

# Wholesale Use of System Agreement

Powerco Limited (Distributor)

[insert name] (Wholesaler)

draft

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draft

## WHOLESALE USE OF SYSTEM AGREEMENT

### PARTIES

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

### BACKGROUND

A The Distributor owns and operates the Network, and provides line function services enabling the conveyance of Gas over that Network.

B The Wholesaler wishes to deliver Gas to End Retailers at ICPs connected to the Network, so that those End Retailers can sell Gas to consumers at those ICPs.

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

### COMMENCEMENT DATE

[ ]

### END RETAILERS

[ ]

**SIGNATURES**

**Signed for Powerco Limited by:**

**Signed for [insert name] by:**

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Position:

Position:

Date:

Date:



**THE PARTIES AGREE** as follows:

**PART I: SERVICES**

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**1 OVERVIEW**

**1.1 Term**

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

**1.2 Services**

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

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

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

**1.3 Wholesaler obligations**

Subject to the terms of this agreement, the Wholesaler will:

- (a) take all steps generally expected as a matter of Good Industry Practice to meet each Service Standard applicable to the Wholesaler; and
- (b) procure that each End Retailer takes all steps generally expected as a matter of Good Industry Practice to:
  - (i) provide a 24 hour, seven day a week, information service to deal with Unplanned Service Interruptions;
  - (ii) maintain and operate a process of revenue assurance to minimise Losses at its Points of Connection; and
  - (iii) meet each Service Standard applicable to that End Retailer.

**1.4 Connections**

- (a) Subject to the terms of this agreement, the Distributor will allow each Consumer's Installation that complies with the Network Connection Standards to remain connected to the Network, and will consider applications for new connections and changes to capacity for existing connections in accordance with the Connection Policies and Network Connection Standards.

- (b) Except as permitted by the terms of this agreement, the Wholesaler will not, and will ensure that the End Retailers do not, disconnect or isolate from the Network any Consumer's Installation that complies with the Network Connection Standards. Subject to the terms of this agreement, the Wholesaler will ensure that the End Retailers process any applications for new connections or changes to capacity for existing connections in accordance with the Connection Policies.

**1.5 End Retailers**

The Wholesaler may, from time to time, by notice in writing to the Distributor, request that a gas retailer be added as an End Retailer (*End Retailer Request*). The Wholesaler will provide to the Distributor such information as is reasonably required by the Distributor to assess the End Retailer Request. The Distributor will, within a reasonable time following the receipt of the End Retailer Request and the supporting information, notify the Wholesaler in writing as to whether it accepts or declines the End Retailer Request. The Distributor may, at its sole discretion, decide whether to accept or decline the End Retailer Request. If the Distributor accepts the End Retailer Request, the relevant gas retailer will be deemed to be an End Retailer for the purposes of this agreement from the date of the notice of acceptance.

**2 RELATIONSHIPS WITH CONSUMERS**

**2.1 Consumer Contract**

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

**2.2 Orphan ICPs**

Where the Distributor becomes aware that a consumer is being supplied with Gas over the Network without being party to a current Line Services Agreement or a current Consumer Contract that includes the provision of Line Function Services, or that a Line Services Agreement with that consumer is about to expire or be terminated, then without limiting any other right of the Distributor under this agreement, the Distributor will give notice to the Wholesaler (along with any other retailers operating in the relevant region) suggesting that one of the End Retailers take up the opportunity to enter into a Consumer Contract with that consumer in respect of the corresponding ICP. Unless within 10 Working Days of receiving that notice an End Retailer has entered into a Consumer Contract providing for the immediate commencement of Gas supply and Line Function Services at that ICP, and the Wholesaler has notified the Distributor accordingly, the Distributor may disconnect the consumer's installation at that ICP, subject to clause 12.8.

**2.3 Distribution Services Agreements**

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

**2.4 Line Services Agreements**

- (a) The Distributor will not enter into a Line Services Agreement with a Consumer where this will interfere with an existing Consumer Contract between the Consumer and an

End Retailer. Otherwise, nothing in this agreement will prevent the Distributor from entering into a Line Services Agreement with any Consumer, or performing, varying, enforcing and/or terminating any such agreement. Within 5 Working Days of entering into a Line Services Agreement in respect of one or more ICPs, the Distributor will notify the Wholesaler accordingly, identifying the ICPs.

- (b) For so long as any ICP is subject to a current Line Services Agreement, the Distributor will not be responsible or liable for the provision of any Distribution Services under this agreement in respect of that ICP, and will not apply any Charges under this agreement in respect of that ICP. The Line Services Agreement will provide the Consumer with the right to have Gas purchased from the End Retailer conveyed over the Network to the relevant ICP, on the terms of that agreement.
- (c) Where the Distributor enters into or terminates a Line Services Agreement that involves the Distributor direct billing the Consumer for daily, monthly or other periodic charges for Line Function Services, the Distributor will reflect this change in the Registry by inserting or removing (as appropriate) the words "Direct Billed" in the "Network Price Details" field.
- (d) The Wholesaler will not (and will procure that the End Retailers do not) knowingly commit, or knowingly cause any person to commit, any act or omission that is inconsistent with the obligations of the Consumer or the Distributor under or in relation to any Line Services Agreement, provided that where a Line Services Agreement contains technical requirements that differ from the technical requirements in relation to Distribution Services set out in this agreement, the Distributor has given the Wholesaler reasonable notice of those requirements.
- (e) The Wholesaler will not (and will procure that the End Retailers do not) knowingly supply Gas in respect of any ICP, except while there is a Line Services Agreement or Consumer Contract currently in force for that ICP.

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

#### **3.1 Access to Distribution Services**

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

- (a) this will not apply to the exercise of any discretion the Distributor may have under clause 1.5 (End Retailers), 10 (Prudential requirements), 12 (Responsibility for Network and other assets), 16 (Force Majeure), 17 (Termination) or 18 (Confidentiality);
- (b) this will not require the Distributor to offer the Wholesaler or any End Retailer any terms or conditions agreed by the Distributor with another retailer for the provision of Line Function Services.

For this purpose, the Wholesaler acknowledges that:

- (c) the pricing and price methodologies may vary according to factors such as network region, consumer type, connection type, term and/or volume

commitments, and any other criteria that the Distributor considers relevant, so that in practice the overall impact of the pricing and price methodologies may vary between retailers; and

- (d) the terms and conditions in this Agreement will vary from those in other retailer agreements, and the Distributor's treatment of End Retailers will vary from its treatment of retailers who contract directly with the Distributor, to the extent the Distributor reasonably considers is necessary to reflect that the Wholesaler is procuring Distribution Services and not the End Retailers.

### 3.2 **Notification of Alternative Contracts**

Within 20 Working Days after executing a contract, or an amendment to a contract, with a retailer that is a related company of the Wholesaler, relating to the supply of Line Function Services covering all or any part of the Network, other than an ISA (the contract or amended contract being an *Alternative Contract*), the Distributor will provide the Wholesaler with a copy of the Alternative Contract, and invite the Wholesaler to adopt a replacement for this agreement in accordance with clause 3.3, based on the Alternative Contract, with such changes as the Distributor reasonably considers necessary to account for the Wholesaler's role as a wholesaler rather than a retailer (*Replacement Contract*). The Wholesaler acknowledges the differences between this agreement and the template "Use of System Agreement" published by the Distributor on or about December 2013 are an example of the changes that may be required by the Distributor to produce a Replacement Contract from an Alternative Contract. To avoid doubt, the exercise of a discretion referred to in clause 3.1(a) will not give rise to any Alternative Contract or Replacement Contract. Notwithstanding the foregoing, incremental amendments to a contract that was originally entered into before 1 May 2013 will not give rise to an Alternative Contract or Replacement Contract.

### 3.3 **Adoption of Replacement Contracts**

At any time during the 12 months after the Distributor executes an Alternative Contract, the Wholesaler may, at its sole discretion, choose to adopt the corresponding Replacement Contract in its entirety in substitution for this agreement. The Wholesaler may exercise this choice by giving notice to the Distributor identifying the Replacement Contract that it wishes to adopt, in which case this agreement will be deemed to have been terminated and replaced with a new contract on the same terms as the Replacement Contract, with effect from the date that is 20 Working Days after the day on which the Distributor receives that notice, and each party will promptly execute a copy of that new contract if requested by the other. The provisions of clause 17.7 shall also apply in respect of a termination of this agreement under this clause 3.3.

## 4 **SERVICE INTERRUPTIONS**

### 4.1 **Communication policies**

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

**4.2 Information disclosure**

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

**4.3 Planned Service Interruptions**

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

**4.4 Unplanned Service Interruptions**

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

**4.5 Costs of communication**

Unless the parties agree otherwise, where the Distributor asks an End Retailer to update Consumers on a Service Interruption in accordance with the Service Interruption Communications Policies, the Wholesaler will procure that the End Retailer does so at no cost to the Distributor, except where additional updates are required due to a change in the timing of an interruption, where the change is caused solely by the negligence or default of the Distributor or its contractors (and not due to consumer requests, weather conditions, major network outages, access issues or other events beyond the reasonable control of the Distributor and its contractors) in which case the Distributor will meet the reasonable additional costs incurred by the End Retailer in providing the additional updates.

**4.6 Load Shedding**

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

- (a) where the Distributor wishes to inspect any part of the Network, or effect alterations, maintenance, repairs or additions to any part of the Network, in each case subject to clauses 4.3 and 4.4;
- (b) as permitted by the Service Standards;
- (c) to maintain a safe environment, consistent with the Distributor's health and safety policies;
- (d) to preserve the security and/or integrity of the Network;

- (e) to avoid or mitigate damage to any equipment directly or indirectly connected to the Network;
- (f) where directed by a Transmission Operator in accordance with the Critical Contingency Regulations, or any Relevant Authority pursuant to any Law that replaces or supplements the Critical Contingency Regulations;
- (g) to comply with Law; and/or
- (h) for any other purpose which in the Distributor's reasonable opinion and in accordance with Good Industry Practice requires Load Shedding.

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

#### 4.7 **Restoration after Unplanned Service Interruptions**

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

#### 4.8 **Restoration after Planned Service Interruptions**

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

### 5 **PERFORMANCE REPORTING**

#### 5.1 **Service Level reporting**

Unless required by Law to publish such information elsewhere, each party will report on its performance relative to Service Levels in accordance with the reporting measures and frequency of reporting as set out in Schedule 1 and the Wholesaler will procure that each End Retailer produces such reports in respect of its performance against the Services Levels (if any) that apply specifically to the End Retailer. Each report prepared for this purpose must:

- (a) compare actual service performance to the target Service Levels and the service performance reporting measures for each applicable Service Standard;
- (b) explain the reasons for any significant under-performance, and explain what actions the party will undertake to rectify that under performance; and

- (c) where the reporting party has claimed during the relevant reporting period that it was unable to meet the Service Standards due to the occurrence of a Force Majeure Event, give a full account of the nature of the Force Majeure Event and the impact of the event on the party's performance in relation to the Service Standards.

**5.2 Additional reports**

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

**5.3 Insurance not to be compromised**

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

## **PART II: PRICING AND PAYMENT**

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### **6 PRICE CHANGES**

#### **6.1 Frequency**

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

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

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

#### **6.2 Consultation**

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

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



When it notifies the finalised Core Price Change under clause 6.4, the Distributor will also provide the Wholesaler with the reasons for that Core Price Change.

**6.3 Meeting with End Retailers**

If requested by the Distributor or one or more End Retailer(s), during the Submission Period, the Wholesaler will facilitate and the Distributor will attend a meeting between the Distributor and each relevant End Retailer so that the Distributor can discuss the Core Price Change directly with the relevant End Retailers.

**6.4 Notice**

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

**6.5 Finality**

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

**7 LOSSES AND LOSS FACTORS**

**7.1 Distributor may update Loss Factors**

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

**7.2 Wholesaler to provide information**

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

**8 LOAD GROUPS**

**8.1 Distributor allocates ICPs to Load Groups**

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

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

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

**8.3 Wholesaler may require Load Group change**

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

**8.4 Wholesaler to provide Load Group information**

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

**8.5 Effect of allocation**

- (a) Except to the extent this clause 8.5 provides otherwise, the Charges for each ICP for any given period will be calculated by reference to the Load Group to which that ICP was allocated during that period, without any subsequent revision or backdating for any reason whatsoever.
- (b) As part of the wash-up process set out in the Price Book, the Distributor will revise the Charges to credit the Wholesaler with the difference between the Charges applied for each ICP for the relevant period and any lower Charges that would have applied for that same period but for the Distributor failing to re-allocate the ICP in breach of clause 8.3 or the Distributor allocating or re-allocating the ICP in a manner not permitted by clause 8.1 or 8.2.
- (c) As part of the wash-up process set out in the Price Book, the Distributor may revise the Charges to bill the Wholesaler for the difference between the Charges applied for

each ICP for the relevant period and any higher Charges that the Distributor would have been entitled to apply for that same period by re-allocating the ICP to a different Load Group, but for a breach by the Wholesaler of clause 8.4.

- (d) Notwithstanding the foregoing, the Charges for a particular Consumption Month cannot be revised at any time after the close of 13 months following the end of that Consumption Month.

## 9 **BILLING AND PAYMENT**

### 9.1 **Obligation to pay**

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

### 9.2 **Commencement and cessation of Charges**

The Charges will commence and cease at each ICP in accordance with the rules set out for that purpose in the Price Book. The Wholesaler must ensure that each End Retailer maintains and updates the connection status in the Registry for each ICP in accordance with the Gas (Switching Arrangements) Rules 2008.

### 9.3 **Billing and Settlement Policies**

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

### 9.4 **Wholesaler to provide billing information**

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

### 9.5 **Distributor to invoice**

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

**9.6 Wash-ups**

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

**9.7 Other invoices**

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

**9.8 GST invoices**

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

**9.9 Payment**

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

**9.10 Interest on late payment**

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

**9.11 Disputing or correcting invoices**

- (a) At any time within 18 months following the date of an invoice issued under this agreement, the party to which that invoice was issued (*Recipient*) may dispute the invoice by giving notice to the other party (*Issuer*) setting out reasonable details of the dispute (in each case, an *Invoice Dispute Notice*).
- (b) Where the Recipient issues an Invoice Dispute Notice before the due date for payment, it may withhold payment of the disputed portion of the invoice until the dispute has been resolved, so long as it has given the Invoice Dispute Notice in good faith, and pays any undisputed portion of the invoice by the applicable due date.

- (c) When the correct amount of the disputed invoice is finally agreed by the parties or determined by an arbitrator, court or other tribunal of competent jurisdiction (*Resolution Date*), except to the extent the parties agree otherwise:
- (i) where the Recipient has withheld payment of an amount that was correctly included in the disputed invoice, the Recipient will pay the amount within 10 Working Days of the Resolution Date, together with Default Interest applied from the original due date up to but excluding the date of payment;
  - (ii) where the Issuer has undercharged the Recipient, the Issuer may issue a debit note for the amount of the undercharge, together with a Use of Money Adjustment applied to that amount from the due date of the original invoice up to but excluding the date of the new invoice, and the Recipient will pay that invoice within 10 Working Days of receipt, so long as that invoice is accompanied by reasonably detailed supporting information;
  - (iii) where an amount has been incorrectly included in the disputed invoice, the Issuer will promptly issue a corresponding credit note to the Recipient, and if the Recipient has already paid some or all of that amount, then within 10 Working Days of the Resolution Date, the Issuer will refund the overpayment to the Recipient, together with:
    - (A) a Use of Money Adjustment, applied from the date of overpayment up to but excluding the date of the refund, or (if earlier) the date 15 Working Days after receipt of the Invoice Dispute Notice; and
    - (B) unless the overpayment is refunded to the Recipient within 15 Working Days after receipt of the Invoice Dispute Notice, Default Interest, applied from the date 15 Working Days after receipt of the Invoice Dispute Notice up to but excluding the date of the refund.

**9.12 No set off**

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

**9.13 Refund of Charges**

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

## 10 PRUDENTIAL REQUIREMENTS

### 10.1 Distributor may require prudential assurance

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

### 10.2 Form

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

### 10.3 Evidence

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

### 10.4 Acceptable Security Amount

- (a) Where the Wholesaler provides Acceptable Prudential Assurance in the form of Acceptable Security, the Distributor will be entitled to specify the Acceptable Security Amount from time to time by giving notice to the Wholesaler, subject to the requirements of this clause 10.4.
- (b) The Distributor will not initiate a review of the Acceptable Security Amount under this clause 10.4 more than once in any 12 month period, except where the Distributor considers that the total number of Active ICPs under this agreement has increased by more than 20% since that amount was last reviewed or determined.
- (c) The Distributor will not give notice of an Acceptable Security Amount exceeding the Distributor's reasonable estimate (at the time of the notice) of the aggregate amount of Charges (including GST) that are likely to become payable by the Wholesaler in respect of any two month period in the 12 months following that notice, plus any disputed amount withheld by the Wholesaler in respect of a disputed invoice.
- (d) If the Wholesaler has not previously entered into a contract with the Distributor for access to the Network, the Distributor will calculate the Acceptable Security Amount having regard to the Distributor's historical records of the consumption of relevant Consumers, and any bona fide business plan prepared by the Wholesaler in good faith to permit a realistic estimate of the aggregate amount of Charges (including GST) that are likely to become payable by the Wholesaler in respect of any two month period in the forthcoming 12 months.

- (e) The Wholesaler may give notice to the Distributor not more than once in any 12 month period requiring the Distributor to review the Acceptable Security Amount, and following that review the Distributor will determine and give notice of the Acceptable Security Amount in accordance with this clause 10.4. Otherwise, the Distributor has no obligation to monitor or review the Acceptable Security Amount.
- (f) Without limiting clause 10.7, if and whenever the Distributor gives notice increasing the Acceptable Security Amount in accordance with this clause 10.4, the Wholesaler will provide a corresponding increase in the Acceptable Security within 10 Working Days of receiving that notice.

#### 10.5 **Notification obligations**

- (a) Subject to clauses 10.5(b) and 10.5(c), the Wholesaler shall notify the Distributor as soon as reasonably practicable (and in any case within 2 Working Days) if and whenever:
  - (i) the Wholesaler has cause to believe that its financial position is likely to be impaired such that its ability to pay for the Services will be consequently affected; and/or
  - (ii) the Wholesaler becomes aware that a third party provider of Acceptable Security needed to satisfy the Wholesaler's obligations under clause 10.1 no longer holds an Acceptable Credit Rating.

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

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

#### 10.6 **Distributor enquiries**

Where the Distributor has reasonable grounds to suspect that the Wholesaler has failed or is failing to give notice as required under clause 10.5, the Distributor may enquire of the Wholesaler as to whether the Wholesaler is complying with clause 10.5, and the Wholesaler will promptly remedy any breach of clause 10.5. If the Wholesaler is not in fact in breach of clause 10.5, the Wholesaler must respond to

the Distributor in writing within 2 Working Days of the Distributor's enquiry, confirming that this is the case and addressing the Distributor's concerns. Correspondence sent or received by either party under this clause will be deemed to be Confidential Information.

#### 10.7 **Urgent Distributor changes**

- (a) If at any time the Distributor has reasonable grounds to consider that there has been a deterioration in the Wholesaler's financial position such that an Acceptable Credit Rating provided by the Wholesaler may no longer provide sufficient security, then the Distributor may give notice to the Wholesaler outlining those reasonable grounds, and requiring the Wholesaler to provide Acceptable Security to a combined value equal to the Acceptable Security Amount (subject to clause 10.4(c)).
- (b) If at any time the Distributor has reasonable grounds to consider that there has been a deterioration in the financial position of the Wholesaler or any third party providing Acceptable Security on behalf of the Wholesaler, such that the existing Acceptable Security may no longer be sufficient, then the Distributor may give notice to the Wholesaler outlining those reasonable grounds, increasing the Acceptable Security Amount (subject to clause 10.4(c)), and requiring the Wholesaler to provide a corresponding increase in the Acceptable Security.
- (c) The Wholesaler will comply with each notice given under this clause 10.7 within 5 Working Days of receipt. Any failure to do so will be deemed an Event of Default. However, the Wholesaler need not comply with a notice given under this clause 10.7 if within 3 Working Days of receiving that notice the Wholesaler provides the Distributor with evidence demonstrating to the Distributor's reasonable satisfaction that there has not been a deterioration in the financial position of the Wholesaler or any third party sufficient to support a notice under this clause 10.7.
- (d) To avoid doubt, any breach of clause 10.5 or 10.6 will be deemed "reasonable grounds" for the Distributor to give notice under this clause 10.7.

#### 10.8 **Decreases and substitutions**

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

#### 10.9 **Calls on third party security**

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



clause 10. Any breach by the Wholesaler of this clause 10.9 will be deemed an Event of Default.

**10.10 Discharge of third party security**

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

**10.11 Distributor holding of Cash Deposit**

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

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

**10.12 Release on termination**

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

## **PART III: OPERATIONAL REQUIREMENTS**

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### **11 ACCESS TO THE CONSUMER'S PREMISES**

#### **11.1 Rights of entry onto Consumers' Premises**

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

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

#### **11.2 Exercise of access rights**

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

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

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

existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

## 12 **RESPONSIBILITY FOR NETWORK AND OTHER ASSETS**

### 12.1 **Wholesaler's responsibility for interference or damage**

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

### 12.2 **Distributor's responsibility for interference or damage**

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

### 12.3 **Interference with the Network**

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

### 12.4 **Notification of interference or damage**

If the Distributor or Wholesaler 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. If an End Retailer discovers any

interference or damage to the Distributor's equipment or the Consumer's Installation, or evidence of theft of Gas, loss of Gas or interference with the Network, the Wholesaler will procure that the End Retailer notifies the Distributor as soon as it is practicable to do so.

**12.5 Additional Metering Equipment**

- (a) Either party may, and the Distributor agrees the End Retailer may, at its own cost, install and maintain additional Metering Equipment for metering data verification purposes or other purposes, provided that it does not interfere with any other Metering Equipment and any consent to install and maintain the additional Metering Equipment required under this agreement has been given. For the avoidance of doubt, any such consent will not be unreasonably withheld by either party. If a party, or the End Retailer, installing or maintaining its additional Metering Equipment causes damage to the Metering Equipment of the other party, the party, or the End Retailer, causing the damage will meet the cost of making good the damage. This provision is for the benefit of the End Retailer and enforceable by the End Retailer pursuant to section 4 of the Contracts (Privity) Act 1982. This provision may be amended in accordance with the terms of this agreement without the consent of any End Retailer.

**12.6 Safe housing for Distributor's Assets**

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

**12.7 Property rights in the Network**

Subject to clause 20, the Wholesaler will ensure that each End Retailer procures in its Consumer Contracts an acknowledgement by the Consumer that:

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

**12.8 Network work**

The Wholesaler will ensure that each End Retailer notifies the Distributor in writing in advance of the End Retailer undertaking work on the Network, wherever possible no later than 2 Working Days before the work commences. The Distributor or its auditors, advisors or authorised representatives may inspect the work being performed by the End Retailer on the Network to confirm whether the End Retailer is complying with its obligations under this Agreement. The Wholesaler will ensure

that the End Retailer provides reasonable co-operation to the Distributor (and its auditors, advisors and authorised representatives) in respect of such audit.

## 13 CONNECTIONS AND DISCONNECTIONS

### 13.1 Policies

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

### 13.2 Consumer compliance

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

### 13.3 Warranted Persons

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

### 13.4 Distributor's right to disconnect

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

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

**13.5 Costs of Disconnection**

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

## **PART IV: DISPUTES, LIABILITY AND TERMINATION**

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### **14 DISPUTE RESOLUTION PROCEDURE**

#### **14.1 Internal dispute resolution processes**

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

#### **14.2 Right to refer dispute to mediation**

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

#### **14.3 Appointment of mediator**

Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties shall agree on the identity of the mediator or, where they cannot so agree within that timeframe, the mediator shall be appointed by the President (or equivalent) of the New Zealand chapter of LEADR or his or her nominee.

#### **14.4 Conduct of mediation**

In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator. Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement. In all matters relating to the mediation:

- (a) the parties and their representatives will act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
- (b) all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;
- (c) any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
- (d) the costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.



**14.5 Court proceedings**

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

**14.6 No reference to previous mediator or previous mediation**

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

**14.7 Interim relief**

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

**15 LIABILITY**

**15.1 Payments under agreement**

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

**15.2 Categories of Recoverable Loss**

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

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

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

### 15.3 Consequential loss

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

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

### 15.4 Distributor not liable

(a) The Distributor will not be liable to the Wholesaler for:

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

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

- (b) Except where this Agreement specifically entitles an End Retailer to enforce a provision against the Distributor, and without limiting the Distributor's

obligations under this Agreement, the Wholesaler shall ensure that each End Retailer unconditionally and irrevocably releases the Distributor from any and all liability that the Distributor may have to the End Retailer in connection with this agreement and/or any events, acts or omissions connected directly or indirectly with this agreement, except for any liability that cannot lawfully be excluded by contract. The Wholesaler will ensure that each such release is given in writing for the benefit of the Distributor, in a form directly enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

#### 15.5 **Wholesaler not liable**

The Wholesaler will not be liable to the Distributor for:

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

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

#### 15.6 **Limitation of liability**

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

#### 15.7 **Consumer Guarantees Act**

- (a) Subject to clause 20, to the fullest extent permitted by law, the Wholesaler will ensure that each End Retailer excludes from all agreements between the End

Retailer and a Consumer (which, for the avoidance of doubt, includes a purchaser of gas that is not an end user) all warranties, guarantees or obligations in favour of any Consumer, imposed on the Distributor or an End Retailer by the Consumer Guarantees Act 1993 or any other Law, that relate to the supply of Gas by an End Retailer and/or the services to be provided by the Distributor pursuant to this agreement (*Statutory Warranties*).

- (b) To the extent an End Retailer is not permitted by law to contract out of any Statutory Warranties imposed on the End Retailer by the Consumer Guarantees Act 1993 or any other Law (*End Retailer Warranties*), the Distributor will indemnify the End Retailer for any liability the End Retailer has to a Consumer to the extent that such liability arises under any End Retailer Warranties that the End Retailer would not have incurred but for a breach by the Distributor of this agreement, in each case provided that the End Retailer complies with the following procedure:
- (i) as soon as practicable after an End Retailer receives the claim from the Consumer (in any event no later than 10 Working Days after receiving the claim), the End Retailer must give the Distributor notice of the claim, together with as much detail of the event or occurrence giving rise to the claim as is reasonably available to that End Retailer, and the amount for which the End Retailer is seeking to be indemnified;
  - (ii) before settling the claim (and in any event no later than 20 Working Days after receiving the claim), the End Retailer must give the Distributor full details of the event on occurrence giving rise to the claim, together with updated information on the amount for which the End Retailer is seeking to be indemnified; and
  - (iii) the End Retailer must give the Distributor a reasonable opportunity to consider the claim and use all reasonable endeavours to discuss the resolution of the claim in good faith with the Distributor.

However, this clause 15.7(b) will not apply in relation to any Consumer claim which arises at a time when the Distributor is subject to any Law requiring it to indemnify the Wholesaler or the End Retailers for some or all of the liabilities, losses, costs and/or expenses arising from that claim. This clause 15.7(b) is for the benefit of each End Retailer and enforceable by an End Retailer pursuant to section 4 of the Contracts (Privity) Act 1982. This clause 15.7(b) may be amended in accordance with the terms of this agreement without the consent of the End Retailer.

- (c) Where the Consumer on-sells gas to an end-user the Wholesaler must ensure that the End Retailer, as a condition of any agreement between the End Retailer and the Consumer, requires the Consumer to include provisions in all agreements between it and an end-user, excluding all Statutory Warranties to the fullest extent permitted by law.
- (d) In communicating with, or marketing to, current and prospective Consumers, the Wholesaler will not, and will ensure that End Retailers do not, make any express or implied statements that would lead a reasonable consumer to expect that the quality or reliability of the supply of Gas through the Network will be materially higher than

the levels of quality and reliability which the Distributor is contractually obliged to deliver under this agreement.

- (e) To avoid doubt, nothing in this clause affects the rights of any consumer under the Consumer Guarantees Act 1993.

#### 15.8 **Distributor liabilities and Consumer Contracts**

Subject to clause 20, the Wholesaler will ensure that each End Retailer procures in all its Consumer Contracts clear and unambiguous clauses to the effect that, as far as permitted by law:

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

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

- (b) the liability of the Distributor for any claim by a Consumer will not in any circumstances exceed the maximum amount that can be awarded for that claim under the applicable complaints resolution scheme referred to in section 43E of the Gas Act 1992 (or that could be so awarded if the claim was resolved through that complaints resolution scheme), although the End Retailer may include a lower limitation of liability.

#### 15.9 **The Distributor will be indemnified**

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

- (a) any claim against the Distributor by any person (other than the Distributor) with whom the Wholesaler or an End 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 Wholesaler of any of its obligations under this agreement;
  - (ii) the disconnection of any Consumer's Installation or Consumer's Premises, either by the Wholesaler, an End Retailer, or by the Distributor at the Wholesaler's or an End Retailer's request in accordance with this agreement;

- (iii) the termination of this agreement pursuant to a notice by the Wholesaler, except when the notice is the result of a breach by the Distributor;
  - (iv) any failure by the Wholesaler to perform any obligation pursuant to any agreement between the Wholesaler and any End Retailer, Consumer or other third party (or otherwise arising at law);
  - (v) any failure by an End Retailer to perform any obligation pursuant to any agreement between the End Retailer and any Consumer or other third party (or otherwise arising at law); or
  - (vi) any action undertaken by the Distributor under or in connection with this agreement at the request of the Wholesaler or an End Retailer; and
- (b) any action by the Distributor to recover any unpaid charges or interest due and payable under this agreement,

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

**15.10 The Wholesaler will be indemnified**

The Distributor hereby indemnifies and holds harmless the Wholesaler and will keep the Wholesaler 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 Wholesaler arising out of or in connection with:

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

- (b) any action by the Wholesaler to recover any unpaid charges or interest due and payable under this agreement,

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

**15.11 Rights of indemnity**

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

**15.12 Benefits to extend**

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

**16 FORCE MAJEURE**

**16.1 Force Majeure Event**

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

- (a) such failure is caused by:
  - (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
    - (A) due to natural causes, directly or indirectly and exclusively without human intervention, and
    - (B) which could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted;
  - (ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, aircraft, or civil disturbances;
  - (iii) the binding order or requirement of any court, government, local authority or regulator, which the party could not reasonably have avoided;
  - (iv) the partial or entire failure of supply or availability of Gas to the Network; and/or

- (v) any other event or circumstance beyond the control of the party invoking this clause 16.1; and
- (b) such party could not have prevented such failure by the exercise of Good Industry Practice,

that failure shall be deemed to be a "Force Majeure Event" and shall not give rise to any cause of action or liability based on default of the provision. The Wholesaler may not invoke this clause 16.1 where its failure was due to an event or circumstance reasonably within the control of an End Retailer or the failure could have been prevented by the exercise of Good Industry Practice by the End Retailer, and such an event or circumstance will not constitute a "Force Majeure Event".

#### 16.2 **Notice**

If a party becomes aware of a prospect of a forthcoming Force Majeure Event, it must notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 16.1, it must as soon as reasonably practical notify the other party that it is invoking clause 16.1 and the full particulars of the Force Majeure Event relied upon.

#### 16.3 **Avoidance and mitigation**

The party invoking clause 16.1 must:

- (a) demonstrate that it exercised Good Industry Practice to overcome or avoid the Force Majeure Event;
- (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
- (c) consult with the other party on the performance of the obligations referred to in sub clauses (a) and (b) above.

#### 16.4 **No obligation to settle**

Nothing in clause 16.3 is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

### 17 **TERMINATION**

#### 17.1 **For convenience**

- (a) Subject to clauses 17.1(b) and 17.1(c), either party may terminate this agreement on not less than 120 Working Days' notice, but no such termination can take effect at any time before the end of 5 years from the Commencement Date.
- (b) The Distributor will not give a termination notice under clause 17.1(a) unless it has first given notice to the Wholesaler offering to enter into a replacement agreement on the Distributor's then-current standard terms for use of the Network by gas wholesalers (*Replacement Offer*), and at least 40 Working Days have passed since the date of that offer, during which time the offer has remained open for acceptance



by the Wholesaler and the Distributor has made reasonable efforts to be available to discuss the offer with the Wholesaler.

- (c) At any time during the 40 Working Days after the date of the Replacement Offer, unless the Wholesaler has accepted the Replacement Offer or the parties have executed an alternative replacement Use of System Agreement, either party may give notice to the other requiring the parties to enter mediation under the terms of the standard mediation agreement of LEADR New Zealand, with a view to agreeing the terms of a replacement Use of System Agreement. If the parties cannot agree on a mediator within 10 Working Days of receipt of that notice, the mediator will be selected by the then-current Chair of LEADR New Zealand or his or her nominee. Unless the parties agree otherwise, the mediation will be conducted in Wellington. Each party will bear its own costs and expenses in connection with the mediation, and the costs and expenses of the mediator in conducting the mediation will be shared equally by the parties unless the mediator determines otherwise. Either party can terminate the mediation at any time, after consultation with the mediator. Neither party will exercise the termination right in clause 17.1(a) while the mediation is underway. If in the course of mediation the parties agree in full on the terms of a replacement Use of System Agreement, then the parties will promptly execute a Use of System on the terms agreed.

#### 17.2 **For lack of supply**

The Distributor may terminate this agreement on 5 Working Days' notice, if at the time of the notice no End Retailer has supplied any Gas over the Network for a continuous period of 180 Working Days or more. The Wholesaler may terminate this agreement immediately on notice to the Distributor if at the time of the notice no End Retailer is contracted to supply Gas to any person through the Network.

#### 17.3 **For Force Majeure**

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

#### 17.4 **For Events of Default**

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

- (c) The Distributor may terminate this agreement immediately on notice to the Wholesaler if the Wholesaler undergoes an Event of Default pursuant to clause 10.9 or 10.11(c), and the Event of Default has not been rectified within 5 Working Days of the Distributor giving notice to the Wholesaler requesting that it be rectified.

**17.5 For incompatibility with Law**

- (a) If the Distributor or Wholesaler comes to the view (supported by a legal opinion from an independent Queen's Counsel) that one or more of the requirements imposed on it by this agreement are contrary to Law (*Unlawful Requirement*), then that party may give notice to the other party, providing reasonable details of the Unlawful Requirement and its impact on the first party.
- (b) Promptly following receipt of a notice under paragraph (a) above, the parties will meet with a view to agreeing one or more amendments to this agreement to address the Unlawful Requirements. Neither party will unreasonably withhold or delay its agreement to any amendments necessary for that purpose, although to avoid doubt a party need not agree to any amendment that would require it to assume any material risk, cost or other burden that it would not also bear if the Unlawful Requirement was not contrary to Law.
- (c) Either party may terminate this agreement immediately on not less than 5 Working Days' notice to the other, if at the time of that notice: the terminating party is exposed (or is likely to be exposed) to a material risk, cost or other burden as a result of an Unlawful Requirement; not less than 30 Working Days have passed since receipt of a notice under paragraph (a) in respect of that Unlawful Requirement; the parties have yet to agree amendments to this agreement addressing the Unlawful Requirement to their mutual satisfaction; and the terminating party is not in breach of paragraph (b) above. Neither party will have any liability to the other by reason of a termination under this clause 17.5, whether under clause 15 or otherwise.

**17.6 For Unintended Regulatory Consequences**

- (a) The parties expect that in performing the roles and responsibilities contemplated in this agreement, the Distributor will be classified under the Gas Act 1992 and associated rules and regulations as the "distributor" or "gas distributor", and the End Retailer will be classified under the Gas Act 1992 and associated regulations as the "retailer" or "trader".
- (b) If the Distributor or Wholesaler comes to the view (supported by a legal opinion from an independent Queen's Counsel) that the Gas Act 1992 or associated rules or regulations apply in a manner that is inconsistent with the parties' expectations as described in paragraph (a) above (*Unintended Regulatory Consequence*), that party may give notice to the other party, providing reasonable details of the Unintended Regulatory Consequence and its impact on the first party.
- (c) Promptly following receipt of a notice under paragraph (b) above, the parties will meet with a view to agreeing one or more amendments to this agreement to address the Unintended Regulatory Consequence. Neither party will unreasonably withhold or delay its agreement to any amendments necessary for that purpose, although to avoid doubt a party need not agree to any amendment that would

require it to assume any material risk, cost or other burden that it would not also bear if the Gas Act 1992 and associated rules and regulations applied as expected under paragraph (a).

- (d) A party may terminate this agreement immediately on not less than 5 Working Days' notice to the other, if at the time of that notice: the terminating party is exposed (or is likely to be exposed) to a material risk, cost or other burden as a result of an Unintended Regulatory Consequence; not less than 30 Working Days have passed since receipt of a notice under paragraph (b) in respect of that Unintended Regulatory Consequence; the parties have yet to agree amendments to this agreement addressing the Unintended Regulatory Consequence to their mutual satisfaction; and the terminating party is not in breach of paragraph (c) above. Neither party will have any liability to the other by reason of a termination under this clause 17.6, whether under clause 15 or otherwise.

#### 17.7 **Effect of termination**

- (a) Termination or expiry of this agreement will not affect any rights accrued up to the time of, or as a result of, that termination or expiry.
- (b) Where this agreement is terminated by the Distributor for any reason, the Wholesaler will remain liable for any Charges that arise in relation to connected Consumers, except where the relevant ICP has been switched to another Gas retailer, or the Distributor has received a notice requesting disconnection of the relevant ICP. The Wholesaler will ensure that each End Retailer procure in its agreements with Consumers the right to terminate supply of Gas by the End Retailer through the Network to the Consumer upon termination of this agreement.
- (c) On the effective date of termination, unless this agreement is replaced by an Alternative Contract, each party must have returned or certified the destruction of the other party's Confidential Information, and the parties will cease to provide any services to each other under this agreement.
- (d) Unless this agreement is replaced by an Alternative Contract, any terms of this agreement which expressly or by their nature extend beyond the expiry or termination of this agreement will remain in effect until fulfilled.
- (e) Where the Distributor terminates this agreement under clause 17.5 or 17.6, it will, at the same time as giving its notice of termination, invite each End Retailer to enter into an agreement with the Distributor on the terms of the most recent Alternative Contract.

## **PART V: OTHER MATTERS**

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### **18 CONFIDENTIALITY**

#### **18.1 Commitment to preserve confidentiality**

Each party to this agreement undertakes that it shall:

- (a) preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose the existence of any of the other party's Confidential Information except as provided for in clause 18.2; and
- (b) only use the other party's Confidential Information for the purposes for which it is provided, and otherwise as expressly permitted by this agreement.

#### **18.2 Disclosure of Confidential Information**

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

- (a) where the parties agree in writing to the disclosure of the information, or in the case of information originally provided by an End Retailer, where the End Retailer agrees in writing to the disclosure of the information;
- (b) where disclosure is expressly provided for under the terms of this agreement;
- (c) where at the time of receipt by the party the Confidential Information is in the public domain or where, after the time of receipt by either party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause 18 or a breach by any other person of that person's obligation of confidence);
- (d) where either party is required to disclose Confidential Information:
  - (i) by any Law, or any Relevant Authority;
  - (ii) by any judicial or other arbitration process, for the purposes of that process;
  - (iii) by the regulations of any stock exchange upon which the share capital of either party is from time to time listed or dealt in;
  - (iv) to a shareholding Minister (or advisors acting on his or her behalf), if the disclosing party is a "State enterprise" as defined in the State Owned Enterprises Act 1986; or
  - (v) to the Crown as shareholder, if the disclosing party is a "mixed ownership model company" as defined in the Public Finance Act 1989
- (e) where the Confidential Information is released to the employees, directors, agents or advisors of the party provided that:
  - (i) the information is disseminated only on a "need to know" basis; and

- (ii) recipients of the Confidential Information shall be made fully aware of the party's obligations of confidence in relation thereto; and
  - (iii) any copies of the information clearly identify it as Confidential Information; and/or
- (f) where the Confidential Information is released to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Wholesaler, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party on terms reflecting the confidentiality requirements of this agreement.

### 18.3 **Unauthorised disclosure**

For the avoidance of doubt:

- (a) a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors or by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 18.2(f); and
- (b) the Wholesaler will be responsible for any unauthorised disclosure of Confidential Information made by an End Retailer; and
- (c) as between the Wholesaler and the Distributor, an End Retailer's Confidential Information will be treated as Confidential Information of the Wholesaler, and the Distributor will be responsible for any unauthorised disclosure of that Confidential Information by the Distributor (or by any party for which the Distributor is responsible under paragraph (a) above) accordingly.

## 19 **AMENDMENTS TO THIS AGREEMENT**

### 19.1 **Overview**

This agreement may be amended as follows:

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

- (f) in any case, any provision of this agreement may be amended by agreement between the parties.

### 19.2 **Distributor may change Variable Provisions**

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

- (a) the change is not inconsistent with Good Industry Practice; and
- (b) the change will not constitute a breach of clause 3.1;
- (c) the Distributor has made the proposed change available to the Wholesaler for consultation, allowing not less than 20 Working Days for a response;
- (d) the Distributor has supplied the Wholesaler with a summary of any submissions received as a result of consultation with other Gas retailers, along with the Distributor's responses to those submissions, and a clear indication of whether the majority of retailers (by number of ICPs supplied on the Network) support or do not oppose the amendment, although the level of support will not affect the Distributor's right to implement the change; and
- (e) if during the period of 20 Working Days above, the Wholesaler provides reasonable evidence that it cannot comply with the proposed change without making material changes to its systems or processes, the Distributor will delay the implementation of the change until at least 3 months after it notifies the finalised change to the Wholesaler under this clause 19.2.

At the expiry of the applicable notice period, this agreement will be deemed to be amended to reflect the updated Variable Provisions notified by the Distributor. To the extent the Variable Provisions conflict with any other express provisions of this agreement, the latter will prevail.

### 19.3 **Negotiation process**

- (a) Either party may from time to time request one or more changes to any part of this agreement, by giving notice to the other explaining the proposed changes, setting out the reasons for the request, and including a draft amendment to this agreement. The parties will enter into good faith negotiations for a reasonable period in respect of those changes.
- (b) If the proposed change is required by Law or any mandatory industry rules or protocols which are binding on both parties (or binding on both the Distributor and End Retailers) at the relevant time, and the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under paragraph (a) above, then either party may give notice to the other referring the change to be determined by arbitration, in which case:
  - (i) the arbitration will be conducted before a single arbitrator in Wellington;

- (ii) the arbitrator will be agreed between the Parties or, failing agreement within 10 Working Days of the referral to arbitration, appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand;
  - (iii) the arbitration will be conducted in accordance with the Arbitration Act 1996; and
  - (iv) the arbitrator will ask each party to submit its best proposal for the change, and will select the proposal which the arbitrator considers is the most fair, reasonable and consistent with Good Industry Practice, and from the date of the arbitrator's decision the agreement will be deemed to be amended accordingly.
- (c) The Wholesaler will be deemed to have accepted a change or addition to this agreement requested by the Distributor under this clause 19.3, so long as the change will not constitute a breach of clause 3.1, and provided that:
- (i) substantially the same change or addition has been incorporated into contracts for supply of Line Function Services between the Distributor and one or more retailers who at that time are the responsible retailers at not less than 66% of the ICPs on the Network (although the change or addition to this agreement may include any differences reasonably required by the Distributor to reflect the Wholesaler's role as a wholesaler rather than a retailer); or
  - (ii) the change or addition is expressed to come into effect only once the requirements of paragraph (i) above have been satisfied.

#### 19.4 **Minor changes**

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

## 20 **CONSUMER CONTRACTS**

### 20.1 **End Retailer to include required provisions**

- (a) In the case of any Consumer Contract entered into prior to the Commencement Date, the Wholesaler will ensure that each End Retailer either:
- (i) issue a unilateral variation to those agreements within 12 months after the Commencement Date, to include the provisions required to be included in such agreements by this agreement, or provisions with substantially the same effect, as summarised in Schedule 3: Requirements for Consumer Contracts; or
  - (ii) where the End Retailer is unable to unilaterally vary those agreements in accordance with paragraph (i) above, ensure the End Retailer will use all reasonable endeavours to obtain at the next review date of the agreement

between the End Retailer and the Consumer, the agreement of the Consumer to vary that agreement to include the provisions required to be included in such agreements by this agreement, or provisions with substantially the same effect, as summarised in Schedule 3: Requirements for Consumer Contracts.

- (b) In the case of any agreement between an End Retailer and a Consumer entered into after the Commencement Date, the Wholesaler will ensure that the End Retailer includes the provisions required to be included in such agreements by this agreement, as summarised in Schedule 3: Requirements for Consumer Contracts. However, to the extent that the End Retailer's applicable standard terms and conditions did not comply with this clause 20.1(b) as at the Commencement Date, the Wholesaler will not be obliged to ensure the End Retailer remedies that non-compliance until the date that is 12 months after the Commencement Date.
- (c) The Wholesaler will ensure that all provisions which this agreement requires that the End Retailer include in its agreements with Consumers are expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.

## 20.2 **Changes during term**

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

## 21 **NOTICES**

### 21.1 **Delivery**

Any notice, consent, permission, approval, agreement, request or instruction given by a party for the purposes of this agreement will be of no effect unless given in writing and personally delivered, posted or forwarded by email to:

- (a) where a party is a recipient, the address for notice set out on the execution page of this agreement or to such other address as the recipient party may notify from time to time; and



- (b) where an End Retailer is a recipient, the address for notice set out on the execution page of this agreement (where relevant) or to such other address as the Wholesaler may notify from time to time.

#### 21.2 **Deemed receipt**

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

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

Any notice that is received after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

## 22 **INFORMATION, AUDIT AND VERIFICATION**

### 22.1 **Protocols for exchanging information**

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

### 22.2 **Consumer information**

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

### 22.3 **Auditing information provided**

To enable either party (*Verifier*) to verify the accuracy of information provided to it by the other party (*Provider*), the Provider will allow the Verifier and its agents reasonable access to the Provider's books and records, including (where the Wholesaler is the Provider) records of metering or consumption data (collectively, *Records*) to the extent that those Records relate to the obligations of the Provider under this agreement. Access to such Records will be given at all reasonable times so long as the Verifier has given the Provider not less than 10 Working Days' prior notice. For the purposes of this clause 22.3, where the Distributor is the Verifier, the Wholesaler shall also ensure that the Verifier and its agents have reasonable access to the books and records of the End Retailers (including, for the avoidance of doubt, the Records).

#### 22.4 **Limitations on the Verifier**

In relation to its review of the Records pursuant to clause 22.3, the Verifier will not:

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

#### 22.5 **Independent Auditor**

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

#### 22.6 **Provider must co-operate**

The Provider will provide, and the Wholesaler will ensure that the End Retailer will provide, reasonable co-operation with the Verifier or the Auditor (as the case may be) in its review of the Provider's or End Retailers' (as relevant) Records under this clauses 22.3, 22.4 and 22.5, and will ensure that the Records are readily accessible and readable.

### 23 **MISCELLANEOUS**

#### 23.1 **No implied warranties**

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

#### 23.2 **No Waiver**

Except where a party has signed an express written waiver of a right under this agreement, no delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.

**23.3 Contract privity**

Except where this agreement specifically states otherwise, this agreement is not intended to be enforceable by any person (including, for the avoidance of doubt, an End Retailer) other than the Wholesaler and Distributor.

**23.4 Entire agreement**

This agreement records the entire agreement, and prevails over any earlier agreement concerning its subject matter.

**23.5 No assignment**

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

**23.6 Severance**

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

**24 DEFINITIONS AND CONSTRUCTION**

**24.1 Defined terms**

In this agreement, unless the context otherwise requires:

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

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

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

*Acceptable Security* means, at the Wholesaler's option:

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

(c) any combination of (a) and (b) above.

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

*Active ICP* means an ICP which has a Registry status of "Active-Contracted" or "Active-Vacant" and for which an End Retailer is the "responsible retailer" under the Gas (Switching Arrangements) Rules 2008.

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

*Alternative Contract* has the meaning given in clause 3.2.

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

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

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

*Change of Control* in respect of an entity, means:

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

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

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

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

- (a) information that is publicly available, other than by way of breach of the confidentiality obligations under this agreement;
- (b) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;

- (c) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence;
- (d) reports prepared in accordance with clause 5;
- (e) the existence and terms of this agreement.

For the purposes of this definition, information provided by an End Retailer to the Distributor will be treated as if it has been provided by the Wholesaler to the Distributor, and information provided by the Distributor to an End Retailer will be treated as if it has been provided by the Distributor to the Wholesaler.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Dispute* has the meaning given to it in clause 14.1.

*Distribution Services* means the services described in clause 1.2.

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

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

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

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

*End Retailers* means the Gas retailers listed as 'end retailers' on the execution page of this agreement, as such list is updated from time to time by the written agreement of the parties or in accordance with clause 1.5.

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

*Event of Default:*

- (a) in relation to either party, means that party:
  - (i) undergoing an Insolvency Event;
  - (ii) committing a material breach and failing to remedy it within 5 Working Days following receipt of notice from the other party pointing out the breach and stating that it regards the breach as material, except where that party is currently engaged in ongoing efforts to remedy the breach which are reasonably satisfactory to the other party; and/or
  - (iii) committing a breach (whether material or not) and failing to remedy it within 5 Working Days following receipt of notice from the other party pointing out the breach, in circumstances where that party has already committed two or more breaches (whether material or not) during the immediately preceding 12 months and the cumulative effect of all these breaches on the other party is material; and
- (b) in relation to the Wholesaler only, means the Wholesaler:
  - (i) committing a material breach of clause 10;
  - (ii) undergoing or suffering any event or circumstance which this agreement deems to be an Event of Default by the Wholesaler; and/or
  - (iii) failing to pay an amount due and payable under this agreement (and not validly withheld under clause 9.11) that exceeds the greater of \$100,000 or 20% of the actual Charges payable by the Wholesaler for the month preceding the month in which the outstanding amount fell due.

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

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

*Gas* means reticulated natural gas.

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

*Good Industry Practice* means:

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

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

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

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

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

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

*Insolvency Event* means in relation to a party:

- (a) the party has a receiver, administrator or manager or similar official appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) the party is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, a statutory manager is appointed or any step is taken with a view to any such appointment under that Act or any other person is appointed to manage any of that party's affairs;
- (c) any step is taken to levy or enforce a security interest or to distrain, attach or execute any legal process against the whole or any substantial part of that party's property;



- (d) the party is unable to pay its debts as they fall due, is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due or fails to comply with a statutory demand under section 289 of the Companies Act 1993;
- (e) the party proposes or makes a compromise, arrangement or composition with or for the benefit of its creditors or proposes an amalgamation (except with the prior consent of the other party);
- (f) a liquidator is appointed, an order is made, resolution is passed, notice is given, an application or petition is filed in any court or any other step is taken by any person, for the dissolution, winding up or liquidation of that party, or any meeting is convened for the purposes of considering taking any of these steps; and/or
- (g) being a company, the party is removed from the register of companies (otherwise than as a consequence of an amalgamation which the other party has provided its consent to).

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

*ISA* means an "Individual Site Agreement" between the Distributor and a retailer regulating one or more aspects of the charges to be billed to the retailer in respect of a site or sites of a single end customer.

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

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

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

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

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

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

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

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

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

*Network* means lines, equipment and plant owned by the Distributor that are used to transport Gas between Injection Points and ICPs.

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

*Permanent Disconnection* means the disconnection of an ICP where the GMS and/or service riser are to be permanently removed from the site.

*Performance Report* has the meaning set out in clause 5.

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

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

*Price Book* means the document(s) referred to in Schedule 2: Price Book, as amended or replaced from time to time by the Distributor in accordance with this agreement.

*Price Change* means:

- (a) an amendment to the rates and/or prices in the Price Book;
- (b) an amendment to the definition in the Price Book of any costs or charges which the Distributor is entitled to pass through to the Wholesaler;
- (c) an amendment to any pricing methodology used to determine the prices in the Price Book;
- (d) an amendment to the definition of any Load Group, or the eligibility criteria for any Load Group;

- (e) the creation of a new Load Group, and/or the closure and deletion of an existing Load Group; and/or
- (f) any other amendment to the Price Book (including the replacement of the Price Book),

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

*Publish* means to disclose information by making the information available on the Distributor's website, notifying the Wholesaler that the information has been disclosed on the website and sending the information in hardcopy to the Wholesaler.

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

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

*Re-energise* means to Energise an ICP after it has been De-energised.

*Registry* means the central database of ICP information maintained in accordance with the Gas (Switching Arrangements) Rules 2008.

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

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

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

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

*Service Interruption Communications Policies* means the policies referred to in Schedule 4: Service Interruption Communications Policies and updated and replaced by the Distributor from time to time in accordance with this agreement, setting out requirements and procedures for communications between the Distributor, the Wholesaler and End Retailers, and between the Wholesaler, End Retailers and Consumers, in relation to Service Interruptions affecting the Network. *Service Level* means the required level of a Service Measure as set out in Schedule 1.

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

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

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

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

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

*Temporary Disconnection* means the disconnection of an ICP where there is no change to the status on the Registry.

*Transitional Disconnection* means the disconnection of an ICP where the status in the Registry is changed to Inactive-Transitional, but excludes a Permanent Disconnection.

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

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

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

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

*Variable Provisions* means:

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

*Warranted Person* means an individual meeting the relevant qualification, certification and other requirements for carrying out the type of work in question, as per the *New Zealand Gas Industry Certificate of Competency Criteria and Framework*

for Reticulated Gas (Natural Gas and/or LPG) Distribution & Gas Measurement System (GMS). As at the date of this agreement, the most current version of these requirements is dated April 2011.

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

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

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

## 24.2 **Construction**

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

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

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

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

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

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

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

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

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

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

*Schedules*: the schedules form part of this agreement;

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

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

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

### **SCHEDULE 1: SERVICE STANDARDS**

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

## Service Standards

Service Measure	Service Level	Service Guarantee	Service Performance Reporting	Measure Frequency of Reporting
Availability of Supply	Subject to the terms of this agreement, the Distributor will endeavour in accordance with Good Industry Practice to maintain continuous supply 24 hours, 7 days each week to every Active ICP.	NIL	SAIDI	As per Distributor's reporting obligations under applicable Laws
Restoration of Supply: Unplanned Service Interruptions	The Distributor to endeavour in accordance with Good Industry Practice to restore supply: <ul style="list-style-type: none"> <li>to Urban<sup>1</sup> areas affected, within 3 hours of notification</li> <li>to Rural<sup>2</sup> areas affected, within 6 hours of notification</li> </ul>	NIL	As per Service Interruption Communications Policies for Unplanned Service Interruptions	As per Service Interruption Communications Policies for Unplanned Service Interruptions
Safety management systems	The Distributor to maintain a safety management system that complies with NZS 7901	NIL	Audit certificate for safety management systems	Current certificate available on website
Oderant monitoring*	The Distributor to provide the Wholesaler with monthly data on odorant levels, as compiled by the Distributor for its own internal purposes, to at least the same level of detail and completeness as generally provided by Distributor to retailers during the 12 months prior to the date of this agreement.	NIL	As determined by Distributor from time to time in accordance with Good Industry Practice	Monthly
Notification of odorant outside specification*	The Distributor to notify the Wholesaler within 24 hours in response to odorant monitoring indicating odorant levels being outside the limits specified in NZS 5263  The Wholesaler will, and will ensure that the End Retailers will, notify the Distributor within 24 hours if it suspects odorant levels are outside the limits specified in NZS 5263	NIL	None	None

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

<sup>2</sup> "Rural" refers to a location that is not Urban.



Service Measure	Service Level	Service Guarantee	Service Performance Reporting	Measure Frequency of Reporting
Notification of non-specification gas*	<p>The Distributor to notify the Wholesaler within 3 hours if it is aware that non-specification gas has entered a gas network</p> <p>The Wholesaler will, and will ensure that the End Retailers will, notify the Distributor with 3 hours if it suspects that non-specification gas has entered a gas network</p>	NIL	None	None
Notification of over pressure event*	The Distributor to notify the Wholesaler within 3 hours if it is aware that the gas network as operated above the network's designated operating pressure range (defined as Low, Medium or Intermediate pressure per industry standards)	NIL	None	None
Notification of serious harm or significant property damage	The Distributor to notify the Wholesaler within 3 hours of incidents resulting in serious harm or significant property damage as defined by the Gas Act. The Distributor to provide the Wholesaler with a copy of associated reports as required by the Gas Act.	NIL	None	None
Unplanned Service Interruption communication	Distributor to comply with Service Interruption Communications Policies for Unplanned Service Interruptions	NIL	As per Service Interruption Communications Policies for Unplanned Service Interruptions	As per Service Interruption Communications Policies for Unplanned Service Interruptions
Notification of Planned Service Interruption	Distributor to comply with Service Interruption Communications Policies for Planned Service Interruptions	NIL	As per Service Interruption Communications Policies for Planned Service Interruptions	As per Service Interruption Communications Policies for Planned Service Interruptions
Consumer Complaints	Both parties will participate in the dispute resolution scheme referred to in section 43E of the Gas Act 1992 and work together to ensure compliance with all timeframes set out in the rules of that scheme.	NIL	Not applicable	Not applicable

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

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

## SCHEDULE 2: PRICE BOOK

### 1 INCORPORATION

- 1.1 As at the date of this agreement, the initial Price Book is the document titled "Powerco Gas Pricing – Distribution Services"<sup>3</sup> with an effective date of [REDACTED], provided that for the purposes of this agreement the Price Book shall be read subject to and in accordance with this clause 1.
- 1.2 Except as otherwise specified in the remainder of this clause 1, a reference in the Price Book to the "Retailer" shall be a reference to the Wholesaler.
- 1.3 The Wholesaler is responsible for paying Charges accumulated in accordance with the Price Book, but the provisions of the Price Book governing the calculation and accumulation of the Charges will be applied as if each reference to the "Retailer" included a reference to each End Retailer. For example, a Service requested by and provided to an End Retailer will give rise to Charges payable by the Wholesaler.
- 1.4 In paragraphs 1.3.13 (e) and 3.1.3 of the Price Book, each reference to "the Retailer" shall be a reference to the relevant End Retailer.
- 1.5 The Wholesaler shall ensure that each End Retailer complies with the requirements imposed on the "Retailer" in paragraphs 1.3.11(b), 1.3.12, 1.3.13 of the Price Book.
- 1.6 Paragraph 1.3.15(a) of the Price Book is amended to read: "Parties involved in the Gas Retailer Switching Process will comply with all requirements of the Switching Rules and the Wholesaler will ensure that all End Retailers involved in the Gas Switching Process comply with all requirements of the Switching Rules".
- 1.7 Each reference in the Price Book to a "responsible retailer" (with or without initial capital letters) will include a reference to any End Retailer who is for the time being the "responsible retailer" for the relevant ICP, although the Wholesaler will discharge any payment obligations which the Price Book assigns to the "responsible retailer", and will ensure that the End Retailer in question complies with all other obligations which the Price Book assigns to the "responsible retailer".
- 1.8 In the "Non-Network Fault Callout Fee" in paragraph 3.1.1 of the Price Book the reference to "Retailer" shall be a reference to "the Wholesaler or End Retailer".
- 1.9 Paragraph 3.1.2 of the Price Book is amended to read: "All Non-Network Fault work, or Wholesaler, End Retailer or End-Customer services not listed above will be charged to the Wholesaler on a time and materials basis at market rates as determined by the Distributor at its sole discretion (and the determination of the rates shall be final and conclusive as between the Wholesaler and the Distributor). Any contracting work for which the Retailer, End Retailer or End-Consumer engages an independent contractor will be at the sole responsibility of, and at the sole cost of, the Wholesaler."

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<sup>3</sup> As at the date of this Agreement, available at [REDACTED]

- 1.10 All references in the Price Book to the "ISA" shall be removed.
- 1.11 The Wholesaler will play the role of the "Retailer" contemplated in paragraph 5 of the Price Book.
- 1.12 Subject to the other provisions of this clause 1, the Price Book will be read with such other changes as are necessary to give effect to the parties' intention that the Wholesaler will pay for all Charges that would be billable to each End Retailer, and will ensure the performance of all obligations that would be imposed on each End Retailer, if the End Retailer was a "Retailer" who was party to a "Network Agreement" as referred to in the Price Book.

## 2 **TRANSITIONAL PROVISIONS**

### **Overview**

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

### **Network definition**

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

### **Load Group changes**

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

## 3 **AMENDMENTS**

Powerco may amend this Schedule 2 in the same manner and to the same extent as Powerco is entitled to amend the Price Book, and any such amendment will be treated as a Price Change for the purposes of the agreement.

**SCHEDULE 3: REQUIREMENTS FOR CONSUMER CONTRACTS**

This Schedule summarises the obligations which the Wholesaler must ensure are included by End Retailers in every agreement for the supply and transportation of Gas entered into between an End Retailer and a Consumer.

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

#### **SCHEDULE 4: SERVICE INTERRUPTION COMMUNICATIONS POLICIES**

As at the date of this agreement, the initial Service Interruption Communications Policies are set out in the document titled "Service Interruption Communications Policies" attached to this Schedule, with an effective date of [REDACTED].

For the purposes of this agreement the Service Interruption Communications Policies shall be read so that, in the Service Interruption Communications Policies, a reference to the "Retailer" shall be a reference to each affected End Retailer, and the Wholesaler will ensure that each End Retailer complies with the Service Interruption Communications Policies accordingly.

Powerco will be entitled to amend this Schedule 4 in the same manner and to the same extent as Powerco is entitled to amend the Service Interruption Communications Policies.

**Service Interruption Communications Policies**  
**Date [ ]**

**[Policy]**

### **SCHEDULE 5: CONNECTION POLICIES**

As at the date of this agreement, the initial Connection Policies are set out in the document titled "Connection Policies" attached to this Schedule, with an effective date of [REDACTED].

For the purposes of this agreement, the Connection Policies shall be read as follows:

- 1 Except as otherwise specified in this Schedule 5, a reference in the Connection Policies to the "Retailer" (either specifically or as a "party") shall be a reference to each relevant End Retailer, and the Wholesaler shall procure that each End Retailer complies with the Connection Policies accordingly.
- 2 The Wholesaler (as distinct from an End Retailer) must not carry out any connections, capacity changes, Disconnections or Reconnections on the Network.
- 3 Nothing in this agreement authorises the Wholesaler or its agents to remove or interfere with GSM assets where this is not otherwise authorised under any other agreement between the Distributor and the Wholesaler.

Powerco will be entitled to amend this Schedule 5 in the same manner and to the same extent as Powerco is entitled to amend the Connection Policies.



**Connection Policies**

**Date [ ]**

**[Policy]**

## **SCHEDULE 6: MANAGEMENT OF CRITICAL CONTINGENCIES AND MAJOR NETWORK EMERGENCIES**

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

- (f) keep the relevant End 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 relevant End Retailer as soon as practically possible of new information becoming available that would likely change the message to that End Retailer's customers;
    - (iii) providing a status update regularly (as agreed in the initial or subsequent conference call meetings);
    - (iv) providing notification to the Wholesaler when the Network is fully restored and back to normal operation;
  - (g) keep the public informed of developments:
    - (i) for Critical Contingency events, following termination of a Critical Contingency where the curtailed demand or loss of supply is more widespread than curtailment bands 3-5 and band 7 and requires coordination of resources to restore supply to Consumers' Installations (including the relighting of pilots, if applicable);
    - (ii) during other emergency events, throughout the period of the emergency until supply is restored to all Consumers' Installations (including the relighting of pilots, if applicable).
- 3 The Distributor and the Wholesaler will maintain, and the Wholesaler will ensure that each End Retailer maintains, emergency management plans outlining the responses and actions likely to be taken when handling Critical Contingencies and other gas supply emergencies. The plan will include demand curtailment and restoration principles, actions required, emergency liaison and contacts, and take into account the Critical Contingency Regulations and associated plans and guides (CCO communications plan, CCO information guide, transmission system owner critical contingency management plans).
- 4 The End Retailers have certain obligations under the Critical Contingency Regulations to allocate consumers to curtailment bands, while the Distributor has responsibility for maintaining the curtailment band information for each ICP on the Registry. The Wholesaler will ensure that the End Retailers designate consumers as critical care, essential services, critical processing and electricity supply consumers in accordance with the Critical Contingency Regulations and the Critical Contingency Designations Guidelines issued by Gas Industry Company Limited. In the event the Distributor disagrees with any designation on the Registry, the Distributor has the right to determine the final designation to preserve consistency across retailers and equitable treatment of consumers, subject to Regulation 58 of the Critical

Contingency Regulations. The Distributor will have regard to the Critical Contingency Regulations and any associated guidelines issued by each Relevant Authority.

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