

Use of System Agreement

between

GasNet Limited (Distributor)

&

[insert name] (Retailer)

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PARTIES

Distributor:	Retailer: [Insert full legal name of Retailer]
Distributor's Details: Street Address: 8 Cooks Street, Wanganui, 4540 Postal Address: PO Box 7149, Wanganui 4541 Address for Notices: PO Box 7149, Wanganui 4541 Contact Person's Details: General Manager Phone: (06) 349 2050 Fax: (06) 349 0135 Website: www.gasnet.co.nz Email Address: management@gasnet.co.nz	Retailer's Details: Street Address: Postal Address: Address for Notices: Contact Person's Details: Phone: Fax: Website: Email Address:

BACKGROUND

- A. The Distributor owns and operates the Network and provides Network Services enabling the transportation of Gas over the Network.
- B. The Retailer has requested the Distributor to provide Network Services on the Network.
- C. The Distributor agrees to provide Network Services on the Network to the Retailer and the Retailer agrees to purchase such services on the terms and conditions set out in this Agreement.

COMMENCEMENT DATE: [insert Date]

SIGNATURES:

Signature

Name of authorised person signing for Distributor

Position

Date

Signature

Name of authorised person signing for Retailer

Position

Date

AGREEMENT

PART I - SERVICE COMMITMENTS

1. TERM OF AGREEMENT

- 1.1 **Term:** This Agreement commences on the Commencement Date and continues until it is terminated in accordance with Clause 22.

2. SERVICES

- 2.1 **Distributor's services and obligations:** The Distributor will in accordance with Good Industry Practice:

- (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
- (b) deliver Gas to the quality level specified in the Service Standards, but does not guarantee delivery of Gas that is free from defects and interruptions;
- (c) provide for Warranted Persons to Connect and Disconnect Points of Connection in accordance with this Agreement, including Clause 19 and Schedule 6;
- (d) provide a 24 hour, seven day a week, Network Emergency and Unplanned Service Interruption response, diagnosis, repair and information service, and provide associated information to the Retailer in accordance with Schedule 5;
- (e) comply with the Service Standards;
- (f) review and help identify the reasons for abnormal trends in UFG in accordance with Clause 10;
- (g) follow the process set out in Clause 25 if the Distributor proposes to make changes to a Gas Gate supplying the Network;
- (h) allow Consumers' Installations that comply with Network Connection Standards to remain connected (unless a Consumer's Installation is disconnected or decommissioned in accordance with this Agreement), and consider applications for new connections and changes to capacity and/or pressure for existing connections in accordance with Clause 19;
- (i) if a Consumer, or the Retailer on behalf of a Consumer, raises concerns with the Distributor regarding the Gas quality (which means the pressure or capacity of the supply), reliability, or safety of the Consumer's supply, the Distributor will investigate those concerns, and, if appropriate, install equipment at the Consumer's Point of Connection to measure Gas pressure, and provide the results of such measurements to the Retailer. If such installation requires the Services to be interrupted, the Distributor will restore the Services as soon as reasonably practicable; and
- (j) provide any Additional Services as agreed.

- 2.2 **Retailer's services and obligations:** The Retailer will in accordance with Good Industry Practice:

- (a) if it becomes aware that a Consumer's Installation does not comply with the Network Connection Standards, notify the Distributor of the ICP identifier of the Consumer's Installation and the details of the non-compliance as soon as reasonably practicable;
- (b) process any applications for new connections or changes to the pressure and/or capacity of existing connections in accordance with Clause 19;
- (c) comply with the Service Standards;
- (d) provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information to the Distributor in accordance with Schedule 5;

- (e) provide for Warranted Persons to Disconnect and Reconnect Points of Connection in accordance with this Agreement, including Clause 19 and Schedule 6;
- (f) subject to Clause 28, have a Consumer Contract with each Consumer for the supply of Gas that contains terms that have substantially the same effect as Schedule 4;
- (g) provide information in accordance with Clauses 10 and 14;
- (h) investigate and minimise, in accordance with Good Industry Practice, non-technical UFG;
- (i) respond to requests from the Distributor for Consumer details in accordance with Clause 30; and
- (j) provide any Additional Services as agreed.

3. EQUAL ACCESS AND EVEN-HANDED TREATMENT

3.1 **Equal access and even-handed treatment:** The Distributor will give all System Users (including the Retailer) equal access to the Network Services and will treat all System Users (including the Retailer) even-handedly.

3.2 **The Distributor will notify the Retailer of alternative contracts:** Within 20 Working Days after agreeing to, or agreeing an amendment to, a contract relating to the supply of Network Services with any System User other than the Retailer (the contract or amended contract, as applicable, being an "Alternative Contract"), the Distributor will notify the Retailer in writing of the existence of that Alternative Contract, make the Alternative Contract available on its website, and invite the Retailer to adopt the Alternative Contract (with any changes necessary to reflect the fact that the Retailer is a different Party).

3.3 **The Retailer has sole discretion to adopt Alternative Contracts:** Within 12 months of the Distributor commencing an Alternative Contract with any retailer other than the Retailer, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract in substitution for this Agreement provided that:

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

3.4 If an Alternative Contract is adopted in accordance with Clause 3.3, this Agreement will terminate from the date of such adoption. The provisions of Clauses 22.3 to 22.7 also apply to a termination of this Agreement under this Clause 3.4.

4. NETWORK OWNERSHIP

4.1 The Network is the property of the Distributor and the Retailer shall not have any right, title or interest in the Network at any time.

5. TITLE, POSSESSION, RESPONSIBILITY AND DEEMED DELIVERY

5.1 **Title to Gas:** Title will at all times remain with the Retailer and the Retailer hereby warrants to the Distributor that, at the time of delivery to the Distributor, the Retailer has good title to the Gas, free and clear of all liens, encumbrances and claims.

5.2 **The control and possession of Gas:** The control and possession of Gas will pass from the Retailer to the Distributor at the Gas Gate and will be held by the Distributor until Gas is delivered to the Retailer at the ICP at which time the control and possession of Gas will revert to the Retailer

5.3 **Responsibility for Gas:** The Distributor will be responsible for the Gas solely on the basis set out in this Agreement while distributing it from the Gas Gate to the Retailer at the ICP and the Retailer will be solely responsible for the Gas at all other times.

5.4 **Deemed delivery of Gas:** The Parties agree that by delivering Gas to the Retailer at the ICP in accordance with the terms of this Agreement, the Distributor will be deemed to have delivered the Retailer's Gas to it.

5.5 **Mixing of Gas:** The Retailer accepts that the Retailer's Gas will be mixed with other Gas in the Network and that the Gas will be subjected to processes within the Network consistent with the Distributor's operation of its Network.

6. QUANTITY

6.1 **Receive, distribute and deliver Gas:** Subject to the terms of this Agreement, the Distributor will on a 24 hour per day basis receive Gas delivered by the Retailer at the applicable Gas Gate, distribute Gas through the Network, and deliver Gas to the Retailer at the ICPs as set out in the Registry.

6.2 **Delivery of sufficient Gas by Retailer:** Subject to the terms of this Agreement the Retailer shall use reasonable endeavours to ensure that there is at all times sufficient Gas delivered to the appropriate Gas Gates so as to allow the Distributor to provide Network Services to the Retailer in accordance with this Agreement (including delivery of the specified MHQ for each ICP) without impinging on GasNet's ability to deliver Gas on behalf of other System Users. Such Quantity of Gas shall include allowance for UFG.

6.3 **System Users to deliver their own Gas:** The Distributor shall use reasonable endeavours to ensure that there is at all times sufficient Gas delivered to the appropriate Gas Gates by all System Users so as to allow the Distributor to provide Network Services to the Retailer in accordance with this Agreement.

6.4 Maximum Hourly Quantity (MHQ):

- (a) Subject to the terms of this Agreement the Distributor will deliver the MHQ set out in the Registry to each ICP.
- (b) The Distributor will not be required to deliver to any ICP a flow of Gas greater than the MHQ set out in the Registry for such ICP.
- (c) The Distributor will not be responsible to the Retailer in the event that Gas available to be drawn from the Network by any Consumer is reduced because the Quantity of Gas taken from the Network by any Consumer exceeds MHQ.

6.5 Increase in Maximum Hourly Quantity (MHQ) Initiated by Retailer: Where the Retailer wishes to increase MHQ at an ICP then;

- (a) The Retailer will notify the Distributor in accordance with Schedule 6 that it wishes to increase the MHQ at an ICP, specifying the MHQ requested and the type of equipment being installed, removed or modified, if that is the reason for the increase in MHQ.
- (b) The Distributor will advise the Retailer in writing within Ten (10) Working Days of receipt of notification in accordance with 6.5(a) whether or not the Distributor is prepared to receive, distribute and deliver the increased MHQ to an ICP in respect of which Notice is received pursuant to Clause 6.5(b). In the event that the Distributor is prepared to increase the MHQ from the date requested by the Retailer (or otherwise specified by the Distributor) the Distributor will advise any change in Network Charges in addition to any requirements necessary to enable the Distributor to be able to meet the Retailer's request, including any risk-sharing arrangements that may be required by the Distributor prior to committing capital funding, with such arrangements taking into consideration any cost sharing arrangements made between the Consumer and the Distributor.
- (c) If the Retailer agrees to pay for any cost incurred by the Distributor in physically providing for increased MHQ the Parties shall record such arrangements in writing.
- (d) Once agreement has been reached in writing to increase MHQ and such change is effected the change to the MHQ will be recorded in the Registry.
- (e) If the Parties are unable to agree cost sharing arrangements pursuant to Clause 6.5(b) the matter shall be referred to mediation pursuant to Clause 26

- 6.6 **Reduction in Maximum Hourly Quantity (MHQ):** Where the Retailer wishes to reduce MHQ at an ICP then;
- (a) The Retailer will notify the Distributor in accordance with Schedule 6 that it wishes to reduce the MHQ at an ICP specifying the MHQ requested and the type of equipment being installed, removed or modified if that is the reason for the reduction in MHQ.
 - (b) The Distributor will advise the Retailer in writing within Ten (10) Working Days of receipt of notification in accordance with 0(a) whether or not the Distributor is prepared to receive, distribute and deliver the new MHQ to the ICP from the date requested by the Retailer. In the event that the Distributor is prepared to decrease the MHQ from the date requested by the Retailer (or otherwise specified by the Distributor) the Distributor will advise any change in Network Charges in addition to any requirements necessary to enable the Distributor to be able to meet the Retailer's request.
 - (c) Once agreement has been reached in writing to reduce MHQ the change to the MHQ will be recorded in the Registry.
 - (d) If the Parties are unable to agree any proposed change to Network Charges pursuant to Clause 0(b) the matter shall be referred to mediation pursuant to Clause 26.
- 6.7 **Usage in excess of Maximum Hourly Quantity (MHQ):**
- (a) The Retailer shall not knowingly receive or take or allow any Consumer to whom the Retailer supplies Gas to receive, take, or have delivered any Quantity of Gas in excess of the agreed MHQ set out in the Registry (if any) in respect of any ICP.
 - (b) The Distributor will endeavour in accordance with Good Industry Practice to identify any ICP where the actual Gas consumption is known or suspected to exceed the MHQ, where any usage in excess of the MHQ has been identified as having the potential to impact on the Distributor's ability to deliver Gas to other Consumers. Where the actual Gas consumption has repeatedly exceeded the MHQ for such ICP the Distributor will take appropriate action to remedy the situation, which may include installation of a Flow Limiting Device in accordance with Clause 6.9 or initiating an MHQ increase in accordance with Clause 6.5.
- 6.8 **Retailer to Advise Nominated Annual Quantity:** Where requested by the Distributor the Retailer will, within 2 months of the request, provide the Distributor the Nominated Annual Quantity for the following Pricing Year for:
- (a) each ICP where the Nominated Annual Quantity exceeds 10TJ; and
 - (b) all other ICP's either aggregated by Load Group or for each ICP,
- provided that the Distributor shall not make such request more than once in any Pricing Year.
- 6.9 **Flow Limiting Device:**
- (a) The Distributor may require the installation of a Flow Limiting Device to limit the flow of Gas at any ICP to the agreed MHQ for such ICP in situations where usage in excess of the MHQ may impact adversely on the Network. In the event that the Flow Limiting Device is installed to protect the Network and is installed on the Network or within the GMS, whether the Distributor owns the GMS or not, the cost of installation shall be met by the Distributor.
 - (b) Where the GMS at an ICP is not owned by the Distributor and the Retailer has requested the Distributor install a Flow Limiting Device on the Network, the Distributor will advise the Retailer within Three (3) Working Days if it is prepared to install such device and, if so, the terms on which the Distributor is prepared to install (including timeframe and cost).
 - (c) Where the Distributor does not own the GMS and the Distributor requires the installation of a Flow Limiting Device to limit the flow of Gas at any ICP to the agreed MHQ for such ICP and the Flow Limiting Device cannot be installed on the Network the Retailer will arrange for such Flow Limiting Device to be installed within the GMS or on the Consumers Gas Installation downstream of the GMS. The reasonable cost of installation shall be met by the Distributor.

7. DELIVERY PRESSURE

- 7.1 The Distributor will endeavour in accordance with Good Industry Practice to ensure that Gas delivered to an ICP is delivered within the pressure range specified by the Distributor as being applicable to that ICP or such other pressure range as may be requested by the Retailer and agreed to in writing by the Distributor.
- 7.2 Where the Retailer becomes aware that the Delivery Pressure at an ICP has fallen outside the standard pressure range for that ICP then the Retailer will notify the Distributor of the occurrence as soon as reasonably practicable.
- 7.3 If the Distributor anticipates or is otherwise aware that Gas is or will be delivered to an ICP outside the pressure range for that Network, the Distributor will advise the Retailer as soon as is reasonably practicable of the steps required, and the time frame proposed, to correct it.
- 7.4 In parts of the Network the delivery pressure may during periods of high demand fall below the standard pressure range. The Distributor aims to ensure delivery pressures remain within the standard pressure ranges through its maintenance, rehabilitation or reinforcement programmes covered in greater detail within its Asset Management Plan.

8. QUALITY

8.1 Gas

- (a) The Retailer agrees that all Gas delivered by the Retailer to the Distributor pursuant to this Agreement will conform to the Gas Specification.
- (b) The Retailer acknowledges that while the Distributor will require all System Users to deliver Gas conforming to the Gas Specification the Distributor may have no knowledge or control of whether such Gas conforms with the Gas Specification or whether other gas in the transmission system upstream of the Gas Gate and which enter the Network conforms with the Gas Specification. The Distributor shall have no liability to the Retailer in respect of Non-Specification Gas unless the Distributor knowingly receives Non-Specification Gas and fails to comply with Clause 8.2

8.2 Non-Specification Gas

- (a) The Parties acknowledge that the Transmission System Operator, Vector Limited, in its "Vector Gas Transmission, Critical Contingency Management Plan" dated 11 September 2012, acknowledges that although Non-Specification Gas is considered to be a credible system threat, it is unlikely to give rise to a breach of a threshold limit as Vector Limited employs a number of controls and monitoring procedures to protect against these types of events occurring and has plans and equipment available to deal with such events.
- (b) Either Party will endeavour to notify the other Party as soon as possible if they become aware of any situation where Non-Specification Gas is or has the potential to be delivered to any Gas Gate.
- (c) In the event that the Distributor is aware of any situation where Non-Specification Gas is or has the potential to be delivered to any Gas Gate Clause 9 shall apply.
- (d) The Distributor will not be required to accept Non-Specification Gas at a Gas Gate unless in any particular instance it has agreed to do so. Prior to so agreeing the Distributor will seek the consent of all System Users to receive Non-Specification Gas.

8.3 Odourisation

- (a) The Retailer will deliver Gas to the Distributor at the Gas Gate which is odourised and complies with NZS 5263:2003 Gas Detection and Odourisation. The Retailer will satisfy the Distributor that quality assurance procedures are in operation to ensure odourisation of the Gas delivered by the Retailer to the Gas Gate.
- (b) The Distributor will on a monthly basis (in accordance with NZS 5263:2003 Gas Detection and Odourisation) monitor and record odorant levels at selected points on the Network and will advise the Retailer as soon as it anticipates or encounters any odorant fade or masking.

- (c) If requested the Distributor will provide details of odorant levels measured by the Distributor to the Retailer.
- (d) Either Party will endeavour to notify the other Party as soon as possible if they become aware of any situation where Gas within the Network is or has the potential to be over or under odorised.
- (e) If requested the Retailer will supply to the Distributor copies of the quality assurance procedures for the supply of odorised Gas at the Gas Gate.

9. SERVICE INTERRUPTIONS

General

- 9.1 **Communications policies:** The Parties will comply with the communication policies set out in Schedule 5.
- 9.2 **The Distributor may Publish Service Interruption information:** The Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption.
- 9.3 **Policy for managing load during a Network Emergency:** The Distributor will develop and Publish a policy for managing load on the Network during a Network Emergency, and will set out in the policy the priorities for Load Shedding, the use of interruptible load (if any), and the restoration of load. When developing and amending the policy, the Distributor will consult with all System Users (including the Retailer), and will take all feedback received into account in finalising the policy. The policy must be consistent with this Agreement and the Distributor will endeavour in accordance with Good Industry Practice to comply with the policy, but the Distributor will not be in breach of the policy if the Distributor has acted in good faith.
- 9.4 **Load Shedding:** The Distributor may carry out Load Shedding in the following circumstances:
 - (a) **Maintenance of Network equipment:** if the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to Clauses 9.6, 9.8, 9.9 and Schedule 5 as applicable;
 - (b) **Provision of supply within the Service Standards:** as permitted by the Service Standards, if the Consumer has elected to receive an interruptible or otherwise non-continuous supply of Gas;
 - (c) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
 - (i) maintain a safe environment, consistent with the Distributor's health and safety policies;
 - (ii) prevent unexpected short term overloading of the Network;
 - (iii) prevent Gas pressures rising or falling to unsafe levels;
 - (iv) manage Network security; and/or
 - (v) avoid or mitigate damage to the Network or any equipment connected to the Network;
 - (d) **Other circumstances:** for any other purpose that, in the Distributor's reasonable opinion and in accordance with Good Industry Practice, requires the interruption or reduction of delivery of Gas to any ICP.

Network Emergency and Unplanned Service Interruptions

- 9.5 **Distributor and Retailer to receive Network Emergency and Unplanned Service Interruption calls:** The Distributor and Retailer acknowledge that either Party may receive

Network Emergency and Unplanned Service Interruption calls from Consumers. The Parties will agree the circumstances under which each Party will manage any subsequent communication with affected Consumers until normal service is restored but unless otherwise agreed by the Parties the Retailer will be responsible for Unplanned Service Interruption calls and for informing and educating Consumers on the process to be followed.

9.6 **Notification of Network Emergency and Unplanned Service Interruptions:** After the occurrence of a Network Emergency or Unplanned Service Interruption, the Distributor and Retailer will comply with the relevant emergency and service interruption communication policy as set out in Schedule 5.

9.7 **Consumer requests for restoration of Network Services:** During any Network Emergency or Unplanned Service Interruption, unless the Distributor requests otherwise, the Retailer will forward to the Distributor any requests it receives from Consumers for the restoration of the Network Services as soon as practicable, and the Distributor will acknowledge such receipt unless the Retailer requests otherwise.

Planned Service Interruptions

9.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor will, as far as is reasonably practicable, schedule Planned Service Interruptions to minimise disruption to Consumers.

9.9 **Distributor to comply with communication policies:** The Distributor will comply with the Service Interruption communication policy set out in Schedule 5 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Network Services.

9.10 **Costs of communication:** If the Distributor asks the Retailer to notify Consumers in accordance with Schedule 5, the Distributor will meet the reasonable costs incurred by the Retailer in complying with such requests, unless agreed otherwise in writing.

Restoration of Network Services

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

- (a) for Network Emergencies and Unplanned Service Interruptions, within the timeframes set out in Schedule 1; and
- (b) for Planned Service Interruptions, within the timeframe set out in the Notice for Planned Service Interruptions,

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

9.12 **Retailer's remedy:** Except as provided in Clause 14.10, the Retailer's only remedy if the Distributor fails to meet the timeframes in Clause 9.11 is recovery of a Service Guarantee in accordance with Schedule 1, if applicable.

10. UNACCOUNTED FOR GAS (UFG)

10.1 **Determination of Annual UFG Factor:** The Allocation Agent will determine the Annual UFG Factor in accordance with the Downstream Reconciliation Rules.

10.2 **Distributor to investigate adverse trends in UFG:** If over time UFG trends abnormally away from expected or historical UFG, the Distributor will use reasonable endeavours to identify the cause of the abnormal movement. The Retailer will provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to investigate any adverse trends in UFG within 15 Working Days of the request from the Distributor. If the Distributor is unable to identify the cause of the abnormal movement, the Distributor will provide relevant information to all affected System Users (including the Retailer) and will, if requested by the Retailer, facilitate a meeting of all affected System Users (including the Retailer) to attempt to resolve the matter.

11. SERVICE PERFORMANCE REPORTING

- 11.1 **Parties to report on performance relative to Service Standards:** Each Party will, unless it is required by law to publish such information elsewhere, prepare a report on its performance relative to the Service Standards in accordance with the reporting measures and at the frequency set out in Schedule 1 (“**Performance Report**”).
- 11.2 **Contents of performance report:** A Performance Report prepared in accordance with Clause 11.1 will:
- (a) compare actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
 - (b) explain the reasons for any significant under-performance by either Party, and explain what actions the Party will undertake to rectify that under-performance; and
 - (c) if a Party claimed during the relevant reporting period that it was unable to meet the Service Standards due to the occurrence of a Force Majeure Event for which it invoked Clause 24, give a full account of the nature of the Force Majeure Event and the impact of the Force Majeure Event on that Party’s performance in relation to the Service Standards.
- 11.3 **Additional reports:** Either Party (the “**Requester**”) may request that the other Party (the “**Provider**”) provide additional performance reports, including reports containing information in addition to that specified in Clause 11.2 or more frequent reports containing the same information. The Provider will comply with such requests if it is reasonably able to do so. The Provider may charge the Requester for the costs reasonably incurred in preparing and supplying such additional reports, provided that if an additional report is requested due to a suspected failure by the Provider to meet a Service Standard that has not been reported in accordance with Clause 11.2, and the additional report demonstrates that such failure existed, no charge may be levied.
- 11.4 **Insurance not to be compromised:** Nothing in this Clause 11 requires either Party to disclose information that may adversely affect an insurance policy held by that Party.

PART II - PAYMENT OBLIGATIONS

12. NETWORK SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 12.1 **Network Services Price information:** The Distributor’s Pricing Methodology and a schedule of Load Groups and Prices are set out on the Distributor’s website.
- 12.2 **Price Changes:** Unless otherwise agreed with the Retailer, the Distributor may not change its Prices more than once in any period of 12 consecutive months, unless a change is a material increase to one or more existing Price and results from a change in:
- (a) a cost that is a pass-through cost or a recoverable cost specified in a determination of an input methodology by the Commerce Commission under Part 4 of the Commerce Act 1986 in respect of the services provided by the Distributor;
 - (b) the Distributor providing new Network Services or materially changing existing Network Services, provided that any proposed Price change will only apply to ICPs affected by the new or changed Network Services; or
 - (c) the law.

Nothing in this Clause 12.2 prevents the Distributor from decreasing a Price at any time, or from increasing a Price with the agreement of the Retailer.

- 12.3 **Process to change Pricing Methodology:** If the Distributor intends to make a change to its Pricing Methodology that will materially affect one or more System Users (including the Retailer) or Consumers then without limiting Clause 12.2 and unless the Parties agree otherwise, the Distributor will:
- (a) **Consult with the Retailer:** Changes to pricing structures and/or methodology will be subject to meaningful consultation and transparency such that the intention and impact of the proposed changes are easily understood, and responses to the

Retailer's written comments, including decisions on final structure are transparent and clear prior to notification of final Pricing Methodology.

- (b) **Publish final Pricing Methodology:** Publish the final Pricing Methodology and the reasons for its decision, no later than the notice period specified in Clause 12.4(a).
- 12.4 **Notice of Price changes:** In addition to any notification requirements under Clause 12.3, the Distributor will give the Retailer Notice of Price changes in accordance with this Clause 12.4. The Distributor will:
- (a) provide 40 Working Days' notice of the Price change, unless the Distributor is required by law to implement the Price change earlier, in which case the Distributor will give as much notice as reasonably practicable;
 - (b) provide to the Retailer:
 - (i) an update of Price information, in a way that makes key changes from the previous version clear; and
 - (ii) without limiting Clause 13, if an ICP or a group of ICPs is to be allocated to a different Load Group, a mapping table that clearly shows the new Load Group to which each ICP or group of ICPs is to be allocated;
 - (c) send the information required in paragraphs (b) and (c) to the Retailer by email, as a minimum.
- 12.5 **Price Structure change and Price change disputes:** Once a Price Structure has been finalised in accordance with Clause 12.3, or a Price change is notified in accordance with Clause 12.4, the Retailer may raise a Dispute under Clause 26 in respect of the Price Structure or the Price change (as the case may be) only if the Retailer considers that the Distributor has not complied with Clause 3.1. If a Dispute is raised, the Retailer will continue to pay the Distributor's Tax Invoices until the Dispute is resolved.
- 12.6 **Changes containing an error:** If the Retailer identifies an error in the Price Structure finalised and Published in accordance with Clause 12.3, or a Price change notified in accordance with Clause 12.4, and the error arises from an obvious error in applying the Pricing Methodology, the Retailer will bring that error to the Distributor's attention as soon as possible after becoming aware of the error. The Distributor may correct such an error, including an error that it identifies itself, without following the process under Clause 12.3 or giving Notice under Clause 12.4(a) (as the case may be), provided that the correction of the error will not have a material effect on the Retailer.
13. **ALLOCATING LOAD GROUPS AND PRICE OPTIONS TO ICPS**
- 13.1 **Distributor allocates Load Group:** The Distributor will allocate a Load Group to each ICP on its Network. If there are two or more Load Groups within the Distributor's Price Structure for which an ICP is eligible, the Distributor will, acting reasonably, allocate one of the eligible Load Groups to the ICP. In allocating a Load Group, the Distributor will have regard to:
- (a) the eligibility criteria for each Load Group that are set out in the Price Schedule;
 - (b) the attributes of the ICP; and
 - (c) if known and relevant:
 - (i) the Retailer's preference for a particular Load Group in respect of which the ICP is eligible;
 - (ii) the GMS installed for the ICP;
 - (iii) the ICP's historic demand profile;
 - (iv) the Consumer's capacity requirements; and
 - (v) any other factors.
- 13.2 **Retailer may request allocation of an alternative eligible Load Group to an ICP:** At any time, the Retailer may request that the Distributor allocate an alternative Load Group to an

ICP, and will provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Load Group, the Distributor will apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 5 Working Days after receipt of Notice of the Retailer's request. If the Distributor declines the request, it will provide the reasons for its decision.

13.3 **Retailer request for reallocation of a Load Group if it considers a Price Category has been Incorrectly Allocated:** Under this Clause 13.3 and Clauses 13.4 and 13.6, a Load Group is **"Incorrectly Allocated"** to an ICP only if the ICP was ineligible for the Load Group allocated by the Distributor based on the relevant information available to the Distributor at the time it made the allocation. If the Retailer reasonably considers that a Load Group was Incorrectly Allocated, the Retailer will notify the Distributor of the reasons why it considers that the Load Group was Incorrectly Allocated and identify a Load Group that the Retailer considers should have been allocated to the ICP, which must be a Load Group for which the ICP is eligible. The Distributor will advise the Retailer within 10 Working Days after receipt of the Retailer's Notice whether it agrees to allocate the requested Load Group (the **"Corrected Load Group"**) to the ICP, such agreement not to be unreasonably withheld, and will provide the reasons for its decision. To avoid doubt, this Clause 13.3 does not apply if the Distributor has already provided Notice to the Retailer that the relevant Load Group is Incorrectly Allocated under Clause 13.6.

13.4 **Credit following correction:** If the Distributor allocates a Corrected Load Group to an ICP following Notice from the Retailer given under Clause 13.3, the Distributor will:

- (a) commence charging the Retailer in accordance with the Price(s) that applies to the Corrected Load Group with immediate effect; and
- (b) subject to Clause 13.5, and by issuing a Credit Note payable in the next monthly billing cycle, credit the Retailer with an amount (if positive) equivalent to:
 - (i) the Charges paid by the Retailer in respect of that ICP in the period from the later of:
 - (A) the Commencement Date;
 - (B) the date the Distributor Incorrectly Allocated the Load Group to that ICP; and
 - (C) the Switch Event Date for that ICP recorded for the Retailer,up to the date on which the Distributor allocates a Corrected Load Group to that ICP; less
 - (ii) the Charges that would have applied if the Corrected Load Group had been allocated to that ICP during the period referred to in subparagraph (i),

provided that the maximum period for which credit will be payable under this Clause 13.4 is 15 months, unless otherwise agreed.

13.5 **Limitations on credits for Load Group corrections:** Clause 13.4(b) will not apply in respect of an ICP if:

- (a) Clause 13.6 applies to the ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer has not provided the Distributor with correct or complete information about the ICP or the Consumer necessary to determine Load Group eligibility (provided that information was not already known by the Distributor);
- (c) the Load Group correction was necessary because the Retailer provided the Distributor with incorrect or incomplete information in relation to the ICP or the Consumer or any other factors in respect of that ICP that were relevant to the allocation of a Load Group; or

- (d) the initial Load Group was allocated on the basis of incorrect information provided by the Consumer or the Consumer's representative.

13.6 **Distributor's right to change Load Group if it considers a Load Group has been incorrectly allocated:** If at any time the Distributor reasonably considers that a Load Group has been incorrectly allocated to an ICP:

- (a) the Distributor will notify the Retailer accordingly, including notification of the reasons why it considers that the Load Group has been incorrectly allocated, and identify the Load Group or Load Groups it considers the ICP is eligible for; and
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's Notice that the current Load Group has not been incorrectly allocated, the Distributor may allocate the Load Group that it considers appropriate to that ICP (acting reasonably and, if the Distributor identified more than one eligible Load Group in its Notice, taking into account the Retailer's or the Consumer's preferred Load Group as communicated to the Distributor by the Retailer), and may commence charging the Retailer for Network Services in accordance with that Load Group after a further 40 Working Days; and
- (c) the Distributor will provide to the Retailer information relevant to its decision.

To avoid doubt, this Clause 13.6 does not apply if the Retailer has already provided Notice to the Distributor under Clause 13.3 that the relevant Load Group has been Incorrectly Allocated.

13.7 **Commencement of Charges:** The Retailer is liable to pay Charges in respect of an ICP from the Switch Date where the ICP Status Code in the Registry is either ACTC or ACTV.

13.8 **Cessation of Charges:** The Retailer is not liable to pay Charges in respect of an ICP:

- (a) from the day after a Transitional Disconnection or Permanent Disconnection (but not as a result of a Temporary Disconnection) where the ICP Status Code in the Registry is either INACT or INACP until the day the ICP is Reconnected; or
- (b) from the Switch Event Date, if another retailer takes responsibility for the ICP.

14. BILLING INFORMATION AND PAYMENT

14.1 Calculating Tax Invoices for Network Service Charges:

The Retailer will provide consumption information, and the Distributor will calculate Network Service Charges payable by the Retailer, in accordance with the following:

- (a) the Retailer will provide to the Distributor, by;
 - (i) 5:00pm on the 5th Working Day after the end of each month; and
 - (ii) in accordance with the GIEP's set out in paragraph (b),
all information that the Distributor reasonably requires to enable it to calculate the Network Service Charges payable by the Retailer to the Distributor; and
- (b) the Parties acknowledge that the Distributor's Pricing Policy and Methodology is based on it receiving consumption volume information from the Retailer using:
 - (i) the As-Billed Normalised reporting methodology, as that methodology is defined in GIEP1; and
 - (ii) summary consumption information as described in GIEP2; and
- (c) the Distributor will calculate the Charges based on the Prices that apply to each chargeable quantity to which the Tax Invoice relates.

14.2 **Late, incomplete, or incorrect information:** If the Retailer does not provide information to the Distributor in accordance with Clause 14.1 by the 5th Working Day after the last day of

the month to which the Tax Invoice relates, or any information provided by the Retailer is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Industry Practice, the Retailer's Tax Invoice for Network Services.

14.3 **Issuing of Tax Invoices:** The Distributor will issue Tax Invoices for Network Services as follows:

- (a) the Distributor will invoice the Retailer within 10 Working Days after the last day of the month to which the Tax Invoice relates;
- (b) at the same time as it provides a Tax Invoice, the Distributor will provide to the Retailer, in accordance with the relevant GIEP, sufficiently detailed information to enable the Retailer to verify the accuracy of the Tax Invoice; and
- (c) if late, incomplete, or incorrect information is provided by the Retailer and the Tax Invoice is estimated in accordance with Clause 14.2 on the basis of that information, the Distributor will issue a Credit Note or Debit Note in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Retailer for its Network Services Charges for that month.

14.4 **Due date for payment:** The settlement date for each Tax Invoice issued by the Distributor will be the 20th day of the month in which the Tax Invoice is received, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. However, if the Distributor fails to send a Tax Invoice to the Retailer within 10 Working Days after the last day of the month to which the Tax Invoice relates and the Retailer did not send late information pursuant to 14.3(c), the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

14.5 Other invoices:

- (a) If applicable, the Distributor may issue the Retailer with:
 - (i) a Tax Invoice for payment for Additional Services, Service Guarantee payments and any other sums due to the Distributor under this Agreement; and
 - (ii) a Credit Note for payment of Service Guarantee payments due to the Retailer.
- (b) If applicable, the Retailer may issue the Distributor with a Tax Invoice for Service Guarantee payments and any other sums due to the Retailer under this Agreement.
- (c) Any Tax Invoice or Credit Note under Clause 14.5(a) or (b) will be issued within 10 Working Days of the end of the month to which the Tax Invoice or Credit Note relates.
- (d) The settlement date for any Tax Invoice issued under Clause 14.5(a) or (b) is the 20th day of the month in which the Tax Invoice is received, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor or the Retailer (as the case may be) fails to send a Tax Invoice to the Retailer or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is late.

14.6 **Interest on late payment:** Subject to Clause 14.7, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this Clause 14. If any part of a Tax Invoice that is properly due in accordance with this Agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the Tax Invoice remains unpaid.

14.7 **Disputed invoices:** If the Retailer or the Distributor disputes a Tax Invoice issued under this Clause 14, the Party disputing the invoice ("**Disputing Party**") will notify the other Party ("**Non-disputing Party**") in writing and provide details as to the reasons why the Disputing Party disputes that invoice within 18 months of the date of the Tax Invoice ("**Invoice Dispute**"). On receiving an Invoice Dispute Notice, the Non-disputing Party will:

- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute Notice and:

- (i) the Disputing Party has not paid the disputed Tax Invoice, promptly issue a Credit Note for the disputed amount, and any remaining amount owed must be paid by the Disputing Party within 6 Working Days of receipt of the Credit Note, but need not pay prior to the time set out in Clause 14.4 or 14.5; or
 - (ii) the Disputing Party has paid the disputed invoice, calculate the amount that the Disputing Party has over paid and promptly issue a Credit Note to the Disputing Party for the amount over paid, which will include a Use of Money Adjustment. Any amount owed must be paid by the Non-disputing Party within 6 Working Days of issuing the Credit Note. A Use of Money Adjustment will apply for the period commencing on the date the original Tax Invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in Clauses 14.4 or 14.5; or
- (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute Notice, either Party may raise a Dispute in accordance with Clause 26 and if the Disputing Party has not paid the disputed Tax Invoice, it will pay the undisputed amount of the disputed Tax Invoice issued in accordance with Clauses 14.4 or 14.5; and
 - (c) on the resolution of a Dispute under Clause 26, any amount owed must be paid by the relevant Party within 6 Working Days. Default Interest is payable for the period commencing on the date the disputed amount would have been due for payment under this Clause 14, and ending when payment is made. To the extent the Tax Invoice is held not to be payable, the Non-disputing Party will issue a Credit Note to the Disputing Party.
- 14.8 **Incorrect invoices:** If it is found at any time that a Party has been overcharged or undercharged and the Party has paid the Tax Invoice containing such overcharge or undercharge, within 20 Working Days after the error has been discovered and the amount has been agreed between the Parties, the Party that has been overpaid will refund to the other Party the amount of any such overcharge or the Party that has underpaid will pay to the other Party the amount of any such undercharge, in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there will be no right to re-open Tax Invoices if more than 18 months has elapsed since the date of the Tax Invoice.
- 14.9 **No set off:** Both Parties will make the payments required to be made to the other under this Agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in Clause 14.7 or as may be required by law.
- 14.10 **Refund of Charges:** If:
- (a) 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
 - (b) the Retailer within 60 days of the interruption requests the Distributor to refund the Charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which the loss of supply continued,
- the Distributor will issue a Credit Note and refund, in the next monthly billing cycle, the Network Services Charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which supply was interrupted.

15. PRUDENTIAL REQUIREMENTS

- 15.1 **Retailer will satisfy prudential requirements:** If required by a Notice from the Distributor, the Retailer will comply with either one of the following prudential requirements within 10 Working Days of receipt of the Distributor's Notice:
- (a) the Retailer will maintain an acceptable credit rating; or
 - (b) the Retailer will provide and maintain acceptable security by, at the Retailer's election:

- (i) providing the Distributor with a cash deposit of the value specified in Clause 15.6 ("**Cash Deposit**"), which the Distributor will hold in a trust account that the Distributor will establish and operate in accordance with Clause 0;
 - (ii) arranging for a third party with an acceptable credit rating to provide security in a form acceptable to the Distributor, of the value specified in Clause 15.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in Clause 15.6.
- 15.2 **Acceptable credit rating:** For the purposes of Clause 15.1, an acceptable credit rating means that the Retailer or the third party (as the case may be):
- (a) carries a long term credit rating of at least:
 - (i) BBB- (Standard & Poors Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
 - (b) if the Retailer or the third party (as the case may be) carries a credit rating at the minimum level required by paragraph (a), is not subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.
- 15.3 **Retailer may elect prudential requirements:** The Retailer may elect to comply with the prudential requirements in any of the ways described in Clause 15.1 at any time, by complying with Clause 15.4.
- 15.4 **Change in prudential requirements complied with:** If the Retailer elects to change the way in which it complies with the prudential requirements, the Retailer will notify the Distributor of its intention at least 2 Working Days before the change occurs and the Parties will comply with Clause 15.14. The change will come into effect on the intended date, provided that the Retailer has complied with all its obligations under this Agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of Clause 15.1.
- 15.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) will provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.
- 15.6 **Value of security:** The value of security required for the purposes of this Clause 15 is the amount calculated and advised by the Distributor to the Retailer in the Distributor's Notice under Clause 15.1 provided that the total value of all security required is no more than the Distributor's reasonable estimate of the Network Service Charges that the Retailer is likely to be required to pay the Distributor in respect of any 2 month period.
- 15.7 **Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will estimate the value of security required under Clause 15.6, subject to any reassessment of the value under this Agreement, having regard to:
- (a) the Distributor's historical records of the Network Service Charges in respect of the relevant ICPs; or
 - (b) in the absence of such records, a bona fide business plan prepared by the Retailer in good faith necessary for the Distributor to determine the value of security that it requires from the Retailer.
- 15.8 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review, the value of security required to be provided by the Retailer at any time. Such updated information may reasonably be requested by the Distributor in order to effect such review.
- 15.9 **Retailer to notify Distributor of changes affecting security:** Subject to Clause 15.10, the Retailer will immediately notify the Distributor if any of the following occurs:

- (a) the Retailer no longer carries an acceptable credit rating; or
- (b) the Retailer has complied with prudential requirements by arranging for a third party to provide security in accordance with Clause 15.1(b), and the Retailer learns that the third party no longer carries an acceptable credit rating; or
- (c) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to pay for Services will be affected.

Any information provided by the Retailer to the Distributor under this Clause 15.9 will be Confidential Information.

15.10 **Public issuers and listed companies:** For the purpose of Clause 15.9, if the Retailer:

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

15.11 **Distributor may make enquiries:** If the Distributor believes that the Retailer should have given Notice under Clause 15.9 and the Distributor has not received any such Notice, the Distributor may enquire of the Retailer as to whether it should have given such Notice. Any such enquiry will be in writing and be addressed to the Chief Executive of the Retailer. If Notice should have been given, the Retailer will give Notice immediately, or if no Notice is required, the Retailer will respond to the Distributor in writing within 2 Working Days of receipt of the Distributor’s Notice under this Clause 15.11. Correspondence sent or received by either Party under this Clause will be Confidential Information.

15.12 Change to the value of security: If:

- (a) following a review of the Retailer's security in accordance with Clause 15.8; or
- (b) on receipt of information contemplated by Clause 15.9 or 15.11; or
- (c) as the result of a failure by the Retailer to respond to a request made under Clause 15.11 within the timeframe set out in Clause 15.11;

the Distributor or the Retailer considers that the value of security should be increased or decreased, the Distributor will, acting reasonably, make a decision on what the value of security should be, and immediately notify the Retailer of its decision and the grounds for that decision. To avoid doubt, failure by a Retailer to respond to a request made under Clause 15.11 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Retailer.

15.13 Failure to maintain acceptable credit rating: If:

- (a) on receipt of information contemplated by Clauses 15.9 or 15.11; or
- (b) as the result of a failure by the Retailer to respond to a request made under Clause 15.11 within the timeframe set out in Clause 15.11,

the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with Clause 15.1(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor will notify the Retailer of the value of acceptable security required in accordance with Clause 15.1(b).

15.14 **Distributor or Retailer to effect changes in value or type of security:** The Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security, within 5 Working Days of notification under Clause 15.4, 15.12 or 15.13. Refunds of Cash Deposits and reductions of the value of third party security required will be made in accordance with Clauses 15.15 or 15.17.

- 15.15 **Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it will refund all or part of the Cash Deposit into a bank account nominated by the Retailer on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.
- 15.16 **Cash Deposit on Insolvency Event:** If an Insolvency Event occurs in relation to the Retailer:
- (a) the Retailer will not be entitled to a return of the Cash Deposit, other than as set out in 15.22(f); and
 - (b) if the Retailer fails or has failed to pay an amount owing under this Agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest), on 2 Working Days' Notice to the Retailer.
- 15.17 **Reduction of third party security:** If the Distributor decreases the value of third party security required in accordance with this Agreement, the Retailer may arrange for the issuing of new third party security for the lesser value, in satisfaction of Clause 15.1(b)(ii), which will replace the earlier third party security.
- 15.18 **When the Distributor may make a call on security:** The Distributor may make a call on security in accordance with Clause 15.19 if:
- (a) the Retailer has provided acceptable security in accordance with Clause 15.1(b);
 - (b) the Retailer fails to pay an amount due under this Agreement; and
 - (c) the amount is not subject to a genuine dispute.
- 15.19 **Calls on security:** If this Clause applies in accordance with Clause 15.18, the Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under Clause 15.21), call on the security as follows:
- (a) if the Retailer provided a Cash Deposit (which includes a deemed Cash Deposit), full beneficial ownership of the amount owing (plus Default Interest) of the Cash Deposit will automatically transfer solely to the Distributor effective from the expiry of the 2 Working Day notice period or immediately (as applicable) and the Distributor may then draw down and apply the amount owed (including Default Interest) from the Cash Deposit;
 - (b) if the Retailer arranged for a third party to provide security, the Distributor may call on the provider of a third party security to pay the amount owed in accordance with the security; and
 - (c) in either case, the Distributor will immediately notify the Retailer that it has called on the security.
- 15.20 **Requirement to maintain security:** To avoid doubt, if the Distributor draws down some or all of a Cash Deposit held by the Distributor under this Agreement, or calls on the provider of a third party security, the Retailer will within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in Clause 15.6 (as such may be reviewed by the Distributor in accordance with Clause 15.8), as required by Clause 15.1(b).
- 15.21 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Retailer in substitution for the third party security and will be dealt with in accordance with Clause 0.

- 15.22 **Trust Account Rules:** If the Distributor receives a Cash Deposit:
- (a) the Cash Deposit will be held in a trust account in the name of the Retailer, to be applied or distributed only on the terms of this Agreement, or as otherwise agreed by the Parties;
 - (b) the Distributor will establish a trust account with a New Zealand registered bank (“**the Bank**”) for the purpose of holding the Cash Deposit (“**Trust Account**”);
 - (c) the Distributor will obtain acknowledgement from the Bank that the Cash Deposit is held on trust in the Trust Account and that the Bank has no right of set-off or right of combination in relation to the Cash Deposit;
 - (d) the Retailer will inform the Distributor of the bank(s) that the Retailer uses for its banking purposes and if the Retailer changes banks;
 - (e) the Trust Account will bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor will pay the Retailer the interest earned on the Cash Deposit on a quarterly basis net of account fees and any amounts required to be withheld by law, unless the Parties agree otherwise;
 - (f) if this Agreement is terminated, the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Retailer) to the Retailer in accordance with Clause 15.15, provided that the Retailer:
 - (i) is not otherwise in default of this Agreement;
 - (ii) has ceased to be bound by this Agreement; and
 - (iii) has discharged all obligations under this Agreement to the Distributor, including payment of all outstanding amounts under this Agreement; and
 - (g) the Distributor will provide the Retailer with an annual report in respect of the operation of the Trust Account if requested by the Retailer.
- 15.23 **Release of third party security:** If this Agreement is terminated, the Distributor will release any third party security, provided that the Retailer has met all of the requirements set out in Clause 15.22(f).

PART III - OPERATIONAL REQUIREMENTS

16. ACCESS TO THE CONSUMER'S PREMISES

- 16.1 **Rights of entry onto Consumer's Premises:** The Retailer will, subject to Clause 28.1, include in each of its Consumer Contracts a requirement that the Consumer provide the Distributor and its agents with safe and unobstructed access onto the Consumer's Premises for all of the following purposes:
- (a) to install, inspect, maintain, operate, upgrade, downgrade, replace or remove (provided that the work to be performed does not have any material adverse effect on the relevant Consumer or Consumer's Premises) the Distributor's Equipment;
 - (b) to disconnect and reconnect the Consumer in accordance with this Agreement;
 - (c) to access the Retailer's Equipment to verify metering information, including, in the event of termination of this Agreement, to determine any Charges outstanding at the time of termination;
 - (d) to ensure the safety of persons or property;
 - (e) to ensure that the Consumer fulfils its obligations in accordance with Clause 17.7; and
 - (f) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Consumer Contract for the period ending 6 months after the date that termination takes effect.

16.2 **Exercise of access rights:** In exercising its access rights under Clause 16.1, the Distributor will, except to the extent that the Distributor has any other binding agreement setting out its access rights directly with the Consumer:

- (a) comply with sections 23, 24, 36, 50, 51 and 52 of the Gas Act 1992 as though these sections relate to the Distributor's access rights as contemplated under Clause 16.1, provided that the Distributor will give written Notice to a Consumer if the Distributor intends to access the Consumer's Premises for any reason (except if the Distributor requires access to carry out a routine inspection or operation of the Distributor's Equipment, or in an emergency situation);
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Consumer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer (including minimising any direct impact on the Consumer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate and professional manner at all times while on the Consumer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor; and
 - (iii) if practicable, identify themselves to the Consumer before entering the Consumer's Premises; and
- (d) comply with the Consumer's reasonable requirements, practices and procedures as disclosed by the Consumer or as generally practised for health and safety, and security requirements.

16.3 **Distributor may disconnect:** The Retailer will, subject to Clause 28.1, include in its Consumer Contracts a provision to the effect that if the Consumer breaches the provisions of its Consumer Contract that require it to give the Distributor access to the Distributor's Equipment on the Consumer's Premises, and the breach is material or persistent, the Distributor may disconnect the Consumer's ICP from the Network and access the Consumer's Premises to reclaim the Distributor's Equipment, provided that:

- (a) if access was required for a purpose described in Clause 16.1(a), (b), (c) or (f), the Distributor or Retailer gave the Consumer 10 Working Days' Notice of access being required (if access is required for a purpose described in Clause 16.1(b), (d) or (e), such Notice is not required); and
- (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with Clause S6.15 of Schedule 6.

16.4 **Costs of disconnection:** The Distributor will not be liable for any loss the Retailer may suffer or incur as a result of a disconnection carried out because the Consumer has not given the Distributor access in accordance with the relevant Consumer Contract and/or the requirements of this Agreement. The Retailer will reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.

16.5 **Existing agreement will prevail:** In the event of a conflict between Clause 16 and any provision of any existing agreement between the Consumer and Distributor with respect to the Distributor's access rights to the Consumer's Premises, the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

17. GENERAL OPERATIONAL REQUIREMENTS

17.1 **Interference or damage to Distributor's Equipment by Consumers:** The Retailer will, subject to Clause 28.1, include in each of its Consumer Contracts a requirement that, during the term of the Consumer Contract and until the end of the period ending 6 months after the termination of the Consumer Contract, the Consumer will not interfere with or damage, and will ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that

emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).

- 17.2 **Costs of making good any damage:** The Retailer will, subject to Clause 28.1, include in each of its Consumer Contracts a requirement that, if any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Consumer or the Consumer's agents or invitees, then the Consumer will pay the cost of making good the damage to the Distributor and that such provision is for the benefit of the Distributor (in accordance with the provisions of the Contracts Privity Act 1982 and may be enforced directly by the Distributor.
- 17.3 **Interference or damage to Distributor's Equipment by the Retailer:** The Retailer will ensure that it and its employees, agents and invitees do not interfere with or damage the Distributor's Equipment (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 17.4 **Costs of making good any damage:** If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.
- 17.5 **Interference or damage to Retailer's Equipment or Consumer's Installations:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Consumer's Installation (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Retailer or the Consumer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 17.6 **Costs of making good any damage:** If the Retailer's Equipment or the Consumer's Installation is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This Clause 17.6 is for the benefit of the Consumer and may be enforced by the Consumer under the Contracts (Privity) Act 1982.
- 17.7 **Interference with the Network:** The Retailer will, subject to Clause 28.1, include in its Consumer Contracts a provision to the effect that the Consumer will not, without the prior written agreement of the Distributor inject or attempt to inject any gas or substance into the Network.
- 17.8 **Notification of interference, damage or theft:** If the Distributor or Retailer discovers any interference or damage to the other Party's equipment or the Consumer's Installation, or evidence of theft of 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.
- 17.9 **Additional GMS:** Either Party may, at its own cost, install and maintain additional GMS (whether owned by that Party or by a third party) for metering data verification purposes or other purposes, provided that:
- (a) the additional GMS does not interfere with any other equipment owned or used by the other Party; and
 - (b) the Party installing the additional GMS ensures that it is installed and maintained in accordance with Good Industry Practice.
- 17.10 **Responsibility for damages:** If the Party installing or maintaining additional GMS (the "**First Party**") causes damage to the equipment or invalidates the existing GMS certification of the other Party, the First Party will:
- (a) meet the cost of making good the damage or recertifying the GMS; and
 - (b) if the damage invalidates the existing GMS certification, and the other Party incurs costs because of its use of the GMS during the period of non-certification, the First Party will reimburse the other Party for those costs, except to the extent that the indemnified Party knew or ought reasonably to have known that the GMS was uncertified.

17.11 **Safe Housing of Equipment:** The Retailer will, subject to Clause 28.1, include in its Consumer Contracts (subject to any alternative written agreement between the Retailer and the Distributor) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Consumer's Premises that the Distributor determines is necessary.

17.12 **The Network:** The Retailer will, subject to Clause 28.1, include in its Consumer Contracts an acknowledgement by the Consumer that:

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

18. NETWORK CONNECTION STANDARDS

18.1 The Distributor will publish its Network Connection Standards on its website.

18.2 The Retailer will:

- (a) subject to Clause 28.1, include in its Consumer Contracts an undertaking that the Consumer will comply with the Distributor's Network Connection Standards; and
- (b) include in its Consumer Contracts a statement that the Network Connection Standards can be found on the Distributor's website.

19. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPS

19.1 **Policies and procedures:** The Distributor and the Retailer will comply with the policies and procedures for establishing new ICPS, changing the capacity and/or pressure of existing ICPS, Decommissioning existing ICPS and Disconnecting and Reconnecting existing ICPS set out in Schedule 6, consistent with Good Industry Practice and the Gas Industry Disconnection and Reconnection Protocol including any amendments published by GANZ and endorsed by the Distributor.

PART IV: OTHER RIGHTS

20. HEALTH AND SAFETY

20.1 During the period in which Network Services are provided under this Agreement, the Parties, which for the Retailer shall include any Agent, will have in place, implement, update and operate health and safety policies and procedures which comply with all applicable laws, regulations and other mandatory industry standards, and will ensure such policies and procedures are followed by their personnel and sub-contractors.

20.2 If requested from time to time, either Party may, as the "**Requesting Party**", request copies of the other Party's then-current health and safety policies and procedures, and will consider in good faith any feedback given by the Requesting Party on those policies and procedures.

20.3 From time to time either Party may request as the Requesting Party, amendments to the other Party's health and safety procedures by giving written Notice to the other Party, as the "**Receiving Party**", detailing those amendments, in which case:

- (a) within 15 Working Days of receiving that Notice, the Receiving Party will notify the Requesting Party whether it accepts or rejects each amendment, provided that subject to Clause 20.3(d), The Receiving Party will not refuse an amendment if the Receiving Party is technically and operationally capable of implementing, maintaining, adhering to, monitoring and enforcing the amendment(s) sought in the relevant Notice;
- (b) if that Notice is in respect of a change for reasons other than to meet legal, regulatory or industry standards (in accordance with Good Industry Practice) the Parties will agree an appropriate amount for the Requesting Party to reimburse the Receiving

Party for all the reasonable cost and expenses suffered or incurred by the Receiving Party as a result of implementing, maintaining, adhering to, monitoring and enforcing the amendment(s) sought in that Notice;

- (c) where the Receiving Party rejects an amendment on the grounds that it is not in accordance with Good Industry Practice, or the Parties cannot agree the appropriate amount for the Requesting Party to reimburse the Receiving Party pursuant to Clause 20.3(b), either Party may seek advice from an independent health and safety auditor with expertise in the energy services field;
 - (d) if the auditor:
 - (i) considers in good faith that the amendment rejected by the Receiving Party is in accordance with Good Industry Practice the Receiving Party will make the necessary changes to its health and safety procedures; and
 - (ii) determines an amount for the Requesting Party to reimburse the Receiving Party is appropriate and the quantum of that amount (pursuant to Clause 20.3(b)), the Receiving Party may raise an invoice accordingly;
 - (e) if the outcome of the review by the auditor is that the auditor does not accept the Receiving Party's rejection of the amendment or the Receiving Party's assessment of the appropriate amount for the Requesting Party to reimburse the Receiving Party in accordance with Clause 20.3(b), then the Receiving Party must, on demand, pay the reasonable, pre-advised costs of the auditor in carrying out the review, and in all other circumstances the cost of the auditor will be met by the Requesting Party.
- 20.4 During the period in which Network Services are provided under this Agreement, the Retailer will make available to GasNet such information as it may hold on Consumers, a Consumer's Installation or a Consumer's Premises that could potentially affect the health and safety of GasNet or GasNet's personnel or sub-contractors while attending a Consumer's Premises. Such information will be made available promptly to GasNet.
- 20.5 Subject to the terms of this Agreement, either Party as the Requesting Party may, no more frequently than once in any 12 month period, after giving reasonable prior written Notice to the Receiving Party, perform an audit (or appoint an auditor to perform such audit on the Requesting Party's behalf) on:
- (a) the Receiving Party's compliance with Clause 20.1; and/or
 - (b) the extent to which the Receiving Party's activities under this Agreement are enabling the Requesting Party to comply with its own health and safety policies and procedures (which, to avoid doubt, shall not place any additional obligations on the Receiving Party in respect of such Requesting Party policies and procedures beyond the obligations set out in Clause 20.1).
- 20.6 The Receiving Party will, subject to any confidentiality obligations owed to third parties and any third party intellectual property rights, use reasonable endeavours to co-operate with and assist the Requesting Party (or an auditor appointed to perform such audit on the Requesting Party's behalf) on reasonable notice as may be reasonably necessary for the performance of the audit under Clause 20.5.
- 20.7 The Requesting Party will provide the results of audits performed under Clause 20.5, and any consequential audit reports, to the Receiving Party promptly after such results or reports become available. Prior to the audit report being finalised a draft copy of the audit report shall be provided to the Receiving Party to provide the opportunity to correct any errors or omissions.
- 20.8 Each Party will meet its own reasonable costs of audits carried out in accordance with Clause 20.5.
- 20.9 The supply of a Party's health and safety policies under Clause 20.1 and any audit performed under Clause 20.5 is:
- (a) only intended to fulfil the Retailer's obligations as principal under the Health and Safety in Employment Act, both Parties obligations under the Gas (Safety and

Measurement) Regulations 2010 and as an employer and principal under the Health and Safety in Employment Act; and

- (b) in no way to be inferred as the Requesting Party:
 - (i) acknowledging or approving that the Receiving Party is complying with its obligations under the applicable laws; or
 - (ii) assuming any responsibility or liability for the Receiving Party's compliance.

20.10 The Parties will report to each other all serious harm and all other accidents (as defined in the Health and Safety in Employment Act) and other incidents including near misses, within:

- (a) 24 hours of a serious harm accident or incident occurring on the Consumers Premises;
- (b) 48 hours of all other accidents or incidents involving injury on a Consumers Premises or damage to property on the Consumers Premises: and
- (c) 5 Working Days of the incident occurring for all other incidents on the Consumers Premises including near misses, provided that the Parties acknowledges that not all near misses are reported to the other Party and that neither Party will be in breach of this Clause if that Party has used its reasonable endeavours to ensure that all near misses are reported to it.

20.11 GasNet will:

- (a) immediately notify the Retailer of any hazards GasNet creates in its performance of the Network Services on the Consumer's Premises and what steps have been taken to eliminate, minimise or isolate the hazard;
- (b) use reasonable endeavours to identify hazards upon arrival at any Consumer's Premises; and
- (c) notify the Retailer of any hazard it identifies at a Consumer's Premises that may be a hazard to the Retailer's representative at the next visit to that Consumer's Premises.

20.12 The Retailer will ensure that its Agent notifies the Retailer who will then notify GasNet of;

- (a) any hazards the Agent creates in its performance of Disconnections and Reconnections and what steps have been taken to eliminate, minimise or isolate the hazard;
- (b) any hazard it identifies at a Consumer's Premises that may be a hazard to GasNet at the next visit to that Consumer's Premises.

20.13 Where the Retailer has provided GasNet with procedural health and safety documentation or instructions relevant to a specific Consumer's Premises GasNet shall:

- (a) ensure all its field service providers and personnel are familiar with specific instructions, hazards and/or procedures at a relevant Consumer's Premises; and
- (b) comply with the Consumer's instructions and procedures, including any specified Notice, attending any training and obtaining any necessary authorisation or clearances

20.14 The Retailer will advise GasNet of any Consumer specific health, safety and environmental requirements and/or information associated with the Consumer's Premises when requirements and/or information are first established and thereafter when the requirements and/or information change.

21. BREACHES AND EVENTS OF DEFAULT

21.1 **Breach of Agreement:** Subject to Clause 21.6, if either Party (the "**Defaulting Party**") fails to comply with any of its obligations under this Agreement the other Party may notify the Defaulting Party that it is in breach of this Agreement. The Defaulting Party will remedy any breach within the following timeframe:

- (a) in the case of a Serious Financial Breach by the Retailer, within 2 Working Days of the date of receipt of such Notice;

- (b) in any other case, within 5 Working Days of the date of receipt of such Notice.
- 21.2 **Distributor will exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with Clause 15.1(b), and the Retailer has committed a Serious Financial Breach of the type described in paragraph (a) of the definition of Serious Financial Breach, the Distributor may give Notice to the Retailer under Clause 21.1 and a notification under Clause 21.4, but only if:
- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
 - (b) the Retailer has arranged for a third party to provide acceptable security in accordance with Clause 15.1(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with Clause 15.19(b), and the third party has failed to do so within 2 Working Days after receiving Notice from the Distributor to do so.
- 21.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in Clause 21.1:
- (a) the breach is an Event of Default for the purposes of this Agreement;
 - (b) the other Party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other Party's intention to exercise its rights under this Clause 20; and
 - (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as possible.
- 21.4 **Notification of Events of Default:** If the Event of Default is any one of the following:
- (a) a Serious Financial Breach (in the case of the Retailer only);
 - (b) a material breach of the Defaulting Party's obligations under this Agreement that is not in the process of being remedied to the reasonable satisfaction of the other Party; or
 - (c) the Defaulting Party has failed on at least two previous occasions within the last 12 months to meet an obligation under this Agreement within the time specified and has received Notice of such failures from the other Party in accordance with Clause 21.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other Party's rights or the other Party's ability to carry out its obligations under this Agreement or, if the Defaulting Party is the Retailer, the Distributor's ability to carry out its obligations under any agreement with any other Gas retailer,
- then no earlier than 1 Working Day after the end of the timeframe set out in Clause 21.1, the other Party may issue a Notice of termination in accordance with Clause 22.2 and, if the breach is a Serious Financial Breach by the Retailer, the Distributor may notify the Gas Industry Company in writing that the Retailer is in breach of this Agreement.
- 21.5 **Breaches that are not Events of Default:** If a breach is not an Event of Default, the non-breaching Party may:
- (a) refer the matter to Dispute resolution in accordance with Clause 26 no earlier than 1 Working Day after the end of the timeframe set out in Clause 21.1; and
 - (b) exercise any other legal rights available to it.
- 21.6 **Insolvency Event:** Despite Clause 21.1, if either Party is subject to an Insolvency Event, the other Party may:
- (a) immediately issue a Notice of termination in accordance with Clause 22.2;
 - (b) exercise any other legal rights available to it; and
 - (c) if the Insolvency Event involves a Serious Financial Breach by the Retailer, the Distributor may notify the Gas Industry Company in writing that the Retailer is in breach of this Agreement.

22. TERMINATION OF AGREEMENT

22.1 **Either Party may terminate this Agreement:** In addition to any other termination right in this Agreement:

- (a) **At will:** either Party may terminate this Agreement by giving at least 120 Working Days' notice in writing of termination and the date on which this Agreement will terminate. The Notice of termination may not be given under this Clause 22.1 before 5 years from the Commencement Date;
- (b) **Dispute resolution:** either Party may terminate this Agreement in accordance with any agreement reached or determination made as a result of the Dispute resolution process set out in Clause 26 if the other Party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach;
- (c) **Illegality:** either Party may terminate this Agreement 1 Working Day after Notice is given by either Party to the other Party terminating this Agreement for the reason that performance of any material provision of this Agreement by either Party has to a material extent become illegal and the Parties acting reasonably agree that despite the operation of Clause 31.4 it is not practicable for this Agreement to continue;
- (d) **Termination by the Retailer if the Retailer is not supplying Gas on the Network:** the Retailer may terminate this Agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying Gas to any Consumer through the Network;
- (e) **Termination by the Distributor if the Retailer is not supplying Gas on the Network:** the Distributor may terminate this Agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with Gas through the Network; or
- (f) **Force majeure:** either Party may terminate this Agreement by giving 10 Working Days' notice to the other Party, if:
 - (i) Notice of a Force Majeure Event is given by either Party to the other under Clause 24.3; and
 - (ii) the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the Party giving Notice of termination to remain bound by its obligations under this Agreement, provided that if the Party who wishes to terminate this Agreement is the Party that gave Notice of the Force Majeure Event, the Party has complied with Clauses 24.3 and 24.4.

22.2 **Termination of Agreement for Event of Default or Insolvency Event:** In addition to any other termination right in this Agreement, if a Party has breached this Agreement and the breach is an Event of Default, or a Party has become subject to an Insolvency Event, the other Party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in Clause 21.1 in the case of an Event of Default) issue a Notice of termination to the defaulting Party, effective either:

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

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

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

22.4 **Retailer remains liable for Charges for remaining Consumers:** If this Agreement is terminated by the Distributor for any reason, the Retailer remains liable to pay any Charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received Notice to disconnect the ICPs and has not done so, in which case

the Retailer will not be liable to pay any Charges for Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the Notice to disconnect the ICP). The Distributor may charge for such Services at the Prices that apply at the time of termination.

22.5 **Obligations to continue until termination:** The Parties will continue to meet their responsibilities under this Agreement up to the effective date of termination.

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

- (a) the Parties will have returned or certified the destruction of the other Party's Confidential Information; and
- (b) the Parties will cease to provide the Services to each other.

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

23. CONFIDENTIALITY

23.1 **Commitment to preserve confidentiality:** Each Party to this Agreement undertakes that it will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as provided for in Clause 23.2; and
- (b) only use Confidential Information for the purposes expressly permitted by this Agreement.

23.2 **Disclosure of Confidential Information:** Either Party may disclose Confidential Information in any of the following circumstances:

- (a) **By agreement in writing:** if the Retailer and Distributor agree in writing to the disclosure of the information;
- (b) **Provided in this Agreement:** if disclosure is expressly provided for under the terms of this Agreement;
- (c) **Public domain:** if at the time of receipt by the Party the Confidential Information is in the public domain or if, after the time of receipt by either Party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either Party of its obligations under this Clause 23 or a breach by any other person of that person's obligation of confidence);
- (d) **Required to disclose:** if either Party is required to disclose Confidential Information by:
 - (i) law, or by any statutory or regulatory body or authority; or
 - (ii) any judicial or other arbitration process; or
 - (iii) the regulations of any stock exchange on which the share capital of either Party is from time to time listed or dealt in;
- (e) **Released to employees, directors, agents or advisors:** if the Confidential Information is released to the employees, directors, agents or advisors of the Party, provided that:
 - (i) the information is disseminated only on a "need to know" basis;
 - (ii) recipients of the Confidential Information will be made fully aware of the Party's obligations of confidence in relation thereto; and
 - (iii) any copies of the information clearly identify it as Confidential Information;

- (f) **Released to a bona fide potential purchaser:** if the Confidential Information is released to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Retailer, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other Party in a form that reflects the obligations in the agreement;
- (g) **Released to a Consumer:** if the Confidential Information relates to a Consumer and the Consumer has requested the release of the information.
- 23.3 **Limit for breach:** A Party's liability for breach of this Clause 23 will not be limited by Clause 27.
- 23.4 **Unauthorised disclosure:** For the avoidance of doubt, a Party will be responsible for any unauthorised disclosure of Confidential Information made by that Party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that Party under Clause 23.2(f).
24. **FORCE MAJEURE**
- 24.1 **Force Majeure Event:** A Force Majeure Event occurs if:
- (a) a Party fails to comply with or observe any provision of this Agreement (other than payment of any amount due);
- (b) such failure is caused by:
- (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
- (A) due to natural causes, directly or indirectly and exclusively without human intervention; and
- (B) that 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, terrorism, blockades, insurrections, riots, epidemics, aircraft or civil disturbances;
- (iii) the binding order or requirement of any court, any government, any local authority, the Gas Industry Company, or the Transmission System Operator, which the Party could not reasonably have avoided;
- (iv) the partial or entire failure of supply or availability of Gas to the Network; or
- (v) any other event or circumstance beyond the control of the Party invoking this Clause 24.1; and
- (c) the Party could not have prevented the failure by the exercise of the degree of skill, diligence, prudence, control and foresight that would reasonably and ordinarily be expected from a skilled and experienced distributor or retailer engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time, acting in accordance with Good Industry Practice.
- 24.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the Party has failed to comply with or observe due to the Force Majeure Event.
- 24.3 **Notice:** If a Party becomes aware that a Force Majeure Event may occur or has occurred, it will:
- (a) notify the other Party as soon as reasonably practicable that it is invoking Clause 24.1;
- (b) provide the full particulars of the potential or actual Force Majeure Event; and

- (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 24.4 **Avoidance and mitigation of effect of Force Majeure Event:** The Party invoking Clause 24.1 will:
- (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
 - (c) consult with the other Party on the performance of the obligations referred to in paragraphs (a) and (b).
- 24.5 **No obligation to settle:** Nothing in Clause 24.4(a) is to be construed as requiring a Party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.
25. **AMENDMENTS TO AGREEMENT**
- 25.1 A change may be made to this Agreement:
- (a) if the change is to one or more of the Variable Provisions and the change is made in accordance with Clause 25.2;
 - (b) if the change is a change to the Pricing Methodology or Price Schedule and the change is made in accordance with Clause 12;
 - (c) if the change is required by law or any mandatory rules or protocols of any industry association or body of which both the Distributor and the Retailer are members or signatories at the relevant time, and the change is made in accordance with Clause 25.4;
 - (d) if the change is made in accordance with Clause 25.5 and involves:
 - (i) permanent disconnection of all or part of the Network from a Gas Gate; or
 - (ii) the construction of a new Gas Gate; and
 - (e) if the change does not fall into any of the categories set out above, and the change is made in accordance with Clause 25.4.
- 25.2 **Process to change any of the Variable Provisions:** The Variable Provisions may be changed only:
- (a) in accordance with any applicable process in the Variable Provision;
 - (b) if there is no applicable process in the Variable Provision and the Party seeking the change is the Distributor, in accordance with Clause 25.3; or
 - (c) by agreement in writing between the Parties.
- 25.3 **Distributor seeks change to a Variable Provision:** If there is no applicable process in the Variable Provision, the Distributor may change the Variable Provision, provided that the proposed change is in accordance with Good Industry Practice and the Distributor has complied with the following:
- (a) subject to paragraph (b), the Distributor will give the Retailer a Change Notice not less than 20 Working Days before the date on which the Distributor wishes the change to take effect; and
 - (b) before giving the Change Notice to the Retailer:
 - (i) the Distributor will consult with the Retailer about the proposed change for a reasonable period, having regard to the nature of the proposed change, but in any event a period of not less than 20 Working Days, and will consider in good faith any submission that the Retailer makes regarding the proposed change; and

- (ii) provide the Retailer with a summary of all submissions received and the responses to the submissions that clearly indicates whether the majority of retailers by number of ICPs supplied on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor may change the Variable Provision as proposed in the Change Notice whether or not a majority of retailers support the change proposed.

25.4 **Procedure for changes required by law and other changes:** The following procedures will apply to changes contemplated by Clauses 25.1(c) and 25.1(e):

- (a) **Notice of change:** either the Distributor or the Retailer may suggest a change by Notice to the other. The Notice will:
 - (i) if the proposed change is contemplated by Clause 25.1(c), specify the mandatory rules or protocols, or the laws that are the basis for the proposed change; or
 - (ii) if the proposed change is contemplated by Clause 25.1(e), set out the reasons for the proposed change; and
 - (iii) set out the change in the form that the change is proposed to be incorporated in this Agreement;
- (b) **Good faith:** the Parties will negotiate the change in good faith;
- (c) **By agreement:** if the Distributor and the Retailer agree to the proposed change they will promptly sign a written variation to this Agreement documenting the change, and this Agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation; and
- (d) **Procedure for changes required by law if the Parties have not agreed:** if the proposed change is contemplated by Clause 25.1(c) and the Parties are unable to agree on the change within 60 Working Days of the date the Notice was first given under paragraph (a), the matter will be referred to the decision of any independent, experienced and suitably qualified person agreed between the Parties or failing agreement, appointed by the President for the time being of the New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
 - (i) will be the minimum necessary to effect the mandatory change required by Clause 25.1(c);
 - (ii) subject to subparagraph (i), will be binding, absent obvious error; and
 - (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision is required to take immediate effect by law or mandatory rules or protocols.

25.5 **Change to Gas Gates:** The following procedure will apply to changes contemplated by Clause 25.1(d):

- (a) **Notice of Proposal:** the Distributor will notify the Retailer that it proposes to:
 - (i) construct and operate, or agree with a Transmission System Operator to have constructed and operated, a new Gas Gate; or
 - (ii) permanently disconnect the Network from a Gas Gate,such proposed change being a “**Proposal**”;
- (b) **Information about Proposal:** the Distributor will provide the following details in writing to the Retailer:

- (i) the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal; and
 - (ii) an estimate of the overall costs of the Proposal and a description of any benefits of the Proposal;
- (c) **Consultation:** the Distributor will consult with the Retailer about the Proposal for a reasonable period of time; and
- (d) **Implementation:** at the conclusion of the process set out in Clause 25.5(a) to (c), if the Distributor decides to proceed with the Proposal, the Distributor may proceed with the Proposal (including incorporating any changes to the original version of the Proposal arising out of consultation with the Retailer or System Users). The Distributor will provide the Retailer at least 20 Working Days' notice of the date on which the commissioning of or permanent disconnection from the Gas Gate is expected to be complete, and this agreement will be deemed to be varied from that date to the extent necessary as a result of the commissioning or permanent disconnection.

25.6 **Exception:** If 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 may effect the change by Notice to the other Party and nothing in Clauses 25.1 to 25.5 will apply to the change. If the Party receiving such a Notice disagrees that the change has a de minimis effect, the Party may raise a Dispute in accordance with Clause 26.

26. DISPUTE RESOLUTION PROCEDURE

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

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

26.3 **Appointment of mediator:** Within 10 Working Days of receipt of the Notice referring the Dispute to mediation, the Parties will agree on the identity of the mediator or, if they cannot agree within that timeframe, the mediator will be appointed by the President (or equivalent) of the New Zealand chapter of LEADR.

26.4 **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.

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

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

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

- (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the Parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
 - (d) **Costs of mediation borne equally:** the costs of the mediation, other than the Parties' legal costs, will be borne equally by the Parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 26.7 **Arbitration to resolve disputes:** Either Party may refer the Dispute to arbitration if the Dispute:
- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the Parties) of the appointment of a mediator; or
 - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with Clause 26.1 within 15 Working Days of the matter being referred to them and neither Party referred the Dispute to mediation.
- 26.8 **Arbitration:** A Dispute referred to arbitration under Clause 26.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the Parties.
- 26.9 **Choice of arbitrator:** The sole arbitrator will be appointed by the Parties. If the Parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in Clause 26.7, the arbitrator will be appointed by the President of the New Zealand Law Society.
27. **LIABILITY**
- 27.1 **Payments of Charges:** Nothing in this Clause 27 will operate to limit the liability of either Party to pay all Charges and other sums due under this Agreement.
- 27.2 **Direct damage:** Except in respect of liability under Clauses 23, 0, 27.11 and 27.12, each Party (and its officers, employees and agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) to the other Party for only direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this Agreement, negligence, or failure to exercise Good Industry Practice.
- 27.3 **Consequential loss excluded:** Except in respect of liability under Clauses 23, 0, 27.11 and 27.12, neither Party (nor any of their respective officers, employees or agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) 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, but not limited to, incidental or special damages);
 - (c) any loss resulting from liability of a Party to another person (except any liability for Direct Damage that arises under Clause 27.2); or
 - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 27.4 **Distributor not liable:** Except as provided in Clause 0, the Distributor will not be liable for:
- (a) any momentary fluctuations in the pressure, specification or odourisation levels of Gas conveyed within the Network; or
 - (b) any failure to convey Gas to the extent that:
 - (i) such failure arises from any act or omission of any Consumer or other person excluding the Distributor and its officers, employees or agents;
 - (ii) such failure arises from:
 - (A) a failure to convey or reduction of injection or supply of Gas into the Network; or

(B) an interruption in the conveyance of Gas in the Network,

if the failure or interruption was requested by the Transmission System Operator or the Critical Contingency Operator under a nationally or regionally coordinated response to a shortage of Gas;

- (iii) such failure arises from any defect or abnormal conditions in or about any Consumer's Premises;
- (iv) the Distributor was taking any action in accordance with this Agreement including Clause 9.4;
- (v) such failure arises from any act or omission of the Transmission System Operator; or
- (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene),

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

- (c) any failure to perform any obligation under this Agreement caused by the Retailer's failure to comply with this Agreement, except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this Agreement.

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

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

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

27.6 **Limitation of liability:** Subject to Clauses 27.1 and 27.7 but otherwise notwithstanding any other provision of this Agreement, the maximum total liability of each Party under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) for any single event or series of connected events will not in any circumstances exceed the lesser of \$10,000 for each ICP on the Network at which the Retailer supplied Gas on the day of the event, or \$5,000,000.

27.7 **Exclusion:** Clause 27.6:

- (a) does not limit a Party's liability under Clauses 23, 0, 27.11 or 27.12;
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme; and
- (c) does not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Consumer failing to comply with the Distributor's Network Connection Standards;
 - (ii) the Retailer is required by this Agreement to include in its Consumer Contracts a provision requiring the Consumer to comply with those Network Connection Standards; and
 - (iii) the Consumer Contract between the Retailer and the Consumer did not include such a provision.

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

- (a) If:
 - (i) there has been a failure of the acceptable quality guarantee in Section 6 of the Consumer Guarantees Act 1993 in the supply of Gas to a Consumer by the Retailer (a "**Failure**");
 - (ii) the Failure was wholly or partially the result of an event or condition associated with the Network;
 - (iii) the Failure was not a result of the Distributor complying with a rule or an order with which it was legally obliged to comply;
 - (iv) the Consumer obtains a remedy under Part 2 of the Consumer Guarantees Act 1993 in relation to the Failure against the Retailer; and
 - (v) that remedy is a cost to the Retailer (a "**Remedy Cost**"),the Distributor indemnifies the Retailer for the Remedy Cost.
- (b) The amount of the Distributor's liability under this indemnity is limited to the proportion of the Remedy Cost that is attributable to the event or condition associated with the Distributor's Network.
- (c) However:
 - (i) if the Distributor pays compensation to a Consumer ("**Payment A**") in respect of a service provided directly by the Distributor to the Consumer; and
 - (ii) the Retailer incurs Remedy Costs in relation to the Consumer for a failure of acceptable quality that arose from the same event or circumstance that led to the payment of Payment A,then the amount that the Retailer would otherwise recover from the Distributor in respect of that Consumer will be reduced by the amount of Payment A.
- (d) If a Consumer makes a claim against the Retailer that the Retailer wishes to be indemnified for under this indemnity (a "**Claim**"), the Retailer will:
 - (i) as soon as reasonably practicable, give written Notice of the Claim to the Distributor specifying the nature of the Claim in reasonable detail; and
 - (ii) consult with and keep the Distributor informed in relation to the Claim.

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

- (a) subject to Clause 28.1, the Retailer will, to the fullest extent permitted by law, exclude from all its Consumer Contracts (which includes a contract between the Retailer and a purchaser of Gas that is not an end user) all warranties, guarantees or obligations:
 - (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this Agreement ("**Distributor Warranties**"); and
 - (ii) imposed on the Retailer by the Consumer Guarantees Act 1993 concerning the supply of Gas by the Retailer under the Consumer Contract ("**Retailer Warranties**");
- (b) if the Consumer on-supplies Gas to an end-user the Retailer will, as a condition of any Consumer Contract, require the Consumer to include provisions in all agreements

between the Consumer and an end-user, excluding all Distributor Warranties and Retailer Warranties to the fullest extent permitted by law; and

- (c) to avoid doubt, nothing in this Clause 27.9 affects the rights of any Consumer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Retailer from offering in its Consumer Contracts its own warranties, guarantees or obligations pertaining to Network services.

27.10 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to Clause 28.1, include in its Consumer Contracts clear and unambiguous Clauses to the effect that:

- (a) the Consumer will indemnify the Distributor against any direct loss, indirect loss or damage caused or contributed to by the fraud of, dishonesty of or wilful breach of the Consumer Contract by the Consumer or any of its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this Agreement; and
- (b) to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of Gas to the Consumer under the Consumer Contract.

27.11 **The Distributor will be indemnified:** The Retailer indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis) 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 by the Retailer, or disconnection requested by the Retailer, of any Consumer's Premises in accordance with this Agreement;
 - (iii) the termination of this Agreement by the Retailer, except when the termination is the result of a breach by the Distributor;
 - (iv) any failure by the Retailer to perform any obligation under any agreement between the Retailer and any Transmission System Operator, Consumer or other third party;
 - (v) any failure by the Retailer to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Distributor under or in connection with this Agreement at the request of the Retailer; and
- (b) any recovery activity of the Distributor in respect of any unpaid Charges or interest payable under this Agreement.

27.12 **The Retailer will be indemnified:** The Distributor indemnifies and holds harmless the Retailer and will keep the Retailer indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis), 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 other than in accordance with this Agreement;

- (iii) the termination of this Agreement by the Distributor, except when the termination is the result of a breach by the Retailer;
 - (iv) any failure by the Distributor to perform any obligation under any agreement between the Distributor and the System Operator or any other third party;
 - (v) any failure by the Distributor to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Retailer under or in connection with this Agreement at the request of the Distributor; and
- (b) any recovery activity of the Retailer in respect of any unpaid Charges or interest payable under this Agreement.

27.13 **Rights of indemnity:** The indemnities in Clauses 0, 27.11 and 27.12 are in addition to and without prejudice to the rights and remedies of each Party under this Agreement or under statute, in law, equity or otherwise.

27.14 **Benefits to extend:** Each Party acknowledges that its obligations under this Clause 27 constitute promises conferring benefits on each Party's officers, employees and agents that are intended to create, in respect of the benefit, an obligation enforceable by those officers, employees and agents and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this Clause 27.

28. CONSUMER CONTRACTS

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

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

- 28.2 **Changes to Consumer Contracts during term:** If this Agreement is changed in accordance with Clause 25 and the change results in the addition of a new provision to this Agreement that requires the Retailer to include a new provision in its Consumer Contracts, the Retailer will take such steps as are necessary to comply with that provision. If the Retailer is required by the Distributor to change its Consumer Contracts more than once in any 2 year period, the Retailer may recover all reasonable costs and expenses associated with such compliance from the Distributor, provided that the Retailer may not recover such costs if the change is required by the Distributor under:
- (a) Clause 25.1(b), unless the change results in a new obligation in Schedule 4;
 - (b) Clause 25.1(c), unless the change results in a new obligation in Schedule 4; or
 - (c) Clause 25.1(d).
- 28.3 **Retailer to indemnify Distributor:** Subject to Clause 27, the Retailer indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations in accordance with Clause 28.1.
29. **NOTICES**
- 29.1 **Delivery of Notices:** Any Notice given under this Agreement will be in writing and will be deemed to be validly given if personally delivered, posted or sent by facsimile transmission or email to the address for Notice set out on the execution page of this Agreement or to such other address as that Party may notify from time to time.
- 29.2 **Deemed receipt:** Any Notice given under this Agreement will be deemed to have been received:
- (a) in the case of personal delivery, when delivered;
 - (b) in the case of facsimile transmission, when sent, provided that the sender has a facsimile confirmation receipt recording successful transmission;
 - (c) in the case of posting, 2 Working Days following the date of posting; and
 - (d) in the case of email, when acknowledgement of receipt is received from the recipient.
- 29.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any Notice given in accordance with Clause 29.2 that is personally delivered or sent by facsimile or email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.
30. **GAS INFORMATION EXCHANGE PROTOCOLS**
- 30.1 **Protocols for exchanging information:** From time to time the Gas Industry Company will publish certain GIEPs, including new or amended GIEPs, which specify recommended formats for the exchange of information between distributors and retailers. Unless this Agreement requires the Parties to comply with one or more GIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any relevant GIEPs when exchanging information, provided that the frequency at which, and method by which, the Parties will exchange information is such that compliance with the GIEP is cost-effective for both Parties.
- 30.2 **Consumer information:** The Retailer will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Consumer information as is reasonably available to the Retailer and necessary to enable the Distributor to fulfil its obligations in accordance with this Agreement. The information will be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and will not, use such information in any way or form other than as permitted by this Clause 30.2.
- 30.3 **Auditing information provided:** To enable either Party to this Agreement (the "**Verifier**") to verify the accuracy of information provided to it by the other Party to this Agreement (the "**Provider**"), the Provider will allow the Verifier and its agents reasonable access to the Provider's books and records (including, if the Retailer is the Provider, of metering or consumption data) (the "**Records**") to the extent that those Records relate to the obligations

of the Provider under this Agreement. Access to such Records will be given at all reasonable times providing the Verifier has given the Provider not less than 10 Working Days' prior Notice.

30.4 **Limitations on the Verifier:** In relation to its review of the Records under Clause 30.3, the Verifier will not:

- (a) use the information obtained for any purpose other than verifying the accuracy of information provided by the Provider under this Agreement; and
- (b) engage as its agent any person that is in competition with the Provider, any person who is related to a person in competition with the Provider or any employee, director, agent of such persons. For the purposes of this Clause 30.4(b) a person is related to another person if it is a related company (as that term is defined in section 2(3) of the Companies Act 1993) of that other person.

30.5 Independent Auditor: If:

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

then the Distributor or the Retailer, as appropriate, will permit an independent auditor (the "Auditor") appointed by the other Party to review the Records and the other Party will not itself directly review any of the Records. The Distributor or the Retailer, as appropriate, will not unreasonably object to the Auditor appointed by the other Party. In the event that the Distributor or the Retailer, as appropriate, reasonably objects to the identity of the Auditor, the Parties will request the President of the Institute of Chartered Accountants (or a nominee) to appoint a person to act as the Auditor. The Party that is permitted by this Clause 30.5 to appoint an Auditor will pay the Auditor's costs, unless the Auditor discovers a material inaccuracy in the Records in which case the other Party will pay the Auditor's costs. The terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

30.6 **Provider will co-operate:** The Provider will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider's Records under Clause 30.3 and will ensure that the Records are readily accessible and readable.

31. MISCELLANEOUS

31.1 **No Waiver:** Unless a Party has signed an express written waiver of a right under this Agreement, no delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.

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

31.3 **No assignment:** Neither Party may assign any benefit or burden under or in relation to this Agreement without the prior written consent of the other Party, such consent not to be unreasonably delayed or withheld. For the purposes of this Clause 31.3, unless a Party is listed on the New Zealand Stock Exchange, a change in control of a Party will be deemed to be an assignment. The Distributor may assign the benefit or burden of this Agreement but shall remain liable for all obligations unless a Deed of Novation is entered into.

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

32. **INTERPRETATION**

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

- (a) headings are to be ignored;
- (b) “including” and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a Party comprises more than one person, each of those person’s liabilities are joint and several;
- (e) references to a Party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a Party remains unrestricted and may be exercised without prejudice to each other at any time;
- (g) all amounts payable under this Agreement are in New Zealand dollars and exclude GST and every other tax and duty, but if GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable, and unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this Agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, Clauses, schedules, annexes or other identifiers are to those in this Agreement unless otherwise identified;
- (k) references to a document or agreement includes it as varied or replaced; and
- (l) each Schedule and any other attachment is part of this Agreement.

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

“**Act**” means the Gas Act 1992;

“**Additional Services**” means any additional services that either the Distributor or the Retailer agree to provide to the other from time to time and as maybe set out in Schedule 2;

“**After Hours**” means any time of day that is not within Business Hours;

“**Agreement**” means this document including its Schedules as amended from time to time in accordance with Clause 25;

“**Allocation Agent**” means the person appointed in accordance with the Downstream Reconciliation Rules who is responsible for determining the quantities of Gas allocated to the Retailer and other System Users at all shared Gas Gates in accordance with the Downstream Reconciliation Rules;

“**Allocation Group**” has the same meaning as in the Downstream Reconciliation Rules;

“**Alternative Contract**” has the meaning given in Clause 3.2;

“**Annual UFG Factor**” has the same meaning as in the Downstream Reconciliation Rules;

“**As Billed Normalised**” means consumption at ICP level which has been billed by the Retailer during the Month (whether based on an estimate read or an actual read) plus the Month’s unbilled sales accrual minus the previous Month’s unbilled sales accrual, as extracted from the Retailer’s billing database;

“Asset Management Plan” means the Distributor’s ten year plan of capital expenditure, maintenance priorities and system development requirements in respect of the Network as set out on the Distributor’s website;

“Billing Period” unless GasNet advise otherwise in writing, means the period from 00.00 hours on the first Day in one Month up to 24.00 hours on the last Day of the Month;

“Business Day” means any day (other than a Saturday or Sunday) on which registered banks are open for business in Wanganui and the registered office of the Retailer;

“Business Hours” means between the hours of 8 a.m. and 5 p.m. on a Business Day;

“CAIDI” has the same meaning as in the Commerce Commission “Gas Distribution Information Disclosure Determination 2012” Decision No. NZCC 23;

“Change Notice” means Notice of a change to a Variable Provision given by the Distributor to the Retailer under Clause 25.3;

“Charges” means the charges for the Services;

“Commencement Date” means the date specified on the execution page of this Agreement;

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

- (a) information known to the recipient prior to the date it was provided to it by the first Party and not obtained directly or indirectly from the first Party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first Party under an obligation of confidence;
- (c) reports prepared in accordance with Clause 11; and
- (d) the existence and terms of this Agreement, except Schedule 2;

“Connect” means to connect the Network at an ICP to the GMS to allow the transportation of Gas to the GMS and Consumer Installation (if connected to the GMS);

“Connection Status Code” shall have the same meaning as in the Switching Arrangements Rules;

“Consumer” means a person who purchases Gas from the Retailer that is delivered via the Network;

“Consumer Contract” means an agreement between the Retailer and the Consumer that includes the supply of Gas and Network Services;

“Consumer’s Installation” has the same meaning as the term “Gas Installation” in the Gas Act 1992;

“Consumer’s Premises” means the land and buildings owned or occupied by a Consumer, and any land over which the Consumer has an easement or right to pass Gas, including:

- (a) the land within the boundary within which 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;

“**Credit Note**” has the meaning given to that term in the GST Act;

“**Critical Contingency**” has the same meaning in the Gas Governance (Critical Contingency Management) Regulations 2008;

“**Critical Contingency Operator**” has the same meaning in the Gas Governance (Critical Contingency Management) Regulations 2008;

“**Day**” will mean a period of 24 consecutive hours, beginning at 00.00 hours and ending 24 hours later;

“**Debit Note**” has the meaning given to that term in the GST Act;

“**Decommission**” means the decommissioning of an ICP so that the ICP is permanently disconnected from the Network, and the Registry status has been altered to “decommissioned”;

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

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

“**Delivery Pressure**” means Gas pressure at the outlet of the Network, notionally the ICP;

“**Direct Damage**” has the meaning given to it in Clause 27.2;

“**Disclosure Requirements**” means the Gas Distribution Information Disclosure Determination 2012 issued by the Commerce Commission under Part 4 of the Commerce Act 1986 as amended or replaced from time to time;

“**Disconnect**” means to isolate the Network at an ICP to prevent further transportation of Gas, either temporary or permanent, to the GMS and/or Consumer Installation;

“**Dispute**” has the meaning given to it in Clause 26.1;

“**Dispute Resolution Scheme**” means the Electricity and Gas Complaints Commission or such other dispute resolution scheme approved or provided for in accordance with section 43E of the Act;

“**Distribution System**” shall have the same meaning as in the Act;

“**Distributor**” means the Party identified as such in this Agreement;

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

“**Downstream Reconciliation Rules**” means the Gas (Downstream Reconciliation) Rules 2008;

“**GIEP**” means:

- (a) a Gas information exchange protocol approved by the Gas Industry Company and published on the Gas Industry Company’s website <http://www.gasindustry.co.nz>; or
- (b) a Gas information exchange protocol that is additional to those published on the Gas Industry Company’s website, agreed by the Parties and recorded in Schedule 3;

“**Event of Default**” has the meaning given to it in Clause 21.3(a);

“Fitting” has the meaning given to that term in the Act;

“Flow Limiting Device” means a device which is installed (usually within the GMS) to restrict the flow of Gas at the ICP so as to prevent damage to the GMS and/or Network;

“Force Majeure Event” has the meaning set out in Clause 24.1;

“GANZ” means the Gas Association of New Zealand Incorporated;

“Gas” means any gaseous compound with all the characteristics listed in the Gas Specification and within the absolute limits specified in the Gas Specification;

“Gas Distribution Standard” means NZS5258:2003 “Gas Distribution Networks”;

“Gas Gate” means a location where Gas enters a Network;

“Gas Industry Disconnection and Reconnection Protocol” means the GANZ Gas Industry Disconnection and Reconnection Protocol GIP001;

“Gas Measurement System” has the same meaning as in the Act;

“Gas Safety Disconnection” means to Disconnect an ICP as a result of result of an unsafe (or potentially unsafe) situation, irrespective of whether the situation is caused by continued flow of Gas or an unrelated event made worse by the continued flow of Gas;

“Gas Specification” means the New Zealand Specification For Reticulated Natural Gas NZS5442: 2008;

“Gas Supply Agreement” means an agreement between the Retailer and a Consumer for the supply of Gas only;

“GJ” means GigaJoule;

“GMS” means the Gas Measurement System;

“GMS Services” means services for the measurement of Gas and associated pressure reduction, if any, comprising GMS which may, or may not, be owned and operated by the Distributor;

“Good Industry Practice” means:

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

“GST” means goods and services tax payable under the Goods and Services Tax Act 1985;

“GST Act” means the Goods and Services Tax Act 1985;

"ICP" means an installation control point being a Point of Connection at which a GMS is connected to the Network, notionally the outlet of the Service Valve. The ICP will have ascribed to it a fifteen digit alpha-numeric unique identifier;

"ICP Parameter Values" shall have the same meaning as in the Switching Arrangements Rules;

"Inactive Permanent Disconnection" shall have the same meaning as in the Switching Arrangements Determinations;

"ICP Status" shall have the same meaning as in the Switching Arrangements Rules;

"ICP Status Code" shall have the same meaning as in the Switching Arrangements Rules;

"Inactive Transitional Disconnection" shall have the same meaning as in the Switching Arrangements Determinations;

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

"Insolvency Event" means a Party:

- (a) has had a receiver, administrator or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

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

"Intermediate Pressure" means Gas delivered through the Network at a pressure greater than 700 kPa and not more than 2000 kPa;

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

"Load Group" means the group that applies to an ICP based on a specified eligibility criteria set out in the Price Structure that determines the Price(s) that apply to that ICP;

"Load Shedding" means the act of reducing or interrupting the delivery of Gas to one or more ICPs;

"Low Pressure" means Gas delivered through the Network at a pressure no greater than 7 kPa;

“Maximum Hourly Quantity” or **“MHQ”** means in respect of Network Services the maximum Quantity of Gas measured in cubic metres at Standard Conditions which GasNet has agreed to deliver for the Retailer in any hour of any Day at each ICP for which Network Services are provided pursuant to this Agreement and as set out in the Registry;

“Medium Pressure” means Gas delivered through the Network at a pressure greater than 7 kPa but not exceeding 700 kPa;

“Meter” means an instrument designed to measure the amount of Gas that passes through a GMS;

“MJ” means MegaJoule;

“Month” means the period beginning at 00.00 hours on the first calendar day of a calendar month and ending at 24.00 hours on the last calendar day of the same calendar month;

“Network” means the part of the Distribution System owned by the Distributor and used to distribute Gas to a consumer, from the Gas Gate to the ICP, but excluding the GMS;

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

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

“Network Emergency” means any emergency situation in respect of the Network in which:

- (a) public safety is at risk; or
- (b) there is a risk of significant damage to any part of the Network; or
- (c) the Distributor is unable to maintain Gas pressures to safe levels; or
- (d) Non-Specification Gas or under/over-odorised Gas has entered the Network or may enter the Network from the Transmission System; or
- (e) an Unplanned Service Interruption affecting part or all of the Network is imminent or has occurred.

“Network Services” means those services described in Clause 2.1 provided by the Distributor to the Retailer under this Agreement but excludes Additional Services;

“Nominated Annual Quantity” or **“NAQ”** means the estimated Quantity of Gas which the Retailer, in good faith, has notified GasNet will be required to be delivered in any Year to a ICP as specified in this Agreement;

“Non-Published Tariff” means a Price that is not a Published Price and which is agreed in writing by the Parties in respect of a specific ICP;

“Non-Specification Gas” means gas which does not meet the Gas Specification;

“Non-Standard ICP” means an ICP where a Non-Published Tariff applies in respect of Network Services;

“Notice” means any written communication, demand, advice or consents required or permitted to be given or made by one Party to the other Party pursuant to this Agreement;

“Parties” means the Distributor and the Retailer collectively;

“Party” means the Distributor and the Retailer individually (as the case may be);

“Performance Report” has the meaning set out in Clause 11.2;

“Permanent Disconnection” has the same meaning as in the Gas Industry Disconnection and Reconnection Protocol;

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

“Point of Connection” means the point at which Gas may flow into or out of the Network;

“Price” means the price within a Load Group which, when combined with a relevant quantity and, if more than one price for a particular Load Group, summed together, determines the Charges that apply to an ICP for a Billing Period;

“Pricing Methodology” means the methodology as set out in the Distributors website, being the Distributor’s policies and processes relating to the determination of the Load Groups, the associated eligibility criteria and setting Prices for Network Services;

“Price Schedule” means the document as set out in the Distributors website that provides the Prices for Network Services;

“Price Structure” means the Load Groups, associated eligibility criteria and Price codes that are used to determine the Price(s) for an ICP;

“Pricing Year” means the 12 month period from 1 October through to 30 September of the following year for which Prices are set using the Pricing Methodology

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

“Quantity” or **“Quantities”** means volume of Gas measured in cubic meters unless the context clearly implies energy measured in GigaJoules;

“Reconnect” means to Connect an ICP to the GMS after it has been Disconnected;

“Registry” has the same meaning as “Registry” in the Switching Arrangements Rules;

“Retailer” means the Party identified as such in this Agreement;

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

“SAIDI” has the same meaning as in the Commerce Commission “Gas Distribution Information Disclosure Determination 2012” Decision No. NZCC 23;

“SAIFI” has the same meaning as in the Commerce Commission “Gas Distribution Information Disclosure Determination 2012” Decision No. NZCC 23;

“Scmh” means cubic metres of Gas delivered per hour at Standard Conditions;

“Serious Financial Breach” means:

- (a) a failure by the Retailer to pay an amount due that exceeds the greater of \$100,000 or 20% of the actual Charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with Clause 14.7; or
- (b) a material breach of Clause 15 by the Retailer;

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

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

“Service Level” means the magnitude of a Service Measure set out in Schedule 1;

“Service Measure” means the characteristics or features of a Service Standard as set out in Schedule 1;

“Service Pipe” means that part of the Network between the main and the ICP or ICPs, dedicated to a particular ICP or group of ICPs supplied from the same Gas main connection;

“Service Standards” means the set of Service Measures, Service Levels, any future Service Guarantees, service performance reporting measures and frequency of reporting as set out in Schedule 1;

“Service Valve” means the valve on the outlet of the Service Pipe immediately prior to the Gas Measurement System at which the supply of Gas to a Consumer can be turned off in a controlled manner. Unless otherwise agreed the outlet of the Service Valve is the interconnection point between the outlet of the Network and the inlet to the GMS;

“Services” means Network Services, Additional Services and any other services provided by the Distributor to the Retailer in accordance with this Agreement;

“Standard Conditions” are at a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kilopascals;

“Standard ICP” means an ICP where a Published Tariff applies in respect of Network Services;

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

“Switching Arrangements Determinations” means the published determinations of the Industry Body (Gas Industry Company) required by the Switching Arrangements Rules;

“Switching Arrangements Rules” means the Gas (Switching Arrangements) Rules 2008;

“System User” means any person (excluding the Retailer unless otherwise stated) together with its successors and assigns whose Gas is or is to be distributed through the Network to an ICP

“Tax Invoice” means a valid tax invoice as specified by section 24 of the GST Act;

“Temporary Disconnection” has the same meaning as in the Gas Industry Disconnection and Reconnection Protocol;

“TJ” means TeraJoule;

“Transitional Disconnection” has the same meaning as in the Gas Industry Disconnection and Reconnection Protocol;

“Transmission System Operator” means a person who transports Gas across the Transmission System and provides the Distributor with services relating to the off-take of Gas at Gas Gates;

“Trust Account Rules” means the rules relating to the establishment and operation of a trust account established and operated by the Distributor in accordance with Clause 15.18;

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

“UFG” shall have the same meaning as in the Downstream Reconciliation Rules;

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

“Variable Provisions” means Schedule 6 ;

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

“Warranted Person” means a person who is Warranted or who is employed by a person who is Warranted;

“Working Day” means every day except Saturdays, Sundays and days that are statutory holidays in the city specified for each Party’s street address at the start of this Agreement; and

“Year” means a period of 365 (or 366 in a leap year) consecutive Days commencing at 00.00 hours on the 1st day of October in each year and ending at 24.00 hours on the 30th day of September in the following year provided that the first such period will include the broken period from 00.00 hours on the Commencement Date (if not 1 October) to 24.00 hours on the 30th day of September immediately following the Commencement Date.

SCHEDULE 1 – SERVICE STANDARDS

Introduction

- S1.1 In accordance with Clause S1.2, the Distributor and the Retailer will meet the Service Standards outlined in this Schedule.
- S1.2 If either Party becomes aware of or suspects a breach of the Service Standards by the other Party, the Party will give the other Party Notice of the reasons why it suspects that there has been a breach.
- S1.3 Each Party will provide the other Party with a report on their own performance for each Service Standard on the frequency specified for each.
- S1.4 The Parties acknowledge that there is no obligation on either Party to compensate the other for failure to meet the Service Standards.
- S1.5 The Distributor will initiate a review of this Schedule 1 in conjunction with the Retailer and other System Users:
- (a) not less than once every three years and no more than once every year, to review and revise the Service Standards; or
 - (b) in the event that either Party consistently fails to meet 90% of the KPI's in 5 or more Service Standards in any period of 12 months, to determine whether the Service Standards satisfy Good Industry Practise and whether a compensation regime should be introduced for failure to meet the Service Standards.

Safety			
Service	Description	KPI	Reporting
Safety Events Affecting Consumers or on a Consumer's property	Notification and investigation of any event relating to the provision of Network Services that has caused, or has the potential to cause, harm to either one or more Consumers, to other persons on a Consumer's Premises, or to property on a Consumers Premises.	<p>Initial Notification: The Parties will report to each other all serious harm and all other accidents (as defined in the Health and Safety in Employment Act) and other incidents including near misses, within;</p> <ul style="list-style-type: none"> • 24 hours of a serious harm accident or incident occurring on a Consumers Premises; • 48 hours of all other accidents and incidents involving injury on a Consumers Premises or damage to property on the Consumers Premises; and • 5 Working Days of the incident occurring for all other incidents on the Consumers Premises including near misses. <p>Investigation: Within 5 Working Days the investigating Party (the Distributor unless otherwise agreed by the Parties) will complete the investigation and submit an event report complete with findings, recommendations and any actions taken. In the event that due to complexity or severity of the event more time is required to complete the investigation, the investigating Party will keep the other Party aware of progress up until completion.</p> <p>Summary Report: Within 5 Working Days of the end of the month the Distributor will provide a summary report to the Retailer of all accidents, incidents and near miss events that it became aware of and managed during the previous month.</p>	<p>Monthly</p> <p>24 hours</p> <p>48 hours</p> <p>5 Working Days</p> <p>5 Working Days after the accident/incident</p> <p>5 Working Days of the month end</p>
Protocol to Support Retailer's compliance with the Gas (Safety and Measurement) Regulations 2010 and the Downstream Reconciliation Rules	Information to support the Retailer's compliance with regulated obligations relevant to the safe supply of Gas to consumers (odorisation, Gas pressure) and accurate Gas measurement	Distributor to provide the information as outlined in the industry protocol intended to support the Retailer's compliance with its obligations in the Gas (Safety & Measurement) Regulations 2010 and Downstream Reconciliation Rules, as applicable to network operators and the safe supply of Gas to consumers (odorisation, Gas pressure) and accurate Gas measurement	As specified in the protocol

Service Installation			
Service	Description	KPI	Reporting
Provision of connection quotations	Provision of a quotation for providing a new, or altering an existing, connection Exclusions: Where property is not fronted by an existing Gas main	Within 10 Working Days of receipt of Service Request	Annually
Installation of a Service	Design, planning, installation and commissioning of a Service on any Delivery Point installed on an approved Natural Gas network Inclusions: <ul style="list-style-type: none"> GasNet liaison with Retailer and Consumer for the purposes of a GMS installation Exclusions: <ul style="list-style-type: none"> Connections from the Intermediate Pressure network Reinstatement of the service installation 	State Highway: Within 30 Working Days of receipt of the quotation acceptance (or such later date as specified in the Service Request) All other areas: Within 20 Working Days of receipt of quotation acceptance (or such later date as specified in the Service Request)	Annually
Provision of information to the Retailer	Notification to the Retailer of the GasNet ICP details including the ICP number, installation date and altitude	Within 2 Working Days of the commissioning date	Annually
Updating of the Registry	Updating of the Registry	The Distributor will update the Registry: <ul style="list-style-type: none"> within 3 Working Days of receiving a request from the Retailer to create an ICP within 2 Working Days of commissioning the ICP The Retailer will: <ul style="list-style-type: none"> within 2 Working Days of entering into a Consumer contract change the ICP Status and Connection Status in the Registry accordingly 	Annually

ICP Capacity Change			
Service	Description	KPI	Reporting
Retailer request for change in MHQ at an ICP	The Retailer submits a written request to the Distributor to change the capacity at an existing ICP, to increase or reduce the MHQ	Within 10 Working Days of receipt of the request the Distributor will advise the Retailer, whether or not it will increase/reduce the MHQ	Annually
Distributor changes the MHQ at an ICP	Completion of the changes required on the network and/or at the ICP to effect the agreed increase/reduction in MHQ	Completion of the change within the agreed timeframe, subject to the Distributor and Retailer agreeing to the change in MHQ at the ICP	Annually
Provision of information to Retailer	Notification to Retailer of the increase/reduction in MHQ	Within 5 Working Days of the increase/reduction in MHQ	Annually
Updating the Registry	Updating the Registry	Within 1 Working Day of notification to the Retailer the Distributor will update the Registry accordingly	Annually

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Relocation of a Service Pipe and/or Riser			
Service	Description	KPI	Reporting
Retailer requests relocation of the service pipe and/or riser	The Retailer submits a written request to the Distributor to relocate the service riser and/or pipe or part thereof.	Within 10 Working Days of receipt of the request the Distributor will advise the Retailer the terms under which the Distributor will undertake the change	Annually
Completion of the change in MHQ at an ICP	<p>Subject to the Retailer and Distributor agreeing to the terms, completion of the changes to the service riser or pipe.</p> <p>Inclusions:</p> <ul style="list-style-type: none"> The Distributor's liaison with Consumer to complete the relocation <p>Exclusions:</p> <ul style="list-style-type: none"> Resolution of any GMS issues with the applicable GMS owner where the GMS is owned by a third party other than GasNet is responsibility of Retailer 	Completion of the change within the agreed timeframe	Annually
Provision of information to Retailer	Notification to Retailer of the relocated service riser or pipe	Within 5 Working Days of the relocation date	Annually
Updating of the Registry	Updating of the Registry, as necessary	Within 1 Working Day of notification to the Retailer	Annually

Provision of Information			
Service	Description	KPI	Reporting
Provision of Billing Information, Tax Invoices & Payment	Provision of information to enable the Retailer to pay the Distributor for Network Services and Additional Services as appropriate	<ul style="list-style-type: none"> • Retailer provides by 5pm on the 5th Working Day after the end of the month information required by the Distributor to calculate services payable by the Retailer. • The Distributor invoices the Retailer within 10 Working Days after the last day of the month. • The Retailer pays the invoices by the 20th of the month in which the invoice was received by the Retailer. 	Annually
Provision of Odourisation Information	Provision of Gas odorant levels within the Distributors' Network to provide evidence, or not, that the Distributor has maintained odorant levels within NZS 5263:2003	<ul style="list-style-type: none"> • Within 5 Working Days of the end of the month the Distributor will provide a report of its monitoring activities and odorant levels within selected points on the Network • Within 2 hours the Distributor will notify the Retailer in the event that it detects odorant fade or masking on its Network, and the likely ICP's most affected. 	Monthly
Provision of Network Charge Information for existing ICP's not on Posted Pricing Schedules	Provision of network Charges for an existing ICP that is not available on the publicly available Posted Price schedule.	Within 5 Working Days of receipt of the request from the Retailer the Distributor will provide the pricing information in writing	Annually

Unplanned Network Maintenance			
Service	Description	KPI	Reporting
Attendance at Delivery Point in response to Fault Service Request	Upon receipt of a Service Request from the Retailer reporting a fault on the Network the Distributor will dispatch a service person to the Delivery Point to assess the fault.	The Distributor's service person arrives at the Delivery Point within 1 hour of receipt of the Service Request	Annually
Notification of unplanned maintenance activity by GasNet to Retailer	The Distributor will provide notification to Retailer of any unplanned maintenance by the Distributor on its Network effecting, or on the property of, a Consumer.	The Distributor notifies the Retailer the same day.	Annually
Fault fixing and Emergency site Management	Upon arrival at the Delivery Point, the Distributor's service personnel will assess the fault and either: (a) remedy the fault; or (b) in the event of risk of harm to personal or public safety, isolate the danger as far as possible and advise the Retailer of the necessary actions to remedy the fault.	The Distributor notifies the Retailer the same day.	Annually
Completion of unplanned maintenance on the Network	Completion of unplanned maintenance on the Network to remedy a fault. Inclusions: <ul style="list-style-type: none"> The Distributor's liaison with Consumer and Retailer to obtain access to the Network to conduct any unplanned maintenance activity Exclusions: <ul style="list-style-type: none"> Immediate liaison with Consumer where required to permit the Distributor to conduct unplanned maintenance is the responsibility of the Retailer Resolution of any GMS issues with the applicable GMS owner where the GMS is owned by a third party other than GasNet is responsibility of Retailer 	Within 5 Working Days of fault identification	Annually
Provision of information to Retailer	Notification to Retailer of the relevant details of the unplanned maintenance	Within 5 Working Days of completion of the unplanned maintenance	Annually
Updating of the Registry	Updating of the Registry, as necessary	Within 1 Working Day of notification to the Retailer	Annually

Planned Network Maintenance

Service	Description	KPI	Reporting
Notification of maintenance activity	<p>Notification to Retailer of regular planned maintenance by the Distributor on its Network.</p> <p>Within 8 Working Days of receipt of the Distributor's Notice, the Retailer will:</p> <p>(a) advise the Distributor of any issues with respect to the scheduled maintenance; and</p> <p>(b) advise the Distributor of any Consumer specific Health Safety and Environment matters associated with the ICP where maintenance of the Network is scheduled</p>	<p>The Distributor notifies Retailer a minimum of 10 Working Days prior to the month that Network maintenance has been scheduled.</p> <p>Retailer responds to the Distributor within 8 Working Days</p>	Annually
Completion of scheduled maintenance	<p>Completion of scheduled maintenance on the Distributor's Network</p> <p>Inclusions:</p> <ul style="list-style-type: none"> The Distributor liaison with Consumer and Retailer to obtain access to the Network to conduct any scheduled maintenance activity <p>Exclusions:</p> <ul style="list-style-type: none"> liaison with Consumer where required to permit the Distributor to conduct planned maintenance is responsibility of Retailer (unless the Retailer and the Distributor agree that the Distributor should liaise with the Consumer) Resolution of any GMS issues with the applicable GMS owner where the GMS is owned by a third party other than the Distributor is the responsibility of the Retailer 	In accordance with the schedule notified by the Distributor to the Retailer as may be varied by the Distributor from time to time	Annually
Provision of information to Retailer	Notification to Retailer of any changes to the Network maintenance programme	Within 5 Working Days of maintenance programme change	Annually
Updating of the Registry	Updating of the Registry, as necessary	Within 1 Working Day of notification to the Retailer	Annually

SCHEDULE 2 – ADDITIONAL SERVICES

[Add any Additional Services as they apply]

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SCHEDULE 3 – GAS INFORMATION EXCHANGE PROTOCOLS

- S3.1 The table below lists the GIEPs published on the Gas Industry Company website as at the date of signing this Agreement.
- S3.2 These GIEPs, which may be amended or added to from time to time, specify recommended formats for the exchange of information between distributors and retailers.
- S3.3 Unless this Agreement requires the Parties to comply with one or more GIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any relevant GIEPs when exchanging information, provided that the frequency at which and method by which the Parties will exchange information is such that compliance with the GIEP is cost-effective for both Parties.

Protocol Reference	From/To R means Retailer D means Distributor	Description
GIEP1	R → D and D → R	Network Detail Consumption Information <ul style="list-style-type: none"> • As Billed • Incremental Normalised • Replacement Normalised
GIEP2	R → D and D → R	Network Summary Consumption Information
GIEP7	R → D	General Installation Status Change
GIEP8	R → D and D → R	Network Price Category and Tariff Change

SCHEDULE 4 – CONSUMER CONTRACTS

S4.1 This Schedule summarises the obligations that this Agreement requires the Retailer to include and the rights that the Retailer must include in every Consumer Contract.

Summary of right/obligation	Clause in this Agreement
The Consumer will provide the Distributor and its agents with safe and unobstructed access onto the Consumer's Premises for certain purposes (e.g. inspection and maintenance of the Distributor's Equipment) at reasonable times).	Clause 16.1
The Distributor may disconnect the Consumer's ICP and reclaim its equipment if the Consumer does not give the Distributor access to the Distributor's Equipment on the Consumer's Premises on Notice from the Distributor.	Clause 16.3
The Consumer will not interfere with or damage the Distributor's equipment.	Clause 17.1
The Consumer will not inject any gas or substance into the Network.	Clause 17.7
The Consumer will provide suitable space for the secure housing of the Distributor's Equipment.	Clause 17.10(a)
The Consumer acknowledges that the Network on the Consumer's Premises is the Distributor's property.	Clause 17.12
The Consumer undertakes to comply with all Distribution Services' safety and technical requirements provided for under any regulations or industry standards, and the Distributor's reasonable Network Connection Standards.	Clause 18.2(a)
The Consumer will ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards.	Clause 19.1 (and Clause S6.10)
The Distributor may perform a Temporary Disconnection in relation to a Consumer's ICP in certain circumstances.	Clause 19.1 (and Clause S6.14)
All warranties, guarantees, or obligations imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law are excluded.	Clause 27.9(a)
If the Consumer on-sells Gas to an end-user, the Consumer's agreement with the end-user will include provisions that exclude all Distributor Warranties.	Clause 27.9(b)
The Consumer will indemnify the Distributor against any direct loss or damage caused or contributed by the fraud, dishonesty or wilful breach of the Consumer Contract between the Retailer and the Consumer.	Clause 27.10(a)
The Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of Gas to the Consumer under the Consumer Contract.	Clause 27.10(b)

SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION POLICIES

Network Emergencies and Unplanned Service Interruptions

- S5.1 The Distributor will, as soon as reasonably practicable but no later than the periods specified in paragraphs (a) and (b) below after first becoming aware of a Network Emergency or an Unplanned Service Interruption affecting 20 or more consumers, communicate to the Retailer by electronic file transfer in accordance with the relevant GIEP (if practicable and agreed), otherwise by email, relevant information that enables the Retailer to respond in an informed manner to calls from affected Consumers. Such information should include, if known, a description of the reason for the interruption, the area affected, and an estimated time for restoration.
- (a) Business Hours – 30 minutes
 - (b) After Hours – 60 minutes (by telephone)
- S5.2 Until a firm restoration time has been advised the Distributor will, within 30 minutes of new information becoming available and at intervals of no longer than 60 minutes, unless otherwise agreed or as reasonable in the circumstances, provide the Retailer with an update of the status of the Network Emergency or Unplanned Service Interruption.
- S5.3 If the expected restoration time is likely to be exceeded, the Distributor will endeavour to inform the Retailer of the new expected restoration time at least 10 minutes before the expected restoration time elapses.
- S5.4 Unless otherwise agreed, the Distributor will supply the Retailer, within 30 minutes of a full or partial restoration of supply, details of the areas restored.
- S5.5 If the Retailer is responsible for receiving and managing Unplanned Service Interruption calls from Consumers it will,
- as soon as possible, but no later than 10 minutes after receiving information relating to a possible Network Emergency or Unplanned Service Interruption, advise the Distributor by telephone the details of the call which should include the following as a minimum;
- (a) name and contact details of the person who made the original call; and
 - (b) nature and details of the Network Emergency or Unplanned Service Interruption; and
 - (c) confirmation, or not, that the appropriate safety advice was provided to the person who made the original call; and
 - (d) name and contact details of the person calling the Distributor on behalf of the Retailer;
- S5.6 When communicating with the Retailer in accordance with this Schedule, the Distributor will advise the Retailer if the Retailer should stop logging calls.
- S5.7 If the Distributor is responsible for receiving and managing Network Emergency and Unplanned Service Interruption calls from Consumers, the Retailer may provide the Distributor's contact details to the Consumer rather than taking details and logging the call with the Distributor.

S5.8 The Distributor will decide whether to initiate its media communication process based upon the extent and level of risk to life or property, the number and type of consumers affected, the number of retailers involved, and the likely duration of the event. When and if time permits, the Distributor will consult with the Retailer on the timing and content of any media release and where practical and reasonable to do so, will incorporate any additional information the Retailer and/or any other retailer considers should be included in the release, providing all retailers are treated even-handedly.

Planned Service Interruptions

Distributor to notify Consumers

S5.9 If required, and subject to Clause 30.2, the Retailer will provide Consumer contact information to the Distributor either:

- (a) on a monthly basis for all Consumers; or
- (b) for a specific list of Consumers based on a list of ICPs provided by the Distributor to the Retailer.

where such information will be provided in accordance with the relevant GIEP, or by other information exchange method as otherwise agreed by the Parties.

S5.10 For all Planned Service Interruptions, the Distributor will provide each of the Consumers it identifies as being affected with a Notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled.

S5.11 The Distributor will provide the Retailer with Notice of the Planned Service Interruption, including the ICP's of the affected Consumers, in accordance with the relevant GIEP or by other information exchange method as otherwise agreed by the Parties, at least 10 Working Days before the Planned Service Interruption is scheduled.

SCHEDULE 6 – CONNECTION POLICIES

Introduction

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

Information content and transmission media

- S6.3 The Clauses set out below focus on the responsibilities of each Party and do not deal with the particular content of the information transferred between the Parties or the media by which the information is transferred. The Parties agree that the information content and transmission media will be consistent with the relevant GIEP, or in the absence of a relevant GIEP or capability by either or both Parties to use the relevant GIEP, as agreed between the Parties.

Process for new connections or changes in capacity

- S6.4 The Distributor may receive applications from:
- (a) the owner of a premises not currently connected to the Network or the owner's agent (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created; and
 - (b) a Consumer (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for an increase or decrease in the capacity of an existing connection.
- S6.5 The Distributor will undertake an impact assessment to determine whether the capacity required for the connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S6.6 If the Distributor agrees to supply a new connection or change the capacity of an existing connection, and the Requesting Party agrees to terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 2 Working Days of the ICP identifier, the Gas Gate to which the ICP is or will be connected, the allocated Load Group and, if the ICP is a new ICP, that the ICP has been commissioned and is ready to be connected (ICP Status is "Ready" on the Registry). If the ICP is eligible for more than one Load Group, the Retailer may advise the Distributor of its preferred Load Group in accordance with Clause 13.2.
- S6.7 Where the Distributor is to provide GMS Services at an ICP and the Retailer has entered into an agreement with the Distributor for GMS Services, the Distributor will arrange for the installation of the GMS and its connection to the ICP using a Warranted Person. The

Distributor will, unless otherwise agreed, notify the Retailer within 2 Working Days of the ICP being connected.

- S6.8 Where the Distributor is not providing GMS Services at an ICP the Retailer (if authorised by the Distributor) will arrange for the installation of the GMS and its connection to the ICP (using a Warranted Person) once approval has been granted by the Distributor. The Retailer will, unless otherwise agreed, notify the Distributor within 2 Working Days of the ICP being connected.
- S6.9 Both Parties will update the status of the ICP in the Registry throughout this process in accordance with the Switching Arrangements Rules.

Temporary Disconnections and associated reconnections

- S6.10 **Consumers' Installations to be compliant:** The Retailer will, subject to Clause 28.1, ensure that its Consumer Contracts require the Consumer to ensure that its Consumer Installation complies with all relevant legal requirements and the Network Connection Standards, including (if applicable) by ensuring that any alteration is certified by a suitably qualified person.
- S6.11 **ICPs not Decommissioned without Notice:** The Parties agree that neither Party will seek to have an ICP Decommissioned without first giving the other Party 24 hours' notice or any other notice period agreed by the Parties.
- S6.12 **Warranted Persons:** Each Party will ensure that any person that it engages to carry out any activity related to Connecting, Reconnecting and Disconnecting ICPs, is a Warranted Person.
- S6.13 **Disconnection by the Retailer:** The Parties agree that a Temporary Disconnection of an ICP at which the Retailer supplies Gas may be carried out by the Retailer in the following circumstances:
- (a) if in an emergency it is necessary to avoid endangering persons or property;
 - (b) for credit reasons; or
 - (c) if requested by the Consumer, for safety or other reasons.
- S6.14 **Disconnection by the Distributor:** The Retailer will, subject to Clause 28.1, ensure that its Consumer Contracts require that, subject to Clauses S6.15 to S6.17, the Distributor may perform a Temporary Disconnection in relation to a Consumer's ICP in the following circumstances:
- (a) it is necessary to avoid endangering persons or property;
 - (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network;
 - (c) an Event of Default or Insolvency Event has occurred in relation to the Retailer;
 - (d) in accordance with Clause 16.3;
 - (e) if a Consumer does any of the things prohibited under Clauses 17.1 or 17.7, or fails to do any of the things required of it as contemplated in Clause 18; or
 - (f) on termination of this Agreement.

S6.15 Notice of disconnection if event is within Consumer's control: If the Distributor intends to perform a Temporary Disconnection as contemplated in Clause S6.14, the Distributor will give the Retailer Notice of the Temporary Disconnection as follows:

- (a) the Distributor will give the Retailer at least 5 Working Days' prior notice of disconnection if the Distributor intends to perform a Temporary Disconnection because:
 - (i) the Consumer failed to provide the Distributor with access in accordance with its Consumer Contract; or
 - (ii) the Consumer damaged or interfered with the Distributor's Equipment or Network; or
- (b) the Distributor will give the Retailer at least 10 Working Days' prior notice of disconnection if the Distributor intends to perform a Temporary Disconnection where the Consumer fails to do any of the things required of it as contemplated in Clause 16.

S6.16 Content of Notice of disconnection for events within Consumer's control: The Notice of Temporary Disconnection provided by the Distributor to the Retailer under Clause S6.15 will specify:

- (a) the ICP identifier relating to the Consumer breach;
- (b) the particulars of the Consumer breach;
- (c) the remedy required if disconnection is to be avoided; and
- (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.

S6.17 Retailer to provide Notice of disconnection to Consumer: On receipt of a Notice of breach by a Consumer under Clause S6.15, the Retailer will promptly forward a physical Notice to the relevant Consumer and include mail, email, and telephone contact details that the Consumer may use to communicate with the Retailer over the matter. The Retailer will promptly forward to the Distributor any response received from the Consumer and the Distributor will consider in good faith all such responses it receives. The Retailer and the Distributor will work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.

S6.18 Notice of disconnection if event is outside the Consumer's control:

- (a) If the Distributor intends to perform a Temporary Disconnection under Clause S6.14, S6.14(c) or S6.14(f), and the grounds for the Temporary Disconnection are not being reasonably Disputed by the Retailer, and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor will give each Consumer:
 - (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such Notice to include the reason for the Temporary Disconnection and be sent to each Consumer's last address provided to the Distributor by the Retailer, or if no address has been provided as the Retailer has no Consumer at that ICP, the Notice will be sent to the Consumer's address on the Registry;
 - (ii) a final warning of not less than 48 hours nor more than 7 days before the disconnection. The final warning will provide the timeframes for disconnection. This will be a separate Notice to the one provided at least 9 Working Days prior to disconnection;
 - (iii) if disconnection is not completed within the timeframes notified, the Distributor will issue another final warning not less than 48 hours nor more than 7 days before disconnection:

- (b) if the Distributor intends to perform a Temporary Disconnection as contemplated by Clause S6.14, S6.14(a) or S6.14(b), the Distributor will use its best endeavours to give each Consumer as much prior Notice as reasonably practicable, but in any event will notify the Consumer no later than 2 days after the Temporary Disconnection.

S6.19 Each Party to give Notice of Temporary Disconnection: The Party that performs a Temporary Disconnection in respect of a Consumer will (unless otherwise agreed) notify the other Party of that fact no later than 2 Working Days after the Temporary Disconnection. To avoid doubt, the status of the ICP in the Registry shall not be changed by any Party to “Inactive” and shall remain as “Active”.

S6.20 Restoration of connection: If either Party has performed a Temporary Disconnection in respect of a Consumer's ICP, the Party that performed the Temporary Disconnection will take reasonable steps to arrange restoration of supply to the connection as soon as reasonably practicable and no longer than 3 Working Days after conditions for reconnection have been satisfied.

Transitional Disconnections and associated reconnections

S6.21 The Retailer may undertake a Transitional Disconnection of an ICP if:

- (a) the Retailer is recorded as the retailer for the ICP in the Registry; and
- (b) the ICP has an “active” status in the Registry.

S6.22 The Retailer may reconnect an ICP that is subject to a Transitional Disconnection if it wishes to supply Gas to that ICP. If the ICP has been disconnected for more than 6 months, the ICP will not be Reconnected until the Retailer is satisfied that Regulation 50 of the Gas (Safety and Measurement) Regulations has been complied with in respect to the safety and certification of the Consumer Installation.

S6.23 The Retailer will ensure that Transitional Disconnections and associated Reconnections are carried out in accordance with the Gas Industry Disconnection and Reconnection Protocol and the Distributor's reasonable operational work practices for managing vacant premises. If a Transitional Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.

S6.24 The Retailer may give the Distributor Notice that the Distributor is responsible for completing the Transitional Disconnection for an ICP if:

- (a) the Retailer wishes to carry out a Transitional Disconnection for the ICP;
- (b) the Retailer has not been able to complete the Disconnection at the ICP due to a technical problem which can only be remedied by the Distributor; and
- (c) the Retailer has not been able to complete a Transitional Disconnection in accordance with Good Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the GMS.

S6.25 If the Retailer gives the Distributor Notice under Clause S6.24:

- (a) the Distributor will endeavour in accordance with Good Industry Practice to complete the Transitional Disconnection;
- (b) the Distributor will remedy the technical problem that prevented the Retailer from completing the Disconnection if it is reasonably practical to do so; and
- (c) the Retailer will continue to use reasonable endeavours to seek to gain access to the ICP GMS.

- S6.26 The Party performing the disconnection or reconnection will, unless otherwise agreed, notify the other Party within 2 Working Days of completion of the work.
- S6.27 Both Parties will update the Registry throughout this process in accordance with the Switching Arrangements Rules.

Decommissioning an ICP

S6.28 A Distributor may Decommission an ICP in the following circumstances,:

- (a) the Distributor is advised by a Consumer, landowner or the Retailer that Gas is no longer required at the ICP;
- (b) it is necessary to Decommission the ICP because public safety is at risk;
- (c) the Registry notifies the Distributor that for an ICP the ICP Status Code is "Inactive-Permanent" with a Connection Status Code of "GPM"; or
- (d) if the Distributor has not supplied Network Services in respect of the ICP for 6 months or more,

provided that in respect of paragraphs (a) and (d), the Distributor will, unless advised by the Retailer, notify the Retailer before Decommissioning the ICP to enable the Retailer to arrange for removal of the GMS (if appropriate) and updating of the Registry.

- S6.29 A Decommissioning will be performed by disconnecting the Service Pipe from the main or at a point within the Service Pipe itself, purging the disconnected section of pipe of Gas and physically sealing both ends. The Distributor will not remove, or pay for removal of, the disconnected section of Service Pipe even if requested to do so by the Consumer, but the Consumer is within their rights to remove the section of Decommissioned Service Pipe within the Consumer's Premises at their own cost, should they wish to do so.
- S6.30 The Distributor will notify the Retailer within 2 Working Days of the Decommissioning having been completed.
- S6.31 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier will not be used again and the process for new connections will be followed if supply is required again at the property.
- S6.32 Both Parties will update the Registry throughout this process in accordance with the Switching Arrangements Rules.

SCHEDULE 7 – GAS EMERGENCIES

S7.1 Except where the Retailer is required to direct consumers to curtail demand in accordance with instructions from the Critical Contingency Operator following declaration of a critical contingency under the Gas Governance (Critical Contingency Management) Regulations 2008, the Distributor will be responsible for managing emergencies affecting the network.

S7.2 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, curtailment of demand by retailers in accordance with instructions from the Critical Contingency Operator;
 - 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 Critical Contingency Operator 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;
 - 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 supply of Gas to consumers' installations including the relighting of pilots;
- 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 2-5 and requires coordination of resources to restore supply to consumers' installations including the relighting of pilots;
 - ii. during other emergency events, throughout the period of the emergency until supply is restored to all consumers' installations including the relighting of pilots.
- S7.3 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 Gas Governance (Critical Contingency Management) Regulations 2008 and associated plans and guides (CCO communications plan, CCO information guide, Critical Contingency Operator's critical contingency management plans).
- S7.4 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.
- S7.5 The Retailer must take all practicable steps during the course of an emergency to assist the Distributor in managing the emergency.
- S7.6 Where the emergency is a Critical Contingency declared under the Gas Governance (Critical Contingency Management) Regulations 2008, the Retailer will meet the costs of isolating its consumers' supplies and restoring supply to its consumers' installations, including the re-lighting of pilots.
- S7.7 Where the emergency has resulted from an event on the network, the Distributor will meet the reasonable direct costs incurred by the Retailer in isolating consumers' supplies and restoring supply to consumers' installations, including the re-lighting of pilots. In these situations the Distributor may elect to effect the isolation, restoration and/or re-lighting of pilots, in which case the Distributor will not be required to meet any other additional costs.
- S7.8 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.
- S7.9 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.
- S7.10 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.