

AGREEMENT FOR THE USE OF SYSTEM

between

WAIPA NETWORKS LIMITED

and

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THIS AGREEMENT made the 1st day of April 2008

BETWEEN **WAIPA NETWORKS LIMITED** at Te Awamutu (the "Distributor")

AND ----- at ----- (the "Network User").

INTRODUCTION

- A.** The Distributor is the owner and operator of its Distribution Network.
- B.** The Distributor and Transpower have entered an agreement under which the Distributor receives electricity delivered from Generators over the Transpower Network.
- C.** In order to convey electricity for its own use or for use by its Customers, the Network User wishes to access the Distribution Network and the Transpower Network.
- D.** The terms and conditions set out in this Agreement record the Parties' agreement for the provision of Line Function Services and use of the Distribution Network by the Network User.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

"Agreement" means this agreement;

"Bank Base Rate" means the 90-day Commercial Bill Rate as published on page BKBM of the Reuters monitor service and applying at 10.30 am on the day of calculation;

"Books and Records" means full and accurate, and where the Distributor requires, audited, books of account, records and supporting documentation which clearly explain and verify the information provided by the Network User under clause 4.2, so as to provide a clear audit trail from the measurements taken from Metering Equipment installed under clause 12 through to reports and statements produced by the Network User's billing system;

"Business Day" means any day on which registered banks are open for the transaction of general business in Te Awamutu;

“Charges” means the charges which are determined from time to time in accordance with this Agreement, and which, at the Commencement Date are as set out in Schedule 1, payable by the Network User to the Distributor;

“Commencement Date” means the date set out in Schedule 2;

“Confidential Information” means all data and other information of whatever nature, provided by one Party to the other and specified at the time it is provided as being confidential, excluding:

- (a) information known to the other Party prior to the date it was provided to it by the first Party and not obtained directly or indirectly from the first Party or otherwise by breach of any confidentiality obligation owed to the first Party; and
- (b) information at the time of disclosure in, or which subsequently enters, the public domain otherwise than by breach of any duty of confidentiality owed to the first Party; and
- (c) information obtained bona fide from another person who is in lawful possession of the same and who did not acquire the same directly or indirectly from the first Party under an obligation of confidence;

“Customer” means any person with whom the Network User has an agreement for the supply of electricity who uses the Distribution Network;

“Customer Category” means the category assigned by the Distributor to a particular Customer Installation used for assigning Charges for Line Function Services;

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

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

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

“Distributor” means Waipa Networks Limited at Te Awamutu, together with its successors and assigns;

“Distributor's Agent” means a person appointed by the Distributor in writing to provide services for or on behalf of the Distributor;

“Distributor's Equipment” means the Fittings and Metering Equipment belonging to the Distributor or the Distributor's Agent which are from time to time installed in, over or upon a Customer's Premises;

“Distributor's Metering Standards” means the relevant standards:

- (a) determined in accordance with Good Industry Practice, issued and amended from time to time by the Distributor acting reasonably which set out the requirements for installation, connection, and commissioning of Metering Equipment at Customers' Points of Supply; and
- (b) which, as at the Commencement Date, shall be those set out in the EGRs;

“EGRs” means the Electricity Governance Rules, as determined by the Electricity Commission;

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

“Force Majeure” means any event or circumstance which is beyond the reasonable control of a Party which results in or causes the failure of that Party to perform any of its obligations under this Agreement and which or, as appropriate, the consequences of which, could not have been prevented by compliance by the relevant Party with Good Industry Practice, such events may include, but are not limited to:

- (a) acts of god, strike, lock-out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, wind, storm, flood, earthquake, accumulation of snow or ice or explosion;
- (b) fault or failure of any plant, apparatus or equipment, including but without limitation by reason of year 2000 non-compliance;
- (c) governmental restraint, act of parliament, other legislation or bylaw;

- (d) the failure or deficiency of any Generator, Transpower, the Network User or any Other Network User to supply or to convey electricity into the Distribution Network;
- (e) the discontinuance or deficiency of supply or failure to convey electricity or to do so in the required quantity which occurs as a result of the Distributor selecting at its reasonable discretion Customers' Points of Supply for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition;

provided that lack of funds or insolvency shall not be interpreted as a cause beyond the reasonable control of that Party;

“Generator” means any person that generates electricity supplied to the Network User or any Other Network User, or any person that injects electricity into the Distribution Network;

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

“Grid Connection Points” means the points of connection between the Distribution Network and the Transpower Network or any Generator or any other distribution network through which electricity is injected into the Distribution Network;

“Incumbent Network User” means the "Incumbent Retailer", as that term is defined in the EGRs, for the Distribution Network;

“Line Function Charges” means the charges determined by the Distributor from time to time in accordance with this agreement for the use of the Distribution Network to convey electricity to Customers' Points of Supply and the provision of Line Function Services, the Line Function Charges applicable at the date of this Agreement being those set out at Schedule 1;

“Line Function Services” means the provision and maintenance of Fittings for the conveyance of electricity from Grid Connection Points to Points of Supply, and the operation of such Fittings, including the control of voltage and the assumption of responsibility for determining and allocating Losses;

“Load Management Service” means the function of reducing or interrupting a part of or all of a Customer's supply of electricity at the Customer's Installation on the basis set out in Schedule 4;

“Losses” means electricity unaccounted for on the Distribution Network, being the difference between the sum of the electricity injected into the Distribution Network measured at the Grid Connection Points and the sum of the electricity measured or calculated as conveyed to all Points of Supply;

“Loss Factor” means in relation to any Customer or Customer Category, the factor determined by the Distributor in accordance with Good Industry Practice which apportions Losses in respect of that Customer or Customer Category, such Loss Factors as at the Commencement Date being those set out at Schedule 5;

“Metering Equipment” means any apparatus for the purpose of measuring and recording the quantity of electricity conveyed through a Customer's Point of Supply including current and voltage transformers, data loggers, wiring connections, test terminals and panels considered to be Fittings irrespective of ownership;

“Network Connection Standards” means the relevant standards determined in accordance with Good Industry Practice, issued by the Distributor and amended by the Distributor from time to time, which set out the standards which must be met by Customers' Installations for continuing connection to the Distribution Network and related matters;

“Network Services” means any and all services offered from time to time by the Distributor in addition to Line Function Services including but not limited to Retail Contracting Services;

“Network User” means ----- together with its successors and permitted assigns;

“Network User's Agent” means the person with whom the Network User has entered into an agreement to provide services on behalf of the Network User;

“Network User's Equipment” means any equipment owned, leased or otherwise provided by the Network User or the Network User's Agent, and which is from time to time installed in, over or upon a Customer's Premises;

“NZEM” means the New Zealand Electricity Market established to permit the purchase and sale of electricity and administered by the Electricity Commission.

“Other Network User” means any person including the Incumbent Network User, other than the Network User, who has entered into an agreement with the Distributor in respect of the conveyance of electricity throughout the Distribution Network and/or for the provision of Line Function Services;

“Party”, “Parties” or “Other Party” means each or either or both the Distributor and the Network User;

“Period of Inaccuracy” means, in relation to any Metering Equipment, the period between the most recent test confirming the accuracy of the Metering Equipment, or the date at which the Parties agree that all evidence suggests that the Metering Equipment was measuring accurately, and the time at which it is determined that the Metering Equipment cannot measure or measures inaccurately provided that if such period is greater than 12 months, the actual period shall be deemed to be 12 months (that being the maximum period permitted under this Agreement), commencing on the date which is 12 months prior to the date on which it is determined that such Metering Equipment cannot measure or is measuring inaccurately;

“Point of Supply” means any of the points at which the Fittings of a Customer or any Other Network User’s customer connects to the Distribution Network;

“Registry” means the reconciliation facility administered by the Electricity Commission, known as the Registry.

“Remote Signalling Service” means the function of providing a signal through the Distribution Network for the purpose of operating equipment on the Customer's Premises, as agreed between the Parties;

“Retail Contracting Services” includes, but is not limited to, any:

- (a) connection, disconnection and/or reconnection, alteration, inspection, metering, and livening of Customers’ Installations; and
- (b) installation and removal of equipment for Load Management Services or Remote Signalling Services;

“Transpower” means Transpower New Zealand Limited, together with its successors and permitted assigns, and any other person providing capacity to the Distribution Network;

“Transpower Charges” means the Network User's portion of the charges payable by the Distributor to Transpower relating to any or all of the use of the Transpower Network to carry the Network User's supply of electricity to the Grid Connection Points, the connection of the Distribution Network to the Transpower Network and grid security for the Transpower Network including the cost of any ancillary service required to be contracted for by Transpower or NZEM in order to receive supply;

“Transpower Network” means the electricity transmission system owned and operated by Transpower; and

“Unit” means kilowatt-hour (kWh) being a measurement of electrical energy;

- 1.2 Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background.
- 1.3 Headings:** section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation.
- 1.4 Negative Obligations:** any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done.
- 1.5 Plural and Singular:** words importing the singular number will include the plural and vice versa.
- 1.6 Persons:** references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.7 Schedules:** the schedules to this agreement and the provisions and conditions contained in the schedules will have the same effect as if set out in the body of this agreement.
- 1.8 Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this agreement's sections, clauses and schedules.
- 1.9 Statutes and Regulations:** references to any statutory provision will include any statutory provision which amends or replaces it, and any subordinate legislation made under it.
- 1.10 Agents and Employees:** any reference in this Agreement to the Network User, Distributor or Customer includes, where the context permits, the agents or employees of the same.
- 1.11 Business Day:** where any obligation under this agreement falls due to be performed on a day which is not a Business Day then such obligation shall be performed on the first Business Day immediately thereafter.

2. DURATION OF AGREEMENT

- 2.1 Term:** The Agreement will commence on the Commencement Date and, except in the case of termination pursuant to clause 17, will

continue until 15 Business Days after either Party gives written notice that termination is required.

- 2.2 Use of the Distribution Network from Expiry of Term:** In the event that either party gives notice of termination under clause 2.1, the Parties shall negotiate in good faith with a view to reaching an agreement as to the terms and conditions of any further use of the Distribution Network by the Network User. In the event that despite such good faith negotiations no agreement has been reached by the Parties by the expiry of 10 Business Days from the date of notice under clause 2.1, the Network User shall be deemed to be bound by and shall comply with the Distributor's standard terms and conditions applying to the use of the Distribution Network at such date and thereafter from time to time.

3. LINE FUNCTION SERVICES

- 3.1 Connection and Line Function Services:** Subject to the Customer and the Customer's Installation complying with the Network Connection Standards the Distributor will in accordance with this Agreement:

3.1.1 allow connection of Customer's Installations to the Distribution Network; and

3.1.2 provide Line Function Services to the Network User in respect of Customers' Points of Supply in accordance with the Network Connection Standards and Good Industry Practice.

- 3.2 Upgrades and Extensions:** Upon receipt of a request in writing made by the Network User for the Distributor to:

3.2.1 upgrade its Line Function Services to any Customer's Point of Supply; or

3.2.2 extend its Distribution Network for the purpose of supplying electricity to any existing or potential Customer;

the Distributor shall, within a reasonable time of receipt of the Network User's written request, having regard to the nature of the request, advise the Network User in writing of its decision and any additional terms and conditions to which the Distributor's acceptance of the request is subject. The Distributor reserves the right to accept or decline any request from the Network User made under this clause 3.2. The Network User may accept or decline the Distributor's notified terms and conditions of acceptance at its election. In the event that the Network User declines or does not accept the Distributor shall have no obligation to perform any requested works.

4. CALCULATION AND PAYMENT OF CHARGES

- 4.1 Charges to Network User:** The Network User shall pay the Charges.
- 4.2 Invoice Information:** The Network User shall by the fourth Business Day of each month and in accordance with the Distributor's directions from time to time, provide to the Distributor the following information for each Customer Category:
- 4.2.1** the measured or assessed consumption or maximum demand for each Charge component; and
 - 4.2.2** the number of Customers and Network Connection Points; and
 - 4.2.3** the number of Customer days per Customer category; and
 - 4.2.4** the rate as determined by the Distributor from time to time applying to each Charge component; and
 - 4.2.5** the amount due for each Charge component; and
 - 4.2.6** the total amount due.
- 4.3 Distributor to Invoice Network User:** On the basis of the information provided to the Distributor by the Network User under clause 4.2, the Distributor shall issue an invoice (the "Invoice") to the Network User for the Charges payable by the Network User for the preceding month.
- 4.4 Distributor to Supply Information to Network User:** The Distributor will make available to the Network User all information reasonably requested by the Network User in connection with the calculation of the Charges in respect of any Invoice.
- 4.5 Payment Due:** The Network User will pay the Distributor the amount of the Invoice by 4 pm on the 20th day of the month of receipt or the 10th day after the Invoice is received whichever is the later provided that, if that day is not a Business Day, payment shall be made on the next Business Day.
- 4.6 Charges Exclude GST:** All Charges payable by the Network User are stated exclusive of Goods and Services Tax. The Distributor will add such amounts for Goods and Services Tax or for such other tax, charge or levy as may from time to time be required by any statute, statutory instrument or equivalent statutory provision by which the Distributor is bound, and such amounts will be paid by the Network

User at the same time as payment of the Charges shown in the Invoice.

4.7 Procedure on Dispute: If the Network User disputes any or all of an amount contained in an Invoice:

4.7.1 the Network User will immediately notify the Distributor of the dispute and provide reasons for the dispute;

4.7.2 the Network User will pay the undisputed amount of the invoiced by the due date specified in the Invoice, and the only reasons for withholding a disputed amount shall be:

(a) a manifest arithmetic error in calculating the Charges, or

(b) invoicing of Charges previously paid by the Network User, or

(c) a manifest error in the information supplied under clause 13.1.

4.7.3 the Parties will comply with the provisions of clause 22 in order to resolve any dispute. Interest on any amount to be paid by either Party following the resolution of any dispute will accumulate and will be payable at the Bank Base Rate plus 3.5 (three and a half) percent from the due date until the date for payment.

Notwithstanding the foregoing, no Invoice may be disputed under this clause 4.7 after 12 months after the date of the Invoice.

4.8 Network User to Pay Interest: If the Network User fails to pay by the due date any amount contained in an Invoice, and has not disputed the Invoice pursuant to clause 4.7, then without prejudice to the Distributor's right to terminate this Agreement, the Network User will pay to the Distributor default interest on that amount at the Bank Base Rate plus five percent from the due date until the date of payment.

5. CHANGES TO CHARGES

5.1 Vary Charges: The Distributor may vary the Charges in accordance with:

5.1.1 clause 5.3 (which relates to variations to the Line Function Charges resulting from any requirements, costs arising from any requirements, charges, levies or taxes of a regulatory authority); or

- 5.1.2 clause 5.4 (which relates to variations to the Charges resulting from changes to charges of Transpower incurred by the Distributor); or
 - 5.1.3 clause 5.5 (which relates to variations to the Network Services Charges); or
 - 5.1.4 clause 5.2 (which relates to any other variations to the Line Function Charges on notice).
- 5.2 **Variation of Line Function Charges:** Without limitation to the Distributor's rights under clauses 5.3, 5.4 and 5.5, the Distributor may vary the Line Function Charges with effect from the Commencement Date provided that:
 - 5.2.1 the Distributor has given the Network User a minimum of 40 days written notice of its intention to vary the charges; and
 - 5.2.2 the Distributor shall be entitled to vary the Line Function Charges pursuant to this clause 5.2 once only in each 12 month period commencing on 1 October in each year during the term of this Agreement with the first of such periods commencing on 1 October 1998.
- 5.3 **Changes to Input Charges, Taxes etc:** The Distributor may increase or reduce at its absolute discretion the Line Function Charges upon giving 5 Business Days notice to the Network User where any requirements, costs arising from any requirements, charges, levies or taxes (but not including changes to income tax payable by the Distributor) are altered or imposed by any regulatory authority in respect of the provision of Line Function Services relating to Customers' Points of Supply or in relation to payments payable under this Agreement.
- 5.4 **Variation of Charges by Transpower:** Upon giving as much notice as is reasonably practicable having regard to such notice as the Distributor receives from Transpower or the provider of any ancillary service of any increases in the rates for charges payable by the Distributor, the Distributor may vary the Charges from time to time to pass on any such increases.
- 5.5 **Network Services Charge:** The Distributor may vary the Charges for Network Services at any time and from time to time upon giving 20 Business Days notice to the Network User.

6. AUDIT

- 6.1 **Books and Records:** The Network User shall keep Books and Records.

6.2 Audit and Inspection: The Distributor may upon giving the Network User ten Business Days notice, appoint independent auditors to confirm the accuracy of any information provided by the Network User under clause 4.2. To the extent required in order to give effect to this clause, the Network User shall ensure that access to all relevant records is available at a reasonably convenient location within New Zealand and shall allow the independent auditors to carry out their audit or investigation. If the independent auditors' report establishes any inaccuracy in any information provided by the Network User under clause 4.2, resulting in any inaccuracy in any Invoice issued by the Distributor then a new Invoice shall be issued. If the reissued Invoice is for more or less than the original Invoice, the Network User shall pay to the Distributor, or the Distributor shall refund to the Network User (respectively), in each case within 5 Business Days after the date on which the reissued Invoice is received by the Network User, an amount equal to the difference between these Invoices, together with interest on the difference at the Bank Base Rate plus 2.0 percent. Such interest shall run from the due date of the original Invoice up to and including the date of payment of the difference under this clause. This clause shall not apply to any Invoice originally issued more than 15 months before the appointment of the independent auditors under this clause. The cost of any such audit shall be borne by:

- (a) the Distributor if the audit was requested by the Distributor and if the audit shows that any inaccuracy in the information provided by the Network User under clause 4.2 has caused any Invoice issued by the Distributor under clause 4.3 to be inaccurate by less than 5%, or \$5,000, whichever is the lesser amount; or
- (b) the Network User in all other circumstances.

The costs of any such investigation:

- (a) will be borne by the Network User where interference by the Network User or the Customer or their subcontractors, agents or invitees is discovered to have occurred or where the interference has been by a third party and the Network User or Customer has failed to provide reasonable protection against interference to the Distributor's Equipment; and
- (b) will otherwise be met by the Distributor.

7. POINTS OF SUPPLY

7.1 Compliance by Customers: The Network User shall use its best endeavours to ensure that all Customers and Customers' Installations comply with the Network Connection Standards and any relevant statutory or regulatory requirements. The Network User's

"best endeavours" shall include but not be limited to ensuring that its contracts with its Customers include such an obligation on Customers and enforcing such contractual rights as against Customers who do not comply with such obligation.

7.2 Awareness of Customer's Non-Compliance: If the Network User becomes aware of any non-compliance with the standards or requirements referred to in clause 7.1 by a Customer and/or a Customer's Installation the Network User shall:

7.2.1 require the Customer to remedy such non-compliance, and

7.2.2 advise the Distributor of the details of the non-compliance within a reasonable period, having regard to the seriousness of the non-compliance.

If the Customer fails to remedy the non-compliance within such reasonable period, the Network User will, if required by the Distributor, and within 14 days of notifying the Customer in writing, disconnect the Customer's Point of Supply. The cost of any such disconnection and any reconnection shall be borne by the Network User.

7.3 New and Modified Customer Installations: For each additional or modified Customer's Installation to which the Network User intends to supply electricity the Network User shall:

7.3.1 give the Distributor reasonable notice in writing of that intended supply including the required capacity;

7.3.2 ensure that the new Customer's Installation complies in all respects with the Network Connection Standards and, if requested by the Distributor, provide a certificate to the Distributor or other information reasonably requested by the Distributor to enable the Distributor to satisfy itself that the Customer's Installation complies;

7.3.3 procure and ensure it has at all times, the Customer's agreement to provide and maintain suitable space for the safe and secure housing of all Distributor's Equipment as the Distributor may deem necessary in accordance with Good Industry Practice to be housed at the Customer's Premises;

7.3.4 if the Customer is not already connected to the Distribution Network, arrange at its own expense connection of the Customer's Installation; and

7.3.5 ensure that the Customer complies with the Network Connection Standards.

- 7.4 Connection to Distribution Network:** The Distributor will not permit any new or modified Customer's Installation or any other Fittings that form part of a system of conveying electricity from a Point of Supply to where it may be consumed to be connected to the Distribution Network, unless, acting reasonably, it is satisfied that all of the requirements of the Network Connection Standards with respect to that Customer's Installation or those Fittings have been complied with.
- 7.5 Availability of Network Connection Standards:** The Network User must advise Customers that a copy of the Network Connection Standards is available upon request to the Network User. The Distributor will make a copy of the Network Connection Standards available to the Network User.
- 7.6 Notice of Disconnection:** For each Customer's Point of Supply which the Network User intends to disconnect, the Network User shall give the Distributor reasonable notice in writing of that intended disconnection.

8. EQUIPMENT

- 8.1 Interference with Network User's Equipment:** Except to the extent that emergency action has to be taken to protect the health and safety of persons, to prevent damage to property or to ensure the security of the Distribution Network, the Distributor shall not interfere with the Network User's Equipment or a Customer's Installation without the prior consent of the Network User or the Customer (as the case may be).
- 8.2 Interference with Distributor's Equipment:** Except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property, the Network User shall not interfere and shall use its best endeavours to ensure that its Customers do not interfere with the Distributor's Equipment. The Network User's "best endeavours" shall include but not be limited to ensuring that its contracts with its Customers include such an obligation on Customers and enforcing such contractual rights as against Customers who do not comply with such obligation.
- 8.3 Protection of Distributor's Equipment:** The Network User shall use its best endeavours to ensure that its Customers protect the Distributor's Equipment against interference and damage. The Network User's "best endeavours" shall include but not be limited to ensuring that its contracts with its Customers include such an obligation on Customers and enforcing such contractual rights as against Customers who do not comply with such obligation.
- 8.4 Obligations if Interference Found:** Should either Party discover evidence of interference with the Distributor's or Network User's

Equipment, or evidence of theft of electricity, the Party discovering the interference or evidence shall notify the other Party within one Business Day. In the event of suspected interference with the Distributor's Equipment at a Customer's Installation the Distributor and the Network User will consult as to the nature of any investigation required and, if the Distributor so requires the Network User will carry out an investigation, and present the findings to the Distributor within a reasonable period. Nothing in the foregoing shall limit the Distributor's right to have its auditors carry out an investigation under clause 6.2.

8.5 Access: The Network User shall include as a condition of its contracts with its Customers, and otherwise ensure that each of its Customers permit, at all reasonable times, safe and unobstructed access by the Distributor onto that Customer's Premises in order to enable the Distributor to:

8.5.1 connect or disconnect the supply of electricity to that Customer's Premises or any other Customer's Premises;

8.5.2 protect or prevent danger or damage to persons or property;

8.5.3 install, test, inspect, maintain, repair, replace, operate, read or remove any of the Distributor's Equipment and carry out any other purpose related to this Agreement;

8.5.4 ascertain the cause of any interference to the quality of Line Function Services being provided by the Distributor to the Network User or any Other Network User; and

8.5.5 otherwise for purposes consistent with this Agreement.

8.6 Access by Distributor: The Distributor shall exercise its right of access by:

8.6.1 wherever practicable, giving to the Network User reasonable notice of its intention to, and the purpose for which it will, exercise its right of access;

8.6.2 causing as little inconvenience as reasonably practicable to the Customer in carrying out such work and shall in doing so comply with all reasonable requirements of the Customer relating to on-site safety and security; and

8.6.3 observing Good Industry Practice at all times.

8.7 Failure by Customer to Provide Access: If a Customer fails to grant to the Distributor access in accordance with the requirements of clause 8.5 the Network User shall, within 14 Business Days of written notice from the Distributor arrange for access for the

Distributor or for the disconnection of that Customer's Point of Supply. The Distributor will be at liberty to take all reasonable steps necessary to gain immediate access where it reasonably believes that is necessary.

8.8 Rights of Access Additional: The rights of access procured further to this Agreement are in addition to any right of access the Distributor may have under any statute or regulation, and nothing in this clause (including clause 8.7) shall limit any other rights the Distributor may have.

9. INTERRUPTION TO SUPPLY

9.1 Interruptions: The conveyance of electricity to any Customer's Point of Supply may be interrupted or reduced by the Distributor at any time the Distributor reasonably considers it appropriate in accordance with Good Industry Practice or any procedures agreed by the Parties:

9.1.1 to enable the Distributor to inspect or effect alterations, maintenance, repairs or additions to any part of the Distribution Network; or

9.1.2 to avoid the risk of danger to persons, damage to property or other interference with the conveyance of electricity through the Distribution Network; or

9.1.3 in case of emergency, to preserve and protect the proper working of the Distribution Network; or

9.1.4 to effect the Load Management Service; or

9.1.5 by the automatic low frequency-initiated tripping of specified load in the event that the integrity of the Transpower Network is endangered; or

9.1.6 in response to an event of Force Majeure.

9.2 Parties' Obligations on Interruption: Where the Distributor interrupts the conveyance of electricity to any Customer pursuant to clause 9.1 (other than pursuant to sub-clause 9.1.4), the Distributor shall:

9.2.1 where practicable, give the Network User prior seven Business Days notice of any interruption to the conveyance of electricity and where appropriate consult with the Network User over the timing of the interruption to minimise inconvenience to the Customers;

9.2.2 if the interruption is unplanned and/or prior notice is not given pursuant to clause 9.2.1, as soon as is practicable give to the Network User notice of the area affected by and reasons for the interruption and its expected duration;

9.2.3 use reasonable endeavours to minimise the period of interruption; and

9.2.4 act in accordance with Good Industry Practice;

and the Network User shall:

9.2.5 where the Network User has received prior notice under clause 9.2.1 give at least two Business Days notice of the interruption to its Customers; and

9.2.6 in the circumstances contemplated by clause 9.2.2, as soon as is practicable give to the Customers notice of the reasons for the interruption and its expected duration where such notice is appropriate.

9.3 Network User To Advise of Interruptions to Supply: The Network User will advise the Distributor of any defect or interruption to the electricity supply or other Distribution Network abnormality reported to the Network User by a Customer, as soon as practicable after receiving such a report. The Network User acknowledges that in the ordinary course such advice shall be given to the Distributor within five minutes of receiving a report from a Customer and the Network User shall at all times use its best endeavours to advise the Distributor promptly so as to minimise any inconvenience to Customers.

10. NETWORK SERVICES

10.1 Performance of Retail Contracting Services: All Retail Contracting Services must be performed by the Distributor or a person accredited by the Distributor.

10.2 Other Retail Contracting Service Providers: The Network User may request the services of another provider of Retail Contracting Services who is accredited by the Distributor. Any alternative provider of Retail Contracting Services shall have gained "Approved Contractor Status" with the Distributor before operating on the Distribution Network and shall be responsible for communicating with the Distributor's Control Room before, during and after any work is carried out on the Distribution Network.

11. RECONCILIATION

- 11.1 Network User to Observe Reconciliation Agreement:** The Network User must, in respect of all electricity supplied by it through the Distribution Network, comply with the relevant requirements of the EGRs and Reconciliation Manager.
- 11.2 Electricity Property of Network User:** For the purposes of this Agreement all electricity injected into the Distribution Network shall be deemed to be the property of the Network User and Other Network Users.
- 11.3 Calculation of Purchases:** The Network User's electricity purchases shall be calculated to include both read and accrued Units as follows.
- 11.3.1** Electricity purchases shall be calculated so that when the Loss Factors are applied to all such Units, that total is the same as the total volume of electricity (as accepted or determined by the Reconciliation Manager) which the Network User had delivered into the Distribution Network during that month. "Read Units" are those Units which are recorded, based on a reading of the relevant Metering Equipment, as having been supplied to the Customer's Point of Supply. "Accrued Units" are those Units which are estimated in accordance with the appropriate EGRs to have been supplied to the Customer's Point of Supply in the period from the time when the Metering Equipment was last read up to the end of the month covered by the relevant Invoice. Where half hourly metering is installed at a Customer's Point of Supply this shall normally be read at the end of each month, so that accruals will not normally be required in respect of such Points of Supply.
- 11.3.2** Electricity purchases shall be calculated using the same methodology as was used by the Distributor for calculating the total number of Units supplied to each Customer's Point of Supply, as at the date of this agreement, or such other methodology as may be agreed between the parties in writing.
- 11.4 Compliance with the EGRs:** The Distributor will, in its use of system agreements with Other Network Users, require such Other Network Users to comply with the EGRs.
- 11.5 No Supply Until Metering Equipment Installed:** The Distributor will not permit any Other Network User to supply any Point of Supply until satisfied that Metering Equipment has been installed unless the Distributor acting reasonably determines that Metering Equipment is not required in that instance.

- 11.6 No Supply of Line Function Services:** The Distributor will not supply Line Function Services in respect of a person formerly a Customer until an Other Network User has notified the Distributor that it has accepted an obligation to supply electricity and Line Function Services to that person. In the event of a dispute between the Network User and any Other Network User for the right to supply a Customer, the person shown on the Registry database at the time of supply will be the person responsible for payment of Line Function Charges under this Agreement.
- 11.7 Loss Factors:** The Distributor will determine Loss Factors for the allocation of Losses incurred by the delivery of electricity through the Distribution Network. The Network User must provide the Distributor with all information the Distributor may reasonably require to determine the Loss Factors. The Network User must ensure that the Loss Factors are used in the reconciliation of quantities supplied by the Network User through the Distribution Network.
- 11.8 Distributor's Obligations:** The Distributor will, in accordance with Good Industry Practice:
- 11.8.1** monitor the application of the Loss Factors by the Other Network Users in respect of electricity conveyed over the Distribution Network; and
 - 11.8.2** promptly advise the Network User and the Reconciliation Manager under the EGRs of any incorrect application of the Loss Factors of which it becomes aware.

12. METERING

- 12.1 Installation:** The Network User shall arrange for Metering Equipment to be installed at each Customer's Point of Supply except where the Distributor and the Network User otherwise agree in writing. The Network User shall ensure that the Metering Equipment installed at Customers' Points of Supply is:
- 12.1.1** installed prior to any supply of electricity to that Point of Supply; and
 - 12.1.2** installed and maintained in accordance with the metering requirements of the EGRs.
- 12.2 Distributor's Set of Metering Equipment:** The Distributor may at its own cost maintain and service an additional set of Metering Equipment at any Customer's Point of Supply for checking and Distribution Network management purposes.

12.3 Disputes to Accuracy: If either of the Parties disputes the accuracy of the Metering Equipment installed pursuant to clause 12.1 such Party may give written notice of such disputed accuracy to the other Party. In the event such written notice is given:

12.3.1 each Party will provide the other with any available information relevant to the checking of the Metering Equipment; and

12.3.2 the Metering Equipment shall be checked, in accordance with Good Industry Practice, by the party responsible for providing the Metering Services for defective or inaccurate functioning or calibration.

In the absence of any such notice of disputed accuracy, the measurements taken by the Network User or the Network User's Agent from such Metering Equipment will be binding on the Parties.

12.4 If it is discovered that the Metering Equipment is not functioning or is inaccurate then the quantity of the supply of Electricity conveyed during the Period of Inaccuracy will be determined pursuant to the provisions of the EGRs.

13. INFORMATION

13.1 Customer Information: Without limitation to the Network User's obligations under clauses 4.2 and 6 the Network User will from time to time as reasonably required by the Distributor, in a format agreed between the Parties acting reasonably, provide to the Distributor the following information to the extent that such information would be available to the Network User if the Network User was operating its business in accordance with Good Industry Practice.

13.1.1 A complete list of all Customer Installations. If required by the Distributor vacant installations will be included as a separate list. The information is required by the Distributor to calculate Line Function Charges.

13.1.2 A complete list of all Customer names and addresses. The information is required, and may only be used for the Waipa Networks Trust and the Distributor to identify and communicate with persons eligible to receive rebates, dividends, distributions of any nature or other information relevant to that trust or to vote in elections for trustees of that trust.

13.1.3 Details of all Connection Services, transfers of Customers between the Network User and Other Network User's, changes in Customer's Points of Supply.

- 13.1.4** Each month at such times as the Distributor may reasonably require, all information relating to the consumption of electricity at Customers' Points of Supply in respect of the preceding month.
- 13.1.5** Estimates and projections of electricity that is intended to be transported by the Network User over the Distribution Network or parts of the Distribution Network.
- 13.1.6** Any other information reasonably required by the Distributor for the purposes of, and incidental to, its role as operator of the Distribution Network.

Customer information required under this clause which may be provided by the Registry, once fully populated and reliable, will be acceptable to the Distributor.

- 13.2 Process for notifying information to the Distributor:** The Distributor and Network User, both acting reasonably, will agree a process whereby all information to be provided by the Network User under clause 13.1 and any other relevant information is promptly notified to the Distributor.
- 13.3 Distributor's Costs:** The Distributor, or in the case of clause 13.1.2 the Distributor and the Waipa Networks Trust may recover from the Network User any reasonable costs incurred by the Distributor and or, in the case of clause 13.1.2, the Waipa Networks Trust as a result of the Network User's failure to comply with clause 13.1. The benefit of this clause extends to the Waipa Networks Trust and may be enforced by the trustees of that trust under the Contracts (Privity) Act 1982.
- 13.4 Inaccurate or Untimely Information:** The Network User acknowledges that given that the Distributor will be relying on the information provided by the Network User and that Charges payable by the Network User, and amounts required to be paid by the Distributor, are dependent on the accuracy and timeliness of such information, the Network User will be responsible for and the Distributor may recover from the Network User any reasonable costs incurred as a result of manifestly inaccurate information being provided or information not being provided in a timely manner.
- 13.5 Distributor to Provide Information:** At the Network User's request, the Distributor shall as soon as reasonably practicable provide such information relating to the Distribution Network, the Transpower Charges and such other information to the extent that it affects the Network User or the Customers as the Network User may reasonably require and as may be lawfully provided by the Distributor. The Distributor shall endeavour to provide such information in an accurate and timely manner.

13.6 Ownership of Information: All information obtained from Metering Equipment is the property of the Network User subject to the Distributor's rights under this Agreement to obtain and use the information for its role as operator of the Distribution Network.

13.7 Privacy Act 1993: The Network User shall ensure that as a condition of its contracts with its Customers that the collection, use and disclosure of information about its Customers contemplated by this clause 13 is authorised by its Customers and complies in all respects with the provisions of the Privacy Act 1993.

14. DISTRIBUTION OF REBATES AND DIVIDENDS

14.1 Credit to Customers: The Distributor may, from time to time, pay an amount to the Network User on the basis that such amount is to be applied as a credit against any amounts payable by any Customers to the Network User. The following provisions shall apply to such amounts.

14.1.1 The Network User shall calculate the amount of each individual Customer's entitlement to any such amount as a rebate, dividend or other distribution on the basis of information relating to such Customer held by the Network User and in accordance with the Distributor's directions for such calculations from time to time.

14.1.2 All such amounts shall be received and at all times held on trust by the Network User for the benefit of such Customers as the Distributor may by notice to the Network User elect from time to time, subject at all times to the directions of the Distributor.

14.1.3 All such amounts shall be held by the Network User in a separate interest bearing account, whenever such amount is required (in terms of the Distributor's directions to the Network User) to be held by the Network User before being applied as a rebate, dividend or other distribution of any nature to Customers for more than one Business Day. Any interest earned on that amount shall belong to the Distributor and shall be paid by the Network User (net of any withholding tax) to the Distributor as directed by the Distributor.

14.1.4 All such amounts shall be applied as a credit against any amounts payable by any Customers of the Network User as the Distributor may direct. If for any reason such amount is unable to be applied by the Network User to the benefit of a Customer (by way of example but without limitation, where a Customer ceases to be a Customer and their account with

the Network User has a credit balance after the date of processing of the rebate, dividend or other distribution) the Network User shall as soon as practicable refund to the Distributor the amount received in respect of such Customer and provide the names and last known addresses of such Customers to the Distributor.

14.2 Requirements for Delivery of Dividends etc: The following provisions shall apply to notification of Customers of the processing of any rebate, dividend or other distribution of any nature to Customers pursuant to clause 14.1.

14.2.1 The Network User shall clearly acknowledge in writing in a form reasonably required by the Distributor in its statements provided to Customers the amount of such rebate, dividend or other distribution and that such rebate, dividend or distribution is being provided to the Customer by the Distributor and Waipa Networks Trust.

14.2.2 The Network User shall insert the Distributor's promotional material into Customers' statement envelopes for statements showing a rebate, dividend or other distribution, as the Distributor may reasonably require.

14.2.3 Other than the cost of production of the Distributor's promotional materials as contemplated by clause 14.2.2 and any costs payable by the Distributor under clause 14.2.4, the Network User shall meet all its costs of complying and shall comply with this clause 14 without cost to the Distributor.

14.2.4 The Distributor shall indemnify the Network User against any costs, losses, liabilities, claims, charges, demands, expenses or actions which may be incurred by the Network User or which may be made against the Network User as a result of or in relation to any illegal, defamatory or offensive content in the Distributor's promotional materials contemplated by clause 14.2.2, except where such costs, losses, liabilities, claims, charges, demands, expenses or actions arise as a result of or in connection with any breach by the Network User of its obligations under this Agreement.

15. USE OF THE DISTRIBUTION NETWORK TO SUPPLY ELECTRICITY

15.1 Co-operation by the Network User: The Network User shall co-operate with the Distributor to ensure that the integrity of the Distribution Network is maintained at all times and as the Distributor may otherwise reasonably require from time to time for the purpose of or incidental to its role as the operator of the Distribution Network. The Network User however acknowledges the autonomy of the Distributor as the operator of the Distribution Network and other than

in accordance with this agreement the Network User shall not and shall not claim to be entitled to restrict the Distributor from conducting its own affairs to the best of its ability in its own interests or in the interest of the Distribution Network generally.

15.2 Co-operation by the Distributor: To the extent that the Distributor can, having regard to its obligations to Other Network Users, the Distributor shall co-operate with the Network User as the Network User may reasonably require from time to time for the purpose of or incidental to the operation of the Network User's business. The Distributor however acknowledges the autonomy of the Network User as the operator of its business and other than in accordance with this agreement the Distributor shall not and shall not claim to be entitled to restrict the Network User from conducting its own affairs to the best of its ability in its own interests.

16. PROVISION OF PERFORMANCE BOND OR BANK UNDERTAKING

The Distributor may, as a condition of entering into this Agreement or otherwise at any time on giving written notice of 10 Business Days to the Network User, require the Network User to provide evidence of a credit rating satisfactory to the Distributor and if such evidence is not provided the Distributor may require the Network User to provide a performance bond or bank undertaking:

16.1 Amount: for an amount equal to the greater of \$25,000 or one sixth of the total Charges payable by the Network User in the previous 12 months or, where the request is made within the first 12 months of this Agreement, one sixth of the forecast total Charges for that 12 month period, determined by the Distributor acting reasonably and in good faith; and

16.2 Terms: on such other terms and conditions and by any financial institution that the Distributor may reasonably require,

to secure payment of the Charges by the Network User. The Distributor and the Network User may agree in writing the circumstances in which such a bond or undertaking would be required.

17. DEFAULT AND TERMINATION

17.1 Distributor can call for Payment Under Bond: If the Network User fails to pay any amount due and owing from the Network User under this Agreement and the default is unremedied at the expiry of five Business Days immediately following the giving of notice by the Distributor to the Network User of such non payment the Distributor may:

17.1.1 where the unpaid amount is \$2,000 or more, call immediately for payment under any bond held pursuant to clause 16; and

17.1.2 if either:

(a) no bond is held pursuant to clause 16 and the unpaid amount is \$2,000 or more; or

(b) a bond is held pursuant to clause 16 but the Distributor is unable (whether because of a cap in the amount payable under the bond or otherwise) to recover the unpaid amount in full and the shortfall is \$2,000 or more,

give 5 Business Days (or such longer period as the Distributor agrees) notice to the Network User terminating this Agreement.

17.2 Disconnection of Points of Supply: If:

17.2.1 the Network User fails to perform or comply with its obligations under this Agreement; and

17.2.2 such failure relates to particular Points of Supply; and

17.2.3 such failure remains unremedied 10 Business Days following the giving of a notice to remedy such failure by the Distributor, such failure being capable of remedy and the Network User is not taking steps which in the Distributor's sole opinion, are reasonable, to remedy that failure,

then, in addition to any other rights under this Agreement, the Distributor, after giving prior notice to the Network User, may disconnect the Points of Supply to which the default relates.

17.3 Notice of Termination: If:

17.3.1 the Network User fails in any material respect to comply with its obligations under this Agreement (other than an obligation to pay amounts of \$2,000 or more, in which case clause 17.1 applies); and

17.3.2 such failure remains unremedied 10 Business Days following the giving of a notice to remedy such failure by the Distributor (such failure being capable of remedy and the Network User is not taking reasonable steps to remedy that failure),

the Distributor may give 5 Business Days (or such longer period as the Distributor agrees) notice to the Network User terminating this Agreement.

17.4 Termination on Option: Either Party may terminate this Agreement by notice in writing to the other Party. Termination shall be deemed to be with effect from the date of such notice or such other date referred to in such notice. Such notice may be given by a Party upon the happening of any of the following events:

17.4.1 the other Party is unable to pay its debts as they fall due for the purposes of section 287 of the Companies Act 1993; or

17.4.2 the other Party is removed from the Register of Companies or is subject to liquidation (namely an application for or an order is made for or an effective resolution is passed for its liquidation) or a petition for winding up of the other Party is made except for the purposes of a reconstruction or relating to a bona fide disputed debt.

17.5 No Negation of Prior Rights/Obligations by Termination: Termination of this Agreement in no way negates the rights and obligations of the Parties up to the time of termination with respect to Line Function Services and Charges specified as part of the Agreement. Termination will be without prejudice to any other rights and remedies of the Distributor. Without limitation to the foregoing, notwithstanding termination the following clauses shall remain in full force and effect:

17.5.1 clause 4 to the extent that it relates to Charges and the calculation of Charges for the period prior to the effective date of termination;

17.5.2 clause 6 to the extent that it relates to information provided by the Network User under clause 4.2 relating to the period prior to the effective date of termination;

17.5.3 clause 11 to the extent that it relates to the period prior to the effective date of termination;

17.5.4 clauses 12.3 and 12.4 to the extent that they relate to disputes arising out of circumstances prior to effective date of termination;

17.5.5 clause 13.1 to the extent that such details relate to circumstances arising as a consequence of the termination of this Agreement;

17.5.6 clause 13 to the extent that it relates to information in respect of the period prior to the effective date of termination;

17.5.7 clause 17.5;

17.5.8 clause 19;

17.5.9 clause 20;

17.5.10 clause 22; and

17.5.11 clause 23.

17.6 In addition to any other termination right in this Agreement, either Party may terminate this Agreement 5 Business Days after notice is given by either Party to the other Party terminating this Agreement following any continuous period of 180 Business Days or more during which the Network User has not supplied any Customers with electricity using the Distribution Network.

18. FORCE MAJEURE

18.1 Consequences of Circumstances Force Majeure on an Obligation: If either Party is unable to carry out any of its obligations under this Agreement because, whether directly or indirectly, of an event or circumstances of Force Majeure this Agreement will remain in effect but except as otherwise provided, the obligation which is unable to be carried out or performed, will be suspended without liability for a period equal to the period of the event or circumstance of Force Majeure. The following provisions shall apply to such suspension of performance.

18.1.1 The non-performing Party shall where reasonably practicable give the other Party prompt notice describing the event or circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure.

18.1.2 The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure.

18.1.3 No obligations of either Party that accrued before the Force Majeure caused the suspension of performance shall be excused as a result of the Force Majeure.

18.1.4 The non-performing Party shall use all reasonable efforts to remedy its inability to perform as quickly as possible. The

Parties acknowledge that such "reasonable efforts" shall not require the non-performing Party to settle strikes, lockouts or industrial disputes where to do so is against its better judgement.

- 18.2 Suspension of Performance:** Where an event or circumstance of Force Majeure results in the Distributor failing to make the Distribution Network available for the conveyance of electricity the Network User's obligation to pay Line Function Charges in respect of the Customers' Points of Supply to which conveyance is interrupted as a result of the event or circumstance of Force Majeure will be suspended for a period equal to the number of whole days that event or circumstance of Force Majeure continues.
- 18.3 Termination of Force Majeure Service:** If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either Party to resume performance of its obligations under this Agreement for a period of no less than 180 days, that Party may on not less than 10 Business Days prior written notice terminate this Agreement.

19. LIABILITY

- 19.1 Exclusions from Distributors Liability:** Notwithstanding any other provision of this Agreement, the Distributor shall not in any circumstances be liable to the Network User for:
- 19.1.1** momentary fluctuations in the voltage or frequency of electricity conveyed;
 - 19.1.2** any failure to convey electricity or to satisfactorily convey electricity caused by no or reduced injection of supply of electricity into the Distribution Network;
 - 19.1.3** any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service caused by any defect or abnormal conditions in or about the Customer's Premises;
 - 19.1.4** any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service caused by the Customer or any other person other than the Distributor or the Distributor's Agents failing to observe or comply with the Network Connection Standards;
 - 19.1.5** failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service caused by outages necessary for the inspection of, or alteration,

repairs or additions to, any part of the Distribution Network in accordance with Good Industry Practice;

19.1.6 failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service in accordance with clause 9.1;

19.1.7 any damage caused as a result of any action of the Network User or any third party not under the control or supervision of the Distributor and/or an event of Force Majeure; or

19.1.8 any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signal Service or to perform any other obligation under this Agreement where, notwithstanding such failure, the Distributor has acted in accordance with Good Industry Practice.

19.2 Exclusions from Network Users' Liability: The Network User shall not in any circumstances be liable to the Distributor for:

19.2.1 any failure to perform any obligation pursuant to this Agreement caused by the Distributor's failure to comply with the same;

19.2.2 any failure to perform any obligation pursuant to this Agreement caused by any defect or abnormal conditions in the Distribution Network.

19.3 Exclusion of Consequential Loss etc: The Distributor's liabilities shall be limited to any direct, reasonably foreseeable physical loss or damage. The Distributor shall not be liable to the Network User for:

19.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill of any person, including the Network User, a third party or a Customer; or

19.3.2 any indirect or consequential loss; or

19.3.3 any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.

19.4 Limitation on Liability: If there is any event or circumstances other than those described in clause 19.1 resulting in liability to the Network User whether in contract or tort or otherwise, then notwithstanding any other provision of this Agreement the Distributor (including its directors, officers, employees, authorised agents, contractors, subcontractors and professional advisors) shall be liable, up to the maximum amount specified in Schedule 3 for any single event or circumstances of failure (and a series of such

events or failures arising from the same event or circumstances shall be a single event or circumstance of failure) and up to the maximum sum specified in Schedule 3 in respect of events or circumstances of failure occurring in any one 365 day period. This limitation shall not apply in relation to the obligation of the Distributor to pay for a service or product provided by the Network User.

19.5 Contracts (Privity) Act 1982: The benefit of clauses 19.1, 19.2, 19.3 and 19.4 are intended to and shall extend to the officers, employees, and agents of the Party concerned and to be enforced by them pursuant to the Contracts (Privity) Act 1989.

20. INDEMNITY AND INSURANCE

20.1 Indemnity: The Distributor may by notice in writing to the Network User require the Network User to, and the Network User shall, indemnify the Distributor, and its respective directors, officers, employees, contractors, agents and advisers (the "**indemnified persons**") against any costs, losses, liabilities, claims, charges, demands, expenses or proceedings suffered or incurred by or brought against any of the indemnified persons in relation to or in consequence of:

20.1.1 the Network User's breach of its obligations under this Agreement; or

20.1.2 any action or inaction by the Network User in breach of its obligations pursuant to the terms of this Agreement; or

20.1.3 any action or inaction by the Distributor at the request of the Network User including but not limited to any request of the Network User for the Distributor to provide Connection Services; or

20.1.4 any action or inaction by the Network User's provider of Connection Services while operating on the Distribution Network under clause 10.3.

20.2 Public Liability Insurance: In the circumstances contemplated by clause 20.1, the Network User shall effect and shall maintain for the term of this Agreement, public liability insurance and any other insurance cover which the Distributor may reasonably require with insurers, who are, and such policies to be in language which is, acceptable to the Distributor, in respect of the Network User's obligations to indemnify the Distributor pursuant to clause 20.1. Such policy shall name the Distributor and its directors, officers, employees, agents, subcontractors and representatives as additional insured and shall have minimum policy limits of \$5,000,000 for any one occurrence. If required by the Distributor,

the Network User shall provide evidence of the insurance required to be maintained under this clause.

20.3 Obligation to Pay: The obligation of the Network User to make any such payment contemplated by clause 20.1 shall arise and subsist:

20.3.1 whether or not:

- (a) the Distributor has actually made any payment or performed any obligation, in terms of the matters referred to in clause 20.1;
- (b) the Network User disputes that the Distributor is legally obliged to make any such payment or perform any such obligations;

20.3.2 notwithstanding that the Distributor is not able to make available to the Network User any receipt, notice of demand or other document arising whatsoever in relation to the Distributor's obligations in respect of which it is indemnified by the Network User under clause 20.1; and

20.3.3 notwithstanding any other matter or thing which might or could but for this provision, enable the Network User to avoid, defer or postpone the making of such payment.

21. CONTRACTS (PRIVITY) ACT 1982

21.1 Without limiting any other provision of this Agreement, the Network User shall ensure that every agreement between it and each of its Customers contains terms which have exactly the same effect as clauses 7, 8, 9.1, 12.2, 13, 18, 19, and 20 and that such terms are expressed to be intended to be for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

21.2 Where the Network User includes a clause in its contract with a Customer to comply with a term of this Agreement directing the Network User to include such a clause the Network User shall ensure that such clause is expressed to be for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

22. DISPUTE RESOLUTION

In the event of a dispute arising between the Parties about interpreting or implementing this Agreement's provisions:

22.1 Negotiate: The Parties will use their best endeavours to resolve the dispute by negotiation in good faith. The Parties will attend at least

one meeting to discuss an attempt to resolve the dispute as a condition precedent to taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief);

22.2 Mediation: If the dispute cannot be resolved in accordance with clause 22.1, then the Parties will refer the dispute to mediation by a mediator jointly appointed by them and failing agreement, a mediator appointed by the chairperson for the time being of LEADR (New Zealand) provided that each Party would bear its own costs in respect of any mediation; and

22.3 Arbitration: If the dispute is not resolved within 20 Business Days of its reference to mediation in accordance with clause 22.2, then the Parties will refer the dispute to arbitration by a single arbitrator agreed on by both Parties or, failing agreement, to an arbitrator appointed by the President (or equivalent officer) for the time being of the New Zealand Law Society. The dispute referred to arbitration will be resolved according to the rules and principles of arbitration established by LEADR as amended from time to time. The Parties acknowledge that no reference to the mediation or to the outcome of the mediation shall be made during the arbitration. The determination of the arbitrator will be final and binding on the Parties. Arbitration costs will be apportioned between the Parties in the manner determined by the arbitrator.

23. CONFIDENTIALITY

23.1 Parties to Preserve Confidentiality: Each Party undertakes with the other Party that it will preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of, any Confidential Information except as set out in clause 23.2.

23.2 Disclosure of Information in Certain Circumstances: Either Party may disclose Confidential Information in the following circumstances:

23.2.1 where either Party is required:

- (a) by any statutory or regulatory obligation, body or authority; or
- (b) by any judicial or other arbitration process; or
- (c) by the regulations of any stock exchange upon which the share capital of either Party is from time to time listed or dealt in; or

- (d) by direction of the government in relation to a sale of any shares in any Party or its holding company; or

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

- (a) the information is disseminated only on a “need to know” basis;
- (b) recipients of the Confidential Information shall be made fully aware of the Party’s obligations of confidence in relation thereto; and
- (c) any copies of the information clearly identify it as Confidential Information.

24. ASSIGNMENT AND AGENTS

24.1 No Assignment, Encumbrance on Novation: The Network User shall not assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the Distributor, which consent shall not be unreasonably withheld.

24.2 No Relief from Liabilities/Performing on Assignment: Any consent to an assignment or other disposition granted under clause 24.1 may not relieve the Network User from liability for performance of any obligations, responsibilities or duties so assigned.

24.3 Parties can Appoint Agents: Subject to obtaining the Distributor's prior written approval to the appointment of the Network User's Agent (including, but without limitation as contemplated by clause 10 in respect of persons to provide Connection Services); each Party may appoint agents to act on its behalf. Any such appointment shall not relieve the Party making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents.

25. RELATIONSHIP OF THE PARTIES

The Parties wish to establish by this Agreement a relationship between them that will be long term and mutually beneficial. The Parties acknowledge that in their day to day operation of this Agreement they may encounter circumstances not expressly or fully provided for in this Agreement. The Parties agree that in such circumstances they will each act in a manner which:

25.1 Reasonable: is reasonable towards the other; and

25.2 Mutually Beneficial: fosters a long term relationship with the other which is mutually beneficial for both parties.

26. NON-WAIVER

The:

26.1 Strict Performance: failure of either Party to insist in any one or more instances upon the strict performance of any terms of this Agreement; or

26.2 Waiver: waiver by either party of any term or right hereunder or of any default by the other Party;

shall not be deemed or construed as a waiver by such Party of any such term, right or default in the future.

27. AMENDMENTS

No amendment to this Agreement shall be effective unless made in writing and signed by both Parties. In the event that from time to time industry practice in the electricity industry changes or there is a variation to the electricity industry environment which has or has the potential to have a significant impact on this Agreement, the Parties shall negotiate in good faith from time to time with a view to maintaining the respective relative positions of the Parties contemplated by this Agreement.

28. PARTIAL INVALIDITY

If any provision of this Agreement is or becomes or is declared invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not prejudice or affect any other provisions of this Agreement which will continue in full force and effect notwithstanding such invalidity, illegality or unenforceability.

29. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes and replaces any previous agreements, communications and understandings between the Parties (whether verbal or written) with respect to the subject matter of this Agreement, including but without limitation, any other Use of System Agreement entered into by the Parties.

30. NOTICES

30.1 Notices to be in Writing: Any notice or other communication under this Agreement must be in writing and made either by facsimile or personal delivery to the recipient at their facsimile or address. Each notice must be marked for the attention of the person or office holder (if any), of the recipient. The initial facsimile number, address

and relevant person or office holder of each Party is as set out in Schedule 2.

30.2 Deemed Receipt: No communication is effective until received. A communication will however be deemed to have been received by the recipient:

30.2.1 in the case of personal delivery, when received by the intended recipient; and

30.2.2 in the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5.00 pm (in the place of receipt) or a non-Business Day, on the next Business Day after the date of despatch.

SIGNED by WAIPA NETWORKS LIMITED by:

Full name of Director/Officer

Signature of Director/Officer

Full name of Director/Officer

Signature of Director/Officer

SIGNED by ----- by:

Full name of Director/Officer

Signature of Director/Officer

Full name of Director/Officer

Signature of Director/Officer

SCHEDULE 1

CHARGES

Current charges as published in the Disclosure section of the Waipa Networks website: www.waipanetworks.co.nz.

NETWORK SERVICES

Current charges as published on the Waipa Networks website: www.waipanetworks.co.nz, or as otherwise negotiated.

SCHEDULE 2

COMMENCEMENT DATE AND ADDRESSES FOR NOTICES

Commencement Date: -----

Addresses for Notices: -----

DISTRIBUTOR:

Address: Waipa Networks Limited
486 Alexandra Street
P O Box 505
TE AWAMUTU

Attention: Chief Executive Officer

Telephone: 07 870 4014

Facsimile: 07 870 2401

NETWORK USER:

Address: -----

Attention: Chief Executive Officer

Telephone: -----

Facsimile: -----

SCHEDULE 3

LIMITATION OF LIABILITY

1. **Maximum Liability for single event and any 365 day period:** Five hundred thousand dollars (\$500,000) (including GST if any)

SCHEDULE 4

LOAD MANAGEMENT SERVICE

- 1. It is acknowledged that :**
 - 1.1** the security of the Distribution Network is dependent on a Load Management Service; and
 - 1.2** the level of Transpower Charges is determined, amongst other things, by load levels at the Grid Connection Points.

- 2. The Distributor and the Network User encourage and support the concept of a Load Management Service to optimise network asset utilisation and reduce costs for end use customers. The Distributor's priorities will be to meet the needs of the Distribution Network by:**
 - 2.1** reducing the Distribution Network load in the event of emergencies occurring on the Distribution Network or on the Transpower Network or in the event of inadequate generation capacity being available to meet demand; and
 - 2.2** then to arrange the Distribution load to ensure compliance with any grid security requirement imposed on the Distributor as a condition of connection of the Distribution Network to the Transpower Network; and
 - 2.3** then to manage the cost of demand for electricity at Grid Connection Points; and

- 3. For the purposes of clause 2.3 of this Schedule, the Distributor will consult with the Network User and with all Other Network Users from time to time as to the basis of the Load Management Service which the Distributor is able to provide to users of the Distribution Network with the intention that the Distributor will seek to facilitate an equitable basis for the Network User and all Other Network Users to minimise the overall level of the Transpower Charges by means of a process of a Load Management Service.**

- 4. As a condition of its contractual arrangements with Transpower for the connection of the Distribution Network to the Transpower Network, the Distributor has agreed to the automatic tripping of specified load in the event of generation failures or failure on the Transpower Network. The Distributor will consult with the Network User as to the selection of specified feeders.**

- 5. Nothing in this Schedule limits the rights of the Distributor to interrupt or reduce the conveyance of electricity under clause 9 (Interruption to Supply).**

- 6. Except in the event that emergency action has to be taken to protect the health and safety of persons, to prevent damage to property or to ensure the security of the Distribution Network or the integrity of the Transpower**

Network, the Distributor shall comply with its Demand Side Management Terms contained in Schedule 1.

SCHEDULE 5
LOSS FACTORS

All Standard and Fixed 11kV Customers	4.00%
All 400V Customers	8.20%