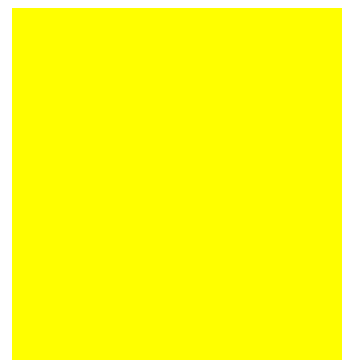


Vector [Gas] Limited
[Retailer]

**Use of System Agreement
- Gas Distribution
Networks**



[Logo of Retailer]

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AGREEMENT dated the later date recorded under the signature block below

PARTIES

Distributor: Vector [Gas] Limited¹	Retailer: [Insert full legal name of Retailer]
<p>Distributor's Details:</p> <p>Street Address: 101 Carlton Gore Road, Newmarket, Auckland</p> <p>Postal Address: PO Box 99 882, Newmarket, Auckland 1149</p> <p>Address for Notices: 101 Carlton Gore Road, Newmarket, Auckland</p> <p>Contact Person's Details: Company Secretary</p> <p>Phone: (09) 978 7788</p> <p>Website: www.vector.co.nz</p> <p>Email Address: companysecretary@vector.co.nz</p>	<p>Retailer's Details:</p> <p>Street Address: [●]</p> <p>Postal Address: [●]</p> <p>Address for Notices: [●]</p> <p>Contact Person's Details: [●]</p> <p>Phone: [●]</p> <p>Website: [●]</p> <p>Email Address: [●]</p>

COMMENCEMENT DATE: [●] 2014

¹ Vector Limited is the relevant contracting party for the Auckland network, and Vector Gas Limited is the relevant contracting party for the North Island network.

SIGNATURES:

Signature

Signature

Name of authorised person signing for
Distributor

Name of authorised person signing for
Retailer

Position

Position

Date

Date

INTRODUCTION

- A. The Distributor owns and operates the Network and the Retailer wishes to supply gas to Consumers on the Network.
- B. The Distributor and the Retailer agree to provide the Services to one another on the terms and conditions set out in this agreement.
- C. The Distributor and the Retailer agree to purchase the Services from one another on the terms and conditions set out in this agreement.

AGREEMENT

PART I - SERVICE COMMITMENTS

1. TERM OF AGREEMENT

- 1.1 **Term:** This agreement commences on the Commencement Date and continues until it is terminated under clause 21 or at law.

2. SERVICES

- 2.1 **Distributor's services and obligations:** Subject to the terms and conditions of this agreement, the Distributor will in accordance with Good Gas Industry Practice:

- (a) maintain and operate its Network in a manner that conforms with relevant legislative requirements;
- (b) accept gas from the Retailer at a Network Point of Supply, and deliver gas to the Retailer at an ICP up to the MHQ at the Delivery Pressure and specification for that ICP in accordance with the Service Standards, but does not promise delivery of gas that is free from defects and interruptions;
- (c) provide a new connection service and provide for Competent Persons to connect, Isolate and restore gas supply to ICPs in accordance with this agreement, including clause 19 and schedule 6;
- (d) provide a 24 hour, seven day a week, Unplanned Service Interruption diagnosis and response service, Network repair and information service, and provide service interruption information in accordance with schedule 5;
- (e) NOT USED
- (f) review and determine Loss Factors in accordance with clause 7;
- (g) follow the process set out in clause 24 if the Distributor proposes to make changes to the Network Points of Supply supplying the Network;
- (h) NOT USED
- (i) investigate concerns regarding the quality of gas supply (which means the pressure or specification of the supply), reliability or safety of the Consumer's supply if a Consumer, or the Retailer on behalf of a Consumer, raises concerns with the Distributor in relation to the same; and
- (j) provide the Additional Services as set out in schedule 2 (if any).

- 2.2 **Retailer's services and obligations:** Subject to the terms and conditions of this agreement, the Retailer will in accordance with Good Gas Industry Practice:

- (a) if it becomes aware that a Gas Installation does not comply with the Gas Safety Regulations, notify the Distributor of the ICP and the details of the non-compliance as soon as reasonably practicable;
- (b) process any applications for new connections in accordance with the Network Connection Process, or changes to the MHQ or capacity of existing connections, in accordance with clause 19 and schedule 6;
- (c) comply with the Service Standards (if any);
- (d) provide a 24 hour, seven day a week, Unplanned Service Interruption information service and provide service interruption information in accordance with schedule 5, except in relation to any Consumers or categories of Unplanned Service Interruption in respect of which the Distributor has notified the Retailer pursuant to clause 5.5 that it will provide such service and information;
- (e) not enter into any arrangements whereby the Retailer agrees to procure Distribution Services for, or otherwise provide or subcontract Distribution Services to, any other retailer except in accordance with clause 27A;
- (f) NOT USED
- (g) provide information in accordance with clauses 7 and 11;
- (h) investigate, in accordance with Good Gas Industry Practice, non-technical Losses;
- (i) respond to requests from the Distributor for Consumer details in accordance with clause 29;
- (j) provide the Additional Services as set out in schedule 2 (if any);
- (k) ensure, in relation to each ICP, that the MHQ is not exceeded without the Distributor's agreement in writing;
- (l) when making gas available to the Distributor at a Network Point of Supply, provide only gas that complies with the Gas Specification, investigate concerns regarding the specification of a Consumer's gas supply if a Consumer raises concerns with the Retailer in relation to the same, and provide the Distributor with evidence (in a form reasonably acceptable to the Distributor) that the Retailer has complied with its obligations in this clause 2.3(l); and
- (m) ensure that a GMS is installed at each ICP and comply with the obligations relating to metering set out in schedule 11.

2.3 **Retailer's obligations - Consumers:** Subject to clause 27, the Retailer will ensure that it has a Consumer Contract with each Consumer for the supply of gas that contains terms that have substantially the same effect as schedule 4.

2.4 NOT USED

3. CONVEYANCE ONLY

3.1 **Distributor may enter into Distributor's Agreement with a Consumer:** The Distributor may enter into a Distributor's Agreement directly with a Consumer at the Consumer's written request. The Distributor acknowledges that its entry into a Distributor's Agreement with a Consumer does not override any obligations of the Consumer to the Retailer during the term of any fixed term Gas Supply Agreement.

3.2 **Conveyance Only basis:** If a Consumer has, or enters into, a Distributor's Agreement, the Distributor will advise the Retailer accordingly and convey gas through the Network to that Consumer on a Conveyance Only basis on the applicable terms of this agreement

(with the Distributor or a third party acting on the Distributor's behalf being responsible for billing the Consumer for distribution service charges) to enable the Retailer to supply gas to that Consumer. The Distributor will also advise the Retailer if a Distributor's Agreement ceases with a Consumer.

3.3 **Valid Distributor's Agreement:** The Retailer will not knowingly supply gas on a Conveyance Only basis to an ICP unless there is a valid Distributor's Agreement in force in relation to the ICP.

3.4 **The Retailer:** The Retailer:

- (a) will not knowingly do or omit to do anything, or cause any person to do or omit to do anything, that is inconsistent with the obligations of the Consumer or the Distributor under any Distributor's Agreement. However, the technical requirements in a Distributor's Agreement may differ from the technical requirements in relation to Distribution Services set out in this agreement, in which case the Distributor will give the Retailer reasonable notice of those requirements; and
- (b) acknowledges that the Distributor will be entitled to terminate any Distributor's Agreement in accordance with its terms.

3.5 **Co-operate to resolve issues:** Without limiting either party's rights or remedies in respect of any breach of this agreement, if either of the following issues arises, the Distributor and the Retailer will co-operate with each other to resolve the issue in a manner that on balance delivers the best outcome for all affected parties (including the Consumer) but that does not adversely impact on the integrity of the Network:

- (a) if, in relation to the supply of gas to any Consumer that is a party to a Distributor's Agreement, the Distributor notifies the Retailer that it considers (acting reasonably) that the Retailer has done, or is doing, anything that is inconsistent with the Distributor's Agreement and that may have an impact on the Network or the provision of distribution services by the Distributor to that or any other Consumer; or
- (b) if either the Retailer or the Distributor becomes aware that any provisions of a Distributor's Agreement and any Gas Supply Agreement would conflict to the extent that a party would be in breach of contract.

3.6 **Consumer not party to a valid Distributor's Agreement:** If at any time it is found by the Distributor or the Distributor becomes aware that a Consumer is not being supplied on an Interposed basis in relation to one or more ICPs and is not a party to a valid Distributor's Agreement in relation to those ICPs, or if any Distributor's Agreement in relation to particular ICPs expires or is terminated or is about to expire or be terminated, then, without limiting any other right of the Distributor under this agreement or otherwise:

- (a) the Distributor will make all reasonable endeavours to notify the Retailer (or any other retailer) of the situation and suggest the Retailer (or any other retailer) take up the opportunity to supply the Consumer on an Interposed basis in relation to those ICPs; and
- (b) if the Distributor gives notice under clause 3.6(a), the Distributor may disconnect the ICPs if, within 20 Working Days of giving that notice, the Distributor has not received notice that the Retailer (or any other retailer) will immediately commence supplying the Consumer on an Interposed basis in relation to those ICPs.

4. EQUAL ACCESS AND EVEN-HANDED TREATMENT

4.1 **Equal access and even-handed treatment:** The Distributor will give all retailers equal access to the Distribution Services and will treat all retailers even-handedly in relation to

Distribution Services, provided that the reference to "all retailers" in this clause 4 will be construed as a reference to all retailers who have entered into a "Use of System Agreement – Gas Distribution Networks" with the Distributor (or any other agreement in the future with the Distributor, however described, which relates to the same subject matter as a "Use of System Agreement – Gas Distribution Networks"). Nothing in this clause 4.1 will create any right or benefit to or for any retailer other than the Retailer, and in particular, the provisions of the Contracts (Privity) Act 1982 are excluded.

4.2 **The Distributor will notify the Retailer of alternative contracts:** Within 20 Working Days after executing a contract or an amendment to a contract relating to the supply of Distribution Services with any retailer other than the Retailer, other than in relation to alteration of the price for the supply of Distribution Services in respect of a particular ICP (the contract or amended contract, as applicable, being an "**Alternative Contract**"), the Distributor will:

- (a) notify the Retailer in writing of the existence of that Alternative Contract;
- (b) make the Alternative Contract available on its website; and
- (c) invite the Retailer to adopt the Alternative Contract (with any changes necessary to reflect the fact that the Retailer is a different party),

provided that the Distributor will not be required to disclose any commercially confidential information to the Retailer under this clause 4.2.

4.3 **The Retailer has sole discretion to adopt Alternative Contracts:** Within 12 months of the Distributor executing an Alternative Contract with any retailer other than the Retailer, the Retailer may, at its sole discretion, choose to adopt the Alternative Contract (in the form referred to in clause 4.2(c)) in substitution for this agreement provided that:

- (a) the Retailer gives not less than 20 Working Days' notice to the Distributor of its intention to sign the Alternative Contract; and
- (b) the Retailer adopts the Alternative Contract in its entirety.

4.4 **Adoption of Alternative Contract:** If an Alternative Contract is adopted in accordance with clause 4.3, this agreement will terminate from the date of such adoption. The provisions of clauses 21.3 to 21.8 also apply to a termination of this agreement under this clause 4.4.

5. SERVICE INTERRUPTIONS

General

5.1 **Communications policies:** The parties will use their reasonable endeavours to comply with the communication policies set out in schedule 5.

5.2 **The Distributor may Publish Service Interruption information:** The Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption. In disclosing such information, the Distributor will comply with its obligations under the Privacy Act 1993.

5.3 **Allocation of gas supply during Service Interruptions:** The parties acknowledge and agree that during any Service Interruption allocation of gas supply will be in the order of the curtailment bands set out in the CCM Regulations, and Consumers will be designated curtailment bands in accordance with the CCM Regulations.

5.4 **Service Interruptions:** The Distributor may interrupt, curtail or shut down the taking of gas at an ICP in any of the following circumstances:

- (a) **Maintenance of Network equipment:** if the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 5.5 and 5.8 and schedule 5 as applicable.
- (b) NOT USED
- (c) **Compliance with instructions from the Transmission System Operator:**
 - (i) to comply with a request or instruction received from the Transmission System Operator; or
 - (ii) if communication with the Transmission System Operator has been lost, and the Distributor reasonably believes that, had communication with the Transmission System Operator been maintained, the Distributor would have received a request or instruction from the Transmission System Operator to interrupt, curtail or shut down the taking of gas at an ICP.
- (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
 - (i) maintain a safe environment (including for the purpose of maintaining public health and safety), consistent with the Distributor's health and safety policies;
 - (ii) NOT USED
 - (iii) NOT USED
 - (iv) manage System Security; or
 - (v) avoid or mitigate damage to the Network or any equipment connected to the Network.
- (e) **Compliance with law:** to comply with the Act, any regulations and rules made under the Act, or any other legislative requirements.
- (f) NOT USED
- (f)A **Force Majeure Events and Emergencies:** if a Force Majeure Event and/or Emergency is occurring or, in the Distributor's reasonable opinion, is likely to occur.
- (g) **Other circumstances:** for any other purpose that, in the Distributor's reasonable opinion and in accordance with Good Gas Industry Practice, requires the interruption or reduction of delivery of gas to any ICP.

Unplanned Service Interruptions

- 5.5 **Retailer to receive Unplanned Service Interruption calls:** The Retailer is responsible for receiving Unplanned Service Interruption calls from Consumers and managing further communication with affected Consumers until normal service is restored, as necessary, unless the Distributor provides to the Retailer 60 Working Days' written notice that the Distributor is responsible for receiving and managing communication with any or all Consumers in relation to any or all Unplanned Service Interruptions in which case the Retailer shall ensure that references to:
- (a) the Distributor's phone number, 0508 VECTOR; and
 - (b) the Distributor's website, www.vector.co.nz,

are included on all Tax Invoices sent to such Consumers as being the contact details for Consumers in relation to Unplanned Service Interruptions. Notwithstanding the foregoing, the Retailer's obligation in relation to clause 5.5(b) shall come into effect on 1 June 2014 or such later date as may be agreed by the parties in writing.

- 5.6 **Notification of Unplanned Service Interruptions:** After the occurrence of an Unplanned Service Interruption, the Distributor and Retailer will comply with the relevant service interruption communication policy as set out in schedule 5.
- 5.7 **Consumer requests for restoration of Distribution Services:** During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Retailer will forward to the Distributor any requests it receives from Consumers for the restoration of the Distribution Services as set out in schedule 5.

Planned Service Interruptions

- 5.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor will, as far as is reasonably practicable, schedule Planned Service Interruptions in a safe and efficient manner and with consideration to minimising disruption to Consumers.
- 5.9 **Distributor to comply with communication policies:** The Distributor will comply with the Service Interruption communication policy set out in schedule 5 in relation to the notification of Planned Service Interruptions, including any changes to the planned date and time for restoration of Distribution Services.
- 5.10 **Costs of communication:** If the Distributor asks the Retailer to notify Consumers of a Planned Service Interruption in accordance with schedule 5, the Retailer will comply with such requests at its own cost, except:
- (a) where re-notification of the Planned Service Interruption to Consumers is required solely due to the act or omission of the Distributor or its contractors. In such circumstances, the Distributor will pay the Retailer's direct out of pocket costs associated with renotifying the Consumers of the Planned Service Interruption. For clarity, Planned Service Interruptions rescheduled:
 - (i) at the request of the Consumer or another retailer; or
 - (ii) due to adverse weather conditions, major Network outages or access issues,are Planned Service Interruptions which are considered not to be caused by the act or omission of the Distributor or its contractors (without limiting the meaning of this phrase); or
 - (b) where the Distributor and the Retailer have agreed otherwise in writing.

Restoration of Distribution Services

- 5.11 **Distributor to restore Distribution Services as soon as practicable:** For all Service Interruptions, the Distributor will endeavour in accordance with Good Gas Industry Practice to restore the Distribution Services up to the CIV in respect of each ICP:
- (a) for Unplanned Service Interruptions, within the timeframes set out in schedule 1; and
 - (b) for Planned Service Interruptions, within the timeframe set out in the notice for Planned Service Interruptions,
- and in any event will restore the Distribution Services as soon as practicable.

5.12 **Retailer's remedy:** The Retailer's sole remedy if the Distributor fails to meet the timeframes in clause 5.11 is the refund of charges (if any) pursuant to clause 11.15. .

5.13 **Restoration of supply to ICPs:** Where gas supply to an ICP has been interrupted, curtailed or shut down:

- (a) the Distributor is responsible for restoring gas supply to each ICP for all Planned Service Interruptions and Unplanned Service Interruptions;
- (b) the Distributor is responsible for the safe restoration of gas supply to the affected Gas Installations for all Planned Service Interruptions;
- (c) the Retailer is responsible for the safe restoration of gas supply by Competent Persons to the affected Gas Installations in accordance with any instructions issued by the Distributor or the Transmission Systems Operator, including the re-lighting of pilot lights where relevant for all Unplanned Service Interruptions arising from a Force Majeure Event or non-Network event (including third party damage to the Network); and
- (d) the Distributor is responsible for the safe restoration of gas supply to the affected Gas Installations for all Unplanned Services Interruptions not covered in clause 5.13(c),

subject to sufficient availability of gas, including from upstream sources.

6. ACCESS TO INFORMATION

6.1 NOT USED

6.2 NOT USED

6.3 NOT USED

6.4 NOT USED

6.5 NOT USED

6.6 NOT USED

6.7 NOT USED

6.8 NOT USED

6.9 NOT USED

6.10 **Access to demand and energy information:** The Distributor may from time to time request that the Retailer provide Consumers' demand and energy information (including hourly quantities and meter pressure from the meters at Consumers' Premises) to the Distributor (where such information has been obtained from Consumers) in a format reasonably requested by the Distributor to assist the Distributor, in managing and planning the Network. The Retailer will comply with such request as soon as practicable and the Distributor will pay the Retailer's reasonable out of pocket costs in doing so.

6.11 NOT USED

7. LOSSES AND LOSS FACTORS

7.1 **Retailer to provide information to enable calculation of Loss Factors by Distributor:** The Distributor will obtain information from the Allocation Agent for the purpose of calculating Loss Factors unless this information is provided by the Retailer. The Retailer hereby authorises the Allocation Agent to provide such information to the

Distributor (it being intended that the Allocation Agent can rely on this authorisation pursuant to the Contracts (Privity) Act 1982). The Retailer will provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors, within 15 Working Days of the request from the Distributor.

7.2 NOT USED

7.3 **Loss Factors and Codes:** The Distributor will determine and Publish Loss Factors and Loss Factor Codes in accordance with the Gas (Switching Arrangement) Rules 2008.

7.4 NOT USED

7.5 NOT USED

7.6 NOT USED

8. NOT USED

8A. RISK AND TITLE

8A.1 **Title in gas:** The Retailer warrants to the Distributor that the Retailer has title to and all necessary rights to provide all gas made available by or on behalf of the Retailer at a Network Point of Supply free and clear of all liens, encumbrances and claims, from the time that gas is made available to the Distributor at a Network Point of Supply until it is made available to the Retailer at an ICP.

8A.2 **Risk in gas:** Except as provided in this Agreement, risk in any gas transported on the Network under this agreement remains at all times with the Retailer.

8A.3 **Co-mingling:** The Distributor may co-mingle the Retailer's gas with other gas in the Network and subject the gas in the Network to any process consistent with the Distributor's operation of its gas networks.

PART II - PAYMENT OBLIGATIONS

9. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

9.1 **Price determination and changes:** Unless otherwise agreed with the Retailer (such agreement not to be unreasonably withheld or delayed), the Distributor may change its Prices no more than once in any period of 12 consecutive months, unless a Price change results from:

- (a) a change in any "pass-through costs" and/or "recoverable costs" as defined in the Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010, as amended or substituted from time to time; or
- (b) the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed price change will only apply to ICPs affected by the change in Distribution Services; or
- (c) a change in the law (including any regulations and rules); or
- (d) any determination, direction or decision of a regulatory agency.

Nothing in this clause 9.1 prevents the Distributor from decreasing a Price without the Retailer's agreement, or from increasing a Price if agreed by the Retailer. Schedule 8 to this agreement will be deemed to be amended to reflect changes to the Prices pursuant to this clause 9.

9.2 **Process to change Price structures:** Without limiting clause 9.1, if the Distributor intends to change its Price structure in a way that will materially affect one or more

retailers or Consumers, the Distributor will notify and consult with the Retailer in good faith in relation to the same, prior to Publishing its changed Price structure and the reasons for its decision. Schedule 8 to this agreement will be deemed to be amended to reflect changes to the Price structure as Published. In consulting with the Retailer, the Distributor will endeavour to:

- (a) implement good consultation practices; and
- (b) publish the final Price structure and the reason for its decision, not later than the notice period specified in clause 9.3(a).

9.3 **Notice of Price change:** The Distributor will give the Retailer notice of all Price changes as specified in this clause 9.3. The Distributor will:

- (a) provide 40 Working Days' notice of the change, unless the Distributor is required by law to implement the change earlier or the Distributor has itself been given less than 60 Working Days' notice of the change described in clause 9.1(a), 9.1(c) or 9.1(d) (as applicable), in which case the Distributor will give as much notice as reasonably practicable;
- (b) provide to the Retailer:
 - (i) an update of the pricing schedule and policy in schedule 8 in a way that makes changes from the previous version clear; and
 - (ii) without limiting clause 10, if an ICP, or a group of ICPs is to be allocated to a different Price Category, a mapping table that clearly shows the new Price Category to which each ICP or group of ICPs is to be allocated; and
- (c) NOT USED
- (d) send the information required in sub-clause (b) to the Retailer by email, as a minimum.

9.4 NOT USED

9.5 **Price structure change and Price change disputes:** Once a price structure or Price is finalised and notified in accordance with clause 9.2 or 9.3 respectively, the Retailer may raise a Dispute under clause 25 in respect of the change only if the Retailer considers that the Distributor has not complied with clause 4.1. If a Dispute is raised, the Retailer will continue to pay the Distributor's Tax Invoices until the Dispute is resolved. When the Dispute is resolved, the Distributor will issue a Credit Note if required. The Retailer agrees that the pricing methodology and factual basis used to determine the Price will not be subject to challenge or dispute in any way, including by means of the Dispute resolution procedure under clause 25.

9.6 **Changes containing an arithmetic error:** If the Retailer identifies an error in a price structure finalised and Published in accordance with clause 9.2, or a Price notified in accordance with clause 9.3(a), and the error arises from an obvious arithmetic error in developing the price structure or calculating the Price, the Retailer will bring that error to the Distributor's attention as soon as practicable after becoming aware of the error. The Distributor may correct such an error, or an arithmetic error that it identifies itself, without following the process under clause 9.2 or giving notice under clause 9.3(a) (as the case may be), provided that the Distributor gives 40 Working Days' notice of such correction to the Retailer. To avoid doubt, the parts of the price structure or Prices that are not affected by the error are not subject to this clause 9.6.

10. APPLYING PRICES TO ICPs

10.1 **Distributor allocates Price Category:** The Distributor will allocate a Price Category to each ICP on its Network. If there are different Prices within the Distributor's price

structure that could be applied to an ICP, the Distributor will, acting reasonably, allocate one of the eligible Price Categories to the ICP. In allocating a Price Category, the Distributor will have regard to:

- (a) the eligibility criteria for each Price Category that are set out in its pricing schedule and policy set out or referred to in schedule 8;
- (b) the attributes of the ICP; and
- (c) if known and relevant:
 - (i) the Retailer's or Consumer's preference for a particular Price Category in respect of which the ICP is eligible, where such preference is provided by the Retailer to the Distributor in writing in a format and manner agreed with the Distributor (acting reasonably);
 - (ii) the rated capacity of the GMS;
 - (iii) the ICP's historic demand profile;
 - (iv) the Consumer's MHQ or capacity requirements; and
 - (v) any other relevant factors.

10.2 **Retailer may request allocation of an alternative eligible Price Category to an ICP:** The Retailer may request that the Distributor allocate an alternative Price Category to an ICP at any time, but no more than once a Year (unless supply at the ICP has changed to a new Consumer), and will provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor will apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Retailer within 5 Working Days after receipt of notice of the Retailer's request. If the Distributor declines the request, it will provide the reasons for its decision.

10.3 NOT USED

10.4 **Retailer request for reallocation of a Price Category if it considers a Price Category has been incorrectly allocated:** Under this clause 10.4 and clauses 10.5 and 10.7, a Price Category is "**Incorrectly Allocated**" to an ICP only if the ICP was not eligible for the Price Category allocated by the Distributor based on the relevant information available to the Distributor at the time it made the allocation. If the Retailer reasonably considers that a Price Category was Incorrectly Allocated, the Retailer will notify the Distributor as soon as practicable of the reasons why it considers that the Price Category was Incorrectly Allocated and identify a Price Category that the Retailer considers should have been allocated to the ICP, which must be a Price Category for which the ICP is eligible. If the Retailer, through such notice, demonstrates to the Distributor's reasonable satisfaction that the Price Category has been Incorrectly Allocated, then the Distributor will advise the Retailer within 10 Working Days after receipt of the Retailer's notice that it agrees to allocate a different Price Category to the ICP (the "**Corrected Price Category**"). If the Distributor does not consider that the Price Category has been Incorrectly Allocated, it will provide the reasons for its decision to the Retailer.

10.5 **Credit following correction:** If the Distributor allocates a Corrected Price Category to an ICP following notice from the Retailer given under clause 10.4, the Distributor will:

- (a) commence charging the Retailer in accordance with that Price(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to clause 10.6, credit the Retailer with an amount (if positive) equivalent to:

- (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
 - (A) the Commencement Date;
 - (B) the date the Distributor Incorrectly Allocated the Price Category to that ICP; and
 - (C) the Switch Date for that ICP recorded for the Retailer,
 up to the date on which the Distributor allocates a Corrected Price Category to that ICP; less
 - (ii) the charges that would have applied if the Corrected Price Category had been allocated to that ICP during the period referred to in subparagraph (i),
- provided that:
- (iii) the amount of the charges to be credited to the Retailer under this clause 10.5 (if any) shall be calculated through the "wash-up" adjustment described in clause 11.6; and
 - (iv) the maximum period for which credit will be payable under this clause 10.5 is 14 months, unless otherwise agreed.

10.6 **Limitations on credits for Price Category corrections:** Clause 10.5(b) will not apply in respect of an ICP if:

- (a) clause 10.7 applies to the ICP; or
- (b) within 20 Working Days of the Switch Date recorded for the Retailer, the Retailer has not provided the Distributor with correct or complete information about the ICP or the Consumer necessary to determine Price Category eligibility (provided that information was not already known by the Distributor); or
- (c) the Price Category correction was necessary because the Retailer provided the Distributor with incorrect or incomplete information in relation to the ICP or the Consumer or any other factors in respect of that ICP that were relevant to the allocation of a Price Category; or
- (d) if the initial Price Category was allocated on the basis of information provided by the Consumer or the Consumer's representative.

10.7 **Distributor's right to change Price Category if it considers a Price Category has been incorrectly allocated:** If at any time the Distributor reasonably considers that the Price Category has been Incorrectly Allocated to an ICP:

- (a) the Distributor will notify the Retailer accordingly including notification of the reasons why it considers that the Price Category has been Incorrectly Allocated, and identify the Price Category or Price Categories it considers the ICP is eligible for;
- (b) unless the Retailer is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Price Category has been correctly applied, the Distributor may allocate the Price Category that it considers appropriate to that ICP in accordance with clause 10.1, and may commence charging the Retailer for Distribution Services in accordance with that Price Category after a further 40 Working Days; and
- (c) the Distributor will provide to the Retailer information relevant to its decision.

To avoid doubt, this clause 10.7 does not apply if the Retailer has already provided notice to the Distributor under clause 10.4 that the relevant Price Category has been Incorrectly Allocated.

10.8 **Commencement of charges:** The Retailer is liable to pay charges in respect of an ICP from:

- (a) the Commencement Date in the case of ICPs or Consumers supplied by the Retailer at the Commencement Date; and
- (b) if the Retailer is assuming responsibility for the ICP after the Commencement Date, the later of the Switch Date or the date that the ICP is connected to the Network and the status of the ICP on the Registry is ACTIVE,

provided that if there is any inconsistency with the status of an ICP on the Registry and the data provided by the Retailer in accordance with clause 11.3, the Distributor may invoice the Retailer in a manner consistent with the data provided by the Retailer.

10.9 **Cessation of charges:** The Retailer is not liable to pay charges in respect of an ICP:

- (a) for the day on which an ICP is disconnected (except as a result of a Temporary Disconnection where the status on the Registry is not changed); or
- (b) from the Switch Date, if another retailer takes responsibility for the ICP with effect from that Switch Date; or
- (c) from the day which is 2 Working Days after the Distributor receives a notification from the Retailer that the Distributor is responsible for completing a Temporary Disconnection (except for notifications for Temporary Disconnections where the status of the ICP on the Registry is not changed) in respect of the ICP, in accordance with schedule 6,

provided that if there is any inconsistency with the status of an ICP on the Registry and the data provided by the Retailer in accordance with clause 11.3, the Distributor may invoice the Retailer in a manner consistent with the data provided by the Retailer.

11. BILLING INFORMATION AND PAYMENT²

11.1 **Payment methodology:** The Distributor and the Retailer have agreed that the Distributor's charges for Distribution Services will be invoiced using a methodology known as [As-Billed Normalised].

11.2 **Pro forma Tax Invoice:** Within 5 Working Days of the commencement of each calendar month, the Distributor will issue to the Retailer a pro forma Tax Invoice setting out the estimated Distribution Services charges payable by the Retailer in respect of the current calendar month based on the Price that applies to each ICP to which the pro forma Tax Invoice relates.

11.3 **Provision of data by Retailer:** Within 5 Working Days of the commencement of each calendar month, the Retailer will provide to the Distributor, using the relevant GIEPs, all information that the Distributor reasonably requires to enable it to calculate and verify the Distribution Services charges payable by the Retailer to the Distributor in respect of the previous month (including consumption data for each ICP for which the Retailer has been responsible in the month and reporting zero consumption where the meter has been read and has not recorded any consumption since the previous reading).

11.4 **Late, incomplete, or incorrect information:** If the Retailer does not provide information to the Distributor in accordance with clause 11.3, or any information provided

² The final version of this section of the agreement will be amended to reflect different billing processes that apply in Vector's gas distribution networks in Auckland and in other North Island areas, once submissions received from retailers on billing processes in relation to this agreement have been considered.

by the Retailer is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Gas Industry Practice, the Retailer's charges for Distribution Services.

11.5 Issuing of actual Tax Invoice: Before the end of each calendar month, the Distributor will:

- (a) calculate the Distribution Services charges for the previous month based on the Price that applies to each ICP and the information received from the Retailer in accordance with clause 11.3 or estimated by the Distributor in accordance with clause 11.4, and will issue a Tax Invoice for the Distribution Services charges. The actual Tax Invoice will be issued as a Tax Invoice that replaces the pro forma Tax Invoice provided by the Distributor to the Retailer pursuant to clause 11.2 (with the Distributor issuing a full Credit Note in relation to such pro forma Tax Invoice before the actual Tax Invoice is issued); and
- (b) at the same time as it issues the actual Tax Invoice, provide to the Retailer, using the relevant GIEP, sufficiently detailed information to enable the Retailer to verify the accuracy of the Tax Invoice.

11.6 Wash-Ups: Both the Distributor and the Retailer recognise that due to the cyclical nature of meter reading it is impractical to provide completely accurate data for consumption and demand (as applicable) in relation to each ICP within the timeframe required for the provision of data by the Retailer under clause 11.3. The parties therefore agree that it is necessary to provide a structure for a subsequent "wash-up" adjustment to be made within 14 months after the original billing date.

- (a) **Fixed Charges:** With regard to the fixed charges, where the Distributor's database or the Registry is updated retrospectively subsequent to the 4th Working Day following the current month, the Distributor will re-allocate fixed charges between retailers for each relevant ICP as at the retrospective date the Registry or the Distributor's database shows the Retailer as having gained or lost the relevant ICP. The Distributor will make this allocation within 3 months of the retrospective changes being made to the Registry, if the Registry is updated retrospectively within 2 months or less after the original billing date for that ICP. Otherwise, the Distributor will make this reallocation within 14 months of the relevant billing date for that ICP. No re-allocation of charges will be retrospectively adjusted after more than 14 months has elapsed from the original billing date.
- (b) **Variable Charges:** With respect to the variable charges, where the Retailer provides a new file of consumption data after the due dates specified in clause 11.3, the Distributor will wash-up variable charges based on that revised consumption data within 3 months (if the new file of consumption data is revised by the Retailer within 2 months or less after the original billing date) and otherwise 14 months after the original billing date. No wash-up of charges will be retrospectively adjusted after more than 14 months has elapsed from the original billing date.

To give effect to the wash-up adjustment, the Distributor will issue a wash-up Tax Invoice that replaces the Tax Invoice provided to the Retailer pursuant to clause 11.5 (in which case the Distributor will issue a full Credit Note in relation to such Tax Invoice before the wash-up Tax Invoice is issued). The Distributor will apply a Use of Money Adjustment in relation to the underpayment or overpayment by the Retailer in relation to each Tax Invoice, and will issue a Tax Invoice or Credit Note (as appropriate) to the Retailer in respect of the same.

11.7 Due date for payment of pro forma Tax Invoice: The settlement date for each pro forma Tax Invoice issued by the Distributor pursuant to clause 11.2 will be the 20th day of the month with the month being determined by reference to the date of the pro forma Tax Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor fails to issue a pro forma Tax Invoice to the Retailer within 10 Working Days after the last day of the month to which the pro forma Tax

Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the pro forma Tax Invoice is issued late.

- 11.8 **Due date for payment of actual Tax Invoice:** The settlement date for the actual Tax Invoice issued by the Distributor pursuant to clause 11.5 will be the 20th day of the month following the date of that actual Tax Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. The Distributor will credit the Retailer's account with the amount paid by the Retailer in respect of the relevant pro forma Tax Invoice so that only the net amount is payable by the Retailer to the Distributor pursuant to this clause. If the amount for payment in the new Tax Invoice is less than the Credit Note issued pursuant to clause 11.5 then the Distributor will off-set the difference against future invoices issued to the Retailer, or will issue a refund within 6 Working Days upon written request from the Retailer.
- 11.9 **Due date for payment of wash-up Tax Invoice/Credit Note:** The settlement date for any amount due in respect of a wash-up Tax Invoice/Credit Note issued pursuant to clause 11.6 will be the 20th day of the month following the date of the wash-up Tax Invoice/Credit Note or, if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the wash-up Tax Invoice is less than the Credit Note issued pursuant to clause 11.6 then the Distributor will off-set the difference against future invoices issued to the Retailer, or will issue a refund within 6 Working Days upon written request from the Retailer.
- 11.10 **Other invoices/credits:**
- (a) If applicable, the Distributor may issue a Tax Invoice or a Credit Note to the Retailer for the Services and any other sums due to the Distributor under this agreement (as the case may be).
 - (b) If applicable, the Retailer may issue a Tax Invoice or a Credit Note to the Distributor for Service Guarantee payments which have accrued at any time during the period of three months prior to the date of the Tax Invoice or Credit Note (and which have not previously been issued) and any other sums due to the Retailer under this agreement (as the case may be).
 - (c) If applicable, the Distributor may issue a Tax Invoice or a Credit Note to the Retailer for other charges or credits in the Distributor's pricing schedule and policy set out or referred to in schedule 8 in the manner advised by the Distributor to the Retailer from time to time.
 - (d) Any Tax Invoice or Credit Note under clause 11.10(a), (b) or (c) will be issued within 10 Working Days of the end of the month to which the Tax Invoice or Credit Note relates.
 - (e) The settlement date for any Tax Invoice issued under clause 11.10(a), (b) or (c) is the 20th day of the month with the month being determined by reference to the date of the Tax Invoice, or if the 20th day of the month is not a Working Day, the first Working Day after the 20th day. If the Distributor or the Retailer (as the case may be) fails to issue a Tax Invoice to the Retailer or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment will be extended by 1 Working Day for each Working Day that the Tax Invoice is issued late.
- 11.11 **Interest on late payment:** Subject to clause 11.12, the Retailer or the Distributor (as the case may be) will pay any Tax Invoice issued under this clause 11 on the due date. If any part of a Tax Invoice that is properly due in accordance with this agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the invoice remains unpaid.
- 11.12 **Disputed Tax Invoices:** If the Retailer or the Distributor disputes a Tax Invoice issued under this clause 11, the party disputing the Tax Invoice ("**Disputing Party**") will notify the other party ("**Non-disputing Party**") within 18 months of the date of supply of the

Services to which the Tax Invoice relates ("**Invoice Dispute**") by a notice that is headed "Disputed Tax Invoice", which will refer to the fact it is given under this clause 11.12 and will contain full details as to the reasons why the Disputing Party disputes that Tax Invoice. On receiving an Invoice Dispute notice, the Non-disputing Party will:

- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute notice, promptly notify the Disputing Party thereof and:
 - (i) if the disputed Tax Invoice has not been paid, the party that issued the disputed Tax Invoice will promptly issue a Credit Note to the other party, and any amount owed must be paid by the relevant party within 6 Working Days of receipt of the Credit Note, but the amount need not be paid prior to the time set out in clause 11.8 or 11.9; or
 - (ii) if the disputed Tax Invoice has been paid, the party that issued the disputed Tax Invoice will calculate the amount that the relevant party has overpaid and promptly issue a Credit Note to the other party, which will include a Use of Money Adjustment. Any amount owed must be paid by the relevant party within 6 Working Days of the date of the Credit Note. A Use of Money Adjustment will apply for the period commencing on the date the original Tax Invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clause 11.8 or 11.9;
- (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute notice, it will promptly notify the Disputing Party thereof and give full reasons and then either party may raise a Dispute in accordance with clause 25 and if the Retailer or the Distributor (as the case may be) has not paid the disputed invoice, it will pay the undisputed amount of the disputed invoice issued in accordance with clause 11.8 or 11.9; and
- (c) on the resolution of a Dispute under clause 25:
 - (i) if the party that is found to have an outstanding amount has already issued a Tax Invoice, that party will promptly issue a Credit Note to the other party and this amount will be offset against future Tax Invoices, or a refund will be issued; or
 - (ii) if the party that is found to have an outstanding amount was the recipient of a supply, that party will promptly pay any outstanding amount to the other party,

within 6 Working Days. A Use of Money Adjustment is payable for the period commencing on the date the disputed amount would have been due for payment under this clause 11, and ending when payment is made.

11.13 Incorrect invoices: If it is found at any time that a party has been overcharged or undercharged (not being as a result of inaccurate consumption or demand data, which is dealt with under clause 11.6) then within 20 Working Days after such error has been discovered and the amount has been agreed between the parties or determined under clause 25, the party that issued the Tax Invoice will issue a Credit Note or Debit Note as appropriate. If the party has paid the Tax Invoice containing such overcharge or undercharge then:

- (a) if a Credit Note is issued, the party issuing the Credit Note will refund to the other party the amount of any such overcharge; or
- (b) if a Debit Note is issued, the party that has underpaid will pay to the other party the amount of any such undercharge,

in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that there will be no right to re-open invoices if more

than 18 months has elapsed since the date of supply of the Services to which the Tax Invoice relates.

11.14 **No set off:** Both parties will make the payments required to be made to the other under this agreement in full without deduction of any nature whether by way of set off, counterclaim or otherwise except as otherwise set out in clause 11.8, 11.9 or 11.12 or as may be required by law, provided that if the Retailer has committed a Serious Financial Breach, this clause will not apply to the Distributor and if either party is subject to an Insolvency, Event, this clause will not apply to the party that is not subject to the Insolvency Event.

11.15 **Refund of charges:** If:

- (a) as a consequence of a fault on the Network (not being a Force Majeure Event or resulting from third party damage to the Network), there is a continuous interruption affecting gas supply to the CIV in respect of an ICP for 24 hours or longer; and
- (b) the Retailer within 60 days of the interruption requests the Distributor to refund the charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which the loss of supply continued,

the Distributor will issue a Credit Note and refund the Distribution Services charges paid by the Retailer in respect of the ICP or ICPs for that Consumer for the number of complete days during which supply was interrupted within 10 Working Days of receipt of information from the Retailer in terms of clause 11.15(b).

12. PRUDENTIAL REQUIREMENTS

12.1 **Retailer will satisfy prudential requirements:** If required by a notice from the Distributor, the Retailer will comply with either one of the following prudential requirements within 10 Working Days of receipt of the Distributor's notice:

- (a) the Retailer will maintain an acceptable credit rating; or
- (b) the Retailer will provide and maintain acceptable security by arranging for a third party with an acceptable credit rating to provide security in the form and of the value specified in clause 12.6. The security must not expire prior to the date on which all amounts owing under this agreement by the Retailer to the Distributor have been paid.

12.2 **Acceptable credit rating:** For the purposes of clause 12.1 and 12.6, an acceptable credit rating means that the Retailer or the third party (as the case may be):

- (a) carries a long term credit rating of at least:
 - (i) BBB- (Standard & Poor's Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
- (b) if the Retailer or the third party (as the case may be) carries a credit rating at the minimum level required by sub-clause (a), is not subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.

12.3 **Retailer may elect prudential requirements:** The Retailer may elect to comply with the prudential requirements in any of the ways described in clause 12.1 at any time, by complying with clause 12.4.

12.4 **Change in prudential requirements complied with:** If the Retailer elects to change the way in which it complies with the prudential requirements in accordance with clause

12.3, the Retailer will notify the Distributor of its intention at least 2 Working Days before the change occurring and the parties will comply with clause 12.17. The change will come into effect on the intended date, provided that the Retailer has complied with all its obligations under this agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of clause 12.1.

12.5 **Evidence of acceptable credit rating:** The Retailer or third party (as the case may be) will provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.

12.6 **Type and value of security:** The security required for the purposes of this clause 12 is:

- (a) an unconditional guarantee in favour of the Distributor with a third party guarantor who has and maintains an acceptable credit rating, the guarantee to be for an amount equal to the Distributor's reasonable estimate of the Distribution Service charges (inclusive of GST) payable by the Retailer that would apply to the [two][three]³ months of highest gas usage in any past or future annual period, and in a form satisfactory to the Distributor (acting reasonably); or
- (b) an unconditional performance bond or bank guarantee in favour of the Distributor and issued by a third party which has and maintains an acceptable credit rating, the performance bond or bank guarantee to be for an amount equal to the Distributor's reasonable estimate of the Distribution Service charges (inclusive of GST) payable by the Retailer that would apply to the [two][three]⁴ months of highest gas usage in any past or future annual period, and in a form satisfactory to the Distributor (acting reasonably); or
- (c) any other form of security acceptable to the Distributor (in its sole discretion); and
- (d) if the Distributor requests, an enforceable security interest in favour of the Distributor in relation to the Retailer's Consumer Contracts.

12.7 NOT USED

12.8 **Replacement of third party security prior to expiry:** If the Retailer has provided an unconditional performance bond or bank guarantee in favour of the Distributor in accordance with clause 12.6(b), then not earlier than 20 Working Days prior to the expiry date for such performance bond or bank guarantee, the Distributor may notify the Retailer that the performance bond or bank guarantee is due to expire. The Retailer shall, by the date no later than 10 Working Days prior to the expiry date for such performance bond or bank guarantee, provide the Distributor with a replacement performance bond or bank guarantee which contains an expiry date which is not earlier than six months after the date of issue or amendment of such replaced performance bond or bank guarantee. If the Retailer does not provide such replacement performance bond or bank guarantee by the date that is 10 Working Days prior to the expiry date of the performance bond or bank guarantee in favour of the Distributor in accordance with clause 12.6(b), the Distributor may make a claim on such performance bond or bank guarantee for the full value of such performance bond or bank guarantee. Nothing in this clause 12.8 shall limit the obligation of the Retailer under clause 12.1(b) to provide a third party security which must not expire prior to the date on which all amounts owing under this agreement by the Retailer to the Distributor have been paid.

³ The security requirement is for the charges for the Retailer's two or three months of highest usage, depending on whether the agreement provides for the monthly distribution charges to be paid in advance or in arrears. For the agreement with Vector Gas Limited the two month option will apply and for Vector Limited, the three month option will apply.

Note that there are no gas insolvency regulations reducing Vector's exposure to insolvency of a Retailer.

⁴ The security requirement is for the charges for the Retailer's two or three months of highest usage, depending on whether the Retailer pays the distribution charges in advance or not. There are no gas insolvency regulations reducing Vector's exposure to insolvency of a Retailer.

12.9 NOT USED

12.10 **Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor will estimate the value of security required under clause 12.6 for the first 6 months of this agreement, subject to any reassessment of the value under this agreement, having regard to:

- (a) the Distributor's historical records of the Distribution Service charges in respect of the relevant ICPs; or
- (b) in the absence of such records, a bona fide business plan prepared by the Retailer in good faith necessary for the Distributor to determine the value of security that it requires from the Retailer.

12.11 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review, the value of security required to be provided by the Retailer under clause 12.6 at any time. The Retailer will provide all information reasonably required by the Distributor for the purpose of any review.

12.12 **Retailer to notify Distributor of changes affecting security:** Subject to clause 12.13, the Retailer will immediately notify the Distributor if any of the following occurs:

- (a) the Retailer no longer carries an acceptable credit rating; or
- (b) the Retailer has complied with prudential requirements by arranging for a third party to provide security in accordance with clause 12.1(b), and the Retailer learns that the third party no longer carries an acceptable credit rating; or
- (c) the Retailer has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to pay for Services will be affected.

Any information provided by the Retailer to the Distributor under this clause 12.12 will be Confidential Information.

12.13 **Public issuers and listed companies:** For the purpose of clause 12.12, if the Retailer:

- (a) is, or is owned by, a "public issuer" for the purposes of the Securities Markets Act 1988, the Retailer may withhold any information to the extent that, and for so long as, the Retailer considers such information to be "inside information" as defined in that Act; or
- (b) is listed on the New Zealand Stock Exchange, the Retailer may withhold any information to the extent that the Retailer considers such information is "material information" under the Listing Rules of the New Zealand Stock Exchange.

12.14 **Distributor may make enquiries:** If the Distributor believes that the Retailer should have given notice under clause 12.12 and the Distributor has not received any such notice, the Distributor may enquire of the Retailer as to whether it should have given such notice. Any such enquiry will be in writing and be addressed to the Chief Executive of the Retailer. If notice should have been given, the Retailer will give notice immediately, or if no notice is required, the Retailer will respond to the Distributor in writing within 2 Working Days of receipt of the Distributor's notice under this clause 12.14. Correspondence sent or received by either party under this clause will be Confidential Information.

12.15 **Change to the value of security:** If:

- (a) NOT USED

- (b) following a review of the Retailer's security in accordance with clause 12.11; or
- (c) on receipt of information contemplated by clause 12.12 or 12.14; or
- (d) as the result of a failure by the Retailer to respond to a request made under clause 12.14 within the timeframe set out in clause 12.14,

the Distributor or the Retailer considers that the value of security should be increased or decreased, the Distributor will, acting reasonably, make a decision on what the value of security should be, and immediately notify the Retailer of its decision and the grounds for that decision. To avoid doubt, failure by a Retailer to respond to a request made under clause 12.14 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Retailer.

12.16 Failure to maintain acceptable credit rating: If:

- (a) on receipt of information contemplated by clause 12.12 or 12.14; or
- (b) as the result of a failure by the Retailer to respond to a request made under clause 12.14 within the timeframe set out in clause 12.14,

the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with clause 12.1(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor will notify the Retailer of the value of acceptable security required in accordance with clause 12.1(b).

12.17 Distributor or Retailer to effect changes in value or type of security: The Distributor or the Retailer, as appropriate, will take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security:

- (a) within 5 Working Days of notification under clause 12.4, 12.15(c), 12.15(d) or 12.16; and
- (b) within 15 Working Days of notification under clause 12.15(b).

12.18 NOT USED

12.19 NOT USED

12.20 Reduction of third party security: If the Distributor decreases the value of third party security required in accordance with this agreement, the Retailer may arrange for the issuing of new third party security for the lesser value, in satisfaction of clause 12.1(b), which will replace the earlier third party security.

12.21 When the Distributor may make a call on security: The Distributor may make a call on security in accordance with clause 12.22 if:

- (a) the Retailer has provided acceptable security in accordance with clause 12.1(b);
- (b) the Retailer fails to pay an amount due under this agreement; and
- (c) the amount is not subject to a genuine dispute.

12.22 Calls on security: If this clause 12.22 applies in accordance with clause 12.21, the Distributor may, on 2 Working Days' notice to the Retailer, call on the security as follows:

- (a) NOT USED

- (b) if the Retailer arranged for a third party to provide security, the Distributor may call on the provider of a third party security to pay the amount owed in accordance with the security; and
- (c) the Distributor will immediately notify the Retailer that it has called on the security.

12.23 **Requirement to maintain security:** To avoid doubt, if the Distributor calls on the provider of a third party security, the Retailer will within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in clause 12.6 (which may be reviewed by the Distributor in accordance with clause 12.11), as required by clause 12.1(b).

12.24 NOT USED

12.25 NOT USED

12.26 **Release of third party security:** If this agreement is terminated, the Distributor will release any third party security, provided that the Retailer:

- (a) is not otherwise in default of this agreement;
- (b) is not subject to an Insolvency Event;
- (c) has ceased to be bound by this agreement; and
- (d) has discharged all obligations under this agreement to the Distributor, including payment of all outstanding amounts under this agreement.

PART III - OPERATIONAL REQUIREMENTS

13. ACCESS TO THE CONSUMER'S PREMISES

13.1 **Rights of entry onto Consumer's Premises:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement that the Consumer provide the Distributor and its agents with safe and unobstructed access onto and within the Consumer's Premises for all of the following purposes:

- (a) to inspect, maintain, operate or replace the Distributor's Equipment;
- (b) to install, read, maintain or replace Additional Metering Equipment;
- (c) to commission, connect, Isolate, disconnect, reconnect or Decommission the ICP in accordance with this agreement;
- (d) to verify metering information, including, in the event of termination of this agreement, to determine any charges outstanding at the time of termination;
- (e) for the safety and protection of persons or property;
- (f) to ensure that the Consumer fulfils its obligations in accordance with clause 14.6;
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Consumer Contract for the period ending 6 months after the date that termination takes effect; and
- (h) for any other purpose related to the provision of Services under this agreement or to enable the Distributor to comply with law.

13.2 **Exercise of access rights:** In exercising its access rights under clause 13.1, the Distributor will, except to the extent that the Distributor has any other binding agreement setting out its access rights directly with the Consumer or if not reasonably practicable in the circumstances:

- (a) NOT USED
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Consumer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Retailer and the Consumer (including minimising any direct impact on the Consumer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate and professional manner at all times while on the Consumer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor or the Distributor's contractor or agent; and
 - (iii) if practicable, identify themselves to the Consumer before entering the Consumer's property; and
- (d) comply with the Consumer's reasonable requirements, practices and procedures as disclosed by the Consumer or as generally practised for health and safety, and security requirements.

13.3 **Distributor may disconnect:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts a provision to the effect that if the Consumer breaches the provisions of its Consumer Contract that require it to give the Distributor access to the Distributor's Equipment on the Consumer's Premises, and the breach is material or persistent, the Distributor may disconnect the Consumer's ICP from the Network and access the Consumer's Premises to reclaim the Distributor's Equipment, provided that:

- (a) if access was required for a purpose described in clause 13.1(a), (b), (d), (g) or (h), the Distributor or Retailer gave the Consumer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 13.1(c), (e) or (f), such notice is not required); and
- (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with the relevant provisions of clause 19 and schedule 6.

13.4 **Costs of disconnection:** The Distributor will not be liable for any loss the Retailer may suffer or incur as a result of disconnection carried out because the Consumer has not given the Distributor access in accordance with the relevant Consumer Contract. The Retailer will reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.

13.5 **Existing agreement will prevail:** In the event of a conflict between clause 13 and any provision of any existing agreement between the Consumer and Distributor with respect to the Distributor's access rights to the Consumer's Premises, the provisions of the existing agreement between the Distributor and Consumer will prevail to the extent of such conflict.

14. GENERAL OPERATIONAL REQUIREMENTS

14.1 **Interference or damage to Distributor's Equipment by Consumers:** The Retailer will, subject to clause 27.1, include in each of its Consumer Contracts a requirement that, during the term of the Consumer Contract and until the end of the period ending 6 months after the termination of the Consumer Contract, the Consumer:

- (a) will not interfere with or damage, and will ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property);
- (b) will take all reasonable precautions necessary to protect the Distributor's Equipment from damage;
- (c) will pay the cost of making good the damage to the Distributor if the Distributor's Equipment is damaged by the act or omission of the Consumer or the Consumer's agents or invitees; and
- (d) will provide the Distributor with a reasonable opportunity to recover the Distributor's Equipment prior to any destruction of the Consumer's Premises.

14.2 Interference or damage to Distributor's Equipment or Network by the Retailer: The Retailer will ensure that it and its employees, agents and invitees do not:

- (a) interfere with or damage the Distributor's Equipment (including, without limitation, for the period of 6 months 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 or safety of persons or to prevent damage to property); or
- (b) interfere with the Network or cause or permit any person, material or device to do so.

14.3 Costs of making good any damage: If any of the Distributor's Equipment is damaged by an act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer will pay the cost of making good the damage to the Distributor.

14.4 Interference or damage to Retailer's Equipment or Gas Installations: The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Gas Installation (including, without limitation, for a period of 6 months after termination of this agreement) without the prior written consent of the Retailer or the Consumer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons, to prevent damage to property or for reasons relating to System Security or the security of the Network).

14.5 Costs of making good any damage: If the Retailer's Equipment or the Gas Installation is damaged by the Distributor or the Distributor's employees, agents or invitees, the Distributor will pay the cost of making good the damage to the Retailer or the Consumer (as the case may be). This clause 14.5 is for the benefit of the Consumer and may be enforced by the Consumer under the Contracts (Privity) Act 1982.

14.6 Interference with the Network: The Retailer will, subject to clause 27.1, include in its Consumer Contracts a provision to the effect that:

- (a) the Consumer will not, without the prior written agreement of the Distributor, inject or attempt to inject any gas into the Network or otherwise interfere with the Network, and will not cause or permit any person, material or device to do so;
- (b) the Consumer will not, without the prior written agreement of the Distributor, convey or receive or attempt to convey or receive any other thing (other than gas in accordance with this agreement) over the Network or cause or permit any other person to do so; and
- (c) if the Consumer breaches the provisions of its Consumer Contract that require it not to interfere with the Network as set out above, and the breach is material or

persistent, the Distributor may disconnect the Consumer's ICP from the Network and access the Consumer's Premises to reclaim the Distributor's Equipment.

14.7 NOT USED

14.8 **Notification of interference, damage or theft:** If the Distributor or Retailer discovers any interference or damage to the other party's equipment or the Gas Installation, or evidence of theft of gas, loss of gas or interference with the Network, the discovering party will notify the affected party as soon as it is practicable to do so. The Retailer will notify the Distributor of any other incident or matter that has, or could have, an adverse effect on the Network or the supply of gas to or from the Network.

14.9 **Additional Metering Equipment:** Either party may, at its own cost, install and maintain Additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that:

- (a) the Additional Metering Equipment does not interfere with any other equipment owned or used by the other party; and
- (b) the party installing the Additional Metering Equipment ensures that it is installed and maintained in accordance with Good Gas Industry Practice.

14.10 **Responsibility for damages:** If the party installing or maintaining Additional Metering Equipment (the "**First Party**") causes damage to the equipment or invalidates the GMS certification of the other party, the First Party will:

- (a) meet the cost of making good the damage or recertifying the GMS (including the cost of any fines or penalties as a result of the damage or invalidation of certification); and
- (b) if the damage invalidates the GMS certification, and the other party incurs costs because of its use of the GMS during the period of non-certification, the First Party will reimburse the other party for those costs (including any fines or penalties imposed on the indemnified party and costs associated with defending any such fines or penalties), except to the extent that the indemnified party knew or ought reasonably to have known that the GMS was uncertified.

14.11 **Safe Housing of Equipment:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts (subject to any alternative written agreement between the Retailer and the Distributor) an undertaking by the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of ICPs at the Consumer's Premises that the Distributor determines is necessary.

14.12 **The Network:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts an agreement by the Consumer that:

- (a) the Network, including any part of the Network situated on Consumer's Premises, is and will remain the sole property of the Distributor;
- (b) no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Equipment that is used to provide any such services; and
- (c) no provision of the Consumer Contract nor the provision of any services by the Distributor in relation to the Network will confer on the Consumer or any other person any right of property or other interest in or to any part of the GMS owned by any person other than the Consumer.

15. NETWORK CONNECTION PROCESS

15.1 **Publication of Network Connection Process:** The Distributor will publish its Network Connection Process on its website.

15.2 **Undertaking in Consumer Contracts:** The Retailer will:

- (a) subject to clause 27.1, include in its Consumer Contracts an undertaking that, where applicable, the Consumer will comply with the Distributor's Network Connection Process (including paying the costs of connection to the Network in accordance with the Network Connection Process); and
- (b) include in its Consumer Contracts a statement that the Network Connection Process can be found on the Distributor's website.

16. NOT USED

17. NOT USED

18. NOT USED

19. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPs

19.1 **Policies and procedures:** The Distributor and the Retailer will comply with the policies and procedures set out in schedule 6, and their other obligations set out in schedule 6.

PART IV: OTHER RIGHTS

20. BREACHES AND EVENTS OF DEFAULT

20.1 **Breach of agreement:** Subject to clause 20.6, if either party (the "Defaulting Party") fails to comply with any of its obligations under this agreement the other party may notify the Defaulting Party that it is in breach of this agreement. The Defaulting Party will remedy any breach within the following timeframe:

- (a) in the case of a Serious Financial Breach by the Retailer, within 2 Working Days of the date of receipt of such notice; and
- (b) in any other case, within 5 Working Days of the date of receipt of such notice.

20.2 **Distributor will exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with clause 12.1(b), and the Retailer has committed a Serious Financial Breach of the type described in paragraph (a) of the definition of "Serious Financial Breach", the Distributor may give notice to the Retailer under clause 20.1 and a notification under clause 20.4, but only if:

- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
- (b) the Retailer has arranged for a third party to provide acceptable security in accordance with clause 12.1(b), and the Distributor has called on the third party to make payment in accordance with clause 12.22(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.

20.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 20.1:

- (a) the breach is an "Event of Default" for the purposes of this agreement;
- (b) the other party will use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of

Default, and to notify him or her of the other party's intention to exercise its rights under this clause 20; and

- (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as possible.

20.4 **Notification of Events of Default:** If the Event of Default is any one of the following:

- (a) a Serious Financial Breach (in the case of the Retailer only); or
- (b) a material breach of the Defaulting Party's obligations under this agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
- (c) the Defaulting Party has failed on at least two previous occasions within the last 12 months to meet an obligation under this agreement within the time specified and has received notice of such failures from the other party in accordance with clause 20.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this agreement or, if the Defaulting Party is the Retailer, the Distributor's ability to carry out its obligations under any agreement with any other gas retailer,

then no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1 the other party may:

- (d) issue a notice of termination in accordance with clause 21.2;
- (e) if the Retailer is the Defaulting Party, the Distributor may:
 - (i) undertake a Temporary Disconnection of some or all of the ICPs supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and/or
 - (ii) prohibit the Retailer from using the Network to supply any ICP which is not currently supplied by it; and/or
 - (iii) if the breach is a Serious Financial Breach and the Distributor has issued a notice of termination pursuant to sub-clause (d) and this agreement has terminated in accordance with clause 21.2, notify the GIC in writing that this agreement has terminated because of a Serious Financial Breach. In exercising its rights under this clause 20.4(e)(iii), the Distributor shall ensure that its notification to the GIC is not inaccurate or misleading; and/or
 - (iv) exercise its rights, if applicable, under clauses 20.7 to 20.8; and/or
- (f) exercise any other legal rights available to it.

20.5 **Other Events of Default:** If a breach is not an Event of Default to which clause 20.4 applies, the non-Defaulting Party may:

- (a) refer the matter to Dispute resolution in accordance with clause 25 no earlier than 1 Working Day after the end of the timeframe set out in clause 20.1; and
- (b) exercise any other legal rights available to it.

20.6 **Insolvency Event:** Notwithstanding clause 20.1, if either party is subject to an Insolvency Event, the other party may:

- (a) immediately issue a notice of termination in accordance with clause 21.2;
- (b) if the Retailer is the party subject to an Insolvency Event, the Distributor may:
 - (i) undertake a Temporary Disconnection of some or all of the ICPs supplied by the Retailer, in which case the Retailer will take all steps necessary to allow those disconnections to be made and will provide the information required by the Distributor in relation to such ICPs; and/or
 - (ii) if the Retailer is the Defaulting Party, the Distributor may prohibit the Retailer from using the Network to supply any ICP which is not currently supplied by it; and/or
 - (iii) notify the GIC in writing that an Insolvency Event has occurred. In exercising its rights under this clause 20.6(b)(iii), the Distributor shall ensure that its notification to the GIC is not inaccurate or misleading; and/or
 - (iv) exercise its rights, if applicable, under clause 20.7, with that clause being construed as if:
 - (A) the Insolvency Event is an Event of Default constituting Serious Financial Breach that has not been remedied within 5 Working Days of the date of the notice under clause 20.7(a); and
 - (B) the pre-conditions in clause 20.8 have been satisfied; and/or
- (c) exercise any other legal rights available to it.

20.7 Communication with other retailers: Without prejudice to any other right of the Distributor whether under this agreement or otherwise, if an Event of Default constitutes a Serious Financial Breach, then:

- (a) the Distributor may, following the period the Retailer has to remedy the breach under clause 20.1(a), give the Retailer a further notice that the relevant breach has not been remedied within the requisite time period and that the Distributor intends to advise other retailers pursuant to this clause;
- (b) if the Retailer has not, within a further period of 5 Working Days after the date of the notice under sub-clause (a), remedied such breach then (notwithstanding the provisions of clause 22) the Distributor may pass all relevant details relating to Consumers to all or any other retailer for the purpose of arranging for the Consumers to be supplied by another retailer and may also advertise, disclose or publish by any means the Distributor considers appropriate the fact that the Retailer is in default of this agreement and that Consumers need to switch to another retailer; and
- (c) the Distributor will, during such 5 Working Day period, use its best endeavours to speak with the chief executive or another senior executive of the Retailer in relation to its intention to exercise its rights under this clause.

20.8 Pre-conditions to communication with other retailers: In exercising its right under clause 20.7, the Distributor will act in good faith and reasonably having regard to the other rights and remedies available to the Distributor in respect of such breach and will not exercise such rights:

- (a) if the amount of such default is less than the lesser of \$100,000 or 20% of the charges for Distribution Services payable by the Retailer in respect of the month prior to the month in which such breach occurred unless such default is a breach of clause 12, in which case the Distributor may exercise such rights; or

- (b) if within 5 Working Days after the Distributor gives to the Retailer notice of such breach, any other retailer who has entered into a "Use of System Agreement – Gas Distribution Networks" with the Distributor (or any other agreement in the future with the Distributor, howsoever described, which relates to the same subject matter as a "Use of System Agreement – Gas Distribution Networks") enters into arrangements reasonably satisfactory to the Distributor to assume all of the obligations of the Retailer to supply gas to all Consumers.

21. TERMINATION OF AGREEMENT

21.1 **Either party may terminate this agreement:** In addition to any other termination right in this agreement:

- (a) **At will:** either party may terminate this agreement by giving at least 120 Working Days' notice in writing of termination and the date on which this agreement will terminate. The notice of termination may not be given under this clause 21.1 before 4 years and 6 months from the commencement date of the first "Use of System Agreement – Gas Distribution Networks" entered into between the Distributor and any retailer. Where the Distributor issues a notice of termination to the Retailer under this clause 21.1(a), the Distributor will at the same time provide to the Retailer a copy of the Standard Use of Network Agreement it proposes will apply between the Distributor and the Retailer after the termination of this agreement. If the Retailer wishes to continue to use the Network, the parties will negotiate any amendments to the Standard Use of Network Agreement in good faith during the 120 Working Day notice period with a view to entering into the new agreement with effect from the termination of this agreement; or
- (b) **Dispute resolution:** either party may terminate this agreement in accordance with any agreement reached or determination made as a result of the Dispute resolution process set out in clause 25 if the other party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach; or
- (c) **Illegality:** either party may terminate this agreement on 1 Working Day's notice if the performance of any material provision of this agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 30.5 it is not practicable for this agreement to continue; or
- (d) **Termination by the Retailer if the Retailer is not supplying gas on the Network:** the Retailer may terminate this agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying gas to any Consumer through the Network; or
- (e) **Termination by the Distributor if the Retailer is not supplying gas on the Network:** the Distributor may terminate this agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Retailer has not supplied any Consumers with gas through the Network; or
- (f) **Force majeure:** either party may terminate this agreement by giving 10 Working Days' notice to the other party, if:
- (i) notice of a Force Majeure Event is given by either party to the other under clause 23.3; and
- (ii) the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice of termination to remain bound by its obligations under this agreement, provided that if the party who wishes to terminate this agreement is the party that gave notice of the Force Majeure Event, the party has complied with clauses 23.3 and 23.4.

21.2 **Termination of agreement for Event of Default or Insolvency Event:** In addition to any other termination right in this agreement, if a party has breached this agreement and the breach is an Event of Default, or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 20.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:

- (a) no less than 5 Working Days after the date of such notice; or
- (b) immediately if the Retailer has ceased to supply gas to all Consumers.

Such notice for termination will lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws or extends the effective date of its notice.

21.3 **Notice to Consumers:** Either party may copy any notice given under clause 21.2 to any or all of the Consumers (notwithstanding the provisions of clause 22), provided that the information contained in that notice is not inaccurate or misleading.

21.4 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.

21.5 **Retailer remains liable for charges for remaining Consumers:** If this agreement is terminated:

- (a) the Retailer remains liable to pay any charges for Services that arise in relation to connected Consumers that have not been switched to another retailer, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Retailer will not be liable to pay any charges for Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP);
- (b) within 5 Working Days of this agreement being terminated, the Retailer must notify the Distributor of all ICPs that have not been disconnected or switched to another retailer;
- (c) the Distributor may charge for such Services as described in sub-clause (a) at the prices that apply at the time of termination, including any applicable disconnection fees; and
- (d) the Distributor has no responsibility for any ICPs that have not been switched to another retailer or disconnected by the Distributor following receipt of a notice to disconnect, that continue to take gas from the Network following termination of this agreement.

21.6 **Obligations to continue until termination:** The parties will continue to meet their responsibilities under this agreement up to the effective date of termination. If the Distributor continues to charge the Retailer for Services after the effective date of termination of this agreement in accordance with clause 21.5, then the Retailer will continue to be bound by all of the terms of this agreement as if the agreement had not been terminated for so long as the Retailer is liable to pay such charges.

21.7 **Events to occur on termination:** On the effective date of termination, unless this agreement is replaced by an Alternative Contract:

- (a) the parties will have returned or certified the destruction of the other party's Confidential Information; and
- (b) the parties will cease to provide the Services to each other.

21.8 **Survival of terms:** Any terms of this agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

22. CONFIDENTIALITY

22.1 **Commitment to preserve confidentiality:** Each party to this agreement undertakes that it will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except as provided for in clause 22.2; and
- (b) only use Confidential Information for the purposes expressly permitted by this agreement.

22.2 **Disclosure of Confidential Information:** Either party may disclose Confidential Information in any of the following circumstances:

- (a) **By agreement in writing:** if the Retailer and Distributor agree in writing to the disclosure of the information; or
- (b) **Provided in this agreement:** if disclosure is expressly provided for under the terms of this agreement; or
- (c) **Public domain:** if at the time of receipt by the party the Confidential Information is in the public domain or if, after the time of receipt by either party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause 22 or a breach by any other person of that person's obligation of confidence); or
- (d) **Required to disclose:** if either party is required to disclose Confidential Information by:
 - (i) law, or by any statutory or regulatory body or authority; or
 - (ii) any judicial or other arbitration process; or
 - (iii) the regulations of any stock exchange on which the share capital of either party is from time to time listed or dealt in; or
- (e) **Released to employees, directors, agents or advisors:** if the Confidential Information is released to the employees, directors, agents or advisors of the party, provided that:
 - (i) the information is disseminated only on a "need to know" basis;
 - (ii) recipients of the Confidential Information will be made fully aware of the party's obligations of confidence in relation thereto; and
 - (iii) any copies of the information clearly identify it as Confidential Information; or
- (f) **Released to a bona fide potential purchaser:** if the Confidential Information is released to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Retailer, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form that reflects the obligations in the agreement; or
- (g) **Released to a Consumer:** if the Confidential Information relates to a Consumer and the Consumer has requested the release of the information.

- 22.3 **Limit for breach:** Where clause 22.5(b) applies, the Distributor's liability for breach of this clause 22 in relation to any error or omission in the provision of the requested information will be limited by clause 26.
- 22.4 **Unauthorised disclosure:** For the avoidance of doubt, a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 22.2(f).
- 22.5 **File Transfer Processes:**
- (a) As soon as practicable after execution of this agreement, the Distributor and the Retailer will act in good faith and seek to agree a set of secure file transfer processes to be followed by the Distributor in providing information relating to Consumers to the Retailer ("**File Transfer Processes**"). If the parties cannot agree the File Transfer Processes within 20 Working Days after the date of execution of this agreement, then either party may raise a dispute to be determined in accordance with the Dispute resolution process in clause 25.
 - (b) If, following the File Transfer Processes being agreed or determined in accordance with sub-clause (a), the Distributor is requested by the Retailer to provide information relating to Consumers to the Retailer other than in accordance with the File Transfer Processes, the Distributor will use its reasonable endeavours to do so. The Distributor's agreement to provide the requested information other than in accordance with the File Transfer Processes shall be on the basis that the liability of the Distributor in relation to any error or omission in doing so shall be limited by the provisions of clause 26.
 - (c) The parties agree that the Distributor may change the File Transfer Processes, provided that the proposed change is in accordance with Good Electricity Industry Practice and the Distributor has complied with the following:
 - (i) subject to sub-clause (c)(ii), the Distributor will give the Retailer change notice not less than 30 Working Days before the date on which the Distributor wishes the change to take effect; and
 - (ii) before giving the change notice to the Retailer in accordance with sub-clause (c)(i):
 - (A) the Distributor will consult with the Retailer (which may be undertaken jointly with other retailers) about the proposed change for a reasonable period, having regard to the nature of the proposed change, but in any event a period of not less than 20 Working Days, and will consider in good faith any submission that the Retailer makes regarding the proposed change; and
 - (B) the Distributor will provide the Retailer a summary of all submissions received and the responses to the submissions that clearly indicates whether the majority of retailers by number of ICPs supplied on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor may change the File Transfer Processes as proposed under sub-clause (a) whether or not a majority of retailers support the change proposed.

23. FORCE MAJEURE

23.1 Force Majeure Event: A "Force Majeure Event" occurs if:

- (a) a party fails to comply with or observe any provision of this agreement (other than payment of any amount due); and

- (b) such failure is caused by:
 - (i) any event or circumstance occasioned by, or in consequence of, any act of God, being an event or circumstance:
 - (A) due to natural causes; and
 - (B) that was not reasonably foreseeable; or
 - (C) if it was reasonably foreseeable, the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with Good Gas Industry Practice; or
 - (ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, aircraft or civil disturbances; or
 - (iii) the binding order or requirement of any court, any government, any local authority, the Rulings Panel, the Transmission System Operator or the Critical Contingency Operator which the party could not reasonably have avoided; or
 - (iv) the partial or entire failure of supply or availability of gas to the Network; or
 - (v) the failure of the Network or any part of it which can be reasonably proven by the Distributor to be an event that did not arise from the Distributor's failure to act in accordance with Good Gas Industry Practice; or
 - (v)A any event or circumstance which causes a Critical Contingency to be determined; or
 - (vi) any other event or circumstance beyond the reasonable control of the party invoking this clause 23; and
- (c) the failure did not occur as a result of the party invoking this clause 23 failing to act in accordance with Good Gas Industry Practice.

23.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event.

23.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it will:

- (a) notify the other party as soon as reasonably practicable that it is invoking this clause 23;
- (b) provide the full particulars of the potential or actual Force Majeure Event; and
- (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).

23.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking this clause 23 will:

- (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
- (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and

- (c) consult with the other party on the performance of the obligations referred to in sub-clauses (a) and (b).

23.5 **No obligation to settle:** Nothing in clause 23.4(a) is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

23.6 **Charges continue:** If a Force Majeure Event occurs:

- (a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of gas during the period of the Force Majeure Event); but
- (b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, gas at the ICP is reduced due to the Force Majeure Event,

provided that where access to any Consumer's Premises is prevented by law or a regulatory authority, other than due to any action or inaction on the part of the relevant Consumer, fixed charges will not be payable for the period during which such access is prevented.

24. AMENDMENTS TO AGREEMENT

24.1 **Changes to agreement:** A change may be made to this agreement:

- (a) if the change is to one or more of the Variable Provisions and the change is made in accordance with clause 24.2; or
- (b) if the change is a change to schedule 8 and the change is made in accordance with clause 9; or
- (c) if the change is required by law or is necessary due to a change in law or any mandatory rules or protocols of any industry association or body of which both the Distributor and the Retailer are members or signatories at the relevant time or is otherwise binding on the Distributor, and the change is made in accordance with clause 24.4; or
- (d) if the change is made in accordance with clause 24.5 and involves:
 - (i) permanent disconnection of all or part of the Network from a Network Point of Supply or one or more ICPs from the Network; or
 - (ii) the construction of a new Network Point of Supply; or
- (e) if the change does not fall into any of the categories set out above, and the change is made in accordance with clause 24.4.

24.2 **Process to change any of the Variable Provisions:** The Variable Provisions may be changed only:

- (a) in accordance with any applicable process in the Variable Provision; or
- (b) if there is no applicable process in the Variable Provision and the party seeking the change is the Distributor, in accordance with clause 24.3; or
- (c) by agreement in writing between the parties.

24.3 **Distributor seeks change to a Variable Provision:** If there is no applicable process in the Variable Provision, the Distributor may change the Variable Provision, provided that

the proposed change is in accordance with Good Gas Industry Practice and the Distributor has complied with the following:

- (a) subject to sub-clause (b), the Distributor will give the Retailer a Change Notice not less than 30 Working Days before the date on which the Distributor wishes the change to take effect; and
- (b) before giving the Change Notice to the Retailer:
 - (i) the Distributor will consult with the Retailer (which may be undertaken jointly with other retailers) about the proposed change for a reasonable period, having regard to the nature of the proposed change, but in any event a period of not less than 20 Working Days, and will consider in good faith any submission that the Retailer makes regarding the proposed change; and
 - (ii) the Distributor will provide the Retailer with a summary of all submissions received and the responses to the submissions that clearly indicates whether the majority of retailers by number of ICPs supplied on the Network support or do not oppose the change proposed. For the avoidance of doubt, the Distributor may change the Variable Provision as proposed in the Change Notice whether or not a majority of retailers support the change proposed.

24.4 **Procedure for changes required by law or necessary due to change in law and other changes:** The following procedures will apply to changes contemplated by clauses 24.1(c) and 24.1(e):

- (a) **Notice of change:** either the Distributor or the Retailer may suggest a change by notice to the other. The Distributor may in its discretion choose to consult with all retailers (including the Retailer) jointly about the proposed change. The notice will:
 - (i) if the proposed change is contemplated by clause 24.1(c), specify the mandatory rules or protocols, or the laws that are the basis for the proposed change; or
 - (ii) if the proposed change is contemplated by clause 24.1(e), set out the reasons for the proposed change; and
 - (iii) set out the change in the form that the change is proposed to be incorporated in this agreement;
- (b) **Good faith:** the parties will negotiate the change in good faith;
- (c) **By agreement:** if the Distributor and the Retailer agree to the proposed change they will promptly sign a written variation to this agreement documenting the change, and this agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation;
- (d) **Procedure for changes required by law or necessary due to change in law if the parties have not agreed:** subject to clause 24.4(e), if the proposed change is contemplated by clause 24.1(c) and the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under sub-clause (a), the matter will be referred to the decision of any independent, experienced and suitably qualified person agreed between the parties or failing agreement, appointed by the President for the time being of the New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:

- (i) will be the minimum necessary to effect the change required or necessary under clause 24.1(c);
 - (ii) subject to subparagraph (i), will be binding, absent obvious error; and
 - (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision is required to take immediate effect by law or mandatory rules or protocols; and
- (e) **Procedure for changes if the parties have not agreed:** notwithstanding clause 24.4(d), if the proposed change is contemplated by clause 24.1(c) or 24.1(e) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under sub-clause (a), as long as not more than two retailers who together supply at least 15% of ICPs at the commencement of the Year (expressed as a percentage of the total number of ICPs connected to the Network at the commencement of the Year) dissent to such change, then such change will be deemed to also have been made to this agreement without any further action being required by the parties, notwithstanding the failure of the parties to agree to the change. The Distributor will notify the Retailer of its intention to exercise its rights under this clause 24.4(e) no less than 5 Working Days prior to the expiry of the 40 Working Day period referred to above. Any change made to this agreement in accordance with the preceding sentence will become effective on the expiry of the 40 Working Day period referred to above, provided that such change will not be deemed to be made to this agreement if the Retailer establishes to the Distributor's satisfaction (acting reasonably) that the Retailer will be materially disadvantaged compared to other retailers if the change is made.

In respect of the Year in which the Commencement Date occurs, the reference above to the percentage of ICPs supplied by retailers at the commencement of the Year will be construed as a reference to the percentage of ICPs supplied by retailers at the Commencement Date (being a percentage of the total number of ICPs connected to the Network at the Commencement Date).

24.5 **Change to Network Points of Supply and ICPs:** The following procedure will apply to changes contemplated by clause 24.1(d):

- (a) **Notice of Proposal:** the Distributor will notify the Retailer that it proposes to:
 - (i) construct and operate, in conjunction with the Transmission System Operator, a new Network Point of Supply; or
 - (ii) permanently disconnect the Network from a Network Point of Supply or permanently disconnect one or more ICPs from the Network,
 such proposed change being a "**Proposal**";
- (b) **Information about Proposal:** the Distributor will provide in writing to the Retailer the details of the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal;
- (c) **Notification:** the Distributor will notify the Retailer about the Proposal a reasonable period of time before it is implemented; and
- (d) **Implementation:** The Distributor will provide the Retailer at least 20 Working Days' notice of the date on which the commissioning of or permanent disconnection from the Network Point of Supply, or permanent disconnection of one or more ICPs from the Network, is expected to be complete, and this agreement will be deemed to be varied from that date to the extent necessary as a result of the commissioning or permanent disconnection.

24.6 **Exception:** If a change to the agreement has a de minimis effect on the contractual undertakings of the parties (for example, without limitation, terminology changes to accord with new industry classifications or definitions), either party may effect the change by notice to the other party and nothing in clauses 24.1 to 24.5 will apply to the change. If the party receiving such a notice disagrees that the change has a de minimis effect, the party may raise a dispute in accordance with clause 25. If, following arbitration undertaken in accordance with clause 25.8, an arbitrator finds that the change has a de minimis effect on the contractual undertakings of the parties, the change will take effect from the date ordered by the arbitrator. Otherwise the change will not take effect.

25. DISPUTE RESOLUTION PROCEDURE

25.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties will promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) of the parties for resolution.

25.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, the parties may agree that the Dispute be referred to mediation.

25.3 **Appointment of mediator:** Within 10 Working Days of an agreement by the parties to refer the Dispute to mediation in accordance with clause 25.2, the parties will agree on the identity of the mediator or, if they cannot agree within that timeframe, the mediator will be appointed by the President (or equivalent) of the New Zealand chapter of LEADR.

25.4 **Conduct of mediation:** In consultation with the mediator, the parties will determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.

25.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.

25.6 **Conduct during mediation:** In all matters relating to the mediation:

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

25.7 **Arbitration to resolve disputes:** Either party may refer the Dispute to arbitration if the Dispute:

- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
 - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with clause 25.1 within 15 Working Days of the matter being referred to them and the Dispute was not referred to mediation within the time specified in clause 25.2.
- 25.8 **Arbitration:** A Dispute referred to arbitration under clause 25.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 25.9 **Choice of arbitrator:** The sole arbitrator will be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 25.7, the arbitrator will be appointed by the President of the New Zealand Law Society.
- 25.10 **No connection to previous mediator or previous mediation:** If the Dispute has been referred to mediation in accordance with clause 25.2, the mediator may not be called by either party as a witness, and no reference may be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent arbitration on the matter in Dispute.
- 25.11 **Urgent Relief:** Notwithstanding any other provision of this agreement, each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.
- 26. LIABILITY**
- 26.1 **Payments of charges:** Nothing in this clause 26 will operate to limit the liability of either party to pay all charges and other sums due under this agreement.
- 26.2 **Direct damage:** Except in relation to liability under clauses 20.4(e)(iii), 20.6(b)(iii), 21.3, 22 (except where clause 22.5(b) applies), 26.10, 26.14, 26.15(b), 26.16(b), 27.3 and 29.3, each party (and its officers, employees and agents) will be liable under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) to the other party only for direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this agreement.
- 26.3 **Excluded liability:** Except in relation to liability under clauses 20.4(e)(iii), 20.6(b)(iii), 21.3, 22 (except where clause 22.5(b) applies), 26.10, 26.14, 26.15(b), 26.16(b), 27.3 and 29.3, neither the Distributor nor the Retailer will be liable for:
- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person; or
 - (b) any indirect or consequential loss (including, but not limited to, incidental or special damages); or
 - (c) any loss resulting from liability of a party to another person (except any liability for Direct Damage that arises under clause 26.2); or
 - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 26.4 **No liability in tort, contract etc:** Except as expressly provided in this clause 26, the Distributor's liability to the Retailer and the Retailer's liability to the Distributor, whether in tort (including negligence), contract, breach of statutory duty, equity or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this agreement is excluded to the fullest extent permitted by law.
- 26.5 **Distributor not liable:** Except as provided in clause 26.10, the Distributor will not be liable for:

- (a) any momentary fluctuations in the pressure or specification of gas conveyed; or
- (b) any failure to convey gas to the extent that:
 - (i) such failure arises from any act or omission of any Consumer or other person excluding the Distributor and its officers, employees or agents; or
 - (ii) such failure arises from:
 - (A) a failure to convey or reduction of injection or supply of gas into the Network; or
 - (B) an interruption in the conveyance of gas in the Network,

if the failure or interruption was requested by the Transmission System Operator, the Critical Contingency Operator or was done under a nationally or regionally coordinated response to a shortage of gas; or
 - (iii) such failure arises from any defect or abnormal conditions in or about any Consumer's Premises; or
 - (iv) the Distributor was taking any action in accordance with this agreement including clause 5.4; or
 - (v) such failure arises from any act or omission of the Transmission System Operator or a Shipper; or
 - (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene); or
 - (vii) such failure has arisen notwithstanding that the Distributor has acted in accordance with Good Gas Industry Practice,

except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this agreement; or
- (c) any failure to perform any obligation under this agreement caused by the Retailer's failure to comply with this agreement, except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this agreement; or
- (d) any loss or damage claimed in respect of any ICP on the Network with a status of INACTIVE on the Registry at the time such loss or damage was suffered.

26.6 **Retailer not liable:** The Retailer will not be liable for:

- (a) any failure to perform any obligation under this agreement caused by the Distributor's failure to comply with this agreement; or
- (b) any failure to perform any obligation under this agreement arising from any defect or abnormal conditions in the Network,

except to the extent that the failure is caused or contributed to by the Retailer not acting in accordance with this agreement.

26.7 **Distributor's limitation of liability:** Except in relation to liability under clauses 20.4(e)(iii), 20.6(b)(iii), 21.3, 22 (except where clause 22.5(b) applies), 26.1, 26.10 and 26.16(b) and subject to clause 26.9, but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Distributor to the Retailer under or in relation to this agreement (whether in contract, tort (including negligence) or otherwise) will:

- (a) subject to the further limitation of the maximum total liability of the Distributor to the Retailer in any Year under sub-clause (b), in respect of a single event or series of connected events, not in any circumstances exceed, in respect of each ICP on the Network with a status of ACTIVE on the Registry at the time the claimable loss or damage was suffered, the lesser of:
- (i) \$10,000, where the ICP is a Residential ICP or \$20,000, where the ICP is a Non-Residential ICP; and
 - (ii) the amount of the claimable loss or damage suffered; and
- (b) in respect of all events or circumstances during the period from 1 July each year until 30 June the following year (“Year”) under all use of system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table:

Distribution services charges paid by the Retailer during the immediately preceding Year (expressed as a percentage of the total amount of distribution services charges received by the Distributor in the immediately preceding Year)	Maximum aggregate liability of the Distributor
0 to 2.5%	\$500,000
>2.5% to 10%	\$1,000,000
>10% to 15%	\$2,000,000
>15% to 20%	\$3,000,000
>20%	\$4,000,000

26.8 **Retailer’s limitation of liability:** Except in relation to liability under clauses 21.3, 22, 26.1, 26.14, 26.15(b), 27.3 and 29.3 and subject to clause 26.9, but otherwise notwithstanding any other provision of this agreement, the maximum total liability of the Retailer to the Distributor under or in relation to this agreement (whether in contract, tort (including negligence) or otherwise) will:

- (a) subject to the further limitation of the maximum total liability of the Retailer to the Distributor in any Year under sub-clause (b), in respect of a single event or series of connected events, not in any circumstances exceed, in respect of each ICP on the Network, the lesser of:
- (i) \$10,000, where the ICP is a Residential ICP or \$20,000, where the ICP is a Non-Residential ICP; and
 - (ii) the amount of the claimable loss or damage suffered; and
- (b) in respect of all events or circumstances during any Year under all use of system agreements between the Distributor and the Retailer in respect of the Network, not in any circumstances exceed the lesser of the amount of the claimable loss or damage suffered and the amount determined in accordance with the following table⁵:

⁵ See footnote 3.

Distribution services charges paid by the Retailer during the immediately preceding Year (expressed as a percentage of the total amount of distribution services charges received by the Distributor in the immediately preceding Year)	Maximum aggregate liability of the Retailer
0 to 2.5%	\$500,000
>2.5% to 10%	\$1,000,000
>10% to 15%	\$2,000,000
>15% to 20%	\$3,000,000
>20%	\$4,000,000

26.9 **Exclusion:** Clauses 26.7 and 26.8:

- (a) do not limit a party's liability under clause 20.4(e)(iii), 20.6(b)(iii), 21.3, 22 (except where clause 22.5(b) applies), 26.10, 26.14, 26.15(b), 26.16(b), 27.3 or 29.3; and
- (b) do not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Consumer failing to comply with the Distributor's Network Connection Process;
 - (ii) the Retailer is required by this agreement to include in its Consumer Contracts a provision requiring the Consumer to comply with those Network Connection Process; and
 - (iii) the Consumer Contract between the Retailer and the Consumer did not include such a provision.

26.10 **Distributor indemnity:** If:

- (a) there has been a failure of the acceptable quality guarantee in the CGA in relation to the supply of gas to a Consumer by the Retailer (a "**Failure**");
- (b) the Failure was wholly or partially the result of an event, circumstance or condition associated with the Network;
- (c) the Failure was not a result of the Distributor complying with a rule or an order with which it was legally obliged to comply;
- (d) the Failure was not a result of action taken by the Transmission System Operator under the Act;
- (e) the Consumer obtains a remedy under Part 2 of the CGA in relation to the Failure against the Retailer; and
- (f) that remedy is a cost to the Retailer (a "**Remedy Cost**"),

the Distributor indemnifies the Retailer for the Remedy Cost ("**Distributor's Indemnity**").

26.11 **Claims for which the Retailer wishes to be indemnified for under the Distributor's Indemnity:** If a Consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor's Indemnity under clause 26.10 (a "Claim"):

- (a) The Retailer will:
 - (i) give written notice of the Claim to the Distributor as soon as reasonably practicable, specifying the nature of the Claim in reasonable detail and will make available to the Distributor all information that it holds that is reasonably required by the Distributor; and
 - (ii) subject to clause 26.11(b), not make any determination, admission, settlement or compromise in respect of the Claim, without first consulting with the Distributor in respect of the Claim.
- (b) If the Distributor is notified of any potential Claim, the Distributor will be entitled to:
 - (i) communicate directly with the relevant Consumer in relation to the Claim; and
 - (ii) assume management and defence of the Claim.

The Distributor will advise the Retailer as soon as practicable after being notified of the Claim whether or not it intends to assume the management and defence of the Claim. Where the Distributor so assumes the management and defence of the Claim it will, subject to the terms of this agreement, be entitled to determine the conduct of that Claim. If the Distributor assumes the management and defence of the Claim pursuant to this clause 26.11(b), the Retailer shall be entitled to make it clear to the relevant Consumer and the Dispute Resolution Scheme that the Distributor is dealing with the Claim.
- (c) Whichever party conducts the management and defence of the Claim, it will ensure that:
 - (i) the other party is kept informed on a timely basis of any development in relation to the Claim; and
 - (ii) the other party and its legal counsel (to the extent applicable) are consulted in a timely manner prior to taking any significant steps in relation to the Claim, so that the reputation of the other party is not unfairly harmed.
- (d) If, in respect of any Claim, the management and defence of which has been assumed by the Distributor pursuant to clause 26.11(b), the Distributor intends (whether by reason of any fact or matter which is asserted or proven in such proceedings or otherwise) to assert that the Distributor's Indemnity does not apply, the Distributor will promptly notify the Retailer accordingly. In that event, the Retailer shall be entitled to resume the conduct of the management and defence of the Claim as it relates to the Retailer.
- (e) The following payment arrangements apply:
 - (i) The Retailer may require the Distributor to pay to the Retailer the out of pocket costs incurred by the Retailer in managing and defending or settling the Claim, at not less than monthly intervals upon presentation of documentation supporting the claim for payment, as and when those costs are incurred by the Retailer.
 - (ii) The Distributor shall promptly pay the Retailer the amounts due under the Distributor's Indemnity, following the Distributor's liability:

- (A) being agreed by the Distributor with the Retailer; or
- (B) being determined by the Dispute Resolution Scheme; or
- (C) otherwise being finally determined in accordance with this agreement,

provided that:

- (D) if the Retailer has become legally obliged to pay a Remedy Cost to the Consumer prior to the Distributor's liability to pay to the Retailer an amount equal to that Remedy Cost being agreed or finally determined as contemplated in paragraph (A), (B) or (C) above; and
- (E) the Retailer has used reasonable endeavours to avoid incurring such Remedy Cost and it would be unreasonable in the circumstances for the Retailer to not pay such Remedy Cost to the Consumer at that time,

then the Distributor shall promptly pay to the Retailer an amount equal to that Remedy Cost notwithstanding that the Distributor's liability to make such payment has not been agreed or finally determined ("**Early Payment Amount**"), provided that:

- (F) the Distributor shall not be required to pay an Early Payment Amount if and to the extent that following such payment, the aggregate amount paid by the Distributor to the Retailer in respect of the Early Payment Amount and all Early Payment Amounts previously paid would exceed the lesser of \$1,000,000 and the Distributor's reasonable estimate of the Distribution Services charges payable by the Retailer to the Distributor in respect of any period not more than 2 months.

For the purposes of calculating the Early Payment Amount, any Early Payment Amount previously paid shall be disregarded if, at the time of the calculation, the Distributor's liability to pay the Retailer for the Remedy Cost to which such Early Payment Amount relates has been agreed or finally determined as contemplated in paragraph (A), (B) or (C) above (it being intended that the amount described in paragraph (F) above shall be the maximum amount which the Retailer is entitled to receive in respect of Early Payment Amounts where the liability of the Distributor to pay the Retailer for the Remedy Cost(s) to which such Early Payment Amounts relate is not at that time certain).

- (iii) The Retailer must promptly repay amounts paid by the Distributor to the Retailer (including under sub-clause 26.11(e)(i)) in respect of any liability to or on behalf of the Retailer under clause 26.10 to the extent that:

- (A) the Claim is or becomes a claim for which the Retailer is not entitled to be indemnified under clause 26.10; or
- (B) a court of competent jurisdiction determines that the Retailer is not entitled to be indemnified by the Distributor for the Claim; or
- (C) the Retailer receives payment under a contract of insurance in respect of the Claim, or the insurer pays, discharges or satisfies the Claim directly and the Retailer is not obliged to refund the payment to the insurer as a result of the payment by the Distributor under the Distributor's Indemnity; or

- (D) the Retailer receives payment from a person other than the Distributor in respect of the Claim, or that person pays, discharges or satisfies the Claim directly; or
 - (E) it is established in relation to the Claim that the Retailer did not perform an obligation referred to in this clause 26.11 and the Distributor's liability is or would have been reduced if the obligation had been performed.
- (f) Where the Distributor is liable to pay the Retailer any amount in accordance with this clause 26 in respect of property damage which is not related to the property of the Retailer, the Retailer agrees that it will pass through the amount received by it from the Distributor in relation to that property damage to the owner of the affected property (whether or not that person is a Consumer). The Distributor may, with the prior written consent of the Retailer (such consent not to be unreasonably withheld), pay such amount directly to the property owner instead of to the Retailer. In such circumstances, the Retailer will provide the Distributor with such information as required to enable the Distributor to make payment and the Distributor shall inform the Retailer as soon as reasonably practicable after making such payment directly to the property owner.

26.12 General:

- (a) NOT USED
- (b) The amount of the Distributor's liability under the Distributor's Indemnity is limited to the proportion of the Remedy Cost that is attributable to the event, circumstances or condition associated with the Distributor's Network.
- (c) However:
 - (i) if the Distributor pays compensation to a Consumer ("**Payment A**") in respect of a service provided directly by the Distributor to the Consumer; and
 - (ii) the Retailer incurs Remedy Costs in relation to the Consumer for a failure of acceptable quality that arose from the same event, circumstance or condition that led to the payment of Payment A,
 - (iii) then the amount that the Retailer would otherwise recover from the Distributor in respect of that Consumer will be reduced by the amount of Payment A.
- (d) Without limiting clause 26.11(b), any dispute between the Distributor and the Retailer relating to the allocation of liability under the Distributor's Indemnity shall be dealt with in accordance with clause 25, until such time as the terms of reference for the Dispute Resolution Scheme are amended to provide for the resolution of disputes in relation to such allocation of liability, after which time either party may elect that the dispute be dealt with under the Dispute Resolution Scheme instead of under clause 25.
- (e) Notwithstanding clause 26.11(d), any adjudication of a Claim where the parties have not agreed and it has not otherwise been determined as to whether the indemnity in clause 26.10 does, or does not, apply will not prejudice the right of the Retailer or the Distributor (as applicable) to assert that the Distributor's Indemnity does, or does not, apply.
- (f) Clauses 26.11(b), 26.11(c), 26.11(d) and 26.12(e) do not apply where a complaint has been made to the Dispute Resolution Scheme under section 95 of the Act.

26.13 Consumer Guarantees Act: The following provisions apply:

- (a) Subject to clause 27.1, the Retailer will, including where the Consumer is acquiring, or holds itself as acquiring, gas for the purpose of a business, exclude from all its Consumer Contracts (which includes a contract between the Retailer and a purchaser of gas that is not an end user) all warranties, guarantees or obligations imposed on the Distributor by the CGA or any other law concerning the services to be provided by the Distributor under this agreement ("**Distributor Warranties**"), to the fullest extent permitted by law.
- (b) If the Consumer on-supplies gas to an end-user the Retailer will, as a condition of any agreement between it and the Consumer, require the Consumer to include provisions in all agreements between the Consumer and an end-user, excluding all Distributor Warranties to the fullest extent permitted by law, including where the end-user is acquiring, or holds itself as acquiring, gas for the purpose of a business.
- (c) To avoid doubt, nothing in this clause 26.13 affects the rights of any Consumer under the CGA that cannot be excluded by law, nor does it preclude the Retailer from offering in its Consumer Contracts its own warranties, guarantees or obligations pertaining to distribution services where such warranties, guarantees or obligations are not Distributor Warranties.

26.14 **Distributor liabilities and Consumer agreements:** The Retailer will, subject to clause 27.1, include in its Consumer Contracts clear and unambiguous clauses to the effect that:

- (a) the Consumer will indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud of, dishonesty of or wilful breach of the Consumer Contract by the Consumer or any of its officers, employees, agents or invitees arising out of, or in connection with, the Services provided under this agreement; and
- (b) to the extent permitted by law, the Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in relation to the supply or non-supply of gas to the Consumer.

26.15 **The Distributor will be indemnified:** Subject to clause 26.17, the Retailer indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis, but excluding all loss or damage of the kind described in clause 26.3 whether incurred by the Distributor or claimed by the person described in sub-clause (a) of this clause 26.15) suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Retailer has a contractual relationship in relation to the provision of services or the conveyance of gas on or in relation to the Network to the extent that the claim arises out of or could not have been made but for:
 - (i) any breach by the Retailer of any of its obligations under this agreement; or
 - (ii) the disconnection by the Retailer, or disconnection requested by the Retailer, of any Consumer's Premises in accordance with this agreement except where the disconnection is effected by the Distributor and is not undertaken in accordance with Good Gas Industry Practice; or
 - (iii) the termination of this agreement by the Retailer, except when the termination is the result of a breach by the Distributor; or
 - (iv) any failure by the Retailer to perform any obligation under any agreement between the Retailer and any Consumer or other third party; or

- (v) any failure by the Retailer to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Distributor under or in connection with this agreement at the request of the Retailer (not being under this agreement); or
 - (vii) any interruption, curtailment or shut down of gas supply to any ICP in accordance with this agreement; and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this agreement.

26.16 **The Retailer will be indemnified:** Subject to clause 26.17, the Distributor indemnifies and holds harmless the Retailer and will keep the Retailer indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis but excluding all loss or damage of the kind described in clause 26.3 whether incurred by the Retailer or claimed by the person described in sub-clause (a) of this clause 26.16), suffered, or incurred by the Retailer arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Retailer has a contractual relationship in relation to the provision of services or conveyance of gas on or in relation to the Network to the extent that claim arises out of or could not have been made but for:
 - (i) any breach by the Distributor of its obligations under this agreement; or
 - (ii) the disconnection by the Distributor of any Consumer's Premises in accordance with this agreement which is not made in accordance with Good Gas Industry Practice; or
 - (iii) the termination of this agreement by the Distributor, except when the termination is the result of a breach by the Retailer; or
 - (iv) any failure by the Distributor to perform any obligation under any agreement between the Distributor and any other third party; or
 - (v) any failure by the Distributor to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Retailer under or in connection with this agreement at the request of the Distributor (not being under this agreement); and
- (b) any recovery activity of the Retailer in respect of any unpaid charges or interest payable under this agreement,

provided that the indemnity under this clause 26.16 shall not apply where any direct loss or damage suffered or incurred by the Retailer relates to any warranties, guarantees or obligations imposed on the Retailer by the CGA or any other law concerning gas to be supplied by the Retailer under the Consumer Contract (each a "**Retailer Warranty**") where the Retailer could have lawfully excluded the relevant Retailer Warranty from its Consumer Contracts (which includes a contract between the Retailer and a purchaser of electricity that is not an end user), including where the Retailer could have lawfully excluded the Retailer Warranty in respect of a Consumer that was acquiring, or holding itself as acquiring, electricity for the purpose of a business.

26.17 **Conduct of claims:** If the party with a right of indemnity under clause 26.15 or 26.16 ("**Indemnified Party**") seeks, or may seek to be indemnified by the other party ("**Indemnifying Party**") under clause 26.15 or 26.16 in respect of a claim by any person

of the kind described in sub-clause (a) of such clauses (“**Third Party Claim**”), the following will apply:

- (a) The Indemnified Party will give notice of the Third Party Claim (including reasonable details) to the Indemnifying Party and ensure that the Indemnified Party does not make any payment or admission of liability in respect of the Third Party Claim.
- (b) The Indemnifying Party may, at its election, in the name of the Indemnified Party, but subject to prior consultation with the Indemnified Party and so that the reputation of the Indemnified Party is not unfairly harmed, conduct all negotiations and defend any proceedings relating to the Third Party Claim. For this purpose, the Indemnified Party will make available to the Indemnifying Party all such information, books and records, and give such other co-operation (including making available employees as witnesses), as the Indemnifying Party may reasonably require for the purpose.
- (c) If and for so long as the Indemnifying Party does not assume the defence of the Third Party Claim, the Indemnified Party will:
 - (i) keep the Indemnifying Party fully informed of the Indemnified Party’s progress in defending the Indemnified Claim and of any related proceedings; and
 - (ii) at the Indemnifying Party’s request, consult with, and take account of the reasonable views of, the Indemnifying Party so far as reasonably possible in the relevant Indemnified Party’s defence of the Third Party Claim and any related proceedings.
- (d) The Indemnified Party will not, without the prior written consent of the Indemnifying Party, settle the Third Party Claim.
- (e) If the Indemnified Party recovers from any third party any amount to which a payment made by the Indemnifying Party to the Indemnified Party under this agreement relates, the Indemnified Party will procure that the amount so recovered by the Indemnified Party (net of the cost of recovery, but not exceeding the amount paid by the Indemnifying Party) will be reimbursed without delay to the Indemnifying Party.

26.18 **Benefits to extend:** Each party agrees that its obligations under this clause 26 (and in the case of the Retailer, its obligations under clause 27.3), will also constitute promises conferring benefits on each party’s officers, agents and employees that are intended to create, in respect of the benefit, an obligation enforceable by those officers, agents and employees and accordingly, the provisions of the Contracts (Privity) Act 1982 apply to its promises under this clause 26 (and in the case of the Retailer, its obligations under clause 27.3) but can be varied without the consent of such persons.

27. CONSUMER CONTRACTS

27.1 **Retailer to include provisions in Consumer Contracts:** The following clauses apply in respect of the Retailer's Consumer Contracts:

- (a) in respect of each Consumer Contract that has been entered into prior to the Commencement Date:
 - (i) at the next review date, or, if the Retailer is able to unilaterally vary the Consumer Contract, within 12 months after the Commencement Date (whichever is earlier), the Retailer will issue a unilateral variation to the Consumer Contract to include provisions that have substantially the same effect as the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the

Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982; or

- (ii) if the Retailer is unable to unilaterally vary one or more Consumer Contracts as set out in subparagraph (i), the Retailer will:
 - (A) use all reasonable endeavours to obtain at the next review of each Consumer Contract, or within 12 months after the Commencement Date (whichever is earlier) the agreement of the Consumer to enter into a variation of the Consumer Contract to include provisions that have substantially the same effect as the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 4 of the Contracts (Privity) Act 1982; and
 - (B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Consumer required in subparagraph (A); or

- (b) in respect of each Consumer Contract that has been entered into after the Commencement Date, include the provisions required to be included in the Consumer Contract by this agreement, as summarised in schedule 4, and those provisions will be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 4 of the Contracts (Privity) Act 1982. Notwithstanding the foregoing, the parties agree that any failure by the Retailer to comply with its obligations under clause 27.1(b) during the period from the Commencement Date to 16 June 2014 (and only during that period) shall not constitute a breach of this agreement by the Retailer, provided that the Retailer complies with such obligations by 16 June 2014.

27.2 Changes to Consumer Contracts during term: If this agreement is changed in accordance with clause 24 and the change results in the addition of a new provision to this agreement that requires the Retailer to include a new provision in its Consumer Contracts, the Retailer will take such steps as are necessary to comply with that provision. If the Retailer is required by the Distributor, to change its Consumer Contracts more than once in any 2 year period, the Retailer may recover all reasonable costs and expenses associated with such compliance from the Distributor, provided that the Retailer may not recover such costs if the change is required by the Distributor under:

- (a) clause 24.1(b), unless the change results in a new obligation in schedule 4; or
- (b) clause 24.1(c), unless the change results in a new obligation in schedule 4.

27.3 Retailer to indemnify Distributor: The Retailer indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Retailer's failure to meet its obligations in accordance with clauses 27.1 and 27.2, provided that if the Distributor seeks to be indemnified by the Retailer under this clause 27.3 in relation to any third party claim that may result in such loss or damage being incurred by the Distributor, the following will apply:

- (a) The Distributor will give notice of such third party claim (including reasonable details) to the Retailer.
- (b) The Distributor will keep the Retailer fully informed of the Distributor's progress in defending such third party claim and of any related proceedings.
- (c) The Distributor will, at the Retailer's request, consult with, and take account of the reasonable views of, the Retailer so far as reasonably possible in the Distributor's defence of such third party claim and any related proceedings.

27.4 **Evidence of compliance:** If the Distributor requests the Retailer to do so, the Retailer will provide the Distributor as soon as practicable with such evidence as the Distributor may reasonably request to satisfy the Distributor that the Retailer is complying with its obligations under this clause 27, provided that the Retailer may refer the Distributor to the Retailer's website if the evidence reasonably requested by the Distributor for the purpose of this clause 27.4 is located and accessible to the Distributor on the Retailer's website.

27.5 **Declaration as unfair contract term:**

- (a) Notwithstanding anything else in this agreement, if the Retailer has complied with its obligations under clauses 27.1 and 27.2, and a provision in a Consumer Contract that is required to be included in the Consumer Contract under those clauses is declared by a court to be an unfair contract term, then:
 - (i) the Retailer and Distributor will immediately amend this agreement to remove any requirement on the Retailer to include the term (or so much of the term as has been declared unfair) in its Consumer Contracts; and
 - (ii) the Distributor will not apply, enforce or rely on the requirement on the Retailer to include the term (or so much of the term as has been declared unfair) in its Consumer Contracts.
- (b) The Retailer will notify the Distributor promptly if the Commerce Commission advises the Retailer that it considers any provision in a Consumer Contract that is required to be included in the Consumer Contract under clauses 27.1 and 27.2 to be an unfair contract term.

28. NOTICES

28.1 **Delivery of Notices:** Any notice given under this agreement will be in writing and will be deemed to be validly given if personally delivered, posted or sent by email to the address for notice set out on the execution page of this agreement or to such other address as that party may notify from time to time.

28.2 **Deemed receipt:** Any notice given under this agreement will be deemed to have been received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, 2 Working Days following the date of posting; and
- (c) in the case of email, when sent to the email address of the recipient, provided that a delivery failure notice has not been received by the sender, in which case the notice will be deemed not to have been sent.

28.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice given in accordance with clause 28.2 that is personally delivered or sent by email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

29. GAS INFORMATION EXCHANGE PROTOCOLS

29.1 **Protocols for exchanging information:** From time to time the GIC will publish certain GIEPs, including new or amended GIEPs, which specify recommended file formats for the exchange of information between distributors and retailers. Unless this agreement requires the parties to comply with one or more GIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with the GIEPs listed in schedule 3 when exchanging information, provided that the frequency at which, and method by which, the parties will exchange information is such that compliance with the GIEP is cost-effective for both parties.

- 29.2 **Consumer information:** The Retailer will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with the information listed in schedule 3 and such other Consumer information as is reasonably available to the Retailer and necessary to enable the Distributor to exercise its rights or fulfil its obligations under this agreement (including under clause 20) or is otherwise properly related to the provision of the Services (which includes conducting Consumer surveys in connection with the Services). The information will be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and will not, use such information in any way or form other than as permitted by this clause 29.2.
- 29.3 **Consumer information received in error by Retailer:** The Retailer undertakes and agrees that in the event that it or anyone acting on its behalf receives any information relating to consumers on the Network directly or indirectly from the Distributor that does not relate to Consumers that the Retailer is supplying at that time, it will keep such information confidential and will not use that information for any purpose. The Retailer acknowledges and agrees that this clause 29.3 shall also be for the benefit of other retailers and enforceable by each of those retailers in accordance with section 4 of the Contracts (Privity) Act 1982.
- 29.4 **Auditing information provided:** To enable either party to this agreement (the "Verifier") to verify the accuracy of information provided to it by the other party to this agreement (the "Provider"), the Provider will allow the Verifier and its agents reasonable access to the Provider's books and records (including, if the Retailer is the Provider, of metering or consumption data) (the "Records") to the extent that those Records relate to the obligations of the Provider under this agreement. If the Retailer is the Provider and any relevant metering or consumption data is held in a third party Metering Equipment owner or operator, the Retailer will procure access to the third party Metering Equipment owner or operator's books and records for the benefit of the Distributor. Access to such Records will be given at all reasonable times providing the Verifier has given the Provider not less than 10 Working Days' prior notice.
- 29.5 **Limitations on the Verifier:** In relation to its review of the Records under clause 29.4, the Verifier will not:
- (a) use the information obtained for any purpose other than verifying the accuracy of information provided by the Provider under this agreement; and
 - (b) engage as its agent any person that is in competition with the Provider, any person who is related to a person in competition with the Provider or any employee, director, agent of such persons. For the purposes of this clause 29.4(b) a person is related to another person if it is a related company (as that term is defined in section 2(3) of the Companies Act 1993) of that other person.
- 29.6 **Independent Auditor:** If:
- (a) the Provider is the Distributor and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from the information relating to the Retailer or that the information is commercially sensitive; or
 - (b) the Provider is the Retailer and, acting reasonably, gives notice that the Records contain information about other Industry participants that cannot reasonably be severed from information relating to the Distributor or that the information is commercially sensitive,

then the Distributor or the Retailer, as appropriate, will permit an independent auditor (the "Auditor") appointed by the other party to review the Records and the other party will not itself directly review any of the Records. The Distributor or the Retailer, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Retailer, as appropriate, reasonably objects to the identity of the Auditor, the parties will request the President of the Institute of Chartered Accountants (or a nominee) to appoint a person to act as the Auditor. The party that is

permitted by this clause 29.5 to appoint an Auditor will pay the Auditor's costs, unless the Auditor discovers a material inaccuracy in the Records in which case the other party will pay the Auditor's costs. The terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

29.7 **Provider will co-operate:** The Provider will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider's Records under clause 29.4 or 29.6 and will ensure that the Records are readily accessible and readable.

29.8 **Non-Compliance:** If a review of the Provider's Records under clause 29.4 or 29.6 by the Verifier or the Auditor (as the case may be) identifies any material inaccuracy in the Records provided by the Provider to the Verifier under this agreement, the Provider will:

(a) as soon as possible agree with the Verifier the remedial action to be taken and take such steps (including providing the Verifier or its agent (including the Auditor) with access to the Records and other relevant information following the remedial action being taken) as are necessary to enable the Verifier to satisfy itself that the Records and other information provided by the Provider to the Verifier under this agreement are materially accurate and that any deficiencies in the Provider's systems, processes and controls that gave rise to the material inaccuracy have been adequately addressed; and

(b) bear the reasonable costs of the Verifier and/or its agent (including the Auditor) incurred in relation to the exercise of its rights under this clause 29.8.

30. MISCELLANEOUS

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

30.2 **[Entire agreement:** This agreement records the entire agreement between the parties concerning its subject matter, and prevails over the Agreement for Use of Networks. Notwithstanding any provision to the contrary contained in the Agreement for Use of Networks, the Agreement for Use of Networks is hereby varied such that all provisions contained in that agreement relating to gas ("**UNA Gas Provisions**") cease to apply with effect from the Commencement Date. Notwithstanding any other provision in the Agreement for Use of Networks, with effect from the date of this agreement:

(a) each party waives all rights and entitlements it may have under the UNA Gas Provisions, or at law in relation to the subject matter of the UNA Gas Provisions, and irrevocably and unconditionally releases the other party in relation to the other party's obligations and liabilities in respect of the same; and

(b) neither party will be entitled to, and will not, bring any claim against the other party under the UNA Gas Provisions, or at law in relation to the subject matter of the UNA Gas Provisions.

For the avoidance of doubt, this clause settles and releases all rights, entitlements and claims of either party, whether known or unknown, under the Agreement for Use of Networks which had accrued prior to or at the date of this agreement.

Notwithstanding the foregoing provisions of this clause 30.2, the right of the Retailer to make a claim under the Agreement for Use of Networks in respect of damage to a Consumer's physical property prior to the date of this agreement is preserved and unaffected by this clause.] ***[Note: This clause applies if the current Agreement for Use of Networks between the Distributor and the Retailer relates to electricity and gas, and a new Use of System Agreement – Electricity has not yet been entered into.]***

OR

[Entire agreement: This agreement records the entire agreement between the parties concerning its subject matter, and prevails over the Agreement for Use of Networks. Notwithstanding any provision to the contrary contained in the Agreement for Use of Networks, the Agreement for Use of Networks is hereby terminated such that all provisions contained in that agreement cease to apply with effect from the Commencement Date. Notwithstanding any other provision in the Agreement for Use of Networks, with effect from the date of this agreement:

- (a) each party waives all rights and entitlements it may have under the Agreement for Use of Networks, or at law in relation to the subject matter of the Agreement for Use of Networks, and irrevocably and unconditionally releases the other party in relation to the other party's obligations and liabilities in respect of the same; and
- (b) neither party will be entitled to, and will not, bring any claim against the other party under the Agreement for Use of Networks, or at law in relation to the subject matter of the Agreement for Use of Networks.

For the avoidance of doubt, this clause settles and releases all rights, entitlements and claims of either party, whether known or unknown, under the Agreement for Use of Networks which had accrued prior to or at the date of this agreement.

Notwithstanding the foregoing provisions of this clause 30.2 the right of the Retailer to make a claim under the Agreement for Use of Networks in respect of damage to a Consumer's physical property prior to the date of this agreement is preserved and unaffected by this clause.] ***[Note: This clause applies if the current Agreement for Use of Network between the Distributor and the Retailer relates to gas only, or if the current Agreement for Use of Networks between the Distributor and the Retailer relates to electricity and gas, and a new Use of System Agreement – Electricity has been entered into (with the result that the only remaining provisions relate to gas).]***

OR

[Entire agreement: This agreement records the entire agreement between the parties concerning its subject matter, and prevails over the Network Services Agreement. Notwithstanding any provision to the contrary contained in the Network Services Agreement, the Network Services Agreement is hereby terminated such that all provisions contained in that agreement cease to apply with effect from the Commencement Date. Notwithstanding any other provision in the Network Services Agreement, with effect from the date of this agreement:

- (a) each party waives all rights and entitlements it may have under the Network Services Agreement, or at law in relation to the subject matter of the Network Services Agreement, and irrevocably and unconditionally releases the other party in relation to the other party's obligations and liabilities in respect of the same; and
- (b) neither party will be entitled to, and will not, bring any claim against the other party under the Network Services Agreement, or at law in relation to the subject matter of the Network Services Agreement.

For the avoidance of doubt, this clause settles and releases all rights, entitlements and claims of either party, whether known or unknown, under the Network Services Agreement which had accrued prior to or at the date of this agreement.

Notwithstanding the foregoing provisions of this clause 30.2, the right of the Retailer to make a claim under the Network Services Agreement in respect of damage to a Consumer's physical property prior to the date of this agreement is preserved and unaffected by this clause.] ***[Note: This clause applies if this agreement will replace the current Network Services Agreement between the Distributor and the Retailer.]***

OR

[Entire agreement: This agreement records the entire agreement of the parties concerning its subject. The parties record that the Retailer has not previously entered into a use of system agreement with the Distributor.] **[Note: This clause applies if this agreement is entered into with a new retailer who is not currently party to an Agreement for Use of Networks or a Network Services Agreement.]**

- 30.3 **UNA Gas Provisions Charges:** Notwithstanding clause 30.2, the UNA Gas Provisions in respect of charges payable by the Retailer to the Distributor (and/or related credits in respect of charges payable by the Distributor to the Retailer) in relation to the period prior to the Commencement Date, including the wash-up and dispute provisions in respect of such charges (and any substantive provisions upon which the Retailer or the Distributor rely in respect of such dispute), shall continue in full force and effect until such time as all payments for charges have been made in accordance with those provisions.] **[Note: This clause applies if the current Agreement for Use of Networks between the Distributor and the Retailer relates to electricity and gas, and a new Use of System Agreement – Electricity has not yet been entered into.]**

OR

[Agreement for Use of Networks Charges: Notwithstanding clause 30.2, the Agreement for Use of Networks in respect of charges payable by the Retailer to the Distributor (and/or related credits in respect of charges payable by the Distributor to the Retailer) in relation to the period prior to the Commencement Date, including the wash-up and dispute provisions in respect of such charges (and any substantive provisions upon which the Retailer or the Distributor rely in respect of such dispute), shall continue in full force and effect until such time as all payments for line charges have been made in accordance with those provisions.] **[Note: This clause applies if the current Agreement for Use of Network between the Distributor and the Retailer relates to gas only, or if the current Agreement for Use of Networks between the Distributor and the Retailer relates to electricity and gas, and a new Use of System Agreement – Electricity has been entered into (with the result that the only remaining provisions relate to gas).]**

OR

[Network Services Agreement Charges: Notwithstanding clause 30.2, the Network Services Agreement in respect of charges payable by the Retailer to the Distributor (and/or related credits in respect of charges payable by the Distributor to the Retailer) in relation to the period prior to the Commencement Date, including the wash-up and dispute provisions in respect of such charges (and any substantive provisions upon which the Retailer or the Distributor rely in respect of such dispute), shall continue in full force and effect until such time as all payments for line charges have been made in accordance with those provisions.] **[Note: This clause applies if this agreement will replace the current Network Services Agreement between the Distributor and the Retailer relates to gas only.]**

- 30.4 **No assignment:** Neither party may assign any benefit or burden under or in relation to this agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld (where the proposed assignee demonstrates to the Distributor's reasonable satisfaction that it is able to meet the requirements of clause 12 and schedule 9). For the purposes of this clause 30.4, unless a party is listed on the New Zealand Stock Exchange or becomes listed on the New Zealand Stock Exchange as part of a transaction associated with change of control, a change in control of a party will be deemed to be an assignment.
- 30.5 **Severance:** Any unlawful provision in this agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.
- 30.6 **Extension of indemnities:** The indemnities provided under this agreement in favour of a party will be construed as also applying to the directors, officers, employees, agents,

representatives and advisers of that party and are intended to be capable of enforcement by such persons in accordance with the Contracts (Privity) Act 1982.

31. INTERPRETATION

31.1 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than one person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
- (g) all amounts payable under this agreement are in New Zealand dollars and exclude GST and every other Tax and duty (unless specified otherwise). Where GST is payable on any amount (other than for the amounts specified as being GST inclusive) it will be added to that amount and will be payable at the time the amount itself is payable;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, schedules, annexes or other identifiers are to those in this agreement unless otherwise identified;
- (k) references to a document or agreement includes it as varied or replaced; and
- (l) each schedule and any other attachment is part of this agreement.

31.2 **Definitions:** In this agreement, unless the context otherwise requires:

"**Act**" means the Gas Act 1992;

"**Additional Metering Equipment**" means any equipment installed by a party to measure the quantity of gas or the energy content of any gas, whether by actual measurement or by estimation, and includes any equipment that forms part of, or is ancillary to, any such equipment, and any telemetry or other equipment to obtain data from such equipment or a GMS and transmit such data to the installing party;

"**Additional Services**" means the additional services that the Distributor or the Retailer will provide to the other in accordance with clauses 2.1(j) and 2.2(j), as described in schedule 2 (if any);

["Agreement for Use of Networks" means the agreement entitled Agreement for Use of Networks in force between the parties at the date of this agreement relating to the conveyance of electricity and/or gas;] *[Note: This definition will be removed if this agreement is intended to replace the Network Services Agreement between the Distributor and the Retailer.]*

"**Allocation Agent**" has the meaning given in the Downstream Reconciliation Rules;

"Alternative Contract" has the meaning given in clause 4.2;

"As-Billed Normalised" is a billing methodology that estimates the variable line charge quantities that would have occurred had the Retailer invoiced the Consumer on a calendar month basis where variable quantities are calculated from the Retailer's as billed to the Consumer data. Fixed charges will be charged as per the applicable pricing schedule and policy set out or referred to in schedule 8 and the relevant Registry record. Invoicing to the Retailer by the Distributor will be for both variable and fixed charges with wash-ups in terms of clause 11.6;

"Auditor" has the meaning given in clause 29.6;

"CCM Regulations" means the Gas Governance (Critical Contingency Management) Regulations 2008;

"CGA" means the Consumer Guarantees Act 1993;

"Change Notice" means notice of a change to a Variable Provision given by the Distributor to the Retailer under clause 24.3;

"CIV" means a customer isolation valve (also known as a riser valve), being the Distributor's valve at the end of the Network service line which conveys gas to an ICP, which enables the Distributor to allow or prevent the flow of gas from the Network;

"Claim" has the meaning given in clause 26.11;

"Commencement Date" means the date specified on the execution page of this agreement, except where this agreement is not the first "Use of System Agreement – Gas Distribution Networks" entered into by the Retailer, "Commencement Date" shall mean the commencement date of the first "Use of System Agreement – Gas Distribution Networks" entered into by the Retailer;

"Competent" means certified by virtue of completing the set of competency requirements created by the Gas Association of New Zealand and authorised by the Distributor to carry out the particular work on or in relation to the Network;

"Competent Person" means a person who is Competent or who is employed by a person who is Competent;

"Confidential Information" means all data and other information of a confidential nature provided by one party to the other under the terms of this agreement or otherwise that is identified by the party providing the information as being confidential, or should reasonably be expected by the other party to be confidential, but excludes:

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence; and
- (c) the existence and terms of this agreement, except schedule 2;

"Consumer" means a person who purchases gas from the Retailer that is delivered via the Network;

"Consumer Contract" means an agreement between the Retailer and the Consumer that includes the supply of gas and distribution services;

"Consumer's Premises" means the land and buildings owned or occupied by a Consumer, and any land over which the Consumer has an easement or right to pass gas, including:

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

"Conveyance Only" means a situation in which the Retailer contracts with the Consumer for the supply of gas only in relation to an ICP and the Distributor does not provide Distribution Services to the Retailer in respect of that ICP;

"Critical Contingency" has the meaning given to that term in the CCM Regulations;

"Critical Contingency Operator" has the meaning given to that term in the CCM Regulations;

"Corrected Price Category" has the meaning given to that term in clause 10.4;

"Credit Note" has the meaning given to that term in the GST Act;

"Debit Note" has the meaning given to that term in the GST Act;

"Decommission" means the decommissioning of an ICP so that the ICP is permanently disconnected from the Network, and the Registry status has been altered to "decommissioned";

"Default Interest" means interest on the amount payable at the Default Interest Rate from the due date for payment until the date of payment of that amount to the relevant party accruing on a daily basis and compounded monthly;

"Default Interest Rate" means the Interest Rate plus 5%;

"Defaulting Party" has the meaning given to it in clause 20.1;

"Delivery Pressure" means the pressure, between a maximum and minimum pressure Published by the Distributor, at which the gas is taken, or made available to be taken by the Consumer, at the outlet of any CIV;

"Direct Damage" has the meaning given to it in clause 26.2;

"Dispute" has the meaning given to it in clause 25.1;

"Dispute Resolution Scheme" means the Electricity and Gas Complaints Scheme or such other dispute resolution scheme approved or provided for in accordance with section 43E of the Act;

"Distribution Services" means those services described in clause 2.1 provided by the Distributor to the Retailer under this agreement but excludes Additional Services;

"Distributor" means the party identified as such in this agreement;

"Distributor Warranties" has the meaning given in clause 26.13(a);

"Distributor's Agreement" means an agreement between the Distributor and a Consumer for the provision of distribution services and, unless otherwise agreed with the Retailer, includes the direct billing of distribution services charges by the Distributor (or a third party acting on behalf of the Distributor) to the Consumer and responsibility for associated debt;

"Distributor's Equipment" means the pipes, valves and other fittings owned by the Distributor up to and including the CIV, that are installed in, over, under or on the Consumer's Premises including Additional Metering Equipment and (where relevant from time to time) any equipment owned by any agent of or service provider to the Distributor;

"Distributor's Indemnity" has the meaning given in clause 26.10;

"Downstream Reconciliation Rules" means the Gas (Downstream Reconciliation) Rules 2008;

"Early Payment Amount" has the meaning given in clause 26.11(e)(ii);

"Emergency" means an event or circumstance that the Distributor determines to be an emergency, irrespective of the cause of the emergency and of whether the Distributor or any other person may have caused or contributed to the emergency, and includes gas escape, safety risk of the Network, danger to premises, life, property or the environment, and determination of a Critical Contingency;

"Event of Default" has the meaning described in clause 20.3(a);

"Failure" has the meaning given in clause 26.10(a);

"File Transfer Processes" has the meaning set out in clause 22.5(a) as the same may be amended from time to time in accordance with clause 22.5(c);

"Force Majeure Event" has the meaning set out in clause 23.1;

"Gas Installation" has the meaning given in the Act;

"Gas Measurement Standard" means New Zealand Standard "Gas Measurement", NZS 5259:2004;

"Gas Safety Regulations" means the Gas (Safety and Measurement) Regulations 2010;

"Gas Specification" means the New Zealand Standard 5442:2008: Specification for Reticulated Natural Gas;

"GIC" means the industry body approved in accordance with section 43ZL of the Act, currently Gas Industry Company Limited;

"GIEP" means:

- (a) a gas information exchange protocol approved by the GIC Information Exchange File Formats Working Group and published on the GIC's website; or
- (b) any other gas information exchange protocol agreed by the parties and recorded in schedule 3;

"GMS" or "Gas Measurement System" means a system for measuring the quantity of gas or the energy content of any gas, whether by actual measurement or by estimation, and includes any equipment that forms part of, or is ancillary to, any such system;

"GMS Owner" means a person who provides Gas Measurement Systems and related services to the Retailer for some or all of the Retailer's ICPs;

"Good Gas Industry Practice" means:

- (a) in the case of the Distributor, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced gas network owner engaged in New Zealand in the distribution of gas under conditions comparable to those applicable to the Network consistent with applicable law, safety and

environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the Network and the applicable law; and

- (b) in the case of the Retailer, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced gas retailer engaged in New Zealand in the same type of undertaking under comparable conditions consistent with applicable law, safety and environmental protection;

"**GST**" means goods and services tax imposed under the GST Act;

"**GST Act**" means the Goods and Services Tax Act 1985;

"**Hour**" means a period of 60 consecutive minutes beginning on the hour and "**Hourly**" will be construed accordingly;

"**ICP**" means (as the context requires) the physical connection point at which gas may flow out of the Network for supply to a Consumer's Gas Installation (being the outlet of the CIV unless otherwise agreed) and/or an installation control point assigned a unique alpha-numeric identifier used to represent the Gas Installation on the Registry;

"**Incorrectly Allocated**" has the meaning given to that term in clause 10.4;

"**Incumbent**" has the meaning given in clause 6.4;

"**Indemnified Party**" has the meaning given in clause 26.17;

"**Indemnifying Party**" has the meaning given in clause 26.17;

"**Industry**" means those parties involved in the production, transmission, distribution and retailing of reticulated gas in New Zealand;

"**Insolvency Event**" means a party:

- (a) has had a receiver, administrator or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets; or
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

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

"**Interposed**" means in relation to a Consumer, that the Distributor provides Distribution Services to the Retailer and the Retailer contracts with the Consumer for the supply of those services;

“**Isolate**” means the process of turning off the CIV to prevent the flow of gas out of the Network at an ICP, and where required may include capping or plugging the CIV, and “**Isolating**” has a corresponding meaning;

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

“**Loss Factor Code**” means the code in the Registry, and in the schedule of Loss Factor Codes and Loss Factors Published by the Distributor, which enables retailers to identify the Loss Factor(s) applicable to an ICP on the Network at any point in time;

“**Loss Factor**” has the meaning given in the Gas (Switching Arrangement) Rules 2008;

“**MHQ**” means the maximum quantity of gas agreed by the Distributor and the Retailer (to be expressed in standard cubic metres unless otherwise specified by the Distributor) which the Retailer can require the Distributor to receive at the Network Point of Supply and make available for the Retailer to take, and which the Retailer is entitled to take, at an ICP in an Hour as agreed by the Distributor;

“**Network**” means (as the context requires) all or any one or more of the Distributor's distribution systems (as defined in the Act), as further described on the Distributor's website from time to time;

“**Network Connection Process**” means the Distributor's written process for connecting to the Network as Published by the Distributor and as updated by the Distributor from time to time;

“**Network Point of Supply**” means a point of connection between the Network and the Transmission System or the Network and another distribution network commonly known as a “gas gate”;

[“**Network Services Agreement**” means the agreement entitled Network Services Agreement in force between the parties at the date of this agreement relating to the conveyance of gas;] *[Note: This definition will be removed if this agreement is intended to replace the Agreement for Use of Networks between the Distributor and the Retailer.]*

“**Non-Residential ICP**” means an ICP that is not a Residential ICP;

“**Payment A**” has the meaning given in clause 26.12(c)(i);

“**Planned Service Interruption**” means a Service Interruption that has been scheduled to occur in accordance with schedule 5;

“**Price**” means a price selected by the Distributor from the Prices listed in schedule 9 or otherwise Published, and which determines the charges for Distribution Services that apply to an ICP;

“**Price Category**” means the price category and associated eligibility criteria of the Distributor as provided to the Retailer from time to time that determines the Price(s) that apply to an ICP;

“**Proposal**” has the meaning given in clause 24.5(a);

“**Provider**” has the meaning given in clause 29.4;

“**Publish**” means to disclose information by making the information available on the Distributor's website, notifying the Retailer that the information has been disclosed on the website or sending the information in hardcopy to the Retailer;

“**Records**” has the meaning given in clause 29.4;

"Registry" means the central database of ICP information established and maintained in accordance with the Gas (Switching Arrangement) Rules 2008 to assist switching;

"Remedy Cost" has the meaning given in clause 26.10(f);

"Requesting Party" has the meaning given in clause S6.4;

"Residential ICP" means an ICP connected to a Gas Installation that is a private dwelling intended for occupation mainly as a place of residence and not normally used for any business activity;

"Retailer" means the party identified as such in this agreement;

"Retailer Warranty" has the meaning given in clause 26.16;

"Retailer's Equipment" means any equipment and GMS owned by the Retailer, the Retailer's agent or any other third party with whom the Retailer has contracted with for the use by the Retailer of such third party's equipment or GMS, which are from time to time installed in, over, or on Consumer's Premises downstream of the CIV;

"Serious Financial Breach" means:

- (a) a failure by the Retailer to pay an amount or amounts due that exceeds in aggregate the greater of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month, and such amount is not genuinely disputed by the Retailer in accordance with clause 11.12; or
- (b) a material breach of clause 12 by the Retailer;

"Service Guarantee" means any payment or other benefit that one party provides to the other party when it fails to meet a Service Standard for which a guarantee payment is provided should that Service Standard not be met (if any);

"Service Interruption" means, in relation to the supply of gas to an ICP, the cessation of supply to that ICP, other than in accordance with this agreement;

"Service Level" means the magnitude of a Service Measure set out in schedule 1 (if any);

"Service Measure" means the characteristics or features of a Service Standard as set out in schedule 1 (if any);

"Service Standards" means the set of Service Measures, Service Levels, Service Guarantees, service performance reporting measures and frequency of reporting as set out in schedule 1 (if any);

"Services" means the Distribution Services, Additional Services, Transmission Services and any other services provided by the Distributor to the Retailer in accordance with this agreement;

"Shipper" means a person who transports gas through the Transmission System for supply to a Retailer at a Network Point of Supply;

"Standard Use of Network Agreement" means the terms on which, at the relevant time, the Distributor proposes to convey gas on its Network and on which the Distributor proposes to provide distribution services, additional services and any other services to retailers, including the Retailer;

"Switch Date" has the meaning given in the Gas (Switching Arrangement) Rules 2008;

"System Security" means the secure state of the Transmission System and/or the Network;

“**Tax**” includes all forms of taxation, withholding, dues, imposts, levies, charges, fees, deductions and rates;

“**Tax Invoice**” has the meaning given to that term in the GST Act;

“**Temporary Disconnection**” means either:

- (a) the ICP is Isolated but there is no change to the status of the ICP in the Registry, known as a “temporary disconnection” (or an equivalent term for the same); or
- (b) the Gas Installation is Isolated from the Network and the status of the ICP in the Registry is changed to “transitional disconnection” (or an equivalent term for the same);

“**Third Party Claim**” has the meaning given to that term in clause 26.17;

“**Third Party Retailer**” has the meaning given to that term in clause 27A.1;

“**Third Party Retailer Agreement**” has the meaning given to that term in clause 27A.1;

“**TOU Data**” means data recorded and stored by a corrector for each Hour of each day including:

- (a) actual volume of gas measured by the meter;
- (b) pressure and temperature of gas at the meter; and
- (c) pressure-and-temperature corrected volume of gas measured by the meter;

“**Transmission System**” means the high pressure gas transmission system currently owned and operated by Vector Gas Limited, as more particularly described at <http://www.oatis.co.nz>;

“**Transmission System Operator**” means the operator of the Transmission System, currently Vector Gas Limited;

[“**UNA Gas Provisions**” has the meaning given to that term in clause 30.2;] **[Note: This definition will be deleted if not used in clauses 30.2 and 30.3.]**

“**Unplanned Service Interruption**” means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Retailer or any affected Consumer, as anticipated in schedule 5 that relate to Unplanned Service Interruptions;

“**Use of Money Adjustment**” means an amount payable at the Interest Rate plus 2% from the date of payment to the date of repayment (in the case of a Credit Note or other repayment) or from the due date of the original invoice to the date of payment (in the case of a Debit Note or other payment) accruing on a daily basis and compounded at the end of every month;

“**Variable Provisions**” means the provisions contained in the schedules except:

- (a) schedule 4; and
- (b) those provisions in schedule 8, which may be changed in accordance with clauses 9 and 10;

“**Verifier**” has the meaning given to that term in clause 29.4;

“Working Day” means every day except Saturdays, Sundays and days that are statutory holidays in the city specified for each party’s street address at the start of this agreement; and

“Year” has the meaning given in clause 26.7(b).

32. NOT USED

SCHEDULE 1 – SERVICE STANDARDS

Introduction

- S1.1 The Distributor and the Retailer will meet the Service Standards outlined in this schedule in accordance with the terms of this schedule.
- S1.2 If either party becomes aware of or suspects a breach of the Service Standards by the other party, the party will give the other party notice of the reasons why it suspects that there has been a breach.
- S1.3 If either party breaches a Service Level that is subject to a Service Guarantee, it will notify the other party as soon as possible and no later than 20 Working Days after becoming aware of the breach. The notification will include:
- (a) the identity of the ICPs affected and the Service Guarantee amount by ICP and in total (if applicable); and
 - (b) the reason for the breach.
- A Credit Note, or order number if the payer requires an invoice from the payee for the amount payable in respect of the breach will be sent in the next payment cycle.
- S1.4 All Service Guarantee amounts in this schedule are inclusive of GST (if any). All Service Guarantee invoices will state clearly the amount of GST (if any) that is payable.
- S1.5 If the Distributor makes a Service Guarantee payment in respect of an ICP, the Retailer will pass that payment on to the Consumer.
- S1.6 The parties acknowledge that the Service Guarantees are set at a level to provide reasonable compensation to the Consumer in respect of the Distributor's or the Retailer's failure to meet the relevant Service Levels, and are not a penalty.
- S1.7 The parties acknowledge that notwithstanding any other provision of this agreement, the column "Service Guarantee" in the following table of Service Standards sets out the sole remedy (if any) of the Retailer in respect of the Distributor's failure to meet the relevant Service Standard. Any failure of the Distributor to meet the Service Standards does not constitute a breach of this agreement, including clause 2.1(b). Service Standards do not apply during a Force Majeure Event (with such term being construed disregarding clause 23.1(a)), except for any Service Standards relating to communication between the Distributor and the Retailer (which apply to the extent that such Force Majeure Event itself does not prevent the Distributor from meeting such Service Standards). Nothing in this clause shall limit any right or remedy of the Retailer in relation to any other breach of this agreement if that occurs (such breach, for clarity, not including a failure to meet a Service Standard or a breach of clause 2.1(b)), where such breach arises from the same action or inaction of the Distributor that gave rise to the failure to meet the Service Standard.
- S1.8 The parties agree that the Distributor may only issue a Change Notice to effect a change to this schedule (including any changes to the Service Levels, Service Standards and Service Guarantees contained in this schedule) under clause 24.1(a) if such proposed change is in accordance with Good Gas Industry Practice, as contemplated by clause 24.3, and the same Change Notice is issued to all retailers (provided that the reference to "all retailers" in this clause S1.8 will be construed in the same way as it is in clause 4.1).

Items for service standards relating to gas supply

SERVICE MEASURE	SERVICE LEVEL	POLICY	INTENDED CONSUMER USAGE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
A. DISTRIBUTOR'S SERVICE STANDARDS RELATING TO GAS SUPPLY					
AVAILABILITY OF SUPPLY					
Time period when gas supply is available	<p>24 hour Continuous Supply</p> <p>Supply is in normal supply circumstances continuously available to CIV 24 hours each day, 7 days each week.</p>		General residential and business usage where a continuous supply of gas is required.	SAIDI	The Distributor will comply with its statutory reporting requirements under the law.
Response Time to Emergencies	<p>Endeavour to respond to:</p> <ul style="list-style-type: none"> • 80% of emergencies within 60 Minutes • 100% within 3 hours 	Refer to schedule 5.	General residential and business usage.		The Distributor will comply with its statutory reporting requirements under the law.

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

Use of System Agreement – Electricity between Vector [Gas] Limited and [Name of Retailer]

SERVICE MEASURE	SERVICE LEVEL	POLICY	SERVICE GUARANTEE	SERVICE PERFORMANCE REPORTING MEASURE	FREQUENCY OF REPORTING
DISTRIBUTOR'S SERVICE STANDARDS					
COMMUNICATION					
Unplanned Service Interruption communication.	As defined in schedule 5.	Refer to schedule 5.	Nil.		Nil
Notification of Planned Service Interruption.	As defined in schedule 5.	Refer to schedule 5.	Nil.		Nil
Information Requests.	The Distributor will consider all reasonable requests for information from the Retailer (if they are stated to be made under this schedule 1 of this agreement, unless the Distributor's ability to communicate the information is directly affected by a Force Majeure Event) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, the Distributor will provide an explanation and/or a new timeframe.		Nil.		

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

MUTUAL OBLIGATIONS					
Information Requests.	Each party will consider all reasonable requests for information from the other party (if they are stated to be made under this schedule 1 of this agreement) and within 5 Working Days meet that request. If the request cannot be met within 5 Working Days, the party to whom the request is made will provide an explanation and/or a new timeframe.		Nil.		

Note: Service Standards do not apply if a Force Majeure Event has occurred, with limited exceptions. Refer clause S1.7 of schedule 1.

SCHEDULE 2 – ADDITIONAL SERVICES

ADDITIONAL SERVICES TO BE PROVIDED BY THE RETAILER

SCHEDULE 3 – GAS INFORMATION EXCHANGE PROTOCOLS

- S3.1 The table below lists GIEPs published on the GIC website as at the date of signing this agreement, and other GIEPs agreed between the parties.
- S3.2 These GIEPs, which may be amended or added to from time to time in accordance with this agreement, specify recommended file formats for the exchange of information between distributors and retailers.
- S3.3 Unless this agreement requires the parties to comply with one or more GIEPs when exchanging information, the Distributor and the Retailer agree that they will use reasonable endeavours to comply with any relevant GIEPs listed below when exchanging information, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the GIEP is cost-effective for both parties.

Protocol Reference	From/To R means Retailer D means Distributor	Description
GIEP1	R → D and D → R	Detail Consumption Information
GIEP7	R → D	General Installation Status Change
Consumer Information	R → D	<p>The Retailer will maintain and keep complete and up to date at all times an electronic record file (in a format acceptable to Distributor, acting reasonably) containing the information listed below for all its ICPs.</p> <ul style="list-style-type: none"> • Network Point of Supply; • ICP number; • ICP address; • Consumer name; • GMS Owner; • Meter Pressure (kPA gauge); • Delivery Pressure (kPa gauge); • MHQ; • ANZSIC Classification Code 1993 classification of Consumer; • Allocation Group (as defined in the Downstream Reconciliation Rules) for Consumer (provided that if the parties do not agree on the Allocation Group, the Distributor’s determination will apply); and • the date on which this agreement applies in

		<p>respect of each specific ICP.</p> <p>The Retailer will ensure the record file is consistent with the information on the Registry and will provide an electronic copy to the Distributor not less than quarterly and at promptly at other times following request.</p>
Civil Defence Liaison Officer	R → D	<p>No later than the Commencement Date and prior to any change in relevant contact person from time to time:</p> <ul style="list-style-type: none"> • the Distributor will notify the Retailer of the name of any person who will act as its civil defence liaison officer; and • the Retailer to notify the Distributor of the name of the person who will liaise with the Distributor in the event of a civil defence emergency.
Gas Safety	R → D and D → R	Subject to any gas industry protocol agreed to by the Distributor.

SCHEDULE 4 – CONSUMER CONTRACTS

S4.1 This schedule summarises the obligations that this agreement requires the Retailer to include and the rights that the Retailer must include in every Consumer Contract. Please refer to the clauses referenced in the schedule for the actual obligations and rights that the Retailer must include in every Consumer Contract.

Summary of right/obligation	Clause in this agreement
The Consumer will provide the Distributor and its agents with safe and unobstructed access onto the Consumer's Premises for certain purposes (eg inspection and maintenance of the Distributor's Equipment) at reasonable times).	Clause 13.1
The Distributor may disconnect the Consumer's ICP and reclaim its equipment if the Consumer does not give the Distributor access to the Distributor's Equipment on the Consumer's Premises on notice from the Distributor.	Clause 13.3
The Consumer will not interfere with or damage the Distributor's Equipment.	Clause 14.1
The Consumer will not inject gas into or attempt to convey or receive any thing over the Network (other than gas in accordance with this agreement) or otherwise interfere with the Network, and the Distributor may disconnect the Consumer's ICP and reclaim its equipment if the Consumer does so.	Clause 14.6
The Consumer will provide suitable space for the secure housing of the Distributor's Equipment.	Clause 14.11
The Consumer acknowledges that the Network on the Consumer's Premises is the Distributor's property.	Clause 14.12
The Consumer undertakes to comply with the Distributor's Network Connection Process and the Distributor may disconnect the Consumer's ICP and reclaim its equipment if the Consumer does so.	Clause 15.2
The Consumer will ensure that its Gas Installation complies with all relevant legal requirements and the Network Connection Process.	Clause 19.1 and clause S6.10 of schedule 6
The Distributor may perform a Temporary Disconnection in relation to a Consumer's ICP in certain circumstances.	Clause 19.1 and clause S6.14 of schedule 6
All warranties, guarantees or obligations imposed on the Distributor by the CGA or any other law are excluded to the fullest extent permitted by law.	Clause 26.13
If the Consumer on-supplies gas to an end-user, the Consumer's agreement with the end-user will include provisions that exclude all Distributor Warranties.	Clause 26.13(b)
The Consumer will indemnify the Distributor against any direct loss or damage caused or contributed by the fraud, dishonesty or wilful breach of the Consumer Contract between the Retailer and the Consumer.	Clause 26.14(a)

Summary of right/obligation	Clause in this agreement
The Distributor will have no liability to the Consumer in contract, tort (including negligence) or otherwise in respect of the supply of gas to the Consumer under the Consumer Contract.	Clause 26.14(b)

SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION POLICIES

Unplanned Service Interruptions

- S5.1 The Distributor will, as soon as reasonably practicable but no later than the periods specified in sub-clauses (a) and (b) below after first becoming aware of an Unplanned Service Interruption and that Unplanned Service Interruption is affecting 20 or more Consumers, communicate to the Retailer by providing relevant information in a manner reasonably determined by the Distributor from time to time that enables the Retailer to respond in an informed manner to calls from affected Consumers. Such information should include, if known, a description of the reason for the interruption, the general area affected and an estimated time for restoration.
- (a) Staffed control room hours – 20 minutes
- (b) On-call control room hours – 40 minutes
- S5.2 The Distributor will, within 10 minutes of new information becoming available, provide the Retailer with an update of the status of Unplanned Service Interruptions.
- S5.3 If the Retailer is responsible for receiving and managing Unplanned Service Interruption calls from Consumers it will, within 10 minutes of receiving information relating to a possible Unplanned Service Interruption, log the call with the Distributor in the manner reasonably requested by the Distributor from time to time.
- S5.4 When communicating with the Retailer in accordance with this schedule, the Distributor will advise the Retailer if the Retailer should stop logging calls with the Distributor, in the manner reasonably determined by the Distributor from time to time.
- S5.5 If the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Consumers, the Retailer may provide the Distributor’s contact details to the Consumer rather than taking details and logging the call with the Distributor.

Planned Service Interruptions

Option A – Retailer to notify Consumers (Default)

- S5.6 The Distributor will provide the Retailer with notice at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICPs which the Distributor’s information systems indicate will be affected. Such notice will be provided in accordance with the process in place at the date of this agreement, until such process is replaced by GIEP[●] as contemplated in schedule 3.
- S5.7 The Retailer may within 2 Working Days after receipt of such notice, notify the Distributor by email of any Consumers who would be adversely affected by the interruption and request an alternative date and/or time.
- S5.8 If the Distributor receives a response from the Retailer requesting an alternative date and/or time for the Planned Service Interruption, the Distributor will consider in good faith the request and may, at its sole discretion, change the time and/or date of the Planned Service Interruption. If a change is contemplated, the Distributor will provide an updated notice at least 2 Working Days in advance of the original date of the Planned Service Interruption, in accordance with the process in place at the date of this agreement, until such process is replaced by GIEP[●] as contemplated in schedule 3.
- S5.9 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor will provide the Retailer with a notice on a daily basis, in accordance with the process in place at the date of this agreement, until such process is replaced by GIEP[●] as contemplated in schedule 3.

S5.10 If the Distributor's information systems indicate that the Planned Service Interruption will affect all consumers supplied from a Network Point of Supply, the Distributor may arrange for public notification through the local newspaper, or other effective method, on behalf of all retailers.

Option B – Distributor to notify Consumers

S5.11 If required, and subject to clause 29.2, the Retailer will provide Consumer contact information to the Distributor. The information will be provided in the manner reasonably requested by the Distributor from time to time.

S5.12 For all Planned Service Interruptions, the Distributor will notify those Consumers which its information systems indicate will be affected with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled. Such notice will be provided in a manner reasonably determined by the Distributor from time to time.

S5.13 The Distributor will provide the Retailer with notice at least 4 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICPs which the Distributor's information systems indicate will be affected. Such notice will be provided in accordance with the process in place at the date of this agreement, and if changed such process will be replaced by GIEP[●].

SCHEDULE 6 – CONNECTION POLICIES

Introduction

- S6.1 The Distributor and the Retailer recognise that the process of managing connections and disconnections of ICPs on the Network requires significant co-ordination between the relevant parties.
- S6.2 This schedule sets the processes that the Distributor and Retailer will follow in respect of:
- (a) new connections and establishing new ICPs;
 - (b) MHQ or capacity changes to existing connections;
 - (c) Temporary Disconnections and associated reconnections; and
 - (d) Decommissioning ICPs.
- S6.2A The parties agree to use reasonable endeavours to follow processes that are consistent with the Gas Industry Disconnection and Reconnection Protocol published by the Gas Association of New Zealand and will update the Registry in accordance with the Gas (Switching Arrangements) Rules 2008 as required.

Information content and transmission media

- S6.3 The clauses set out below focus on the responsibilities of each party and do not deal with the particular content of the information transferred between the parties or the media by which the information is transferred. The information content and transmission media will be determined by the Distributor having regard to current practice and the capability of both parties to use the determined media.

Process for new connections and establishing new ICPs

- S6.4 The Distributor may receive applications from the owner of a premises not currently connected to the Network or the owner's agent, which may be the Retailer (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created. The Distributor and the Retailer acknowledge and agree that new connections will be carried out in accordance with the Network Connection Process without limiting this schedule 6.
- S6.5 The Distributor will undertake an impact assessment to determine whether the MHQ or capacity required for the new connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S6.6 If the Distributor agrees to supply a new connection and/or establish a new ICP, and the Requesting Party agrees to terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 4 Working Days of the ICP for the new connection, the Network Point of Supply to which the ICP is or will be connected, and the applicable Price.
- S6.7 The Distributor will arrange for the ICP to be connected (using a Competent Person) once approval has been granted by the Distributor and the Requesting Party has signed the Distributor's agreement in accordance with the Network Connections Process. The Distributor will, unless otherwise agreed, endeavour to notify the other party within 4 Working Days of the ICP being connected using a process advised by the Distributor for this purpose.

S6.8 The Distributor will update the status of the ICP in the Registry throughout this process in accordance with the Gas (Switching Arrangements) Rules.

Timeframe for connecting standard new connections

S6.9 The timeframe for connecting an approved standard new ICP connection (if all necessary equipment is in place gas main extensions are not required and other requirements are met), is generally 4-6 weeks (but in periods of high demand may take up to 8 weeks) after the Distributor has approved the terms of the standard new ICP connection as set out above. The timeframe for connecting all other ICP connections will be as agreed between the Distributor and the Requesting Party.

Changes in Capacity

S6.9A The Distributor may receive applications from a Consumer (the "**Requesting Party**") for an increase or decrease in the MHQ or capacity of an existing connection.

S6.9B The Distributor will undertake an impact assessment to determine whether the MHQ or capacity required for the new connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.

S6.9C If the Distributor agrees to change the MHQ or capacity of an existing connection and the Requesting Party agrees to terms offered by the Distributor and confirms to the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 3 Working Days of the ICP, the Network Point of Supply to which the ICP is connected, and the applicable Price.

Temporary Disconnections (including transitional disconnections) and associated reconnections

S6.10 **Gas Installations to be compliant:** The Retailer will, subject to clause 27.1, ensure that its Consumer Contracts require the Consumer to ensure that its Gas Installation complies with all relevant legal requirements and the Network Connection Process, including (if applicable) by ensuring that any alteration is certified by a suitably qualified person.

S6.11 **ICPs not Decommissioned without notice:** Subject to any agreement the Distributor may have with a Consumer, the parties agree that neither party will seek to have an ICP Decommissioned without first giving the other party 24 hours' notice or any other notice period agreed by the parties.

S6.12 **Competent Persons:** Each party will ensure that any person that it engages to carry out any activity related to commissioning, connecting, Isolating, disconnecting and Decommissioning ICPs, or performing any other work on the Network, is a Competent Person.

S6.13 **Disconnection by the Retailer:** The parties agree that a Temporary Disconnection of an ICP at which the Retailer supplies gas may be carried out by the Retailer in the following circumstances:

- (a) if in an Emergency where it is necessary to protect persons or property;
- (b) for credit reasons; or
- (c) if requested by the Consumer, for safety or other reasons.

S6.14 **Disconnection by the Distributor:** The Retailer will, subject to clause 27.1, ensure that its Consumer Contracts require that, subject to clauses S6.15 to S6.17, the Distributor

may perform a Temporary Disconnection in relation to a Consumer's ICP in the following circumstances:

- (a) it is necessary to avoid endangering persons or property; or
- (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or the transmission system; or
- (c) the Distributor has planned maintenance activities to complete; or
- (d) an Event of Default or Insolvency Event has occurred in relation to the Retailer; or
- (e) in the circumstances set out in clause 3.6; or
- (f) in accordance with clause 13.3; or
- (g) if a Consumer does any of the things prohibited under clauses 14.1 or 14.6, or fails to do any of the things required of it under clause 15; or
- (h) on termination of this agreement.

S6.15 Notice of disconnection if event is within Consumer's control: If the Distributor intends to perform a Temporary Disconnection as contemplated in clause S6.14, the Distributor will give the Retailer notice of the Temporary Disconnection as follows:

- (a) The Distributor will give the Retailer at least 5 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because:
 - (i) the Consumer failed to provide the Distributor with access in accordance with its Consumer Contract; or
 - (ii) the Consumer damaged or interfered with the Distributor's Equipment or Network; or
- (b) The Distributor will give the Retailer at least 10 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection where the Consumer fails to do any of the things required of it under clause 13.

S6.16 Content of notice of disconnection for events within Consumer's control: The notice of Temporary Disconnection provided by the Distributor to the Retailer under clause S6.15 will specify:

- (a) the ICP identifier relating to the Consumer breach;
- (b) the particulars of the Consumer breach;
- (c) the remedy required if disconnection is to be avoided; and
- (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.

S6.17 Retailer to provide notice of disconnection to Consumer: On receipt of a notice of breach by a Consumer under clause S6.15, the Retailer will promptly forward a physical notice to the relevant Consumer and include mail, email and telephone contact details that the Consumer may use to communicate with the Retailer over the matter. The Retailer will promptly forward to the Distributor any response received from the Consumer and the Distributor will consider in good faith all such responses it receives. The Retailer and the Distributor will work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.

S6.18 **Notice of disconnection if event is outside the Consumer's control:** Subject to clause S6.19, if:

- (a) the Distributor intends to perform a Temporary Disconnection under clause S6.14 (d) or (h) and the grounds for the Temporary Disconnection are not being reasonably Disputed by the Retailer and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor will give each Consumer:
 - (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such notice to include the reason for the Temporary Disconnection and be sent to each Consumer's last address provided to the Distributor by the Retailer, or if no address has been provided as the retailer has no Consumer at that ICP, the notice will be sent to the Consumer's address on the Registry, and the Distributor will provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;
 - (ii) a final warning not less than 48 hours nor more than 7 days before the disconnection. The final warning will provide the timeframes for disconnection. This will be a separate notice to the one provided at least 9 Working Days prior to disconnection; and
 - (iii) if disconnection is not completed within the timeframes notified, the Distributor will issue another final warning not less than 48 hours nor more than 7 days before disconnection.
- (b) If the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.14(a) or S6.14(b), the Distributor will use reasonable endeavours to give each Consumer as much prior notice as reasonably practicable, but in any event will notify the Consumer no later than 2 Working Days after the Temporary Disconnection.

S6.19 NOT USED

S6.19A **Distributor to update Registry:** The Distributor will update the status of the ICP in the Registry throughout this process in accordance with the Gas (Switching Arrangements) Rules 2008 (and acknowledges that the status of the ICP in the Registry is not to be changed for temporary disconnections by the Retailer for credit purposes).

S6.20 **Each party to give notice of Temporary Disconnection:** The party that performs a Temporary Disconnection in respect of a Consumer will (unless otherwise agreed) notify the other party of that fact no later than 2 Working Days after the Temporary Disconnection.

S6.21 **Restoration of connection:** If either party has performed a Temporary Disconnection in respect of a Consumer's ICP, the party that performed the Temporary Disconnection will take reasonable steps to arrange restoration of supply to the connection as soon as reasonably practicable and not longer than 3 Working Days after conditions for reconnection have been satisfied.

S6.22 NOT USED

S6.23 NOT USED

S6.24 NOT USED

S6.25 NOT USED

S6.26 NOT USED

S6.27 NOT USED

S6.28 NOT USED

Decommissioning an ICP

S6.29 A Distributor may Decommission an ICP if the following circumstances are met:

- (a) the Distributor is advised by a Consumer, landowner or the Retailer that gas is no longer required at the ICP;
- (b) it is necessary to Decommission the ICP because public safety is at risk;
- (c) the Registry notifies the Distributor that the ICP has the status of "Inactive", with the reason given "Ready for decommissioning", the ICP has been disconnected and the Retailer has attempted to recover the meters; or
- (d) if the Distributor has not supplied Distribution Services in respect of the ICP for 6 months or more,

provided that in respect of sub-clauses (a) and (d), the Distributor will, unless advised by the Retailer, notify the Retailer before Decommissioning the ICP to enable the Retailer to arrange for removal of the Metering Equipment (if appropriate) and updating of the Registry.

S6.30 NOT USED

S6.31 The party performing the Decommissioning will notify the other party within 2 Working Days of the Decommissioning having been completed.

S6.32 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier will not be used again and the process for reconnections will be followed if supply is required again at the property.

S6.33 Both parties will update the Registry throughout this process in accordance with the Gas (Switching Arrangements) Rules 2008.

S6.34 NOT USED

S6.35 NOT USED

S6.36 NOT USED

S6.37 NOT USED

SCHEDULE 7 – NOT USED

SCHEDULE 8 – PRICING SCHEDULE AND POLICY

- S8.1 The pricing schedule and policy set out in this schedule 8 will apply to the Services provided by the Distributor to the Retailer under this agreement.
- S8.2 Notwithstanding clause S8.1 but subject to clause 9, the Distributor may give to the Retailer 60 Working Days' written notice to replace the pricing schedule and policy set out in this schedule 8 with a pricing schedule and policy is as set out in: <http://www.vector.co.nz/gas/our-pricing>.⁶

⁶ Vector will provide a full pricing schedule for the applicable network.

SCHEDULE 9 – NOT USED

SCHEDULE 10 – NOT USED

SCHEDULE 11 – METERING

S11.1 The Retailer will:

- (a) ensure it has one or more metering agreements with GMS Owner(s) that require the GMS Owner(s) to comply with the Gas Measurement Standard and all relevant laws, and provide all services in accordance with Good Gas Industry Practice;
- (b) use reasonable endeavours to ensure in relation to each GMS, that the measured errors of the meter and/or any Conversion Device forming part of that GMS fall within the relevant "maximum permissible error" limits set out in the Gas Measurement Standard;
- (c) ensure that each GMS is appropriately sized and designed for the Consumer's actual requirements;
- (d) ensure that each GMS includes suitable equipment to regulate the Delivery Pressure to meet the requirements of the network operating pressures;
- (e) ensure that meter readings are taken not less frequently than:
 - (i) every second month, if the annual consumption of gas at the ICP (based on TOU Data where available, and otherwise the as billed normalised data) is less than or equal to 250 GJ; and
 - (ii) every month, if the annual consumption of gas at the ICP (based on TOU Data where available, and otherwise the as billed normalised data) is more than 250 GJ; and
- (f) promptly address any concerns that the Distributor may raise with it in relation to a particular GMS, or generally about the quality of metering services being provided to, or provided by, the Retailer.

S11.2 Within 10 Working Days of the Distributor's request at any reasonable time, the Retailer will ensure that the Distributor may obtain any GMS-related information the Distributor may reasonably require directly from the GMS Owner, including:

- (a) general layout of the GMS;
- (b) description of the constituent components of the GMS and their technical specifications (including pressure ratings);
- (c) the set-point of all pressure regulators that control (or could control) the pressure of gas at any meter and/or the Delivery Pressure;
- (d) the design inlet, type, model and size of any meter;
- (e) the minimum and maximum flow rates for which the GMS is designed; and
- (f) the setting of any over-pressure protection device.