
Use of System Agreement

BETWEEN

Nelson Electricity Limited

AND

{Retailer Name}



USE OF SYSTEM AGREEMENT

AGREEMENT dated 2017

BETWEEN **NELSON ELECTRICITY LIMITED** a duly incorporated company having its registered office at 1-3 Alfred Street, Blenheim ("**the Distributor**")

AND **{RETAILER NAME}** a duly incorporated company having its registered office at **{ADDRESS}** ("**the Network User**")

RECITALS

- A. The Distributor owns and operates the Distribution Network and the Network User is an Electricity retailer that wishes to use the Distribution Network to supply Electricity to Consumers.
- B. The Network User has agreements or intends to enter into agreements to supply Consumers with Electricity.
- C. The Distributor agrees to allow the Network User to use its Distribution Network and to provide the Network User with Line Function Services on the terms and conditions set out in this Agreement.
- D. The Distributor and the Network User acknowledge that, in addition to this Agreement, they are separately bound by the Code.

AGREEMENT

1. Definitions and Interpretation

1.1 In this agreement, unless the context otherwise requires:

"Act" means the Electricity Act 1992;

"Agreement" means this Agreement as signed by the Distributor and the Network User;

"Bank Base Rate" means the 90-day commercial bill rate as published on the "BKBM" page (or its successor or equivalent page) of the Reuters Monitor Screen (or its successor or equivalent screen) at or about 10.30 am on the day of calculation or in the absence of a quoted rate, the rate determined by the ANZ Bank being the average of the buy rates applicable on that day to bank accepted 90 day bills of exchange, or in the absence of such a

determination, such rate as the Distributor may determine as the nearest practicable equivalent;

“Business Day” means any day of the week other than Saturday, Sunday or a statutory holiday observed in either of Blenheim or Wellington;

“CGA” means the Consumer Guarantee Act 1993.

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

“Charges” means the charges in Schedule One which are payable by the Network User to the Distributor in accordance with this Agreement, which may be varied from time to time pursuant to this Agreement;

“Code” means the Electricity Industry Participation Code 2010 made under the Act;

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

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

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

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

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

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

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

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

“Consumer’s Point of Supply” means the location in the electrical circuit where ownership of the equipment relating to the supply of Electricity changes from the Distributor to the Consumer as determined by the Distributor;

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

“Date of Commencement” means the date this Agreement is signed by both parties;

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

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

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

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

“Effective Date” shall mean the date this Agreement is executed by both parties;

“EIEP” means:

- (a) an electricity information exchange protocol approved by the Electricity Authority and published on the Electricity Authority’s website www.ea.govt.nz; or
- (b) an electricity information exchange protocol that is additional to those published on the Electricity Authority’s website, agreed by the parties and recorded in schedule 3;

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

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

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

“Force Majeure” means any event or circumstance which is beyond the reasonable control of either Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including, but not limited to, acts of God, strike, lock-out or other industrial disturbance, act of a public enemy, or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, epidemics or disease, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, acts of animals, lightning, fire, storm, flood, earthquake, accidental collisions, accumulation of snow or ice, lack of water arising from weather or environmental problems, lack of adequate fuel resources, explosion, fault or failure of any plant, apparatus or equipment which could not have been prevented by Good Industry Practice, governmental restraint, act of parliament, other legislation, bylaw, or the failure or deficiency of any Generator or Transpower to supply Electricity to the Network’s Point of Supply or any deficiency or the consequences thereof in such supply to the extent that such failure or deficiency could not have been prevented by Good Industry Practice by the Distributor and the discontinuance or deficiency of supply or failure to convey Electricity or to do so in the required quantity which occurs as a result of the Distributor selecting at its discretion a Consumer’s Point of Supply for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Generator” means any person who generates Electricity supplied to the Network User;

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

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

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

“Line Function Services” means the provision, maintenance and operation of Fittings for the conveyance of Electricity to Consumers’ Points of Supply in accordance with Good Industry Practice and includes Remote Signal Services and Remote Data Communication Services;

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

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

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

“Loss Adjustment Factor” means the factor or factors by which Electricity measured at the Consumer’s Point of Supply is adjusted in accordance with the Code. These factors will be reviewed from time to time by the Distributor and new factors issued. A copy of the factors currently applicable is included in Schedule Three;

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

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

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

“Network Connection Standards” means the Distributor’s written technical and safety standards for connection to the Network that are issued by the Distributor and updated from time to time, and include:

- (a) all referenced relevant regulations and industry standards relevant; and
- (b) all externally referenced publications, such as website links in those regulations and standards;

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

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

“Network User’s Equipment” means the Fittings and Metering Equipment belonging to the Network User which are from time to time installed in, over, or upon a Consumer’s Premises;

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

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

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

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

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

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

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

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

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

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

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

“Reconciliation Rules” means the reconciliation rules contained in the Code

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

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

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

“Retailer” means any independent retailers of Electricity who use, or proposes to use, the Distribution Network for the conveyance of Electricity.

“Rights of Access” means:

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

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

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

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

2. Use of the Distribution Network

2.1 Subject to the terms and conditions of this Agreement, the Distributor shall:

- (a) Allow the Network User to use the Distribution Network for purposes of conveying Electricity to each Consumer’s Point of Supply.
- (b) Operate and maintain the Distribution Network in accordance with Good Industry Practice.
- (c) Use reasonable endeavours to maintain the Network Performance standards set out in Schedule Five.
- (d) Provide the Network User with Line Function Services, including Remote Signal Services and Remote Data Communication Services in accordance with Schedule Six.
- (e) Publish any applicable Network Connection Standards on its website.

2.2 The Distributor is not obliged to accept any request from the Network User or a Consumer to:

- (a) Upgrade its Line Function Services to any Consumer's Point of Supply beyond the standards required in this Agreement; or
- (b) To extend the Distribution Network for purposes of supplying Electricity to any existing or potential Consumer.

2.3 If any request to upgrade Line Function Services or to extend the Distribution Network is made by the Network User and accepted by the Distributor there may be additional Charges payable in respect to that upgrade or extension and those Charges will be the subject of a separate agreement.

3. Network User's Obligations

3.1 Without limiting any other obligation of the Network User under this Agreement, the Network User must:

- (a) For new Consumer connections and changes to Consumer connections, supply the Distributor with a completed Customer Information Sheet in the form, as attached in Schedule Two which may be modified from time to time for each Consumer.
- (b) Undertake any works which, in the reasonable opinion of the Distributor, are required to be undertaken before the supply of Electricity to the Consumer can commence.
- (c) Provide any evidence reasonably required by the Distributor that all Fittings at the Consumers Point of Supply comply in all respects with the Distributor's Network Connection Standards.
- (d) Ensure that Metering Equipment is in place which complies with the Code.
- (e) Arrange for the execution of Line Function Services Agreement between the Distributor and the Consumer, unless the Distributor is to provide Line Function Services to the Network User and not the Consumer.
- (f) Enter into an agreement with each Consumer which contains the provisions required by this Agreement to be included in such agreements, including those provisions particularly identified in clause 13.1.
- (g) Provide all information which has been requested of it by Transpower in accordance with any contractual relationship that the Distributor may have with Transpower which requires information to be provided by Network Users.
- (h) Meet the Prudential Requirements of Schedule Four.
- (i) To comply with the Distributor's directions for the holding and payment of funds to be applied for the Consumer's benefit under the Distributor's consumer rebate scheme as referred to in Schedule 7.

4. Commencement and Termination

- 4.1 Unless terminated earlier pursuant to the provisions of this Agreement, this Agreement shall commence on the Date of Commencement and shall continue until 5 Business Days after the Network User gives written notice to the Distributor that termination is required and such termination is effected in accordance with this Agreement.
- 4.2 The Network User may not terminate this Agreement pursuant to clause 4.1 unless:
- (a) the Network User has arranged for another person to supply the Consumers that are supplied by the Network User before the Agreement is terminated and that person meets the reasonable requirements of the Distributor (including, without limitation, having entered into a use of system agreement with the Distributor and is complying with that agreement); or
 - (b) the Distributor is advised by the Network User that the Network User no longer has any Connected Consumers.
- 4.3 In addition to the termination provisions of this Agreement, the Distributor will be entitled to terminate this Agreement by giving the Network User 5 Business Days' notice following any continuous period of 180 days or more during which the Network User has not supplied any Consumers with Electricity otherwise than due to an event or circumstance of Force Majeure.

5. Line Function Services Agreement

- 5.1 Clauses 5.2 to 5.4 (both inclusive) shall only apply in respect of a Consumer and a Consumer's Point of Supply where the Distributor has a Line Function Services Agreement with that Consumer in respect of that Consumer's Point of Supply. Unless the Network User otherwise agrees in writing, the Distributor will only enter into a Line Function Services Agreement with a Consumer, if that Consumer has a supply capacity which exceeds 250kVA at the Consumer's Point of Supply.
- 5.2 Subject to clause 5.1, the Network User shall not do anything, nor cause any Consumer to do anything, which results in the Consumer breaching its obligations to the Distributor under a Line Function Services Agreement.
- 5.3 Subject to clause 5.1 and notwithstanding the provisions of this Agreement, the Distributor shall be entitled to:
- (a) interrupt the supply of Electricity to a Consumer's Point of Supply; and/or
 - (b) Disconnect a Consumer's Point of Supply,
- at any time in accordance with the provisions of any Line Function Services Agreement between the Distributor and the relevant Consumer or, if applicable, pursuant to the Act, and to terminate any such Line Function Services Agreement at any time in accordance with

the provisions of such agreement. The Distributor shall, where practicable, consult with the Network User during discussions with the Consumer prior to interruption of the supply of Electricity or Disconnection and will attempt to provide the Network User with a copy of any final notice issued to the Consumer prior to Disconnecting the Consumer's Point of Supply.

- 5.4 The Distributor shall give the Network User notice of any Disconnection and/or termination referred to in clause 5.3 as soon as practicable following such Disconnection and/or termination.

6. Equipment

- 6.1 All items of the Distributor's Equipment situated on a Consumer's Premises will remain the sole and absolute property of the Distributor. The Distributor may register notice of its ownership rights on the Personal Property Securities Register. If circumstances so require, the Network User will assist the Distributor to obtain an undertaking from the Consumer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of the Distributor's Equipment related to the Consumer's Connection and deemed necessary by the Distributor in accordance with Good Industry Practice to be housed at the Consumer's Premises.

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

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

- 6.3 The Distributor will not, and will ensure that its employees, agents and invitees do not, interfere with or damage the Network User's Equipment or the Consumer's Equipment (including, without limitation, after termination of this Agreement for a minimum period of twenty business days) without the prior written consent of the Network User or the Consumer, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property, and shall take all reasonable precautions necessary to protect that equipment from damage, complying with any reasonable requests about such protection made by the Network User or Consumer. If the Network User's Equipment or the Consumer's Equipment is damaged by the negligence or

wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, then the Distributor shall pay the cost of making good the damage to the Network User or the Consumer (as the case may be). This clause is for the benefit of the Consumer and may be enforced by the Consumer pursuant to the Contracts (Privity) Act 1982.

7. Disconnection of Consumer

7.1 The Distributor will Disconnect a Consumer's Point of Supply upon notice from the Network User requesting such Disconnection, where arrangements have been put in place for the Distributor to undertake those services for the network user, (in which case the Distributor will promptly notify the Network User of the date and time of the Disconnection).

7.2 The Distributor may Disconnect a Consumer's Point of Supply

- (a) upon an event of default occurring as set out in clause 15.3; or
- (b) if this Agreement is terminated by either Party; or
- (c) if the Consumer fails to grant the Distributor the Rights of Access contained in clause 12; or
- (d) if the Consumer's Equipment or the Network User's Equipment in respect of that Consumer's Point of Supply does not comply with the requirements of this Agreement; or
- (e) if, in the Distributor's reasonable opinion, the Consumer's Equipment or the Network User's Equipment in respect of that Consumer's Point of Supply is unsafe.

In the case of clause 7.2(a) and 7.2(d) the Distributor shall provide the Network User 5 Business Days written notice of its intention to Disconnect the Consumer, stating the reasons for such Disconnection and which provides a reasonable time for the Consumer or Network User to comply with the Distributor's requirements before Disconnection is effected. The Distributor will not Disconnect if the reason for the Disconnection is remedied to the satisfaction of the Distributor prior to the expiry of the notice period, or all reasonable steps necessary for remedying the reason have been and continue to be taken.

7.3 Where a Consumer's Point of Supply is Disconnected pursuant to clause 7.1, the Network User shall indemnify the Distributor against all liabilities incurred by the Distributor as a result of such Disconnection including claims by a Consumer of wrongful Disconnection, provided that the Distributor has acted in accordance with the Network User's instructions and Good Industry Practice in relation to the Disconnection.

7.4 Should the Distributor Disconnect a Consumer's Point of Supply in accordance with clause 7.1, or Reconnect a Consumers Point of Supply upon request by the Network User, the Network User shall pay to the Distributor the Charges for such Disconnection or Reconnection (as the case may be).

7.5 If a Consumer's Point of Supply is:

- (a) Disconnected and
- (b) the Distributor reasonably considers that:
 - (i) the Disconnection of the Consumer's Point of Supply was requested in order for that Consumer to avoid Charges during a period in which the Consumer's Premises were unoccupied; or
 - (ii) the Disconnection relates to a Consumer's Point of Supply that is used to operate seasonal plant or equipment; and
- (c) within 12 months of that Disconnection, Reconnection of that Consumer's Point of Supply is requested; then

the Network User shall pay the Charges for the period from the Disconnection to the Reconnection as advised to the Network User by the Distributor within a reasonable time of the Reconnection occurring.

8. Interruption of Supply

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

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

8.2 Where the Distributor interrupts the supply of Electricity to any Consumer's Point of Supply

pursuant to clause 8.1, it shall:

- (a) where practicable give the Network User 7 Business Days prior notice of its intention to interrupt the conveyance of Electricity unless, in the reasonable opinion of the Distributor, the interruption must be effected immediately due to the nature of the need for it. The notice shall state the date, the time, the Consumer Installation Numbers affected;
- (b) if the interruption is unplanned and no prior notice is given, as soon as it is practicable give the Network User notice of the area affected, the reasons for the interruption, and its expected duration;
- (c) where Transpower request an interruption that can be planned, consult with the Network User with regard to the timing of the interruption; and
- (d) resume the conveyance of Electricity to the relevant Consumer's Point of Supply as soon as reasonably practicable; and
- (e) act in accordance with Good Industry Practice at all times.

8.3 Where notice is given to the Network User pursuant to clause 8.2(a), and the Network User advises the Distributor more than 3 Business Days before the interruption is to be made, that the interruption is not suitable, the Distributor will endeavour to negotiate with the Network User to find a more acceptable date and time for the interruption. If no agreement is reached, or if the Distributor believes that it is necessary to interrupt the conveyance of Electricity, the Distributor shall be entitled to interrupt the conveyance of Electricity as set out in the notice referred to in clause 8.2(a).

9. Ownership of Electricity

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

9.2 For the purposes of this Agreement Electricity shall be deemed:

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

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

10. No Interconnection

10.1 If there is more than one Consumer's Point of Supply at any Consumer's Premises, the Network User shall specify in its contract with the Consumer that there is to be no interconnection at any time between those Consumer's Points of Supply without the prior

written consent of the Distributor (which may not be unreasonably withheld).

11. Quality of Demand

- 11.1 The Network User shall use reasonable endeavours to ensure that in each contract with its Consumers that if the characteristics of the Consumer's Equipment or demand interferes with the quality of supply of Electricity, (including harmonic voltages and currents injected back into the Distribution Network), to any one or more consumers of any Other Network User (other than the Network User) also using the Distribution Network, or interferes with the operation of any of the Distributor's Remote Signal Services or other Fittings (as those Distributor's Remote Signal Services and Fittings were operated at the Commencement Date, as may be subsequently altered from time to time in accordance with Good Industry Practice), the Consumer shall, upon notice from the Distributor or the Network User, remedy the interference at its cost as soon as practicable (and in any event within 20 Business Days of the date of the notice). If the Consumer fails to remedy the cause within such 20 Business Day period, the Distributor may require the Consumer's Point of Supply to be Disconnected.
- 11.2 The mean Power Factor of the demand placed by a Consumer on the Distribution Network shall not be less than an average of 0.95 lagging over the six highest monthly demands measured at the meter nearest to the Consumer's Point of Supply across the whole supply to that Consumer per Month, and if the mean Power Factor falls below 0.95 lagging over the six highest monthly demands measured at the meter nearest to the Consumer's Point of Supply, the Distributor may charge the Power Factor Charge prescribed in Schedule One. The Distributor or the Network User may, at their discretion, Disconnect the Consumer's Point of Supply or take such other action acceptable to the Distributor to procure compliance of the Consumer's Equipment.
- 11.3 The Network User shall ensure that every agreement between it and each Consumer who does not have a Line Function Services Agreement with the Distributor in respect of each of that Consumer's Points of Supply, shall contain a term to the effect that the Consumer will give employees, agents, subcontractors and other authorised representatives of the Distributor Rights of Access to the Consumer's Equipment for the purpose of remedying any interference pursuant to clause 11.1 or taking any measure pursuant to clause 11.2 or 11.3, and that such term is expressed to be intended for the benefit of the Distributor and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

12. Access

- 12.1 Employees, agents, subcontractors, invitees and other authorised representatives of the Distributor will at all reasonable times have Rights of Access.
- 12.2 Each Party shall not, and shall ensure that none of its employees, agents or invitees, take any action (or omit to take any action) which could result in the Other Party not being able to obtain access to that Other Party's equipment located at a Consumer's Premises.
- 12.3 The Network User shall use reasonable endeavours to ensure that every agreement between it and each Consumer contains terms to the effect that:

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

- (b) the Distributor shall be entitled to Disconnect the Consumer's Equipment from the Distribution Network forthwith upon the Consumer failing to grant the Distributor Rights of Access to any of the Distributor's Equipment.)

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

12.4 The Distributor will exercise its Right of Access to the Consumer's Premises by:

- (a) wherever practicable giving to the Network User and the relevant Consumer reasonable notice of its intention to and the purpose for which it will exercise its Right of Access;
- (b) minimising the inconvenience caused to the Consumer to the extent that it is practicable to do so; and
- (c) observing Good Industry Practice at all times.

12.5 The Rights of Access conferred by this clause 12 are in addition to any right of access the Distributor may have under any statute or regulation.

12.6 If a Consumer fails to grant to the Distributor Rights of Access to the Distributor's Equipment on the Consumer's Premises after the Distributor has given the Network User 5 Business Days written notice of access being required, the Distributor may forthwith Disconnect the Consumer's Point of Supply from the Distribution Network. The Distributor shall not be liable for any loss the Network User may suffer or incur as a result of any such Disconnection. The Network User shall reimburse the Distributor for all costs relating to the Disconnection and of any Reconnection.

12.7 Termination of this Agreement in no way negates the rights and obligations of the parties up to the time of termination with respect to the services and Charges specified as part of this Agreement. Termination will be without prejudice to any other rights and remedies of either Party.

13. Contracts (Privity) Act 1982

13.1 Without limiting any other provision of this Agreement, the Network User shall ensure that every agreement between it and each Consumer:

- (a) requires the Consumer to comply with the reasonable provisions of the Network Connection Standards; and
- (b) includes a prohibition on the Connection or Disconnection of any Consumer's Equipment directly to the Distribution Network without the prior written consent of the Distributor; and
- (c) includes a prohibition on the Consumer interfering with the Distributor's Equipment, or causing or permitting any other person, material, or vegetation to do so; and
- (d) includes a prohibition on the Consumer conveying or receiving or attempting to convey or receive any signal or other form of communication over the Distribution Network, or any part of it, to or from any person other than the Distributor, or causing or permitting any other person to do so without the prior written consent of the Distributor; and
- (e) records that it is the Consumer's responsibility to maintain the lines and poles which convey electricity from the Consumer's Point of supply over and to the Consumer's premises in a safe condition using a suitably qualified person (other than where it is by the law the Distributor's responsibility to maintain such lines); and
- (f) provides that the Consumer is responsible for ensuring that the Electricity (Hazards from Trees) Regulations 2003 are complied with in respect of any trees in respect of which the Consumer has an interest that are near any line forming part of the Network; and
- (g) contains terms which have exactly the same effect as clauses 6, 7.2, 8.1, 10.1, 11.1, 11.2, 11.4, 12.3 and 17.

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.

14. Payment of Charges

14.1 In consideration of the Distributor's performance of its obligations under this Agreement the Network User shall pay to the Distributor the Charges specified in Schedule One. The Charges may be varied by the Distributor from time to time in accordance with clauses 14.7,

14.8 and 14.9.

- 14.2 The Network User shall ensure that the information required is received by the Distributor no later than 5 Business Days after the end of the prior Month. The Distributor, acting reasonably, may, by notice to the Network User, require an audit of all the Network Users' records necessary to verify the accuracy of the information provided. If an error is found in the records during the audit which would result in a variance greater than 0.5% of the total charges paid by the Network User to the Distributor during the last twelve months, the cost of such audit shall be borne by the Network User. If there is no error the cost of such audit shall be borne by the Distributor. Where an error is discovered, the Party which is found to be in debt to the Other Party shall repay that Other Party within 10 Business Days of discovery of the error, and in addition pay interest at the Bank Base Rate from the date the error occurred until the date that payment is made. A Party can dispute any error found in accordance with clause 19.
- 14.3 The Distributor will by the 8th Business Day of each Month (provided the Network User has complied with clause 14.2) invoice the Network User for the Charges payable by the Network User pursuant to clause 14.1 for the prior Month. Should the Network User not comply with clause 14.2, the Distributor may delay invoicing the Network User by the number of days the Network User delays in complying with clause 14.2. In the event that the Network User has not complied with clause 14.2, the portion of any Charges may be estimated by the Distributor in accordance with Good Industry Practice and invoiced to the Network User. A charge or credit shall be made by the Distributor in the first invoice rendered to the Network User following the relevant information becoming available, so that following such adjustment the Network User is charged the Charges that it would have been charged had the information been available, or available in sufficient time.
- 14.4 The Network User shall pay to the Distributor (or to the credit of the Distributor in a New Zealand bank account nominated by the Distributor) the amount of each invoice rendered pursuant to clause 14.3 by the 20th day of the Month in which the same shall have been rendered or, if that day is not a Business Day then on the next Business Day or, 4 Business Days after receipt of an invoice if later.
- 14.5 All Charges payable by the Network User are stated exclusive of GST (if any). The Distributor shall add to such amounts GST and such other tax, charge or levy as may from time to time be required by virtue of any statute or statutory instrument by which the Distributor is bound. The same shall be payable by the Network User contemporaneous with payment of the Charges shown on the invoice.
- 14.6 If the Network User fails to pay any amount due under this Agreement to the Distributor by the due date specified on an invoice, the Distributor may charge, and the Network User will, pay default interest on the amount unpaid at the rate of 3% per annum over the Bank Base Rate from the due date until the date of payment, provided that nothing in this clause shall affect any rights the Distributor may have to discontinue its services under this Agreement for non-payment. Any disputed amount must be paid on the due date. If the disputed amount (or part thereof) is determined in favour of the Network User, the Distributor will incur interest from the date that the payment was made to the date a refund is made to the Network User at the Bank Base Rate on the refunded amount. The Network User shall

indemnify the Distributor in respect of all reasonable costs and expenses incurred by the Distributor in endeavouring to recover any unpaid Charges that are correctly invoiced.

- 14.7 The Distributor may, at its discretion, vary the Charges or any component thereof (including, without limiting the generality of the foregoing, the method of calculating the Charges). Any variation to the Charges shall be final and binding as between the Parties and shall not be the subject of any dispute, mediation, or arbitration. Subject to clause 14.8, the Distributor will not vary the Charges in any particular Consumer Category more than once in any 12 Month period unless the Parties otherwise agree. Nothing in this clause or the content of this agreement prevents the Distributor from changing the chargeable capacity, other similar pricing variables or load group that a consumer is in more frequently than once in any 12 month period based on new or updated information received.
- 14.8 The Distributor may vary the Charges to pass on any variations in charges arising from variations in the charges payable by it to Transpower or for any variations in the charges payable by it for avoided transmission.
- 14.9 The Distributor shall give not less than 60 days' prior written notice before the date on which it intends the varied Charges to take effect (the "Effective Date"), which will set out the Effective Date and details of the variations to the Charges.
- 14.10 Nothing in this clause 14 shall restrict the Parties, if they so agree, to have the Network User render an invoice to the Distributor prepared by the Network User on behalf of the Distributor in respect of the Charges payable by the Network User to the Distributor. Such invoice is to be rendered by the Network User no later than 7 Business Days after the end of the Month for the Charges payable pursuant to clause 14.1 for the prior Month. The Network User shall pay to the Distributor (or to the credit of the Distributor in a New Zealand bank account nominated by the Distributor) the amount of each invoice rendered pursuant to this clause by the 20th day of the Month in which the same shall have been rendered. If such a draft invoice is rendered, the Distributor may request that it and the information on which it is based, be audited in accordance with clause 14.2.

15. Default and Termination

- 15.1 If an event of default occurs and remains unremedied, the non-defaulting Party may give one Business Days' notice in writing to the Party in default terminating this Agreement, without prejudice to any other rights and remedies of the Parties.
- 15.2 On termination or expiry of this Agreement:
- (a) the Network User shall cease its use of the Distribution Network and, if applicable, the Distributor shall cease to provide Line Function Services in accordance with this Agreement; and
 - (b) each Party will return to the Other Party all property of that Party held by the first Party; and

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

15.3 For the purposes of clause 15.1 an event of default occurs if:

- (a) a Party fails to pay (other than by inadvertent error in funds transmission which is discovered and notified by the Other Party and corrected within 2 Business Days) any amount due and owing to the Other Party under this Agreement and the default is unremedied at the expiry of 5 Business Days immediately following receipt of written notice to the Party in default of such non-payment; or
- (b) a Party has to give written notice pursuant to clause 15.3(a) to the Other Party 3 times in any 12 Month period; or
- (c) a Party fails in any material respect to perform or comply with any of its material obligations under this Agreement and (if the failure is capable of remedy) it is not remedied, or it has not started to be remedied, to the reasonable satisfaction of the non-defaulting Party within 5 Business Days (or such longer period as may be specified by the non-defaulting Party) of receiving a written notice from the non-defaulting Party of the failure and requiring it to be remedied; or
- (d) a Party:
 - (i) becomes subject to any distress, attachment, execution or other legal process levied, enforced, sued out on or against any material part of its property and is not discharged or stayed within 10 Business Days; or
 - (ii) has a receiver or statutory manager appointed to the whole or any substantial part of its undertaking, property or assets; or
 - (iii) fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
 - (iv) is removed from the register of companies.

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

15.5 The provisions of clauses 6, 12, 14.6, 17, 19 and 20 shall survive termination of this Agreement and shall remain in full force and effect notwithstanding such termination except as otherwise provided in this Agreement.

16. Force Majeure

16.1 If either Party is unable to carry out any of its obligations under this Agreement because of

Force Majeure, this Agreement shall remain in effect but except as otherwise provided, both Parties' obligations, other than any obligation in respect of payment of Charges accrued up to the date of the Force Majeure, shall be suspended without liability for a period equal to the period of the continuing Force Majeure, provided that:

- (a) the non-performing Party gives the Other Party prompt notice describing the Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of obligations is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) no obligations of either Party that accrued before the Force Majeure are excused as a result of the Force Majeure;
- (d) the non-performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

16.2 Nothing in this clause 16 shall be construed to require either Party to settle a strike, lock-out or other industrial disturbance by acceding against its judgement to demands made to it.

16.3 If:

- (a) an event of Force Majeure has a direct and material effect on the Network User's operations; and
- (b) the Distributor is unable to provide the Line Function Services to any Consumer's Point of Supply;

then, for each Month during which, in respect of a Consumer's Point of Supply, clauses 16.3(a) and 16.3(b) applied, the Charges for that Consumer's Point of Supply for that Month shall be reduced by the amount determined as follows:

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

Where

- a = the Charges which would have been payable in respect of that Consumer's Point of Supply for that Month if this clause 16.3 did not apply;
- b = the number of days in that Month; and
- c = the number of days in that Month during which in respect of that Consumer's Point of Supply clauses 16.3(a) and 16.3(b) applied throughout the entire day.

17. Liability

17.1 Except as provided in clause 17.9, neither Party nor any of its officers, employees, contractors, invitees or agents shall be liable to the Other Party, in the circumstances where:

- (a) the failure of or defect in the supply or conveyance of Electricity or other breach of this Agreement is directly or indirectly caused by Force Majeure; or
- (b) in respect of the Distributor, for:
 - (i) momentary fluctuations in the voltage or frequency of Electricity conveyed; or
 - (ii) any failure to convey Electricity caused by any Consumer's or other person's failure to observe or comply with Good Industry Practice; or
 - (iii) any failure to convey Electricity caused by no or reduced injection or supply of Electricity into the Distribution Network; or
 - (iv) any failure to convey Electricity caused by any defect or abnormal conditions in any Consumer's Premises or Consumer's Equipment; or
 - (v) any failure to convey Electricity in accordance with clause 8.1; or
 - (vi) any failure to convey Electricity due to an occurrence caused by Transpower, a Generator, or the Network User;
- (c) the Other Party's loss results from the liability of that Other Party to a third party PROVIDED THAT the Distributor shall be liable for any direct, reasonably foreseeable, physical loss or damage if it is caused by the Distributor's negligence or wilful act or omission and the liability is of the Network User to a Consumer and the Network User shall be liable for any direct, reasonably foreseeable, physical loss or damage if it is caused by the Network User's negligence or wilful act or omission and the liability is of the Distributor to a Consumer, Transpower, a Generator, or an Other Network User. Such liability shall be in accordance with the remaining provisions of this clause 17.

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

17.3 Except as provided in clause 17.9, neither Party nor any of its officers, employees, agents, contractors or invitees shall in any circumstances whatsoever be liable to the Other Party, for:

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

17.4 Subject to clause 17.9 but otherwise notwithstanding any other provision of this Agreement, any liability of the Distributor, whether as a result of a breach of this Agreement or on any other ground or basis whatsoever (including, but not limited to, liability as a result of negligence) to the Network User, will be limited to:

- (a) per event (and for the purposes of this clause a series of breaches arising from the same event or circumstance shall be accepted by the Parties as being a single event), the lesser of \$10,000 times each ICP on the network at which retailer supplied electricity on the day of the event, or \$200,000; and
- (b) \$1,000,000 for events or circumstances occurring in any consecutive period of 365 days; and
- (c) in any event, will not exceed the actual loss or damage suffered, including without limitation, any liability to any Consumer or other person.

17.5 The provisions of clauses 17.1 to 17.4 are intended to extend to the officers, employees, agents, contractors and invitees of the Distributor and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

17.6 The Network User shall ensure that every agreement between it and its Consumers shall contain a term that limits the total liability of the Distributor to a Consumer in the same manner as this clause 17, except as required by law (including without limitation the Consumer Guarantees Act 1993), and that such term shall be expressed to be intended for the benefit of and enforceable by the Distributor pursuant to the Contracts (Privity) Act 1982.

17.7 Any liability of the Network User pursuant to clause 17.1(c) will be limited to: the same as above

- (a) \$200,000 per event (and for the purposes of this clause a series of breaches arising from the same event shall be treated as a single event);
- (b) \$1,000,000 for events or circumstances occurring in any consecutive period of 365 days; and
- (c) in any event, will not exceed the actual loss or damage suffered, including without limitation, any liability to Transpower, a Generator, or an Other Network User.

17.8 The limitation of liability thresholds set out in clauses 17.4 and 17.7 shall be varied as at 1

April of each year (with the first escalation occurring on 1 April 2016 for changes in the Producers Price Index in accordance with the following formula:

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

where

NT = the new limitation of liability threshold to apply

ET = the limitation of liability threshold being \$200,000 or \$1,000,000 or other amount based on the number of Consumers registered with the Network user as their Retailer (as the case may be)

Reference Index is the Producers Price Index, Inputs All Industry (PPIQ.SAI9) as published by Statistics New Zealand for December of the year immediately prior to the date on which the escalation is to be made

Base Index is the Producers Price Index, Input All Industry (PPIQ.SAI9) as published by Statistics New Zealand for March 1999.

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

17.9 If:

- (a) there has been a failure of the acceptable quality guarantee in the CGA in relation to the supply of electricity to a Consumer by the Network User (a “**Failure**”);
- (b) the Failure was wholly or partially the result of an event, circumstance or condition associated with the Distribution 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 Transpower in its capacity as the System Operator under the Act;
- (e) the Consumer obtains a remedy under Part 2 of the CGA in relation to the Failure against the Network User; and
- (f) that remedy is a cost to the Network User (a “**Remedy Cost**”),

the Distributor indemnifies the Network User for the Remedy Cost (“**Distributor’s Indemnity**”).

The parties agree that indemnity contained in this clause 17.9 shall apply instead of the form of indemnity specified in Schedule 12A.1 of the Code, which the parties agree pursuant to clause 12A.6(4) of the Code will be omitted from this Agreement.

17.10 Consumer Guarantees Act: The following provisions apply:

- (a) The Network User will exclude from all agreements with its Consumers 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 electricity to an end-user the Network User 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, electricity for the purpose of a business.
- (c) To avoid doubt, nothing in this clause 17.10 affects the rights of any Consumer under the CGA that cannot be excluded by law, nor does it preclude the Network User from offering in its agreements with Consumers its own warranties, guarantees or obligations pertaining to Line Function Services where such warranties, guarantees or obligations are not Distributor Warranties.

17.11 Distributor Liabilities and Consumer Agreements: The Network User will include in its agreements with Consumers 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 agreement 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 the 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 electricity to the Consumer.

17.12 Claims for which the Network User wishes to be indemnified for under the Distributor’s Indemnity: If a Consumer makes a claim against the Network User in relation to which the Network User wishes to be indemnified by the Distributor under the Distributor’s Indemnity under clause 17.9 (a “**Claim**”):

- (a) The Network User 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) 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 and the Distributor has accepted liability or indicated that it is likely to accept liability under the Distributor's Indemnity in respect of the 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 Network User 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 17.12(b), the Network User shall be entitled to make it clear to the relevant Consumer 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 17.12(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 Network User accordingly. In that event, the Network User shall be entitled to resume the conduct of the management and defence of the Claim as it relates to the Network User.

17.13 Network User to Indemnify Distributor: The Network User indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Network User's failure to meet its obligations in accordance with clauses 3, 6.2, 10, 11, and 12,

provided that if the Distributor seeks to be indemnified by the Network User under this clause 17.13 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 Network User.
- (b) The Distributor will keep the Network User fully informed of the Distributor's progress in defending such third party claim and of any related proceedings.
- (c) The Distributor will, at the Network User's request, consult with, and take account of the reasonable views of, the Network User so far as reasonably possible in the Distributor's defence of such third party claim and any related proceedings.

17.14 Evidence of Compliance: If the Distributor requests the Network User to do so, the Network User will provide the Distributor as soon as practicable with such evidence as the Distributor may reasonably request to satisfy the Distributor that the Network User is complying with its obligations under this clause 17.14, provided that the Network User may refer the Distributor to the Network User's website if the evidence reasonably requested by the Distributor for the purpose of this clause 17.14 is located and accessible to the Distributor on the Network User's website.

18. Electricity Information Exchange Protocols

18.1 Protocols for exchanging information: From time to time the Electricity Authority will publish certain EIEPs, including new or amended EIEPs, which specify recommended formats for the exchange of information between distributors and retailers. Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Network User agree that they will use reasonable endeavours to comply with the EIEPs published on the Electricity Authority's website, as at the date of this Agreement and thereafter as modified from time to time when exchanging information, provided that the frequency at which, and method by which, the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.

18.2 Consumer information: The Network User will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Consumer information as is reasonably available to the Retailer and necessary to enable the Distributor to fulfil its obligations in accordance with this agreement. 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 18.2.

18.3 Consumer information received in error by the Network User: The Network User 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 the Network User is supplying at that time, it will keep

such information confidential and will not use that information for any purpose. The Network User acknowledges and agrees that this clause 18.3 shall also be for the benefit of Other Network Users and enforceable by each of those Other Network Users in accordance with section 4 of the Contracts (Privity) Act 1982.

18.4 **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 Network User 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 Network User is the Provider and any relevant Metering Data is held by a third party Metering Equipment owner or operator, the Network User 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.

18.5 **Limitations on the Verifier:** In relation to its review of the Records under clause 18.4, 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 18.5(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.

18.6 **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 Network User or that the information is commercially sensitive; or
- (b) the Provider is the Network User 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 Network User, 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 Network User, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Network User, 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 18.6 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.

- 18.7 **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 18.4 or 18.6 and will ensure that the Records are readily accessible and readable.
- 18.8 **Non-compliance:** If a review of the Provider's Records under clause 18.4 or 18.6 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 18.8.

19. **Dispute Resolution**

- 19.1 After receipt of notice of a dispute from one Party to the Other Party, the Parties shall actively and in good faith negotiate with a view to speedy resolution of any dispute or difference within 10 Business Days of the notice being received by the Other Party. The dispute may arise between the Parties concerning the interpretation of this Agreement or relating to any other matter arising under this Agreement. In the first instance good faith negotiations shall occur:
- (a) between two designated employees of the Parties; and
 - (b) failing resolution, by negotiation between the Chief Executive Officers of the respective Parties.
- 19.2 Where any dispute is not resolved pursuant to clause 19.1 within 10 Business Days of one Party giving notice to the other of a proposal for the resolution of the dispute either Party may require the dispute to be referred to mediation by a notice to the Other Party setting out the general nature of the dispute.
- 19.3 Within 10 Business Days of the notice referring the dispute to mediation the Parties shall agree on the appointment of a mediator and in consultation with the mediator determine a

location, timetable and procedure for the mediation.

- 19.4 Each of the Parties shall appoint a representative who shall have authority to reach an agreed solution and effect settlement.
- 19.5 In all matters relating to the mediation the Parties and their representatives shall act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure.
- 19.6 All proceedings and disclosures in the course of the mediation shall be conducted and made without prejudice to the rights and positions of the Parties in any subsequent arbitration or other legal proceedings.
- 19.7 Any decision or recommendation of the mediator shall be binding on the Parties in respect of any matters unless within 10 Business Days either Party notifies the Other Party in writing that it rejects the mediator's determination.
- 19.8 The costs of the mediation, other than the Parties' legal costs, shall be borne equally by the Parties, who shall be jointly and severally liable to the mediator in respect of the mediator's fees.
- 19.9 Where at the conclusion of a mediation pursuant to clauses 19.3 to 19.8 any question or difference, the subject of a mediation notice, may be referred by either Party to arbitration under the Arbitration Act 1996 before a sole arbitrator. In relation to an arbitration conducted pursuant to this clause the Parties agree that:
- (a) in addition to the stated methods of giving notice, email shall also be permitted;
 - (b) the Parties will endeavour to agree the choice of an arbitrator and failing agreement the arbitrator shall be appointed by the President of the Wellington District Law Society;
 - (c) the venue of the arbitration shall be determined by the arbitrator;
 - (d) the arbitrator shall not appoint any expert to advise except with the written consent of both Parties; and
 - (e) the Second Schedule to the Arbitration Act 1996 applies; and
 - (f) No reference to mediation or the outcome of mediation (if any) shall be made.
- 19.10 The Distributor and the Network User shall continue to perform their respective obligations pursuant to the provisions of this Agreement pending the resolution of any question, dispute or difference.
- 19.11 This clause 19 does not apply to any variations to any of the Charges that the Distributor makes except as a result of a dispute pursuant to clause 27.4.

20. Confidentiality

- 20.1 Each Party ("**Obligor**") undertakes with the other Party that it shall preserve the confidentiality of and shall not directly or indirectly reveal, report, publish, disclose or transfer Confidential Information except in the circumstances and to the extent set out in clause 20.3.
- 20.2 The Parties shall procure their respective employees, agents, and contractors who from time to time have access to any information the subject of clause 20.1 are bound by an obligation of confidence of the same scope and effect as the obligations set out in clause 20.1.
- 20.3 The Obligor may disclose Confidential Information in the following circumstances:
- (a) where at the time of receipt by the Obligor the Confidential Information is already in the public domain; or
 - (b) where after the time of receipt by the Obligor the Confidential Information enters the public domain, except where it does so as a result of a breach by the Obligor of its obligations under clause 20.1 or a breach by any other person of an obligation of confidence to the Party which is not the Obligor and the Obligor is aware of such breach; or
 - (c) where the Obligor is required:
 - (i) by any statutory or regulatory obligation, body or authority; or
 - (ii) by any judicial or arbitration process; or
 - (ii) by the regulations of any stock exchange upon which the share capital of the Obligor or the other Party (or either of their holding company) is from time to time listed or dealt in.
 - (d) where the Confidential Information is released to the employees, directors, agents or advisers of the Obligor provided that the requirements of clause 20.2 are met.

21. No Assignment

- 21.1 Subject to clause 21.2, neither Party may assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the Other Party, which consent must not be unreasonably withheld or delayed.
- 21.2 Each Party may subcontract or delegate the performance of any of its obligations under this Agreement to any person (including, in the case of the Network user, to the Subsidiaries), without the prior consent of the Other Party.

22. Non-Waiver

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

23. Entire Agreement

- 23.1 This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the Parties. Each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.

24. Savings Clause

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

25. Governing Law

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

26. Notices

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

26.2 The required address and electronic mail address for the Parties for the purposes of this clause 26:

Addresses for Notices:

{Retailer Name}

Address:

Attention:

By email to:

Nelson Electricity Limited

Address: 63 Haven Road, Nelson
PO Box 7083, Nelson

Attention: General Manager

Telephone: (03) 546 0486

Email: phil@nel.co.nz

26.3 Subject to clause 26.4, a notice or other form of communication shall be deemed to have been received as follows:

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

26.4 A notice or other form of communication which, but for the provisions of this clause 26.4, would be deemed to be received after 5pm on a Business Day or on a day which is not a Business Day, shall be deemed to be received at 8.30am on the next following Business Day.

27. Review and Variations

27.1 Subject to clauses 14.5, 14.8, 14.9, and 14.10, no variations or modifications to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties.

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

27.3 The Party requesting the review or variation shall propose in writing to the other Party amendments to this Agreement and the basis on which such amendments are sought. The Other Party shall respond within 15 Business Days of receipt of the notice, with agreement to the proposed amendments or an alternative proposal.

27.4 Parties shall negotiate in good faith to reach prompt agreement on proposed amendments. If agreement is not reached within 30 Business Days of initiation of the review or the proposal of the variation then the procedure of clause 19 shall apply.

27.5 In making a determination under an arbitration required by clause 27.4, the arbitrator will have regard to the respective benefits and burdens of the Parties under this Agreement and the effect of any changes or reasonably anticipated changes in any statute, technology, or accepted industry practice in the period since the Date of Commencement.

28. Equitable Treatment

28.1 In exercising any rights or undertaking any obligations under this Agreement that relate to or affect Other Network Users the Distributor will treat the Network User equitably in relation to any Other Network User with regard to the terms and conditions laid down for the use of the Distribution Network.

28.2 If the Distributor enters into an agreement with any Other Network User to use the Distribution Network and that agreement, taken as a whole, is more favourable to that Other Network User than this Agreement to the Network User, the parties shall discuss whether to amend this Agreement to provide such additional benefits to the Network User provided that the basis for providing such additional benefits can be agreed between the Parties.

29. Costs

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

30. No Third Party Rights

30.1 Except as expressly provided in this Agreement the Parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement.

31. Further Assurance

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

EXECUTED as an agreement by the Parties in accordance with their respective constitutions by their duly authorised signatories.

NELSON ELECTRICITY LIMITED by:

Signature

Name

Title

Witness

Title

{RETAILER NAME} by:

Signature

Name

Title

Witness

Title

Schedule One – Charges

A current price schedule is also available on Nelson Electricity' website www.nel.co.nz.

Where a connection has a choice of pricing plan the Distributor reserves the right to limit changes between pricing plans to one change in any 12 month period. E.g. The Distributor offers a Low Fixed Charge plan to qualifying residential connections and a standard plan for residential connections.

SCHEDULE 1(a) Effective 1 April 2017
CHARGES FOR delivery of line function services
NELSON ELECTRICITY LIMITED NETWORK

(for Points of Connection supplied from Points of supply at STK0331)

Mass Market Consumers

Customer Category	Fixed Supply Price \$/kVA/day	Variable Supply Price \$/kWh
GROUP 1 – General Low Fixed Charge Group (Eligible Residential Only)		
1-Fixed Fixed Daily Price (15kVA only) <i>Per Customer Point of Connection (15kVA X 1 cent = 15 cents/day)</i>	0.01	
1-24hr Uncontrolled (UN) <i>Per Unit</i>		0.09248
1-Water Controlled 18 (CN18) <i>Per Controlled Water Heating Unit</i>		0.05487
1-Night. Night Only (CN8) <i>Per Unit (11pm – 7am)</i>		0.03368
1-DG. Distributed Generation <i>Per Distributed Generation Unit Exported into Nelson Electricity Network</i>		0.0050
GROUP 2 – General Standard Group (Residential and Business)		
2-Fixed Fixed Daily Price (15kVA – 150kVA) <i>Per Customer Point of Connection</i>	0.0646	
2-24hr Uncontrolled (UN) <i>Per Unit</i>		0.04765
2-Water Controlled 18 (CN18) <i>Per Controlled Water Heating Unit</i>		0.02879
2-Night. Night Only (CN8) <i>Per Unit (11pm – 7am)</i>		0.01929
2-DG. Distributed Generation <i>Per Distributed Generation Unit Exported into Nelson Electricity Network</i>		0.0050

NOTES:

- a) All prices are exclusive of Goods and Services Tax (GST).
- b) For connections up to 150kVA.
- c) All residential connections are defined as being consistent with the statutory definition of "Domestic Premises" contained within s5 of the Electricity Industry Act.
- d) Group 1 - Low Fixed Charge Group is only for residential connections which are the primary residence of the occupier.
- e) Group 2 - Residential and Business is for all other non-half hour metered connections from 15kVA up to 150kVA.
- f) Group 2 - The minimum fixed charge for these groups is 15kVA. For the purposes of clarification, it is accepted that the following maximum fuse sizes will be accepted as 15kVA as per the Nelson Electricity Network Code.
 - 1 phase 60 amps
 - 2 Phase 40 amps
 - 3 Phase 30 amps
 Any fuse sizes greater than those above will be charged at the assessed kVA.
- g) Group 1 and 2 - A new charge has been created for the kWh exported onto the network by Group 1 and 2 consumers. The new tariff codes are 1-DG and 2-DG respectively.

SCHEDULE 1(b) Effective 1 April 2017
CHARGES FOR delivery of line function services
NELSON ELECTRICITY LIMITED NETWORK

(for Points of Connection supplied from Points of supply at STK0331)

Time of Use Consumers

Customers with supply capacities greater than 150kVA (consumers with supply capacity less than 150kVA can utilise the time of use tariffs).

NETWORK PRICES: (Groups 3-12)

Metered Installation (\$/Metered Installation/Day)	1.19
Winter Demand (\$/Winter Demand kVA/Day)	0.22363
Energy (\$/kWh)	0.01587
Capacity Supplied (\$/Capacity Supply Group/day) - See Groups Below	

Price Group	kVA Rating		Price \$/Day
T-03	15kVA	- 42kVA	2.076
T-04	43kVA	- 69kVA	3.418
T-05	70kVA	- 110kVA	5.447
T-06	111kVA	- 138kVA	6.833
T-07	139kVA	- 218kVA	10.794
T-08	219kVA	- 300kVA	14.855
T-09	301kVA	- 500kVA	24.758
T-10	501kVA	- 750kVA	37.136
T-11	751kVA	- 1000kVA	49.515
T-12	1001kVA	- 1500kVA	74.273
T-13	1501kVA	- 2000kVA	99.030
T-15		2400kVA	118.836

The *Winter Demand* charge is the single highest half hour kVA demand recorded in the months of June, July, and August between 8.30am-11.30am and 5pm-6pm. The winter demand assessment period excludes weekends and public holidays. The winter demand value is used for billing purposes from the October month for the following 12 months until reset again the after the following winter. New consumer connections will have an assessed winter demand until the end of the first winter period. The Electricity Registry represents the Winter Demand in the Chargeable Capacity field for Time of Use consumers.

SCHEDULE 1(c) Effective 1 April 2017
Miscellaneous Small Connections (Metered and Non-metered)

A Metered Builders Temporary Supply (0-BT)

Single Phase Connection (up to 1 phase 30 amps)

<i>Daily Price</i>	<i>\$0.6190 per day</i>
<i>kWh Price</i>	<i>\$0.09248 per kWh</i>

Three Phase Connection

Group 2 prices apply

B Miscellaneous Unmetered Connections (0-UM)
(Excludes Council and Transit streetlights.)

Individually calculated on the following basis:

\$21.54 per annum plus \$404.785 per kW maximum demand

e.g. 50 W private light:

Annual charge = \$21.54 + 0.05 x \$404.79 = \$41.78

(Calculated as a daily price = \$0.059 per day plus \$1.109/kW/day maximum demand.)

If maximum demand cannot be readily identified by Nelson Electricity then fuse capacity will be used instead.

C Nelson City Council Streetlights (0-SL)

\$285 per day

All Prices exclude GST

SCHEDULE 1(d)
OTHER Prices

A Disconnection and Reconnection Fee

(i) Low voltage

8:00 am – 5:00 pm Monday to Friday (Excludes Public Holidays) \$100.00

Outside the above hours \$200.00

(ii) High voltage

Reasonable cost determined by the distributor on a site by site basis

When disconnection is not effected, as a result of payment to the collector a call-out fee applies as above

B Call Out Fee

A call out fee is charged where the Distributor, after having been requested by the Retailer to investigate a Customer complaint determines that the cause of the complaint is outside the Distributor's responsibility (eg. Relates to the Customer's fittings).

8:00 am – 5:00 pm Monday to Friday (Excludes Public Holidays) \$100.00

Outside the above hours \$200.00

SCHEDULE 1(e) Effective 1 April 2017

**CHARGES FOR delivery of line function services
NELSON ELECTRICITY LIMITED NETWORK**

(for Points of Connection supplied from Points of supply at STK0331)

Power Factor Charge

Power Factor Charge applies to all Time of Use connections (Price Category Code T-03 to T-15).

Prices applicable to consumers on a monthly basis that have a peak lagging Power Factor of less than 0.95.

The Chargeable kVAr is the total kVAr at monthly kW peak less the kVAr at 0.95 Power Factor.

Monthly Power Factor Charge = Chargeable kVAr * \$6.50 per kVAr.

This charge differs from the methodology as set in 14.3 of the Conveyance and Use of System Agreement for the purposes of simplifying the kVAr assessment and for billing purposes.

**SCHEDULE 1(f) Effective 1 April 2017
CHARGES FOR delivery of line function services
NELSON ELECTRICITY LIMITED NETWORK**

(for Points of Connection supplied from Points of supply at STK0331)

Remote Signal

1. Remote Signal Services Prices

Nil

2. Additional Channels

Additional Channels and/or services can be provided to the Network User. The price is to be negotiated on a case by case basis with the Distributor taking into account any physical constraints imposed by the Ripple Control Equipment.

Schedule Two – Consumer Information Sheet

Network Connection Application

Nelson Electricity Limited (NEL)

PO Box 7083, Nelson
Ph 03 546 9256 Fax 03 546 0487



IMPORTANT

- To be completed by the person accepting responsibility for the New Connection, Temporary Builder's Supply and/or Major Alterations to Premises. Note – this is not an Application for Supply of Electricity.
- This installation must comply with AS/NZS 3000:2000, The Electricity Regulations 1997 and subsequent amendments and the Nelson Electricity Limited Network Code.
- This connection can be completed but will not be lived in until you have signed up with an Energy Retailer who will arrange living in.
- Five (5) working days must be allowed to process this application.
- Easement Route: If the service main route traverses land belonging to another party and if a relevant easement is not subsequently registered by the applicant, Nelson Electricity Limited will NOT guarantee continued supply.

CUSTOMER OR AGENT RESPONSIBLE FOR ONGOING CHARGES

Name _____ Company Name (if any) _____
 Postal Address _____ Phone Number _____
 Signature _____ Date _____

ELECTRICAL CONTRACTOR DETAILS

Name _____
 Contact Ph No _____
 Return Fax No _____
 Network Connection by _____
 Preferred Energy Trader _____
 For list of Approved Contractors for connection and/or works on NEL network visit www.nel.co.nz

INSTALLATION LOCATION DETAILS

Lot No _____ Street No _____
 DPS _____ Unit No/Flat No _____
 Location of Premises / Street Name _____
 Description (front/rear, etc) _____
 Number of Units on Site _____
 Anticipated Date of Commissioning _____

CONNECTION TYPE

TICK 1	Commercial or Domestic	
New Installation	<input type="checkbox"/>	<input type="checkbox"/>
Alteration	<input type="checkbox"/>	<input type="checkbox"/>
Builder's Temporary Supply (max 30 amp)	<input type="checkbox"/>	<input type="checkbox"/>
Commercial Type	_____	

REQUESTED LOADING

Number of Phases Required 1 2 3
 Expected Load (Amps per phase) _____ (eg: 20, 30, 60, 100)
 State load if over 100 Amps _____ A _____ kva
 (Unmetered load is not permitted.)
MOTORS, GENERATORS AND OTHER LOADS
 Motors, generators and other loads all must comply with NEL Network Code.
 Motor Size _____
 Power Factor _____ >0.95

Signature of Contractor/Customer _____ Print Name _____ Date _____

NEL OFFICE USE ONLY

ICP _____ – _____
 Network Connection Point (NCP) _____ Mass Market Fuse Capacity _____ kVA
 Transformer No _____ TOU Winter Demand (CPD) _____ kVA
 GXP **STK0331** Dist. Loss Group _____
 Network Capacity Check Yes No Pricing Group (Cat. Code) _____

Authorised by _____ Date _____ Signature _____

- | | | |
|---|--|---|
| 1.) <input type="checkbox"/> Asset Manager capacity check | 5.) <input type="checkbox"/> NEL Newsletter Listing updated | 9.) <input type="checkbox"/> Invoice required? Y / N |
| 2.) <input type="checkbox"/> ICP issued | 6.) <input type="checkbox"/> MARIA Registry updated | 10.) <input type="checkbox"/> As-builts required? Y / N |
| 3.) <input type="checkbox"/> ICP database updated | 7.) <input type="checkbox"/> Electrical contractor sent copy | |
| 4.) <input type="checkbox"/> Asset database updated | 8.) <input type="checkbox"/> Easement required? Y / N | |

Schedule Three – Loss Adjustment Factors

Loss factor are included on the current price schedule and also available as a separate document on Nelson Electricity' website www.nel.co.nz. The current version is attached below

1. LOSS ADJUSTMENT FACTORS

Factors

The Loss Adjustment Factors reflect the total Losses incurred via the various components of the Distribution Network when Electricity is conveyed through that network. The appropriate Loss Adjustment Factors as at the date of execution of this Agreement are as set out in the following table. The Loss Adjustment Factors may be amended by the Distributor from time to time upon 60 days notice.

The Loss Adjustment Factors applicable at Date of Commencement are:

For Consumer's Points of Supply supplied from the Network's Point of Supply at Stoke (STK0331).

Distributor Loss Category

Loss Code	Description	Loss Factor Consumption	Loss Factor Generation
L0	Group 0 Unmetered and Builders Temporary Supply	1.055	1.019
L1	Group 1 Residential	1.055	1.019
L2	Group 2 Business (All Categories except Time of Use)	1.055	1.019
L3	Group 3 Time of Use - Supplied from 400V Network	1.046	1.022
L4	Group 4 Time of Use - Direct 400V feed from transformer	1.046	1.022
L5	Group 5 Time of Use - Dedicated Transformer 400V Metering	1.046	1.022
L6	Group 6 Time of Use - Dedicated Transformer 11kV Metering	1.030	1.017

- Loss Factors will be applied to the metered energy consumption measured at the Consumer's Point of Supply.
- Loss Factors will be reviewed and may be amended by the Distributor from time to time in accordance with this Agreement to ensure that they reflect unaccounted for Electricity on the Distribution Network as accurately as possible.

Schedule Four – Prudential Requirements

1. PRUDENTIAL REQUIREMENTS

- 1.1 **Network User will satisfy prudential requirements:** If required by a notice from the Distributor, the Network User will comply with either one of the following prudential requirements within 10 Working Days of receipt of the Distributor's notice:
- (a) the Network User will maintain an acceptable credit rating; or
 - (b) the Network User will provide and maintain acceptable security by, at the Network User's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 1.6 ("**Cash Deposit**"), which the Distributor will hold in a trust account that the Distributor will establish and operate in accordance with clause 1.23; or
 - (ii) arranging for a third party with an acceptable credit rating to provide security in a form acceptable to the Distributor, of the value specified in clause 1.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in clause 1.6.
- 1.2 **Acceptable credit rating:** For the purposes of clause 1.1, an acceptable credit rating means that the Network User 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 Network User 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.
- 1.3 **Network User may elect prudential requirements:** The Network User may elect to comply with the prudential requirements in any of the ways described in clause 1.1 at any time, by complying with clause 1.4.
- 1.4 **Change in prudential requirements complied with:** If the Network User elects to change the way in which it complies with the prudential requirements in accordance with clause 1.3, the Network User will notify the Distributor of its intention at least 2 Working Days before the change occurring and the parties will comply with clause 1.15. The change will come into effect on the intended date, provided that the Network User 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 1.1.

- 1.5 **Evidence of acceptable credit rating:** The Network User 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.
- 1.6 **Value of security:** The value of security required for the purposes of this Schedule as at the Commencement Date is the value described in clause 12A.4(5) of the Code, as advised by the Distributor to the Network User in writing prior to the Commencement Date.
- 1.7 **Additional security:** The Distributor and the Network User agree that the Distributor may, by notice to the Network User, require the Network User to provide further additional security in accordance with clause 12A.5 of the Code ("**Additional Security**"). If the Distributor requires the Network User to provide Additional Security:
- (a) the Network User may elect the type of security that it provides in accordance with clause 1.1; and
 - (b) the parties must comply with clause 1.13.
- 1.8 **Additional security requirements:** The following provisions apply in respect of any Additional Security provided:
- (a) if the Additional Security is in the form of a cash deposit, the Distributor will pay a charge to the Network User calculated in accordance with clause 12A.5(3)(a) of the Code, and the Additional Security will be held as if it were part of the Cash Deposit under this agreement;
 - (b) if the Additional Security is in the form of security from a third party, the Distributor will pay a charge to the Network User calculated in accordance with clause 12A.5(3)(b) of the Code;
 - (c) any money required to be paid by the Distributor to the Network User in accordance with this clause 1.8 will be paid by the Distributor to the Network User on a quarterly basis net of any amounts required to be withheld by law; and
 - (d) if the level of any Additional Security actually provided by the Network User is greater than the level of Additional Security required by the Distributor, the charges referred to in sub-clause (a) will not be payable by the Distributor under this clause 1.8 in relation to the excess.
- 1.9 **Initial Estimate of security for Network User:** The Distributor will estimate the value of security required under clause 1.6 for the first six 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 Network User in good faith necessary for the Distributor to determine the value of security that it requires from the Network User.

1.10 **Review of the value of security:** The Distributor may review, or the Network User may require the Distributor to review, the value of security required to be provided by the Network User at any time.

1.11 **Network User to notify Distributor of changes affecting security:** The Network User will immediately notify the Distributor if any of the following occurs:

- (a) the Network User no longer carries an acceptable credit rating; or
- (b) the Network User has complied with prudential requirements by arranging for a third party to provide security in accordance with clause 1.1(b), and the Network User learns that the third party no longer carries an acceptable credit rating; or
- (c) the Network User 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 Network User to the Distributor under this clause 1.11 will be Confidential Information.

1.12 **Distributor may make enquiries:** If the Distributor believes that the Network User should have given notice under clause 1.11 and the Distributor has not received any such notice, the Distributor may enquire of the Network User 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 Network User. If notice should have been given, the Network User will give notice immediately, or if no notice is required, the Network User will respond to the Distributor in writing within two Working Days of receipt of the Distributor's notice under this clause 1.12. Correspondence sent or received by either party under this clause will be Confidential Information.

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

- (a) the Distributor requires that the Network User provide Additional Security in accordance with clause 1.7; or
- (b) following a review of the Network User's security in accordance with clause 1.10; or
- (c) on receipt of information contemplated by clause 1.11 or 1.12; or
- (d) as the result of a failure by the Network User to respond to a request made under clause 1.12 within the timeframe set out in clause 1.12,

the Distributor or the Network User considers that the value of the 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 Network User of its decision and the grounds for that decision and will include in the notification details of the part of the security that constitutes Additional Security. To avoid doubt, failure by a Network User to respond to a request made under clause 1.12 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Network User.

1.14 Failure to maintain acceptable credit rating: If:

- (a) on receipt of information contemplated by clause 1.11 or 1.12; or
- (b) as the result of a failure by the Network User to respond to a request made under clause 1.12 within the timeframe set out in clause 1.12,

the Distributor considers, acting reasonably, that the Network User is no longer able to maintain an acceptable credit rating in accordance with clause 1.1(a), and the Distributor still requires the Network User to comply with prudential requirements, the Distributor will notify the Network User of the value of acceptable security required in accordance with clause 1.1(b).

1.15 Distributor or Network User to effect changes in value or type of security: The Distributor or the Network User, 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 1.4, 1.13(c), 1.13(d) or 1.14; and
- (b) within 15 Working Days of notification under clause 1.13(a) or 1.13(b).

Refunds of Cash Deposits and reductions of the value of third party security required will be made in accordance with clause 1.16 or 1.18.

1.16 Refund of Cash Deposit: If the Distributor refunds all or part of a Cash Deposit, it will refund all or part of the Cash Deposit into a bank account nominated by the Network User on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.

1.17 Cash Deposit on Insolvency Event: If an Insolvency Event occurs in relation to the Network User:

- (a) the Network User will not be entitled to a return of the Cash Deposit; and
- (b) if the Network User fails or has failed to pay an amount owing under this agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest), on two Working Days' notice to the Network User.

- 1.18 **Reduction of third party security:** If the Distributor decreases the value of third party security required in accordance with this agreement, the Network User may arrange for the issuing of new third party security for the lesser value, in satisfaction of clause 1.1(c)(ii), which will replace the earlier third party security.
- 1.19 **When the Distributor may make a call on security:** The Distributor may make a call on security in accordance with clause 1.20 if:
- (a) the Network User has provided acceptable security in accordance with clause 1.1(c);
 - (b) the Network User fails to pay an amount due under this agreement; and
 - (c) the amount is not subject to a genuine dispute.
- 1.20 **Calls on security:** If this clause 1.20 applies in accordance with clause 1.19, the Distributor may, on two Working Days' notice to the Network User (or immediately in the case of deemed Cash Deposit), call on the security as follows:
- (a) if the Network User provided a Cash Deposit (which includes a deemed Cash Deposit), the Distributor may draw down and apply the amount owed (including Default Interest) from the Cash Deposit and full beneficial ownership of that amount (plus Default Interest) will automatically transfer solely to the Distributor before the draw down;
 - (b) if the Network User 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) in either case, the Distributor will immediately notify the Network User that it has called on the security.
- 1.21 **Requirement to maintain security:** To avoid doubt, if the Distributor draws down some or all of a Cash Deposit held by the Distributor under this agreement, or calls on the provider of a third party security, the Network User will within five Working Days take all steps necessary to ensure that the Network User maintains acceptable security of the value specified in clause 1.6 and the value of any Additional Security required by clause 1.7 (as each may be reviewed by the Distributor in accordance with clause 1.10), as required by clause (b).
- 1.22 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Network User in substitution for the third party security.
- 1.23 **Trust Account Rules:** If the Distributor receives a Cash Deposit:

- (a) the Cash Deposit will be held on trust for the benefit of both the Distributor and the Network User, to be applied or distributed only on the terms of this agreement, or as otherwise agreed by the parties;
- (b) if this agreement is terminated, the Distributor will refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Network User) to the Network User in accordance with clause 1.16, provided that the Network User:
 - (i) is not otherwise in default of this agreement;
 - (ii) is not subject to an Insolvency Event, in which case clause 1.17 applies;
 - (iii) has ceased to be bound by this agreement; and
 - (iv) has discharged all obligations under this agreement to the Distributor, including payment of all outstanding amounts under this agreement,and the Distributor will have no other contractual or equitable obligation to return the Cash Deposit to the Network User otherwise than as set out in this sub-clause (f); and
- (c) the Distributor will provide the Network User with an annual report in respect of the operation of the Trust Account if requested by the Network User.

1.24 **Release of third party security:** If this agreement is terminated, the Distributor will release any third party security, provided that the Network User has met all of the requirements set out in clause 1.23b.

Schedule Five – Network Performance Standards

1. NETWORK PERFORMANCE

1.1 Quality of Conveyance

The Distributor shall use all reasonable endeavours to:

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

1.2 Network User Enquiries

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

Schedule Six – Remote Signal Services and Remote Data Communication Services

1. REMOTE SIGNAL SERVICES

- 1.1 Subject to the terms and conditions of this schedule, the Distributor shall:
- (a) operate the Remote Signal Services, subject to paragraphs 1.2 and 1.3, at the times in accordance with the relevant Consumer Category. Where technology makes it possible, the Parties will discuss and may agree, to allow the Network User to operate the Remote Signal Services or for the Distributor to operate the Remote Signal Services at the times specified by the Network User;
 - (c) operate and maintain the Ripple Control Equipment in accordance with Good Industry Practice so as to ensure that Remote Signals can be injected into the Distribution Network, at a standard that ensures that the Remote Signals are available at the Consumer's Point of Supply, so as to correctly operate the Load Control Equipment of the appropriate Consumer Category;
- 1.2 Subject to paragraph 1.4, the Distributor shall be entitled to operate the Remote Signal Services at any time the Distributor deems it necessary in accordance with Good Industry Practice for the safe and reliable operation of the Distribution Network.
- 1.3 Subject to paragraph 1.4, the Distributor may operate the Remote Signal Services for the purpose of minimising the charges payable by the Distributor to Transpower.
- 1.4 Except in the case of emergency, the Distributor shall not operate the Remote Signal Services to activate any Channels that are used for Connections that have the Network User as their retailer for more time in any day than that which is appropriate for the relevant Consumer Category.

2. CHANNELS

- 2.1 The Channels assigned by the Distributor to the Network User may or may not be for the exclusive use of the Network User.
- 2.2 The Network User may from time to time request the Distributor to provide additional Channels. If such Channels are available these shall be provided to the Network User upon the terms and conditions of this schedule.
- 2.3 Where additional Channels are required to replace Channels currently assigned to and utilised by the Network User, as a result of the Distributor changing the Remote Signal frequency used to provide the Remote Signal Services, these additional Channels will be provided to the Network User at no charge.

- 2.4 Where the Distributor intends to change the Remote Signal frequency used to provide the Remote Signal Services the Parties will meet to agree a reasonable time period to facilitate the transition from the old to the new Remote Signal frequencies. If agreement cannot be reached the provisions of clause 22 shall apply.
- 2.5 Currently the System uses 725Hz signalling. The Distributor is not planning to change this frequency in the foreseeable future.

3. REMOTE DATA COMMUNICATION SERVICES

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

4. COMMENCEMENT AND TERMINATION

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

5. EQUIPMENT

- 5.1 The Network User shall ensure that Load Control Equipment is installed at each Consumer's Premises that can reliably respond to the appropriate Remote Signals required for the Consumer Category assigned to that Consumer's Premises.
- 5.2 The Distributor shall ensure that its respective employees, agents, contractors and invitees do not interfere with the Load Control Equipment of the Network User or the immediate connections to the Load Control Equipment without the prior written consent of the Network User, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In this event, the Network User shall be notified in writing as soon as practicable thereafter.
- 5.3 Any Party may, upon giving reasonable notice to the Other Party, request a test of the Load Control Equipment or the Ripple Control Equipment at any time. Any test performed pursuant to this clause shall be conducted by a person appointed by the Party who provides the Load Control Equipment or the Ripple Control Equipment, as the case may be. The Party who requests a test of the Load Control Equipment or the Ripple Control Equipment shall pay the reasonable costs of testing unless the Load Control Equipment or the Ripple Control Equipment is found to not be functioning, or responding correctly in respect of the applicable Consumer Category, in which case, the provider of the Load Control Equipment or the Ripple Control Equipment, as the case may be, shall bear those costs. If the Load Control Equipment or the Ripple Control Equipment is found not to be functioning, or responding correctly in respect of the applicable Consumer Category, it shall be adjusted, repaired or replaced as necessary at the expense of the provider of the Load Control Equipment or the Ripple Control Equipment, as the case may be.
- 5.4 The Distributor shall, as soon as practicable following it becoming aware that paragraph 5.1 is not satisfied in respect of any particular Consumer's Premises (a "Default"), give the Network User a notice identifying each such Consumer's Premises ("Remedy Notice"). Upon receipt of such Remedy Notice the Network User shall have 20 Business Days to remedy the Default or advise the Distributor that the Network User disputes the Remedy Notice.
- 5.5 If, pursuant to paragraph 5.4, the Network User advises the Distributor that the Network User disputes the Remedy Notice, the provisions of clause 22 of the Agreement shall apply.
- 5.6 If, pursuant to paragraph 5.4, the Network User does not advise the Distributor that the Network User disputes the Remedy Notice, and the Default is not remedied in the 20 Business Day period, the Distributor will have the right to assign a different Consumer Category to each Consumer's Point of Supply that is in Default in accordance with this Agreement.

6. INFORMATION TO BE PROVIDED BY THE PARTIES

- 6.1 Each Party will provide to the other, at no charge, as soon as reasonably practicable after receipt of the request:

- (a) such information as may reasonably be required for the purpose of calculating charges due under this schedule and the performance of functions or obligations under this schedule; and
- (b) information in sufficient detail to enable a Party to audit the information provided pursuant to paragraph 6.1(a).

6.2 The obligations of the Parties pursuant to this paragraph 6 to make information available is subject to:

- (a) any obligation of confidence in respect of any information; and
- (b) a request for information being relevant to the requesting Party's obligations under this Agreement.

7. PAYMENT OF CHARGES

7.1 In consideration of the Distributor's performance of its obligations under this Agreement the Network User shall pay the charges specified in Schedule 1(f). The Charges may be varied by the Distributor from time to time in accordance with clauses 14.7 and 14.9 of the Agreement.

7.2 The provisions of clause 14 of the Agreement shall apply in respect of the charges payable under this schedule.

Schedule Seven – Additional Services

1. REBATES

- 1.1 For the purposes of this schedule:
 - (a) “**Rebate**” includes line charge discounts, line charge rebates, line charge holiday;
- 1.2 The Distributor may require, no more than once in any calendar year, the Network User to pass a Rebate to qualifying Consumers by crediting the Consumers’ electricity accounts, by giving the Network User at least 40 Working Days’ notice.
- 1.3 The notice will include:
 - (a) the time period within which the eligibility date will be set;
 - (b) the criteria to identify qualifying ICPs or Consumers, including any specific exclusions;
 - (c) the proposed process and timelines for information to be exchanged to enable efficient implementation;
 - (d) the format of the information to be exchanged; and
 - (f) the proposed basis of calculation (if known).
- 1.4 The Network User, acting reasonably, will advise the Distributor whether or not it is willing and able to meet the Distributor’s requirements set out in the notice.
- 1.5 If there are any changes to the information to be exchanged or the eligibility criteria compared to the last Rebate processed, the parties will test the information exchange process in advance.
- 1.6 The Distributor will advise the Network User of the eligibility date as soon as reasonably practicable, and provide details of any proposed publicity information and media releases.
- 1.7 The Distributor will provide contact details for queries that cannot be addressed by the Network User and a set of relevant FAQs.
- 1.8 The Network User will provide a file to the Distributor containing any information reasonably requested by the Distributor to enable the Distributor to calculate the Rebate applicable to each qualifying ICP or Consumer.
- 1.9 The Distributor will return the file to the Network User with the Rebate amounts added within a reasonable time after receipt of the Network User’s file.
- 1.10 The Network User will as soon as reasonably practicable after receiving the file from the Distributor apply the Rebate to qualifying Consumers’ accounts.
- 1.11 The Rebate will be separately identified on invoices to qualifying Consumers, and will include words as specified by the Distributor along the following lines “Nelson Electricity

rebate". This requirement will only extend to the Network User including wording within the existing limitations of the Network User's billing system and/or bill format.

- 1.12 If the Network User agreed to distribute the Distributor's promotional material, the Network User will provide the Distributor's promotional material to the Consumer along with the Network User's invoice that includes the Rebate.
- 1.13 The Distributor will indemnify the Network User against any costs, losses, liabilities, claims, charges, demands, expenses or actions that may be incurred by the Network User or 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 material, 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.
- 1.14 The Distributor will meet the Network User's reasonable costs for providing any services requested, and if requested the Network User will provide a quote for the services in advance. The Distributor will pay the Network User's invoice for the services by the 20th of the month following the invoice date.
- 1.15 Any Rebates received in advance by the Network User will be held as separately identifiable funds by the Network User.
- 1.16 The Distributor will pay the Network User for the full amount of the Rebates credited by the Network User within 5 Working Days (or an alternative agreed date) of the Network User confirming the total amount credited to Consumers' accounts. The Network User will confirm this by providing a file itemising the Rebate credited to each Consumer.
- 1.17 The Distributor will compensate the Network User by issuing a Credit Note for the total amount credited and offset the total amount against future Distributions Service Charges.
- 1.18 If for any reason the Rebate payable to a Consumer is unable to be paid (by way of example but without limitation, because a qualifying consumer ceases to be a Consumer and its account with the Network User has a credit balance after the date of processing of the Rebate), and the Network User has received funds from the Distributor in respect of the Rebate, the Network User will as soon as practicable refund to the Distributor the Rebate received for that qualifying consumer, or the net credit of the account for that qualifying consumer if this is less than the amount of the Rebate for that qualifying consumer or refund the consumer directly the remaining amount by cheque. The Network User will also provide a supporting file to the Distributor containing the ICP, refund amount, consumer name and forwarding address (if available).