

ORION NEW ZEALAND LIMITED

(AS A DISTRIBUTOR OF ELECTRICITY)

[.....]

(AS A RETAILER OF ELECTRICITY)

DELIVERY SERVICES AGREEMENT

Precedent Date

28 August 2001 (revised 17 September 2007)

DELIVERY SERVICES AGREEMENT

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PARTIES

- (1) ORION NEW ZEALAND LIMITED, at Christchurch (*the Distributor*)
- (2) [.....], at Wellington (*the Electricity Retailer*)

INTRODUCTION

- A The Distributor owns and operates the Distribution Network and has an agreement with Transpower to receive electricity delivered to its points of connection with Transpower's Grid.
- B The Electricity Retailer wishes to sell electricity to its Connected Customers and to purchase Delivery Services from the Distributor.
- C The Distributor agrees to provide Delivery Services to the Electricity Retailer on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND CONSTRUCTION

1.1 In this Agreement, unless the context otherwise requires:

“*Asset Management Plan*” means the Distributor's plan of capital expenditure, maintenance priorities and system development in respect of the Distribution Network, in the form that will be made publicly available by way of regulation as varied by the Distributor from time to time.

“*Agreement*” means this Delivery Services Agreement;

“*Associated Services*” means as defined in Schedule C;

“*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 every day except Saturdays, Sundays and days which are statutory holidays in one or both of the cities specified for each party at the start of this agreement;

“*Charges*” means the charges payable under this Agreement to the Distributor for the Delivery Services which are set out in the Distributor's document issued from time to time and referred to as “*application of delivery prices*”;

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

“*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 Agreement*” means an agreement between the Distributor and another party for establishing a new Connection or modification of an existing Connection;

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

“*Connected Customer*” means a person who is supplied, or applies to be supplied with electricity by the Electricity Retailer that is delivered via the Distribution Network;

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

“*Connected 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 Connected Customer’s Installation as defined by the Distributor;

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

“*Date of Commencement*” means [.....];

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

“*Delivery Services*” means the provision of Line Function Services and the provision of the Associated Services and where applicable the Discretionary Services;

“*Discretionary Services*” means the services set out in Schedule D and such other services as the Distributor may offer from time to time;

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

“*Distribution Network*” means the Distributor’s system for the conveyance of electricity including all Fittings comprising that system and which terminates at the Connected Customers’ 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 a Connected Customer’s premises;

“*Electricity Complaints Commissioner Scheme*” means the scheme implemented by the Electricity Complaints Council;

“*Electricity Complaints Council*” means the governing body under the Electricity Complaints Commissioner Scheme;

“*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 this Agreement 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;

“*Generator*” means any organisation that generates or wholesales electricity supplied to the Electricity Retailer or any Other Electricity Retailer.

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

“*Incumbent Retailer*” has the same meaning as defined in MARIA.

“*Involved*” for the purposes of clauses 5.3 and 21.3 shall have the same meaning as prescribed in the Electricity Industry Reform Act 1998.

“*Line Function Services*” is as defined in the Electricity Act 1992. In the context of this agreement; 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;

“*Lines Complaint*” means any Connected Customer’s complaint, under the Electricity Complaints Commissioner Scheme, about Line Function Services via the Distribution Network;

“*Load Group*” means the group applied by the Distributor to a particular Connected Customer Installation for the purposes of assigning Charges for Delivery Services;

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

“*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 that attributed to the 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 Connected 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 Connected Customers’ Installations 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 Generator or any other distribution network where electricity is injected into the Distribution Network;

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

“*Other Electricity Retailer*” means an electricity retailer, other than the Electricity Retailer, who purchases or wishes to purchase Delivery Services from the Distributor which includes, where appropriate, the Connected Customer;

“*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;

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

“*Single Event*” means any event of breach or series of breaches of this agreement arising from the same event or circumstances

“*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 this Agreement 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 this Agreement.
- 1.5 Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.6 Any reference in this Agreement to the Electricity Retailer, Distributor or Connected Customer includes, where context permits, the agents or employees of the same.

2 CONDITIONS PRECEDENT

- 2.1 Prior to the Distributor providing Delivery Services pursuant to this Agreement:
 - 2.1.1 The Electricity Retailer and the Distributor shall have executed this Agreement; and
 - 2.1.2 The Distributor, acting reasonably, shall be satisfied that the Electricity Retailer is in a position to enter into agreements to supply electricity to Connected Customers and is able to maintain supply to Connected Customers; and
 - 2.1.3 The Electricity Retailer shall have confirmed in writing its agreement to be bound by and comply with the conditions and requirements of MARIA as amended from time to time or entered into an agreement with the Incumbent Retailer for the reconciliation of electricity. Provided that if the Electricity Retailer is a member of the NZEM and as a result is able to obtain reconciliation services, it shall not be necessary for the Electricity Retailer to be a party to MARIA; and
 - 2.1.4 The Electricity Retailer shall have provided the information required by MARIA; and
 - 2.1.5 The Electricity Retailer shall have complied with the prudential requirements set out in clause 15.

3 TERM OF THE AGREEMENT

- 3.1 The Agreement shall commence on the Date of Commencement and, except in the case of termination pursuant to clause 16, shall continue until 5 Business Days after the Electricity Retailer gives written notice that termination is required. The Electricity Retailer may not terminate the Agreement while supplying electricity to any Connected Customer.

4 REVIEW OF THE AGREEMENT

- 4.1 Either party may initiate a review of the Agreement.
- 4.2 The party requesting the review shall propose in writing to the other party amendments to the Agreement 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 20.
- 4.4 The Distributor may, acting reasonably, vary the terms and conditions of this Agreement by giving not less than 60 days written notice to the Electricity Retailer of the proposed variation provided that:
- 4.4.1 The Distributor shall consider in good faith any written submissions that the Electricity Retailer may make subject to the written submissions being received by the Distributor within 40 days of the Electricity Retailer 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 Electricity Retailer prior to their coming into effect;
- 4.4.2 Any variation under this clause 4.4 shall not be effective, if such variation is materially detrimental to the Electricity Retailer's business in selling electricity to the Connected Customers unless the variation is one reasonably necessary to give effect to any legislative or regulatory change;
- 4.4.3 The terms and conditions to be varied are set out in the Distributor's Delivery Services Agreement that is applicable at the time the variation takes effect;
- 4.4.4 The same variation is made to each of the Distributor's standard Delivery Services Agreements with Other Electricity Retailers.

- 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 14.
- 5 DELIVERY SERVICES
- 5.1 The Distributor shall, in accordance with this Agreement:
- 5.1.1 provide Delivery Services including the provision of the Associated Services and such of the Discretionary Services as the Electricity Retailer may elect to acquire, to the Electricity Retailer 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;
 - 5.1.5 comply with its obligations as a member of the Electricity Complaints Commissioner Scheme.
- 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. The Electricity Retailer shall ensure its contracts with Connected Customers contain a similar provision, to the effect that the Distributor does not guarantee continuous Delivery.
- 5.3 The Distributor shall accommodate the Electricity Retailer and all Other Electricity Retailers equitably with regard to the Delivery Services. If the Distributor is Involved in electricity retailing it shall at all times treat its electricity retailing activity in an economically equivalent manner to the Electricity Retailer and Other Electricity Retailers.
- 5.4 If an Electricity Retailer requests the Distributor to upgrade its Delivery Service or extend its Distribution Network, the Distributor may require the Electricity Retailer or the Connected Customer to enter into a Connection Agreement to record the terms agreed between the Distributor and the Electricity Retailer or Connected Customer in relation to the upgrade and/or extension.

- 5.5 The Distributor will consult with the Electricity Retailer on any material changes to the Asset Management Plan and consider any submissions made by the Electricity Retailer on the Asset Management Plan in good faith. For the avoidance of doubt the Distributor's obligation is to consult only, and the determination of the Asset Management Plan is a matter for the Distributor, at its discretion.
- 5.6 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 Electricity Retailer in respect of the Connections affected by the event. A copy of the Non Performance Payment Schedule to apply from the Commencement Date is set out in Schedule F. Any variation to a Non Performance Payment Schedule will be introduced pursuant to clause 4.4 and may not be materially inferior to the Electricity Retailer than any existing Non Performance Payment Schedule, without the consent in writing of the Electricity Retailer.
- 5.7 The Electricity Retailer acknowledges that there are existing arrangements and may be written agreements applying to a particular Connection. The Electricity Retailer 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 as specified in clause 7; 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 To accommodate the Electricity Retailer in the event of an envisaged shortage of electricity; or
- 6.1.8 To allow the Electricity Retailer to inspect, effect alterations, maintain or repair any fittings owned by the Electricity Retailer or Connected 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; or
- 6.2.2 Overloading arising from a capacity shortage in the Distribution Network or Transpower's Grid; or
- 6.2.3 Emergencies; or
- 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 the Transpower Network integrity is endangered. (The Electricity Retailer and Other Electricity Retailers are offered the opportunity to participate with the Distributor in the selection of the specified feeders and/or Connected Customers).

- 6.3 Where the Distributor interrupts Delivery pursuant to clause 6.1, the Distributor shall liaise with the Electricity Retailer to arrange for appropriate reasonable prior notice to be given to the Electricity Retailers' Connected Customers of its planned intention to interrupt the Delivery and shall consult with the Electricity Retailer over the timing of the interruption to minimise inconvenience to the Electricity Retailer's Connected Customers. For routine planned interruptions, appropriate prior notice shall be four days.

- 6.4 Where the Distributor interrupts Delivery pursuant to clause 6.1.8 the Electricity Retailer shall be responsible for dealing with the Generators and Other Electricity Retailers and the Distributor shall use its best endeavours to co-operate with the Electricity Retailer and all Other Electricity Retailers who have electricity conveyed over the Network.
- 6.5 Where the Distributor interrupts Delivery pursuant to clause 6.2 and if at least all Connected 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 is practicable, the Distributor shall report to the Electricity Retailer the area affected by and reasons for the interruption and its expected duration.
- 6.6 In all situations of interruptions, the Distributor shall use all reasonable endeavours to minimise the period of interruption.
- 6.7 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 the Transpower 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 Electricity Retailer and Other Electricity Retailers.
- 6.8 The Electricity Retailer shall forthwith advise the Distributor of any defect or interruption to the electricity supply or other Distribution Network abnormality known to the Electricity Retailer, as soon as practicable after receiving such knowledge. Where such advice was not initially in writing, the Electricity Retailer will within 2 Business Days follow up the initial advice with written advice to the Distributor.

7 LOAD MANAGEMENT SERVICES

- 7.1 The Charges as at the Date of Commencement are dependent on the Distributor's Load Management Service, current at the Date of Commencement being maintained. The Distributor shall continue to operate its current Load Management Service, until such time as a new basis is agreed with the Electricity Retailer and Other Electricity Retailers, including, without limitation, for the following purposes:
- 7.1.1 To alleviate congestion on the Distribution Network and manage demand for electricity at Network Supply Points;
- 7.1.2 To seek to minimise the transmission charges from Transpower;
- 7.1.3 To reduce the Distribution Network load in the event of emergencies occurring on the Distribution Network or on Transpower's Grid;

7.2 The Distributor may extend the use of its current Remote Signalling Service or provide other Remote Signalling Services to the Electricity Retailer, at the Distributor's discretion.

8 CONNECTIONS

8.1 The Connections to which this Agreement relates are those Connections for which the Electricity Retailer is the electricity retailer as advised via the rules of MARIA.

8.2 For each established Connection from which the Electricity Retailer intends to supply electricity, the Electricity Retailer shall:

8.2.1 Advise parties as required by MARIA;

8.2.2 Procure from the Connected Customer on a continuing basis, an undertaking to provide and maintain suitable space for the safe and secure housing of all Distributor's Equipment, deemed necessary by the Distributor, to be housed at the Connected Customer's Premises; and

8.2.3 Subject to the Distributor's approval arrange and effect at its own expense Reconnection, if not already connected.

8.3 The Distributor shall not agree to connection to the Distribution Network of any new or modified Connected Customer's Installation unless, acting reasonably, it is satisfied that all of the requirements of the Network Code have been complied with.

8.4 The Electricity Retailer at its own expense may make arrangements to physically Disconnect a Connected Customer's Installation from the Distribution Network at any time. The Electricity Retailer shall incur no charges for Delivery Services to that Connected Customer beyond the date of Disconnection.

8.5 If there is more than one Connection for a Connected Customer's Installation the Electricity Retailer shall use its best endeavours to ensure that no interconnection is made at any time between those Connections without the prior written consent of the Distributor. Further, the Distributor shall use its best endeavours to ensure that there are no material adverse effects on the Electricity Retailer or the Connected Customer if the interconnection is operated by the Distributor or the Connected Customer in accordance with Good Industry Practice.

8.6 The Electricity Retailer shall ensure that every agreement between it and its Connected Customers contains conditions requiring compliance of the Connected Customer and the Connected Customer's Installation with the provisions of clause 8.5, all statutory and regulatory requirements, Good Industry Practice, the Network Code, and the Distributor's requirements of Connected Customers as set out in this Agreement as amended from time to time.

- 8.7 If the Electricity Retailer becomes aware that a Connected Customer's Installation does not comply with the requirements of this Agreement, the Electricity Retailer shall Disconnect the Connected Customer at the Connection unless the Connected Customer has taken all actions necessary for the Connected Customer's Installation to comply with such requirements within 10 Business Days, or such longer period as agreed by the Distributor, of the Electricity Retailer's becoming aware of such circumstances. The cost of Disconnection and any Reconnection shall be borne by the Electricity Retailer.
- 8.8 Where either party becomes aware that the Connected Customer's Premises are to be demolished it shall immediately advise the other party and subsequently confirm the relevant details in writing. The Electricity Retailer shall instruct the Distributor to de-energise and make safe the Connected Customer's Premises. The instruction shall include clear identification of the Connection. Each party is responsible for removing their equipment from the Connected Customer's Premises. The Distributor shall place a notice in a prominent position at the Premises advising that the Connection has been de-energised, after the de-energising and making safe has occurred. The Distributor will also notify the Electricity Retailer in writing that it is appropriate to proceed with the demolition in this context.

9 EQUIPMENT PROTECTION AND ACCESS

- 9.1 The Distributor shall not interfere with the Electricity Retailer's or Connected Customer's Equipment without the prior written consent of the Electricity Retailer, 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 Electricity Retailer of the occurrence and circumstances involved.
- 9.2 The Electricity Retailer and Connected 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 Electricity Retailer will as soon as practicable inform the Distributor of the occurrence and circumstances involved.
- 9.3 The Electricity Retailer shall be liable to the Distributor for any damage to the Distributor's Equipment caused by the negligence, wilful act or omission of the Connected Customer, the Electricity Retailer or their agents or invitees. The Electricity Retailer shall ensure that its contract with the Connected Customer provides that:
- 9.3.1 the Connected Customer shall protect the Distributor's Equipment against interference and damage;

9.3.2 the Distributor may request the Connected Customer to remove or trim trees or vegetation on the Connected Customer's premises that are either interfering or likely to interfere with the Distribution Network, and that if this work is not undertaken, the Distributor may undertake the removal or trimming work and recover the costs of such work from the Connected Customer.

9.4 Should the Distributor or the Electricity Retailer discover evidence of interference with the Distributor's or Electricity Retailer's Equipment, or evidence of theft of electricity, the party discovering the interference or evidence shall notify the other party within 24 hours. In the event of suspected interference with the Distributor's Equipment at a Connected Customer's Installation the Distributor may itself, or may require the Electricity Retailer to, carry out an investigation and present the findings to the Distributor within a reasonable period. The costs of the investigation:

9.4.1 will be borne by the Electricity Retailer where interference by the Electricity Retailer or the Connected Customer or their subcontractors, agents or invitees is discovered to have occurred, or where the interference has been, by a third party, and the Electricity Retailer or Connected Customer has failed to provide reasonable protection against interference to the Distributor's Equipment; and

9.4.2 will otherwise be met by the Distributor.

9.5 The Electricity Retailer shall use best endeavours to ensure that the Connected Customer shall provide the Distributor, at all reasonable times, safe and unobstructed access:

9.5.1 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 this Agreement; and

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

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

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

9.5.5 onto the Connected Customer's Premises for the purposes of Reconnecting or Disconnecting the Connection to any Connected Customer's Installation; and

- 9.5.6 onto the Connected Customer's Premises for any other purpose relevant to the Distributor providing Delivery Services to Connected Customer's Premises in accordance with Good Industry Practice and/or for the purpose of maintaining the integrity of the Distribution Network.
- 9.6 If a Connected Customer fails to grant to the Distributor access in accordance with the requirements of clause 9.5, the Electricity Retailer shall, within 5 Business Days of written notice from the Distributor, arrange for access for the Distributor or for the Disconnection of that Connected 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. The Electricity Retailer shall ensure that its contract with the Connected Customer provides for access by the Distributor, consistent with this Agreement.
- 9.7 The Distributor shall exercise its right of access by:
- 9.7.1 wherever practicable, giving to the Electricity Retailer and Connected Customer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
 - 9.7.2 causing as little inconvenience as practicable to the Electricity Retailer and Connected Customer in carrying out such work;
 - 9.7.3 observing Good Industry Practice at all times;
 - 9.7.4 observing any reasonable security or site safety requirements of the Connected Customer that are made known to the Distributor.
- 9.8 The rights of access conferred by this Agreement are in addition to any right of access the Distributor may have under any statute or regulation.
- 9.9 Upon the Distributor exercising its access rights under this Agreement, the Distributor shall indemnify the Electricity Retailer from
- 9.9.1 any costs of recertification in the event the Distributor inadvertently causes the invalidation of the MARIA certification of the Metering Installation; or
 - 9.9.2 any damage to the Electricity Retailer's equipment.

10 CONNECTION SERVICES

- 10.1 All Connection Services shall be performed by the Electricity Retailer, or an authorised agent of the Electricity Retailer as agreed by the parties. All employees of the Electricity Retailer or its authorised agent who undertake Connection Services must be approved by the Distributor (such approval not to be unreasonably withheld).
- 10.2 The Electricity Retailer may request the Distributor to authorise an Electricity Retailer's agent and the agent's employees, by submitting to the Distributor sufficient details to satisfy the Distributor of the agent's and the agent's employees competency to perform the Connection Services satisfactorily. The Distributor shall not unreasonably withhold authorisation of any Electricity Retailer's agent.
- 10.3 The Electricity Retailer shall, whether itself or through its agent, perform Connection Services in accordance with Good Industry Practice, the Distributor's published relevant operating standards, and in accordance with all reasonable requests made by the Distributor.
- 10.4 Authorisation of an Electricity Retailer's employee or agent or agent's employee may be withdrawn at any time by the Distributor if the Distributor reasonably forms the view the employee or agent or agent's employee should no longer be authorised for the purposes of performing Connection Services.

11 METERING AND CONTROL

- 11.1 At each Connection the Electricity Retailer shall ensure 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.
- 11.2 The Distributor may at its own cost maintain and service an additional Metering Installation at any Connection for checking and Distribution Network management purposes, provided it does not interfere with the primary metering equipment. Where the additional metering equipment is installed for the purposes of auditing the primary metering equipment, the additional metering equipment is to meet the requirement of MARIA and the Network Code.
- 11.3 The Electricity Retailer shall provide and maintain load control receiver relays at each Connection as appropriate for responding to the signals provided by the Distributor under its Load Management Service, subject to the selection of the particular Load Management Service by the Electricity Retailer which may not require such equipment.

- 11.4 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 Measuring Installation complies with the accuracy requirements of MARIA shall be dealt with pursuant to the terms of MARIA.
- 11.5 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.
- 11.6 The Electricity Retailer shall provide the Distributor with access to the data from the Metering Installation at all reasonable times, in a format advised by the Distributor (acting reasonably).

12 RECONCILIATION – LOSS FACTORS

- 12.1 For the purposes of this Agreement all electricity entering the Distribution Network shall be deemed to be the property of the Electricity Retailer and Other Electricity Retailers.
- 12.2 The parties acknowledge that electricity in transit over the Distribution Network cannot physically be identified as the property of any particular Electricity Retailer.
- 12.3 For the purposes of this Agreement, electricity shall be deemed:
- 12.3.1 the property of the Electricity Retailer; and
 - 12.3.2 to have been taken
- at the time it is Delivered through a Connection.
- 12.4 The Distributor shall declare annual Loss Factors at least 40 Business Days in advance of their application. These Loss Factors shall apply equally to all Connections and which have similar Delivery circumstances as provided for in MARIA. They shall apply equitably between the Electricity Retailer and Other Electricity Retailers. The Electricity Retailer shall provide the Distributor with all information the Distributor may reasonably require to enable the Distributor to determine the Loss Factors. If the Electricity Retailer does not consider the Loss Factors declared by the Distributor to be appropriate, the Distributor will meet with the Electricity Retailer and in good faith consider any submissions made by the Electricity Retailer. To assist the Electricity Retailer, the Distributor will provide details of the methodology and information used by the Distributor to determine the Loss Factors.

12.5 To account for the amount of electricity for which the Electricity Retailer is responsible at the Network Supply Points, the Electricity Retailer shall apply the appropriate Loss Factor to the quantity of electricity measured at each Connection, where required by MARIA.

12.6 The Distributor will not Deliver electricity to any Connections, which are connected to the Distribution Network, unless an Electricity Retailer has first confirmed it will sell electricity to that particular Connection via the rules of MARIA.

13 CALCULATION & PAYMENT OF CHARGES

13.1 In consideration for the Distributor providing Delivery Services to the Electricity Retailer in respect of the Connected Customers' Connections, the Electricity Retailer shall pay the Charges.

13.2 In consideration for the Distributor providing Delivery Services, the Electricity Retailer will provide the Distributor, at such times as the Distributor may reasonably require, any information relevant to this Agreement relating to the consumption of electricity at Connections for the purposes of operating the Distribution Network and for the purposes of determining the Charges and Loss Factors, in a format determined by the Distributor acting reasonably.

13.3 The Distributor will use its best endeavours to provide an invoice to the Electricity Retailer for the Charges payable by the Electricity Retailer 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.

13.4 The Invoice shall contain the following information for each Customer Category:

13.4.1 The quantity applicable for each Charge component;

13.4.2 The price applying to each Charge component;

13.4.3 The amount due for each Charge component;

13.4.4 The total amount due; and

13.4.5 The due date.

13.5 The Distributor shall make available to the Electricity Retailer all information reasonably requested by the Electricity Retailer in connection with the calculation of the Charges in respect of any Invoice.

- 13.6 The Invoice prepared by the Distributor in accordance with clause 13.3 will be based on the information available to the Distributor at the date of preparation of the Invoice regarding the Connections supplied by the Electricity Retailer. In addition, the Invoice will state any revisions applying to previous months Invoices, in the same format, that have arisen from actual consumption figures supplied by the Electricity Retailer or corrections to 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.
- 13.7 The Electricity Retailer 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 Electricity Retailer 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 Electricity Retailer from the 15th day of the month. All Charges payable by the Electricity Retailer are stated exclusive of Goods and Services Tax, which tax which shall be payable by the Electricity Retailer at the same time as payment for the Charges shown in the Invoice.
- 13.8 The Distributor may recover from the Electricity Retailer any reasonable costs incurred by the Distributor as a result of the Electricity Retailer's failure to comply with clause 13.2. The Electricity Retailer may similarly recover from the Distributor any costs incurred by the Electricity Retailer as a result of the Distributor's failure, through no fault of the Electricity Retailer, to render an invoice for the Charges to the Electricity Retailer in accordance with Clause 13.3.
- 13.9 Subject to clause 13.10 if the Electricity Retailer disputes any or all of an amount contained in an Invoice:
- 13.9.1 The Electricity Retailer will immediately notify the Distributor of the dispute and provide reasons for the dispute;
- 13.9.2 The Electricity Retailer will pay the full amount of the Invoice including the disputed amount by the due date specified in the Invoice; and
- 13.9.3 The parties will comply with the provisions of clause 20 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 13.9 after 9 months after the date of rendering the Invoice.

13.10 In the event of a manifest error in an Invoice the Electricity Retailer shall immediately notify the Distributor of the manifest error. The Distributor upon being satisfied the Invoice contains a manifest error, shall use reasonable endeavours to correct the manifest error prior to the due date of payment. In the event of a disagreement between the Electricity Retailer and the Distributor as to whether the Invoice contains a manifest error, then the Invoice shall be deemed to be a disputed Invoice under clause 13.9.

13.11 If the Electricity Retailer fails to pay by the due date any amount contained in an Invoice, and has not disputed the Invoice pursuant to Clause 13.9, or notified the Distributor of a manifest error under clause 13.10, then without prejudice to the Distributor's right to terminate this Agreement, the Electricity Retailer will pay to the Distributor default interest on that amount at the Bank Base Rate plus five percent from the due date until the date of payment.

14 CHARGING VARIATIONS

14.1 Subject to clause 14.2 and the following conditions, the Distributor may vary the prices which give rise to the Charges:

14.1.1 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 Electricity Retailer; or

14.1.2 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 Connected Customers' Points of Supply, upon giving a minimum of 5 Business Days notice to the Electricity Retailer. Any such variation shall be fairly applied between the Electricity Retailer and Other Electricity Retailers as appropriate; or

- 14.1.3 By the giving of 40 Business Days notice in writing to the Electricity Retailer with respect to any increase in aspects of the Charges excluding those covered under clause 14.1.1 or 14.1.2. The notice shall include details of the new prices, and details of any variations to the methodology. The Electricity Retailer 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 14.1.3, more than once during any 12 month period. Any decreases in Charges excluding those covered under clauses 14.1.1 or 14.1.2 may be introduced by the Distributor with less than 40 Business Days notice in writing to the Electricity Retailer.
- 14.2 Where the Distributor receives information from Transpower on proposed changes to transmission charges, the Distributor shall, to the extent permissible under its contractual arrangements with Transpower, pass such information to the Electricity Retailer and use reasonable endeavours to facilitate and assist the Electricity Retailer in making any submissions to Transpower in relation to transmission charges.
- 14.3 The Distributor in making any variations to the prices or charging methodology under clause 14 shall have regard to the following criteria:
- 14.3.1 The objective to treat the Electricity Retailer and Other Electricity Retailers in an economically equivalent manner;
- 14.3.2 To pass through transmission charges in what the Distributor considers to be a fair and equitable manner (acting reasonably) including the benefits of rental rebates or other rebates made available by Transpower;
- 14.3.3 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;
- 14.3.4 Such other matters as the Distributor may reasonably consider appropriate.
- 14.3.5 In relation to 14.1.1 and 14.1.2 to give as much notice as is reasonably practical of any changes in prices.

15 PRUDENTIAL REQUIREMENTS

- 15.1 In order to purchase Delivery Services from the Distributor, the Electricity Retailer will comply with one of the following prudential requirements when required by the Distributor:

- 15.1.1 Maintain an acceptable credit rating in accordance with clause 15.2; or
 - 15.1.2 Pay and maintain a cash bond up to the amount required under clause 15.3 to the Distributor; or
 - 15.1.3 Procure and maintain the provision and maintenance of an unconditional guarantee or letter of credit in favour of the Distributor for the amount equivalent to the bond requirement in clause 15.3. The guarantee or letter of credit must be in a form satisfactory to the Distributor (acting reasonably) and the third party guarantor must maintain an acceptable credit rating in accordance with clause 15.2; or
 - 15.1.4 Provide a combination of the securities referred to in clauses 15.1.1 to 15.1.3 to the satisfaction of the Distributor (acting reasonably).
- 15.2 For the purpose of clauses 15.1.1 and 15.1.3 an acceptable credit rating means that the Electricity Retailer, or guarantor, as the case may be, must carry a long term credit rating of at least *A3 (Moody's Investor Services Inc)*, *A- (Standard & Poors Rating Group)* or *B+ (AM Best)* as applying at the commencement of this Agreement or such other equivalent rating as may be satisfactory to the Distributor (acting reasonably).
- 15.3 A cash bond may be required by the Distributor up to the equivalent of the Distributor's reasonable estimate of one and a half months Charges (inclusive of GST), based on the average monthly charges over a twelve month period, payable by the Electricity Retailer to the Distributor. At any time, the Distributor may review, or the Electricity Retailer may require the Distributor to review, the amount of the bond. The Distributor must complete any review requested by the Electricity Retailer within 20 Business Days. Where, as the result of a review, the Distributor notifies the Electricity Retailer of an increase to the amount of the bond, the Electricity Retailer must implement any resulting change within 20 Business days of the notification. The cash bond shall be held on the following terms:
- 15.3.1 The cash bond will be held by the Distributor in a separate bank account on trust for the Electricity Retailer 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 Electricity Retailer under this Agreement.
 - 15.3.2 The separate bank account shall be an interest bearing account, with interest compounding to the account.
 - 15.3.3 The cash bond may be transferred to the Distributor in accordance with the terms of this Agreement to apply against monies owing by the Electricity Retailer to the Distributor. Where any part of the cash bond is utilised by the Distributor in accordance with this provision the Electricity Retailer 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.

15.3.4 At the expiry of this Agreement after the Electricity Retailer has paid all monies owing under this Agreement to the Distributor, the Distributor shall then repay any cash bond held with respect to the Electricity Retailer.

15.4 In the event the Electricity Retailer is not in full compliance with the prudential requirements set out in this clause 15, this shall represent an event of default for the purposes of clause 16.

16 DEFAULT AND TERMINATION

16.1 Subject to clause 15.4 for the purposes of this clause 16 an event of default occurs if:

16.1.1 The Electricity Retailer fails to pay any amount due and owing from the Electricity Retailer under this Agreement and the default is unremedied at the expiry of 2 Business Days immediately following the giving of notice by the Distributor to the Electricity Retailer of such non payment; or

16.1.2 The Electricity Retailer fails in the reasonable opinion of the Distributor in any material respect to perform or comply with any of its obligations under this Agreement 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;

16.2 If an event of default has occurred in accordance with clause 16.1.2 which relates to a particular Connection and which remains unremedied then, in addition to any other rights under this Agreement, the Distributor, after giving prior notice to the Electricity Retailer, may Disconnect the Connection to which the default relates.

16.3 If an event of default has occurred the Distributor may give the Electricity Retailer a further notice of the default, giving the Electricity Retailer 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:

16.3.1 Apply any cash bond or enforce any other form of security for payment provided under clause 15, to payment of all or part of the Invoice; and/or

- 16.3.2 Terminate this Agreement, without prejudice to any other rights and remedies of the Distributor in which event the Distributor shall cease providing Delivery Services and the Distributor may at the Electricity Retailer's cost Disconnect all or any of the Connected Customer Installations supplied by the Electricity Retailer from the Distribution Network and cease to provide Delivery Services. The Distributor will not terminate this Agreement if the default is genuinely disputed and the amount in dispute is the lesser of \$100,000 or 20% of the Charges for the previous month.
- 16.4 Further to clause 16.3 in addition to any other rights the Distributor may have the Distributor may from the date of termination arrange for an Other Electricity Retailer to supply electricity to the Connected Customers, subject to the consent of the Connected Customers. For this purpose the Electricity Retailer shall provide such information to the Distributor as it may reasonably require, anytime from an event of default occurring, for the purpose of negating inconvenience to the Connected Customers arising from the termination of this Agreement.
- 16.5 The Electricity Retailer shall ensure in its agreement with Connected Customers that termination of this Agreement also terminates any agreement between the Electricity Retailer and its Connected Customers as to the supply of electricity to the Connected Customers through the Distribution Network.
- 16.6 Following such termination the Distributor may without further recourse to the Electricity Retailer access any Metering Installation owned by the Electricity Retailer to determine charges outstanding at the time of termination.
- 16.7 Termination of this Agreement 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 the Agreement.
- 17 RIGHT TO APPLY FOR APPOINTMENT OF A RECEIVER, INTERIM LIQUIDATOR OR LIQUIDATOR
- 17.1 Upon an event of default occurring for the purposes of clause 16.1.1, the Distributor may as an alternative to exercising its right to terminate:
- 17.1.1 Give notice to the Electricity Retailer of its intention to exercise its rights under this clause, unless the event of default is remedied within a further 5 Business Days;
- 17.1.2 Upon the expiry of the 5 Business Days referred to in clause 17.1.1, apply to the High Court of New Zealand for the appointment of a receiver, interim liquidator or liquidator.

- 17.2 The Distributor shall exercise its rights under clause 17.1 in good faith and reasonably having due regard to any other options available to the Distributor, which do not involve ceasing Delivery Services to all Connections or continuing to provide Delivery Services where the Electricity Retailer is in default, without the Distributor being satisfied that the default is one readily capable of remedy, and will be remedied within 5 Business Days. The Distributor will not apply to appoint a receiver, interim liquidator or liquidator if the default is genuinely disputed and the amount in dispute is less than either \$100,000 or 20% of the charges for the previous month.
- 17.3 In giving the notice under clause 17.1, the Distributor will use its best endeavours to telephone and speak with the chief executive of the Electricity Retailer, or such other senior executive as may be available, during the 5 Business Day period.
- 17.4 The Electricity Retailer may by notice in writing to the Distributor, nominate a third party to be sent copies of any notices given by the Distributor under clauses 16.1.1, 16.1.2, 16.3 and 17.1.1, in which event the Distributor shall copy such notices to the nominated party at the same time and in the same manner as it forwards any such notice to the Electricity Retailer. In that event the Electricity Retailer may only withdraw such nomination, by providing the Distributor with consent in writing from the nominated party, that it no longer requires to receive copies of such notices.

18 FORCE MAJEURE

- 18.1 If either party is unable to carry out any of its obligations under this Agreement because of an event or circumstance of Force Majeure, this Agreement 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:
- 18.1.1 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;
- 18.1.2 The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- 18.1.3 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;
- 18.1.4 The non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

18.2 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 this Agreement, a party may on not less than 10 Business Days prior written notice terminate this Agreement.

19 LIMITATION OF LIABILITY

19.1 Neither party shall be liable to the other for any breach of this Agreement which is directly or indirectly caused by a circumstance of Force Majeure.

19.2 The Electricity Retailer shall not be liable to the Distributor for:

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

19.2.2 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 Connected Customer remains without supply.

19.3 The Distributor shall not be liable to the Electricity Retailer or Connected Customer for any losses whatsoever which may be sustained by the Electricity Retailer or Connected Customer unless the loss was due to the Distributor's breach of this Agreement. In that event, the Distributor's liability shall be limited to making good any physical damage to the property of the Electricity Retailer or Connected Customer (whether in the form of monetary payment or otherwise), to the maximum amounts specified in clause 19.5. This provision is subject to the Distributor's obligations under the Electricity Complaints Commissioner Scheme.

19.4 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:

19.4.1 Any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

19.4.2 Any loss resulting from the liability of the other party to another person (other than a Connected Customer under the Electricity Complaints Commissioner Scheme); or

- 19.4.3 Any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.
- 19.5 Any claims for loss arising from either party's (the *claiming* party) breach of its obligations under this Agreement must be lodged with the other party within three months of the claiming party becoming aware of an event's occurrence. The maximum liability of the other party to the claiming party in respect of any Single Event shall not exceed \$10,000 (GST exclusive) per Connection, and \$1,000,000 (GST exclusive) in total, excluding any liability the Electricity Retailer may have to pay the Charges. 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 Electricity Retailer and all Other Electricity Retailers and Connected Customers under this Agreement and delivery services agreements with Other Electricity Retailers for any Single Event shall be \$1,000,000 (GST exclusive). This shall be apportioned between the Electricity Retailer, Other Electricity Retailers and Connected Customers on a proportionate basis as determined by the Distributor (acting reasonably), if necessary. The maximum liability of the Electricity Retailer to the Distributor under this Agreement, excluding liability for payment of the Charges, shall not exceed \$1,000,000 (GST exclusive) for any Single Event.
- 19.6 The benefit of this clause 19 shall be extended to the officers, employees and agents of the parties and may be enforced by these persons pursuant to the Contracts (Privity) Act 1982.
- 19.7 The Electricity Retailer shall ensure that:
- 19.7.1 It does not contract to provide Line Function Services to a Connected Customer on more favourable terms than provided by the Distributor to the Electricity Retailer under this Agreement, without first obtaining the Distributor's written consent (not to be unreasonably withheld where the Electricity Retailer agrees to indemnify the Distributor for any additional loss, cost or damage to the Distributor that would occur from the provision of Line Function Services on such terms);
- 19.7.2 Its contract with Connected Customers limits to the full extent permissible at law any claim under any Lines Complaint, howsoever arising (whether by tort, contract, Electricity Complaints Commissioner Scheme or otherwise) to \$10,000 per Connection per Single Event, subject to clauses 19.7.1 and 19.7.3;

19.7.3 Its contract with Connected Customers limits, to the full extent permissible by law, the total amount payable by the Distributor to the Electricity Retailer, Other Electricity Retailers and Connected Customers for any Single Event to \$1,000,000 (GST exclusive). This shall be apportioned between the Electricity Retailer, Other Electricity Retailers and Connected Customers on a proportionate basis as determined by the Distributor (acting reasonably), if necessary.

19.8 Subject to the Electricity Retailer complying with clause 19.7, the Distributor agrees to indemnify the Electricity Retailer from any claim from a Connected Customer relating to a Lines Complaint, subject to any indemnity provided by the Electricity Retailer under clause 19.7.1. Where a complaint by a Connected Customer is not exclusively a Lines Complaint, the Electricity Retailer and Distributor agree to work co-operatively together to resolve the complaint, having regard to the Distributor's liabilities being limited to that part of the complaint that is a Lines Complaint.

19.9 Consumer Guarantees Act

- (a) The Electricity Retailer shall, to the fullest extent permitted by law, exclude from all agreements between it and a Connected Customer (which, for the avoidance of doubt, includes a purchaser of electricity that is not an end user) all warranties, guarantees or obligations imposed on the Distributor to any Connected Customer concerning the services to be provided by the Distributor pursuant to this agreement by the Consumer Guarantees Act 1993 or any other law ("Distributor Warranties").
- (b) Where the Connected Customer on-sells electricity to an end-user the Electricity Retailer must, as a condition of any agreement between it and the Connected Customer, require the Connected Customer to include provisions in all agreements between it and an end-user, excluding all Distributor Warranties to the fullest extent permitted by law.
- (c) To the extent the Electricity Retailer is not permitted by law to contract out of any warranties, guarantees or obligations on the Electricity Retailer to any Connected Customer imposed by the Consumer Guarantees Act 1993 or any other law ("Electricity Retailer Warranties"), notwithstanding the limitations of liability in clauses 19.1, 19.2, 19.3, 19.4 and 19.5, the Distributor indemnifies the Electricity Retailer to the extent of any liability under any Electricity Retailer Warranties that the Electricity Retailer would not have incurred but for the breach by the Distributor of the Distributor Warranties, provided that if the Electricity Retailer wishes to claim against the Distributor under this clause the Electricity Retailer must comply with the following procedure:

- (i) within the time specified in paragraph (ii) below, the Electricity Retailer must give the Distributor notice of the claim, together with full details of the event or occurrence giving rise to the claim, the amount which the Electricity Retailer considers it is liable for and the amount it is seeking to be indemnified for;
 - (ii) for the purposes of paragraph (i) above, notice must be given as soon as practicable after the Electricity Retailer receives the claim from the Connected Customer and before settling the claim but in any event no later than 10 Business Days after receiving the claim; and
 - (iii) the Electricity 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.
- (d) For the avoidance of doubt, nothing in this clause affects the rights of any Connected Customer under the Consumer Guarantees Act 1993, nor does it preclude the Electricity Retailer from offering in its contracts with Connected Customers its own warranties, guarantees or obligations pertaining to distribution services.

19.10 The Electricity Retailer shall indemnify the Distributor from all loss cost and claims arising from the Electricity Retailer's failure to comply with clauses 16.5, 19.7 and 19.9.

20 DISPUTE RESOLUTION

20.1 The Distributor and the Electricity Retailer 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 this Agreement.

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

20.3 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.

- 20.4 The matter in dispute shall be referred to arbitration if:
- 20.4.1 The parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
 - 20.4.2 Mediation has taken place and no agreement has been reached.
- 20.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Distributor and the Electricity Retailer agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.
- 20.6 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.
- 20.7 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.
- 20.8 This clause 20 does not apply to the Distributor's Charges which may be set at the discretion of the Distributor in accordance with clause 14.
- 21 INFORMATION REQUESTS
- 21.1 At the Distributor's request, the Electricity Retailer shall as soon as reasonably practicable provide the following:
- 21.1.1 Estimates and projections of electricity that is intended to be Delivered for the Electricity Retailer over the Distribution Network or parts of the Distribution Network; and
 - 21.1.2 Estimations of controllable load connected for each of the Load Groups and on an individual Connection basis for those with an installed capacity of 1000 kVA or more, every 12 months.
 - 21.1.3 Such other information as the Distributor may reasonably require for the performance of its obligations under this Agreement.

- 21.2 Where the Electricity Retailer becomes aware of anticipated material consumption changes by Connected Customers which could impact on the need for capacity in the Distribution Network, the Electricity Retailer shall as soon as reasonably practical notify the Distributor accordingly.
- 21.3 The Distributor shall, as soon as reasonably practicable, provide the Electricity Retailer with information relating to the Distribution Network and Transpower's Grid as may be reasonably required by the Electricity Retailer, and to the extent that it materially affects the Electricity Retailer's Connected Customers.
- 21.4 The information required by the parties under clauses 21.1 or 21.2 shall only be provided to the extent that such request is reasonable, and does not breach the confidentiality requirements of this or any other Agreement relating to the Delivery Service.
- 21.5 The information required under this clause 21 shall be provided by the parties as part of each party's obligations to the other under this Agreement, at no additional cost, where the party providing the information, has that information readily available from the normal course of business. Where the information requested is not readily available, the party being asked to provide the information may make a reasonable charge to recover its costs in providing such information.

22 CONFIDENTIALITY

- 22.1 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 22.2.
- 22.2 Either party may disclose Confidential Information in the following circumstances:
- 22.2.1 where at the time of receipt by the party the Confidential Information is in the public domain;
- 22.2.2 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 22.1 or a breach by any other person of that person's obligation of confidence and the party is aware of such breach;
- 22.2.3 where either party is required to disclose Confidential Information:
- 22.2.3.1 by any statutory or regulatory obligation, body or authority;
- 22.2.3.2 any judicial or other arbitration process;

22.2.3.3 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;

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

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

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

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

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

22.2.6 For the purposes of complying with the equivalent of clause 31 in any other agreement for the supply of Delivery Services with an Other Electricity Retailer.

22.3 If at any time the Distributor is Involved in electricity retailing, the Distributor shall ensure no Confidential Information is disclosed to its electricity retailing operation, without the consent of the Electricity Retailer or the Connected Customer as appropriate.

23 ASSIGNMENT AND AGENTS

23.1 Either party may assign, or subcontract its rights or obligations under this Agreement, provided that in the case of the Electricity Retailer the assignee has first complied with the prudential requirements in clause 15.

23.2 Any such assignment in clause 23.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned or subcontracted unless the other party, at its discretion, agrees otherwise.

- 23.3 In addition a party shall not unreasonably refuse its consent to a novation of this Agreement to a third party by the other party subject to the party being satisfied (acting reasonably) as to the ability of the third party to meet its obligations under this Agreement. If the party unreasonably refuses its consent to a novation, then upon any assignment to that third party, the other party shall not remain liable for the performance of the assignee under this Agreement and shall be released from any further liability to the party under this Agreement for all matters arising prior to the date of the assignment.
- 23.4 Subject to approval of the appointment of an electricity retailer's agent in accordance with clause 10, 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.
- 23.5 Either party may assign its benefits and obligations under this Agreement 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.
- 23.6 The Electricity Retailer may notify the Distributor that one or more of its subsidiaries (*"the Subsidiary"*) may also be selling electricity to Connected Customers, and also wishes to become a party to this Agreement. Subject to the Subsidiary agreeing to be bound by the provisions of this Agreement, the Subsidiary shall become a supplementary party to this Agreement and be bound by it. In that event the Electricity Retailer and the Subsidiary shall each be responsible for the performance of the other, under this Agreement, and the Distributor shall treat the Electricity Retailer and the Subsidiary, as one party for the prudential requirements in clause 15, and such other provisions as may be applicable to give full effect to this provision.
- 23.7 This Agreement shall terminate upon the Electricity Retailer agreeing to become bound by the provisions of another delivery services agreement with the Distributor pursuant to a clause in that delivery services agreement similar to clause 23.6 in this Agreement. The Electricity Retailer shall give the Distributor notice in advance of the date of this termination.

24 CUSTOMER AGREEMENTS

The Electricity Retailer shall ensure that every agreement in relation to the supply of electricity and Delivery Services between the Electricity Retailer and a Connected Customer includes the provisions required to be included in such agreements by this Agreement, as summarised in Schedule A, and these provisions shall be expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to section 4 of the Contracts (Privity) Act 1982.

25 NON-WAIVER

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

26 ENTIRE AGREEMENT

Subject to clause 29, this Agreement, including the Schedules, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements and understandings between the parties and each of the parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.

27 SAVINGS CLAUSE

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

28 NOTICES

- 28.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement shall be in writing and delivered personally, or by pre-paid post, by courier delivery, by facsimile, or by electronic mail.
- 28.2 The required addresses, facsimile numbers and electronic mail addresses of the parties for the purposes of this clause are set out in Schedule E.
- 28.3 A notice or other form of communication shall be deemed to have been received as follows:
- 28.3.1 if given or delivered personally or by courier delivery at the time when given or delivered;

- 28.3.2 if sent by pre-paid post at the expiration of 48 hours after the document was delivered into the custody of the postal company;
- 28.3.3 if sent by facsimile, on the time and day of sending if the sending machine confirms transmission is successful.
- 28.3.4 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.

29 VARIATIONS

- 29.1 No variations or modifications to this Agreement shall be effective unless made in writing and signed by or on behalf of both parties or otherwise effected in accordance with this Agreement.
- 29.2 Either party may at any time propose variations to this Agreement by notice in writing to the other party for incorporation in negotiations and discussions under the terms of clause 4.

30 COSTS

Each party shall bear its own costs of and incidentals to the preparation of this Agreement.

31 OPTION TO ADOPT NEW DELIVERY SERVICES AGREEMENT

The Distributor will, subject to clause 4:

- 31.1 provide to the Electricity Retailer a copy of each current agreement entered into (whether before or after the date of this Agreement) between the Distributor and Other Electricity Retailers relating to the supply of Delivery Services; and
- 31.2 if the Electricity Retailer so requires, enter into a new agreement with the Electricity Retailer in the same form (with the necessary modifications) as any agreement chosen by the Electricity Retailer from the agreements provided to the Electricity Retailer under clause 31.1. That new agreement will be in substitution for this Agreement, which will terminate upon execution of that new agreement.

EXECUTED as an Agreement

ORION NEW ZEALAND LIMITED

by:

Director/Authorised Person

Director/Authorised Person

Date:

in the presence of:

Name:

Occupation:

Address:

[.....]

by:

Director/Authorised Person

Director/Authorised Person

Date:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE A

(Clause 24)

Electricity Retailers' Agreements with Connected Customers

| DSA Clause | Summary of Requirement |
|-------------------|---|
| 5.2 | No guarantee of continuous Delivery |
| 8.2.2 | Retailer to procure suitable space from the Connected Customer for housing Distributor's equipment at the premises |
| 8.5 | No interconnection to be made without consent of the Distributor |
| 8.6 | Compliance of the Connected Customer and the Customer's installation with all statutory and regulatory requirements, etc |
| 9.2 & 9.3 | Connected Customer not to interfere with the Distributor's Equipment |
| 9.6 | Provide the Distributor with access onto the Customer's Premises for maintenance etc of the Distributor's Equipment, etc |
| 16.5 | Agreement with Connected Customer to terminate if DSA terminates |
| 19.7.2 | A clear and unambiguous clause that limits the liability of the Distributor for a Lines Complaint to \$10,000 per Connection per Single Event, including liability in tort. |
| 19.7.3 | A clause stating that the Distributor's total liability for a Single Event is limited to \$1,000,000. |
| 19.9 | All agreements with business customers to exclude the application of the Consumers Guarantees Act (CGA) pursuant to section 43(2) of the CGA for the benefit of the Distributor |

Note: This Schedule has been inserted for the assistance of the Electricity Retailer. The specific requirements of the relevant clauses must be complied with and this Schedule represents a summary only for convenience.

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 Electricity Retailer acknowledges that maintenance of voltage within the tolerance range may depend in part on the maintenance of the power factor at Connected Customers' Installations as set out in the Network Code.

B1.1.2 Ensure that the levels of harmonic voltages and currents passed into Connected Customers' 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 | 19 | 20 |
| (b) Rural | 412 | 432 |
| Number of supply interruptions per connected customer (SAIFI) – times per year: | | |
| (a) Urban | 0.4 | 0.5 |
| (b) Rural | 3.6 | 4.0 |

*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 Electricity Retailer 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 Electricity Retailer's enquiries as follows:

B2.1.1 Provide acknowledgement to the Electricity Retailer of an enquiry or complaint from the Electricity Retailer 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 6.5, the Distributor shall use reasonable endeavours to report such interruptions to the Electricity Retailer 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 Electricity Retailer the time and date of the event and the location and/or the connections affected.

B3.1.2 As soon as the Distributor has reliable information, the Distributor shall advise the Electricity Retailer 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 In providing its Associated Service “Fault Call Receipt and Field Service Dispatch”, the Distributor shall use reasonable endeavours to:

- B4.1.1 Immediately advise the caller of any information known to the Distributor regarding the event (Schedule C clause C1.2).
- B4.1.2 Undertake an investigation and provide a report (if requested) pursuant to Schedule C clause C1.7 and as detailed in 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

Associated Services

C1 Fault Call Receipt and Field Service Dispatch

The Distributor shall provide a service to receive fault calls from Connected Customers and the Electricity Retailer and to dispatch operators, faults persons and repair crews, as appropriate. Incoming information may be via telephone, facsimile, or other appropriate means. In providing this service, the Distributor shall:

C1.1 Receive incoming calls.

C1.2 Advise the caller of any information known to the Distributor regarding the event, including cause and expected duration.

C1.3 Advise the Electricity Retailer if at least all Connected Customers supplied either from a distribution transformer in a built-up area or from a circuit breaker in a non built up area are affected and provide information known to the Distributor regarding the event, including cause and expected duration.

C1.4 Advise the news media if a significant number of customers are affected by the event.

C1.5 Liaise with Transpower, if Transpower's plant is involved.

C1.6 Dispatch fault services, as required.

C1.7 Pursuant to clause 6.5, provide a written report to the Electricity Retailer after the event. This report will detail the cause (if known), time of occurrence and duration of the event, the number of Connected Customers affected and any measures taken to prevent recurrence.

In situations where a significant number of Connected Customers are affected, the Electricity Retailer shall assist the Distributor by processing the calls from Connected Customers and providing the Distributor with filtered information.

C2 New Connections

The Distributor shall undertake all negotiations with the owners of future Connected Customer's Installations or their agents with respect to the establishment of new Connections. This will include settling a Connection Agreement with the party who is wanting to establish the new Connection. An Electricity Retailer may be the agent for a developer or future Connected Customer in negotiations with the Distributor. An Electricity Retailer shall become contractually involved when a supply of energy is required.

C3 Modification of an Existing Connection

The Distributor shall undertake all negotiations with the Connected Customers or their agents with respect to modifications to established Connections. This will include settling a Connection Agreement with the Connected Customer. The Electricity Retailer may be the agent for the Connected Customer. A modification could include, but is not limited to, an upgrading or downgrading of the capacity or a conversion from an overhead to an underground Connection.

C4 Temporary Isolations

The Distributor shall arrange for the temporary isolation of a Connected Customer's Installation in response to a request from the Connected Customer or the Electricity Retailer provided that where the request is from the Electricity Retailer, the Electricity Retailer shall indemnify the Distributor from all losses or costs arising from the Distributor's complying with the request, provided the Distributor acts in accordance with Good Industry Practice. The Distributor shall charge the party requesting the service as detailed in its *schedule of charges for associated services*.

C5 Provision of Ripple Signalling

Pursuant to clause 7, the Distributor shall provide ripple signals for its Load Management Service, as part of the Delivery Service.

C6 Power Quality Complaints and Issues

The Distributor shall receive and act upon all enquiries or complaints from Connected Customers or the Electricity Retailer regarding power quality. If investigations of any substance are required, then the Distributor shall refer the matter to a contractor. The Distributor will cover all expenses if the Distributor is at fault. Otherwise the enquiring party shall pay all expenses.

C7 Network Plant Removal or Re-siting

The Distributor shall deal with all enquiries from Connected Customers or the Electricity Retailer regarding requests for Distribution Network equipment removal or re-siting. The Distributor shall liaise with the enquiring party and negotiate the arrangements for the work to be executed. All costs of plant removal or re-siting shall be borne by the enquiring party.

C8 Emergency Calls

The Distributor shall respond urgently 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.

C9 Advance Notice of Planned Interruptions

Prior to implementing a planned interruption per clause 6.1, the Distributor shall use reasonable endeavours to identify the Connections involved and despatch appropriate notices(s) as agreed with the Electricity Retailer. Such notice can be sent either directly to “the occupant” at the address of the connection or to the Electricity Retailer, as agreed.

C10 Use of Standby Generation for Load or Capacity Management

Where an interruption to 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.

C11 Maintenance on Connected Customer's side of Network Connection Point

The Distributor will, at its own cost, carry out repairs, maintenance and replacement of equipment such as lines, cables and poles necessary for the supply of electricity 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 Connected Customer or any third party or the Connected Customer's failure to comply with the Electricity Retailer's terms and conditions of supply.

C12 Complaints Handling Service

The Distributor will provide an in-house consumer complaints service for handling Lines Complaints, as required in schedule D of the Electricity Complaints Commissioner Scheme. The Distributor shall deal with all Lines Complaints except those relating to issues covered in Schedule F of this Agreement where the Electricity Retailer and Distributor agree to the Electricity Retailer handling these directly, within the limits given in Schedule F.

C13 Temporary Connections

The Distributor will provide an agency and subcontracting service with respect to temporary connections that the Distributor provides, generally for building and construction sites. As an agent, the Distributor will vet applications on behalf of the Electricity Retailer. As a subcontractor, the Distributor will provide administration and information, process applications, provide the temporary connection, and provide a boundary box (if required).

SCHEDULE D

Discretionary Services

The Distributor offers to undertake further discretionary services which are subject to negotiation and are specifically chargeable to the party using the service.

D1 Provision of Additional Ripple Signals

The Distributor will negotiate with the Electricity Retailer to provide additional ripple signals over and above those that are already established for the Load Management Service. The Distributor shall use its best endeavours to provide these as required by the Electricity Retailer, subject to the availability of time slots and the limitations of the Distributor's ripple injection plants. Signals required for the Load Management Service shall have priority and all additional signals provided for the Electricity Retailer shall be chargeable.

D2 Use of Standby Generator for Energy Shortage

The Distributor may make its standby generator(s) available to the Electricity Retailer or Connected Customers for use in situations of energy shortage, subject to the Distributor's requirements as set out in clause C10 taking priority. The Distributor shall charge the party requiring this service.

D3 Temporary Connections

The Distributor may provide temporary boundary boxes to facilitate construction at temporary connections.

SCHEDULE E

Notices Provision

The Distributor

Orion New Zealand Limited
218 Manchester Street
PO Box 13896
Christchurch

Attention: Neville Ross
Commercial Contracts & Pricing Manager
Email: neville.ross@oriongroup.co.nz
Tel: (03) 363 9870
Fax: (03) 363 9736

The Electricity Retailer:

[.....]
[.....]
[.....]
[.....]
[.....]

Attention: [.....]

SCHEDULE F**Non-Performance Payments Schedule**

(with reference to Clause 5.6)

F1 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 F4 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 Electricity Retailers.
- (b) In a rural area the desired target time to restore electricity delivery is within three hours. Subject to clause F4 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 Electricity Retailers.
- (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. such as Transpower, contractor damage, vehicle or machinery damage will not be subject to non-performance payments.

F2 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 Electricity Retailer will be given a minimum of four days' notice of the Connections supplied by them affected by the outage or the occupant(s) of the connection(s) affected will be directly notified as agreed with the Electricity Retailer.
- (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 Electricity Retailer.

F3 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 Business 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 F3(a), a payment of \$25.00 (GST inclusive) in respect of each Connection, for each verified claim received from the Electricity Retailer, will be paid.
- (d) Where the Distributor fails to meet the time frame in part F3(b), a payment of \$100.00 (GST inclusive) in respect of each Connection, for each verified claim by the Electricity Retailer, will be paid.

F4 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 or the Electricity Retailer.
- (b) The total liability of the Distributor under this non-performance payment schedule and all other identical non-performance payment schedules with Other Electricity Retailers, shall be included as part of the Distributor's maximum total liability stated in clause 19.5. Payments shall be apportioned by the Distributor acting reasonably.