
USE OF SYSTEM AGREEMENT

BETWEEN

Electra Limited

AS A DISTRIBUTOR OF ELECTRICITY

and

(.....)

AS THE RETAILER

INDEX

<i>1. DEFINITIONS AND INTERPRETATION</i>	<i>1</i>
<i>2. INCUMBENT AND DEFAULT SUPPLIER STATUS</i>	<i>8</i>
<i>3. TERM OF THIS AGREEMENT</i>	<i>8</i>
<i>4. REVIEW OF THIS AGREEMENT</i>	<i>8</i>
<i>5. LINE FUNCTION SERVICE</i>	<i>8</i>
<i>6. INTERRUPTION TO SUPPLY</i>	<i>10</i>
<i>7. CUSTOMERS' POINTS OF SUPPLY</i>	<i>11</i>
<i>8. EQUIPMENT PROTECTION AND ACCESS</i>	<i>12</i>
<i>9. CONNECTION AND LIVENING SERVICES</i>	<i>13</i>
<i>10. METERING</i>	<i>14</i>
<i>11. RECONCILIATION</i>	<i>15</i>
<i>12. CALCULATION & PAYMENT OF CHARGES</i>	<i>16</i>
<i>13. CHARGING VARIATIONS</i>	<i>18</i>
<i>14. RETAILER OBLIGATIONS</i>	<i>18</i>
<i>15. DEFAULT AND TERMINATION</i>	<i>19</i>
<i>16. FORCE MAJEURE</i>	<i>21</i>
<i>17. LIABILITY FOR LOSS</i>	<i>22</i>
<i>18. DISPUTE RESOLUTION</i>	<i>23</i>
<i>19. INFORMATION REQUESTS</i>	<i>24</i>
<i>20. CONFIDENTIALITY</i>	<i>25</i>
<i>21. ASSIGNMENT AND AGENTS</i>	<i>25</i>

22. NON-WAIVER	26
23. SAVINGS CLAUSE	26
24. ENTIRE AGREEMENT	26
25. GOVERNING LAW	26
26. NOTICES	27
27. VARIATIONS	27
28. COSTS	27
29. NO REPRESENTATIONS	27
Schedule 1	29
<i>Term of Contract and Addresses for Notices</i>	29
Schedule 2	30
<i>Charges</i>	30
Schedule 3	30
<i>Performance Targets</i>	31
Schedule 4	32
<i>Load Management Service</i>	32
Schedule 5	34
<i>Connection and Liveness Services and Customer Transfer Procedures</i>	34
Schedule 6	36
<i>24 hour Customer Fault Service</i>	36
Schedule 7	37
<i>Limitation of Liability</i>	37
Schedule 8	38
<i>Consumption information format</i>	38

BETWEEN ELECTRA LIMITED (the “Distributor”)

AND (.....) (the “Retailer”).

INTRODUCTION

- A. The Distributor, an Electricity Lines Business, owns and operates the Distribution Network and has an agreement with Transpower New Zealand Limited (Transpower) to receive electricity delivered from Generators over Transpower's Network.
- B. The Retailer, an Electricity Supply Business, wishes to use the Distribution Network and the Transpower Network to convey electricity purchased for use by its Customers.
- C. The Distributor agrees to provide the Line Function Services to, and allow use of the Distribution Network by, the Retailer on the terms and conditions set out in this Agreement.

THE PARTIES AGREE:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Accredited Service Provider” means a company that has met the Distributor’s accreditation criteria for construction on, or operation of the Distributor’s electricity network;

"Agreement" means this Use of System Agreement as signed by the Distributor and the Retailer;

“Asset Management Plan” means the Distributor’s five year plan of capital expenditure, maintenance priorities and system development requirements in respect of the Distributor’s Equipment and the Distribution Network;

"Bank Base Rate" means the 90 day Commercial Bill Rate as published on page BKBM of Reuters monitor service and applying at 10:30 am on the day of the calculation;

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

“Charges” means the charges payable under this Agreement to the Distributor for Line Function Services in respect of Customers’ Points of Supply, determined from time to time in accordance with this Agreement, those being applicable, at the Date of Commencement set out in Schedule 2;

“Charging period” means a period of 1 calendar month;

“Connection and Livening Service” means services that may be provided by the Retailer or the Retailer's Agent or the Distributor or the Distributor's Agent under this Agreement and includes;

- a) connection, alteration, inspection pre-livening of Customer Installations
- b) disconnection and/or reconnection of Customer Installations
- c) installation and removal of Metering Equipment
- d) livening of Customer Installation by Retailer or Retailer's Agent only
- e) installation and removal of equipment for Load Management Services or Remote Signalling Services;

“Confidential Information” means any and all proprietary information owned by or which is in the possession or under the control of a Party and which is not in the public domain (or otherwise known to the other Party without any breach of an obligation of confidence owed to the first Party) including, but not limited to, ideas, records, price lists, technical and marketing data, know-how, trade secrets, strategies, designs or policies of or relating to that Party and which have been disclosed to or may be disclosed to the other Party;

“Customer” means any person who is a party to an agreement with the Retailer for the supply of electricity where the supply of electricity is by means of the Distribution Network;

“Customer Category” means the price option charges applied by the Distributor to particular Customer Installations or group of Customer Installations;

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

“Customer's Point of Supply” means each point of connection on the boundary of the property where the premises on which the Customer's Installation is situated at which (a supply of) electricity may flow between the Distribution Network and the Customer's Installation. The electricity flow is measured at the Metering Point;

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

“Date of Commencement” means the date specified in Schedule 1;

“Distribution Network” means the Distributor's system for the conveyance of electricity including all Fittings comprising that system and which terminates at Customers' Points of Supply;

“Distributor's Agent” means a person or organisation with whom the Distributor has or proposes to enter into an agreement to provide services for or on behalf of the Distributor;

“Distributor's Equipment” means the Fittings and Metering Equipment belonging to the Distributor or the Distributor's Agent which is from time to time installed in, over or upon a Customer's Premises;

“Distributor's Metering Standards”:

- (a) means the relevant standards determined in accordance with Good Industry Practice, issued and amended by the Distributor from time to time which set out the requirements for installation, connection, and commissioning of Metering Equipment at Customers' Points of Supply; and
- (b) as at the Date of Commencement, are set out in the Distributor's Technical Standards;

"Electricity Lines Business" means a business as defined in Clause 4 of the Electricity Industry Reform Act 1998;

"Electricity Supply Business" means a business as defined in Clause 5 of the Electricity Industry Reform Act 1998;

"Mco" means Electricity Market Company Limited, a duly incorporated company at Wellington;

"ENANZ" means Electricity Networks Association of New Zealand Inc.;

"Fittings" means everything used, or designed or intended for use, in or in connection with the conversion, transformation, conveyance or use of electricity;

"Force Majeure" means any event or circumstance:

- (a) which is beyond the reasonable control of either Party
- (b) which results in or causes the failure of that Party to perform any of its obligations under this Agreement; and
- (c) which or, as appropriate, the consequences of which, could not have been prevented by compliance by the relevant Party with Good Industry Practice

including, but not limited to:

- (d) acts of god, strike, lock-out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice and explosion
- (e) fault or failure of any plant, apparatus or equipment
- (f) governmental restraint, act of parliament, other legislation and bylaw
- (g) or the failure or deficiency of any Generator to supply electricity or, Transpower or the Distributor to convey electricity; and
- (h) the discontinuance or deficiency of supply or failure to convey electricity or to do so in the required quantity which occurs as a result of the Distributor selecting at its discretion Customer's Point of Supply for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Generator” means any person that generates electricity supplied to the Retailer or any Other Retailer;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances in New Zealand and includes adherence to the principles laid out in any code of practice generally adopted by the electricity supply industry in New Zealand;

“Grid Connection Points” means the points of connection between the Distribution Network and the Transpower Network or any Generator or any other distribution network through which electricity is injected into the Distribution Network;

“Incumbent Retailer” has the same meaning as that attributed to the term “Incumbent Retailer” in respect of the Distribution Network in MARIA as at the Commencement Date;

“Line Function Services” means the provision, operation and maintenance of electric lines, substations, related equipment and all other services necessary for the conveyance of electricity from Generators to Customers' Network Connection Points including the procuring of contracts with Transpower for the connection of the Distributor's Network, the provision of a Load Control Service and the allocation of Losses;

“Load Management Service” means the function of reducing or interrupting a part or all of a Customer's supply of electricity on the basis agreed between the Retailer and Distributor at the date of this agreement or such other basis as may be agreed between the Distributor and the Retailer with the principle purpose of minimising Transpower charges and minimising existing and future network capacity requirements, as specified in Schedule 4;

“Losses” means electricity unaccounted for on the Distribution Network, being the difference between the sum of the electricity injected into the Distribution Network measured at the Grid Connection Points and the sum of the electricity measured or calculated as conveyed to all Points of Supply;

“Loss Factor” means the factor nominated by the Distributor from time to time, by which electricity metered at the Customer's Network Connection Point or agreed Metering Point is increased to determine the electricity for which the Retailer is responsible to purchase within the Distribution Network;

“MARIA” means:

- (a) the “Metering and Reconciliation Agreement” established by Deed between Mco and Transpower dated 21 March 1994 which records the contractual arrangements between Generators, Transpower Retailer and distributors regarding the metering of electricity consumption and the reconciliation of the metering information obtained, amended from time to time; and
- (b) any rules established thereunder;

“Metering Equipment” means the apparatus used for the purpose of measuring the quantity of electricity conveyed through a Customer's Network Connection Point and shall include current and voltage transformers, ripple relays, associated wiring and communications equipment;

“Metering Point” means the point where Metering Equipment is installed in accordance with Clause 10 and the Distribution Code to record consumption of electricity at or for a Customer’s Point of Supply;

"Metering Services" means all those functions required to maintain the integrity of the Metering Equipment and the information extracted. The services include installation, maintenance, testing, replacement and removal of meters, and exclude meter reading;

“Retailer's Agent” means the person with whom the Retailer has entered into an agreement to provide services on behalf of the Retailer;

“Retailer’s Equipment” means any equipment owned, leased or otherwise provided by the Retailer or the Retailer's Agent, and which is from time to time installed in, over or upon a Customer’s Premises;

“NZEM” means the New Zealand Electricity Market established to permit the purchase and sale of electricity and administered by Mco;

“NZEM Rules” means the rules of the New Zealand Electricity Market (NZEM) as may be in force and published from time to time by Mco;

“Other Retailer” means a person, other than the Retailer, who has entered into an agreement with the Distributor for the supply of Line Function Services;

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

“Performance Targets” means the performance targets agreed to by the Distributor from time to time; and which as at the Date of Commencement, are set out in Schedule 3;

“Period of Inaccuracy”:

- (a) means the period between the most recent test confirming the accuracy of the Metering Equipment, or the date at which the Parties agree that all evidence suggests that the Metering Equipment was measuring accurately, and the time at which it is determined that the Metering Equipment cannot measure or measures inaccurately; and
- (b) is deemed to be the period during which the Metering Equipment has become incapable of any measurement or any accurate measurement,

provided that if such period is greater than 12 months, the actual period shall be deemed to be 12 months (that being the maximum period permitted under this Agreement), commencing on the date which is 12 months prior to the date on which it is determined that such Metering Equipment cannot measure or is measuring inaccurately;

“Power Factor” means that defined in the Distribution Code;

"Reconciliation Agreement" means MARIA or any other local reconciliation agreement as may be agreed with the Incumbent Retailer;

"Reconciliation Function" means the function of reconciling flow of electricity into, within and out of the Distributor's Network for the purposes of enabling financial settlements to take place;

“Remote Signalling Service” means the function of providing a signal through the Distribution Network for the purpose of operating equipment on the Customer’s Premises, as agreed between the Parties;

“Sales Discount” or **“Sales Discounts”** means a discount of Line Function Service Charges made from time to time by the Distributor, to persons connected to the Distribution Network, as referred to and provided for in clause 14;

“Technical Standards” means the relevant standards determined in accordance with Good Industry Practice, issued or adopted by the Distributor and amended by the Distributor from time to time, which set out the standards which must be met by Customers’ Installations for continuing connection to the Distribution Network; and which, as at the Date of Commencement, are set out in the Distributor’s technical standards;

“Transpower” means Transpower New Zealand Limited its successors and permitted assigns; and

“Transpower Network” means the electricity transmission system owned and operated by Transpower;

“Year 2000 Compliant”:

- (a) particularly in relation to goods, has the meaning specified by the British Standards Institute Committee BDD/1/1 in document number PD2000-1:1998, being that neither performance or functionality is to be effected by dates prior to, during and after the year 2000, in particular that:
 - (i) no value for current date will cause any interruption in operation;
 - (ii) date-based functionality is to behave consistently for dates prior to, during and after year 2000;
 - (iii) in all interfaces and data storage, the century in any date is to be specified either specifically or by unambiguous algorithms or inferencing rules; and
 - (iv) year 2000 is to be recognised as a leap year; and
- (b) particularly in relation to service, means that the service is unlikely to cause any date-dependent equipment or systems to cease to be Year 2000 Compliant in terms of paragraph (a) of this definition.

“Year 2000 Non-Compliance Event” means any event relating to the failure of the Distribution Network or the Distributor’s Equipment to be Year 2000 Compliant.

1.2 Clause and other headings are for ease of reference only and are referred to in the Index.

1.3 Any reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.

- 1.4 A reference to a “person” includes a reference to a natural person, corporation sole, company or other body corporate, an unincorporated body of persons, a statutory body, and an instrument of the Crown.
- 1.5 References to Clauses and Schedules are references to Clauses of and schedules to this Agreement.
- 1.6 Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.7 Any reference in this Agreement to the Retailer, Distributor or Customer includes, where the context permits, the agents or employees of the same.

2. Incumbent and Default Supplier Status

- 2.1 The parties acknowledge that the Retailer is not the Incumbent Retailer.
- 2.2 The Retailer shall notify the Distributor at least 5 Business Days prior to supplying a Customer's Point of Supply.
- 2.3 Subject to any legal or regulatory constraints, the Distributor will refer to the Retailer and any Other Retailer:
 - (a) any person enquiring about the provision of Line Function Services and electricity supply by means of the Distribution Network: and
 - (b) any person who seeks to establish a new Customer's Point of Supply on the Distribution Network,in accordance with procedures to be determined by the Distributor acting reasonably.

3. Term of this Agreement

- 3.1 Subject to Clause 3.2 the Agreement shall commence on the Date of Commencement and, except in the case of termination pursuant to Clause 15 shall continue until 90 Business Days after the Retailer gives written notice that termination is required;
- 3.2 The Agreement shall be deemed to be terminated if the Retailer no longer supplies any Customers for a period greater than 6 months.

4. Review of this Agreement

- 4.1 Either Party may initiate a review of this Agreement.
- 4.2 The Party requesting the review shall propose in writing to the other Party amendments to this Agreement and the basis on which such amendments are sought. The other Party shall respond within 20 days of receipt, with agreement to the proposed amendments or an alternative proposal.
- 4.3 The Parties shall negotiate in good faith to reach prompt agreement on proposed amendments or any alternative proposal. If agreement is not reached within 30 Business Days of initiation of the review, either Party may initiate dispute resolution procedures pursuant to Clause 18.
- 4.4 A review of Charging Variations by the Retailer shall not be allowed for under this Clause.

5. Line Function Service

- 5.1 Subject to clause 5.2 the Distributor shall:
 - (a) in accordance with this Agreement, allow connection of Customers' Installations to the Distribution Network; and

- (b) provide Line Function Services to the Retailer in respect of Customer's Points of Supply in accordance with the Performance Targets and Good Industry Practice
- 5.2 The Distributor shall not be obliged to allow connection of Customer's Installations to the Distribution Network or provide Line Function Services to the Retailer in accordance with clause 5.1 where a Year 2000 Non-Compliance Event occurs that reasonably prohibits the connection of a Customer's Installation to the Distribution Network or the provision of Line Function Services to the Retailer.
- 5.3 In the context of this Agreement, Line Function Services include:
 - (a) at the date of this agreement, the responsibility for the procuring of contracts with Transpower for the connection of the Distribution Network;
 - (b) at the date of this Agreement, the apportionment of the transmission costs for the duration of the Distributor's existing agreement with Transpower;
 - (c) the apportionment of distribution costs;
 - (d) the provision of a Load Management Service;
 - (e) the determination of Loss Factors for the allocation of Losses to Customers and customers of Other Retailers incurred by the delivery of electricity through the Distribution Network; and
 - (f) the provision of a 24 hour fault service as described in Schedule 6 relating to Line Function Services.
- 5.4 The Distributor will make available to each Retailer a copy of the finalised Asset Management Plan for the Distributor's next fiscal year. The Retailer undertakes to respect the confidential nature of the Asset Management Plan and will ensure that the contents of the Asset Management Plan remain confidential between the Distributor and the Retailer.
- 5.5 The cost of any material extension to the Distribution Network not contained within the Asset Management Plan set out in Clause 5.4 will be recovered by the Distributor by agreement with the customers who will be supplied via such extension and/or those customers' electricity suppliers. Any such costs will not be recovered by variation to the level of Charges to the Retailer under this Agreement unless agreed otherwise.
- 5.6 The Distributor shall treat the Retailer on no less favourable terms than all Other Retailers with regard to terms of access to the Distribution Network, the level of Line Function Services and the charges for such services.
- 5.7 The Retailer may request in writing the Distributor to:
 - (a) upgrade its Line Function Services to any Customer's Point of Supply beyond the standards required by this Agreement; and/or
 - (b) extend its Distribution Network for the purpose of supplying electricity to any existing or potential Customer.
- 5.8 The Distributor reserves the right to, in its absolute discretion, accept or decline any request from the Retailer made under Clause 5.7. The Distributor shall, within 20 Business Days of receipt of the Retailer's written request, advise the Retailer in writing of its decision and,

where appropriate, any additional terms and conditions to which the Distributor's acceptance of the request is subject.

- 5.9 The Distributor agrees to use reasonable endeavours to pass through any charges for transmission services applicable to the Retailer without any margin or mark-up, other than that which arises in the ordinary course of charging on a variable basis. The Distributor and the Retailer will agree a basis for minimising such transmission charges in the provision of Load Management Service as per Schedule 4. The Retailer recognises that the Distributor will incur administrative costs in administering the Transpower component of Charges, (or Charges') and that the Distributor's reasonable costs will be recovered through the payment for Line Function Services.

6. Interruption to Supply

- 6.1 The Distributor may interrupt or reduce the conveyance of electricity to any Customer's Point of Supply at any time the Distributor reasonably considers it appropriate in accordance with Good Industry Practice:

- (a) to enable the Distributor to inspect, effect alterations, maintenance, repairs or additions to any part of the Distribution Network; or
- (b) to avoid the risk of danger to persons, damage to property or other interference with the conveyance of electricity through the Distribution Network; or
- (c) in case of emergency, to preserve and protect the proper working of the Distribution Network; or
- (d) to effect the Load Management Service as specified in Schedule 4; or
- (e) by the automatic low frequency-initiated tripping of specified 11kV feeders in the event that the integrity of the Transpower Network is endangered; or
- (f) in response to an event of Force Majeure.

- 6.2 Where the Distributor interrupts the conveyance of electricity to any Customer pursuant to Clause (6.1) (a), (b), (c), (e) or (f) the Distributor shall:

- (a) where practicable, give the Retailer reasonable notice of any planned interruption to the conveyance of electricity and where appropriate consult with the Retailer over the timing of the interruption to minimise inconvenience to the Customers;
- (b) if the interruption is unplanned and no prior notice is given, as soon as is practicable give to the Retailer written notice of the area affected by and reasons for the interruption and its expected duration. Notice may initially be given by telephone to the appropriate number but will, within 24 hours also be provided in written or electronic form;
- (c) use reasonable endeavours to minimise the period of interruption; and
- (d) act in accordance with Good Industry Practice.

- 6.3 Where the Retailer notifies the Distributor that the Retailer's load is able to be managed, the Distributor shall operate the Load Management Services on the basis, which appears as Schedule 4 in this Agreement for the following purposes:

- (a) to alleviate distribution constraints and manage demand for electricity at Grid Connection Points;
 - (b) to reduce the Distribution Network load in the event of emergencies occurring on the Distribution Network or on the Transpower Network or in the event of inadequate generation capacity being available to meet demand; and
 - (c) where requested by the Retailer, provided that the Retailer meets the Distributor's reasonable costs for providing such Load Management Service.
- 6.4 The Retailer shall advise the Distributor of any defect or interruption to the electricity supply or other Distribution Network abnormality reported to the Retailer by a Customer as detailed in Schedule 6.
- 6.5 The Distributor shall consult (with all best endeavours) with the Retailer if it wishes to alter the feeders or Customers affected by an interruption under Clause 6.1(e), after the date of execution of this agreement.
- 6.6 It is acknowledged by the Retailer that unplanned interruptions to supply are a natural consequence of the operation of the Distribution Network. However, the Distributor agrees to operate, maintain and develop the Distribution Network in accordance with Good Industry Practice to minimise the level of such unplanned interruptions, and use all reasonable efforts to, meet the Performance Targets.

7. Customers' Points of Supply

- 7.1 The Retailer shall procure that all Customers' Installations comply with the Network Connection Standards and any relevant statutory requirements.
- 7.2 If the Retailer becomes aware that a Customer's Installation does not comply with the Technical Standards or any relevant statutory requirements, the Retailer shall require the Customer to remedy such non-compliance, and advise the Distributor within a reasonable period, having regard to the seriousness of the non-compliance. If the Customer fails to remedy the non-compliance within the specified period, the Retailer shall disconnect the Customer's Point of Supply. The cost of disconnection and any reconnection shall:
- (a) be borne by the Distributor where:
 - (i) any Customer's Installation did not comply with the Network Connection Standards immediately prior to the Date of Commencement; and
 - (ii) if the Distributor had followed Good Industry Practice, it would have caused the Customer to remedy such non-compliance prior to the Date of Commencement; and
 - (b) in any other case, be borne by the Retailer.
- 7.3 For each additional or modified Customer's Installation to which the Retailer intends to supply electricity the Retailer shall:
- (a) give the Distributor reasonable notice of that intention within a minimum of five working days;

- (b) ensure that the new Customer's Installation complies in all respects with the requirements for Customers' Installations set out in the Network Technical Standards;
 - (c) procure from the Customer, on a continuing basis, an undertaking to provide and maintain suitable space for the safe and secure housing of all Distributor's Equipment deemed necessary by the Distributor in accordance with Good Industry Practice to be housed at the Customer's Premises; and
 - (d) arrange and effect at its own expense connection of the Customer's Installation to the Distribution Network, if the Customer is not already connected.
- 7.4 The Distributor shall not permit connection to the Distribution Network of any new or modified Customer's Installation unless, acting reasonably, it is satisfied that all of the requirements of the Technical Standards and this Agreement with respect to that Customer's Installation have been complied with.
- 7.5 The Distributor shall, within 24 hours of becoming aware of any connected Customer's Point of Supply on the Distribution Network which is not included in, or is to be deleted from, any agreement between the Distributor and any Retailer, notify the Incumbent Retailer of such situation and provide the last recorded Retailer four hours notice that the Distributor will disconnect that Customer's Point of Supply.

8. Equipment Protection and Access

- 8.1 The Distributor shall not interfere with the Retailer's Equipment or a Customer's Installation without the prior written consent of the Retailer, 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. In the event of such interference the Distributor will inform the Retailer of the occurrence and circumstances involved on the day it occurs.
- 8.2 The Retailer shall not interfere and shall procure that its Customers shall not interfere with the Distributor's Equipment, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In the event of such interference the Retailer will inform the Distributor of the occurrence and circumstances involved in accordance with a procedure to be agreed upon by the Distributor and Retailer.
- 8.3 The Retailer shall procure that its Customers protect the Distributor's Equipment against interference and damage. The Retailer shall be liable to the Distributor for any damage to the Distributor's Equipment other than damage caused by the negligence, wilful act or omission of the Distributor.
- 8.4 Should the Distributor or the Retailer discover evidence of interference with the Distributor's or Retailer's Equipment, or evidence of theft of electricity, the Party discovering the interference or evidence shall notify the other Party within 24 hours. In the event of suspected interference with the Distributor's Equipment at a Customer's Installation the Distributor may itself, or may require the Retailer to, carry out an investigation and present the findings to the Distributor within a reasonable period. The costs of the investigation:
- (a) Will be borne by the Retailer where interference by the Retailer or the Customer or their subcontractors, agents or invitees is discovered to have occurred or where the interference has been by a third party and the Retailer or

Customer has failed to provide reasonable protection against interference to the Distributor's Equipment: and

- (b) Will otherwise be met by the Distributor.
- 8.5 The Retailer shall procure that its Customers permit, at all reasonable times, safe and unobstructed access by the Distributor:
- (a) to any of the Distributor's Equipment for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing the same and for any other purpose related to this Agreement;
 - (b) onto any Customer's Premises to ascertain the cause of any interference to the quality of Line Function Services being provided by the Distributor to the Retailer or any Other Retailer;
 - (c) onto any Customer's Premises for the purposes of connecting or disconnecting the supply of electricity to that Customer's Premises or any other Customer's Premises; and
 - (d) onto any Customer's Premises for the purposes of protecting or preventing danger or damage to persons or property.
- 8.6 If a Customer fails to grant to the Distributor access in accordance with the requirements of Clause 8.5, the Retailer shall within 5 Business Days of written notice from the Distributor arrange for access for the Distributor or for the disconnection of that Customer's Point of Supply provided that the Distributor shall be at liberty to take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to persons or property.
- 8.7 The Distributor shall exercise its right of access by:
- (a) wherever practicable, giving to the Retailer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
 - (b) causing as little inconvenience as practicable to the Customer in carrying out such work and shall in doing so comply with all reasonable requirements of the Customer relating to on-site safety and security; and
 - (c) observing Good Industry Practice at all times.
- 8.8 The rights of access set out in this Agreement are in addition to any right of access the Distributor may have under any statute, regulation, easement or caveat.

9. Connection and Livening Services

- 9.1 All Connection and Livening Services shall be performed by the Distributor or an Accredited Service Provider.
- 9.2 The Retailer will utilise an Accredited Service Provider for Connection and Livening Services. The Retailer will meet the Accredited Service Provider's costs in performing such Connection and Livening Services.

- 9.3 Connection and Livening Services shall be performed in accordance with the procedures specified in Schedule 5.
- 9.4 Notwithstanding Clause 9.1, the Retailer may request the Distributor to accredit another provider of Connection and Livening Services if there is dissatisfaction with the performance of the original provider. The Distributor will be given the opportunity to provide such Connection and Livening Services to the Retailer at an equivalent or lower price.
- 9.5 All Connection and Livening Services, transfers of Customers between the Retailer and Other Retailers, changes in Customer's Points of Supply and any other relevant information will be notified to the Distributor as per the process in Schedule 5.
- 9.6 The cost of Connection and Livening Services other than for safety reasons shall not be borne by the Distributor.

10. Metering

- 10.1 The Retailer shall arrange for MARIA compliant Metering Equipment to be installed at each Customer's Point of Supply except where the Distributor and the Retailer otherwise agree.
- 10.2 Where agreed by the Parties the Metering Equipment may be provided and owned, by the Distributor, the Distributor's Agent, or another metering service provider and the Retailer shall purchase the Metering Services from the Distributor or another metering service provider. If Metering Services are provided to the Retailer by the Distributor, the charges for these services shall be agreed separately.
- 10.3 The Retailer shall ensure that the Metering Equipment installed at Customers' Points of Supply is:
- (a) installed prior to any supply of electricity to that Customer's Point of Supply; and
 - (b) equipment which is installed and maintained in accordance with the Metering Code of Practice of ENANZ or any other relevant and accepted industry standard, such as MARIA.
- 10.4 The Distributor may at its own cost maintain in service an additional set of Metering Equipment at any Customer's Point of Supply for checking and Distribution Network management purposes.
- 10.5 The measurements taken by the Retailer or the Retailer's Agent from the Metering Equipment shall be binding on the Parties unless either of the Parties disputes the accuracy of the Metering Equipment by giving written notice to the other Party. In the event such written notice is given:
- (a) each Party shall provide the other with any available information relevant to the checking of the Metering Equipment; and
 - (b) the Metering Equipment shall be checked for defective or inaccurate functioning or calibration consistent with Good Industry Practice, such as the ENANZ Metering Code of Practice.
- 10.6 If it is discovered that the Metering Equipment used in the determination of Charges is not measuring accurately then the quantity of electricity conveyed or maximum demand during

the Period of Inaccuracy shall be determined in accordance with the appropriate provisions of the MARIA agreement.

- 10.7 All information obtained from Metering Equipment is the property of the Retailer, but is also available to the Distributor under Clauses 12 and 19.
- 10.8 Where the Retailer purchases Metering Services from the Distributor or the Distributor's Agent, the Distributor or the Distributor's Agent:
 - a) shall not allow the Metering Equipment or the data it measures to be used for any purpose other than as specifically provided for by the Parties to this Agreement
 - b) shall vest in the Retailer or Retailer's Agent the right to independently access information from the Metering Equipment as required at any time by the Retailer without further recourse to the Distributor.

11. Reconciliation

- 11.1 For the purposes of this Agreement all electricity injected into the Distribution Network shall be deemed to be the property of the Retailer and Other Retailers.
- 11.2 The Retailer's electricity purchases shall be calculated in accordance with MARIA's requirements including those for Incumbent Retailers.
- 11.3 The Distributor will not permit any Retailer to supply any Customer's Point of Supply until satisfied that Metering Equipment has been installed and appropriate reconciliation procedures meeting the Distributor's reasonable requirements are in place.
- 11.4 The Distributor will not supply Line Function Services in respect of a person formerly a Customer until:
 - (a) the Retailer, acting reasonably, has released that person from all further obligations to it in respect of the supply of electricity and Line Function Services to the relevant Metering Equipment at the Customer's Point of Supply; and
 - (b) an Other Retailer has notified the Distributor that it has accepted an obligation to supply electricity and Line Function Services to that person.
- 11.5 The Distributor shall, in accordance with Good Industry Practice:
 - (a) determine the Loss Factors;
 - (b) monitor the application of the Loss Factors by the Other Retailers in respect of electricity conveyed over the Distribution Network; and
 - (c) promptly advise the Retailer and the national reconciliation manager under MARIA of any incorrect application of the Loss Factors of which it becomes aware.
- 11.6 The Distributor shall, in accordance with Good Industry Practice, carry out reconciliation of consumption information received from Retailers, from Mco via the Retailer and in respect of Grid Connection Points to verify the reasonableness of the Retailer's electricity purchases, and shall advise the Retailer of any discrepancies or alternatively may contract reconciliation services from a third party of the Distributors choice.

- 11.7 If the Parties, acting reasonably, agree that the methodology for apportioning Losses to the Retailer and Other Retailers is materially unfair to the Retailer, the Parties, acting reasonably, shall agree a new methodology.
- 11.8 The electricity quantities and allocations determined by MARIA or as agreed between the Parties shall provide the basis on which the Distributor shall charge for the elements of the Line Function Services if they are priced on a per unit of electricity basis. Information is to be provided to the Distributor in accordance with Clauses 12 and 19.

12. Calculation & Payment of Charges

- 12.1 In consideration for the Distributor providing Line Function Services to the Retailer in respect of the Customers' Points of Supply, the Retailer shall pay the Charges.
- 12.2 Charges for Line Function Services applicable at the Date of Commencement are detailed in Schedule 2.
- 12.3 The Retailer will provide the Distributor, all information relating to the consumption of electricity for each Customer or Customer Category at Customers' Points of Supply in respect of the preceding month as outlined in Clause 12.4 and in the format specified in Schedule 8 by the 5th Business Day of each month to allow the generation of an appropriate invoice.
- 12.4 The Retailer shall unless otherwise agreed provide the following information for each Customer Category:
- (a) the measured, assessed and accrued consumption or maximum demand for each Charge component;
 - (b) the number of current Customers for each charge component;
 - (c) the rate applying to each Charge component;
 - (d) the amount due for each Charge component;
 - (e) the total amount due;
 - (f) the total units measured, assessed or accrued;
 - (g) the total number of current customers; and
 - (h) the GST component.
- 12.5 By 4pm on the 10th Business Day of the month the Distributor shall invoice the Retailer for the Charges payable by the Retailer for the previous month (the "Invoice") in the format specified in Schedule 8.
- 12.6 The Retailer shall make available to the Distributor all contributing data reasonably requested by the Distributor in connection with the base data in respect of the information provided for in Clause 12.4 (including certified true copies of the Retailer's external and internal (if any) audit reports as at the end of the Retailer's financial year in respect of the accuracy of the data relating to electricity consumption and the processes used for the collection and collation of that information) and shall use reasonable endeavours to ensure that the information is correct. The Distributor may at any time, at its cost, request an independent audit of any

information or data relating to electricity consumption set out in clause 12.4. If that audit reveals a significant error or errors in that information or data:

- (a) the Retailer shall pay the cost of such audit; and
- (b) the Retailer shall pay the difference between the amount of any Invoice and the amount that should have been paid if the error or errors had not been made, together with default interest in the same manner as clause 12.12.

12.7 The Retailer shall pay the Distributor the amount of the Invoice by 4 pm on the 20th day of the month of receipt or the 5th Business Day after the Invoice is issued whichever is the later provided that, if that day is not a Business Day, payment shall be made on the next Business Day. Payment is to be by direct credit from the Retailers bank account to the Distributors bank account.

12.8 If the Retailer fails to supply the relevant data or information by the 5th Business Day of the month and, as a result the Distributor cannot render an Invoice by 4pm on the 10th Business Day of the month and in accordance with clause 12, then:

- (a) if the Invoice is received prior to the 20th of the month the Retailer shall pay the Invoice by 4 pm on the 20th day of the month of receipt;
- (b) and if the Invoice is received after the 20th day of the month the Retailer shall pay the Invoice on the next Business Day following the receipt of the Invoice and the Retailer shall pay default interest on the amount of the Invoice at the same rate as default interest under clause 12.12 from the date that the payment would have been due if the Invoice had been rendered in accordance with Clause 12.

12.9 All Charges payable by the Retailer are stated exclusive of Goods and Services Tax. The Distributor shall add such amounts for Goods and Services Tax or for such other tax, charge or levy as may from time to time be required by any statute, statutory instrument or equivalent statutory provision by which the Distributor is bound, and such amounts shall be paid by the Retailer at the same time as payment of the Charges shown in the Invoice.

12.10 The Distributor may recover from the Retailer any costs incurred by the Distributor as a result of the Retailer's failure to comply with Clause 12.3 or 12.4.

12.11 If the Retailer disputes any or all of an amount contained in an Invoice:

- (a) the Retailer will immediately notify the Distributor of the dispute and provide reasons for the dispute;
- (b) the Retailer will pay any undisputed amounts by the due date specified in the Invoice; and
- (c) the Parties will comply with the provisions of Clause 18 in order to resolve any dispute. Interest on any amount to be paid by either Party following the resolution of any dispute will accumulate and will be payable at the Bank Base Rate plus five percent from the due date until the date for payment.

Provided that no Invoice may be disputed under this Clause 12.11 after 12 months after the date of the Invoice.

12.12 If the Retailer fails to pay by the due date any amount contained in an Invoice and has not disputed the Invoice pursuant to Clause 12.11, then without prejudice to the Distributor's right

to terminate this Agreement, the Retailer will pay to the Distributor default interest on that amount at the Bank Base Rate plus five percent from the due date until the date of payment.

12.13 The Distributor may, as a condition of entering into this Agreement or otherwise at any time on giving written notice of 10 Business Days to the Retailer, require the Retailer to provide a performance bond or bank undertaking:

- (a) for an amount of no more than one sixth of the total Charges payable by the Retailer in the previous 12 months (or, where the request is made within the first 12 months of this Agreement, one sixth of the forecast total Charges for that 12 month period, determined by the Distributor acting reasonably and in good faith); and
- (b) by any major trading bank in New Zealand,

to secure payment of the Charges by the Retailer. The Distributor and the Retailer may agree in writing the circumstances in which such a bond or undertaking would be required.

13. Charging Variations

13.1 The Distributor has the right to amend the Charges for Line Function Services after giving not less than 40 days notice of any variation of the Charges. Unless the variation is to pass on cost changes to the Distributor provided for under any contract or agreement relating to the use of Transpower's network, the Distributor may not exercise its rights pursuant to this Clause and vary the Charges or the pricing methodology, such as GXP based pricing, more than once in any period of 12 months.

13.2 The Retailer cannot unreasonably dispute any variation to Charges made under Clause 13.1 and the provisions of Clause 18 do not apply to any variation under Clause 13.1.

13.3 The Distributor may increase or reduce the Charges upon giving 5 Business Days notice to the Retailer where any charges, levies or taxes are altered or imposed by any regulatory authority in respect of the provision of Line Function Services relating to Customer's Points of Supply or in relation to payments payable under this Agreement. The Distributor shall on request provide the Retailer with evidence of the charges, levies or taxes.

13.4 The Distributor may vary the Charges from time to time to pass on any increases or reductions in the rates for charges payable to Transpower by the Distributor if the Distributor has given the Retailer a minimum of:

- (a) 30 days written notice of its intention to issue a formal notice of those variations pursuant to paragraph (b) below, during which period the Distributor will consult with the Retailer over the proposed variation of Charges; and
- (b) 30 days formal written notice of those variations.

14 Retailer Obligations

14.1 The Retailer acknowledges that the Distributor may require the Retailer to provide a Sales Discount or Sales Discounts to Customers. The Retailer acknowledges that the provision of a Sales Discount or Sales Discounts is an integral and historical part of the Distributor's business. The Parties agree as follows:

- (a) any Sales Discount on Line Function Services will be reflected, and separately identified on invoices to Customers as emanating from the Distributor;
- (b) until applied to the Customer's account, the Retailer holds the benefit of any Sales Discount upon trust exclusively for the Customer;
- (c) any Sales Discount will be passed by the Retailer to the Customer without any deduction of any nature;
- (d) the mechanism and process by which any Sales Discount is passed to the Customer must first be approved by the Distributor, and the Distributor will pay the Retailer such reasonable sum as may be agreed between the Parties in providing the service;
- (e) the Retailer shall, upon request of the Distributor, provide information to Customers from time to time and agrees to do so on a timely basis and at a reasonable cost;
- (f) the Retailer shall, from time to time, upon request of the Distributor, provide all such information concerning Customers and agrees to do so in a timely manner and at a reasonable cost;
- (g) All information requested under clause 14.1(f) may be used solely for the purposes of the Distributors electricity distribution services business.
- (h) the Retailer agrees to allow the Distributor access to its billing distribution system to communicate with Customers for the sole purpose of the Distributors electricity distribution network services business. Such access will be on the basis that it does not interfere with the Retailer's own communication plans and shall be at a reasonable cost.

14.2 Where practical the Retailer acknowledges that it will provide any information requested under Clause 19 within five working days of such request. The parties agree to work co-operatively to give effect to this clause.

14.3 The Retailer shall be responsible for notifying and if necessary consulting Customers of any planned interruptions of Line Function Services as advised to the Retailer under Clause 6. The Distributors obligations in respect of interruptions to Line Function Services are detailed in Clause 6.

14.4 Information provided by the Retailer in accordance with Clause 14.1 shall only be used by the Distributor for the purposes for which it is provided.

15. Default and Termination

15.1 If the Retailer fails to pay any amount due and owing to the Distributor under this Agreement (except where the unpaid amount is being disputed in good faith) and the default is unremedied at the expiry of 5 Business Days immediately following the giving of notice by the Distributor to the Retailer of such non payment the Distributor may:

- (a) where the unpaid amount is not more than the amount of a bond held by the Distributor in relation to the Retailer, call immediately for payment under any bond held pursuant to Clause 12.13; and
- (b) if either:
 - (i) no bond is held pursuant to Clause 12.13 and the unpaid amount is \$200,000; or
 - (ii) a bond is held pursuant to Clause 12.13 but the Distributor is unable (whether because of a cap in the amount payable under the bond or otherwise) to recover the unpaid amount in full and the shortfall is \$200,000 or more,

give 20 Business Days (or such longer period as the Distributor agrees) notice to the Retailer terminating this Agreement.

15.2 If:

- (a) the Retailer fails in a material respect to perform or comply with its obligations under this Agreement; and
- (b) such failure will or is likely to have a material adverse effect on the Distributor's ability to carry on its business; and
- (c) such failure relates to particular Points of Supply; and
- (d) such failure remains unremedied 10 Business Days following the giving of a notice to remedy such failure by the Distributor;

then, in addition to any other rights under this Agreement, the Distributor, after giving prior notice to the Retailer, may disconnect the Points of Supply to which the default relates.

15.3 If:

- (a) the Retailer fails in any material respect to comply with its obligations under this Agreement (other than an obligation to pay money); and
- (b) such failure will or is likely to have a material adverse effect on the Distributor's ability to carry on its business; and
- (c) such failure remains unremedied 10 Business Days following the giving of a notice to remedy such failure by the Distributor (such failure being capable of remedy and the Retailer is not taking reasonable steps to remedy that failure);

the Distributor may give 20 Business Days (or such longer period as the Distributor agrees) notice to the Retailer terminating this Agreement.

15.4 If the Retailer or the Distributor;

- a) becomes subject to any distress, attachment, execution or other legal process levied, enforced, sued out on or against any material part of its property which results in the Retailer's or Distributor's failure to comply with its obligations under this Agreement;
- b) has a receiver appointed to the whole or any substantial part of its undertaking, property or assets;

- c) is deemed or presumed to be unable to pay its debts within the meaning of the Companies Act 1993, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes to make a consignment, or an arrangement or composition with or for the benefit of its creditors;
- d) is removed from the register of companies or is subject to liquidation (either where an application for an order is made for or an effective resolution is passed for its liquidation); or
- e) subject to Clause 21.4 sells its business (or its undertaking, property or assets comprising the major part of its business) without the prior consent of the other Party. Such consent may not be unreasonably withheld.

Either party may give 5 Business Days notice to the other terminating this Agreement

- 15.5 Termination of this Agreement in no way negates the rights and obligations of the Parties up to the time of termination with respect to Line Function Services and Charges specified as part of the Agreement. Termination will be without prejudice to any other rights and remedies of the Distributor or Retailer.
- 15.6 The Retailer shall procure agreements between the Retailer and Customers to provide for change of Retailer upon termination of this agreement to any other retailer of the Customers' choice provided that retailer has a current Use of System Agreement with the Distributor..
- 15.7 Subject to Clause 15.8, for a period of 10 days following termination the Distributor may access any Metering Equipment owned or leased by the Retailer for the purpose of obtaining information to determine charges outstanding at the time of termination and the Metering Equipment shall be available to the Incumbent Retailer to allow supply to continue to Customers.
- 15.8 Notwithstanding clause 15.7, if the Retailer chooses to remove its meters after a Customer ceases to take supply, the Retailer shall undertake a final reading for all such Customers and supply the Distributor with complete and accurate data for electricity consumed by such Customers within 10 days of that Customer terminating its supply.

16. Force Majeure

- 16.1 If either Party is unable to carry out any of its obligations under this Agreement because of an event or circumstances of Force Majeure this Agreement shall remain in effect but except as otherwise provided, the obligation which is unable to be carried out or performed, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure, shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
 - (a) the non-performing Party gives the other Party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
 - (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

- (c) no obligations of either Party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure; and
 - (d) the non-performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 16.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either Party to resume performance of its obligations under this Agreement for a period of no less than 180 days, that Party may on not less than 10 Business Days prior written notice terminate this Agreement.

17. Liability For Loss

- 17.1 Neither Party shall be liable to the other for any loss, cost or expense which may be sustained by that Party or any other person unless such loss was due to the other Party's breach of this Agreement.
- 17.2 Notwithstanding any other provisions of this Agreement, the Distributor shall not in any circumstances be liable to the Retailer for:
- a) momentary fluctuations in the voltage or frequency of electricity conveyed;
 - b) any failure to convey electricity or to satisfactorily convey electricity caused by no or reduced injection of supply of electricity into the Distribution Network;
 - c) any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service caused by any defect or abnormal conditions in the Customer's Premises or the Customer or any other person failing to observe or comply with the Network Connection Standards;
 - d) failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service in circumstances where emergency action has to be taken to protect the health or safety of persons or to prevent damage to property; or
 - e) any loss or damage caused as a result of any act or omission of the Retailer or any third party not under the control or supervision of the Distributor and/or an event of Force Majeure or
 - f) any event or circumstance to which Clause 6.1 applies.
 - g) any failure to convey electricity or any loss or damage caused by the occurrence of a Year 2000 Non-Compliance Event.

Subclauses (a) to (f) of this clause will not apply to any event or circumstance where that event or circumstance could have been avoided by the application of Good Industry Practice by the Distributor.

- 17.3 The Retailer shall not in any circumstances be liable to the Distributor for:
- a) any failure to perform any obligation pursuant to this Agreement caused by the Distributor's failure to comply with the same; or

- b) any failure to perform any obligation pursuant to this Agreement directly caused by any defect or abnormal conditions in the Distribution Network or
- c) any failure to perform any obligation to this Agreement directly caused by any event of Force Majeure.

This clause will not apply to any event or circumstance where that event or circumstance could have been avoided by the application of Good Industry Practice by the Retailer.

- 17.4 If there is any event or circumstances other than those described in Clauses 17.2 and 17.3 resulting in liability of one party to the other party or to any other person whether in contract or tort or otherwise howsoever, then notwithstanding any other provision of this Agreement that party shall be liable only up to the amount(s) specified in Schedule 7. Any liability of the Distributor under the Consumer Guarantees Act 1993 is excluded or limited to the maximum extent permissible under that Act.
- 17.5 The benefit of Clauses 17.1, 17.2, and 17.3 are intended to extend to the directors, officers, employees, authorised agents, contractors, subcontractors and professional advisers of the party concerned and may be enforced by them pursuant to the Contracts (Privity) Act 1989.
- 17.6 The Retailer shall ensure that every agreement between it and its Customers contains a clause that limits any liability the Distributor may have to a Customer (whether in contract, tort or otherwise) as set out in Clauses 17.1 to 17.4 to the amount(s) specified in Schedule 7.
- 17.7 The Retailer shall take all reasonable steps to assess electricity consumption volumes and to advise the Distributor at the earliest opportunity of any concerns or knowledge or irregularity. The Retailer will use all reasonable endeavours to ensure that Metering Equipment is not interfered with.
- 17.8 Without prejudice to the liability of the Distributor, the Distributor (having regard to the instructions of its insurers) agrees to reasonably co-operate with any independent investigation by competent persons into any incident giving rise to a liability claim.
- 17.9 The Retailer will advise the Distributor immediately it has knowledge of an event likely to give rise to a claim, and agrees to co-operate and procure the Customer's co-operation to enable the Distributor to properly investigate the event and be allowed to defend any claim without prejudice.

18. Dispute Resolution

- 18.1 The Distributor and the Retailer shall actively and in good faith negotiate with a view to the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.
- 18.2 Every dispute or difference that is not resolved by discussion between the Distributor and the Retailer may be referred by either Party to mediation.
- 18.3 If a dispute has been referred to mediation then the Parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the Parties and endeavour to resolve it by agreement between the Parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. Each Party shall bear its own costs in the mediation, and shall pay half the costs of the mediator.

- 18.4 If the matter in dispute remains unresolved after compliance with Clauses 18.2 and 18.3 it may only be referred to arbitration if the Parties so agree. If the Parties do not so agree, the dispute may be referred to the New Zealand courts by either Party.
- 18.5 If the Parties agree that any matter in dispute is to be referred to arbitration the following procedures will apply:
- (a) The dispute or difference shall be referred to a sole arbitrator for resolution if the Distributor and the Retailer agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.
 - (b) Where the matter has previously been referred to mediation, the mediator shall not be called by either Party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
 - (c) The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this Clause and the decision of the arbitrator will be final and binding on the Parties.

19. Information Requests

- 19.1 At the Distributor's request, the Retailer shall as soon as reasonably practicable provide at no cost, the following:
- a) estimates and projections of electricity that is intended to be transported by the Retailer over the Distribution Network or parts of the Distribution Network, or any likely extension to that Network; and
 - b) any obligation under Clause 12;
 - c) total monthly quantities of electricity that have been purchased at each grid exit point to enable the Distributor to calculate a Loss Factor; and
 - d) such other information as the Distributor may reasonably require for the performance of its obligations under this Agreement.
- 19.2 With prior agreement of the Retailer the Distributor may seek verifying, clarifying or other information from any Customer or potential Customer for the purpose of making an investment decision relating to the Distribution Network.
- 19.3 At the Retailer's request, the Distributor shall as soon as reasonably practicable provide such information relating to the Distribution Network, the Transpower Network and Charges and such other information to the extent that it affects the Customers as the Retailer may reasonably require.
- 19.4 The information requested under Clauses 19.1 or 19.2 shall only be provided to the extent that such request is reasonable, and does not breach the confidentiality requirements of this or any other Agreement relating to the use or operation of the Distribution Network.

- 19.5 The Retailer shall provide the information in respect of connections to and disconnection's from the Distribution Network in accordance with Schedule 5.
- 19.6 The Parties will use all reasonable endeavours to provide the information requested under Clause 19.1 and 19.2 in an accurate and timely manner.
- 19.7 The Retailer agrees to include in its contracts for supply of electricity with Customers contract rights to provide information requirements relating to Customers as may be required by the Distributor.

20. Confidentiality

- 20.1 Each Party undertakes with the other Party that it shall preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose the existence of, any Confidential Information except as set out in Clause 20.2.
- 20.2 Either Party may disclose Confidential Information in the following circumstances:
- (a) where at the time of receipt by the Party the Confidential Information is in the public domain; or
 - (b) where after the time of receipt by either Party the Confidential Information enters the public domain except where it does so as a result of a breach by either Party of its obligations under Clause 20.1 or a breach by any other person of that person's obligation of confidence and the Party is aware of such breach; or
 - (c) where either Party is required:
 - (i) by any statutory or regulatory obligation, body or authority; or
 - (ii) by any judicial or other arbitration process; or
 - (iii) by the regulations of any stock exchange upon which the share capital of either Party is from time to time listed or dealt in; or
 - (iv) by direction of the government (whether as its shareholder or otherwise) in relation to a sale of any shares in any Party or its holding company; or
 - (d) where the Confidential Information is released to the employees, directors, agents or advisers of the Party provided that:
 - (i) the information is disseminated only on a "need to know" basis;
 - (ii) recipients of the Confidential Information shall be made fully aware of the Party's obligations of confidence in relation thereto; and
 - (iii) any copies of the information clearly identify it as Confidential Information.

21. Assignment and Agents

- 21.1 Subject to Clause 21.4, neither Party shall assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 21.2 Any consent to an assignment or other disposition granted under Clause 21.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned.
- 21.3 Subject to approval of the appointment of a Retailer's Agent in accordance with Clause 9, each Party may appoint agents to act on its behalf. Any such appointment shall not relieve the Parties making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents.
- 21.4 If any substantial part of the assets of the Retailer are transferred to another company by reason of a direction of the government, then the Retailer may assign its benefits and obligations under this Agreement to that new company without requiring the consent of the Distributor, and following such assignment this Agreement will be deemed to have been novated between the Distributor and the assignee, and the Retailer will have no further obligations or liabilities to the Distributor pursuant to the assigned Agreement.

22. Non-Waiver

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

23. Savings Clause

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

24. Entire Agreement

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

25. Governing Law

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

26. Notices

- 26.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement shall be in writing and delivered personally, or by pre-paid post, by courier delivery, by facsimile, or by electronic mail.
- 26.2 The required addresses, facsimile numbers and electronic mail addresses of the Parties for the purposes of this Clause are set out in Schedule 1.
- 26.3 A notice or other form of communication shall be deemed to have been received as follows:
- (a) if given or delivered personally or by courier delivery at the time when given or delivered;
 - (b) if sent by pre-paid post at the expiration of 48 hours after the document was delivered into the custody of the postal authorities;
 - (c) if sent by facsimile, on the time and day of sending if the sending machine confirms transmission is successful; and
 - (d) if sent by electronic mail, on the time and day of sending if the recipient confirms by return of electronic mail that the transmission has been successful.

27. Variations

- 27.1 No variations or modifications to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties.

28. Costs

- 28.1 Each party shall bear its own costs of and incidental to the preparation of this Agreement.

29. No Representations

- 29.1 The Retailer acknowledges that , notwithstanding anything else in this Agreement, the Distributor has not made or given, and does not make or give, any representation or warranty to the Retailer that the Distribution Network or the Distributor's Equipment is Year 2000 Compliant.

EXECUTED as an Agreement.

SIGNED for and on behalf of **ELECTRA LIMITED as Distributor**

Signed by	.....	<i>Signature</i>
	.....	<i>Full Name</i>
	.....	<i>Position</i>

In the presence of	.....	<i>Signature</i>
	.....	<i>Full Name</i>
	.....	<i>Address</i>

SIGNED for and on behalf of (.....) as **Retailer**

Signed by	.....	<i>Signature</i>
	.....	<i>Full Name</i>
	.....	<i>Position</i>

In the presence of	.....	<i>Signature</i>
	.....	<i>Full Name</i>
	.....	<i>Address</i>

Schedule 1

Term of Contract and Addresses for Notices

Date of Commencement:

Addresses for Notices:

DISTRIBUTOR:

Address: Electra Limited
Attention: John Yeoman
Telephone: (06) 366 0924
Facsimile: (06) 366 0949
E-mail: johnye@electra.co.nz

RETAILER:

Address:
Attention:
Telephone:
Facsimile:
E-mail:

Schedule 2

Charges

Refer to our web site www.electra.co.nz for current pricing.

Schedule 3

Performance Targets

The Distributor will meet the Performance Targets listed below. If we fail to do this for any reason within our control, then the Distributor will make a payment of \$30 (including GST) for each customer of the Retailer that is affected. This payment will be made to each affected customer either directly or via the Retailer who will credit the affected customer(s) account.

The Distributor will report and detail to the Retailer qualifying Performance Target payment(s) it has made to its customer(s). The Distributor may request the application of a credit to the customer(s) account(s) for any amounts involved.

Service	Performance Target
Getting the power back on where a fault on the Distributor's network affects a group of the Retailer's customers.	The Distributor will restore electricity supply within the following times of the Retailer or its customers notifying the Distributors Fault Dispatch Agent: <ul style="list-style-type: none">• Urban/rural – 4 hours• Remote rural – 12 hours
Getting the power back on where a single Retailer customer is without power due to the Distributor's blown main supply fuse.	The Distributor will fix the fuse within two hours of the Retailer or its customers notifying the Distributors Fault Dispatch Agent.
Restoring hot water supply to the Retailer's customer(s) where the problem is caused by a fault on the Distributor's equipment.	The Distributor will carry out repairs within two hours of the Retailer or its customer(s) notifying the Distributors Fault Dispatch Agent in the case of individual customers, within four hours of the Retailer or its customers notifying the Distributor if the problem is widespread, or within a time agreed between both parties.
Advisory details for Planned Interruptions.	The Distributor will give the Retailer and its affected customers at least 72 hours written notice of the date and duration of a planned interruption. <i>Reduced notice period may be given if verbal agreement is obtained from all affected Retailer customers.</i>
Keeping to time when the Distributor carries out planned maintenance.	The Distributor will not switch off power to the Retailer's customer(s) prior to the notified time. The Distributor will have power back on to the Retailer's customer(s) no later than 15 minutes after the time notified to the Retailer and its customer(s).

The distributor will not be held to these Performance Targets: -

- In an emergency situation
- Where public safety requires the diversion of resources.

Schedule 4

Load Management Service

It is acknowledged that:

- The level of Transpower charges are determined, amongst other things, by load levels at the Grid Exit Points
- The security of the Distribution Network is dependant on a load management regime

The Distributor encourages and supports the concept of load management to reduce costs for customers. The Distributors priorities will be:

- Manage demand for electricity at Grid Exit Points on an equitable basis between the Retailer and all Other Retailers; and
- Provide Load Management Services for the Retailer and all Other Retailers as described in Table 1

The list of time tabled programs (refer Table 1) can be modified upon request, and the Distributor welcomes the addition of load that can be controlled to help meet its Transpower Agreement.

For the purposes of the first Clause of this Schedule, the Distributor will consult with the Retailer and with all Other Retailers from time to time as to the basis of the load management service which the Distributor is able to provide to users of the Distribution network. The Distributor will seek to facilitate an equitable basis for the Retailer and all Other Retailers to minimise the delivered energy costs and the overall level of the Transpower Charges by means of a process of load control

The Retailer will consult with the Distributor to optimise the level of controllable load on each load control channel with the intention that controllable load is spread across all channels to the satisfaction of the Distributor.

Nothing in this schedule limits the rights of the Distributor to interrupt or reduce the conveyance of electricity under Clause 6 (Interruption of Supply).

Exclusive ripple control channels are available for use by Retailers to provide for selective load management by the Distributor.

Table 1

Channel #	Price option	Price option code	On time	Off time	On time	Off time
0	Managed Saver water heating	EL2&3	As required	For	Peak	control
1	Managed Saver water heating	EL2&3	As required	For	Peak	control
2	Managed Saver water heating	EL2&3	As required	For	Peak	control
3	Managed Saver water heating	EL2&3	As required	For	Peak	control
4	Managed Saver water heating	EL2&3	As required	For	Peak	control
5	Managed Saver water heating	EL2&3	As required	For	Peak	control
6	Managed Saver water heating	EL2&3	As required	For	Peak	control
7	Managed Saver water heating	EL2&3	As required	For	Peak	control
8	Managed Saver water heating	EL2&3	As required	For	Peak	control
9	Managed Saver water heating	EL2&3	As required	For	Peak	control
10	Managed Saver water heating	EL2&3	As required	For	Peak	control
11	Managed Saver water heating	EL2&3	As required	For	Peak	control
12	Managed Saver water heating	EL2&3	As required	For	Peak	control
13	Managed Saver water heating	EL2&3	As required	For	Peak	control
14	Managed Saver water heating	EL2&3	As required	For	Peak	control
15	Thrifty	EL5	23:00	07:00	2 hours between 1300-1600	
16	Super Thrifty	EL4	23:00	07:00		
20	School heat		00:00	07:00		
21	School water heating		03:00	07:00	11:00	16:00
22	School fans		07:30	17:00		
40	Commercial managed saver	EL2&3	As required	For	Peak	control
14	Commercial managed saver	EL2&3	As required	For	Peak	control
42	Commercial managed saver	EL2&3	As required	For	Peak	control
43	Commercial managed saver	EL2&3	As required	For	Peak	control
44	Commercial managed saver	EL2&3	As required	For	Peak	control
45	Street lighting	Time	Or	Photo	Cell	control
46	Street lighting	Time	Or	Photo	Cell	control
47	Street lighting	Time	Or	Photo	Cell	control
48	Street lighting	Time	Or	Photo	Cell	control
49	Community lighting	Time	Or	Photo	Cell	control
50	Day / night	EL11	21:00	07:00		
51	*Triple saver	EL6	21:00	07:00	11:00	17:00
52	*Triple saver	EL6	23:00	07:00		

*Triple Saver uses combinations of channels 51 and 52 to switch registers.

Night	51 on, 52 on
Off Peak	51 on, 52 off
Peak	51 off, 52 off

Schedule 5

Connection and Livening Services and Customer Transfer Procedures

The Distributor requires notification from The Retailer of:

- New Customers Points of Supply, added to the network
- Transfer of Customer's Point of Supply to another Retailer
- Disconnection of Customer's Point of Supply for a period greater than 30 days
- Permanent removal of the installation from the network

An Accredited Service Provider shall perform all such connection and livening services.

All costs for the provision of connection and livening services, except safety related, shall be incurred by the Retailer.

Customer's Point of Supply that remain vacant for a period greater than 15 days shall be disconnected from the network at the Retailers expense.

The Retailer will maintain a record of Customer's Point of Supply connections and shall make this record available to the Distributor upon request.

Procedure for livening a new Customer's Point of Supply:

1. Customers requiring the livening of a new point of supply will contact the Retailer
2. The Retailer will dispatch an accredited Service Provider to liven the installation
3. Provided that the Customer's installation meets the Distributor's technical standards, the Service provider will fit metering equipment to a standard agreed by the Retailer and the Distributor

The Retailer will arrange to pass summarised information onto the Distributor 5 Business Days prior to livening, so that an Installation Control Point (ICP) number can be issued to the Customer's Point of Supply by the Distributor . This information will include:

- The address of the Installation
- The Distributor's Asset Number to which the service is connected
- The date the installation is intended to be livened
- Retailer name

The information is to be supplied in either electronic format (method to be agreed), Faxed or via telephone.

Procedure for Isolating a Customer's Point of Supply:

This procedure is applicable where:

- The installation is vacant
- The Customer is disconnected for debt
- The Customer requests disconnection
- The installation is being permanently removed from the network
- The Retailer will dispatch an Accredited Service Provider to isolate the installation

- The Retailer will inform the Distributor on a monthly basis of those installations that have remained isolated for a period greater than 30 days *and*
- The Retailer will inform the Distributor of those installations that have been permanently removed

Procedure for connecting an existing Customer's Point of Supply:

This procedure is applicable where:

- The Retailer and customer form an agreement for supply of Electricity
- Reconnection for Debt
- The customer requests reconnection. Note: 6 month Recertification requirement.
- The Retailer will dispatch an Accredited Service Provider to reconnect the installation
- The Retailer will maintain a database that records the status of the Customer's Point of Supply

Procedure for Transfer of a Customer's Point of Supply:

This procedure is applicable where:

- The Customers Point of Supply is transferred from one Retailer to another Retailer.
1. The Retailer will inform the Distributor **within 2** Business Days of any transfer of Customer's Point of Supply to or from another Retailer.
 2. The Retailer will supply the following information:
 - Installation Control Point (ICP) Number
 - Site Name
 - Site Address
 - Site Locality
 - Date of Transfer from another Retailer
 - The name of the other Retailer
 3. File format to be based on existing industry protocol and will be presented in the following format:
 - Electronic file
 - Comma Delimited
 4. The information will be Emailed to the Distributor.
 5. Customer Switching must comply with MARIA Code of Practice.

Schedule 6

24 hour Customer Fault Service

The Distributor will procure a 24-Hour, 7 day per week, Electricity Network fault repair service to the Customer's Installations supplied by the Retailer.

A "Network Fault" is defined as:

"Any instance where normal electricity supply is off or supply is outside of normal parameters as a result of Network Line or Equipment failure. It is inclusive of network equipment that is in a state that represents a clear hazard to the public."

The Distributor will contract a suitable Service Provider for such fault repairs. The responsibility for provision, operation and payment for such services is at the Distributor's cost.

The Distributor wishes to have a single point of contact for the dispatch of fault calls. Freephone number 0800 LOST POWER is provided for this service (0800 567876).

The Distributor will appoint a provider to act as the Distributor's agent for the dispatch of fault calls to the Accredited Service Provider.

Schedule 7

Limitation of Liability

1. Subject to clause 2 below, the liability of the Distributor to the Retailer or any other person will not exceed:
 - (a) in relation to any one Customer, in respect of any one event or series of related events or multiple but unrelated events, in aggregate an amount equivalent to half of the total of the then current Line Function Services Charges (excluding any Transpower charge component) payable by the Retailer in respect of that Customer under this Agreement; or
 - (b) for any two or more Customers in respect of any one event or series of related events or in respect of multiple but unrelated events, in aggregate an amount equivalent to half of the amount of the then current annual Line Function Services Charges (excluding any Transpower charge component) payable by the Retailer in respect of those Customers under this Agreement.
2. The liability of the Distributor to the Retailer or any other person in any 12 month period will not exceed in aggregate an amount equivalent to half of the amount of the then current annual Line Function Services Charges (excluding any Transpower charge component) payable by the Retailer under this Agreement.
3. The Retailer's liability to the Distributor in respect of a single event, series of related events or multiple unrelated events, and in any 12 month period shall not exceed an amount equivalent to half of the total of the then current annual Line Function Services Charges (excluding any Transpower charge component) payable by the Retailer under this Agreement.
4. In this Schedule, the phrase "series of related events" means a number of events which are all related in that they arise from the same circumstances.

Schedule 8

Consumption information format

To be agreed between the parties of this Use of System Agreement.