SCHEDULE 2: PRICE BOOK

1 INCORPORATION

As at the date of this agreement, the initial Price Book is the document titled "Powerco Gas Pricing – Distribution Services" available from the Distributor's website, with an effective date of [REDACTED].

2 TRANSITIONAL PROVISIONS

Overview

- 2.1 This agreement is based on a new standard form Use of System Agreement developed by the Distributor from 2012 to 2014.
- 2.2 As at the date of this agreement, the Price Book has yet to be revised to improve alignment with the terms and terminology of this new standard form.
- 2.3 In the meantime, the provisions of this section 2 are intended to clarify the application of the Price Book in the context of this agreement.
- 2.4 The provisions of this section 2 may be amended or deleted by subsequent versions of the Price Book.

Network definition

- 2.5 In the Price Book, each reference to "Gas Network" includes a reference to the "Network" as defined in this agreement.

Load Group changes

- 2.6 For the purposes of clause 8.3 of this agreement, the "evidence and/or confirmations" required by the Price Book as a pre-requisite for a change of Load Group includes any evidence and/or confirmations reasonably requested by the Distributor at the relevant time for the purpose of demonstrating the satisfaction of the applicable Load Group eligibility criteria set out in the Price Book.
- 2.7 For the purposes of clause 8.4 of this agreement, the "information and/or evidence" required by the Price Book to enable the Distributor to allocate an ICP to the correct Load Group includes any information and/or evidence reasonably requested by the Distributor at the relevant time for that purpose.

SCHEDULE 3: REQUIREMENTS FOR CONSUMER CONTRACTS

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

Provisions which the Retailer must include in its agreement with Consumers	Clause reference in this agreement
Rights for the Distributor to access the Consumer's Premises, including for the purpose of performing Temporary Disconnections as permitted by clause 13.4	Clause 11.1
Obligation on Consumer to protect the Distributor's Equipment against interference and damage	Clause 12.1
Prohibition on interference with the Network	Clause 12.3
Safe housing for Distributor's assets	Clause 12.6
Acknowledgement of Distributor's ownership rights	Clause 12.7
Requirement that the Consumer comply with the Distributor's Network Connection Standards	Clause 13.2
Exclusion of Distributor Warranties	Clause 15.7
Assumption of liability by Consumer	Clause 15.8(a)
Limitation of Distributor liability	Clause 15.8(b)
Right for Retailer to terminate supply of gas to Consumer on termination of this agreement.	Clause 17.5(b)
Acknowledgment of Distributor as a third party beneficiary under the Contracts (Privity) Act 1982.	Clause 20.1(c)

SCHEDULE 4: SERVICE INTERRUPTION COMMUNICATIONS POLICIES

Unplanned Service Interruptions

- 1 This Service Interruption Communications Policy applies to Unplanned Service Interruptions affecting 20 or more Consumers (*Material Unplanned Interruptions*).
- 2 As soon as reasonably practicable but no later than 30 minutes after the Distributor first becomes aware of a Material Unplanned Interruption, the Distributor will notify the Retailer, in an Agreed Format if applicable.
- 3 The Distributor will provide the Retailer with updates on the status of the Material Unplanned Interruption, within 30 minutes of new information becoming available to the Distributor and otherwise at reasonable intervals determined by the Distributor (generally 60 minutes), until the Distributor advises the Retailer of a firm restoration time.
- 4 Where an expected restoration time advised by the Distributor for a Material Unplanned Interruption is likely to be exceeded, the Distributor will inform the Retailer of the new expected restoration time. This will be done no later than 10 minutes before the expected restoration time elapses.
- 5 The Distributor will supply the Retailer with details of each area to which supply is restored following a Material Unplanned Interruption, within 30 minutes of a full or partial restoration of supply.
- 6 Unless otherwise agreed, the Retailer will be responsible for receiving and managing calls from Consumers relating to the Material Unplanned Interruption. When the Distributor first notifies the Retailer of a Material Unplanned Interruption, the Distributor will also provide an indication of whether the Distributor wishes to take over the logging of these calls.
- 7 Unless the Distributor has taken over responsibility for logging calls, whenever the Retailer receives information relating to a possible Material Unplanned Interruption, the Retailer will log a call with the Distributor within 30 minutes of receiving that information, in an Agreed Format if applicable.
- 8 Where the Distributor is responsible for receiving and managing calls, the Retailer may provide the Distributor's contact details to the Consumer rather than taking details and logging the call with the Distributor.
- 9 The Distributor will ensure that its media communication process is initiated by the following events (at a minimum):
 - (a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 60 minutes in duration, affecting but not necessarily limited to:
 - (i) more than 1,000 Consumers;
 - (ii) a central business district;

- (iii) an industrial area that normally consumes significant quantities of gas;
- (iv) supply to critical facilities such as hospitals, pumping stations; or
- (b) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 60 minutes in duration, affecting the Network to such an extent that a reasonable and prudent operator in the Distributor's position, acting in accordance with Good Industry Practice, would initiate a disaster recovery plan (for example, a serious earthquake);
- (c) a Civil Defence emergency has been initiated (in this situation communication may be via Civil Defence Headquarters); or
- (d) any other major event that has a material adverse effect on the delivery of Distribution Services.

Planned Service Interruptions

- 10 For Planned Service Interruptions, the Distributor will provide the Retailer with a notice (in an Agreed Format, if applicable) at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled.
- 11 Within 2 Working Days of receiving that notice, the Retailer may notify the Distributor of any Consumers who would be adversely affected by the Planned Service Interruption and request an alternative date and/or time.
- 12 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 the request in good faith, 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.
- 13 Where a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor will provide the Retailer with a notice (in an Agreed Format, if applicable) as soon as reasonably practicable.
- 14 Where the Retailer receives a final notice from the Distributor confirming a Planned Service Interruption, the Retailer will forward that notice to all Consumers who will be affected by that Planned Service Interruption, within 5 Working Days of receiving that notice.
- 15 If the Planned Service Interruption will affect all consumers supplied from a gas gate, the Distributor may, in addition to providing the notices required above, arrange for public notification through the local newspaper, or other effective method, on behalf of all retailers.

SCHEDULE 5: 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 The Connection Policies in this Schedule set out examples of the broad processes to be followed in respect of:
 - (a) new connections;
 - (b) capacity changes;
 - (c) Temporary Disconnections and associated Reconnections;
 - (d) Transitional Disconnections and associated Reconnections; and
 - (e) Permanent Disconnections.
- 3 The Connection Policies 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. The information content and transmission media will be consistent with the Agreed Formats, where relevant.

General

- 4 In the interests of safety, all Disconnections and Reconnections undertaken by either party must be undertaken in accordance with the GANZ Gas Industry Disconnection and Reconnection Protocol GIP001.
- 5 Accordingly, notwithstanding any other provision of this agreement, the Retailer undertakes that neither it nor its agents will carry out any connections, capacity changes, Disconnections or Reconnections on the Network, except:
 - (a) Temporary Disconnections, as permitted by paragraph 15 below;
 - (b) Transitional Disconnections, as permitted by paragraph 20 below;
 - (c) Permanent Disconnections, as permitted by paragraph 28 below; and/or
 - (d) otherwise with the Distributor's prior consent, which may be given or withheld at its absolute discretion.
- 6 Nothing in this agreement authorises the Retailer or its agents to remove or interfere with GMS assets where this is not otherwise authorised under any other agreement between the Distributor and the Retailer.

Process for New Connections or Changes in Capacity

- 7 The Distributor will receive applications from the owner of a Consumer's Premises, either directly or through the Retailer (in each case, the *Requesting Party*) for the creation of a new connection to the Network or an increase or decrease in capacity for an existing connection to the Network.
- 8 The Distributor will undertake an impact assessment to determine whether alterations to the Network are required in order to implement that application. If alterations to the Network are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works or may decline the Requesting Party's application. If the application is declined the Distributor will provide reasons why.
- 9 If the Distributor accepts the application, then once the Distributor and Requesting Party have agreed on the terms for the relevant work, the Distributor will arrange for the work to be undertaken accordingly.
- 10 Once the work has been completed, and the Requesting Party has advised the Distributor of its retailer (if not already known), the Distributor will update the Registry in accordance with its obligations under the Switching Rules and (in the case of a new ICP) will advise the Retailer via the Registry that the ICP is ready to be Energised.
- 11 Once the ICP is ready to be Energised, the Retailer (or, where applicable, the Consumer) will arrange for the ICP to be Energised by a Warranted Person.
- 12 Both parties will update the Registry throughout this process in accordance with Switching Rules.

Physical Isolation

- 13 For Transitional Disconnections and Permanent Disconnections, the Consumer's Installation will be physically isolated from the Gas service. To achieve this, subject to paragraphs 4 and 5 above, the Retailer initiating the Disconnection must:
 - (a) where there is a Consumer residing at the property, advise the Consumer of the proposed disconnection, if it was not initiated by or requested by the Consumer;
 - (b) arrange for a Warranted Person to close and cap or plug the service valve, and cap or plug the pipe-work downstream of the service valve; and
 - (c) fit status tags to the service valve,
 (referred to as *Physical Isolation*).
- 14 To avoid doubt, a Temporary Disconnection may also include Physical Isolation provided the ICP status code in the Registry remains unchanged. If the ICP status

code is to be changed after the initial Temporary Disconnection, the change will be treated under this Schedule as a Transitional Disconnection.

Temporary disconnections and associated reconnections

- 15 A Temporary Disconnection may be carried out in the following circumstances:
- (a) by either party in an emergency where the interests of public or Consumer safety require an immediate disconnection;
 - (b) by the Retailer, for credit reasons;
 - (c) by the Retailer or Distributor, where requested by the Consumer, for safety or other reasons;
 - (d) by the Distributor acting in accordance with clause 13.4 of this agreement; or
 - (e) by the Retailer or Distributor or their agents for equipment maintenance or replacement.
- 16 Whenever the Distributor initiates a Temporary Disconnection, or a Reconnection at an ICP that has been Temporarily Disconnected, the Distributor will notify the Retailer within 1 Working Day of the field work having been completed.
- 17 In all other cases, a party performing a Temporary Disconnection or associated Reconnection will, unless otherwise agreed, provide a monthly report detailing the Temporary Disconnections and associated Reconnections undertaken during the previous month (other than Temporary Disconnections which the Distributor has already notified to the Retailer under paragraph 16).
- 18 To avoid doubt, the four letter ICP status code in the Registry is not to be changed for Temporary Disconnections, including Physical Isolations initiated by the Retailer which the Retailer chooses to treat as Temporary Disconnections.
- 19 However, the Retailer will update the three letter connection status code following each Temporary Disconnection in accordance with the Switching Rules.

Transitional Disconnections and associated Reconnections

- 20 The Retailer may undertake a Transitional Disconnection, or request the Distributor to undertake a Transitional Disconnection, only when the Retailer no longer requires Distribution Services for an ICP. The Retailer must not use Transitional Disconnections, or use any Registry ICP status code associated with Transitional Disconnections, for Disconnections carried out in response to non-payment by a Consumer or for other credit control reasons, unless and until the Retailer has closed the relevant Consumer's account with the Retailer. This does not prevent the Retailer from carrying out a Physical Isolation as part of a Temporary Disconnection in accordance with paragraph 15, provided that the Retailer may only progress to a Transitional Disconnection where the requirements of this paragraph 20 are met.

- 21 The Retailer may request a Reconnection when it requires Distribution Services for an ICP that had previously been subject to a Transitional Disconnection.
- 22 Where the Retailer carries out a Transitional Disconnection, the Retailer shall ensure that the work is carried out solely by Warranted Person.
- 23 Where:
- (a) the Retailer wishes to carry out a Transitional Disconnection for a specific ICP; and
 - (b) the Distributor has not provided an exclusive and accessible isolation device for that ICP; and
 - (c) the Retailer, having made reasonable endeavours (including by seeking to disconnect at the ICP at the meter(s)), has not been able to complete a Transitional Disconnection by a Warranted Person for that purpose; then
- the Retailer may notify the Distributor to take responsibility for completing the Transitional Disconnection for that ICP, provided the Retailer provides suitable evidence (if requested by the Distributor) of findings in the attempt(s) to disconnect.
- 24 In this case:
- (a) the Distributor will endeavour in accordance with Good Industry Practice to complete the Transitional Disconnection; and
 - (b) the Distributor will investigate provision of an accessible isolation device for the ICP but, unless required by law, 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
 - (c) the Retailer will continue to meet its obligations under the Switching Rules and Reconciliation Rules.
- 25 Within 3 Working Days of the Distributor completing a Transitional Disconnection, or a Reconnection at an ICP that was Transitionally Disconnected, the Distributor must notify the Retailer of the date the field work was completed.
- 26 The Retailer will update the Registry throughout this process in accordance with the Switching Rules. To avoid doubt, the Retailer will not update the Registry where it carries out a Physical Isolation as part of a Temporary Disconnection in accordance with paragraph 15, unless and until the Retailer chooses to progress that ICP to a Transitional Disconnection in accordance with paragraph 20.

Permanent Disconnections

- 27 Subject to the requirements of the Gas Act 1992, the Retailer or Distributor (as stated below) may commence Permanent Disconnection of an ICP in the following circumstances:
- (a) The Retailer or the Distributor may commence Permanent Disconnection on receipt of a request from a property owner, advising that a Gas supply is no longer required at the relevant ICP and requesting permanent removal of the supply, provided that if the Distributor is the party commencing the work, then unless the ICP has been inactive for 6 months or more, the Distributor must communicate with the Retailer before undertaking any work to ensure the Retailer's reasonable requirements are satisfied (e.g. obtaining a final meter read and removal of the GMS);
 - (b) The Distributor may commence Permanent Disconnection on receipt of a service request from the Retailer, advising that a Gas supply is no longer required at the relevant ICP, and requesting permanent removal of the supply; or
 - (c) The Distributor may commence Permanent Disconnection where public safety is at risk, provided that it must obtain a meter reading before removing the GMS, and must advise the Retailer of the meter reading within 3 Working Days of completing the Permanent Disconnection; or
 - (d) The Distributor may commence Permanent Disconnection on receipt of a notification of the Registry of the ICP status "Inactive-Permanent" with reason "Disconnected – ready for decommissioning" where the site has been Disconnected, and the GMS for that ICP have been removed; or
 - (e) The Distributor may commence Permanent Disconnection where Gas has not been supplied to an ICP for a period of 6 months or more, provided that the Distributor must obtain a meter reading before removing the GMS, and must advise the Retailer of the meter reading within 3 Working Days of completing the Permanent Disconnection.
- 28 Where the Retailer or Distributor commences a Permanent Disconnection in accordance with paragraph 27, that party will complete the first stage of the Permanent Disconnection to physically isolate the Consumer's Installation from the service, read the meter and remove the GMS, cap the service valve, and cap or plug the downstream pipe-work. However, only the Distributor may complete that part of a Permanent Disconnection that involves disconnection of the service line outside the property and removal or abandonment of the service line on the property.
- 29 The party undertaking each aspect of a Permanent Disconnection will notify the other party within 3 Working Days of the work having been completed. Where the Retailer completes the first stage of a Permanent Disconnection, it will issue a service request for the Distributor to complete the Permanent Disconnection.

- 30 Work involved in a Permanent Disconnection may only be performed by a Warranted Person.
- 31 Once an ICP has 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 the relevant site.
- 32 Both parties will update the Registry throughout this process in accordance with the Switching Rules.

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SCHEDULE 6: MANAGEMENT OF CRITICAL CONTINGENCIES AND MAJOR NETWORK EMERGENCIES

- 1 Except where the Retailer is required to direct consumers to curtail demand in accordance with instructions from the transmission system owner following declaration of a critical contingency under the Gas Governance (Critical Contingency Management) Regulations 2008 (*Critical Contingency Regulations*), the Distributor will be responsible for managing emergencies affecting the Network.
- 2 Emergency management will include such actions as are necessary to:
 - (a) assess and make safe any situation;
 - (b) control the flow of gas into and out of the Network, including:
 - (i) during a critical contingency declared in accordance with the Critical Contingency Regulations (*Critical Contingency*), curtailment of demand by retailers in accordance with instructions from the transmission system owner;
 - (ii) during other emergency events, coordination of resources with retailers to isolate individual consumer supplies to enable gas to be restored in the network once the cause of the loss of supply has been rectified;
 - (c) make temporary or permanent repairs to any part of the Network;
 - (d) restore the Network back to its normal operating condition;
 - (e) control the restoration of gas supply to Consumers' Installations while ensuring Network security is not compromised, including:
 - (i) during a Critical Contingency, following receipt of notice from the transmission system owner that curtailed demand may be restored from the transmission system, issuing instructions to the Retailer (and all other retailers) outlining when curtailed demand can be restored (together with any specific instructions with respect to the order of restoration) to enable the orderly restoration of supply to Consumers' Installations (including the relighting of pilots if applicable) in accordance with the Gas (Safety and Measurement) Regulations 2010;
 - (ii) during other emergency events, following repair of the cause of loss of supply and restoration of gas within the Network, co-ordination of resources with retailers to enable the orderly restoration of supply of gas to Consumers' Installations (including the relighting of pilots if applicable) in accordance with the Gas (Safety and Measurement) Regulations 2010;

- (f) keep the Retailer informed of developments following termination of a Critical Contingency and throughout for other emergency events, including:
 - (i) arranging an initial conference call, and subsequent conference call meetings as appropriate, to discuss coordination of resources, communications and strategy to deal with the emergency;
 - (ii) updating the Retailer as soon as practically possible of new information becoming available that would likely change the message to the Retailer's customers;
 - (iii) providing a status update regularly (as agreed in the initial or subsequent conference call meetings);
 - (iv) providing notification to the Retailer when the Network is fully restored and back to normal operation;
 - (g) keep the public informed of developments:
 - (i) for Critical Contingency events, following termination of a Critical Contingency where the curtailed demand or loss of supply is more widespread than curtailment bands 3-5 and band 7 and requires coordination of resources to restore supply to Consumers' Installations (including the relighting of pilots, if applicable);
 - (ii) during other emergency events, throughout the period of the emergency until supply is restored to all Consumers' Installations (including the relighting of pilots, if applicable).
- 3 The Distributor and the Retailer will maintain emergency management plans outlining the responses and actions likely to be taken when handling Critical Contingencies and other gas supply emergencies. The plan will include demand curtailment and restoration principles, actions required, emergency liaison and contacts, and take into account the Critical Contingency Regulations and associated plans and guides (CCO communications plan, CCO information guide, transmission system owner critical contingency management plans).
- 4 Except for critical care, essential services, critical processing, and electricity supply designations, the Retailer is obliged to allocate ICPs to curtailment bands in accordance with the Critical Contingency Regulations, and the Distributor must within 5 Working Days of being notified of a change by the Retailer update the load shedding category on the Registry with the curtailment band for the relevant ICP. Consumers may apply to the Gas Industry Company for a designation. If the Gas Industry Company approves a designation for a Consumer Installation it must give notice to the Distributor and Retailer, and the Distributor must within 5 Working Days update the load shedding category in the Registry for the associated ICP. A "C" or "E" suffix is added to the curtailment band number for the Consumer Installations where a critical processing or electricity supply designation is approved, while consumer installations with an essential services or critical care designation are allocated to curtailment bands 5 or 7 respectively.

- 5 The Distributor and the Retailer will provide each other with emergency contact details, and will review and update the information as required (at least annually) including identification and advice of who will act as the key point of contact for each of the parties (and their contact details) when an emergency event occurs.
- 6 The Retailer must take all practicable steps during the course of an emergency to assist the Distributor in managing the emergency.
- 7 Where the emergency is a Critical Contingency, the Retailer will meet the costs of isolating its Consumers' supplies and restoring supply to its Consumers' Installations, including the relighting of pilots (if applicable), excluding any isolation or restoration of Consumer Installations that are not subject to the Critical Contingency Regulations.
- 8 Where the emergency has resulted from an event on the Network, the Distributor will meet the reasonable costs incurred by the Retailer in isolating Consumers' supplies and restoring supply to Consumers' Installations, including the re-lighting of pilots (if applicable).
- 9 Both the Distributor and Retailer will ensure that appropriate records are maintained of communications received and actions taken during an emergency, including the date and time of all such communications and actions. This will enable a full debrief following the event, and provision of records should claims arise, or settlements be initiated, following the event.
- 10 The Distributor's responsibilities in the management of emergencies affecting the Network are without prejudice to any rights the Distributor may have against any third party who has caused or contributed to the cause of an outage or other event resulting in an emergency on the Network, including (but not limited to) the right to recover costs against the third party.
- 11 The Distributor and Retailer agree to undertake periodic testing of the arrangements for managing emergencies including the effectiveness of each party's emergency management plans.

SCHEDULE 7: ISA TERMS

- 1 This Schedule applies wherever the Retailer signs an ISA relating to a particular Consumer identified as the "Customer" in the ISA (*Customer*), and covering one or more ICPs specified in the ISA (*Relevant ICPs*).
- 2 Unless the Retailer and Distributor specifically agree otherwise, an ISA will be of no effect unless signed and returned by the Retailer within one month of the date of receipt from the Distributor.
- 3 An ISA will take effect under this Schedule on and from the commencement date set out in the ISA, and unless the ISA is terminated earlier in accordance with this Schedule, will expire on the expiry date set out in the ISA.
- 4 Subject to section 7 below, for each Consumption Month falling during the term of the ISA, the "fixed" and "variable" Line Charges (as defined in the Price Book) for the Relevant ICPs will be calculated in accordance with the ISA, and otherwise in accordance with the Price Book. All prices stated in the ISA are expressed before the addition of GST.
- 5 To avoid doubt, the prices stated in the ISA do not cover additional services (priced separately in the Price Book) such as connection and disconnection fees, callout fees, the introduction of delivery pressure measurement or modification to installed meter capacity, or other modifications to the system or equipment required for the relevant Points of Connection.
- 6 During the term of the ISA, the Retailer will ensure that the Network is the only means by which Gas is delivered to the relevant Consumer Premises.
- 7 If and whenever the Distributor notifies a Price Change under clause 6 of this agreement as part of its regular annual review of the Charges, the Distributor may increase the "Individually Priced Site" Charges under the ISA to reflect any increase in the Consumer Price Index, by multiplying the then-current "Individually Priced Site" Charges by an Adjustment Factor, calculated as follows:

Adjustment Factor = ΔCPI_t

where:

- **ΔCPI_t** is the average change in the quarterly Consumer Price Index (All Groups) published by Statistics New Zealand, over the 12 months ending 31 March in the calendar year **t**, calculated in accordance with the following expression:

$$\Delta\text{CPI}_t = \frac{\text{CPI}_{\text{Jun},t-1} + \text{CPI}_{\text{Sep},t-1} + \text{CPI}_{\text{Dec},t-1} + \text{CPI}_{\text{Mar},t}}{\text{CPI}_{\text{Jun},t-2} + \text{CPI}_{\text{Sep},t-2} + \text{CPI}_{\text{Dec},t-2} + \text{CPI}_{\text{Mar},t-1}} - 1$$

- **t** refers to the calendar year ending 31 December, being the calendar year in which the Price Change is to take effect under clause 6 of this agreement

- 8 For the avoidance of doubt:
- (a) if the application of the Adjustment Factor would result in a decrease in the "Individually Priced Site" Charges, the Adjustment Factor will not be applied and those Charges will remain unchanged; and
 - (b) the Distributor may increase the "Individually Priced Site" Charges by an amount equal to or less than that determined by application of the Adjustment Factor.
- 9 The "Standard Tariff Rate" Charges under the ISA, including any standard tariff for the "Individually Priced Site(s)" specified in the ISA, will automatically be updated to match the "fixed" and "variable" Line Charges specified in each updated Price Book issued by the Distributor under this agreement.
- 10 The Distributor may vary any of the Charges under the ISA by notice to the Retailer, in order to pass on:
- (a) any variations in charges payable by the Distributor to any Transmission Operator;
 - (b) any variations in the regulatory (central or local government) compliance costs, taxes (excluding income tax), rates or other levies imposed upon the Distributor; or
 - (c) any material variations in its Network or the provision of the Services.
- 11 If the Customer's Gas usage at the Relevant ICPs during any twelve month period is less than the "minimum usage" amount specified in the ISA, the Distributor may vary the "Individually Priced Site" Charges under the ISA by notice to the Retailer, in order that the Distributor's aggregate revenues from those Charges will be at the level which the Distributor would receive if the Customer had used Gas at the specified "minimum usage" amount specified in the ISA.
- 12 The Distributor may terminate the ISA by notice to the Retailer if:
- (a) the information provided by the Retailer upon which the ISA was prepared was incorrect in any way which the Distributor in its absolute discretion considers to be material; or
 - (b) the Distributor is entitled to terminate this agreement (regardless of whether the Distributor does, in fact, terminate this agreement); or
 - (c) the Customer has a liquidator, provisional liquidator, receiver or official manager appointed over all or part of its property except for the purposes of a solvent reconstruction or amalgamation; or
 - (d) the Customer makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors; or

- (e) the Customer ceases to be a party to a Consumer Contract with the Retailer;
or
- (f) the Customer ceases to use Gas at a Relevant ICP, whether in breach of its Consumer Contract or not and whether or not there is any other person using Gas at the site; or
- (g) the Retailer defaults in payment of any Charges in respect of the Relevant ICP(s) for a period of 14 days after notice has been given by the Distributor to remedy the default.

13 The Retailer may terminate the ISA by notice to the Distributor if:

- (a) the Customer has a liquidator, provisional liquidator, receiver or official manager appointed over all or part of its property except for the purposes of a solvent reconstruction or amalgamation; or
- (b) the Customer makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors; or
- (c) the Customer ceases to be a party to a Consumer Contract with the Retailer;
or
- (d) the Customer ceases to use Gas at a Relevant ICP, whether in breach of its Consumer Contract or not and whether or not there is any other person using Gas at the site.