

Buller Electricity Limited

and

Pulse Utilities New Zealand Limited

Conveyance and Use of System
Agreement

August 6 2008

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CONVEYANCE AND USE OF SYSTEM AGREEMENT

AGREEMENT dated 2008

BETWEEN BULLER ELECTRICITY LIMITED a duly incorporated company incorporated under the Companies Act 1993 and having its registered office at Robertson Street, Westport (“the Distributor”)

AND PULSE UTILITIES NEW ZEALAND LIMITED a duly incorporated company having its registered office at 403A Richmond Road, Grey Lynn, Auckland (“the Independent Retailer”)

RECITALS

- A. The Distributor owns and operates the Distribution Network and the Independent Retailer is an Electricity retailer that wishes to use the Distribution Network to supply Electricity to Consumers.
- B. The Distributor agrees to provide the Independent Retailer with Line Function Services on the terms and conditions set out in this Agreement.
- C. The Independent Retailer has agreements or intends to enter into agreements to supply Consumers with Electricity.
- D. The parties wish to make provision that the obligations assumed by the Independent Retailer under this Agreement are for the benefit of and enforceable by the Subsidiaries of the Independent Retailer.

AGREEMENT

1 Definitions and Interpretation

1.1 In this agreement, unless the context otherwise requires:

“**Act**” means the Electricity Act 1992;

“**Accredited Service Provider**” means a person who has met the Distributors accreditation criteria for construction on, or operation of, the Distributors Network;

“**Agreement**” means this Agreement as signed by the Distributor and the Independent Retailer;

“Bank Base Rate” means the 90-day commercial bill rate as published on page BKBM of the Reuters monitor service at 10.30 am on the day of calculation or in the absence of a quoted rate, the rate determined by the WestpacTrust Bank as being the average of the buy rates applicable on that day to bank accepted 90 day bills of exchange, or in the absence of such a determination, such rate as the Distributor may determine as the nearest practicable equivalent;

“Bank Guarantee” means a deed of guarantee entered into by a registered trading bank in the form set out in Schedule Five (or such other form as the Distributor may agree in writing);

“Business Day” means any day of the week other than Saturday, Sunday or a statutory holiday observed in either of the places at which notices may be delivered to a Party pursuant to clause 28;

“Channel” means a code that is assigned by the Distributor to the Independent Retailer that operates the Load Control Equipment in respect of a particular Consumer Category;

“Charges” means the charges which are payable by the Independent Retailer to the Distributor in accordance with this Agreement, which may be varied from time to time pursuant to clause 17.8;

“Clearing Manager” means the person acting as the clearing manager pursuant to NZEM or such other person from time to time to whom Metering Data is to be sent pursuant to NZEM;

“Confidential Information” means all data and other information of whatever nature, provided by one Party to the Other Party pursuant to this Agreement, excluding:

- (a) 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
- (b) 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” means the physical connection of the Distribution Network to a Consumer’s Equipment and “Connect” means to connect the Distribution Network thereto in accordance with the Distributor’s requirements;

“Consumer” means a purchaser of Electricity from the Independent Retailer where the delivery is by means of Connection to the Distribution Network;

“Consumer Category” means the consumer category description for the type of Charges for Line Function Services set out in Schedule One and selected as that which will apply to a particular Consumer’s Point of Supply for the purpose of assigning Charges for Line Function Services;

“Consumer’s Equipment” means any Fittings and Metering Equipment of a Consumer that form part of a system for conveying Electricity from that Consumer’s Point of Supply to where the Electricity may be consumed, including any Fittings owned or used by the Consumer individually or jointly with any other person but does not include Fittings belonging to the Distributor;

“Consumer Information Sheet” means the information sheet in the form set out in Schedule Three (or such other form as the Parties may agree in writing) to be completed by the Independent Retailer;

“Consumer Installation Number” is the identification number assigned to a Consumer’s Point of Supply by the Distributor;

“Consumer’s Point of Supply” means the location in the electrical circuit where ownership of the equipment relating to the supply of Electricity changes from the Distributor and the Consumer as determined by the Distributor. Diagrammatic examples to assist understanding are shown in Schedule Four;

“Consumer’s Premises” means any premises all or part of which is occupied by a Consumer or on which the Consumer’s Equipment is installed;

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

“Disconnection” means the act of precluding a Customer from having access to the Distribution Network and Disconnect shall have a corresponding meaning;

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

“Distributor’s Equipment” means the Fittings belonging to the Distributor which are from time to time installed in, over, or upon a Consumer’s Premises. All equipment within the Consumer’s Premises that is integral to the operation of the Distribution Network and is on the Distribution Network side of the Consumer’s Point of Supply is the property of the Distributor;

“Distribution Network” means the Distributor’s system for the conveyance and distribution of Electricity (including all Fittings comprising part of that system) and which terminates at Customers Points of Supply.

“Effective Date” shall have the meaning set out in clause 17.10;

“Electricity” means electrical energy as measured in kilowatt-hours (kWh);

“Electricity Supply Business” has the meaning set out in the Electricity Industry Reform Act 1998;

“ESANZ Electricity Metering Code of Practice” means the electricity metering code of practice of the Electricity Supply Association of New Zealand Inc as varied from time to time;

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

“Force Majeure” means any event or circumstance which is beyond the reasonable control of either Party 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, epidemics or disease, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, acts of animals, lightning, fire, storm, flood, earthquake, accidental collisions, 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 which could not have been prevented by Good Industry Practice, governmental restraint, act of parliament, other legislation, bylaw, or the failure or deficiency of any Generator, or Transpower to supply Electricity to the Network’s Point of Supply or any deficiency or the consequences thereof in such supply to the extent that such failure or deficiency could not have been prevented by Good Industry Practice by the Distributor and the discontinuance or deficiency of supply or failure to convey Electricity or to do so in the required quantity which occurs as a result of the Distributor selecting at its discretion a Consumer’s Point of Supply for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Generator” means any person who generates Electricity supplied to the Independent Retailer and for the purposes of this Agreement shall include the NZEM;

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

“**GST**” means goods and services tax as defined in the Goods and Services Tax Act 1985;

“**Half Hour**” means a period of 30 consecutive minutes commencing on the hour or at 30 minutes past the hour;

“**Incumbent Retailer**” has the meaning set out in MARIA;

“**Independent Retailer**” means any retailer of Electricity who is not the Incumbent Retailer;

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

“**Independent Retailer’s Equipment**” means the Fittings, Metering and Ripple Control Equipment belonging to the Independent Retailer which are from time to time installed in, over, or upon a Consumer’s Premises;

“**Line Function Services**” means the provision, maintenance and operation of Fittings for the conveyance of Electricity to Consumers’ Points of Supply, and includes the control of voltage and load control, in accordance with Good Industry Practice;

“**Line Function Services Agreement**” means an agreement between the Distributor and a Consumer relating to the provision of Line Function Services by the Distributor to that Consumer in respect of that Consumer’s Point of Supply through which the Independent Retailer is supplying Electricity;

“**Load Control Equipment**” means the Fittings, which may include, but are not limited to, ripple receivers and relays, which are from time to time installed in, over, or upon a Consumer’s Premises for the purpose of receiving Remote Signals;

“**Losses**” means Electricity unaccounted for on the Distribution Network, being the difference between the sum of the Electricity injected into the Distribution Network measured at the Network’s Points of Supply and the sum of the Electricity measured or calculated at the Consumer’s Points of Supply and all points of supply of consumers of other Independent Retailers, as conveyed for the Independent Retailer and all other Independent Retailers;

“**Loss Adjustment Factor**” means the factor by which Electricity measured at the Consumer’s Point of Supply is adjusted in accordance with the Reconciliation Rules, which is set out from time to time in Schedule Four;

“MARIA” means the Metering and Reconciliation Information Agreement established by way of deed between Electricity Marketing Company Limited, Transpower and others dated 21 March 1994, as amended from time to time;

“Metering Data” means information recorded directly by Metering Equipment measuring the quantity of Electricity conveyed in accordance with the Reconciliation Rules during the period for which the information is required;

“Metering Equipment” means metering equipment and other apparatus that complies with this Agreement for the purpose of measuring the quantity of the supply of electricity conveyed through the Distribution Network to a Consumer’s Point of Supply;

“Month” means a calendar month and **“Monthly”** shall be construed accordingly;

“Network’s Point of Supply” means the point of connection between the Distribution Network and Transpower’s Network or any Generator or any Other Distribution Network through which Electricity can be injected into the Distribution Network;

“NRM” means the person appointed from time to time as the National Reconciliation Manager pursuant to MARIA or the person appointed as the Reconciliation Manager under the NZEM or such other person from time to time to whom Metering Data is to be sent pursuant to MARIA or the NZEM as applicable;

“NZEM” means The New Zealand Electricity Market established by Electricity Market Company Limited (EMCO) in 1994 to permit the purchase and sale of Electricity;

“Other Distribution Network” means a system for the conveyance and distribution of Electricity to end users, including all Fittings comprising part of that system, which is not owned by the Distributor;

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

“Other Services User” means a person, other than the Independent Retailer, who has entered into an agreement with the Distributor for the provision of Remote Signal Services and/or Remote Data Communication Services by the Distributor to that Other Independent Retailer;

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

“Period of Inaccuracy” means the period since the most recent prior test conducted on the Primary Metering Equipment (according to Good Industry Practice by an approved person) in which the Primary Metering Equipment was shown to be measuring accurately to the time at which accurate measurement by the Primary Metering Equipment is restored provided however that this period shall not exceed two years;

“Power Factor” means the amount determined in accordance with the following formula:

$$\frac{P}{\sqrt{P^2+Q^2}}$$

Where: P= active power being the measured value of the product of current and the component of voltage in phase with the current; and

Q= reactive power being the measured value of the product of current and the component of voltage in quadrature with the current,

both P and Q being the instantaneous values integrated over one and the same Half Hour;

“Primary Metering Equipment” shall have the meaning set out in clause 6.3;

“Purchaser Class Market Participant” has the meaning given to that term in the rules governing NZEM;

“Reconciliation” means the Metering Data that has been dispatched to and processed by the Relevant Service Provider;

“Reconciliation Rules” means the reconciliation rules which the Independent Retailer has specified in the Consumer Information Sheet as are to apply being either:

- (a) MARIA or NZEM (provided that if the Independent Retailer fails to make such specification, MARIA shall apply); or
- (b) such other process of calculating Electricity quantities at each Network’s Point of Supply as the Network User, all Other Independent Retailers and the Distributor may agree; or
- (c) a system of calculating Electricity quantities which has been introduced through Government legislation.

“Reconnection” means the act of providing a Customer with access to the Distribution Network and “Reconnect” has a corresponding meaning;

“Relevant Service Provider” means, if the applicable Reconciliation Rules are MARIA, NRM and, if the applicable Reconciliation Rules are NZEM, the Clearing Manager;

“Remote Data Communication Services” means the function of utilising the Distribution Network to send and receive data;

“Remote Signal” means the signal injected into the Distribution Network for the purposes of Remote Signal Services;

“Remote Signal Services” means the function of injecting a signal into the Distribution Network which may, but is not limited to, reduce or interrupt a part of a Consumer’s supply of Electricity on the basis agreed between the Network User, Independent Retailer and the Distributor. Remote Signal Services may be provided in respect of, without limitation, the supply of Electricity in respect of storage and storage water heating;

“Rights of Access” means:

- (a) safe and unobstructed access to and within a Consumer’s Premises; and
- (b) reasonable use of facilities and amenities available to the Independent Retailer or the Consumer and ordinarily used in association with the Distributor’s Equipment;

“Ripple Control Equipment” means the Fittings owned by the Distributor for the purpose of producing Remote Signals, which may include, but are not limited to, ripple injection plant, which are from time to time installed by the Distributor;

“Service Guarantees” means a guarantee by the Distributor to provide the service level commitments described in paragraphs 2.1 to 2.6 (both inclusive) of Schedule Six;

“Subsidiaries” means those legal entities detailed in Schedule 8 of this Agreement.

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

“Transpower’s Network” means the Electricity transmission system owned and operated by Transpower.

- 1.2 Clause and other headings are for ease of reference only and shall be ignored in construing this Agreement.

- 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. References to paragraphs in a schedule are references to paragraphs of that schedule.
- 1.5 Any reference in this Agreement to a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.6 References to either party, or to any party, to a document or agreement shall be deemed to include their successors and permitted assigns.
- 1.7 Any reference to time is expressed on a 24 hour clock basis in standard time or New Zealand Day Light Time, whichever is applicable as provided in the Time Act 1974.
- 1.8 All amounts referred to in this Agreement are denominated in New Zealand dollars.
- 1.9 A reference to a “**person**” shall be deemed to include references to a natural person, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of states, government departments and local and municipal authorities in each case whether or not having separate legal personality.

2. Use of the Distribution Network

- 2.1 Subject to the terms and conditions of this Agreement, the Distributor shall:
 - (a) allow the use of the Distribution Network by the Independent Retailer, by the Distributor conveying Electricity through the Distribution Network to each Consumer’s Point of Supply and by operating and maintaining the Distribution Network in accordance with Good Industry Practice for that purpose;
 - (b) not knowingly permit conveyance of Electricity on the Distribution Network in breach of the MARIA rules unless the Network User and all Other Independent Retailers agree on a process of calculating Electricity quantities at each Network’s Point of Supply, or a system of calculating Electricity quantities has been introduced through Government legislation, and the Distributor complies with such agreed or introduced process;
 - (c) use reasonable endeavours to negotiate agreements with Transpower that provide for a reliable transmission service of sufficient capacity to be provided by Transpower to convey

Electricity, in quantities that meet the Independent Retailer's requirements, from Transpower's Network to the Distribution Network in a cost-effective manner.

2.2 The obligations of the Distributor pursuant to clause 2.1 shall only apply if:

- (a) the Independent Retailer has adopted MARIA and agrees to be bound by and comply with the obligations under MARIA imposed upon Independent Retailers or has adopted and agreed to be bound by and comply with the obligations under NZEM imposed upon Purchaser Class Market Participants or the Reconciliation Rules; and
- (b) the Independent Retailer has provided the performance bond, Bank Guarantee, or bank undertaking required pursuant to clause 17.7.

2.3 The obligations of the Distributor pursuant to clause 2.1 shall only apply in relation to each Consumer's Point of Supply in respect of which:

- (a) the Independent Retailer has delivered to the Distributor, at least 2 Business Days before the commencement of supply of Electricity by the Independent Retailer to the Consumer through that Consumer's Point of Supply (or such shorter time period as the Distributor may in any particular case determine), a duly completed Consumer Information Sheet in accordance with clauses 3.2 or 3.3(c);
- (b) any modification or extension to the Distribution Network which, in the reasonable opinion of the Distributor, is required before the supply of Electricity can commence has been completed to the reasonable satisfaction of the Distributor;
- (c) the Distributor is satisfied that all Fittings at the Consumer's Point of Supply comply in all respects with the Distributor's reasonable requirements and Good Industry Practice;
- (d) Metering Equipment is in place which in the reasonable opinion of the Distributor complies with the requirements set out or referred to in this Agreement;
- (e) the Distributor and the Consumer are parties to a valid and subsisting agreement for Line Function Services in relation to that Consumer's Point of Supply, unless the Distributor is to provide Line Function Services in relation to that Consumer's Point of Supply to the Independent Retailer;
- (f) the Independent Retailer has provided all information to Transpower that has reasonably been requested by Transpower relating to the operation of the Transpower Grid or Grid Connection Assets and in accordance with any contractual relationship that the Distributor may have with Transpower from time to time.

- 2.4 The Distributor shall, as soon as practicable following it becoming aware that any of the conditions set out in clause 2.3 cease to be satisfied in respect of one or more Consumer's Point of Supply, give the Independent Retailer a notice identifying each such Consumer's Point of Supply and specifying the condition(s) that has ceased to be satisfied ("Remedy Notice"). Unless the circumstances require immediate Disconnection of the Consumer for safety reasons, upon receipt of such Remedy Notice the Independent Retailer shall have 5 Business Days to remedy the condition(s). If the condition(s) are not remedied in this time frame the Distributor will have the right to Disconnect the Consumer's Point of Supply from the Distribution Network.
- 2.5 The Distributor will use all reasonable endeavours to maintain the network performance and services standards as set out in Schedule Six. The Distributor will pay to the Independent Retailer (or to the credit of the Independent Retailer in a New Zealand bank account nominated by the Independent Retailer) the amount owing, as specified in Schedule Six, by the 20th day of the Month following each Month in which the Distributor fails to meet the network performance and services standards specified in Schedule Six if, as a direct result of such failure, the Independent Retailer is required to compensate its Consumers. The Distributor will automatically pay those amounts specified in Schedule Six without the need for the Independent Retailer to provide the Distributor with a claim for such amounts and the Independent Retailer will pay the amounts received from the Distributor to the affected Consumers.
- 2.6 The quality of Line Function Services provided by the Distributor shall be determined at the Consumer's Point of Supply.
- 2.7 The Distributor is not obliged to accept any request from the Independent Retailer or Consumer:
- (a) to upgrade its Line Function Services to any Consumer's Point of Supply beyond the standards required in this Agreement; or
 - (b) to extend the Distribution Network for the purpose of supplying Electricity to any existing or potential Consumer of the Independent Retailer.

On receipt of a request to upgrade its Line Function Services or extend the Distribution Network, the Distributor will respond in writing within 5 Business Days of receipt of the request, either advising its decision, or providing a commitment of when its decision will be made (such decision to be made in a time frame that is in accordance with Good Industry Practice).

- 2.8 Any agreement by the Distributor to upgrade or extend the Distribution Network following the receipt of a request under clause 2.7 or pursuant to clause 3.8, is conditional upon the Parties agreeing the additional Charges, if any, that will be payable in respect to that upgrade or extension.

3 Consumer Transfers, Connections, and Consumer Information Sheet

- 3.1 The Consumers' Points of Supply to which this Agreement relates are to be noted in the Consumer Information Sheets that form part of this Agreement. The Consumer Information Sheet and form of notification may be varied from time to time with agreement from both Parties with the overriding intention to move to a form of electronic data transfer as soon as the Parties are able. The Independent Retailer may add or delete any Consumer's Point of Supply in accordance with the provisions of this Agreement.
- 3.2 Where the Independent Retailer first wishes to supply electricity to a Consumer:
- (a) if the Consumer is, at the time the Independent Retailer first wishes to supply Electricity to that Consumer, Connected, the Independent Retailer shall provide the Distributor with a completed Consumer Information Sheet in respect of such Consumer no later than 2 Business Days prior to the date on which the supply of Electricity is to commence;
 - (b) provided the information provided on the Consumer Information Sheet is complete, it is received within the period specified in clause 3.2(a) and the Consumer Category applied for is appropriate (where there is a choice of price options within a Consumer Category the Independent Retailer shall have the right to choose the price option that will apply), the Distributor will allow the Independent Retailer to commence supply of Electricity to that Consumer on the date specified in the Consumer Information Sheet in accordance with the terms of this Agreement and the Independent Retailer agrees that the applicable Charges shall be to the account of the Independent Retailer; and
 - (c) if the information provided on the Consumer Information Sheet is not complete or the Consumer Category applied for is not appropriate, the Distributor will notify the Independent Retailer before the date specified for commencement of supply in the Consumer Information Sheet, and endeavour to provide information to the Independent Retailer that will assist the Independent Retailer to be able to submit a Consumer Information Sheet that is satisfactory to the Distributor's reasonable requirements.
- 3.3 Where the Independent Retailer first wishes to supply electricity to a Consumer at a Consumer's Point of Supply which has not previously been Connected, or which has previously been Connected but which has not been supplied with Electricity for a period of more than 6 Months:
- (a) the Independent Retailer must provide the Distributor with a completed system connection form (which is available from the Distributor on request);
 - (b) the Distributor will respond to receipt of the completed system connection form, setting out what is required for Connection, within 2 Business Days;

- (c) upon the Distributor being satisfied that all matters required for Connection have been duly completed the Distributor shall notify this to the Independent Retailer who shall then be entitled to give to the Distributor a completed Consumer Information Sheet no later than 2 Business Days prior to the date on which the supply of Electricity is to commence;
- (d) provided the information provided on the Consumer Information Sheet is complete, it is received within the period specified in clause 3.3(c) and the Consumer Category applied for is appropriate (where there is a choice of price options within a Consumer Category the Independent Retailer shall have the right to choose the price option that will apply), the Distributor will allow the Independent Retailer to commence supply of Electricity to that Consumer on the date specified in the Consumer Information Sheet in accordance with the terms of this Agreement and the Independent Retailer agrees that the applicable Charges shall be to the account of the Independent Retailer; and
- (e) if the information provided on the Consumer Information Sheet is not complete or the Consumer Category applied for is not appropriate, the Distributor will notify the Independent Retailer before the date specified for commencement of supply in the Consumer Information Sheet, and endeavour to provide information to the Independent Retailer that will assist the Independent Retailer to be able to submit a Consumer Information Sheet that is satisfactory to the Distributor's reasonable requirements.

3.4 The Independent Retailer shall be deemed to warrant to the Distributor each time a Consumer Information Sheet is delivered to the Distributor that the Independent Retailer has entered into an agreement with the Consumer which complies with the provisions of this Agreement and that no terms of such agreement conflict with the provisions of this Agreement.

3.5 The Distributor will assign an identification number or code to each Consumer's Point of Supply. The Distributor will assign a Consumer's Point of Supply and the responsibility for the Charges in respect of that Consumer's Point of Supply to the Independent Retailer or any Other Independent Retailer supplying Electricity to that Consumer's Point of Supply depending on the latest complete and correct Consumer Information Sheet in respect of that Consumer's Point of Supply provided to the Distributor.

3.6 The Independent Retailer shall indemnify the Distributor from any liability arising from any dispute involving the Incumbent Retailer, a Consumer, or any Other Independent Retailer in relation to whether or not the Incumbent Retailer or any Other Independent Retailer is entitled to supply Electricity to a Consumer at that Consumer's Point of Supply as specified in a Consumer Information Sheet.

- 3.7 The Independent Retailer remains liable for Charges in respect of a person who has been a Consumer of the Independent Retailer until:
- (a) the Distributor receives a Consumer Information Sheet in respect of that Consumer from any Other Independent Retailer; or
 - (b) the Consumer's Point of Supply is disconnected in accordance with this Agreement and the Independent Retailer has advised the Distributor that the Independent Retailer has ceased to supply that Consumer at that Consumer's Point of Supply; or
 - (c) 7 days after the Independent Retailer has advised the Distributor that the Independent Retailer has ceased to supply that Consumer at that Consumer's Point of Supply.
- 3.8 Where the provision of Line Function Services in respect of a particular Consumer's Point of Supply requires capital expenditure by the Distributor on plant and/or equipment, the Distributor will inform the Independent Retailer. The Parties will agree on the terms and conditions on which the Distributor will expend such capital prior to such expenditure occurring, which may include the Distributor entering into an agreement with the Consumer relating to the capital expenditure. In the event the Parties do not agree on the terms and conditions or if the Consumer fails to enter into any necessary agreement with the Distributor, the Distributor shall not be required to incur such capital expenditure.
- 3.9 Where the Independent Retailer requests that the Distributor Reconnect a Consumer's Point of Supply that has been Disconnected from the Distribution Network within the preceding six Months, the Distributor will allow Reconnection if no significant change to the Consumer's Equipment, or the Metering Equipment, or the Distributor's Equipment has occurred within that six Month period. Upon such Reconnection the Independent Retailer shall comply with clause 3.2.
- 3.10 The Distributor or the Distributor's Agent (who may be the Independent Retailer), may carry out any Connection, Disconnection, or Reconnection. Any Connection, Disconnection, or Reconnection must be notified by the Party carrying out the work to the other Party within one Business Day of it being carried out.
- 3.11 Only a person who has been approved by the Distributor may arrange to Connect, Reconnect, or Disconnect Consumers. The Independent Retailer must ensure that all of its employees and agents who Connect, Reconnect or Disconnect Customers are Accredited Service Providers.
- 3.12 All persons must carry out Connections, Disconnections, and Reconnections in accordance with the Distributor's reasonable requirements, and all applicable safety standards and requirements. The Independent Retailer will procure that all agreements with its agents approved to Connect,

Disconnect, or Reconnect Consumers include an undertaking that the services will be carried out in a manner that meets the Distributor's reasonable requirements and that such an undertaking is intended for the benefit of and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

- 3.13 The Distributor may withdraw the approval of a person given under clause 3.11, if that person breaches any of the Distributor's reasonable requirements or any applicable safety standard or requirement.

4 Remote Signal Services and Remote Data Communication Services

- 4.1 The Distributor will provide the Network User and the Independent Retailer with Remote Signal Services and Remote Data Communication Services in accordance with Schedule Seven. In consideration of these services being provided by the Distributor the Independent Retailer will pay the charges specified in Schedule Seven.
- 4.2 The Parties agree to consider and review the provisions of Schedule 7 no later than the first anniversary of this Agreement. The review of Schedule 7 shall take into account the requirements of the Network User and other Independent Retailers or, as the case may be, the Distributor's expectation of those requirements in relation to the Remote Signalling Services and Remote Data Communication Services. If the parties fail to agree on how Schedule 7 should be reviewed the matter shall be treated as a dispute to be resolved in accordance with clause 21.

5 Commencement and Termination

- 5.1 Unless terminated earlier pursuant to the provisions of this Agreement, this Agreement shall commence on the Date of Commencement and shall continue until 90 Business Days after the Independent Retailer gives written notice to the Distributor that termination is required.
- 5.2 The Independent Retailer may not terminate this Agreement pursuant to clause 5.1 unless:
- (a) the Independent Retailer has arranged for another person to supply the Consumers that are supplied by the Independent Retailer before the Agreement is terminated and that person meets the reasonable requirements of the Distributor (including, without limitation, having entered into a conveyance and use of system agreement with the Distributor and is complying with that agreement); or
 - (b) the Distributor is advised by the Independent Retailer that the Independent Retailer no longer has any Consumers Connected.
- 5.3 The Distributor will be entitled to terminate this Agreement by giving the Independent Retailer 5 Business Days notice following any continuous period of 180 days or more during which the

Independent Retailer has not supplied any Consumers with Electricity otherwise than due to an event or circumstance of Force Majeure.

6 Metering

- 6.1 The Independent Retailer acknowledges that the Independent Retailer has specified in the Consumer Information Sheet for each Consumer's Point of Supply the Reconciliation Rules pursuant to which the Metering Data from the Primary Metering Equipment at that Consumer's Point of Supply is to be Reconciled. The Parties agree to remain bound by those Reconciliation Rules throughout the term of this Agreement and to comply with the Reconciliation Rules in respect of the Reconciliation of the Metering Data (unless otherwise agreed between the Parties in writing).
- 6.2 The provisions of clause 6.3 to 6.10 (both inclusive) shall apply unless, and to the extent that, the Reconciliation Rules deal with the matters referred to in those clauses and the Independent Retailer remains bound by the Reconciliation Rules.
- 6.3 The Independent Retailer shall ensure that Metering Equipment ("Primary Metering Equipment") is installed at each Consumer's Premises in respect of each Consumer's Point of Supply, at no cost to the Distributor, that is suitable to measure the data required for the Consumer Category and the quantity of Electricity conveyed to that Consumer's Point of Supply. Subject to clause 6.9, the Primary Metering Equipment shall be deemed to be accurate and all measurements taken from the Primary Metering Equipment shall be binding on the Parties. The Primary Metering Equipment shall comply with MARIA and the ESANZ Electricity Metering Code of Practice.
- 6.4 Each Party may, at its own expense, provide additional Metering Equipment to measure the quantity of Electricity conveyed to a Consumer's Point of Supply.
- 6.5 Unless the Distributor and the Independent Retailer agree otherwise, the Party responsible for installing the Primary Metering Equipment shall be responsible for the installation, testing, maintenance and operation of the Primary Metering Equipment in the manner set out in the Reconciliation Rules and shall ensure that the Primary Metering Equipment complies with the Reconciliation Rules.
- 6.6 Each Party shall ensure that its respective employees, agents, contractors and invitees do not interfere with the Metering Equipment of the Other Party or the immediate connections to that Metering Equipment without the prior written consent of the Other Party, 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 this event, the Other Party shall be notified in writing as soon as practicable thereafter.

6.7 Any Party may, upon giving reasonable notice to the Other Party, request a test of the Primary Metering Equipment at any time. Any test performed pursuant to this clause shall be conducted by a person appointed by the person who provides the Primary Metering Equipment and shall be completed using a meter or calibration equipment with a standard of accuracy greater than the standard referred to in the Reconciliation Rules. The Party disputing the accuracy of the Primary Metering Equipment shall pay the reasonable costs of testing unless the Primary Metering Equipment is found to be inaccurate, in which case, the provider of the Primary Metering Equipment shall bear those costs. If the Primary Metering Equipment is found not to be functioning or to be inaccurate, it shall be adjusted, repaired or replaced as necessary at the expense of the provider of the Primary Metering Equipment.

6.8 If it is discovered that the Primary Metering Equipment is not functioning or is inaccurate then the quantity of Electricity conveyed during the Period of Inaccuracy will be determined in accordance with the Reconciliation Rules:

- (a) using the measurements of any check Metering Equipment, if installed, provided that such check Metering Equipment is functioning accurately;
- (b) in the absence of any accurate check Metering Equipment, correcting the inaccuracy if the percentage of inaccuracy is ascertainable by calibration, recalibration, tests or mathematical calculation, such calculation to be made by increasing or decreasing the quantity of Electricity conveyed and recorded during the Period of Inaccuracy; or
- (c) in any other case, estimating the quantity of Electricity conveyed, using as a basis the quantity of Electricity conveyed during periods in similar conditions when the Primary Metering Equipment was measuring accurately.

6.9 As soon as reasonably practicable after the determination referred to in clause 6.8 has occurred a correcting notice shall be issued to the Parties and the Relevant Service Provider so that the correct Charges can be invoiced to each Party.

7 Information to be provided by the Parties

7.1 The Independent Retailer shall arrange for the collection and collation of Metering Data from the Primary Metering Equipment in respect of the Consumer's Point of Supply and shall apply that data further to its obligations under this Agreement and to its obligations under the Reconciliation Rules. The Independent Retailer shall provide the Distributor, at no charge, with such of the Metering Data as the Distributor may reasonably require for each Network's Point of Supply and Consumer's Point of Supply in a format reasonably required by the Distributor.

- 7.2 Each Party will provide to the other, at no charge, as soon as reasonably practicable upon request:
- (a) such information as may reasonably be required for the purpose of calculating Charges and the performance of functions or obligations under this Agreement; and
 - (b) information in sufficient detail to enable a Party to audit the information provided by the Other Party in accordance with clause 17.2 in relation to the Consumer Category assigned to a Consumer's Point of Supply and the Charges and as required under the Reconciliation Rules.
- 7.3 The Independent Retailer will provide to the Distributor, at no charge to the Distributor, as soon as reasonably practicable, upon request, such information as the Distributor may reasonably require for the proper and efficient performance of its obligations, and the efficient and safe operation of the Distribution Network.
- 7.4 The Distributor shall determine the Losses of Electricity deemed to have been incurred in the Distribution Network, by reference to the predetermined Loss Adjustment Factors at specific voltage levels as are specified in Schedule Five (as the same may be varied from time to time upon 60 days notice by the Distributor and advised to the Independent Retailer). The Independent Retailer shall determine the quantities of Electricity for which the Independent Retailer is responsible at the appropriate Network's Point of Supply by applying the Loss Adjustment Factors applicable to each Consumer's Point of Supply to the quantity of Electricity measured at that Consumer's Point of Supply. This information is to be provided by the Independent Retailer in accordance with the Reconciliation Rules.
- 7.5 If the Independent Retailer or the Distributor should discover evidence of interference with Metering Equipment, the Distributor's Equipment, or the Network User's Equipment, such as, but not limited to, broken seals to meters or of theft of Electricity, the Party discovering the evidence shall inform the Other Party within one Business Day of the discovery.
- 7.6 The Independent Retailer acknowledges that the Distributor has trust ownership and requires from time to time information from the Independent Retailer to be able to allow communication with the Consumers as trust beneficiaries. Subject to clause 7.7, the Independent Retailer agrees to provide, upon request, relevant information in its possession reasonably required for this purpose in a reasonable timeframe and in a format to be agreed between the Parties.
- 7.7 Information provided by the Independent Retailer in accordance with clause 7.6 shall not be used for any purpose which is detrimental in any way to the Independent Retailer or the Independent Retailer's Supply Business.

- 7.8 The Distributor may, from time to time, pay an amount to the Independent Retailer (a “Rebate”). If the Rebate is to be applied as a credit against any amounts payable by Consumers of the Independent Retailer who are deemed to qualify for the Rebate in accordance with the rules set out by the trust owners of the Distributor (a “Qualifying Consumer”) then the following provisions shall apply to such Rebates:
- (a) the Independent Retailer shall calculate the amount of each Qualifying Consumer’s entitlement to the Rebate and pass these entitlements to the Qualifying Consumers in accordance with the Distributor’s reasonable directions; and
 - (b) all Rebates received by the Independent Retailer shall be held by the Independent Retailer for the benefit of the Qualifying Consumer’s; and
 - (c) should a Rebate not be able to be applied for the benefit of a Qualifying Consumer, (for example, where a Qualifying Consumer ceases to be a Consumer of the Independent Retailer and their account with the Independent Retailer has a credit balance after the date of processing of the Rebate) the Independent Retailer shall as soon as practicable refund to the Distributor the Rebate for that Qualifying Consumer, or the net credit of the account for that Qualifying Consumer if this is less than the amount of the Rebate for that Qualifying Consumer.
- 7.9 The reasonable costs incurred by the Independent Retailer in complying with clauses 7.6 and 7.8 shall be met by the Distributor with payment being made to the Independent Retailer on the 20th day of the month following that which an invoice is raised by the Independent Retailer for these costs. Late payment will incur default interest at the rate of 3% per annum over the Bank Base Rate from the due date of the invoice until the date of payment.
- 7.10 The Distributor shall indemnify the Independent Retailer against any costs, losses, liabilities, claims, charges, demands, expenses or actions which may be incurred by, or made against, the Independent Retailer as a result of the Independent Retailer undertaking or failing to undertake, any of its obligations referred to in clauses 7.6 and/or 7.8 except where such costs, losses, liabilities, claims, charges, demands, expenses or actions arise as a result of the Independent Retailer’s gross negligence or wilful default.
- 7.11 The obligations of the Parties pursuant to this clause 7 to make information available is subject to:
- (a) any obligation of confidence in respect of any information; and

- (b) a request for information being relevant to the requesting Party's obligations under this Agreement.

8 Line Function Services Agreement

8.1 Clauses 8.2 to 8.4 (both inclusive) shall only apply in respect of a Consumer and a Consumer's Point of Supply where the Distributor has a Line Function Services Agreement with that Consumer in respect of that Consumer's Point of Supply. Unless the Distributor otherwise agrees in writing, the Distributor will only enter into a Line Function Services Agreement with a Consumer, if that Consumer has a supply capacity which exceeds 250kVA at the Consumer's Point of Supply.

8.2 Subject to clause 8.1, where the Distributor has provided the Independent Retailer with a copy of a Line Function Services Agreement the Independent Retailer shall not do anything nor cause any consumer to do anything, which results in a consumer breaching its obligations to the Distributor under the Line Function Services Agreement.

8.3 Subject to clause 8.1, notwithstanding the provisions of this Agreement, the Distributor shall be entitled to:

- (a) interrupt the supply of Electricity to a Consumer's Point of Supply; and/or
- (b) Disconnect a Consumer's Point of Supply,

at any time in accordance with the provisions of any Line Function Services Agreement between the Distributor and the relevant Consumer or, if applicable, pursuant to the Act, and to terminate any such Line Function Services Agreement at any time in accordance with the provisions of such agreement. The Distributor shall, where practicable, consult with the Independent Retailer during discussions with the Consumer prior to interruption of the supply of Electricity or Disconnection and will attempt to provide the Independent Retailer with a copy of any final notice issued to the Consumer prior to Disconnecting the Consumer's Point of Supply.

8.4 The Distributor shall give the Independent Retailer notice of any Disconnection and/or termination referred to in clause 8.3 as soon as practicable following such Disconnection and/or termination.

9 Equipment

9.1 All items of the Distributor's Equipment situated on a Consumer's Premises will remain the sole and absolute property of the Distributor. If circumstances so require, the Independent Retailer will assist the Distributor to obtain an undertaking from the Consumer to provide and maintain, at no

cost to the Distributor, suitable space for the safe and secure housing of the Distributor's Equipment related to the Consumer's Connection and deemed necessary by the Distributor in accordance with Good Industry Practice to be housed at the Consumer's Premises.

9.2 The Independent Retailer will, and will procure that the Consumer will, ensure that it and its respective employees, agents and invitees do not interfere with or damage the Distributor's Equipment (including, without limitation, after termination of this Agreement) without the prior written consent of the Distributor, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property, and shall take all reasonable precautions necessary to protect the Distributor's Equipment from damage, complying with any reasonable requests about such protection made by the Distributor. If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Independent Retailer or the Independent Retailer's employees, agents or invitees, then:

- (a) the Independent Retailer shall pay the cost of making good the damage to the Distributor and
- (b) The Distributor will not be liable to the Independent Retailer for failure to comply with this Agreement insofar as that failure is the result of the negligence or wilful act or omission of the Independent Retailers employee, agent or invitee.

9.3 The Distributor will not, and will ensure that its employees, agents and invitees do not, interfere with or damage the Independent Retailer's Equipment or the Consumer's Equipment (including, without limitation, after termination of this Agreement) without the prior written consent of the Independent Retailer or the Consumer, 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, and shall take all reasonable precautions necessary to protect that equipment from damage, complying with any reasonable requests about such protection made by the Independent Retailer or Consumer. If the Independent Retailer's Equipment or the Consumer's Equipment is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, then:

- (a) the Distributor shall pay the cost of making good the damage to the Independent Retailer or the Consumer (as the case may be); and
- (b) the Independent Retailer will not be liable to the Distributor for failure to comply with this Agreement insofar as that failure is the result of the damage or interference with the Independent Retailer's Equipment or the Consumer's Equipment by the Distributor's employee, agent or invitee.

9.4 The Independent Retailer's Equipment and the Consumer's Equipment will comply with all statutory requirements, Good Industry Practice, and any requirements of this Agreement.

10 Disconnection of Consumer

10.1 The Distributor may Disconnect a Consumer's Point of Supply:

- (a) upon notice from the Independent Retailer requesting such Disconnection (in which case the Distributor will promptly notify the Independent Retailer of the date and time of the Disconnection); or
- (b) upon an event of default as set out in clause 18.3; or
- (c) if this Agreement is terminated by either Party; or
- (d) if the Consumer fails to grant the Distributor the Rights of Access contained in clause 15; or
- (e) if the Consumer's Equipment or the Independent Retailer's Equipment in respect of that Consumer's Point of Supply does not comply with the requirements of this Agreement; or
- (f) if, in the Distributor's reasonable opinion, the Consumer's Equipment or the Independent Retailer's Equipment in respect of that Consumer's Point of Supply is unsafe.

In the case of clause 10.1(b) and 10.1(e) the Distributor shall provide the Independent Retailer 5 Business Days written notice of its intention to Disconnect the Consumer, stating the reasons for such Disconnection and which provides a reasonable time for the Consumer or Independent Retailer to comply with the Distributor's requirements before Disconnection is effected. The Distributor will not Disconnect if the reason for the Disconnection is remedied to the satisfaction of the Distributor prior to the expiry of the notice period, or all reasonable steps necessary for remedying the reason have been and continue to be taken.

10.2 Where a Consumer's Point of Supply is Disconnected pursuant to clause 10.1(a), the Independent Retailer shall indemnify the Distributor against all liabilities incurred by the Distributor as a result of such Disconnection including claims by a Consumer of wrongful Disconnection, provided that the Distributor has acted in accordance with the Independent Retailer's instructions and Good Industry Practice in relation to the Disconnection.

10.3 Should the Distributor disconnect a Consumer's Point of Supply in accordance with clause 10.1(a), or reconnect a Consumers Point of Supply upon request by the Independent Retailer, the Independent Retailer shall pay to the Distributor the Charges in respect of such disconnection or reconnection (as the case may be) specified in Schedule One.

11 Interruption of Supply

11.1 The Distributor may interrupt the conveyance of Electricity to any Consumer's Point of Supply at any time the Distributor considers it reasonably necessary to do so:

- (a) as part of a programme of planned outages of the Distribution Network; or
- (b) to enable the Distributor to inspect, effect alterations, maintain, repair or add to any part of the Distribution Network; or
- (c) to avoid danger to persons or damage to property or to avoid interference with the regularity or efficiency of the conveyance of Electricity through the Distribution Network; or
- (d) in case of emergency to preserve and protect the proper working of the Distribution Network, Transpower's Network or any other system through which the Distribution Network directly or indirectly receives a supply of Electricity; or
- (e) if the supply of Electricity to any Consumer's Point of Supply is or will be reduced in capacity, impaired or interrupted; or
- (f) upon instructions from Transpower or as a result of an action by Transpower further to an agreement between the Distributor and Transpower; or
- (g) in providing Remote Signal Services; or
- (h) in response to an event of Force Majeure.

Nothing in clause 11.1 shall affect the Distributor's obligation to comply with the Service Guarantees.

11.2 Where the Distributor interrupts the supply of Electricity to any Consumer's Point of Supply pursuant to clause 11.1, it shall:

- (a) where practicable give the Independent Retailer 7 Business Days prior notice of its intention to interrupt the conveyance of Electricity unless, in the reasonable opinion of the Distributor, the interruption must be effected immediately due to the nature of the need for it. The notice shall state the date, the time, the Consumer Installation Numbers affected, the reasons for the interruption, and its expected duration;

- (b) if the interruption is unplanned and no prior notice is given, as soon as it is practicable give the Independent Retailer notice of the area affected, the reasons for the interruption, and its expected duration. The Distributor and the Independent Retailer will establish and agree on a suitable protocol for communications in these situations;
- (c) where Transpower request an interruption that can be planned consult with the Independent Retailer with regard to the timing of the interruption; and
- (d) resume the conveyance of Electricity to the relevant Consumer's Point of Supply as soon as reasonably practicable; and
- (e) act in accordance with Good Industry Practice at all times.

11.3 Where notice is given to the Independent Retailer pursuant to clause 11.2(a), and the Independent Retailer advises the Distributor more than 3 Business Days before the interruption is to be made, that the interruption is not suitable, the Distributor will endeavour to negotiate with the Independent Retailer to find a more acceptable date and time for the interruption. If no agreement is reached, or if the Distributor believes that it is necessary to interrupt the conveyance of Electricity, the Distributor shall be entitled to interrupt the conveyance of Electricity as set out in the notice referred to in clause 11.2(a).

12 Ownership of Electricity

12.1. The Parties acknowledge that Electricity injected into the Distribution Network cannot be identified as the property of any person.

12.2. For the purposes of this Agreement Electricity shall be deemed:

- (a) to be the property of the Independent Retailer and the Other Independent Retailers; and
- (b) to have been taken at the time it was conveyed to a Consumer's Point of Supply.

12.3. The Distributor shall not be liable to the Independent Retailer or any Generator in relation to the payment for any Electricity injected into the Distribution Network for supply to Consumers.

13 No Interconnection

13.1 If there is more than one Consumer's Point of Supply at any Consumer's Premises, the Independent Retailer shall not interconnect those Consumer's Points of Supply, nor knowingly

permit such interconnection, without the prior written consent of the Distributor, which may not be unreasonably withheld.

14 Quality of Demand

- 14.1 The Independent Retailer shall require in each contract with its Consumers that if the characteristics of the Consumer's Equipment or demand interferes with the quality of supply of Electricity to any other Consumer, any one or more consumers of any Other Independent Retailer (other than the Independent Retailer) also using the Distribution Network, or interferes with the operation of any of the Distributor's Remote Signal Services or other Fittings (as those Distributor's Remote Signal Services and Fittings were operated at the Commencement Date, as may be subsequently altered from time to time in accordance with Good Industry Practice), the Consumer shall, upon notice from the Distributor or the Independent Retailer, remedy the interference at its cost as soon as practicable (and in any event within 20 Business Days of the date of the notice). If the Consumer fails to remedy the cause within such 20 Business Day period, the Distributor may require the Consumer's Point of Supply to be Disconnected.
- 14.2 The Independent Retailer shall require in each contract with its Consumers that each Consumer must use all reasonable measures to ensure that the levels of harmonic voltages and currents injected back into the Distribution Network from the Consumer's Premises conform with the New Zealand Electrical Code of Practise for Harmonic Levels NZECP 36:1993, insofar as the harmonic disturbance results from a cause within the control of the Consumer.
- 14.3 The mean Power Factor of the demand placed by a Consumer on the Distribution Network shall not be less than an average of 0.95 lagging across the whole supply to that Consumer per Month, and if the mean Power Factor falls below 0.95 lagging, the Distributor may give notice to the Independent Retailer requesting that the mean Power Factor meets the prescribed minimum within the period specified by the Distributor in the notice. If the Independent Retailer fails to ensure that the Power Factor meets the prescribed minimum within the period prescribed in such notice given to the Independent Retailer, the Independent Retailer shall pay to the Distributor the Power Factor Charge prescribed in Schedule One. The Distributor or the Independent Retailer may, at their discretion, Disconnect the Consumer's Point of Supply or take such other action acceptable to the Distributor to procure compliance of the Consumer's Equipment.
- 14.4 The Independent Retailer shall ensure that every agreement between it and each Consumer who does not have a Line Function Services Agreement with the Distributor in respect of each of that Consumer's Points of Supply, shall contain a term to the effect that the Consumer will give employees, agents, subcontractors and other authorised representatives of the Distributor Rights of Access to the Consumer's Equipment for the purpose of remedying any interference pursuant to clause 14.1 or taking any measure pursuant to clause 14.2 or 14.3, and that such term is

expressed to be intended for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

15 Access

15.1 Employees, agents, subcontractors, invitees and other authorised representatives of the Distributor will at all reasonable times have Rights of Access.

15.2 Each Party shall not, and shall ensure that none of its employees, agents or invitees, take any action (or omit to take any action) which could result in the Other Party not being able to obtain access to that Other Party's equipment located at a Consumer's Premises.

15.3 The Independent Retailer shall ensure that every agreement between it and each Consumer contains terms to the effect that:

- (a) the Consumer will give the employees, agents, subcontractors, invitees and other authorised representatives of the Distributor Rights of Access, for the purpose of:
 - (i) installing, testing, inspecting, maintaining, repairing, replacing, operating or removing the Distributor's Equipment (including upon termination of this Agreement) and for any other purpose relating to this Agreement; and
 - (ii) ascertaining the cause of any interference to the quality of Line Function Services being provided by the Distributor to the Independent Retailer or any Other Independent Retailer; and
 - (iii) protecting or preventing danger or damage to persons or property; and
 - (iv) Connecting or Disconnecting the supply of Electricity to any Consumer's Point of Supply in accordance with this Agreement; and
 - (v) Any other purpose related to such activities or to the Distributor's rights or benefits conferred under or pursuant to this Agreement.
- (b) the Distributor shall be entitled to Disconnect the Consumer's Equipment from the Distribution Network forthwith upon the Consumer failing to grant the Distributor Rights of Access to any of the Distributor's Equipment (as contemplated in clause 15.6).

and the Independent Retailer shall ensure that such terms are expressed to be intended for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

- 15.4 The Distributor will exercise its Right of Access to the Consumer's Premises by:
- (a) wherever practicable giving to the Independent Retailer and the relevant Consumer reasonable notice of its intention to and the purpose for which it will exercise its Right of Access;
 - (b) minimising the inconvenience caused to the Consumer to the extent that it is practicable to do so; and
 - (c) observing Good Industry Practice at all times.
- 15.5 The Rights of Access conferred by this clause 15 are in addition to any right of access the Distributor may have under any statute or regulation.
- 15.6 If a Consumer fails to grant to the Distributor Rights of Access to the Distributor's Equipment on the Consumer's Premises after the Distributor has given the Independent Retailer 5 Business Days written notice of access being required, the Distributor may forthwith Disconnect the Consumer's Point of Supply from the Distribution Network. The Distributor shall not be liable for any loss the Independent Retailer may suffer or incur as a result of any such Disconnection. The Independent Retailer shall reimburse the Distributor for all costs relating to the Disconnection and of any Reconnection.
- 15.7 Termination of this Agreement in no way negates the rights and obligations of the parties up to the time of termination with respect to the services and charges specified as part of this Agreement. Termination will be without prejudice to any other rights and remedies of the Distributor.

16 Contracts (Privity) Act 1982

- 16.1 Without limiting any other provision of this Agreement, the Independent Retailer shall ensure that every agreement between it and each Consumer:
- (a) requires the Consumer to comply with the reasonable provisions of the Distributors published connection standards; and
 - (b) includes a prohibition on the Connection or Disconnection of any Consumer's Equipment directly to the Distribution Network without the prior written consent of the Distributor; and
 - (c) includes a prohibition on the Consumer interfering with the Distributor's Equipment, or causing or permitting any other person, material, or vegetation to do so; and

- (d) includes a prohibition on the Consumer conveying or receiving or attempting to convey or receive any signal or other form of communication over the Distribution Network, or any part of it, to or from any person other than the Distributor, or causing or permitting any other person to do so without the prior written consent of the Distributor; and
- (e) contains terms which have exactly the same effect as clauses 6.6, 9, 10.1(e), 10.1(f), 11.1, 13.1, 14, 15.3, and 20;

and that such terms are expressed to be intended to be for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

- 16.2 The Distributor acknowledges that the obligations assumed by it under this Agreement are for the benefit of and are enforceable by, any or all of the Subsidiaries who are the designated persons as contemplated under Section 4 of the Contracts [Privity] Act 1982. Performance or non-performance of the Agreement by any of the Subsidiaries will be deemed to be performance or non-performance of the Agreement by the Independent Retailer.

17 Payment of Charges

- 17.1 In consideration of the Distributor's performance of its obligations under this Agreement the Independent Retailer shall pay the Charges specified in Schedule One and Schedule Seven to the Distributor. The Charges may be varied by the Distributor from time to time in accordance with clauses 17.8, 17.9, and 17.10.
- 17.2 The Independent Retailer shall ensure that the information required pursuant to clause 7.2(a) is received by the Distributor no later than 7 Business Days after the end of the prior Month. The Distributor, acting reasonably, may, by notice to the Independent Retailer, require an audit of all the Independent Retailers records necessary to verify the accuracy of the information provided pursuant to clause 7.2(a). If an error is found in the records during an audit, that when calculated equates to a variance of \$50,000 or more of the total Charges that were payable by the Independent Retailer to the Distributor in the preceding 365 day period (excluding any errors already accounted for and corrected in other audits completed in the preceding 365 day period), the cost of such audit shall be borne by the Independent Retailer. If there is no error, or an error is found in the records during an audit, that when calculated equates to a variance of less than \$50,000 of the total Charges that were payable by the Independent Retailer to the Distributor in the preceding twelve month period (excluding any errors already accounted for and corrected in other audits completed in the preceding 365 day period), the cost of such audit shall be borne by the Distributor. Where an error is discovered, the Party which is found to be in debt to the Other Party shall repay that Other Party within 10 Business Days of discovery of the error, and in

addition pay interest at the Bank Base Rate from the date the error occurred until the date that payment is made. A Party can dispute any error found in accordance with clause 21.

- 17.3 The Distributor will by the 10th Business Day of each Month (provided the Independent Retailer has complied with clause 17.2) invoice the Independent Retailer for the Charges payable by the Independent Retailer pursuant to clause 17.1 for the prior Month. Should the Independent Retailer not comply with clause 17.2, the Distributor may delay invoicing the Independent Retailer by the number of days the Independent Retailer delays in complying with clause 17.2. In the event that the Independent Retailer has not complied with clause 17.2 by the 15th day of the Month, the portion of any Charges determined from such information may be estimated by the Distributor in accordance with Good Industry Practice and invoiced to the Independent Retailer. A charge or credit shall be made by the Distributor in the first invoice rendered to the Independent Retailer following the relevant information becoming available, so that following such adjustment the Independent Retailer is charged the Charges that it would have been charged had the information been available, or available in sufficient time.
- 17.4 The Independent Retailer shall pay to the Distributor (or to the credit of the Distributor in a New Zealand bank account nominated by the Distributor) the amount of each invoice rendered pursuant to clause 17.3 by the 20th day of the month in which the same shall have been rendered.
- 17.5 All Charges payable by the Independent Retailer are stated exclusive of GST (if any). The Distributor shall add to such amounts GST and such other tax, charge or levy as may from time to time be required by virtue of any statute or statutory instrument by which the Distributor is bound. The same shall be payable by the Independent Retailer contemporaneous with payment of the Charges shown on the invoice.
- 17.6 If the Independent Retailer fails to pay any amount due under this Agreement to the Distributor by the due date specified on an invoice, the Distributor may charge, and the Independent Retailer will, pay default interest on the amount unpaid at the rate of 3% per annum over the Bank Base Rate from the due date until the date of payment, provided that nothing in this clause shall affect any rights the Distributor may have to discontinue its services under this Agreement for non-payment. Any disputed amount must be paid on the due date. If the disputed amount (or part thereof) is determined in favour of the Independent Retailer, the Distributor will incur interest from the date that the payment was made to the date a refund is made to the Independent Retailer at the Bank Base Rate on the refunded amount. The Independent Retailer shall indemnify the Distributor in respect of all reasonable costs and expenses incurred by the Distributor in endeavouring to recover any unpaid Charges that are correctly invoiced. The charging of default interest does not imply the granting of credit by the Distributor.

- 17.7 The Distributor may, as a condition of entering into this Agreement or otherwise, at any time on giving 10 Business Days' written notice to the Independent Retailer, require the Independent Retailer to provide a performance bond, bank undertaking, or Bank Guarantee, to a value equal to the Distributor's reasonable estimate of 3 Months' Charges payable by the Independent Retailer under this Agreement, to secure payment of the Charges by the Independent Retailer. From time to time the Distributor may require the Independent Retailer to change the level of the performance bond, bank undertaking or Bank Guarantee, such change to be effected within 10 Business Days' of the written request by the Distributor, to reasonably protect the Distributor from any changed financial exposure to the Independent Retailer or as a result of any variation to the Charges. Where any claim is made under the performance bond, bank undertaking or Bank Guarantee, the Independent Retailer will within 10 Business Days of notice from the Distributor procure a further performance bond, bank undertaking or Bank Guarantee, to be issued so that the requirements of this clause continue to be met.
- 17.8 The Distributor may, at its discretion, vary the Charges or any component thereof (including, without limiting the generality of the foregoing, the method of calculating the Charges). Before the Distributor varies any Charges the Distributor must consult with the Independent Retailer at least 20 Business Days before the new Charges are to be notified pursuant to clause 17.10. Any variation to the Charges shall be final and binding as between the Parties and shall not be the subject of any dispute, mediation, or arbitration. Subject to clause 17.9, the Distributor will not vary the Charges or the Service Guarantees, more than once in any 12 Month period.
- 17.9 The Distributor may vary the Charges to pass on any variations in charges arising from variations in the rates for charges payable by it to Transpower or on any variations in the charges arising from variations in the rates for charges payable by it for avoided transmission. Should Transpower reduce its charges arising from variations in the rates for charges or the charges arising from variations in the rates for charges for avoided transmission charges reduce to the Distributor, these reductions will be passed through to the Independent Retailer at the same time.
- 17.10 The Distributor shall give not less than 60 days' prior written notice before the date on which it intends the varied Charges to take effect (the "Effective Date"), which will set out the Effective Date and details of the variations to the Charges.
- 17.11 Nothing in this clause 17 shall restrict the Parties, if they so agree, to have the Independent Retailer render a draft invoice to the Distributor prepared by the Independent Retailer on behalf of the Distributor in respect of the Charges payable by the Independent Retailer to the Distributor. Such invoice is to be rendered by the Independent Retailer no later than 7 Business Days after the end of the Month for the Charges payable pursuant to clause 17.1 for the prior Month. The Independent Retailer shall pay to the Distributor (or to the credit of the Distributor in a New Zealand bank account nominated by the Distributor) the amount of each invoice rendered pursuant this clause on the 20th day of the Month in which the same shall have been rendered.

If such a draft invoice is rendered, the Distributor may request that it, and the information upon which it is based, be audited in accordance with clause 17.2.

17.12 The Independent Retailer will charge Consumers for Line Function Services on a basis that is in accordance with Schedule One of this Agreement. For the avoidance of doubt, this does not require that the Charges for Line Function Services have to be separately identified on the Independent Retailer's invoices to Consumers.

18 Default and Termination

18.1 If an event of default occurs and remains unremedied, the non-defaulting Party may give 24 hours notice in writing to the Party in default terminating this Agreement, without prejudice to any other rights and remedies of the Parties.

18.2 On termination or expiry of this Agreement:

(a) the Independent Retailer shall cease its use of the Distribution Network and, if applicable, the Distributor shall cease to provide Line Function Services in accordance with this Agreement; and

(b) each Party will return to the Other Party all property of that Party held by the first Party; and

(c) the Independent Retailer will provide to the Distributor all information relating to the consumption of electricity at the Consumer's Points of Supply that the Distributor may reasonably require to determine the Charges outstanding at the time of termination.

18.3 For the purposes of clause 18.1 an event of default occurs if:

(a) a Party fails to pay (other than by inadvertent error in funds transmission which is discovered and notified by the Other Party and corrected within 2 Business Days) any amount due and owing to the Other Party under this Agreement and the default is unremedied at the expiry of 5 Business Days immediately following receipt of written notice to the Party in default of such non-payment; or

(b) a Party has to give notice pursuant to clause 18.3(a) to the Other Party 3 times in any 12 Month period; or

(c) a Party fails in any material respect to perform or comply with any of its material obligations under this Agreement and (if the failure is capable of remedy) it is not remedied, or it has not started to be remedied, to the reasonable satisfaction of the non-defaulting Party within 5 Business Days (or such longer period as may be specified by the

non-defaulting Party) of receiving a written notice from the non-defaulting Party of the failure and requiring it to be remedied; or

(d) a Party:

(i) becomes subject to any distress, attachment, execution or other legal process levied, enforced, sued out on or against any material part of its property and is not discharged or stayed within 10 Business Days; or

(ii) has a receiver or statutory manager appointed to the whole or any substantial part of its undertaking, property or assets; or

(iii) fails to comply with a statutory demand under section 289 of the Companies Act 1993; or

(iv) is removed from the register of companies.

18.4 The termination of this Agreement shall be without prejudice to the rights of the Parties accruing prior to termination.

18.5 The provisions of clauses 9, 15, 17.6, 20, 21 and 22 shall survive termination of this Agreement and shall remain in full force and effect notwithstanding such termination.

19 Force Majeure

19.1 If either Party is unable to carry out any of its obligations under this Agreement because of Force Majeure, this Agreement shall remain in effect but except as otherwise provided, both Parties' obligations, other than any obligation in respect of Service Guarantees and 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 period of the continuing Force Majeure, provided that:

(a) the non-performing Party gives the Other Party prompt notice describing the Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;

(b) the suspension of obligations is of no greater scope and of no longer duration than is required by the Force Majeure;

(c) no obligations of either Party that accrued before the Force Majeure are excused as a result of the Force Majeure;

- (d) the non-performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

19.2 Nothing in this clause 19 shall be construed to require either Party to settle a strike, lockout or other industrial disturbance by acceding against its judgement to demands made to it.

19.3 If:

- (a) an event of Force Majeure has a direct and material affect on the Independent Retailer's operations; and
- (b) the Distributor is unable to provide the Line Function Services to any Consumer's Point of Supply; and
- (c) the Distributor invokes clause 19.1;

then, for each Month during which, in respect of a Consumer's Point of Supply, clauses 19.3(a), (b) and (c) applied, the Charges for that Consumer's Point of Supply for that Month shall be reduced by the amount determined as follows:

$$\frac{a}{b} \times c$$

Where

- a = the Charges which would have been payable in respect of that Consumer's Point of Supply for that Month if this clause 19.3 did not apply;
- b = the number of days in that Month; and
- c = the number of days in that Month during which in respect of that Consumer's Point of Supply clauses 19.3(a), (b) and (c) applied throughout the entire day.

20 Limitation of Liability

20.1 Neither Party nor any of its officers, employees, contractors, invitees or agents shall be liable to the Other Party, in the circumstances where:

- (a) the failure of or defect in the supply or conveyance of electricity or other breach of this Agreement is directly or indirectly caused by Force Majeure; or
- (b) in respect of the Distributor, for:
 - (i) momentary fluctuations in the voltage or frequency of electricity conveyed; or

- (ii) any failure to convey electricity caused by any Consumer's or other person's, other than the Distributor, failure to observe or comply with Good Industry Practice; or
 - (iii) any failure to convey electricity caused by no or reduced injection or supply of Electricity into the Distribution Network; or
 - (iv) any failure to convey electricity caused by any defect or abnormal conditions in any Consumer's Premises or Consumer's Equipment; or
 - (v) any failure to convey electricity in accordance with clause 11.1; or
 - (vi) any failure to convey electricity due to an occurrence caused by Transpower, a Generator, or the Independent Retailer; or
 - (vii) any outage or fault caused by a failure in the Distribution Network which was not foreseeable and could not have been prevented by Good Industry Practice;
 - (viii) any failure to comply with clause 2.5 other than for payment of the fee set out in Schedule 7.
- (c) the Other Party's loss results from the liability of that Other Party to a third party PROVIDED THAT the Distributor shall be liable for any direct, reasonably foreseeable, physical loss or damage if it is caused by the Distributor's negligence or wilful act or omission and the liability is of the Independent Retailer to a Consumer and the Independent Retailer shall be liable for any direct, reasonably foreseeable, physical loss or damage if it is caused by the Independent Retailer's negligence or wilful act or omission and the liability is of the Distributor to a Consumer, Transpower, a Generator, or an Other Independent Retailer. Such liability shall be in accordance with the remaining provisions of this clause 20.

20.2 Neither Party nor any of its officers, employees, contractors, invitees or agents shall be liable to the Other Party for loss arising from any breach of this Agreement other than for direct loss which was reasonably foreseeable as being likely to occur in the ordinary course of events from such breach, and which resulted in physical damage to property on a Consumer's Premises belonging to the Other Party, or a Consumer.

20.3 Neither Party nor any of its officers, employees, agents, contractors or invitees shall in any circumstances whatsoever be liable to the Other Party, for:

- (a) any loss of profit, loss of revenue, loss of use, loss of contract, or loss of goodwill of any person including the Other Party, a third party, or a Consumer; or
- (b) any indirect or consequential loss; or
- (c) any loss resulting from loss or corruption of or damage to any electronically stored data, or software; or
- (d) any loss arising from an occurrence under clause 11.

20.4 Notwithstanding any other provision of this Agreement, any liability of the Distributor, whether as a result of a breach of this Agreement or on any other ground or basis whatsoever (including, but not limited to, liability as a result of negligence) to the Independent Retailer, will be limited to:

- (a) \$100,000 per event (and for the purposes of this clause a series of breaches arising from the same event shall be treated as being a single event);
- (b) \$250,000 for events or circumstances occurring in any consecutive period of 365 days;
- (c) in any event, will not exceed the actual loss or damage suffered, including without limitation, any liability to any Consumer or other person.

20.5 The provisions of clauses 20.1 to 20.4 are intended to extend to the officers, employees, agents, contractors and invitees of the Distributor and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

20.6 The Independent Retailer shall ensure that every agreement between it and its Consumers shall contain a term that limits the total liability of the Distributor to a Consumer in the same manner as this clause 20, except as required by law (including without limitation the Consumer Guarantees Act 1993), and that such term shall be expressed to be intended for the benefit of and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

20.7 Nothing in this clause 20 shall limit the Distributor's obligations in respect of payments to be made for any Service Guarantees to the Independent Retailer.

20.8 Any liability of the Independent Retailer pursuant to clause 20.1 (c) will be limited to:

- (a) \$100,000 per event (and for the purposes of this clause a series of breaches arising from the same event shall be treated as a single event);

- (b) \$250,000 for events and circumstances occurring in any consecutive period of 365 days; and
- (c) in any event, will not exceed the actual loss or damage suffered, including without limitation, any liability to Transpower, a Generator, or an Other Independent Retailer.

20.9 The limitation of liability thresholds set out in clauses 20.4 and 20.8 shall be varied as at 1 April of each year (with the first escalation occurring on 1 April 2000) for changes in the Producers Price Index in accordance with the following formula:

$$NT = ET \times \frac{\text{Reference Index}}{\text{Base Index}}$$

where

- NT = the new limitation of liability threshold to apply
- ET = the limitation of liability threshold being \$100,000 or \$250,000 (as the case may be)
- Reference Index is the Producers Price Index, Inputs All Industry (PPIQ.SAI9) as published by Statistics New Zealand for December of the year immediately prior to the date on which the escalation is to be made
- Base Index is the Producers Price Index, Input All Industry (PPIQ.SAI9) as published by Statistics New Zealand for March 1999.

(If Statistics New Zealand ceases to compile and report figures for the Producers Price Index, Inputs All Industry, the parties are to agree on a substitute index which approximates the purpose and composition of that statistic if agreement is not reached, then a substitute is to be selected by the President for the time being of the New Zealand Society of Accountants.)

21 Dispute Resolution

21.1 After receipt of notice of a dispute from one Party to the Other Party, the Parties shall actively and in good faith negotiate with a view to speedy resolution of any dispute or difference within 10 Business Days of the notice being received by the Other Party. The dispute may arise between the Parties concerning the interpretation of this Agreement or relating to any other matter arising under this Agreement. In the first instance good faith negotiations shall occur:

- (a) between two designated employees of the Parties; and failing resolution by
- (b) negotiation between the Chief Executive Officers of the respective Parties.

21.2 Where any dispute is not resolved pursuant to clause 21.1 within 10 Business Days of one Party giving notice to the other of a proposal for the resolution of the dispute either Party may require

the dispute to be referred to mediation by a notice to the Other Party setting out the general nature of the dispute.

- 21.3 Within 10 Business Days of the notice referring the dispute to mediation the Parties shall agree on the appointment of a mediator and in consultation with the mediator determine a location, timetable and procedure for the mediation.
- 21.4 Each of the Parties shall appoint a representative who shall have authority to reach an agreed solution and effect settlement.
- 21.5 In all matters relating to the mediation the Parties and their representatives shall act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure.
- 21.6 All proceedings and disclosures in the course of the mediation shall be conducted and made without prejudice to the rights and positions of the Parties in any subsequent arbitration or other legal proceedings.
- 21.7 Any decision or recommendation of the mediator shall be binding on the Parties in respect of any matters unless within 10 Business Days either Party notifies the Other Party in writing that it rejects the mediator's determination.
- 21.8 The costs of the mediation, other than the Parties' legal costs, shall be borne equally by the Parties, who shall be jointly and severally liable to the mediator in respect of the mediator's fees.
- 21.9 Where at the conclusion of a mediation pursuant to clauses 21.3 to 21.8 any question or difference, the subject of a mediation notice, may be referred by either Party to arbitration under the Arbitration Act 1996 before a sole arbitrator. In relation to an arbitration conducted pursuant to this clause the Parties agree that:
- (a) in addition to the stated methods of giving notice, facsimile shall also be permitted;
 - (b) the Parties will endeavour to agree the choice of an arbitrator and failing agreement the arbitrator shall be appointed by the President of the District Law Society;
 - (c) the venue of the arbitration shall be determined by the arbitrator;
 - (d) the arbitrator shall not appoint any expert to advise except with the written consent of both Parties; and
 - (e) the Second Schedule to the Arbitration Act 1996 applies.

21.10 The Distributor and the Independent Retailer shall continue to perform their respective obligations pursuant to the provisions of this Agreement pending the resolution of any question, dispute or difference.

21.11 This clause 21 does not apply to any variations to any of the Charges that the Distributor makes except as a result of a dispute pursuant to clause 30.

22 Confidentiality

22.1 Each Party ("Obligor") undertakes with the other Party that it shall preserve the confidentiality of and shall not directly or indirectly reveal, report, publish, disclose or transfer Confidential Information except in the circumstances and to the extent set out in clause 22.3.

22.2 The Parties shall procure their respective employees, agents, and contractors who from time to time have access to any information the subject of clause 22.1 are bound by an obligation of confidence of the same scope and effect as the obligations set out in clause 22.1.

22.3 The Obligor may disclose Confidential Information in the following circumstances:

- (a) where at the time of receipt by the Obligor the Confidential Information is already in the public domain; or
- (b) where after the time of receipt by the Obligor the Confidential Information enters the public domain, except where it does so as a result of a breach by the Obligor of its obligations under clause 22.1 or a breach by any other person of an obligation of confidence to the Party which is not the Obligor and the Obligor is aware of such breach; or
- (c) where the Obligor is required:
 - (i) by any statutory or regulatory obligation, body or authority; or
 - (ii) by any judicial or arbitration process; or
 - (iii) by the regulations of any stock exchange upon which the share capital of the Obligor or the other Party (or either of their holding company) is from time to time listed or dealt in; or
- (d) where the Confidential Information is released to the employees, directors, agents or advisers of the Obligor provided that the requirements of clause 22.2 are met.

23 No Assignment

- 23.1 Subject to clause 23.2, neither Party may assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the Other Party, which consent must not be unreasonably withheld or delayed.
- 23.2 Each Party may subcontract or delegate the performance of any of its obligations under this Agreement, without the prior consent of the Other Party, but any such subcontracting or delegation will not relieve a Party from liability for performance of any such obligations, responsibility, or duty.

24 Non-Waiver

- 24.1 None of the provisions of this Agreement shall be considered to be waived by either Party except when such waiver is given in writing.
- 24.2 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.

25 Entire Agreement

- 25.1 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, communications and understandings, whether oral or written, between the Parties. 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.

26 Savings Clause

- 26.1 If any provision of this Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of the jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality. The Parties shall initiate a review pursuant to clause 29 to vary this Agreement so far as it is possible so as to remove the invalidity, unenforceability or illegality while retaining the intention of the Parties in any provision which is or becomes or is declared invalid, unenforceable or illegal.

27 Governing Law

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

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 address, facsimile number, and electronic mail address for the Parties for the purposes of this clause 28 are set out in Schedule Two, provided that either Party may alter its address, facsimile number, or electronic mail address for the purposes of this clause by notice in writing to the other Party.

28.3 Subject to clause 28.4, a notice or other form of communication shall be deemed to have been received as follows:

- (a) if given or delivered personally or by courier delivery, at the time when given or delivered;
- (b) if sent by pre-paid post, at the expiration of 48 hours after the document was delivered into the custody of the postal authorities;
- (c) if sent by facsimile, on the day of sending if the sending machine confirms transmission is successful;
- (d) if sent by electronic mail, on the day of sending if the recipient confirms by return electronic mail that the transmission has been received.

28.4 A notice or other form of communication which, but for the provisions of this clause 28.4, would be deemed to be received after 5pm on a Business Day or on a day which is not a Business Day, shall be deemed to be received at 8.30am on the next following Business Day.

29 Review and Variations

29.1 Subject to clauses 17.5, 17.8, 17.9, and 17.10, no variations or modifications to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties.

29.2 Either Party may propose variations or initiate a review of this Agreement.

- 29.3 The Party requesting the review or variation shall propose in writing to the other Party amendments to this Agreement and the basis on which such amendments are sought. The Other Party shall respond within 15 Business Days of receipt of the notice, with agreement to the proposed amendments or an alternative proposal.
- 29.4 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 or the proposal of the variation then the procedure of clause 21 shall apply.
- 29.5 In making a determination under an arbitration under clause 29.4, the arbitrator will have regard to the respective benefits and burdens of the Parties under this Agreement and the effect of any changes or reasonably anticipated changes in any statute, technology, or accepted industry practice in the period since the Date of Commencement.

30 Equitable Treatment

- 30.1 In exercising any rights or undertaking any obligations under this Agreement that relate to or affect Other Independent Retailers the Distributor will treat the Independent Retailer equitably in relation to any Other Independent Retailer with regard to the terms and conditions laid down for the use of the Distribution Network.
- 30.2 If the Distributor enters into an agreement with any Other Independent Retailer to use the Distribution Network and that agreement, taken as a whole, is more favourable to that Other Independent Retailer than this Agreement to the Independent Retailer, the parties shall discuss whether to amend this Agreement to provide such additional benefits to the Independent Retailer provided that the basis for providing such additional benefits can be agreed between the Parties.

31 Costs

- 31.1 The Parties shall bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement.

32 No Third Party Rights

- 32.1 Except as expressly provided in this Agreement the Parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement shall be for the sole and exclusive benefit of the Parties.

33 Further Assurance

33.1 Each Party undertakes to do all acts and things and execute all deeds and documents which may be required to be executed to carry out or give effect to the provisions of this Agreement.

34 Incumbent Retailer

34.1 The Independent Retailer acknowledges TrustPower as Network User is the Incumbent Retailer in relation to the Distribution Network. The Distributor covenants to ensure that the following clause appears in each of its agreements whereby the Distributor allows any person (for the purpose of the below clause the "Network User") to be connected to the Distribution Network and covenants to enforce the clause. Terms in the clause shall be defined appropriately with, without limitation, references to "Consumer" being references to the consumer of the party with whom the Distributor is contracting.

[1]

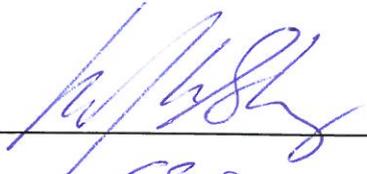
- (a) The terms and conditions set out in this clause [1] apply for so long as TrustPower Limited is undertaking an Electricity Supply Business and is the Incumbent Retailer. Upon TrustPower Limited ceasing to be the Incumbent Retailer this clause [1] shall cease to apply. The Independent Retailer agrees to comply with this clause [1] until TrustPower Limited is no longer the Incumbent Retailer. In the event of a conflict between the provisions of this clause [1] and any provision of this Agreement, the provisions of this clause [1] shall prevail.
- (b) The Distributor shall allow the use of the Distribution Network by the Independent Retailer only if the Independent Retailer has adopted MARIA and agrees to be bound by and comply with the obligations under MARIA imposed upon Independent Retailers or has adopted and agreed to be bound by and comply with the obligations under NZEM imposed upon Purchaser Class Market Participants, unless otherwise agreed prior in writing by TrustPower Limited, and TrustPower Limited has acknowledged that such agreement will not be unreasonably withheld.
- (c) The Independent Retailer warrants to the Distributor that any agreement it enters into with a Consumer for the supply of Electricity to that Consumer through that Consumer's Point of Supply does not impose any liability on the Incumbent Retailer for the supply of Electricity to that Consumer nor does it imply a backup supply of Electricity by TrustPower Limited in the event of the Independent Retailer's failure to supply Electricity other than on terms and conditions that might be agreed between the Consumer and TrustPower Limited.
- (d) The Independent Retailer shall forthwith upon commencement of supply of Electricity to a Consumer advise the Relevant Service Provider that the supply of Electricity to the

Consumer at each Consumer's Point of Supply from the Network's Point of Supply from which the Consumer is supplied is to be to the account of the Independent Retailer and not TrustPower Limited (or any Other Independent Retailer) from the date specified on the Consumer Information Sheet or such later date as the Independent Retailer and the Consumer have agreed and advised the Distributor.

- (e) The Independent Retailer may, on giving not less than 2 Business Days' prior written notice to the Distributor, require the Distributor to exclude any Consumer and that Consumer's Point of Supply from the Consumers covered by this Agreement with effect from the date and time specified in that notice. The Independent Retailer may only require the Distributor to so exclude a Consumer if:
- (i) another person who meets the reasonable requirements of the Distributor has entered into an agreement with that Consumer and is supplying Electricity to that Consumer at each of the Consumer's Points of Supply; or
 - (ii) the Distributor has Disconnected that Consumer or is advised that the Consumer no longer requires a supply of Electricity and has been permanently Disconnected from the Distribution Network.
- (f) The Independent Retailer may not terminate the Agreement with the Distributor to use the Distribution Network unless:
- (i) another person who meets the reasonable requirements of the Distributor (including, without limitation, having entered into a conveyance and use of system agreement with the Distributor and is complying with that agreement) has entered into an agreement with the Consumers that were supplied by the Network User before the agreement is terminated and is supplying Electricity to those Consumers at each of those Consumer's Points of Supply; or
 - (ii) the Distributor has Disconnected the Independent Retailer's Consumers or is advised that the Independent Retailer's Consumers no longer requires a supply of Electricity and has been permanently Disconnected from the Distribution Network.

EXECUTED as an agreement

BULLER ELECTRICITY LIMITED by:



Title *CEO.*

PULSE UTILITIES NEW ZEALAND LIMITED by:



Title *C.E.O.*

Schedule 1

Charges

The schedule is divided into two parts. The first part is charges for fixed and variable line function services which are effective from the date of commencement until amended in accordance with Clause 17. The second part relates to charges by the Distributors Agent.

Where a Consumer Disconnects from the Consumer's Point of Supply then seeks Reconnection at the same Consumer's Point of Supply for the same Electricity supply purpose within a 12 month period, all outstanding line charges associated with this Consumer's Point of Supply must be paid before the Reconnection is made. This provision does not apply if where the Reconnecting Consumer is a different Consumer to that applying at the date of Disconnection.

Schedule One

Part A

Line Function and Transmission Charges

Load Group 1

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

LOAD GROUP 1 Domestic Customers – 1432 Consumers For all customers up to 15kVA Capacity Loads Supplied at 400 V

Consumer's Point of Supply Charge		1 st April 2006	1 st May 2008
1	Fixed Line Charge per day	\$1.00	\$1.00

Code	Consumer Category	Description	1 st April 2006	1 st May 2008
2	24 Hours	Available 24 hours a day	7.93	8.76
6	Controlled	For use with the 24 Hour tariff for control of hot water and storage heaters	3.57	3.94
3	All Inclusive	All Load is subject to control	6.29	6.95
35	Day	Day Rate for Day/Night rate 0800-2400	9.54	10.54
5	Night	Night Rate for Day/Night rate 2400-0800	2.38	2.63

Schedule One

Part A

Line Function and Transmission Charges

Low User Group

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

Domestic Customers - Low User Group - 2153 Consumers
For all customers up to 15kVA Capacity Loads Supplied at 400 V

Consumer's Point of Supply Charge		1 st April 2006	1 st May 2008
1L	Fixed Line Charge per day	\$0.15	\$0.15

Code	Consumer Category	Description	1 st April 2006	1 st May 2008
2L	24 Hours	Available 24 hours a day	11.71	12.47
6L	Controlled	For use with the 24 Hour tariff for control of hot water and storage heaters	7.51	8.00
3L	All Inclusive	All Load is subject to control	10.13	10.78
35L	Day	Day Rate for Day/Night rate 0800-2400	13.25	14.12
5L	Night	Night Rate for Day/Night rate 0000-0800	6.37	6.78

Schedule One

Part A

Line Function and Transmission Charges

Load Group 2

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

LOAD GROUP 2 Non Domestic Customers – 595 Consumers
For all customers over 15kVA capacity supplied from the general 400 V system

	Consumer's Point of Supply Charge	1 st April 2006	1 st May 2008
8	Fixed Line Charge per day [over 1 kVA]	\$1.00	\$1.00
21	Underverandah Light rate per light per month	\$12.00	\$12.00

Code	Consumer Category	Description	1 st April 2006	1 st May 2008
9	24 Hours	Available 24 hours a day	7.93	8.76
13	Controlled	For use with the 24 Hour tariff for control of hot water and storage heaters	3.57	3.94
68	Day	Day Rate for Day/Night rate 0800-2400	9.54	10.54
12	Night	Night Rate for Day/Night rate 0000-0800	2.38	2.63
32	Lighting	Underverandah and Streetlighting	6.12	6.76

Schedule One

Part A

Line Function and Transmission Charges

Load Group 3

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

LOAD GROUP 3 Non Domestic Customers – 41 Consumers
For all customers over 15kVA capacity with Dedicated 400 V Feeders

Consumer's Point of Supply Charge		1 st April 2006	1 st May 2008
55	Fixed Line Charge per day	\$4.00	\$4.00

Code	Consumer Category	Description	1 st April 2006	1 st May 2008
310	Commercial Day	Summer Day 0800–2400	7.25	8.01
311	Commercial Night	Summer Night 2400-0800	2.15	2.38
320	Commercial Day	Winter Day 0800–2400	7.25	8.01
321	Commercial Night	Winter Night 2400-0800	2.15	2.38
300	24 Hour Supply	Available 24 hours a day	5.58	6.17

Schedule One

Part A

Line Function and Transmission Charges

Load Group 4

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

LOAD GROUP 4 Non Domestic Customers – 9 Consumers
For all customers over 100kVA

Consumer's Point of Supply Charge		1 st April 2006	1 st May 2008
54	Fixed Line Charge per day	\$15.00	\$15.00

Code	Consumer Category	Description		1 st April 2006	1 st May 2008
110	Commercial Day	Summer Day	0800–2400	7.25	8.01
111	Commercial Night	Summer Night	2400-0800	2.15	2.38
112	Commercial Day	Winter Day	0800–2400	7.25	8.01
113	Commercial Night	Winter Night	2400-0800	2.15	2.38
100	24 Hour Supply	Available 24 hours a day		5.58	6.17

Schedule One

Part A

Line Function and Transmission Charges

Load Group 5

Charges are as per Buller Electricity Limited published prices as at 1st May 2008. Charges payable immediately before this date were set at 1st April 2006. All Charges are exclusive of GST.

LOAD GROUP 5 Non Domestic Customers – 3 Consumers For all customers over 200kVA

Consumer's Point of Supply Charge		1 st April 2006	1 st May 2008
23	Fixed Line Charge per day	\$35.00	\$35.00

			1 st April 2006	1 st May 2008
417	Commercial Day	Summer Day 0800–2400	7.25	8.01
415	Commercial Night	Summer Night 2400-0800	2.15	2.38
412	Commercial Day	Winter Day 0800–2400	7.25	8.01
410	Commercial Night	Winter Night 2400-0800	2.15	2.38
400	24 Hour Supply	Available 24 hours a day	5.58	6.17

Schedule One

Part B

Wash-Up Information

The Charges set out in Part B of this Schedule are the Charges to be applied to the Wash up Information referred to in the Pricing Methodology, a copy of which has been made available to the Network User by Buller Electricity Limited (the **Distributor**).

Wash-up Information is calculated using aggregated information and cannot be attributed to any type of Consumer or to any time of the day and relates to Electricity transported on the Distribution Network at unknown times. The Distributor will therefore use the weighted average cost of the Line Function Services for individual Network Users to price Wash-up Information (as referred to in the Pricing Methodology). The weighted average cost per unit of Electricity shall be determined from the revenue from the variable portion of charges for Line Function Services as determined in accordance with this Schedule One Part A and the quantity of Electricity supplied during the Consumption Period (i.e., the calendar month during which Electricity is supplied to Consumers). The price per kWh determined by the Distributor shall apply to the Wash-up Information in accordance with the following formula to determine the wash-up invoice amount.

$$\text{Wash-up invoice amount} = \text{QTY}_{\text{WI}} * \text{Rate}_{\text{kWh}}$$

where:

$$\text{QTY}_{\text{WI}} = \text{Wash-up Information allocated to the Network User}$$

$$\text{Rate}_{\text{kWh}} = \text{Rate per kilowatt hour calculated for the Network User}$$

The price applicable to Wash-up Information shall be supplied to the Network User at the time of invoice and shall be accompanied by supporting data.

Power Factor Charge

A low power factor on an electricity distribution network disadvantages the consumers that are connected to that network and therefore must be strictly controlled. The Distributor has a payment regime which is intended to incentivise Consumers connected to its Distribution Network to maintain the Power Factor on or above the allowable limit.

If a Consumer's Point of Supply is in breach of the minimum Power Factor requirements for the Distribution Network, the Distributor will give the Network User notice and allow the Network User three months to notify and require the Consumer to correct the Power Factor.

If the Consumer's Power Factor is not within the defined limits within three months of the Distributor notifying the Network User, the monthly payment (the Power Factor Charge) in the table below will apply. The Distributor will invoice the Network User each month for the period the Power Factor remains outside the defined limits.

Minimum Power Factor	0.95
Monthly Payment per kVA of the Consumer's Point of Supply	\$6.67

The kVA is based on the anytime maximum kVA during the month when the Power Factor is less than the minimum specified in clause 14.3 of the relevant Conveyance and Use of System Agreement made between the Distributor and the Network Use.

Schedule Two - Dates and Notices

Date of Commencement: August 6 2008

Addresses for Notices:

Pulse Utilities New Zealand Limited

Address: 403A Richmond Road
Grey Lynn, Auckland
(P O Box 10044, Dominion Road) Auckland

Attention: James Martin, Chief Executive
Telephone: 09 378 6607
Facsimile: 09 378 4405
Email: james.martin@pulseutilities.com

The Distributor

Buller Electricity Limited

Address: Robertson Street, Westport 7825
P O Box 243, Westport 7866

Attention: Michael Joseph McSherry, Chief Executive
Telephone: (03) 788 8171
Facsimile: (03) 788 8191
Email: mike.mcsherry@bullernetwork.co.nz

Schedule Three - Consumer Information Sheet

INDEPENDENT RETAILER DETAILS

INDEPENDENT RETAILER NAME			
INDEPENDENT RETAILER ADDRESS			
CONTACT PERSON			
POSITION			
TELEPHONE NUMBER	()		
FACSIMILE	()		
SERVICE REQUIRED	CONVEYANCING AND LINE FUNCTION SERVICES		
RECONCILIATION RULES APPLICABLE	MARIA <u>or</u> NZEM <i>(Delete One)</i>		
IF LINE FUNCTION REQUIRED – TARIFF(S) APPLIED FOR			
DATE AND TIME OF COMMENCEMENT OF SUPPLY			
<p>The Independent Retailer hereby gives notice and warrants to the Distributor that they are entitled to supply and have entered into a contract to supply Electricity to the Consumer at the Consumer's Points of Supply set out below. The Independent Retailer warrants that Metering Equipment and Load Control Equipment is installed at the Consumer's Premise that complies in all respects with the Conveyance and Use of System the Independent Retailer has with the Distributor. The Independent Retailer agrees to become liable for all Charges payable in accordance with the Conveyance and Use of System Agreement from the commencement of supply of Electricity with the Distributor.</p>			
Signed by the INDEPENDENT RETAILER			
Date			

CONNECTION DETAILS

Physical address for Consumers Points of Supply *	The Distributor's Consumer Installation Number	Primary Metering Services to be provided by:	TO BE COMPLETED BY THE DISTRIBUTOR				
			Capacity kVA	Connection Level <i>(Delete One)</i>	Line Tariff Applied	Loss Adjust Factor	Transpower Point of Connection
				High / Low			
				High / Low			
				High / Low			
				High / Low			
				High / Low			
				High / Low			
				High / Low			
				High / Low			

* Please use another sheet if more connections are required (one form per Consumer)

Schedule Four – Loss Adjustment Factors

Loss Adjustment Factor

The Loss Adjustment Factors reflect the total Losses incurred via the various components of the Distribution Network when Electricity is conveyed across the Distribution Network.

With effect from 1 May 2008 the following Loss Factors and Ratios will apply:

Loss Category	Loss Ratio/Factor
Reconciliation Loss Ratio	7.59%
Technical Loss Ratio	5.15%
Non Technical Loss Ratio	2.44%
Reconciliation Loss Factor	1.082

The Loss Adjustment Factors and Ratios may be amended by the Distributor from time to time in accordance with the provisions of the relevant Conveyance and Use of System Agreement made between the Distributor and the Network User.

Loss Codes and Loss Adjustment Factors

The Distributor populates the registry with a loss code for each Consumer Installation Number (ICP) and from time to time determines and publishes Loss Adjustment Factors under the provisions of the relevant Conveyance and Use of System Agreement made between the Distributor and the Network User.

The following Loss Codes and Loss Adjustments Factors apply on and from 1 May 2008.

Loss Code	Loss Adjustment Factor
	As at 30 September 2007
BL0	1.000
BL1	1.082

- d) any other dealing whatsoever by the Distributor with the Independent Retailer or the Bank or either of them or any other person or persons; or
- e) any other act, matter, circumstance or law whereby the Bank as a surety only would, but for the provisions of this clause 3, have been released from liability under this deed.

4. The Bank agrees independently of the foregoing guarantee to indemnify the Distributor against all losses, costs and other expenses which the Distributor may suffer or incur as a result of any failure of the Independent Retailer to make due and punctual payment of the moneys referred to in clause 1, whether or not the liability of the Independent Retailer is, or has become, void or unenforceable for any reason, and whether or not the foregoing guarantee shall be void or unenforceable against the Bank for any reason.

5. The Bank agrees to pay to the Distributor all costs and expenses (including costs as between solicitor and own client) sustained or incurred by the Distributor in obtaining or attempting to obtain payment of all or any of the moneys for which the Bank may from time to time be liable under the provisions of this deed or in enforcing or attempting to enforce any remedy or power expressed or implied in this deed.

EXECUTION AS A DEED

[Insert name of registered trading bank]

by:

[_____ Attorney]

Witness to signature[s]:

Signature: _____

Occupation: _____

Address: _____

Schedule Six – Network Performance and Service Standards

1. NETWORK PERFORMANCE

1.1 Quality of Conveyance

The Distributor shall use all reasonable endeavours to:

- (a) Plan, design, maintain and operate the Distribution Network in accordance with Good Industry Practise in New Zealand and meet all statutory and regulatory requirements as legislated from time to time.
- (b) Maintain the voltage at each Consumer's Point of Supply to within the tolerances prescribed pursuant to the Electricity Regulations 1997, or as may be agreed by the Parties from time to time.
- (c) Minimise flicker, voltage sags, voltage surges, spikes and electrical noises at the Consumer's Points of Supply;
- (d) Maintain the levels of the harmonic voltages and currents passing into Consumers' Premises so that they conform with the Limitation of Harmonic Levels Notice 1981, and electrical Code of Practice 36, or any other notice in substitution thereof insofar as harmonic disturbance results from a cause within the Distributor's control; and
- (e) Provide continuous delivery of Electricity at each Point of Connection subject to the terms of this Agreement.

1.2 Independent Retailer Enquiries

- (a) During normal business hours (0800 to 1700) the Distributor will operate a help desk facility to handle Independent Retailer account and general enquiries.
- (b) A service will be maintained for emergency and fault calls outside the hours 0800 to 1700.
- (c) The Distributor will provide a 24-hour fault reporting service to the Independent Retailer or the Independent Retailer's Agent to enable them to handle fault calls and provide the status of same.

2. SERVICE GUARANTEES

The Distributor will undertake to meet its published service level commitments. Where these service levels are not met the Distributor will honour the penalty provisions as set out in this Schedule or as amended by it from time to time.

2.1 Restoration of Electricity Supply

Where the Distributor is advised of an interruption to Electricity supply it will organise the fault response on the Independent Retailer's behalf. Where a fault is discovered on the Distributor's Network between the hours of 5AM to 10PM the Distributor will:

- (a) Undertake to restore supply within six hours of receipt of notification between the hours of 5AM to 10PM for urban faults, or within eighteen hours of notification between the hours of 5AM to 10PM for rural faults.
- (b) Where a service Network fuse requires replacement, undertake to restore supply within six hours of notification between the hours of 5AM to 10PM for urban Consumers, or within six hours of notification between the hours of 5AM to 10PM for rural Consumers.
- (c) Meet the costs of fault response provided the fault is on the Distribution Network.

Where the Distributor is unable to restore supply within the Service Guarantee period it will make a refund to the Independent Retailer of:

- (i) \$20.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

The above commitment and Service Guarantees do not apply where the fault results from and is caused by a failure of the Consumer's Equipment, or the Independent Retailer's Equipment, or Transpower.

2.2 Accidental Disconnections

Where the Distributor accidentally disconnects a Consumer it will make a refund to the Independent Retailer of:

- (i) \$50.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network ; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

2.3 Planned Maintenance

Where the Distributor plans to do maintenance on the Distribution Network that requires an interruption to the supply of Electricity to Consumers it will notify the Independent Retailer of the Consumer Installation Numbers affected 7 Business Days prior to the interruption. There will be no more than two planned interruptions to any Consumer's Point of Supply in any 12 Month period. Where this requirement is not met the Distributor will make a refund to the Independent Retailer of:

- (i) \$20.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

Maintenance which is unable to be planned because of the nature of it (as described in clause 11), or in the instance where the Distributor or the Distributor's Agents has obtained the immediate consent of the individual Consumers affected before the work is performed, will not attract a refund.

2.4 New Connections

Where the Independent Retailer requests a new Consumer Connection to the Distribution Network, the Distributor will:

- (a) Investigate and advise the Distributor's requirements for connection within ten Business Days.
- (b) Complete the Connection within the agreed time frame if the Distributor's requirements have been met.

Where this requirement is not met the Distributor will make a refund to the Independent Retailer of:

- (i) \$20.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network ; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

2.5 Disconnections and Reconnections

Where the Independent Retailer requests a Consumer is Disconnected or Reconnected to the Distribution Network, the Distributor will (subject to the terms of the Agreement):

- (a) Disconnect or Reconnect at the agreed time; or
- (b) Disconnect or Reconnect within 8 hours on a Business Day between the hours of 8:00AM and 5:00PM, and for urban Consumers, and within 12 hours on a Business Day between the hours of 8:00AM and 5:00PM for rural Consumers.

Where this requirement is not met the Distributor will make a refund to the Independent Retailer of:

- (i) \$20.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network ; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

2.6 Written Responses or Estimates for new or additional Supplies

Where an Independent Retailer requests that the Distributor prepare a written response to a query or an estimate for any required works, the Distributor will reply to requests within 10 Business Days.

Where this requirement is not met the Distributor will make a refund to the Independent Retailer of:

- (i) \$20.00 per Consumer for each affected Consumer who has a 3 phase Connection to the Distribution Network ; or
- (ii) \$20.00 per Consumer for each affected Consumer who has a 1 or 2 phase Connection to the Distribution Network.

SUMMARY TABLE OF SERVICE STANDARDS

Service Guarantee	Service Standard	Consumer's with a 1 or 2 phase Connection	Consumer's with a 3 phase connection
Restore Power	Within 6 hours (urban) or 18 hours (rural) of fault notification between the hours of 5AM to 10PM excluding where the cause is a natural disaster such as snowstorms, high winds, lightning, floods and earthquakes (in which case the Distributor will work 24 hours per day to remedy all faults).	\$20.00 refund per Consumer affected	\$20.00 refund per Consumer affected
Accidental Disconnection	Where the Distributor accidentally Disconnects a Consumer	\$30.00 refund per Consumer affected	\$100.00 refund per Consumer affected
Planned Maintenance	Written notice 7 Business Days in advance and no more than four in any 12 month period for any Consumer	\$20.00 refund per Consumer affected	\$20.00 refund per Consumer affected
New Connection	Advise requirements within 10 Business Days, and connect on agreed day if all requirements have been met	\$20.00 refund per Consumer affected	\$20.00 refund per Consumer affected
Disconnections and Reconnections	At agreed time, or 8 Business hours (urban), or 12 business hours (rural) from request subject to safety approvals	\$20.00 refund per Consumer affected	\$20.00 refund per Consumer affected
Written response or estimates for new or additional Supplies	Reply within 10 Business Days	\$20.00 refund per Consumer affected	\$20.00 refund per Consumer affected

Schedule Seven – Remote Signal Services and Remote Data Communication Services

1. REMOTE SIGNAL SERVICES

1.1 Subject to the terms and conditions of this schedule, the Distributor shall:

- (a) operate the Remote Signal Services, subject to paragraphs 1.2 and 1.3, at the times specified by the Network User and Independent Retailer which times are those which are used by the Independent Retailer at the Date of Commencement (which times may be varied from time to time by notice from the Independent Retailer to the Distributor which varied times must be in accordance with the relevant Consumer Category and which times are not to restrict the Distributor's operation of the Remote Signal Services pursuant to clauses 1.2 and 1.3), and where technology makes it possible, allow the Independent Retailer to operate the Remote Signal Services;
- (b) allow the use of the Remote Signal Services by the Network User and Independent Retailer;
- (c) operate and maintain the Ripple Control Equipment in accordance with Good Industry Practice so as to ensure that Remote Signals can be injected into the Distribution Network at the times specified by the Network User and Independent Retailer so as to correctly operate the Load Control Equipment of the appropriate Consumer Category;
- (d) not permit the use of the Channels assigned to the Independent Retailer by any Other Services User except with the prior written agreement of the Independent Retailer (which request may not be unreasonably withheld).

1.2 Subject to paragraph 1.4, the Distributor shall be entitled to operate the Remote Signal Services at any time the Distributor deems it necessary in accordance with Good Industry Practice for the sale and reliable operation of the Distribution Network.

1.3 Subject to paragraph 1.4, the Distributor shall not operate the Remote Signal Services for the purpose of minimising the charges payable by the Distributor to Transpower.

1.4 Except in case of emergency, the Distributor shall not operate the Remote Signal Services to activate any Channels assigned to the Network User for more time in any day than that which is appropriate for the relevant Consumer Category.

1. CHANNELS

1.1 The Channels assigned by the Distributor to the Independent Retailer are for the exclusive use of the Independent Retailer and are not to be offered to any Other Services User except with the Independent Retailer's prior written consent (which consent may not be unreasonably withheld).

1.2 The Channels assigned by the Distributor to the Independent Retailer are all the Channels used by the Independent Retailer at the Date of Commencement, which are specified in appendix two to this schedule, and any Channels that may be added in accordance with paragraph 2.3.

- 1.3 The Independent Retailer may from time to time request the Distributor to provide additional Channels. If such Channels are available and are not assigned to, or reserved to be assigned to any Independent Retailer these shall be provided to the Independent Retailer upon the terms and conditions of this schedule.
- 1.4 The Distributor may from time to time, acting reasonably and in accordance with Good Industry Practice, request the Independent Retailer to allocate the use of certain Channels that are assigned to a particular Consumer Category, in a different manner, for the purpose of diversifying the time when electricity is switched on or off to the Consumer's Points of Supply in that particular Consumer Category, so as to minimise load peaks. The parties shall agree in writing as to who shall pay the costs (if any) prior to complying with the Distributor's request. In the event the Parties cannot agree the Independent Retailer shall not be bound to comply with that request made under this paragraph 2.4.

2. REMOTE DATA COMMUNICATION SERVICES

- 2.1 Subject to the terms and conditions of this schedule the Distributor shall allow the Network User and Independent Retailer to use Remote Data Communication Services by sending and receiving data over the Distribution Network for the purposes of communication with Metering Equipment and the operation of its Electricity Supply Business.
- 2.2 The Independent Retailer shall ensure that any use of the Remote Data Communication Services by the Independent Retailer does not interfere with the quality of supply of electricity to any Consumer's Point of Supply, or interfere with the operation of any of the Distributor's Remote Signal Services, or any other Fittings (as those Consumer's Points of Supply, Remote Signal Services and Fittings are operated at the Date of Commencement, as they may be altered in accordance with Good Industry Practice from time to time).
- 2.3 Subject to paragraph 3.4, if the Remote Data Communication Services interferes with the quality of supply of electricity to any Consumer's Point of Supply, or interferes with the operation of any of the Distributor's Remote Signal Services, or any other Fittings (as those Consumer's Points of Supply, Remote Signal Services and Fittings are operated at the Date of Commencement, as they may be altered in accordance with Good Industry Practice from time to time), the Independent Retailer shall, upon notice from the Distributor, remedy the interference at its cost as soon as practicable (and in any event within 20 Business Days of the date of the notice). If the Independent Retailer fails to remedy the cause within such 20 Business Day period, the Distributor may request that the Independent Retailer suspend the Independent Retailer's operation of the Remote Data Communication Services that cause such interference, until such time as the Independent Retailer remedies the interference.
- 2.4 Paragraph 3.3 shall not apply when the interference referred to in paragraph 3.3 has resulted from any action or omission by the Distributor, any Other Independent Retailer, or Other Services User, or any of their respective employees, agents, or consumers. In this event the Distributor shall upon notice from the Independent Retailer, remedy the interference at its cost as soon as practicable (and in any event within 20 Business Days of the date of the notice).

4. COMMENCEMENT AND TERMINATION

- 4.1 Unless terminated earlier pursuant to the provisions of this schedule, this schedule shall commence on the Date of Commencement and shall continue until 5 Business Days after the Independent Retailer gives the Distributor written notice that termination is required.

5. EQUIPMENT

- 5.1 The Independent Retailer shall ensure that Load Control Equipment is installed at each Consumer's Premises that can reliably respond to the appropriate Remote Signals required for the Consumer Category assigned to that Consumer's Premises.

- 5.2 The Distributor shall ensure that its respective employees, agents, contractors and invitees do not interfere with the Load Control Equipment of the Independent Retailer or the immediate connections to the Load Control Equipment without the prior written consent of the Independent 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 this event, the Independent Retailer shall be notified in writing as soon as practicable thereafter.
- 5.3 Any Party may, upon giving reasonable notice to the Other Party, request a test of the Load Control Equipment or the Ripple Control Equipment at any time. Any test performed pursuant to this clause shall be conducted by a person appointed by the Party who provides the Load Control Equipment or the Ripple Control Equipment, as the case may be. The Party who requests a test of the Load Control Equipment or the Ripple Control Equipment shall pay the reasonable costs of testing unless the Load Control Equipment or the Ripple Control Equipment is found to not be functioning, or responding correctly in respect of the applicable Consumer Category, in which case, the provider of the Load Control Equipment or the Ripple Control Equipment, as the case may be, shall bear those costs. If the Load Control Equipment or the Ripple Control Equipment is found not to be functioning, or responding correctly in respect of the applicable Consumer Category, it shall be adjusted, repaired or replaced as necessary at the expense of the provider of the Load Control Equipment or the Ripple Control Equipment, as the case may be.
- 5.4 The Distributor shall, as soon as practicable following it becoming aware that paragraph 5.1 is not satisfied in respect of any particular Consumer's Premises (a "Default"), give the Independent Retailer a notice identifying each such Consumer's Premises ("Remedy Notice"). Upon receipt of such Remedy Notice the Independent Retailer shall have 20 Business Days to remedy the Default or advise the Distributor that the Independent Retailer disputes the Remedy Notice.
- 5.5 If, pursuant to paragraph 5.4, the Independent Retailer advises the Distributor that the Independent Retailer disputes the Remedy Notice, the provisions of clause 21 of the Agreement shall apply.
- 5.6 If, pursuant to paragraph 5.4, the Independent Retailer does not advise the Distributor that the Independent Retailer disputes the Remedy Notice, and the Default is not remedied in the 20 Business Day period, the Distributor will have the right to assign a different Consumer Category to each Consumer's Point of Supply that is in Default in accordance with this Agreement.

6. INFORMATION TO BE PROVIDED BY THE PARTIES

- 6.1 Each Party will provide to the other, at no charge, as soon as reasonably practicable after receipt of the request:
- (a) such information as may reasonably be required for the purpose of calculating charges due under this schedule and the performance of functions or obligations under this schedule; and
 - (b) information in sufficient detail to enable a Party to audit the information provided pursuant to paragraph 6.1(a).
- 6.2 The obligations of the Parties pursuant to this paragraph 6 to make information available is subject to:
- (a) any obligation of confidence in respect of any information; and
 - (b) a request for information being relevant to the requesting Party's obligations under this Agreement.

7. PAYMENT OF CHARGES

- 7.1 In consideration of the Distributor's performance of its obligations under this Agreement the Independent Retailer shall pay the charges specified in appendix one to the Distributor. The charges may be varied by the Distributor from time to time in accordance with clauses 17.8 and 17.10 of the Agreement.
- 7.2 The provisions of clause 17 of the Agreement shall apply in respect of the charges payable under this schedule.

8. EQUITABLE TREATMENT

- 8.1 If the Distributor enters into an agreement with any Other Independent Retailer or other Services User to use the Remote Signal Services or the Remote Data Communication Services and that agreement, taken as a whole, is more favourable to that Other Independent Retailer or Other Services User than this schedule to the Independent Retailer, the parties shall discuss whether to amend this schedule to provide such additional benefits to the Independent Retailer provided that the basis for providing such additional benefits can be agreed between the Parties.
- 8.2 In exercising any rights or undertaking any obligations under this schedule that relate to or affect Other Independent Retailers or Other Services User the Distributor will treat the Independent Retailer equitably in relation to any Other Independent Retailer or Other Services User with regard to the terms and conditions laid down for Remote Signal Services and Remote Data Communication Services.

9. CHARGES

- 9.1 The fixed service charge allows access limited only by the capacity of the Ripple Control equipment for the operation of the Remote Signal Services for all channels assigned to Independent Retailers in accordance with this Agreement.

The amount of the charge is \$12.00 per annum per Consumer payable monthly. The rate excludes GST.

Appendix One – Independent Retailer’s Channels

STATIC RIPPLE PLANT 317 Hz CHANNEL ALLOCATION OVERVIEW

Commands					supply point
		series	sets	description	
00....59			100	tariff control	
60....79	[300	100	consumer addressing	Robertson
		400	100	consumer addressing	Robertson
		500	100	consumer addressing	Robertson
		600	100	consumer addressing	Westport
		700	100	infrequently used commands (synch)	
		800	100	network automation	
		900	n/a	character set	
80....89				Reserved	
90....99				Reserved	
100....118				Master commands	

Approved Channel Assignment 14-4-97

Commands		Tariff		Supply Point
Individual	Master	Code	Description	
00	100	19	domestic priority controlled 22	robertson
01	100	19	domestic priority controlled 22	wpt
02	100	10	business priority controlled 22	robertson
03	100	10	business priority controlled 22	wpt
04	100			
05	101	20	domestic continuous 20	robertson
06	101	20	domestic continuous 20	wpt
07	101		business continuous 20 (future)	robertson
08	101		business continuous 20 (future)	wpt
09	101			
10	102	6	domestic off peak 16 (also old tariff 3 & 4)	2,3,4,5,6,7,8,9
11	102	6	domestic off peak 16 (also old tariff 3 & 4)	10,11,12,13,14,15
12	102	6	domestic off peak 16 (also old tariff 3 & 4)	16,17,18,20,21,22,
13	102	6	domestic off peak 16 (also old tariff 3 & 4)	23,24,25,35,36
14	102	6	domestic off peak 16 (also old tariff 3 & 4)	26,27,28,29,30,31,37, 38] 40,41,42,43,44,45,46]
15	103	6	domestic off peak 16 (also old tariff 3 & 4)	1,32,33,34,48,50
16	103			
17	103	13	business off peak 16	robertson
18	103	13	business off peak 16	wpt
19	103	13	business off peak 16 SPECIAL!!	robertson
20	104	14	domestic economy 14	robertson
21	104	14	domestic economy 14	wpt
22	104	18	business economy 14	robertson
23	104	18	business economy 14	wpt
24	104			
25	105	16	domestic super economy 12	robertson
26	105	16	domestic super economy 12	wpt
27	105	17	business super economy 12	robertson
28	105	17	business super economy 12	wpt
29	105			
30	106	15	dom/bus storeheat 10 (2 rate meter)	all areas
31	106	15	domestic storeheat 10 (load:heat)	robertson
32	106	15	domestic storeheat 10 (load:heat)	wpt
33	106	15	business storeheat 10 (load:heat)	robertson
34	106	15	business storeheat 10 (load:heat)	wpt
35	107	15	dom/bus waterheat 10 (2 rate meter)	all areas
36	107	15	domestic waterheat 10 (load: water)	robertson
37	107	15	domestic waterheat 10 (load: water)	wpt
38	107	15	business waterheat 10 (load: water)	robertson
39	107	15	business waterheat 10 (load: water)	wpt
40	108	5	domestic nightsave 8 (2 rate meter)	all areas
41	108	5	domestic nightsave 8 (load: water)	robertson
42	108	5	domestic nightsave 8 (load: heat)	robertson
43	108	5	domestic nightsave 8 (load: water)	wpt
44	108	5	domestic nightsave 8 (load: heat)	wpt
45	108	12	business nightsave 8 (2 rate meter)	all areas
46	108	12	business nightsave 8 (load: water)	robertson
47	108	12	business nightsave 8 (load: heat)	robertson
48	108	12	business nightsave 8 (load: water)	wpt
49	108	12	business nightsave 8 (load: heat)	wpt
50	110			
51	110			
52	110			
53	110			
54	110			
55	111	32	business streetlighting	robertson
56	111	32	business streetlighting	wpt
57	111	21	business underverandah lighting	robertson, wpt
58	111	47,48	private security lighting	robertson, wpt
59	111			

Grey areas are future

Schedule Eight – Nominated Subsidiaries of the Independent Retailer

For Pulse Utilities New Zealand Limited, they have nominated:

- 1.



Buller Electricity Limited

Robertson Street
Westport 7825
New Zealand

PO Box 243
Westport 7866
New Zealand

T +64 3 788 8171
F +64 3 788 8191
E info@bullernetwork.co.nz
W www.bullerelectricity.co.nz

**DIRECTORS' CERTIFICATE UNDER SECTION 77 OF THE
ELECTRICITY INDUSTRY ACT 2010**

THIS STATEMENT is made by Francis Thomas Dooley, Murray Warden Frost, Warren Boyce McNabb, Graham Arthur Naylor and Sharon Patricia Roche.

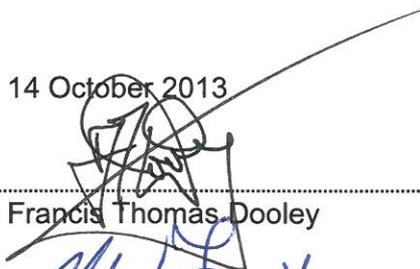
We certify that:

- we are directors of a distributor in respect of which there is a connected retailer;
- the terms in the use-of-systems agreement are a true and fair view of the terms on which line function services and information were supplied in respect of retailing to which the agreement relates during the preceding calendar year; and
- with the exception of sections 77(1)(d) and 77(4), section 77 of the Electricity Industry Act 2010 was fully complied with during that year.

Date:

14 October 2013

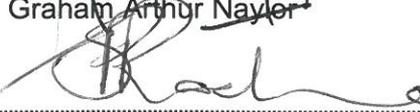
Signed by:


Francis Thomas Dooley


Murray Warden Frost


Warren Boyce McNabb


Graham Arthur Naylor


Sharon Patricia Roche