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ORION NEW ZEALAND LIMITED

TERMS AND CONDITIONS OF PROVIDING DELIVERY SERVICES TO MAJOR CUSTOMERS



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TERMS AND CONDITIONS OF PROVIDING DELIVERY SERVICES TO MAJOR CUSTOMERS

1 DEFINITIONS AND CONSTRUCTION

1.1 In these terms and conditions, unless the context otherwise requires:

“*Bank Base Rate*” means the 90-day Commercial Bill Rate as published by Reuters Press Agency and applying at 10.30 am on the day of calculation;

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

“*Charges*” means the charges payable under these terms and conditions to the Distributor for the Delivery Services which are currently set out in the Distributor’s schedule of delivery charges as issued from time to time;

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

“*Commencement Date*” means the date that the Customer commences receiving Delivery Services from the Distributor;

“*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, excluding:

- information known to the other party prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party; and
- information obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the first party under an obligation of confidence;

“*Connection Services*” means the Disconnection and Reconnection of the Customer’s Installation to the Distribution Network;

“*Conveyance Agreement*” means an agreement between the Distributor and the Electricity Retailer which allows the Electricity Retailer to sell electricity, delivered over the Distribution Network, to the Customer;

“*Customer*” means any person at a Major Customer Connection who has contracted with the Electricity Retailer for the supply of electricity which necessitates use of the Distribution Network to convey the electricity to the Customer's Installation, and who purchases Delivery Services from the Distributor under the Terms and Conditions of Providing Delivery Services to Major Customers with Orion.;

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

“*Customer's Network Connection Point*” or “*Connection*” means each point of connection at which a supply of electricity may flow between the Distribution Network and the Customer's Installation as defined by the Distributor;

“*Customer's Premises*” means the land and buildings owned, occupied or managed by the Customer the subject of the Connection, and any land over which the Customer has an easement or right to pass electricity;

“*Delivery*” means the transportation of electrical energy at 50 Hz to the Customer via the Distribution Network;

“*Delivery Services*” means the provision of Line Function Services;

“*Disconnection*” means the removal of a fuse or link or the opening of a switch to prevent further Delivery from the Connection;

“*Distributor*” means Orion New Zealand Limited and its successors and permitted assigns.

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

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

“Electricity Retailer” means the person selling or intending to sell electricity to the Customer.

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

“Force Majeure” means any event or circumstance which is beyond the reasonable control of either party and which could not have been prevented by a party complying with Good Industry Practice, and which results in or causes the failure of that party to perform any of its obligations under these terms and conditions including but not limited to acts of god, strike, lock-out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, lack of adequate fuel resources, explosion, fault or failure of any plant, apparatus or equipment, governmental restraint, act of parliament, other legislation or bylaw, or the failure of any third party, including Transpower to inject sufficient electricity into the Distribution Network for its proper operation provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that party;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced distributor engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time;

“Line Function Services” is as defined in the Electricity Act 1992. In the context of these terms and conditions; Line Function Services includes the responsibility for procuring contracts with Transpower for the connection of the Distributor’s Network to Transpower’s Grid, the allocation of the transmission charges, the provision of a Load Management Service and the allocation of Losses incurred during Delivery;

“*Load Management Service*” means providing a signal for the purpose of reducing or interrupting Delivery to a part of the Customer’s Installation, including as an example, but without limitation, Delivery to a water heater, on a basis previously agreed between the Customer and Distributor and as appropriate to the Load Management Service selected by the Customer;

“*Losses*” means electricity unaccounted for on the Distribution Network, being the difference between the sum of the electricity delivered to the Distributor measured at the Network Supply Points and the sum of the electricity measured or calculated as delivered to all Connections;

“*Loss Factor*” means the ratio of electricity injected into the network to the corresponding electricity delivered from the network at a Connection;

“*Major Customer Connection*” means a connection to the Distribution Network classified as a major customer connection as advised by the Distributor from time to time.

“*MARIA*” means the “Metering and Reconciliation Information Agreement” administered by The Marketplace Company Limited (M-Co) for the purpose of assigning electricity purchased by Electricity Retailers;

“*Metering Installation*” has the same meaning as attributed to that term in MARIA and means any apparatus for the purpose of measuring the quantity of electricity Delivered through a Connection, but for the purposes of this definition shall exclude current and voltage transformers, wiring connections, test terminals and panels considered to be Fittings owned by the Customer or the Distributor;

“*National Reconciliation Manager (NRM)*” has the same meaning as that attributed to the term in MARIA;

“*Network Code*” means the relevant standards, issued by the Distributor and amended by the Distributor from time to time which set out the standards, in accordance with Good Industry Practice, which must be met by the Customer’s Installation for continuing connection to the Distribution Network, and other related matters;

“*Network Supply Points*” means the points of connection between the Distribution Network and Transpower’s Grid or any other distribution network where electricity is injected into the Distribution Network;

“*NZEM*” means the New Zealand Electricity Market;

“*Other Customer*” means any other person, whether an end use customer or an electricity retailer who purchases or wishes to purchase Delivery Services from the Distributor;

“*Performance Targets*” means those targets set out in Schedule B;

“*Reconnection*” means the reinstatement of a fuse or link or the closing of a switch to allow further Delivery from the established Connection;

“*Transpower*” means Transpower New Zealand Limited its successors and assigns.

“*Transpower’s Grid*” means the electricity transmission system owned and operated by Transpower.

- 1.2 Clause and other headings are for ease of reference only.
- 1.3 Any reference in these terms and conditions to any gender includes all genders and a reference to the singular includes the plural and vice versa.
- 1.4 References to Clauses and Schedules are references to clauses of and schedules to these terms and conditions.
- 1.5 Any reference in these terms and conditions to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.6 Any reference in these terms and conditions to the Customer or Distributor includes, where context permits, the agents or employees of the same.

2 CONDITIONS PRECEDENT

2.1 Prior to the Distributor providing Delivery Services to the Customer under these terms and conditions:

2.1.1 The Customer shall provide written advice to the Distributor that the Customer wishes to receive Delivery Services under these terms and conditions. In the event the Customer has not provided this written acknowledgement but receives Delivery Services and pays for the Delivery Services, based on invoices that record the Delivery Services are provided pursuant to these terms and conditions, the Customer shall be deemed to have accepted the Delivery Services subject to these terms and conditions.

2.1.2 The Electricity Retailer shall have signed a Conveyance Agreement with the Distributor on terms satisfactory to the Distributor, and confirmed to the Distributor that the Electricity Retailer will, from a particular date being the Date of Commencement, commence the sale of electricity to the Customer at the Customer's Connections.

2.1.3 The Customer, if required by the Distributor, shall have complied with the prudential requirements set out in clause 12.

3 TERM OF THE PROVISION OF DELIVERY SERVICES

3.1 The provision of Delivery Services under these terms and conditions shall commence on the Commencement Date and, except in the case of termination pursuant to clause 13, shall continue until 5 Business Days after the Customer gives written notice that termination is required.

4 REVIEW OF THESE TERMS AND CONDITIONS

4.1 Either party may initiate a review of these terms and conditions.

4.2 The party requesting the review shall propose in writing to the other party amendments to these terms and conditions and the basis on which such amendments are sought. The other

party shall respond within 15 Business Days of receipt, with agreement to the proposed amendments or an alternative proposal.

4.3 The parties shall negotiate in good faith to reach prompt agreement on proposed amendments. If agreement is not reached within 30 Business Days of initiation of the review, the review shall be at an end and any disagreement on the review shall not be a matter to be referred to the Dispute Resolution procedures pursuant to clause 16.

4.4 The Distributor may acting reasonably, vary the terms and conditions of these terms and conditions by giving not less than 60 days written notice to the Customer of the proposed variation provided that:

4.4.1 The Distributor shall consider in good faith any written submissions that the Customer may make subject to the written submissions being received by the Distributor within 40 days of the Customer receiving the notice. The Distributor having regard to any written submissions may make such changes as it considers appropriate, in which event 20 days written notice of those changes shall be given to the Customer prior to their coming into effect;

4.4.2 The same variation is made to the Distributor's standard Terms and Conditions of Providing of Delivery Services to Major Customers.

4.5 For the avoidance of doubt; this clause 4 does not provide for reviews of the Distributor's Charges which may be reviewed by the Distributor in accordance with clause 11.

5 DELIVERY SERVICES

5.1 The Distributor shall, in accordance with these terms and conditions:

5.1.1 provide Delivery Services to the Customer in accordance with Good Industry Practice, subject to clause 5.2; and

5.1.2 use its reasonable endeavours to meet the Performance Targets;

5.1.3 use its reasonable endeavours in its negotiations with Transpower to ensure that transmission services are provided cost-effectively.

- 5.1.4 comply with MARIA, in so far as any obligations are placed on “*Distributors*” as defined in MARIA, in the context of providing Delivery Services.
- 5.2 The Distributor shall use reasonable endeavours to provide continuous Delivery but does not guarantee that the Distribution Network will provide Delivery which is free from defects or interruptions.
- 5.3 The Distributor shall treat the Customer and all Other Customers equitably with regard to the Delivery Services.
- 5.4 If the Customer requests the Distributor to upgrade its Delivery Service or extend its Distribution Network, the Distributor may require the Customer to enter into a Connection Agreement to record the terms agreed between the Distributor and the Customer in relation to the upgrade and/or extension.
- 5.5 The Distributor may from time to time put in place a Non Performance Payment Schedule pursuant to which, upon the happening of certain events, the Distributor will make a payment to the Customer. A copy of the Non Performance Payment Schedule to apply from the Commencement Date is set out in Schedule C. Any variation to a Non Performance Payment Schedule will be introduced pursuant to clause 4.4 and may not be materially inferior to the Customer than any existing Non Performance Payment Schedule, without the consent in writing of the Customer.
- 5.6 As part of the Delivery Services the Distributor will, at its own cost, carry out repairs, maintenance and replacement of equipment such as lines, cables and poles necessary for the provision of Delivery Services between the network connection point to the building entry point. This service covers fair wear and tear, including damage caused by storms, but not damage caused by the Customer or any third party or the Customer’s failure to comply with the Electricity Retailer’s terms and conditions of supply.
- 5.7 The Customer acknowledges that there are existing arrangements and may be written agreements applying to a particular Connection. The Customer may request from the Distributor details of any such arrangements or agreements applying to any particular Connection. Such arrangements or agreements shall continue to apply unless the Distributor agrees otherwise. Such arrangements or agreements may by way of example relate to matters such as plant ratings,

electrical protection settings, use of land and buildings, accommodation of the Distributor's Equipment or general physical layout of plant.

6 INTERRUPTION TO DELIVERY

The Distributor may interrupt or reduce Delivery at any time the Distributor considers it appropriate to do so for planned or unplanned interruptions as follows:

6.1 Planned Interruptions

In situations where the Distributor determines the need for the interruption in accordance with Good Industry Practice at least two hours in advance, including:

- 6.1.1 To enable the Distributor to inspect, effect alterations, maintenance, repairs or additions to any part of the Distribution Network; or
- 6.1.2 To avoid the risk of danger to persons, damage to property or interference with the regularity or efficiency of Delivery; or
- 6.1.3 To preserve and protect the proper working of the Distribution Network, and meeting the Distributor's obligations to Transpower or any other network owner through which the Distributor directly or indirectly takes a supply of electricity; or
- 6.1.4 For the Distributor's Load Management Service; or
- 6.1.5 If supply of electricity to a Network Supply Point is or will be reduced, impaired or interrupted; or
- 6.1.6 In the event of an occurrence of Force Majeure; or
- 6.1.7 In the event of an envisaged shortage of electricity.
- 6.1.8 To allow the Customer to inspect, effect alterations, maintain or repair any fittings owned by the Customer.

6.2 Unplanned Interruptions

In situations where the Distributor does not know of the need for the interruption in advance, such as:

- 6.2.1 Faults on the Distribution Network caused by equipment failure, accident, storm or similar event;
 - 6.2.2 Overloading arising from a capacity shortage in the Distribution Network or Transpower's Grid.
 - 6.2.3 Emergencies
 - 6.2.4 As a condition of the transmission service from Transpower, for the automatic low frequency-initiated tripping of specified 11kV feeders in the event that Transpower's Grid integrity is endangered.
- 6.3 Where the Distributor interrupts Delivery pursuant to clause 6.1, the Distributor shall provide appropriate reasonable prior notice to the Customer of its planned interruption to interrupt the delivery and shall where appropriate consult with the Customer over the timing of the interruption to minimise inconvenience to the Customer. For routine planned interruptions, appropriate prior notice shall be four days, and shall be in such reasonable form as the Distributor may determine including public notice in a local newspaper.
- 6.4 Where the Distributor interrupts Delivery pursuant to clause 6.2 and if at least all customers supplied either from a distribution transformer in a built-up area or from a circuit breaker in a non-built-up area are involved, then as soon as practicable, the Distributor shall report to the Customer the area affected by and reasons for the interruption and its expected duration.
- 6.5 In all situations of interruptions, the Distributor shall use all reasonable endeavours to minimise the period of interruption.
- 6.6 If there is a capacity shortage in the Distribution Network or Transpower's Grid associated with an interruption which creates a difficulty in Delivery and/or the transmission over Transpower's Grid, the Distributor shall determine the priorities for maintaining and restoring Delivery. The Distributor shall not make any determination under this clause for the purposes of discriminating between the Customer and Other Customers.

- 6.7 The Customer shall forthwith advise the Distributor of any defect or interruption to the electricity supply or other Distribution Network abnormality known to the Customer, as soon as practicable after receiving such knowledge.
- 6.8 The Distributor shall arrange for the temporary isolation of a Customer's Installation in response to a request from the Customer or the Electricity Retailer. The Distributor shall charge the party requesting the service as detailed in the Distributor's current schedule of delivery charges.
- 6.9 Where an interruption of Delivery is required or occurs which is initiated by the Distributor, the Distributor may use its standby generator(s) to minimise the incidence and duration of interruptions. This shall be solely at the Distributor's discretion.

7 CONNECTIONS

- 7.1 The Connections to which this Agreement relates at the Commencement Date are listed in Schedule A or updates thereof as advised via the rules of MARIA.
- 7.2 For each established Connection the Customer undertakes to provide and maintain suitable space for the safe and secure housing of all the Distributor's Equipment, deemed necessary by the Distributor, to be housed at the Customer's Premises.
- 7.3 The Distributor shall not agree to connection to the Distribution Network of any new or modified Customer's Installation unless, acting reasonably, it is satisfied that all of the requirements of the Network Code have been complied with.
- 7.4 The Distributor, at the cost of the Customer, may make arrangements to physically Disconnect a Customer's Installation from the Distribution Network at any time. The Customer shall incur no charges for Delivery Services beyond the date of Disconnection in relation to that Connection.
- 7.5 If there is more than one Connection for a Customer's Installation the Customer shall ensure that no interconnection is made at any time between those Connections without the prior written consent of the Distributor.

- 7.6 The Customer shall comply with all statutory and regulatory requirements, good industry practice, the Network Code and these terms and conditions as amended from time to time.
- 7.7 If the Customer becomes aware that the Customer's Installation does not comply with the requirements of these terms and conditions, the Customer shall notify the Distributor immediately. If it becomes necessary for the Distributor to disconnect the Customer at the Connection the cost of Disconnection and any Reconnection shall be borne by the Customer.

8 EQUIPMENT PROTECTION AND ACCESS

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

interference has been by a third party, and the customer has failed to provide reasonable protection against interference to the Distributor's Equipment.

8.4.2 will otherwise be met by the Distributor.

8.5 The Customer shall provide the Distributor, at all reasonable times, with safe and unobstructed access:

8.5.1 to any of the Distributor's Equipment for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing the same and for any other purpose related to these terms and conditions; and

8.5.2 to any of the Electricity Retailer's Equipment for the purpose of verification of metering information; and

8.5.3 onto the Customer's Premises to ascertain the cause of any interference to the quality of Delivery Services being provided by the Distributor to the Customer or any Other Customer; and

8.5.4 onto the Customer's Premises for the purpose of protecting or preventing danger or damage to persons or property; and

8.5.5 onto the Customer's Premises for the purposes of Reconnecting or Disconnecting the Connection to the Customer's Installation.

8.5.6 onto the Customer's Premises for any other purpose relevant to the Distributor providing Delivery Services to the Customer's Premises in accordance with Good Industry Practice and/or for the purpose of maintaining the integrity of the Distribution Network.

8.6 If the Customer fails to grant to the Distributor access in accordance with the requirements of clause 8.5, the Distributor, may arrange for the Disconnection of that Customer's Installation provided that the Distributor shall be at liberty to take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to persons or property.

8.7 The Distributor shall exercise its right of access by:

- 8.7.1 wherever practicable, giving to the Customer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
- 8.7.2 causing as little inconvenience as practicable to the Customer in carrying out such work;
- 8.7.3 observing Good Industry Practice at all times;
- 8.7.4 observing any reasonable security or site safety requirements that are made known to the Distributor by the Customer.

8.8 The rights of access conferred by these terms and conditions are in addition to any right of access the Distributor may have under any statute or regulation.

9 METERING AND CONTROL

9.1 At each Connection the Electricity Retailer is responsible for ensuring that there is a Metering Installation which complies with MARIA , and produces the quantities needed to calculate the Charges. The Network Code may stipulate additional requirements. As provided for in MARIA, some loads may be unmetered.

9.2 The measurements taken by the Electricity Retailer from the Metering Installation shall be binding on the Parties for the purpose of determining the Charges, as applicable, unless either of the Parties disputes the accuracy of the Metering Installation in which event whether the Metering Installation complies with the accuracy requirements of MARIA shall be dealt with pursuant to the terms of MARIA.

9.3 If it is discovered that the Metering Installation used in the determination of Charges is not measuring accurately then the quantity of electricity delivered shall be determined via the procedures given in the rules of MARIA.

10 CALCULATION & PAYMENT OF CHARGES

10.1 In consideration for the Distributor providing Delivery Services to the Customer in respect of the Customer's Connections, the Customer shall pay the Charges.

- 10.2 The Distributor will use its best endeavours to provide an invoice to the Customer for the Charges payable by the Customer in respect of that month (*“the Invoice”*) by the 10th day of the month. Where the Distributor has not received from the Electricity Retailer or a third party all necessary information to prepare the Invoice, the Distributor may issue the Invoice based on a reasonable estimate of such information.
- 10.3 The Distributor shall make available to the Customer all information reasonably requested by the Customer in connection with the calculation of the Charges in respect of any Invoice.
- 10.4 The Invoice prepared by the Distributor in accordance with clause 10.3 will be based on the information available to the Distributor at the date of preparation of the Invoice regarding the Connections. In addition, the Invoice will state any revisions applying to previous months Invoices, in the same format, that have arisen from actual consumption values supplied by the Electricity Retailer or corrections to the data since the previous months Invoices. The Distributor may debit or credit, as appropriate, daily interest on the difference between the previous and revised amounts at the Bank Base Rate and this will accrue from the due date of payment of the Invoice for the previous amount and the date of issue of the Invoice for the revised amount. The Distributor will not make any debit unless it is also applying credits in appropriate circumstances, and vice versa.
- 10.5 The Customer shall pay the Distributor the total amount due on the Invoice by 4pm on the 20th day of the month to which the Invoice relates, provided that, if that day is not a Business Day, payment shall be made on the next Business Day. In the event the Distributor has failed to provide the Invoice to the Customer by the 15th day of the month, the due date for payment shall be extended by one day, for each day the Invoice was not received by the Customer from the 15th day of the month. All Charges payable by the Customer are stated exclusive of Goods and Services Tax, which tax which shall be payable by the Customer at the same time as payment for the Charges shown in the Invoice.
- 10.6 If the Customer disputes any or all of an amount contained in an Invoice:
- 10.6.1 The Customer will immediately notify the Distributor of the dispute and provide reasons for the dispute;

- 10.6.2 The Customer will pay the full amount of the Invoice including the disputed amount by the due date specified in the Invoice; and
- 10.6.3 The parties will comply with the provisions of clause 16 in order to resolve any dispute. Interest on any amount to be paid by either party following the resolution of any dispute will accumulate and will be payable at the Bank Base Rate plus three percent from the due date until the date of payment.

Provided that no Invoice may be disputed under this clause 10.6 after 9 months after the date of rendering the Invoice.

- 10.7 If the Customer fails to pay by the due date any amount contained in an Invoice, and has not disputed the Invoice pursuant to clause 10.6, then without prejudice to the Distributor's right to terminate the provision of Delivery Services, the Customer will pay to the Distributor default interest on that amount at the Bank Base Rate plus five percent from the due date until the date of payment.

11 CHARGING VARIATIONS

- 11.1 The Distributor may vary the prices which give rise to the Charges on the following basis:
- 11.1.1 To effect an equitable pass through of any increase or decrease in the prices by Transpower relating to its transmission charges upon giving a minimum of 5 Business Days notice to the Customer; or
- 11.1.2 To effect an equitable pass through of any charges, levies, taxes or other such costs imposed by regulatory authority applied to charges in respect of the provision of Delivery Services relating to the Customer's Connections, upon giving a minimum of 5 Business Days notice to the Customer. Any such variation shall be fairly applied between the Customer and Other Customers as appropriate; or
- 11.1.3 By the giving of 40 Business Days notice in writing to the Customer with respect to aspects of the Charges excluding those covered under clause 11.1.1 or 11.1.2. The notice shall include details of the new prices, and details of any variations to the methodology. The Customer may make submissions in writing to the Distributor on the proposed new prices which the Distributor agrees to consider in good faith,

without in any way limiting the ability of the Distributor to determine the level of prices and the basis for the calculation of the prices for the provision of Delivery Services. The Distributor shall not increase the prices for any one Connection pursuant to this clause 11.1.3, more than twice during any 12 month period.

11.2 The Distributor in making any variations to the prices or charging methodology under clause 11 shall have regard to the following criteria:

- 11.2.1 The objective to treat the Customer and Other Customers in an economically equivalent manner;
- 11.2.2 To pass through transmission charges in what the Distributor considers to be a fair and equitable manner (acting reasonably);
- 11.2.3 What the Distributor considers to be a fair and reasonable return on its assets, having due regard to the industry information published under any disclosure regulations applying from time to time;
- 11.2.4 Such other matters as the Distributor may reasonably consider appropriate.
- 11.2.5 In relation to 11.1.1 and 11.1.2 to give as much notice as is reasonably practical of any changes in prices.

12 PRUDENTIAL REQUIREMENTS

12.1 Where the Distributor considers it appropriate, a cash bond may be required by the Distributor up to the equivalent of one month of charges payable by the Customer to the Distributor (averaged over a period of 12 months). The level of cash bond shall be reviewed at intervals of 12 months by the Distributor having regard to the average level of charges over that period, subject to seasonal variation. A cash bond shall be held on the following terms:

- 12.1.1 The cash bond will be held by the Distributor in a separate bank account on trust for the Customer until such time as either the Distributor is entitled to have access to the cash bond under this Agreement or the cash bond is returned to the Customer under these terms and conditions.

12.1.2 The cash bond may be transferred to the Distributor in accordance with the terms of these terms and conditions to apply against monies owing by the Customer to the Distributor. Where any part of the cash bond is utilised by the Distributor in accordance with this provision the Customer shall within 5 Business Days of receiving notice from the Distributor, pay to the Distributor a further cash bond to meet the prudential requirements of this clause.

12.1.3 At the expiry of this Agreement after the Customer has paid all monies owing under this Agreement to the Distributor, or at such earlier date as the Distributor shall determine (acting reasonably) the Distributor shall then repay any cash bond held with respect to the Customer.

12.2 In the event the Customer is not in full compliance with the prudential requirements set out in this clause 12, this shall represent an event of default for the purposes of clause 13.

13 DEFAULT AND TERMINATION

13.1 Subject to clause 12.2 for the purposes of this clause 13 an event of default occurs if:

13.1.1 The Customer fails to pay any amount due and owing from the Customer under these terms and conditions and the default is unremedied at the expiry of 2 Business Days immediately following the giving of notice by the Distributor to the Customer of such non payment; or

13.1.2 The Customer fails in the reasonable opinion of the Distributor in any material respect to perform or comply with any of its obligations under these terms and conditions and (if it is capable of remedy) it is not in the process of being remedied to the reasonable satisfaction of the Distributor within 10 Business Days of receiving a written notice from the Distributor specifying the failure and requiring it to be remedied;

13.2 If an event of default has occurred in accordance with clause 13.1.2 which relates to a particular Connection and which remains unremedied then, in addition to any other rights under these terms and conditions, the Distributor, after giving prior notice to the Customer, may Disconnect the Connection to which the default relates.

- 13.3 If an event of default has occurred the Distributor may give the Customer a further notice of the default, giving the Customer a further five Business Days to remedy the default. In the event the default remains unremedied at the expiry of the five Business Days then the Distributor may:
- 13.3.1 Apply any cash bond or enforce any other form of security for payment provided under clause 12, to payment of all or part of the Invoice; and/or
 - 13.3.2 Terminate the provision of Delivery Services under these terms and conditions, without prejudice to any other rights and remedies of the Distributor in which event the Customer shall cease acquiring Delivery Services and the Distributor may at the Customer's cost Disconnect all or any of the Customer's Installations and cease to provide Delivery Services.
- 13.4 Following such termination the Distributor may without further recourse to the Customer access any Metering Installation owned by the Customer or the Electricity Retailer to determine Charges outstanding at the time of termination.
- 13.5 Termination of the provision of Delivery Services in no way negates the rights and obligations of the parties up to the time of termination with respect to services and Charges specified as part of these terms and conditions.

14 FORCE MAJEURE

- 14.1 If either party is unable to carry out any of its obligations under these terms and conditions because of an event or circumstances of Force Majeure, these terms and conditions shall remain in effect but except as otherwise provided, both parties' obligations, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure, shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- 14.1.1 The non-performing party gives the other party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;

14.1.2 The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

14.1.3 No obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;

14.1.4 The non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

14.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under these terms and conditions, a party may terminate these terms and conditions on not less than 10 Business Days prior written notice.

15 LIMITATION OF LIABILITY

15.1 Neither party shall be liable to the other for any breach of these terms and conditions which is directly or indirectly caused by a circumstance of Force Majeure.

15.2 The Customer shall not be liable to the Distributor for:

15.2.1 Any damage caused to the Distributor's Equipment on a Customer's premises, where that damage was caused by unauthorised interference by other than the Customer or Electricity Retailer their agents or invitees and provided that the premises were properly secured prior to the interference.

15.2.2 The payment of Charges to a Connection, where the Delivery of electricity to that Connection is interrupted for a continuous period exceeding 24 hours, due to a defect in the Distribution Network. In these circumstances and unless a situation of Force Majeure is declared, the Distributor shall reduce the amount of the Charges for the month by one thirtieth for each completed 24 hours that the Customer remains without supply.

15.3 The Distributor shall not be liable to the Customer for any loss which may be sustained by the Customer (including as a result of a claim by the Customer) unless such loss was due to the Distributor's breach of these terms and conditions in which case the Distributor's liability shall

be limited to making good any physical damage to the property of the Customer, to the maximum amounts specified in clause 15.5.

- 15.4 Neither party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other party, in contract or in tort, for:
- 15.4.1 Any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - 15.4.2 Any loss resulting from the liability of the other party to another person; or
 - 15.4.3 Any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.
- 15.5 Any claims for loss arising from the Distributor's breach of its obligations under these terms and conditions must be lodged with the Distributor within two months of the Customer becoming aware of an event's occurrence. The maximum total liability of the Distributor to the Customer in respect of any single event shall not exceed \$100,000. A series of breaches arising from the same event or circumstance shall be accepted by the parties as being a single event or circumstance of breach. The maximum liability of the Distributor to the Customer and all Other Customers under these terms and conditions and delivery services agreements with Other Customers for all events or circumstances occurring in any twelve month period shall be \$1,000,000. This shall be apportioned between the Customer and Other Customers on a proportionate basis as determined by the Distributor (acting reasonably) , if necessary.
- 15.6 The benefit of this clause 15 shall be extended to the officers, employees and agents of the Distributor and may be enforced by these persons pursuant to the Contracts (Privity) Act 1982.
- 15.7 In the event the Consumer Guarantees Act 1993 applies to the provision of Line Function Services, then:
- 15.7.1 The Consumer Guarantees Act 1993 shall not apply if the Customer is purchasing Delivery Services for the purposes of a business.

15.7.2 If the Customer is not acquiring Delivery Services for a business nothing in this Agreement, including this clause 15 shall apply so as to limit any rights the Customer may have under the Consumer Guarantees Act 1993.

15.8 All other liability including any liability in tort, is hereby excluded, to the full extent permitted by law.

16 DISPUTE RESOLUTION

16.1 The Distributor and the Customer shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under these terms and conditions.

16.2 Every dispute or difference that is not resolved by discussion between the Distributor and the Customer may be referred by either party to mediation.

16.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

16.4 The matter in dispute shall be referred to arbitration if:

16.4.1 The parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or

16.4.2 Mediation has taken place and no agreement has been reached.

16.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Distributor and the Customer agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.

16.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.

16.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

16.8 This clause 16 does not apply to the Distributor's Charges which may be set at the discretion of the Distributor in accordance with clause 11.

17 INFORMATION REQUESTS

17.1 Where the Customer becomes aware of a potential material consumption change which could impact on the need for capacity in the Distribution Network, the Customer shall, as soon as reasonably practical, notify the Distributor accordingly.

18 CONFIDENTIALITY

18.1 Each party undertakes with the other party that it shall preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as set out in clause 18.2.

18.2 Either party may disclose Confidential Information in the following circumstances:

18.2.1 where at the time of receipt by the party the Confidential Information is in the public domain;

18.2.2 where after the time of receipt by either party the Confidential Information enters the public domain except where it does so as a result of a breach by either party of its obligations under clause 18.1 or a breach by any other person of that person's obligation of confidence and the party is aware of such breach;

18.2.3 where either party is required to disclose Confidential Information:

18.2.3.1 by any statutory or regulatory obligation, body or authority;

18.2.3.2 any judicial or other arbitration process;

18.2.3.3 by the regulations of any stock exchange upon which the share capital of either party or the other party is from time to time listed or dealt in;

18.2.4 where the Confidential Information is released to the employees, directors, agents or advisers of the party provided that:

18.2.4.1 the information is disseminated only on a “need to know” basis; and

18.2.4.2 recipients of the Confidential Information shall be made fully aware of the party’s obligations of confidence in relation thereto; and

18.2.4.3 any copies of the information clearly identify it as Confidential Information.

18.2.5 Where the Confidential Information is released to a bona fide potential purchaser of the business of the Distributor or the Customer, subject to that bona fide potential purchaser having signed a confidentiality agreement approved by the other party to this Agreement (acting reasonably).

19 ASSIGNMENT AND AGENTS

19.1 The Customer shall not assign, encumber, novate or otherwise dispose of its benefits or obligations under these terms and conditions without the prior written consent of the other Distributor, which consent shall not be unreasonably withheld.

19.2 Any such consent granted under clause 19.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned unless the Distributor, at its discretion, agrees otherwise.

19.3 The Distributor may assign or subcontract any or all of its rights and obligations under this Agreement. In addition the Customer shall not unreasonably refuse its consent to a novation of this Agreement to a third party by the Distributor subject to the Customer being satisfied (acting reasonably) as to the ability of the third party to meet its obligations under this Agreement. If the Customer unreasonably refuses its consent to a novation, then upon any

assignment to that third party, the Distributor shall not remain liable for the performance of the assignee under this Agreement and shall be released from any further liability to the Customer under this Agreement for all matters arising prior to the date of the assignment.

19.4 The parties may appoint agents to act on the party's behalf. Any such appointment shall not relieve the parties making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents. Without limiting the generality of the above the Customer may appoint the Electricity Retailer as the Customer's agent for the purposes of receiving invoices under these terms and conditions and for otherwise dealing with the Distributor for and on behalf of the Customer.

19.5 Either party may assign its benefits and obligations under these terms and conditions to a wholly owned subsidiary without the consent of the other party provided that the assignor provides an unconditional guarantee of the obligations assumed by the assignee.

20 NON-WAIVER

20.1 None of the provisions of these terms and conditions shall be considered to be waived by either party except when such waiver is given in writing.

20.2 No delay by or omission of either Party in exercising any right, power, privilege or remedy under these terms and conditions shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

21 ENTIRE AGREEMENT

Subject to clause 24, these terms and conditions, including the Schedules, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties and each of the Parties acknowledges and confirms that it does not enter into these terms and conditions in reliance on any representation or warranty or other undertaking not fully reflected in the terms of these terms and conditions.

22 SAVINGS CLAUSE

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

23 NOTICES

23.1 Any notice, demand, certificate or other communication required to be given or sent under these terms and conditions shall be in writing and delivered personally, or by pre-paid post, by courier delivery, by facsimile, or by electronic mail.

23.2 The required addresses, facsimile numbers and electronic mail addresses of the Parties for the purposes of this clause shall be as last notified by the parties to each other.

23.3 A notice or other form of communication shall be deemed to have been received as follows:

23.3.1 if given or delivered personally or by courier delivery at the time when given or delivered;

23.3.2 if sent by pre-paid post at the expiration of 48 hours after the document was delivered into the custody of the postal company;

23.3.3 if sent by facsimile, on the time and day of sending if the sending machine confirms transmission is successful.

23.3.4 if sent by electronic mail, on the time and day of sending if the electronic mailing system does not advise that the transmission was unsuccessful.

24 VARIATIONS

24.1 No variations or modifications to these terms and conditions shall be effective unless made in writing and signed by or on behalf of both Parties or otherwise effected in accordance with these terms and conditions.

24.2 Either Party may at any time propose variations to these terms and conditions by notice in writing to the other Party for incorporation in negotiations and discussions under the terms of clause 4.

25 COSTS

Each party shall bear its own costs of and incidentals to the preparation of these terms and conditions.

26 OPTION TO ADOPT CURRENT DELIVERY SERVICES AGREEMENT

The parties acknowledge that the Distributor has at any point of time a standard Terms and Conditions of Providing of Delivery Services to Major Customers (being a contract which has the same purpose as this Agreement and called the “*Standard Terms and Conditions of Providing Delivery Services to Major Customers*”). The Distributor undertakes to:

- 26.1 Publicly disclose the current Standard Terms and Conditions of Providing Delivery Services to Major Customers including making a copy available on its web site;
- 26.2 enter into the Standard Terms and Conditions of Providing Delivery Services to Major Customers (as changed) in lieu of this Agreement on the basis of a written request to do so from the Customer;
- 26.3 provide, on request, marked-up changes from the previous Standard Terms and Conditions of Providing Delivery Services to Major Customers;
- 26.4 advise the Customer whenever a new Standard Terms and Conditions of Providing Delivery Services to Major Customers is established.

SCHEDULE A

(Clause 7.1)

Customer's Network Connection Points

SCHEDULE B
Performance Targets

B1 Network Performance:

B1.1 The Distributor shall use reasonable endeavours to:

B1.1.1 Maintain the voltage at Connections to within the range specified in clause 53 of the Electricity Regulations 1997. The Customer acknowledges that maintenance of voltage within the tolerance range may depend in part on the maintenance of the power factor at Customer's Installations as set out in the Network Code.

B1.1.2 Ensure that the levels of harmonic voltages and currents passed into the Customer's Installations conform with the Limitation of Harmonic Levels Notice 1993, Electrical Code of Practice 36, or any other notice in substitution thereof in so far as the harmonic disturbance results from problems arising from a cause within the control of the Distributor.

B1.1.3 Meet the reliability performance targets on a five yearly average basis as published in its approval statement of corporate intent. At the Commencement Date these are:

	Orion Network Interruptions Only	All Interruptions*
Duration of supply interruptions per connected customer (SAIDI) – minutes per year:		
(a) Urban	54	60
(b) Rural	378	420
Number of supply interruptions per connected customer (SAIFI) – times per year:		
(a) Urban	0.8	0.9
(b) Rural	5.0	5.5
Duration of supply interruptions per customer affected (CAIDI) – minutes per interruption		
(a) Urban	67	67
(b) Rural	76	76

*Includes interruptions sourced from the Distribution Network, Transpower and the Generators.

B1.1.4 Total number of proven customer voltage complaints per year where non compliance with clause B1.1 is proven not to exceed 4 per 10,000 Connections.

B1.1.5 The Distributor shall on request provide the Customer with reports on the Distributor's performance against the Distribution Network performance targets set out in clauses B1.1.3 and B1.1.4 of this Schedule.

B2 Response to Enquiries:

B2.1 The Distributor shall use reasonable endeavours to respond to the Customer's enquiries as follows:

B2.1.1 Provide acknowledgement to the Customer of an enquiry or complaint from the Customer within 3 Business Days.

B2.1.2 Complete an investigation relating to such enquiry or complaint within 10 Business Days (where reasonably practicable to do so).

B2.1.3 Provide a report on the findings of an investigation within 5 Business Days of the completion of the investigation, if requested.

B2.1.4 Respond promptly to all telephone calls or messages regarding situations of emergencies such as broken wires, fire, vehicle accident or circumstances where life is at risk. The Distributor shall dispatch services, as necessary. The costs of attendance will be borne by the Distributor and such circumstances shall take priority over all other undertakings with respect to continuity of Delivery.

B3 Reporting Unplanned Interruptions to Delivery:

B3.1 Pursuant to clause 6.3, the Distributor shall use reasonable endeavours to report such interruptions to the Customer to the following timetable. Such reporting shall be by a process which is agreed between the parties:

B3.1.1 Within 15 minutes of the Distributor being advised of the occurrence of an unplanned interruption, the Distributor shall advise the Customer the time and date of the event.

B3.1.2 As soon as the Distributor has reliable information, the Distributor shall advise the Customer when restoration of Delivery is expected and the cause of the unplanned interruption.

B3.1.3 Clauses B3.1.1 and B3.1.2 shall also apply with respect to the operation of the Load Management Service.

B4 Fault Call Receipt and Field Service Dispatch:

B4.1 The Distributor's Delivery Service shall include "Fault Call Receipt and Field Service Dispatch"

B4.1.1 Immediately advise the caller of any information known to the Distributor regarding the event
B4.1.2 Undertake an investigation and provide a report (if requested) pursuant to Schedule B clauses B2.1.2 and B2.1.3.

B4.1.3 Have a fault person go to the vicinity of the fault within one hour (urban area) and within two hours (rural area) where there is an unplanned interruption to Delivery to a Major Customer Connection.

B4.1.4 Dispatch a standby generator with capacity of up to 300kVA to a Major Customer Connection within 24 hours following an unplanned interruption to Delivery to the Major Customer Connection except in circumstances of storms or Force Majeure.

SCHEDULE C**Non Performance Payments Schedule (GST inclusive)**

(with reference to clause 5.5)

C1 Restoration of Electricity Delivery

- (a) In an urban area the desired target time to restore electricity delivery is within 1.5 hours. Subject to clause C4 if the Distributor does not have electricity restored within three hours of being notified of the fault the Distributor will pay \$25.00 (GST inclusive) per Connection based on verified claims received from the Customer.
- (b) In a rural area the desired target time to restore electricity delivery is within three hours. Subject to clause C4 if the Distributor does not have electricity restored within six hours of being notified of the fault the Distributor will pay \$25.00 (GST inclusive) per Connection based on verified claims received from the Customer.
- (c) In the case of natural disaster (such as, but not limited to snow storms, high winds, lightning, floods and earthquakes) the Distributor will use its best endeavours to restore electricity delivery as soon as practicable. In these circumstances no non-performance payments will be made.
- (d) Faults caused by a third party (e.g. Transpower, contractor damage, vehicle or machinery damage) will not be subject to non-performance payments.

C2 Advance Notification of Planned Outage Affecting Delivery Service

- (a) Where planned maintenance or network alterations (as per clause 6.1.1) need to be carried out and the Delivery Service is to be interrupted the Customer will be given a minimum of two days' notice of the Connections affected by the outage or the occupant(s) of the connection(s) affected will be directly notified as agreed with the Customer.
- (b) If the Distributor fails to take these steps the non-performance payment for non-notification shall be \$15.00 (GST inclusive) per Connection based on each verified claim received from the Customer.

C3 New First Time Connections to the Network

- (a) Where existing network reticulation is available in a street including existing boundary connection boxes in underground areas, or road crossings, and existing poles in an overhead low voltage reticulated area, then new residential property Connections will be made by the Distributor within five Business Days of completion of all necessary Council, Telecom and other approvals.
- (b) In all other cases, new Connections which require additional capacity to be provided or extensions to the network from the existing network, are subject to a design/build contract generally between the agent of or owner of the premises to be connected and an authorised contractor. The time taken for the Connection will vary depending on size and location, and will be subject to an agreed time frame as specified in the design/build contract.

When the new asset is completed and is ready for service the final Connection process will be made by the Distributor within five working days, subject to receipt of all approvals and notifications required to carry out enlivenment.

- (c) Where the Distributor fails to meet the time frame in part C3(a), a payment of \$25.00 (GST inclusive) in respect of each Connection, for each verified claim received from the Customer, will be paid.
- (d) Where the Distributor fails to meet the time frame in part C3(b), a payment of \$100.00 (GST inclusive) in respect of each Connection, for each verified claim by the Customer, will be paid.

C4 Limitations on Application of Guarantees

- (a) No obligation to make any payment under the non-performance payment obligations in this schedule shall arise where the failure to meet the standard was principally caused by an event beyond the direct control of the Distributor, or principally caused by the actions of a third party.
- (b) The total liability of the Distributor under this non-performance payment schedule and all other identical non-performance payment schedules with Other Customers, shall be

included as part of the Distributor's maximum total liability stated in clause 15.5.
Payments shall be apportioned by the Distributor acting reasonably.