

DATED

2001

**SCANPOWER LIMITED
(Distributor)**

and

(Retailer)

USE OF SYSTEM AGREEMENT

AGREEMENT dated **2001**

BETWEEN

SCANPOWER LIMITED (the "Distributor"); and
or its nominee (the "Retailer")

INTRODUCTION

- A. The Distributor, an Electricity Lines Business, owns and operates the Distribution Network and has an agreement with Transpower New Zealand Limited (TPNZ) to receive electricity delivered from Generators over TPNZ's Network.
- B. The Retailer, an Electricity Supply Business, wishes to use the Distribution Network and the TPNZ Network to convey electricity purchased for use by its Customers and to sell electricity purchased together with the Distributor's Line Function Services.
- C. The Distributor agrees to provide the Line Function Services to, and allow use of the Distribution Network by, the Retailer on the terms and conditions set out in this Agreement.

THE PARTIES AGREE

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means this Use of System Agreement as signed by the Distributor and the Retailer;

"Apparent Power" means the product voltage of alternating current normally measured in kilovoltamperes (KVA) or megavoltamperes (MVA);

"Asset Management Plan" means a plan outlining the Distributor's asset management philosophy, criteria, maintenance, renewal and survey workplan, and proposed network development which may be reviewed and revised on an annual basis;

"Bank Base Rate" means the 90 day Commercial Bill Rate as published on page BKBM of Reuters monitor service and applying at 10:30 am on the day of the calculation;

"Charges" means the charges set out in Schedule 1 and subsequent amendments thereto in respect of Line Function Services and Metering Services provided by the Distributor;

"Charging Period" means a period of one calendar month;

"Confidential Information" means all data and other information of whatever nature, specified as being confidential at the time it is provided by one Party to the other Party under this Agreement;

"Connection Services" means services that may be provided by the Retailer or the Retailer's Agent or the Distributor or the Distributor's Agent under this Agreement and includes:

- (a) connection of a Customer's Installation to the Distribution Network including livening of Customer Installations, installation, fitting and commissioning of any protection, isolating, or switching equipment, mains termination, and connection of protection, isolating, or switching equipment to the Distribution Network;
- (b) disconnection of a Customer Installation at the Distributor's request under clause 12 or 18; and
- (c) installation and removal of any Distributor's Equipment;

"Customer" means a purchaser of electricity and Line Function Services from the Retailer where the supply is by means of the Distribution Network;

"Customer's Network Connection Point" means each point of connection at which the Customer's Installation or embedded network is connected to the Distribution Network and, unless otherwise agreed is the "Point of Supply" as defined in the Electricity Act 1992. Where required, the Customer's Network Connection Point will be defined in Schedule 3 attached;

"Customer's Installation" means any Fittings or Metering Equipment owned or used by a Customer (except Distributor's Equipment) that form all or part of a system for conveying electricity from the Customer's Network Connection Point to where the electricity may be consumed;

"Customer Load Control Equipment" means equipment installed on the Customer's premises for the purpose of enabling the Distributor to provide a Load Control Service or to enable the Retailer to provide a Load Control Service or a range of customer services, and may include communications equipment;

"Date of Commencement" means the date of this Agreement;

"Date of Expiry" means a date nominated by the Retailer on giving the Distributor not less than six (6) months prior written notice;

"Distribution Code" means the code based upon Good Industry Practice issued or adopted by the Distributor, and as amended from time to time by the Distributor;

"Distribution Network" means the Distributor's system including all Fittings and any Metering Equipment belonging to the Distributor comprising that system to convey electricity from the Network's Point of Supply and which terminates at the Customer's Network Connection Point;

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

"Distributor's Equipment" means those Fittings and Metering Equipment belonging to the Distributor or the Distributor's Agent which is from time to time installed in, over or upon a Customer's premises;

"Electricity Lines Business" means a business as defined in clause 4 of the Electricity Industry Reform Act 1998;

"Electricity Supply Business" means a business as defined in clause 5 of the Electricity Industry Reform Act 1998;

"Embedded Network Operator" means an entity that operates a public or private network for supply to itself or other parties;

"M-co" means the Marketplace Company Limited, a duly incorporated company at Wellington;

"Energy Supply Contract" means an agreement between a Generator and a Retailer relating to the sale and purchase of electricity;

"ENANZ" means the Electricity Networks Association of New Zealand Inc.;

"Fittings" means everything used, or designed or intended for use in or in connection with the conversion, transformation, conveyance or use of electricity including electric lines, substations and related equipment but excluding Metering Equipment;

"Force Majeure" means any event or circumstance:

- (a) that is beyond the reasonable control of either Party; and
- (b) that results in or causes the failure of that Party to perform any of its obligations under this Agreement; and
- (c) that or, as appropriate, the consequences of which, could not have been prevented by compliance by the relevant Party with Good Industry Practice,

Such events may include, but are not limited to:

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- (d) acts of god, strike, lock-out or other industrial disturbance, act of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice and explosion;
- (e) governmental restraint, act of parliament, other legislation and bylaw;
- (f) the failure or deficiency of any Generator, TPNZ or the Distributor to convey or **supply** electricity; and
- (g) 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 Customers 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 will not be interpreted as a cause beyond the reasonable control of that Party and provided further that, for the avoidance of doubt in relation to (d) to (g) above, such event or circumstance will only constitute an event of Force Majeure where the event or circumstance is beyond the reasonable control of the Party claiming Force majeure and where compliance by that Party with Good Industry Practice would not have prevented the event or circumstance (or the consequence of such event or circumstance) from occurring

"Generator" means any other person or organisation that generates and supplies electricity to the Retailer or M-co;

"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 and includes adherence to the principles laid out in any code of practice generally adopted by the electrical industry and strict adherence to any applicable law (including the requirements of the Electricity Act 1992 and regulations made under that Act including technical regulations);

"GST" means goods and services tax pursuant to the Goods and Services Tax Act 1985;

"Incumbent Retailer" has the meaning attributed to the term "Incumbent Retailer" in MARIA;

"Line Function Services" means the provision, operation and maintenance of Fittings and Metering Equipment belonging to the Distributor, and all other services necessary for the conveyance of electricity from Generators to each Customer's Network Connection Point including the procuring of contracts with TPNZ for the connection of the Distributor's Network, and the MARIA requirement for allocation of Losses;

"Livening Services" means livening of a Customers Installation by the Retailer or the Retailer's Agent and includes fitting and removal of fuses (fuse capacity to be in accordance with an approved Network Connection Application, with any increase/decrease to be approved via a Network Connection Application prior to any change) and compliance with Regulation 44 of the Electricity Regulations 1997 and any amendments thereof for new or re-commissioned Customer Installations. Auditable records of all Livening Services undertaken are to be maintained including fuse capacity installed, test results, inspection results, and Certificates of Compliance in respect of the Customer's Installation. These records will be made available to the Distributor or Retailer, on request, for inspection and auditing;

"Load Control Service" means the function of reducing or interrupting a part or all of a Customer's supply of electricity on the basis agreed between the Distributor and the Retailer with the principal purpose of optimising TPNZ charges, minimising existing and future network capacity requirements, minimising energy purchase costs and responding to other energy pricing signals;

"Losses" means electricity unaccounted for on the Distribution Network, being the difference between the sum of all electricity delivered to the Distribution Network measured at the Network's Point or Points of Supply and the sum of all electricity delivered to all Customers' Network Connection Points or Metering Points;

"Loss Factor" means the factor by which electricity metered at the Customer's Network Connection Point or agreed Metering Point is increased to determine the electricity for which the Retailer is responsible to purchase within the Distribution Network as set out in Schedule 1;

"MARIA" means the "Metering and Reconciliation Information Agreement" established by Deed between M-co and Transpower dated 21 March 1994 which records the contractual arrangements between Generators, Transpower, network users and distributors regarding the metering of electricity consumption and the reconciliation of the metering information obtained, amended from time to time, and any rules or amendments established there under;

"Metering Code of Practice" means the Metering Code of Practice published by ESANZ in October 1997, and revised editions of that document;

"Metering Equipment" means the apparatus used for the purpose of measuring the quantity of electricity conveyed through a Customer's Network Connection Point and will

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include current and voltage transformers, ripple relays, and associated wiring and communications equipment;

"Metering Point" means the point where Metering Equipment is installed in accordance with clause 9 and the Distribution Code to record consumption of electricity at or for a Customer's Network Connection Point;

"Metering Services" means all those functions required to maintain the integrity of the Metering Equipment and the information extracted. The services include installation, maintenance, testing, replacement and removal of meters, and exclude meter reading;

"National Reconciliator" means the "NRM" as defined in MARIA;

"Network's Point of Supply" means the point or points of connection between the Distribution Network and TPNZ's Network or any Generator or any other distribution network through which the Distribution Network receives a supply of electricity;

"Network Connection Application" means the application form required by the Distributor for Line Function Services from a Customer or Retailer for a new or upgraded Customer's Network Connection Point which details the proposed new or upgraded Customer Installation capacity and special requirements;

"Network Connection Point" means the point at which the customers installation is connected to the distribution network;

"Network Connection Requirements" means the connection requirements as detailed in clause 5;

"Network Interconnection Agreement" means an agreement between the Distributor and an Embedded Network Operator who operates an embedded distribution network;

"New Capacity Agreement" means an agreement between the Distributor and the Retailer to supply new capacity or upgraded capacity or other requirements of the Distribution Network to meet the needs of the Retailer or the Customer;

"NZEM Rules" means the rules of the New Zealand Electricity Market (NZEM) as may be in force and published from time to time by M-co;

"Other Retailer" means a retailer, other than the Incumbent Retailer, who uses or wishes to use the Distribution Network to convey electricity for use by its Customers;

"Party, Parties, or other Party" means each or either of the Distributor or the Retailer, or both the Distributor and the Retailer;

"Period of Inaccuracy" means the period between the most recent prior test conducted on the Metering Equipment when it was accurate and the time at which it is determined that the Metering Equipment cannot measure or measures inaccurately and is deemed to be the period during which the Metering Equipment has become incapable of any measurement or any accurate measurement, or any other period as agreed between Retailer and Distributor;

"Posted Terms of Supply and Charges" means terms of supply and charges imposed by the Incumbent Retailer or other Retailer in the absence of any other agreement with the Customer, or terms of supply and charges in respect of Line Function Services provided by the Distributor when clause 6.4 applies;

"Power Factor" means that power factor defined in the Distribution Code;

"Power Fluctuation" means short term variations in the nature of electricity at a Customers Network Connection Point resulting in voltage spikes, dips, sags, brown outs, over-voltage, under-voltage, frequency variations or excursions resulting from but not limited to the following:

- Lightning strikes.
- The operation of either the Distributor's, TPNZ'S, a Generator's, or a Customer's power system fault protection equipment (including auto reclosers).
- Wind causing trees to contact power lines.
- Motor starting.
- Large single loads.
- Switching of alternative supply routes by the Distributor or TPNZ.
- Cable or line faults in the Distribution Network or TPNZ's network.
- Welders, pottery kilns.
- Broken lines.
- Partial supply of three phase supplies.
- Third party events.

"Premises" means the land and buildings owned or occupied by a Customer, any land over which the Customer has an easement or right to pass electrical fittings and any electrical fittings used by the Customer to convey electricity from the Customer's Network Connection Point to the locations at which electricity is consumed;

"Reconciliation Function" means the function of reconciling flow of electricity into, within and out of the Distributor's Network for the purposes of enabling financial settlements to take place;

"Remote Signaling Service" means the function of providing a signal through the Distribution Network for the purposes of providing Load Control services on the Customer's premises, as agreed between the Parties;

"Retailer's Agent" means a person or organisation with whom the Retailer has or proposes to enter into an agreement to provide services for or on behalf of the Retailer;

"Retailer's Equipment" means any Fittings and Metering Equipment owned, leased or otherwise provided by the Retailer, or the Retailer's Agent, and which is from time to time installed in, over or upon a Customer's premises;

"Risk Management and Security of Supply Plan" means a plan which may be reviewed and revised annually outlining risks and security of supply issues that Retailers and Customers will assist in drafting in respect of the Line Function Services from the Distributor and includes the Distributors risk management philosophy, criteria, and security of supply issues;

"Sales Discount" means a discount of Line Function Service Charges made from time to time by the Distributor to those Customers who are defined as &,consumers" in the Trust Deed;

"Sensitive Equipment" means equipment or devices or appliances that may be sensitive to Power Fluctuations and may include but are not limited to computers, devices which have micro processors or electronic controls or clocks (e.g. VCRs, facsimile machines, TVs etc.), electronic time clocks, electronic power supplies, telecommunication equipment, electronic motor starters and controllers and three phase motors and other three phase devices or equipment that may be damaged when only partial supply e.g. one or two phases is supplied to a three phase device;

"Service Standards" means the levels of performance to which the Distributor will use its best endeavours to achieve in providing Line Function Services;

"TPNZ" means Transpower New Zealand Limited its successors and permitted assigns;

"TPNZ Network" means the electricity transmission system owned and operated by TPNZ;

"Trust Deed" means the Scanpower Customer Trust Deed dated 3 April 1993 (as amended from time to time) constituting the Scanpower Customer Trust being an "electricity trust" as defined in the Electricity Industry Reform Act 1998; and

"Trustees" means the trustees for the time being under the Trust Deed.

1.2 Clause and other headings are for ease of reference only.

1.3 Any reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.

1.4 References to clauses and schedules are references to clauses of and schedules to this Agreement.

- 1.5** Any reference in this Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

2 Conditions Precedent

- 2.1** Prior to the conveyance of electricity through the Network to a Customer's Network Connection Point pursuant to this Agreement:

- (a) the Retailer and the Distributor will have executed this Agreement;
- (b) the Retailer will have satisfied the Distributor, and will be deemed to warrant to the Distributor each time a Customer information sheet is delivered to the Distributor pursuant to clause 2.1(c) below, that:
 - (i) the Retailer has entered into an agreement to purchase electricity, sufficient to meet its obligations to Customers it is supplying, from a Generator or a Purchaser Class Market Participant under the NZEM Rules, or the Retailer is a Purchaser Class Market Participant under the NZEM rules; and
 - (ii) the Retailer has entered into an agreement to supply electricity to the Customer and such agreement provides for terms which have substantially the same effect as clauses 3.4, 3.5, 5.2(b), 10.2, 10.3, 10.4, 14.5, 14.6, 15.1, and 15.2;
- (c) the Retailer has completed and provided to the Distributor a Customer information schedule, as detailed in Schedule 3;
- (d) the Retailer has confirmed in writing it is bound by and will comply with:
 - (i) MARIA or other reconciliation processes as agreed between the Retailer and Distributor; and/or (as applicable);
 - (ii) the NZEM Rules.
- (e) Metering Equipment has been installed in accordance with clauses 9.4 or 9.5, and;
- (f) a Network Interconnection Agreement being entered either prior to or simultaneously with this Agreement where the Retailer's Customer is an Embedded Network Operator.

3 Agreement to Use of Distribution Network

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- 3.1** In consideration for the payment of the Charges by the Retailer, the Distributor will provide Line Function Services to the Retailer, such Services not being the conveying by the Distributor to the Retailer of the Distributor's assets or right to possession of those assets.
- 3.2** Use of the Distribution Network is restricted to the conveyance of electricity and for signalling or communication purposes in relation to the conveyance or metering of electricity.
- 3.3** For the purpose of this Agreement all electricity injected into the Distribution Network, at the Network's Point of Supply, will be deemed to be the property of the Retailer and all Other Retailers as tenants in common on a proportionate basis.
- 3.4** The Retailer will procure that (where applicable) the Customers and Customer Installations comply with the Distribution Code, and any statutory requirements.
- 3.5** The Retailer acknowledges that pursuant to clause 20.2 the Distributor will not be responsible for Power Fluctuations, and the Retailer accepts responsibility to advise Customers to install suitable protection equipment and practices where appropriate, especially for Sensitive Equipment.

4 (SPARE)

5 Customers' Network Connection Point

- 5.1** The Customer's Network Connection Points to which this Agreement relates are as listed in Schedule 3 or updates thereof, as advised to the Distributor in accordance with this Agreement.
- 5.2** For all Customer's Network Connection Points (not previously listed in Schedule 3 or added thereto) through which the Retailer (including the incumbent Retailer) intends to supply electricity the Retailer will:
 - (a) give the Distributor reasonable notice of that intention including the name and address of the Premises, and meet the information requirements of Schedule 4 and the Distribution Code;
 - (b) where the Customer installation is a new installation, procure from the Customer an undertaking to provide and maintain suitable space for the safe and secure housing of all Distributor's Equipment related to the Customer's Network Connection and reasonably deemed necessary by the Distributor to be housed on the customer's Premises; and
 - (c) ensure connection to the Distribution Network is undertaken in accordance with clause 11.

5.3 The Retailer will not permit livening of any connection to the Distribution Network of any new or modified Customers Installation unless or until:

- (a) the Distributor is reasonably satisfied that all of the requirements of this Agreement and Distribution Code have been complied with;
- (b) the Network Connection Application has been approved by the Distributor prior to connection and livening;
- (c) any New Capacity Agreement requirement for new or upgraded Distribution Network assets required by a Customer has been entered into between the Distributor and the Retailer; and
- (d) the Distributor is satisfied that for supply capacities greater than 15 kVA the Power Factor of the Customer's Installation does not breach the minimum requirements specified in clause 16.6 and the Distribution Code.

5.4 The Retailer may, on giving at least two working days written notice to the Distributor, require the Distributor to delete any Customer's Network Connection Point from Schedule 3 under this Agreement with effect from the date and time specified in that notice and thereupon the Retailer at its own expense will, unless agreed otherwise with the Customer or Other Retailer, disconnect the Customers Installation from the Distribution Network and the Retailer will incur no further charges for Line Function Services beyond the specified date and time.

5.5 Should any Customer be disconnected from the Distribution Network who is subject to a New Capacity Agreement prior to the termination date (of the New Capacity Agreement), the Distributor will use all reasonable endeavours to find an alternative use for, or will dispose of, that part of the Distribution Network that is utilised by or provided for the Customer, and thereafter if applicable the Retailer or Customer, as specified in the New Capacity Agreement, will pay the Distributor the Disconnection Charge (that was agreed to in the New Capacity Agreement).

5.6 If there is more than one Customer's Network Connection Point at the premises the Retailer will procure that no interconnection is made at any time between those Customer's Network Connection Points.

6 Term of the Agreement and Renewal

6.1 The Agreement will commence on the Date of Commencement and except in the case of an early termination agreed by the Parties in writing or in the case of termination Pursuant to clause 18 or 19, will expire on the Date of Expiry.

- 6.2** Where this agreement is for a fixed term, or is terminated by the Distributor, except in the case of termination pursuant to clause 18 or 19 no later than three months prior to the Date of Expiry a new agreement will be offered by the Distributor to the Retailer.
- 6.3** The Retailer may, upon notice to the Distributor prior to the Date of Expiry, elect to:
- (a) upon expiry of this agreement, cease using the Distribution Network; or
 - (b) prior to and with effect from expiry of this Agreement allow the Customer installations to remain connected to the Distribution Network.
- 6.4** If the Retailer does not exercise its rights of election under options (a) or (b) in clause 6.3, or if this Agreement is terminated pursuant to clause 18 or 19, the Retailer will be deemed to have elected to remain connected to the Distribution Network in accordance with the Distributor's Posted Terms of Supply and Charges until an election is made by the Retailer to either not renew or enter into a new agreement.

7 Review of The Agreement

- 7.1** Notwithstanding the term of the Agreement, and without limiting either Party's rights in relation to termination, the Parties will, on notice from either Party, review the provisions of this Agreement for the purposes of considering and reaching agreement on any amendments to this Agreement necessary to give effect to any change in circumstances or clarification of this Agreement as a result of any amendment to the Electricity Industry Reform Act 1998, the Electricity Act 1992, any regulations passed under both Acts, any alterations to MARIA, the rules of M-co or the NZEM Rules, any contractual relationships with TPNZ, the status of the Incumbent Retailer, or any other applicable New Zealand electricity distribution industry standards or practices.
- 7.2** If the Network Owner updates its standard contract for network services, the Network Owner shall advise the Network User and this Agreement shall be amended in such a manner as is required by the Network User to reflect such updates. If the Network Owner offers access to the Network on terms which vary from this Agreement then the Network Owner shall promptly advise the Network User and this Agreement shall be amended in such a manner as is required by the Network User to reflect such variations.

8 Payment of Charges

- 8.1** In consideration for the Distributor providing Line Function Services to Customers' Network Connection Points included in Schedule 3 and as amended from time to time, the Retailer will pay the Charges due to the Distributor as calculated in accordance with clause 16 and Schedule 1.

- 8.2** The Incumbent Retailer will meet all charges payable for lived-in Customer's Network Connection Points on the Distribution Network except to the extent that those charges are payable by the Retailer or an Other Retailer.
- 8.3** The Distributor will generate a tax invoice and send this to the Retailer no later than the close of business on the 12th business day of every month for the amount due in respect of charges for the previous month's Charging period calculated in accordance with clause 8.1 for all customers covered by this Agreement.
- 8.4** The Retailer will pay to the Distributor sums invoiced by the 20th day of the month in which the invoice is created.
- 8.5** All Charges payable by the Retailer are, unless expressed otherwise, stated exclusive of Goods and Services Tax (if any); the Distributor will add to such amounts Goods and Services Tax or such other tax, charge or levy as may from time to time be required by virtue of any statute, statutory instrument or equivalent statutory provision by which the Distributor is bound.
- 8.6** If the Retailer fails to make payment by the due date specified on an invoice including any estimated invoice the Retailer will pay the Distributor default interest on the amount unpaid at the rate of two percentage points over and above the Bank Base Rate for the period between the due date and the date of payment. Such payment of interest does not preclude the Distributor from exercising any other remedy provided for in this Agreement.
- 8.7** If payment is not received by the due date as set out in clause 8.4 or if the Retailer does not comply with clause 8.3 for three consecutive monthly periods, the Distributor may give notice of an event of default as specified in clause 18.

9 Metering

- 9.1** The quantity of electricity conveyed to any Customer's Network Connection Point will be measured by the Metering Equipment.
- 9.2** Metering Equipment may be owned by the Retailer or the Retailer's Agent or Distributor, or the Distributor's Agent, or the Customer, or a third party.
- 9.3** If the Metering Equipment is owned by the Retailer or the Retailer's Agent, the Retailer will ensure compliance with clauses 9.4 and 9.5. If Metering Equipment is owned by Customers or a third party, the Retailer will use reasonable endeavours to ensure that the Customer or third party complies with clauses 9.4 and 9.5.

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- 9.4** All Metering Equipment and Metering Services will be installed, maintained and operated to comply with:
- (a) MARIA or other agreed and accepted industry standards that may be adopted;
 - (b) the Distribution Code. and
 - (c) Good Industry Practice and in the event of a conflict between MARIA and the Distribution Code, MARIA is to prevail.
- 9.5** Spare
- 9.6** The Metering Equipment will be deemed to be accurate and all measurements taken from the Metering Equipment will be binding on the Parties unless any of the Parties disputes the accuracy of the Metering Equipment by giving written notice to the other Party or Parties. In the event such written notice is given:
- (a) each Party will provide the other with any available information relevant to the checking of the Metering Equipment;
 - (b) the Metering Equipment will be checked for defective or inaccurate functioning or calibration in accordance with Good Industry Practice; and
 - (c) no Metering Equipment will be altered or checked unless the Customer, the Incumbent Retailer or other Retailer, and the Distributor have been given the opportunity to be represented.
- 9.7** If it is discovered that any Metering Equipment used in the determination of charges is not measuring accurately then the quantity of electricity conveyed or maximum demand during the Period of Inaccuracy will be determined in accordance with the requirements of MARIA, or where relevant, any superseding accepted industry reconciliation agreement.
- 9.8** Where the Retailer purchases Metering Services from the Distributor or the Distributor's Agent, the Distributor or the Distributor's Agent:
- (a) will not allow the Metering Equipment or the data it measures to be used for any purpose other than as specifically provided for by the Parties to this Agreement; and

- (b) will vest in the Retailer or Retailer's Agent the right to independently access information from the Metering Equipment as required at any time by the Retailer without further recourse to the Distributor.

9.9 The Retailer will upon ceasing to supply electricity to its Customer allow the Retailer's or the Retailer's Agent's Metering Equipment to remain in place for a period of no less than 10 business days for use by the Incumbent Retailer or any Other Retailer supplying electricity to that Customer. The Retailer will give any Other Retailer, or the Incumbent Retailer, access to the Metering Equipment and will supply all information from the Metering Equipment as reasonably required by the Other Retailer or the Incumbent Retailer for the period that the Metering Equipment remains in place.

10 Equipment Protection and Access

- 10.1** The Distributor, its employees, agents and invitees will not interfere with the Retailer's Metering Equipment without the prior written consent of the Retailer, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property. In the event of such interference the Distributor will immediately inform the Retailer of the occurrence and circumstances involved.
- 10.2** The Retailer will procure that, its employees, agents, invitees or Customers will not interfere with the Distributor's Equipment without the prior written consent of the Distributor, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property. In the event of such interference the Retailer will immediately inform the Distributor of the occurrence and circumstances involved.
- 10.3** The Retailer will procure the Customer to provide and be responsible for:

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- (a) reasonable protection (at the expense of the Customer) of the Distributor's Equipment where located on the premises, or from the boundary of the Premises up to the Customer's Network Connection Point against interference and damage; and
- (b) any damage caused to the Distributor's Equipment, by negligent or willful act or omission of a Customer, or through failure of the Customer to provide the protection referred to in (a) above.

10.4 The Retailer will procure agreements between it and its Customers that will give the Distributor's employees, agents, sub-contractors and invitees at all reasonable times safe and unobstructed access:

- (a) to any of the Distributor's Equipment for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing the same and for any other purposes related to this Agreement;
- (b) to any of the Retailer's Equipment, for the purpose of verification of metering information as required to comply with any Reconciliation Function;
- (c) onto the Customer's premises to ascertain the cause of any interference to the quality of Line Function Services being provided by the Distributor to the Retailer, Other Retailer or Retailer's Customers; and
- (d) onto the Customer's premises for the purpose of protecting persons or property from electrical hazard, connecting or disconnecting the supply of electricity.

The benefit of this clause 10.4 is intended to extend to the Distributor and may be enforced by the Distributor pursuant to the Contracts (Privity) Act 1982.

10.5 The Distributor will exercise its right of access wherever practicable:

- (a) giving to the Retailer and Customer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
- (b) causing as little inconvenience to the Retailer and Customer in carrying out such work;
- (c) observing Good Industry Practice; and
- (d) leaving evidence of entry to property or premises and a description of work done.
- (e) observing any security or site safety requirements of the Customer made known to the Distributor.

- 10.6** The rights of access conferred by this Agreement are in addition to any right of access the Distributor may have under any statute, regulation, easement or caveat.
- 10.7** If a Customer fails to grant to the Distributor access as required under clause 10.4, the Distributor may disconnect the Customer's Installation from the Distribution Network, provided two working days notice in writing has been given to the Retailer.
- 10.8** Should the Distributor, the Retailer or their respective agents, discover evidence of interference with the Distributor's Equipment or the Retailer's Equipment, broken seals to meters or of theft of electricity, the Party discovering the interference or theft will notify the other Party within 24 hours.
- 10.9** In the event of suspected interference with the Distributor's Equipment on a Customer's Installation the Distributor may carry out an investigation and, if in the reasonable opinion of the Distributor the Retailer is at fault, then the Retailer will compensate the Distributor for the reasonable costs incurred in undertaking the investigation and for the cost of repairing any resulting damage.
- 10.10** The Distributor indemnifies the Retailer and the Customer for any damage caused in exercising its right of access under this Agreement.

11 Connection and Livening

- 11.1** All Connection Services will be performed either by the Distributor or the Distributor's Agent, or the Retailer or the Retailer's Agent as agreed by the Parties. Livening Services will only be carried out by the Retailer or the Retailer's Agent.
- 11.2** All Connection Services or/and Livening Services will be performed in accordance with the Distributor's reasonable requirements and any processes and procedures for such Connection Services or /and Livening Services as may be agreed between the Parties (which will be documented).
- 11.3** A Retailer's Agent will be accredited by the Distributor to carry out Connection Services or/and Livening Services on the Distribution Network once the Retailer has submitted to the Distributor sufficient details to satisfy the Distributor of the agent's capability, experience and qualifications to perform the Connection Services or/and Livening Services and meet the requirements of the Distributor. The Distributor will not unreasonably withhold accreditation of any Retailer's Agent.

- 11.4** The Retailer will procure in agreements with its agents accredited to perform Connection Services or/and Livening Services that the services will be carried out in a manner that meets the Distributor's reasonable requirements.
- 11.5** Accreditation to perform Connection Services or/and Livening Services may be withdrawn by the Distributor, acting reasonably, in the event of a breach by the Retailer or Retailer's Agent of clause 1 1.2.
- 11.6** If the Distributor withdraws a Retailer's Agent's accreditation, the Distributor will notify the Retailer in writing of the withdrawal of accreditation and the basis thereof.
- 11.7** The Distributor may refuse to allow connection of a Customer where the Retailer, the Retailer's Agent or the Customer fails to satisfy the conditions for connection contained in the Distribution Code or otherwise fails to obtain the approval of the Distributor.
- 11.8** The cost of Connection Services and Livening Services will be borne by the person requesting those services.

12 Disconnection of Customer

- 12.1** If a Customer's Installation does not comply with the requirements of this Agreement or if the Customer's Installation is the subject of a requirement from the Secretary pursuant to the Electricity Act 1992, the Distributor or Retailer may disconnect the Customer's Installation until the Customer has taken all actions necessary for the installation to comply with such requirements.
- 12.2** In exercising its right to disconnect under clause 12.1 the Distributor will provide the Retailer:
 - (a) a minimum of 14 days' written notice of its intention to disconnect, the reasons for disconnection, the Distributor's requirements in relation to the Customer's Installation to prevent disconnection and a reasonable time within which the Retailer or Customer must comply with the Distributor's requirements before disconnection is effected; and
 - (b) if due to there being significant risk to life or property the Distributor determines on reasonable grounds not to give prior notice, as soon as practicable after disconnection, written notice of the reasons for disconnection and its requirements for connection of the Customer's Installation.
- 12.3** In the event of such disconnection, or any subsequent reconnection not arranged for by the Retailer, the Distributor may re-cover from the Retailer its reasonable costs of carrying out such service.

12.4 The Distributor's obligations for continuance of supply in accordance with Section 62 of the Electricity Act 1992 do not apply in the case of disconnection under this clause 12 or under clause 18.

13 Line Function Services

13.1 In Providing the Line Function Services the Distributor will:

- (a) design, construct, operate and maintain the Distribution Network in accordance with Good Industry Practice, all statutory requirements, the requirements of the Distribution Code, and take into consideration the reasonable requirements of the Retailer and Other Retailers and Customers;
- (b) use its best endeavours to procure from TPNZ all reasonable safeguards to enable the Distributor to provide the Line Function Services to the degree specified by this Agreement;
- (c) use its best endeavours to enable a reliable, high quality and continuous supply of electricity;
- (d) maintain the Line Function Service Performance Standards as defined in Schedule 2 and the Distribution Code;
- (e) operate a Load Control Service and Remote Signaling Service according to regimes as agreed between Retailer and Distributor;
- (f) provide a 24 hour call out fault service for Line Function Services;
- (g) provide a 24 hour communications system to receive and action Customer and/or Retailer inquiries/complaints resulting from distribution or transmission network faults and outages;
- (h) notify the Retailer of interruptions to Line Function Service in accordance with clause 15; and
- (i) determine Loss Factors as specified in Schedule 1 for the allocation of Losses in the delivery of electricity through the Distribution Network after consulting with the Incumbent Retailer and Other Retailers.

13.2 The quality of the Line Function Services provided by the Distributor to a Customer will be determined at the Customers' Network Connection Point.

13.3 Where the Retailer has a Line Function Services requirement not allowed for in this Agreement, the Retailer and the Distributor may reach an agreement with regard to that requirement subject only to the requirements that the Distributor

will, on request of Other Retailers, notify the Other Retailers of the principles on which the agreement is based.

- 13.4** The Distributor reserves the right to accept or decline any request from the Retailer or Customer to extend its Distribution Network for the purpose of supplying electricity to any existing or potential Customer of the Retailer. Unless otherwise agreed the Distributor will convey its decision and any additional considerations in writing to the Retailer or Customer on any such request within 30 days of receipt of the Retailer's or Customer's written request included where relevant, the reason why the request has been declined.
- 13.5** Any extension or upgrade of the Distribution Network in response to a request under clause 13.4 will at the option of the Distributor be the subject of a New Capacity Agreement on terms to be agreed between the Distributor, the Retailer and the Customer.
- 13.6** The Distributor will prepare the following documents which will be revised on an annual basis:
- (a) Asset Management Plan; and
 - (b) Risk Management and Security of Supply Plan.

These documents outline proposed maintenance, network development, and security of supply standards and risks for the Distribution Network and which are reflected in the Charges. Before finalising these documents Retailers and customers with direct connection Agreements will be consulted and given one month to make a written submission. The Distributor undertakes to give due consideration to all submissions and where considered appropriate, in its opinion, incorporate or modify the documents accordingly.

- 13.7** In providing Line Function Services to the Retailer, the Distributor will not misrepresent, defame, or degrade the Retailer to any Customer, Other Retailers, or any other person.

14 Retailer Obligations

- 14.1** The Retailer acknowledges that the Distributor may require the Retailer to assist it to meet its obligations in terms of the Trust Deed. The Parties agree as follows:
- (a) any Sales Discount will be reflected, and separately identified on invoices to Customers;
 - (b) until applied to the Customer's account, the Retailer holds the benefit of any Sales Discount upon trust exclusively for the Customer;

- (c) the Sales Discount will be shown as attributable to the Customer's beneficial interest in the Trust Deed;
- (d) the mechanism and process by which any Sales Discount is passed to the Customer must first be approved by the Distributor, and the Distributor will pay the Retailer such reasonable sum as may be agreed between the Parties in providing this service; and
- (e) the Retailer will use its reasonable endeavours to enable the Distributor to comply with any further obligations of the Distributor under the Trust Deed, provided the Parties have first agreed the basis on which the Retailer will be paid by the Distributor in consideration for the Retailer providing any such assistance.

14.2 The Retailer acknowledges that it will provide the information requested in Schedule 4 if relevant within five working days of the Retailer's obligation to provide the information..

14.3 The Retailer will not misrepresent or degrade the Distributor to any Customer, Other Retailers or any other person, and likewise the Distributor will not misrepresent or degrade the Retailer to any customer, Other Retailer or any other person.

14.4 The Retailer in its electricity supply agreement with the Customer will include the right for the Retailer to provide the information set out in Schedule 4 to the Distributor.

14.5 The Retailer warrants and will procure that all written advice and instructions to the Distributor in respect of a Customer will be made in good faith, lawful, and any consequence or ongoing obligation thereby created will be binding on both the Retailer and Customer.

14.6 The Retailer will advise Customers to, in the event of an interruption to service whether scheduled or unscheduled, treat the Distribution Network and Customers Installation as if they are live and to disconnect or switch off all appliances, plant and equipment that could create a hazard e.g. heaters or stove elements and Sensitive Equipment.

15 Interruption of Line Function Services

15.1 The Distributor may interrupt or reduce the conveyance of electricity to any Customer's Network Connection Point at any time the Distributor considers it appropriate to do so in accordance with Good Industry Practice:

- (a) to enable the Distributor to inspect, effect alterations, maintenance, repairs or additions to any part of the Distribution Network;

- (b) to avoid danger or to avoid interference with the regularity or efficiency of the conveyance of electricity through the Distribution Network;
- (c) to preserve and protect the proper working of the Distribution Network, the TPNZ Network (excluding interruption to participate in the spinning reserve market or markets of a similar nature) or any other network;
- (d) if supply of electricity to a Network Point of Supply is or will be reduced, impaired or interrupted any remaining supply capacity, if any, will be allocated by the Distributor, using its reasonable endeavours, on an equitable basis between Retailers after giving Priority to essential services; or
- (e) in the event of an occurrence of Force Majeure.

15.2 Where the Distributor interrupts the conveyance of electricity to any Customer pursuant to clause 15.1, the Distributor will:

- (a) give the Retailer (and any major or "*critical*" Customer agreed with the Retailer) reasonable prior written notice of its intention to interrupt the conveyance of electricity and seek agreement of the timing of the interruption to minimise inconvenience to the Retailer and Customers unless, in the reasonable opinion of the Distributor, the interruption must be effected immediately for operational or safety reasons. The notice will state the date, time, area affected and reasons for the interruption, and the expected duration of the interruption. In the event that agreement is not reached the Distributor reserves the right after considering all information from the Retailer and other Retailers, to determine the timing of the interruption of Line Function Services. The Distributor will advertise in an agreed local publication an interruption notice which will state the date and time of the interruption as well as an alternative date should the work not proceed on the original scheduled date;
- (b) if no prior notice is given, as soon as is practicable give to the Retailer and local radio stations notice of the area affected by and reasons for the interruption and its expected duration;
- (c) use all reasonable endeavours to both minimise the period of interruption and resume the conveyance of electricity to the relevant Customer's Network Connection Point as soon as reasonably practicable;
- (d) choose times least likely to disrupt affected Customers subject to safety considerations; and
- (e) act in accordance with the Distribution Code and Good Industry Practice.

15.3 The Distributor will make available to the Retailer, on request, information regarding the power quality available to the Retailer at a particular Customer's Network Connection Point.

16 Prices and Price Variations

16.1 Charges for Line Function Services applicable at the Date of Commencement are detailed in Schedule 1. The Charges and all other prices set out in this Agreement are, unless expressed otherwise, exclusive of all statutory charges (including Goods and Services Tax) payable by the Distributor as a direct consequence of the provision of Line Function Services under this Agreement.

16.2 In setting and determining the Charges for Line Function Services, the Distributor will:

- (a) treat all Retailers on an equitable basis in respect of Charges and terms and conditions for equivalent services;
- (b) use its best endeavours to maintain stable and predictable charges;
- (c) disclose its pricing methodology in an open and transparent manner;
- (d) be entitled to a fair and reasonable commercial return on assets employed after allowing for the reasonable recovery of operating and other costs. Unless agreed otherwise "fair and reasonable return" will be taken to refer to the accounting rate of profit (ARP) as defined under the Electricity (Information Disclosure) Regulations 1994, and amendments thereof; and
- (e) comply with any regulations promulgated under the Electricity Act 1992 or the Electricity Industry Reform Act 1998.

16.3 Unless agreed otherwise, the Distributor has the right to amend the charges for Line Function Services after giving not less than 45 Business Days' notice of any variation of the Charges. Unless the variation is to pass on positive or negative cost changes to the Distributor provided for under any contract or agreement relating to the use of TPNZ's Network, the Distributor may not exercise its rights pursuant to this clause more than once in any period of 12 months. Any such variation to the Charges will not be disputed under the Agreement and will not be the subject of mediation or arbitration except as may be required pursuant to regulations made under the Electricity Industry Reform Act 1998 or as directed by a decision of the courts.

16.4 The Distributor will provide the Retailer with not less than 60 Business Days' notice of any change in the Distributor's pricing strategy, policy or methodology

where that change may impact on the structure of the Retailer's pricing to Customers.

16.5 The written notice given by the Distributor to the Retailer setting out any variation or amendment to Charges will include:

- (a) the levels of the new prices and effective date;
- (b) the reason for the variations; and
- (c) a statement of pricing strategy, policy, and methodology where a change in any one of these causes the price variation.

16.6 This Agreement assumes for Customer Installations above 15 kVA capacity, a Power Factor of 0.95 or better. The Distributor reserves the right to require Customers to fit Power Factor correction equipment.

17 Reconciliation

17.1 Unless agreed otherwise, the Retailer and Other Retailers will become party to MARIA which will specify the method of determining the electricity flows into, within and out of the Distribution Network. The Incumbent Retailer's electricity purchases will be calculated in accordance with MARIA's requirement for Incumbent Retailers.

17.2 Unless agreed otherwise, if the Retailer is not bidding into NZEM for the quantities of electricity for which Line Function Services are to be provided to the Retailer, then:

- (a) if the electricity taken at the relevant Network's Point of Supply is likely to exceed 2.5 MWh in any half hour, the Retailer will by 5pm on each day provide to NZEM information as to the anticipated quantities of electricity to be taken at that relevant grid exit point for each half hour of the next day; and
- (b) if the electricity at the relevant Network's Point of Supply is likely to be less than 2.5 MWh in any half hour, the Retailer will by 5pm each day use its reasonable endeavours to provide NZEM information as to the anticipated quantities of electricity to be taken at that relevant grid exit point for each half hour of the next day.

17.3 The Distributor will not connect any Other Retailers to the Distribution Network unless the Other Retailer agrees to comply with MARIA.

18 Default and Termination

18.1 If an event of default has occurred and remains unremedied, the Distributor or Retailer may give 24 hours notice in writing to the other Party terminating this Agreement, without Prejudice to any other rights and remedies of either Party. Upon the expiry of the notice the Retailer will cease its use of the Network. Otherwise, upon termination, the provisions of clause 6.4 apply.

18.2 For the purpose of clause 18. 1, an event of default occurs if:

- (a) the Retailer fails to pay any amount due and owing from the Retailer under this Agreement and the default is unremedied at the expiry of ten working days immediately following receipt by the Retailer of written notice from the Distributor of such non-payment;
- (b) either Party fails in any material respect, other than as a result of a circumstance of Force Majeure, to perform or comply with any of its obligations under this Agreement and (if it is capable of remedy) it is not in the process of being remedied to the reasonable satisfaction of the other Party within 10 working days of receiving written notice of the failure requiring it to be remedied;
- (c) either Party:
 - (i) is deemed or presumed to be unable to pay its debts within the meaning of the Companies Act 1993, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a consignment or an arrangement or composition with or for the benefit of its creditors;
 - (ii) is removed from the register of companies or is subject to liquidation, either where an application for an order is made for liquidation or an effective resolution is passed for its liquidation; or
 - (iii) sells its business, or its undertaking, property or assets comprising the major part of its business without the prior written consent of the other Party, which consent will not be unreasonably withheld;

or

- (d) either Party:
 - (i) becomes subject to any distress, attachment, execution or other legal process levied, enforced, issued on or against any material part of its property and is not discharged or stayed within ten working days; or
 - (ii) has a receiver appointed to the whole or any substantial part of its undertaking property or assets and the other Party forms the opinion on

reasonable grounds that the event materially affects the creditworthiness of the Party or the ability of that Party to comply with this Agreement.

18.3 Termination of this Agreement in no way negates the rights and obligations of the Parties up to the time of termination.

19 Force Majeure

19.1 If either Party is unable to carry out any of its obligations under this Agreement because of an event or circumstances of Force Majeure this Agreement will remain in effect but except as otherwise provided, the obligation, which is unable to be carried out, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure, will be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the non-performing Party gives the other Party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of performance 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 suspension of performance are excused as a result of the Force Majeure; and
- (d) the non-performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

19.2 If the event or circumstance of Force Majeure is of such magnitude or has continued, or in the reasonable opinion of either Party will continue, for not less than 120 days, and as a consequence it is either impracticable or unreasonable for either Party to perform, comply with or observe material obligations under this Agreement, either Party can require the other to meet to discuss the impact of that event or circumstances on this Agreement, and both Parties will, using goodwill, seek to negotiate a variation to this Agreement. If no such agreement is concluded within 30 days of either Party requesting a meeting, either Party may give not less than 14 days prior notice terminating this Agreement. Any dispute as to the application of this clause 19.2 will be resolved under clause 21, and until so resolved, the termination notice is suspended.

19.3 Nothing in this clause 19 shall be construed to require either Party to settle a strike, lock-out or other industrial disturbance by acceding against its judgment to demands made to it.

20 Liability for Loss

- 20.1** Neither Party will be liable to the other for any loss, cost or expense which may be sustained by that Party or any other person unless such loss was due to the other Party's breach of this Agreement.
- 20.2** Notwithstanding any other provisions of this Agreement, the Distributor will not in any circumstances be liable to the Retailer for:
- (a) any failure to convey electricity or to satisfactorily convey electricity caused by no or reduced injection of supply of electricity into the Distribution Network;
 - (b) any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signaling Service caused by any defect or abnormal conditions in the Customer's Premises or the Customer or any other person failing to observe or comply with the Distribution Code;
 - (c) failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signaling Service in circumstances where emergency action has to be taken to protect the health and safety of persons or to prevent damage to property;
 - (d) any loss or damage caused as a result of any act or omission of the Retailer or any third party not under the control or supervision of the Distributor, and/or an event of Force Majeure;
 - (e) any event or circumstance to which clause 15.1 applies.

This clause 20.2 will not apply to any event or circumstance where that event or circumstance could have been avoided by the application of Good Industry Practice by the Distributor.

- 20.3** The Retailer will not in any circumstances be liable to the Distributor for:
- (a) any failure to perform any obligation pursuant to this Agreement, caused by the Distributor's failure to comply with the same;
 - (b) any failure to perform any obligation pursuant to this Agreement directly caused by any defect or abnormal conditions in the Distribution Network; or
 - (c) any failure to perform any obligation pursuant to this Agreement directly caused by any event of Force Majeure.

This clause 20.3 will not apply to any event or circumstance where that event or circumstance could have been avoided by the application of Good Industry Practice by the Retailer.

- 20.4** If there is any event or circumstances other than those described in clauses 20.2 and 20.3 resulting in liability of one Party to the other Party or to any other person whether in contract or tort or otherwise howsoever, then notwithstanding any other provision of this Agreement that Party will be liable only for loss directly resulting from the breach (where such loss was reasonably foreseeable as being likely to occur from such breach) and, in any event, only up to the amount(s) specified in Schedule 6. For the avoidance of doubt, a Party shall not be liable for any consequential loss (including loss of use, revenue or profit) suffered by the other party following a breach of this Agreement.
- 20.5** The benefit of clauses 20.1 to 20.4 are intended to extend to the directors, officers, employees, authorised agents, contractors, subcontractors and professional advisers of the Party concerned and may be enforced by them pursuant to the Contracts (Privity) Act 1982.
- 20.6** The Retailer will take all reasonable steps to assess electricity consumption volumes and to advise the Distributor at the earliest opportunity of any concerns or knowledge or irregularity. The Retailer will use reasonable endeavours to ensure that Metering Equipment is not interfered with.
- 20.7** Without prejudice to the liability of the Distributor, the Distributor (having regard to the instructions of its insurers) agrees to reasonably co-operate with any independent investigation by competent persons into any incident giving rise to a liability claim.
- 20.8** The Retailer will advise the Distributor as soon as reasonably possible it has knowledge of an event likely to give rise to a claim, and agrees to co-operate, and procure the Customer's co-operation, to enable the Distributor to properly investigate the event and be allowed to defend any claim without prejudice.
- 20.9** The Parties agree that all services Provided by the Distributor under this Agreement are being acquired by the Retailer for the Purposes of a business as defined in the Consumer Guarantees Act and that the Provisions of that Act do not apply.

21 Dispute Resolution

- 21.1** The Distributor and the Retailer will actively and in good faith negotiate with a view to the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.

- 21.2** Every dispute or difference that is not resolved by discussion between the Distributor and the Retailer may be referred by either Party to mediation or arbitration as set out below.
- 21.3** If mediation is requested by either Party, and the Parties are unable to agree on the appointment of the mediator, that appointment will be made by the President for the time being of the New Zealand Law Society at the request of either Party. Mediation will be conducted according to the time and Procedures stipulated by the mediator, but in all material respects in accordance with the practices and procedures recommended by LEADR (Lawyers Engaged in Alternative Dispute Resolution). All discussions/information at mediation will be without prejudice and will not be referred to in any arbitration or other proceedings. The Parties will each bear their own costs in the mediation and will each pay half the costs of the mediator. If mediation is not requested, or having been requested is unsuccessful, or has not been completed within 14 days of the request for mediation, either Party may refer the matter in dispute to arbitration.
- 21.4** Reference to arbitration will be to a sole arbitrator if the Distributor and the Retailer agree on one, *or if* they cannot agree on the appointment of an arbitrator within 14 days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of one of them.
- 21.5** The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the Parties.

22 Information Requirements

- 22.1** The Retailer retains ownership of data and information produced by, or obtained from the Metering Equipment, provided however that such data and information shall be available to the Distributor under this Clause 22 and Schedule 4.
- 22.2** The Retailer will supply to the Distributor the "*Retailer Information*" set out in Schedule 4 and in addition at the Distributor's request, as soon as reasonably practicable, will provide the following:
- (a) such details including estimates and projections of electricity sold (or to be sold) or purchased (or to be purchased) by the Retailer that is intended to be transported over the Distribution Network or any likely extension to that Network as the Distributor may reasonably request; and
 - (b) such other information as the Distributor may reasonably require for the performance of its obligations under this agreement and the efficient,

economic and safe operation of the Distribution Network as set out in the Distribution Code.

- 22.3** With Prior agreement of the Retailer the Distributor may seek verifying, clarifying or other information from any Customer or Potential customer for the Purpose of making an investment decision relating to the Distribution Network.
- 22.4** The Retailer and Distributor will agree on the information to be Provided in respect of connections to and disconnections from the Distribution Network.
- 22.5** The Distributor will provide to the Retailer the "*Distributor Information*" set out in Schedule 5 and in addition will Provide the following subject to confidentiality Provisions of the TPNZ Contract and any approvals required from TPNZ:
- (a) information relating to the Distributor's Network and the -TPNZ Network as may be reasonably required by the Retailer for the Purpose of Providing a quality delivered electricity service to its Customers;
 - (b) the schedule of TPNZ Pricing relating to the connection of the Distributors Network. This schedule will be Provided within 7 working days of the Distributor being in receipt of a new or amended such schedule of charges (Proposed or agreed) from TPNZ; and
 - (c) TPNZ notices, and explanations Provided by TPNZ to the Distributor in accordance with TPNZ's obligations in amending its charges to the Distributor.
- 22.6** The information required under this clause 22 *will* be provided free of charge by the Parties.
- 22.7** The provision of information under this clause 22 is subject to each Party's obligations under the Privacy Act 1993, Provided that each Party shall use its best endeavours to obtain all necessary consents from third parties to pass on information required under this clause 22.

23 Confidentiality

- 23.1** Each Party undertakes with the other Party that it will preserve the confidentiality and secrecy of and will not knowingly directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information except in the circumstances and to the extent set out in:
- (a) any agreement with a Generator relating to the Purchase of energy;
 - (b) any agreement with TPNZ relating to connection to the TPNZ Network;

- (c) MARIA;
- (d) the NZEM Rules;
- (e) the Distribution Code; or
- (f) Clause 23.2.

23.2 Either Party may disclose Confidential Information in the following circumstances:

- (a) where at the time of receipt the Confidential Information is in the public domain;
 - (b) where after the time of receipt the Confidential Information enters the public domain except, where it does so as a result of a breach by either Party of its obligations under clause 23.1 or a breach by any other person of their obligation of confidence, and the Party is aware of such breach;
 - (c) where either Party is required:
 - (i) by any statutory or regulatory obligation, body or authority;
 - (ii) by any judicial or other arbitration process; or
 - (iii) by the regulations of any stock exchange upon which the share capital of either Party is from time to time listed;
- or
- (d) where the Confidential Information is released to the employees, directors, agents, consultants and professional advisers of either Party in each case on the basis set out in clause 23.3.

23.3 With effect from the Date of Commencement each Party will adopt procedures within its organisation to ensure the confidentiality and secrecy of all Confidential Information which it is obliged to preserve as confidential and secret under this clause 23. These procedures are:

- (a) the Confidential Information will be disseminated within the organisation of each Party only on a "need to know" basis (to be reasonably determined by the disclosing Party);
- (b) employees, directors, agents, consultants and professional advisers of each Party in receipt of Confidential Information will be made fully aware of each Party's obligations of confidence in relation thereto; and

- (c) any copies of the Confidential Information whether in hard copy or computerised form will clearly identify the Confidential Information as confidential and secret.

24 Assignment and Agents

- 24.1** Except as expressly provided for in this Agreement 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 will not be unreasonably withheld.
- 24.2** Any such consent will not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned.
- 24.3** Subject to the approval of the appointment of the relevant Retailer's Agent in accordance with clause 11.3, the Parties may appoint agents to act on their behalf. Any such appointment will not relieve the Parties making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents.
- 24.4** Any change of ownership of either Party is deemed to be an assignment to which clause 24.1 applies. "Change of ownership" means any transaction or series of transactions whereby the legal or beneficial ownership of more than 49% of the issued share capital of the Party is held, either directly or indirectly, by a person who is not a registered shareholder of the Party on the Date of Commencement.
- 24.5** Either Party may assign its benefits and obligations under this agreement to a wholly owned subsidiary without the consent of the other Party provided that the assignor provides an unconditional guarantee of the obligations assumed by the assignee.

25 Non-Waiver

- 25.1** None of the provisions of this Agreement will be considered to be waived by either Party except when such waiver is given in writing.
- 25.2** No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Agreement will 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 will not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

26 Entire Agreement

This Agreement, including the Schedules, the Distribution Code, any New Connection Agreement, any Network Connection Application and any Network Interconnection Agreement

that may be entered into during the currency of this agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.

27 Savings Clause

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

28 Governing Law

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

29 Notices

29.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement will be in writing and delivered personally or by prepaid post, by courier delivery, or by facsimile.

29.2 The required addresses, and facsimile numbers of the Parties for the purposes of this clause are set below:

Addresses for Notices:

Distributor	Scanpower Limited
Address:	Scanpower Limited P.O. Box 157 10-12 Gordon Street Dannevirke
Attention:	Jeff Farnworth General Manager
Telephone:	(06) 374-8039
Facsimile:	(06) 374-8631

Retailer

Address:

Attention:

Telephone
Facsimile

- 29.3** A notice or other form of communication will be deemed to have been served 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; or
 - (c) if sent by facsimile, on the time and day of sending if the sending machine confirms transmission is successful.

30 Variations

- 30.1** No variations or modifications to this Agreement will be effective unless made in writing and signed by or on behalf of both Parties.
- 30.2** Either party may initiate a review of this Agreement.
- 30.3** The party requesting the review will propose in writing to the other party amendments to the Agreement and the basis on which such amendments are sought. The other party will respond within 15 working days of receipt, with agreement to the proposed amendments or an alternative proposal.
- 30.4** Subject to Clause 30.5 the parties will negotiate in good faith to reach prompt agreement on the proposed amendments. If agreement is not reached within 30 days of initiation of the review, either party may initiate the dispute resolution procedures pursuant to Clause 21.
- 30.5** For the avoidance of doubt, this clause 30 does not create rights to review the Charges which may be varied by the Distributor in accordance with Clause 16.

31 Costs

- 31.1** Each Party will bear its own costs of and incidental to the preparation of this Agreement except where otherwise specifically provided.

EXECUTED as an Agreement.

SIGNED for and on behalf of
SCANPOWER LIMITED BY

Authorised Signatory

Name/Title

Witnessed by:

Signature

Name

Occupation

Address

SIGNED for and on behalf of

BY

Authorised Signatory-

Name/Title

Witnessed by:

Signature

Name

Occupation

Address

SCHEDULE 1 - CHARGES

This Schedule is divided into two parts.

Schedule S 1.1 below specifies the Use-of-System charges for the Line Function Services of the Distributor which are effective from the Date of Commencement until amended or substituted charges are determined in accordance with Clause 16. Charges are capacity based to give Positive pricing signals for load control purposes, and break down Transmission, Distribution, Account Administration and Power Factor related components. Loss allocation policy is also detailed.

Schedule S 1.2 below specifies the Load Control Services, Connection, Disconnection, etc., charges.

1.1 Use-of-System Charges

1.1.1 General

The following charges are stated exclusive of Goods and Services Tax.

- No allowance is made for distribution losses.
- Capacity is based on the minimum of the mains size, mains protective device rating, transformer rating or load limiting circuit breaker rating.

1.1.2

SCANPOWER
Product and Pricing Options
April 2000 - March 2001
(excl GST)

Domestic

D1:	Standard Option	Number of customers: 4506	Prices
10	Network	Supply Charge	65c/Day
23		Day Line Charge	6 c/Kwh
24		Night Line Charge	4 c/Kwh
D3:	Night Use Option	Number of customers: 13	Prices
30	Network	Supply Charge	15c/Day
23		Day Line Charge	6 c/Kwh
24		Night Line Charge	4 c/Kwh
C1<100,000Kwh/Yr		Number of customers: 1252	Prices
40	Network	Supply Charge \$/KVA/Mth	70 c/Day
28		Day Line Charge	6 c/Kwh
29		Night Line Charge	4 c/Kwh
Cl.2 (2KVA)		Number of customers: 462	Prices
11	Network	Supply Charge	39.5c/Day
46		Day Line Charge	6 c/Kwh
47		Night Line Charge	4 c/Kwh

Scanpower Use Of System Agreement

Cl.5 (5KVA)		Number of customers: 389	Prices
13	Network	Supply Charge	52 .3c/Day
51		Day Line Charge	6 c/Kwh
52		Night Line Charge	4 c/Kwh

C2		Number of customers: 24	Prices
14	Network	Supply Charge \$/KVA/Mth	70 c/Day
53		Day Line Charge	6 c/kwh
54		Night Line Charge	4 c/Kwh

C3>100,000<500,000 Kwh/Yr		Number of customers: 15	Prices
50	Network	Supply Charge \$/KVA/Mth	2.40
57		Day Line Charge	4.2c/Kwh
58		Night Line Charge	2.8c/Kwh
133		Corporate Services	\$6. 90/mth

Definition of Day/Night (7am-11pm/11pm-7am) Day consumption is approximately 74% of total electricity used. Night consumption is approximately 26% of total electricity used.

C4>500,000<2,000,000 Kwh/Yr		Number of customers: 7	Prices
60	Network	Supply Charge \$/KVA/Mth	2.40
73		Day Line Charge	3.84/Kwh
74		Night Line Charge	1.34c/Kwh
65		MD Charge (June, July, August)	\$4/KW/mth
134		Corporate Services	\$6.90/mth

C5>2,000,000<3,500,000 Kwh/Yr		Number of customers: 2	Prices
70	Network	Supply Charge \$/KVA/Mth	2.40
78		Day Line Charge	3.84c/Kwh
79		Night Line Charge	1.34c/Kwh
75		MD Charge (June, July, August)	\$4/KW/mth
135		Corporate Services	\$6.90/mth

Scanpower Use Of System Agreement

C6>3,500,000 Kwh/Yr	Number of customers: 1	Prices
71	Network	Supply Charge \$/KVA/Mth 3.80
82		Day Line Charge 2.2277c/Kwh
83		Night Line Charge 0.7277c/Kwh
85		MD Charge (June, July, August) 3.674
136		Corporate Services \$6.90/mth

Public Lighting

12 Network Supply Charge \$/fitting/mth

Miscellaneous Prices

18	Telecom Boxes	\$20.70/mth Monthly Charge per Telecom box
	Building Services	\$52.50 for 3 months, then \$22.50/mnth thereafter
19	Electric Fence	\$6/mth Monthly Charge per electric fence (no 400V Dist line)
98	Electric Fence	\$8/mth Monthly Charge per electric fence (feed from SP Dist line)

Transpower charge

(Old Price) (New Price) and is included in Scanpower Network charge as above
 2.085 c/Kwh (incl GST) 2.28 c/Kwh (incl GST)

Transpower charge: Transmission of energy to SCANPOWER by TRANSPOWER Ltd and is built into Network Charges.

Local Losses are included in the Line Prices

- LFCA001 2.5%
- LFCA002 7.28%
- LFCA003 8.1%

1.1.3 Loss Allocation Policy

For Retailers the above Loss Factors are to be used by Retailers to multiply the kWh recorded half hour meter reading at the Customer premises in order to determine the Retailers responsibility for the purchase of kWh at the GXP.

Note: HV metered installations individually assessed. Different factors may apply in individual customer contracts.

1.2 Metering and Load Control Charges

Asset Use Charges

For ripple injection plant \$/ day (To be discussed)

Installation Charges

\$27 plus \$28/hour travelling time Plus \$0.60 per kilometer traveled.

Special Services

Reinspection after 6 months \$42.67 plus \$28/hour travelling time Plus \$0.60 per kilometer traveled

1.2.1 Load Control Service

1.2.1.1 General

The Distributor shall continue to operate its current function of Load Control from the Date of Commencement of this Agreement until such time as a new basis is agreed with the Retailer.

1.2.1.2 Current Control Regime

Operated to maintain maximum demand to 14MW during control periods. (Usually in June, July and August)

1.2.1.3 Other Applications of Load Control

- Night switching
- Load shifting
- Meter tariff switching
- Street lighting control

1.2.2 Other Services Available to the Retailer

- Customer Disconnection
- Customer Reconnection
- Customer Account Transfer
- Code/meter change

- Safety disconnection
- Operate LV Fuse to Disconnect or Reconnect
- Operate HV Fuse to Disconnect or Reconnect
- Meter Reading - Special, Final, etc.
- Customer Reconnection-defaulter

All of the above 9 Services charged at

\$40 during business hours

\$62.22 after business hours

GST Excl.

SCHEDULE 2 - LINE FUNCTION SERVICE'S PERFORMANCE
Line Function Service Standards

2.1 General

The Distributor undertakes to:

- (a) Plan, design, maintain and operate its Distribution Network in accordance with the current version of the Distribution Code and Good Industry Practice.
- (b) Take all reasonable endeavours to meet the standards of service and performance specified in this Schedule 2. For the avoidance of doubt, the Distributor's obligation to take all reasonable endeavours to meet the standards of service and performance does not limit the Distributor's obligation to meet those standards included in this Schedule 2 in respect of which a dollar sum is specified to be payable by the Distributor if the Distributor fails to meet such standards.

2.2 Quality Standards and Performance Levels

2.2.1 The Distributor will:

- (i) use all reasonable endeavours to maintain the voltage at the Customers' Network Connection Point(s) to within the range specified in The Electricity Regulations, 1993 or within the tolerance range agreed between the Retailer and Distributor - the Retailer acknowledges that maintenance of voltage within the tolerance range may depend in part on the maintenance of a Power Factor of 0.95 or better in the demands placed on the Distribution Network by the Customers and other installations; and
- (ii) use all reasonable endeavours to ensure that the levels of harmonic voltages and currents passed into the Retailer's Customer Installations conform with the Limitation of Harmonic Levels Notice 1981, Electrical Code of Practice 36, or any other notice in substitution thereof insofar as the harmonic disturbance results from problems arising from causes within the control of the Distributor.

2.2.2 The Distributor will effect a programme to ensure the quality and reliability of line function services. The performance targets for the year ended 31 March are:

- Average loss of supply per customer (SAIDI) not to exceed 175 minutes per year (provided that the average loss of supply per customer relates to losses of supply caused only by planned and unplanned outages on the Distribution Network. The duration of any loss of supply to a customer which is caused by an outage on TPNZ's Network will not be included within the 175 minute period)

Any failure to comply with this standard will result in the Distributor crediting the retailer with \$1000 per minute above the stated level.

- Total number of proven customer voltage complaints not to exceed 20 per year.

Any failure to comply with this standard will result in the Distributor crediting the retailer with \$100 per complaint above the stated level.

2.3 Service and Standards

2.3.1 The Distributor undertakes to provide the following services to the retailer:

- Provide a written acknowledgement to the retailer of a customer inquiry/complaint within 3 business days.
- Complete a formal investigation relating to a customer inquiry/complaint within 10 business days.
- Provide a written report on the findings of an investigation within 5 business days of the completion of the investigation.

Any failure to comply with this standard will result in the distributor crediting the retailer with \$100 per failure.

2.3.2 The Distributor undertakes to supply the following general services to the retailer.

- Updated information concerning quality of supply.
- Indications of maximum short circuit fault levels appearing on Customers switchboards.

2.4 Planning

The Distributor undertakes to provide to the Retailer:

- Notification of individual planned shut-downs 10 days ahead on a rolling basis.
- A copy of the Network Asset Management Plan.

2.5 Reports

To the extent that the information is relevant to the retailer and the retailers customers, the Distributor will supply the following reports to the retailer:

- Overnight partial or complete feeder faults and faults occurring to specified customers' installations with dedicated transformers by 0830 hours on the next business day.
- Faults involving supply to installations as above and other customers specified by the retailer within 20 minutes between 0800 and 1700 hours on a business day, and by 0830 hours on the next business day if outside these hours.
- Network outages including TPNZ or generator initiated outages as above.
- Update reports during extended outages to nominated retailer staff as frequently as appropriate.
- Where it affects Customers supplied by the retailer, exception reports on duration and area coverage of load control by 0830 hours on the next business day.

2.6 Provision of Emergency Services

The Distributor will provide the Retailer with an emergency communication service which will aim to:

- Answer Customer's inquiries about Line Function Services.
- Acknowledge Customer's inquiries about the Retailer's Services and pass these on to the Retailer.
- Deal with Customer inquiries/complaints during distribution or transmission network emergencies out of normal working hours.

The Distributor will provide a faults service which attends to customer call-outs on a 24 hour basis.

2.7 Services Guarantees

The Distributor agrees to comply with the following service standards in respect to all Customers.

2.7.1 Notwithstanding Clause 20, any failure to comply with this standard will result in the Distributor crediting the retailer with \$50 per failure per Customer point of supply.

SERVICE GUARANTEE

Restore Power

STANDARD

Within 6 hours of fault notification excluding where the cause is a Force Majeure (in which case the Distributor will work 24 hours per day to remedy all faults).

Accidental disconnection

Automatic credit of \$50

Main Supply Fuses

4 hours - normal working hours
4 hours - outside working hours

Planned Maintenance

Written notice 2 working days in Advance

Power Fluctuations (Voltage)

Respond within 2 working days. Fix problem or answer within 10 working days

New connection

5 working days from all necessary approvals, or on agreed day (230 V)

Reconnections

1 working day from request subject to safety approvals

Estimates for New or Additional Supply

Estimate within 10 working days

Keep Appointments

Pay out if fail to provide Customer with Prior notice of lateness

SCHEDULE 3 - CUSTOMER CONNECTION POINTS

3.1 New Customer's Points of Supply

The following information is to be provided for each new Customer Point of Supply

Customer Information Schedule

Full Customer Name
Street Address
Customer No
Account No
Site Contact Telephone-
Fax
Retailer Name
Retailer Contact
Telephone
Fax
Load Charging Group
Capacity at the customer's point of connection
Capacity Controlled at the Customer's Point of connection
Physical Location of Points of Connection
Meter Make/Mode
Accuracy Class
Logger Make/Model
Accuracy Class
Load Control Make/Model
Class
Forecast Consumption
Forecast Controllable load

SCHEDULE 4 - RETAILER INFORMATION

In accordance with this provision of the Agreement the following information is supplied by the Retailer to the Distributor:

S4.1 Customer Network Connection Point

- (a) Details of existing customers, and of new Customers prior to connection in accordance with the requirements of this Agreement including postal address.
- (b) Details of deleted or disconnected Customers.

S4.2 Metering Equipment

- (a) All information reasonably required to assist in the estimation of quantities of electricity during periods when the metering equipment is known to be not functioning or inaccurate.
- (b) Information relevant to the possible interference with or damage to the Distributor's metering or load control equipment that comes to the notice of the Retailer.

S4.3 Metered and Customer Number Information

- (a) In the case of Customer's served by the Retailer during the period covered, the quantity of electricity delivered monthly, (read and accrued), accumulated in the load charging groups, pricing options, and by assessed half hour profiles, by Grid exit point and with and without the Loss Factor applied.
- (b) In the case of Customers served by the Retailer during the period covered, the quantity of electricity as read during the month, accumulated into load groups, pricing options, by grid exit point, without loss factors applied.
- (c) For each customer load charging group the number of Customers at the commencement of the month, Customers added, Customers deleted, and the number of Customers at month end.
- (d) For each of the Distributors load charging groups the sum of capacities supplied and sum of demand capacities.
- (e) For each Customer that the Retailer is providing the Distributor with active metering information (kVA), information reasonably required by Distributor from

time to time to establish winter or anytime kVA related demands or is necessary for network planning.

- (f) For each Load Group served by the Retailer a summary of information provided to the National Reconciliator each month

S4.4 Load Information

- (a) Forecasts of monthly controllable load connected, and electricity consumption quantities for each of the charging groups for the next 12 months updated every six months (April and September) after providing an initial estimate 30 days after Commencement Date.
- (b) Estimations of controllable load connected for each of the charging groups every twelve months.
- (c) The location of unusual loads whose operation may affect the quality of supply to other Customers.

S4.5 General

- (a) The Annual Report and Financial Statement of the Retailer.
- (b) Details of significant deterioration in the financial position of the Retailer likely to lead to the Retailer's insolvency or liquidation.
- (c) Such details of the Retailer's contract with embedded generators as may affect any condition of this Agreement.

SCHEDULE 5 - DISTRIBUTOR INFORMATION

In accordance with the provisions of this Agreement the following information will be supplied by the Distributor to the Retailer.

S5.1 Metering Equipment

- (a) Any available information relevant to the checking of Metering Equipment.
- (b) Relevant information to assist in the estimation of quantities of electricity during periods when the Metering Equipment is known to be not functioning or inaccurate.
- (c) Information relevant to the possible interference with or damage to the Retailer's Metering Equipment that comes to the notice of the Distributor.

S5.2 Customers (Only applies to Incumbent Retailer)

- (a) Details of the location of Customers disconnected by the Distributor because of serious risk to life or property or because the Customer's Installation does not comply with the requirements of this Agreement.
- (b) To the Incumbent Retailer, details of installations connected to the Distribution Network but not the subject of any agreement between the Distributor and the Retailer or the Distributor and any Other Retailer.

SCHEDULE 6 - LIMITATION OF LIABILITY

6.1 Liability Limitation

Liability will not exceed in respect of any one Customer

- (a) \$10, 000 in respect of any single event or series of related events; and
- (b) \$50,000 in aggregate in any 12 month period
- (c) Provided that the maximum liability of either party in respect of Customers or other liabilities in the performance of this Agreement will not in aggregate in any 12 month period exceed \$500,000.