

signed with the power.

27 March 2002

USE OF SYSTEM AGREEMENT

between

COPY

AUCKLAND INTERNATIONAL AIRPORT LIMITED

and

MIGHTY RIVER POWER LIMITED



AUCKLAND INTERNATIONAL AIRPORT LIMITED
PO BOX 73-020

AUCKLAND INTERNATIONAL AIRPORT
AUCKLAND, NEW ZEALAND

Phone: (+649) 256-8815

Fax: (+649) 275-4927

Email: admin@aiaa.co.nz

THIS AGREEMENT is dated the

27th

day of March 2002

BETWEEN AUCKLAND INTERNATIONAL AIRPORT LIMITED ("AIAL")

AND MIGHTY RIVER POWER LIMITED ("Retailer")

BACKGROUND

- A. AIAL owns and operates the Distribution Network and the Retailer is an electricity retailer that wishes to use the Distribution Network to supply electricity to Customers.
- B. AIAL agrees to provide the Line Function Services and allow Use of the Distribution Network by the Retailer on the terms and conditions set out in this agreement.
- C. The Retailer is the parent company of the Subsidiaries and is entering into this agreement for the benefit of itself and the Subsidiaries. This agreement is for the benefit of, and enforceable by, any or all of the Subsidiaries.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

"AIAL Equipment" means the Fittings belonging to AIAL or leased by AIAL which are from time to time installed in, over or upon the Customer's Premises;

"Assessment Charge" means the charge referred to in paragraph 2.3 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1);

"Business Day" means a day on which registered banks are open for business in Auckland;

"Charges" means the aggregate of:

- (a) the Line Charges; and
- (b) the other charges set out in Schedule 1 as applicable,

as the same may be varied from time to time in accordance with clause 5.1;

"Charging Period" means a period of one calendar month or part thereof ending at midnight on the last day of a month;

"Claim" means any complaint, allegation or inquiry by or before any statutory tribunal or authority or any claim, application or proceeding filed in any court of law;

"Commencement Notice" has the meaning given to that term in clause 3.3;

"Confidential Information" means all data and other information of whatever nature, provided by one party to the other party under or in terms of this agreement or otherwise, excluding:

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

"Customer" means a purchaser of electricity from the Retailer where the delivery is by means of the Distribution Network;

"Customer Information Sheet" means the information sheet in the form set out in Schedule 4 (or such other form as AIAL shall notify the Retailer in writing) to be completed by the Retailer and provided to AIAL in terms of clause 2.1;

"Customer's Point of Connection" means each point of connection at the boundary of the Premises on which the Customer's Installation is situated at which a supply of electricity may flow between the Distribution Network and the Customer's Installation;

"Customer's Installation" means any Fittings of a Customer that form part of a system for conveying electricity from the Customer's Point of Connection to where the electricity may be consumed, including any Fittings owned or used by a Customer jointly with any other person, but does not include Fittings belonging to AIAL;

"Default Event" means any of the events specified in clause 14.1;

"Disconnection Fee" means the fee referred to in paragraph 2.4 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1);

"Distribution Network" means AIAL's system, including any other system leased by AIAL, for the conveyance and distribution of electricity, terminating at the boundary of any Premises on which a Customer's Installation is situated, and includes all Fittings comprising part of that system;

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

"Force Majeure" means any event or circumstance which is beyond the reasonable control of either party and which results in or causes the failure of that party to perform any of its obligations under this agreement, including but not limited to acts of God, strike, lock-out or other industrial disturbance, act of a public enemy, 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, lack of water arising from weather or environmental problems, explosion, destruction, fault or failure of any plant, apparatus or equipment or the Fittings (including where caused by any other retailer of electricity using the Distribution Network) which could not have been

prevented by Good Industry Practice, governmental restraint or other intervention or request, Act of parliament, other legislation, bylaw, or the failure of any Supplier or Transpower to supply electricity to the Network's Point of Connection, or any deficiency or the consequences thereof which could not have been prevented by Good Industry Practice by AIAL and the discontinuance or deficiency of supply or failure to convey electricity or to do so in the required quantity which occurs as a result of AIAL selecting at its discretion a Customer's Point of Connection for discontinuance or deficiency of supply in response to any event or occurrence referred to in this definition. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall be deemed to be a matter beyond the reasonable control of the party concerned and lack of funds shall be deemed to not be a matter beyond the reasonable control of the party concerned;

"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;

"GST" means goods and services tax as defined by the Goods and Services Tax Act 1985;

"Late Data Charge" means the charge referred to in paragraph 2.2 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1);

"Line Charges" means the aggregate charges payable by the Retailer to AIAL for the Use of the Distribution Network set out in paragraph 1 of Schedule 1 (as amended from time to time in accordance with clause 5.1);

"Line Function Services" means, in relation to the Distribution Network, the provision and maintenance of Fittings owned or leased by AIAL for the conveyance of electricity and the operation of such Fittings, provided however that AIAL shall not be obliged to maintain any Fittings not owned or leased by it;

"MARIA Rules" means the rules of the Metering and Reconciliation Information Agreement established pursuant to a Deed of Establishment of Metering and Reconciliation Information Agreement between Electricity Market Company Limited and Transpower New Zealand Limited dated 21 March 1994, as amended from time to time, or any other binding legal arrangement having a similar purpose;

"Metering Equipment" means metering equipment and other apparatus for the purpose of measuring and recording the quantity of the supply of electricity conveyed through the Distribution Network to a Customer's Point of Connection;

"Metering File Format" means such format as is specified by AIAL acting reasonably);

"Metering Installation Notice" means a notice in the form set out in Schedule 5 or such other form as AIAL may reasonable require;

"National Reconciliation Manager" means the person appointed from time to time as the National Reconciliation Manager pursuant to the MARIA Rules or

the person appointed as the Reconciliation Manager under the NZEM Rules or such other person from time to time to whom metering information is to be sent pursuant to the MARIA Rules or the NZEM Rules, as applicable;

"Network's Point of Connection" means the point of connection between the Distribution Network and any Supplier's Network or Transpower's Network or any other distribution network through which AIAL receives a supply of electricity;

"NZEM" means the New Zealand Electricity Market;

"NZEM Rules" means the rules of the NZEM, as amended or substituted from time to time;

"Period of Inaccuracy" means the period from the most recent prior test conducted on the Metering Equipment (according to Good Industry Practice by the Retailer) to the time at which it is determined that such 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;

"Power Factor" means the amount determined in accordance with the following formula;

$$\frac{A}{\sqrt{A^2 + R^2}}$$

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

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

both A and R being the instantaneous values integrated over one and the same half hour;

"Premises" means land and buildings which are occupied by, or in the possession of, a Customer or on which a Customer's Installation is installed, whether exclusively by the Customer or jointly with others;

"Primary Metering Equipment" has the same meaning given to that term in clause 8.1;

"Reconnection Fee" means the fee referred to in paragraph 2.1 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1);

"Subsidiaries" means Energy Auckland Limited and such other companies as are or may from time to time become subsidiaries (as defined in section 5 of the Companies Act 1993) of the Retailer;

"Supplier" means any entity which shall either generate electricity supplied to the Retailer or AIAL, or shall supply electricity to the Retailer or AIAL, or if the Retailer or AIAL is purchasing electricity through the NZEM, means the Clearing Manager or the National Reconciliation Manager under the NZEM Rules, as the case may require, and their respective successors and assigns;

"Transpower" means Transpower New Zealand Limited and its successors and assigns, or any organisation providing the services currently provided by Transpower;

"Transpower's Network" means the electricity transmission system owned and operated by Transpower;

"Withdrawal Notice" has the meaning given to that term in clause 3.4;

"Use of the Distribution Network" means use of the Distribution Network for the conveyance of electricity by the Retailer through the Distribution Network to a Customer's Point of Connection.

- 1.2 Clause and other headings are for ease of reference only and shall be ignored in construing this agreement.
- 1.3 References to clauses and schedules are references to clauses of and schedules to this agreement.
- 1.4 References 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.
- 1.5 References to parties are, unless the context requires otherwise, parties to this agreement and shall be deemed to include their successors or permitted assigns.
- 1.6 Any reference to time is expressed on a 24 hour clock basis in standard time or New Zealand daylight time, whichever is applicable as provided in the Time Act 1974.
- 1.7 References to a party using its **"best endeavours"** to achieve a result shall include, but not be limited to, that party including all necessary contractual terms in its relationships with third parties, and taking all enforcement action (including, but not limited to, obtaining temporary injunctions and other specific performance remedies) to enforce those terms.

2. CUSTOMER INFORMATION SHEET

- 2.1 **Customer Information Sheet:** The Retailer shall provide AIAL with a completed Customer Information Sheet in respect of such Customer to whom the Retailer wishes to commence delivery of electricity by using the Distribution Network. The Retailer shall provide the Customer Information Sheet to AIAL within the same time period as the Retailer must advise and supply the Customer's old retailer with information under the customer switching provisions in the MARIA Rules, or as the parties otherwise agree in writing from time to time.
- 2.2 **Metering Installation Notice:** Where the Primary Metering Equipment is to be provided by the Retailer, no later than 2 Business Days prior to the date on which the Retailer wishes to commence using the Distribution Network to deliver electricity to a Customer's Point of Connection, the Retailer shall provide AIAL with a completed Metering Installation Notice in respect of that Customer's Point of Connection.

- 2.3 **AIAL to Provide Information:** On receipt of each Customer Information Sheet, AIAL shall provide to the Retailer the necessary information to enable the Retailer to calculate the Line Charges for that Customer.

3. USE OF DISTRIBUTION NETWORK

- 3.1 **Obligations of AIAL:** Subject to clause 3.2, AIAL will allow Use of the Distribution Network by the Retailer and will provide Line Function Services.

- 3.2 **Pre-conditions:** The obligations of AIAL under clause 3.1 shall apply only:

3.2.1 in relation to Customer's Points of Connection in respect of which:

- (a) AIAL has been in receipt of a duly completed Customer Information Sheet (as contemplated under clause 2.1) for a period of at least 2 Business Days or such shorter period as agreed by the parties; and
- (b) Primary Metering Equipment and the telephone link referred to in clause 8.6 (both satisfactory to AIAL) are in place and AIAL has been in receipt of a duly completed Metering Installation Notice as contemplated under clause 2.2, for a period of at least 2 Business Days prior to the commencement of the Use of the Distribution Network by the Retailer in relation to the relevant Customer; and
- (c) where any Fittings or the relevant Customer's Installation require modification or extension before the supply of electricity can commence, the modification or extension has been completed, at the cost of the Retailer to the reasonable satisfaction of AIAL; and

3.2.2 to the extent that any modification or extension of the Distribution Network is required, where such modification or extension has been carried out to the satisfaction of AIAL.

- 3.3 **Notice When Conditions Satisfied:** AIAL shall, as soon as practicable following it becoming aware that the conditions set out in clauses 3.2.1 and 3.2.2 have been satisfied in respect of each Customer's Point of Connection specified in a Customer Information Sheet (or, in the circumstances referred to in clause 3.4, as soon as practicable following it becoming aware that the conditions referred to in any Withdrawal Notice given by AIAL, pursuant to that clause have been satisfied), give the Retailer notice that such conditions have been satisfied in respect of each such Customer's Point of Connection ("**Commencement Notice**"), and subject to the other provisions of this agreement, the Retailer shall be entitled to commence Use of the Distribution Network for the conveyance of electricity to the relevant Customer at each such Customer's Point of Connection. AIAL shall be entitled to copy any such Commencement Notice to the Customer in respect of whom the notice relates.

- 3.4 **Notice if Conditions Cease to be Satisfied:** If, at any time following AIAL giving the Retailer a Commencement Notice pursuant to clause 3.3, the conditions set out in clauses 3.2.1(b) to 3.2.2 cease to be satisfied in respect of one or more Customer's Point of Connection referred to in that notice, AIAL shall be entitled to withdraw the Commencement Notice by giving the Retailer 5 Business Days' notice identifying each such Customer's Point of Connection

and specifying the condition(s) that has ceased to be satisfied ("Withdrawal Notice"), and 5 Business Days following receipt of such Withdrawal Notice, the Retailer shall cease its Use of the Distribution Network in relation to each such Customer's Point of Connection, unless and until such time as such conditions are satisfied and AIAL gives a further Commencement Notice to the Retailer in respect of each such Customer's Point of Connection. AIAL shall be entitled to copy any such Withdrawal Notice (and any subsequent Commencement Notice) to the Customer in respect of whom the notice relates if the relevant conditions have not been satisfied by the Retailer within 5 Business Days of the date of the Withdrawal Notice.

3.5 Termination: Unless earlier terminated:

3.5.1 pursuant to clause 14 or clause 16; or

3.5.2 by either party giving not less than 30 days' written notice to the other,

this agreement will continue until 31 March 2004, and the Retailer will give written notice to each Customer that they need to arrange for another electricity supplier (and warrant to AIAL that this notice has been given) not less than 14 days' prior to 31 March 2004, unless:

- (a) the Retailer has entered into another agreement with AIAL relating to the use of the Distribution Network by the Retailer; or
- (b) AIAL has entered into an agreement with each Customer to supply electricity to that Customer at each of the Customer's Points of Supply; or
- (c) the Customer provides a written notice to AIAL advising that it no longer requires a supply of electricity.

3.6 Termination by Retailer Conditional: The Retailer may not terminate this agreement pursuant to clause 3.5.2 unless:

3.6.1 it has given not less than 14 days' prior written notice to each Customer that they need to arrange for another electricity supplier and warrant that this notice has been given to AIAL; or

3.6.2 AIAL has entered into an agreement with each Customer to supply electricity to that Customer at each of the Customer's Points of Supply; or

3.6.3 the Customer provides a written notice to AIAL advising that it no longer requires a supply of electricity.

4. NO INTERCONNECTION

If there is more than one Customer's Point of Connection at any Premises, the Retailer shall use its best endeavours to ensure that no interconnection is made at any time between those Customer's Points of Connection without the prior consent of AIAL which may be withheld at the discretion of AIAL.

5. PAYMENT OF CHARGES

- 5.1 Charges:** In consideration of AIAL providing the Line Function Services and allowing the Use of the Distribution Network, the Retailer shall pay the Charges plus GST thereon to AIAL. AIAL may at its discretion vary the Charges or any component thereof (including, without limitation, the method of calculating the Charges) upon first giving not less than 30 days' notice to the Retailer of each such variation, provided that such Charges shall not be varied more than twice in any 12 month period. Any such variation to the Charges shall be final and binding as between the parties.
- 5.2 Invoicing:** As soon as possible after the end of each Charging Period, AIAL shall invoice the Retailer for:
- 5.2.1** the Line Charges relating to each Customer's Point of Connection in respect of the previous Charging Period; and
- 5.2.2** such other Charges as are applicable under this agreement.
- 5.3 Reading Unavailable:** If in respect of any Customer's Point of Connection the reading of the actual consumption and demand from the Primary Metering Equipment in relation to the preceding Charging Period or any other information necessary to calculate the Line Charges (including any reconciliation) is not available on the date that AIAL proposes to render the invoice, the Line Charges included in the invoice in respect of that Customer's Point of Connection for the previous Charging Period shall be estimated by AIAL and a charge or a credit shall be made by AIAL in the first invoice rendered to the Retailer following the relevant actual consumption and demand information becoming available.
- 5.4 Timing of Payments:** The Retailer shall pay to AIAL (or to the credit of AIAL in a New Zealand bank account nominated by it) the amount of each invoice rendered pursuant to this agreement no later than 21 days after the date of the invoice.
- 5.5 Interest on Late Payment:** If the Retailer fails to pay any amount payable under this agreement, the Retailer shall pay to AIAL interest on that amount at the rate of 5% per annum above the base overdraft lending rate of AIAL's principal bankers calculated daily for the period from the due date until the date of payment (including interest), provided that nothing in this clause shall affect any rights AIAL may have to discontinue its services for non-payment of any such amount (or any other right or remedy AIAL may have at law).
- 5.6 Provision of Information:** The Retailer shall, if requested by AIAL:
- 5.6.1** provide AIAL with a copy of its audited financial statements each year (signed on behalf of the directors of the Retailer and by its auditors) as soon as such financial statements are available after (and in any event within 4 months of) the end of the Retailer's financial year; and
- 5.6.2** provide AIAL with half-yearly financial statements (certified by an officer of the Retailer as having been approved by the directors of the Retailer) within the later of 2 months of the Retailer's half-yearly balance date and one month of such financial statements having been requested by AIAL; and

5.6.3 provide AIAL with such other financial information as the Retailer considers may assist AIAL in considering the creditworthiness of the Retailer.

5.7 Security for Charges: Subject to clause 5.8, AIAL may, as a condition of entering into this agreement or otherwise and having regard to the level of Charges being paid by the Retailer, at any time on giving 14 days' written notice to the Retailer, require the Retailer to provide a performance bond, bank undertaking or other security on such terms that AIAL may reasonably require to secure payment of the Charges by the Retailer. From time to time AIAL may require the Retailer to change the level of the performance bond or the bank undertaking or provide further or substitute security to reasonably protect AIAL.

5.8 Credit information: The Retailer shall not be required to comply with the requirements of clause 5.7 for so long as it has a Standard & Poor's credit rating of BBB or better, or an equivalent credit rating of Moody's Investor Services Inc, and it provides evidence reasonably satisfactory to AIAL of the same.

5.9 Invoice on Termination: Notwithstanding any provision to the contrary contained in this agreement, upon the termination of this agreement, the parties shall cause the Primary Metering Equipment for each Customer's Point of Connection to be read as soon as possible following such termination to enable AIAL to render a final invoice to the Retailer in respect of the Customers up to and including the date of termination. The invoice shall include such charges and credits as are necessary to result in the appropriate level of Charges being paid by the Retailer to AIAL in accordance with this agreement to the date of termination.

6. APPLICATION OF MARIA AND NZEM RULES

6.1 MARIA or the NZEM Rules to Apply: The Retailer covenants it is bound by the MARIA Rules or the NZEM Rules (as applicable) at the date of execution of this agreement and that it will continue to be bound by such rules at all times throughout the term of this agreement.

6.2 MARIA or the NZEM Rules to Cease to Apply: If at any time during the term of this agreement:

6.2.1 AIAL becomes aware that the Retailer is not bound, or has ceased to be bound, by the MARIA Rules or the NZEM Rules (as applicable), notwithstanding the provisions of clause 6.1; or

6.2.2 AIAL reasonably determines that details of the quantities of electricity purchased by the Retailer and distributed to each Customer's Point of Connection are not available pursuant to the MARIA Rules or the NZEM Rules (as applicable) in a reasonably timely manner (whether as a result of delay or as a result of the MARIA Rules or the NZEM Rules (as applicable) ceasing for any reason to be of full force and effect),

then, without limiting the provisions of clause 14 in circumstances where the Retailer is in default of its obligations under clause 6.1, AIAL may, by notice in writing to the Retailer, advise the Retailer that, until further notice, the provisions of clauses 6.1, 6.3 to 6.4 shall not apply and that the quantities of

electricity purchased by the Retailer and distributed to each Customer's Point of Connection shall be determined in accordance with Schedule 6.

- 6.3 Metering Equipment:** In respect of each Customer's Point of Connection, the Retailer shall install Metering Equipment satisfactory to AIAL (in its reasonable discretion) and which satisfies the requirements set out in the MARIA Rules or the NZEM Rules (as applicable).
- 6.4 National Reconciliation Manager:** The Retailer shall provide to the National Reconciliation Manager within the time frame set out in the MARIA Rules or the NZEM Rules (as applicable) the information from the readings referred to in clause 8.2 adjusted to include an allowance for losses in relation to such readings based on the appropriate loss adjustment factors set out in Schedule 3 (as the same may be varied from time to time by AIAL and advised to the Retailer) and otherwise in accordance with the MARIA Rules or the NZEM Rules (as applicable). Copies of such information shall be contemporaneously provided to AIAL. Copies of all reports and other information provided by the National Reconciliation Manager shall, insofar as they relate to the Distribution Network, be provided to AIAL by the Retailer as soon as possible following receipt by the Retailer.

7. METERING INTERFERENCE, ACCESS AND HOLDOVER PERIOD

- 7.1 No Interference:** Each party will ensure (and the Retailer will use its best endeavours to ensure that each Customer ensures) that its employees, agents and invitees, do not interfere with the Metering Equipment (whether it is owned by AIAL or the Retailer) or the immediate connections to the Metering Equipment without the prior written consent of the other party except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property proximate to that Metering Equipment. In this event, the other party shall be notified in writing as soon after as practicable.
- 7.2 Access:** Each party shall ensure that the employees, agents, subcontractors and invitees of the other party will at all reasonable times have safe and unobstructed access to the Metering Equipment (but only insofar as is permitted for the purposes of this agreement). The Retailer shall ensure that any individuals to whom access is given pursuant to this clause, comply with all reasonable directions given by AIAL or the relevant Customer as to general access, safety and security arrangements.
- 7.3 Metering Equipment to Remain In Place:** If at the time that the Retailer ceases to supply a Customer at a Customer's Point of Connection (for whatever reason and whether or not as a result of the termination of this agreement) the Retailer's Metering Equipment is the Primary Metering Equipment in respect of that Customer's Point of Connection, the Retailer shall, unless it is requested not to by AIAL:
- 7.3.1** use its best endeavours to ensure that such Metering Equipment remains in place and is operational for a period of 10 Business Days (or such lesser period as AIAL may specify to the Retailer in writing) from the date on which such supply ceases ("Holdover Period");
- 7.3.2** cause such Metering Equipment to be read at midnight at the end of the Holdover Period and, in addition, to be read at midnight on the

last day of the Charging Period, if such a day falls within the Holdover Period; and

7.3.3 provide the information from the readings referred to in clause 7.3.2 to AIAL within 3 Business Days of the reading being taken in the manner referred to in clause 8.2.

For the avoidance of doubt, the provisions of this clause 7.3, and clauses 7.1 and 7.2 shall continue to apply in respect of such Metering Equipment during the Holdover Period, notwithstanding that the Retailer has ceased to supply the relevant Customer at the Customer's Point of Connection or any termination of this agreement.

8. READING OF METERING EQUIPMENT

8.1 **Primary Metering Equipment:** The Metering Equipment for each Customer's Point of Connection in respect of which this agreement provides or the parties otherwise agree, that the measurements will be taken therefrom, is referred to as the "Primary Metering Equipment".

8.2 **Monthly Reading by Retailer:** The Retailer shall cause the Primary Metering Equipment to be read to obtain the consumption and, if applicable, the demand information recorded by the Primary Metering Equipment for each Charging Period and for the information from such readings (and such ancillary information as AIAL may reasonably require) to be submitted to AIAL in the Metering File Format, by 4pm on the sixth Business Day after the end of the Charging Period at no cost to the Customer.

8 *Karen Dwyer 13/6/02*
- meters to be read monthly
for each "charging period" =
calendar month ending midnight
ie, comply
with
Metering

8.4 *no allowance for estimates*
- if MRP can't produce actual
consumption by 6th working day
charge "late data" charge and
"assessment charge"
it will be
her party
ce to the
ading. If

information
and

method as is agreed by the parties. The reasonable costs of checking such Primary Metering Equipment shall be borne by the party that issued the Dispute Notice unless the Primary Metering Equipment fails to meet the requirements of the MARIA Rules or the NZEM Rules (as applicable), in which case such costs shall be borne by the party that provided the Primary Metering Equipment.

8.5 **Period of Inaccuracy:** If it is discovered that the Primary Metering Equipment is not functioning or is inaccurate, then the quantity of the supply of electricity conveyed during the Period of Inaccuracy will be determined by:



last day of the Charging Period, if such a day falls within the Holdover Period; and

- 7.3.3** provide the information from the readings referred to in clause 7.3.2 to AIAL within 3 Business Days of the reading being taken in the manner referred to in clause 8.2.

For the avoidance of doubt, the provisions of this clause 7.3, and clauses 7.1 and 7.2 shall continue to apply in respect of such Metering Equipment during the Holdover Period, notwithstanding that the Retailer has ceased to supply the relevant Customer at the Customer's Point of Connection or any termination of this agreement.

8. READING OF METERING EQUIPMENT

- 8.1 Primary Metering Equipment:** The Metering Equipment for each Customer's Point of Connection in respect of which this agreement provides or the parties otherwise agree, that the measurements will be taken therefrom, is referred to as the "Primary Metering Equipment".
- 8.2 Monthly Reading by Retailer:** The Retailer shall cause the Primary Metering Equipment to be read to obtain the consumption and, if applicable, the demand information recorded by the Primary Metering Equipment for each Charging Period and for the information from such readings (and such ancillary information as AIAL may reasonably require) to be submitted to AIAL in the Metering File Format, by 4pm on the sixth Business Day following the end of the Charging Period, at no cost to AIAL.
- 8.3 Testing and Operation:** The Retailer shall, insofar as is reasonable, comply with and observe all relevant procedures for the operation, maintenance and testing of the Primary Metering Equipment to ensure that such Metering Equipment is accurate and operational at all times.
- 8.4 Dispute Relating to Accuracy:** The Primary Metering Equipment will be deemed to be accurate (and binding on both parties) unless either party disputes its accuracy in relation to a reading by giving written notice to the other party ("Dispute Notice") within 12 months of the date of that reading. If a Dispute Notice is given:
- 8.4.1** each party will provide the other with any available information relevant to the checking of the Primary Metering Equipment; and
- 8.4.2** the Primary Metering Equipment will be checked for defective or inaccurate functioning or calibration in accordance with such other method as is agreed by the parties. The reasonable costs of checking such Primary Metering Equipment shall be borne by the party that issued the Dispute Notice unless the Primary Metering Equipment fails to meet the requirements of the MARIA Rules or the NZEM Rules (as applicable), in which case such costs shall be borne by the party that provided the Primary Metering Equipment.
- 8.5 Period of Inaccuracy:** If it is discovered that the Primary Metering Equipment is not functioning or is inaccurate, then the quantity of the supply of electricity conveyed during the Period of Inaccuracy will be determined by:

- 8.5.1 using the measurements of any check Metering Equipment, if installed, provided that, if such check Metering Equipment is discovered to not be functioning or to be inaccurate, such check Metering Equipment shall not be used; or
 - 8.5.2 if there is no check Metering Equipment or if the check Metering Equipment is discovered to not be functioning or to be inaccurate, and the percentage of inaccuracy of the Primary Metering Equipment is ascertainable, by amending the quantity of electricity recorded as having been conveyed during the Period of Inaccuracy to take account of the inaccuracy; or
 - 8.5.3 in any other case, by estimating the quantity of the supply of electricity conveyed, using as a basis the quantity of supply of electricity conveyed during periods on similar conditions when the Primary Metering Equipment was measuring accurately.
- 8.6 **Telephone Link:** The Retailer shall provide a direct telephone link to the Retailer's Metering Equipment to facilitate remote reading by AIAL or for such other purpose as AIAL may reasonably require.
- 8.7 **Failure to Provide:** If the Retailer fails to provide the information to AIAL as required pursuant to this clause, AIAL shall be entitled to assess or estimate the relevant consumption and demand information in such manner as it thinks fit and the Retailer shall pay to AIAL the Late Data Charge and the Assessment Charge, which shall be included in the invoice rendered to the Retailer for the Charging Period to which the assessment relates.
- 8.8 **Additional Metering Equipment:** Each party may, at its own expense, provide additional Metering Equipment to measure the quantity of electricity conveyed to a Customer's Point of Supply and the party installing such equipment shall, insofar as is reasonable, comply with and observe all relevant procedures for the operation, maintenance and testing of that Metering Equipment to ensure that it is accurate and operational at all times.

9. **QUALITY OF DEMAND**

- 9.1 **Interference with Quality:** If the characteristics of the Customer's Installation or demand or the supply of electricity by the Retailer or use of the Distribution Network by the Retailer materially interfere with the quality of supply to any other customer, any one or more customers of any retailer (other than the Retailer) also using the Distribution Network and/or one or more of AIAL's customers, or materially interferes with the operation of any of AIAL's load control, signalling or other Fittings, the Retailer shall, upon notice from AIAL, remedy the interference at its cost as soon as practicable (and in any event within 30 days of the date of the notice). If required to do so by the Retailer or if the Retailer fails to remedy the cause within such 30 day period, AIAL may remedy the interference and the Retailer shall reimburse to AIAL the cost of AIAL doing so, within 10 days of receiving an invoice from AIAL in respect of the same.
- 9.2 **Power Factor:** The Power Factor of the demand placed by a Customer on the Distribution Network shall not be less than an average of 0.95 lagging across the whole supply to that Customer per month and, if the Power Factor falls below 0.95 lagging, AIAL may give notice to the Retailer to take all measures necessary to ensure that the Power Factor meets the prescribed minimum

within the period specified by AIAL in the notice. If the Retailer fails to ensure that the Power Factor meets the prescribed minimum within such period, AIAL may:

- 9.2.1 take such measures as it considers reasonably necessary to ensure that the Power Factor meets the prescribed minimum, and the Retailer shall reimburse to AIAL the costs of AIAL taking such measures, within 10 days of receiving an invoice in respect of the same;
- 9.2.2 charge the Retailer for all relevant excessive reactive units, at a price determined by AIAL from time to time.

10. AIAL'S EQUIPMENT

- 10.1 **AIAL Property:** All items of AIAL Equipment situated on a Customer's Premises will remain the sole and absolute property of AIAL.
- 10.2 **No Interference or Damage:** The Retailer shall not, and shall use its best endeavours to ensure that Customers do not, interfere with or damage AIAL Equipment, or let any other person do so, and shall take all reasonable precautions necessary to protect that equipment from damage, complying with any reasonable requests about such protection made by AIAL. If any property of AIAL is damaged by the negligence or wilful act or omission of the Retailer, or by a Customer or a third party if the Retailer has failed to use its best endeavours to prevent such damage, then the Retailer shall pay the cost of making good the damage to AIAL.
- 10.3 **Agreement with Customers:** The Retailer shall ensure that every agreement between it and each Customer contains terms which have exactly the same effect as clauses 10.1 and 10.2 and that such terms are expressed to be intended to be for the benefit of AIAL and enforceable by AIAL pursuant to the Contracts (Privity) Act 1982.

11. DISCONNECTION OF CUSTOMER

- 11.1 **Disconnection:**
 - 11.1.1 The Retailer may disconnect a Customer's Installation from the Distribution Network in accordance with its contract with the Customer for the supply of electricity to that Customer's Installation, provided that:
 - (a) it has given not less than 7 days' prior written notice to the Customer advising that the Customer needs to arrange for another electricity supplier and warrants to AIAL that such a notice has been given; or
 - (b) the Customer provides a written notice to AIAL advising that it no longer requires a supply of electricity.
 - 11.1.2 If requested in writing by the Retailer and a Customer, AIAL may as soon as reasonably practicable disconnect that Customer's Installation from the Distribution Network and will notify the Retailer of the date and time at which the disconnection was effected. Where

any disconnection is performed by AIAL in accordance with this clause, the Retailer shall pay to AIAL the Disconnection Fee.

11.1.3 The Retailer will indemnify AIAL against any direct costs, liability, loss or damage suffered or incurred by AIAL as a result of disconnection whether by the Retailer or AIAL, provided, in the case of disconnection by AIAL, that AIAL has acted in accordance with the instructions of the Retailer in relation to the disconnection.

11.2 Non-Compliance of Customer's Installation: If in AIAL's reasonable opinion a Customer's Installation is unsafe or otherwise does not comply with AIAL's reasonable requirements, AIAL may disconnect the Customer's Installation from the Distribution Network until the Customer, at the Customer's expense, has done or refrained from doing all acts reasonably required by AIAL to make the Customer's Installation safe or compliant with AIAL's reasonable requirements. AIAL shall give prior notice of the intention to disconnect the Customer's Installation except where AIAL reasonably considers that it is necessary to effect the disconnection immediately for safety reasons.

11.3 Notice: In exercising its right to disconnect under clause 11.2, AIAL will give to the Retailer and the relevant Customer:

11.3.1 reasonable written notice of its intention to disconnect, the reasons for disconnection, its requirements in relation to the Customer's Installation to prevent disconnection, and a reasonable time in which the Customer must comply with AIAL's requirements before disconnection is effected; or

11.3.2 if AIAL determines not to give prior notice, as soon as practicable after disconnection, written notice of the reasons for disconnection and its requirements in relation to the Customer's Installation before reconnection of the Customer's Point of Connection.

11.4 Exclusion of Customers: The Retailer may, on giving not less than 14 days' prior written notice to AIAL, require AIAL to exclude any Customer and that Customer's Points of Supply from the Customers covered by this agreement with effect from the date and time specified in that notice. The Retailer may only require AIAL to exclude a Customer if:

11.4.1 the Retailer has ceased, or, at the expiry of the notice, will cease to supply electricity to that Customer; and

11.4.2 either:

(a) it has given not less than 7 days' prior written notice to that Customer advising that the Customer needs to arrange for another electricity supplier and warrants to AIAL that such a notice has been given; or

(b) the Customer provides a written notice to AIAL advising that it no longer requires a supply of electricity.

11.5 Reconnection: No Customer disconnected under this clause 11 shall be reconnected to the Distribution Network by the Retailer unless the Retailer satisfies AIAL (in its absolute discretion) that the Customer's Installation is safe and complies with AIAL's reasonable requirements (which may, without limitation, include the requirement that the Retailer follow the procedure set out

in clause 3) No reconnection by the Retailer shall take place until written notice has been given by AIAL to the effect that the Customer may be reconnected. Where AIAL is requested by the Retailer and the relevant Customer to reconnect such Customer's Installation to the Distribution Network, the Retailer will pay to AIAL, in respect of any such reconnection, the Reconnection Fee.

12. INTERRUPTION OF SUPPLY.

12.1 Interruption: AIAL may interrupt the conveyance of electricity to any Customer's Point of Connection at any time AIAL considers it reasonably necessary to do so:

12.1.1 as part of a programme of planned outages of the Distribution Network; or

12.1.2 to enable AIAL to inspect, effect alterations, maintain, repair or add to any part of the Distribution Network; or

12.1.3 to avoid danger to persons or damage to property or to avoid interference with the regularity or efficiency of the conveyance of electricity through the Distribution Network; or

12.1.4 in case of emergency to preserve and protect the proper working of the Distribution Network or any other system through which AIAL directly or indirectly takes a supply of electricity; or

12.1.5 if the Customer's Point of Supply is or will be reduced in capacity, impaired or interrupted by Transpower in the course of operating Transpower's Network or a Supplier in the course of operating its Network; or

12.1.6 In the national interest.

12.2 Obligations of AIAL: Where AIAL interrupts the supply of electricity to any Customer pursuant to clause 12.1, it will:

12.2.1 give the Retailer and the relevant Customer 5 days' prior notice of its intention to interrupt the conveyance of electricity unless, in the reasonable opinion of AIAL, the interruption must be effected immediately due to the circumstances in respect of which the interruption is required, such notice to state the date, time, area affected by and reasons for the interruption, and its expected duration;

12.2.2 resume the conveyance of electricity to the relevant Customer's Point of Connection as soon as reasonably practicable; and

12.2.3 act in accordance with Good Industry Practice at all times.

12.3 Agreement with Customers: The Retailer shall ensure that every agreement between it and each Customer contains terms which have exactly the same effect as clauses 7.1, 7.2, 7.3, 11 and 12, and that such terms are expressed to be intended to be for the benefit of AIAL and enforceable by AIAL pursuant to the Contracts (Privity) Act 1982.

13. ACCESS

13.1 Agreement with Customers: The Retailer shall ensure that every agreement between it and each Customer contains terms to the effect that:

13.1.1 the Customer will give the employees, agents, sub-contractors, invitees and other authorised representatives of AIAL at all reasonable times, safe and unobstructed access to any Metering Equipment or AIAL Equipment located on the Customer's Premises for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating or removing the same and for any other purpose related to this agreement and to any Customer's Installation for the purposes of remedying any interference in accordance with clause 9.1 or taking any reading in accordance with this agreement; and

13.1.2 AIAL shall be entitled to disconnect the Customer's installation from the Distribution Network forthwith upon the Customer failing to grant AIAL access as contemplated in clause 13.1.1,

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

13.2 Failure to Grant Access: If a Customer fails to grant to AIAL access as contemplated by clause 13.1.1, AIAL may forthwith disconnect the Customer's Installation from the Distribution Network. AIAL shall not be liable for any loss the Retailer may suffer or incur as a result of any such disconnection, provided that AIAL acts reasonably in the manner in which it effects the disconnection. The Retailer shall reimburse AIAL for all costs relating to the disconnection and of any reconnection.

14. DEFAULT AND TERMINATION

14.1 Default Events: If any of the following shall occur:

14.1.1 the Retailer fails to pay (other than by inadvertent error in funds transmission which is corrected within 2 Business Days) any amount due and owing from the Retailer under this agreement, and the default has not been remedied prior to the expiry of 7 days following receipt by the Retailer of notice of such non-payment issued by or on behalf of AIAL; or

14.1.2 the Retailer fails in any other material respect to perform or comply with any of its obligations under this agreement and (if the failure is capable of remedy) it is not remedied to the reasonable satisfaction of AIAL within 7 days of receiving a notice from AIAL of the failure and requiring it to be remedied; or

14.1.3 the Retailer:

(a) becomes subject to any distress, attachment, execution or other legal process levied, enforced, sued out on or against any material part of its property which is not discharged or stayed within 14 days; or

- (b) has a receiver appointed to the whole or any substantial part of its undertaking, property or assets; or
- (c) is deemed or presumed to be unable to pay its debts as they fall due, or becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes an assignment, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (d) is removed from the register of companies (except where removal from the register is pursuant to an amalgamation under the Companies Act 1993) or an application for an order is made, or an effective resolution is passed, for its liquidation;
- (e) sells its business (or its undertaking, property or assets comprising the major part of its business) without the prior consent of AIAL, such consent not to be unreasonably withheld having regard to the obligations of the Retailer under this agreement; or
- (f) fails to be a party to a subsisting sale and purchase agreement with a Supplier, or other arrangement, to enable it to meet the electricity supply requirements to Customers,

then AIAL may:

14.1.4 advise any or all of the Customers that a Default Event has occurred under this agreement and provide such Customer(s) with details of the nature of the default (notwithstanding the provisions of clause 21); and/or

14.1.5 give notice to the Retailer terminating this agreement, without prejudice to any other rights and remedies of AIAL. Upon the expiry of the notice the Retailer shall immediately cease its Use of the Distribution Network and AIAL may cease to provide Line Function Services.

14.2 Agreement with Customers: The Retailer shall ensure that every agreement between it and each Customer will provide that the same shall automatically terminate if for any reason this agreement shall terminate, and that such automatic termination is irrevocable. Each such agreement between the Retailer and each Customer shall also provide that such automatic termination provision is intended to be for the benefit of AIAL and enforceable by AIAL pursuant to the Contracts (Privity) Act 1982.

14.3 Other Supply: Following termination of this agreement (including pursuant to clause 3.5), AIAL may at its discretion arrange for the supply of electricity to Customers by itself or by another electricity retailer.

15. FURTHER PROVISIONS RELATING TO TERMINATION

15.1 Termination Without Prejudice: The termination of this agreement shall be without prejudice to the rights of the parties accruing prior to termination.

- 15.2 Provisions to Survive:** The provisions of clauses 5.5, 5.9, 7.3, 17, 18 and 21 shall survive termination of this agreement and shall remain in full force and effect notwithstanding such termination.

16. FORCE MAJEURE

- 16.1 Suspension of Obligations:** If either party is unable to carry out any of its obligations under this agreement because of Force Majeure, this agreement will remain in effect but except as otherwise provided, both parties' obligations will be suspended without liability for a period equal to the Force Majeure, provided that:
- 16.1.1** the non-performing party gives the other party prompt notice describing the event or circumstance claimed to be 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;
 - 16.1.2** the suspension of obligations is of no greater scope and of no longer duration than is required by the Force Majeure;
 - 16.1.3** no obligations of either party which shall have accrued before the notice referred to in clause 16.1.1 is given are suspended as a result of the Force Majeure; and
 - 16.1.4** the non-performing party uses all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
- 16.2 No Requirement to Settle:** Nothing in this clause 16 shall be construed to require either party to settle a strike, lockout or other industrial disturbance by acceding its judgment to demands made to it.
- 16.3 Termination:** If the Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to comply with clause 16.1.4, that party may, on not less than 14 days' prior written notice to the other party, terminate this agreement.

17. LIMITATION OF LIABILITY

- 17.1 Force Majeure:** Neither party shall be liable to the other party for any failure of or defect in the supply or conveyance of electricity or other breach of this agreement which is directly or indirectly caused by Force Majeure.
- 17.2 AIAL Not Liable:** AIAL shall not in any circumstances be liable to the Retailer or a Customer for or arising as a result of:
- 17.2.1** momentary fluctuations in the voltage or frequency of electricity conveyed; or
 - 17.2.2** any failure to convey electricity caused by no or reduced injection or supply of electricity into the Distribution Network; or
 - 17.2.3** any failure to convey electricity caused by any default or abnormal conditions in any Customer's Premises; or
 - 17.2.4** any failure to convey electricity in accordance with clause 12.

- 17.3 AIAL Liable for Direct Loss Only:** AIAL shall not be liable to the Retailer, any Customer nor any other party for loss arising from any breach of this agreement, other than for loss directly resulting from such breach and which, at the date of this agreement, was reasonably foreseeable as being likely to occur in the ordinary course of events from such breach, and which resulted from physical damage to the property of the other party, its officers, employees or agents. Without limitation, AIAL shall not be liable as aforesaid for:
- 17.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill of any person including a Customer; or
 - 17.3.2 any indirect or consequential loss; or
 - 17.3.3 any loss resulting from the liability of such other party to any other person; or
 - 17.3.4 any loss resulting from loss of corruption of or damage to any computer or electronically stored data, software or hardware.
- 17.4 AIAL Limitation:** Notwithstanding any other provision of this agreement, the liability of AIAL in relation to this agreement, whether as a result of any breach of this agreement, or on any other ground or basis whatsoever, shall not in any circumstances exceed:
- 17.4.1 \$10,000 in respect of any one event or series of related events; and
 - 17.4.2 \$50,000 in aggregate in any 12 month period.
- 17.5 Retailer Limitation:** Notwithstanding any other provision of this agreement, the liability of the Retailer in relation to this agreement, whether as a result of any breach of this agreement, or on any other ground or basis whatsoever, shall not in any circumstances exceed:
- 17.5.1 \$500,000 in respect of any one event or series of related events; and
 - 17.5.2 \$1,000,000 in aggregate in any 12 month period.
- 17.6 Retailer to Indemnify:** AIAL shall be indemnified and kept indemnified by the Retailer against all expenses, damages, costs, pecuniary penalties and other financial liabilities incurred by AIAL arising out of, or in connection with any Claim by or from any third party arising from or as a result of:
- 17.6.1 any failure by the Retailer to perform its obligations under this agreement;
 - 17.6.2 any disconnection performed by the Retailer or AIAL under this agreement (including the issue of any Withdrawal Notice);
 - 17.6.3 any Customer's Installation or demand or the supply of electricity by the Retailer or use of the Distribution Network by the Retailer where, in the absence of any default by AIAL, such demand, supply or use materially interferes with the quality of supply to AIAL, any other customer, any one or more customers of any retailer (other than the Retailer) also using the Distribution Network and/or one or more of AIAL's customers, or materially interferes with the operation of any of AIAL's load control (except to the extent that the relevant Customer's Installation is owned or operated by AIAL); or

17.6.4 any failure by the Retailer, except to the extent that such failure is due to an act or omission of AIAL, to comply with any of its obligations to any Customer or Supplier of the Retailer.

17.7 Contracts (Privity) Act: The benefit of this clause 17 is intended to extend to the officers, employees and agents of the parties and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

17.8 Fair and Reasonable: This clause 17 has specifically been brought to the attention of the parties and has been the subject of discussions and is fair and reasonable having regard to the circumstances at the date of this agreement.

17.9 Agreement with Customers: The Retailer shall ensure that every agreement between it and each Customer will contain a term that limits the liability of AIAL to the Customer in the same manner as this clause 17 and that such term will be expressed to be intended for the benefit of and enforceable by AIAL pursuant to the Contracts (Privity) Act 1982.

18. DISPUTE RESOLUTION

18.1 Notice of Dispute: Subject to clause 5.1, where any question, dispute or difference arises concerning the administration or interpretation of any provision of this agreement, the party initiating the question, dispute or difference shall provide notice of the same to the other party.

18.2 Reference to Arbitrator(s): If the parties are unable to resolve the question, dispute or difference by discussion within 30 days of such notice, the matter shall be referred to the arbitration of a single arbitrator if the parties can within a further period of 14 days agree on one, or otherwise to two arbitrators, one to be appointed by each party and an umpire to be appointed by the two arbitrators before they enter into consideration of the matter. Such arbitration shall be determined in accordance with the provisions of the Arbitration Act 1996.

19. INFORMATION TO BE PROVIDED BY RETAILER

19.1 Information: The Retailer will provide to AIAL, at AIAL's request as soon as reasonably practicable:

19.1.1 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; and

19.1.2 such information as AIAL may reasonably require for the proper and efficient performance of its obligations (including invoicing), and the efficient and safe operation of the Distribution Network.

20. ASSIGNMENT

20.1 No Assignment: Subject to clause 20.2, neither party may assign, encumber, novate or otherwise dispose of any benefit or obligation under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

20.2 Subcontracting and Delegation: Each party may subcontract or delegate the performance of any of its obligations under this agreement, without the prior consent of the other, but any such subcontracting or delegation will not relieve a party from liability for performance of any such obligations or duty.

21. CONFIDENTIALITY

21.1 Confidential Information: Each party ("**Obligor**") undertakes with the other party that it shall preserve the confidentiality of and shall not directly or indirectly reveal, report, publish, disclose or transfer Confidential Information except in the circumstances and to the extent set out in:

21.1.1 Transpower Agreement: any agreement with Transpower or any Supplier relating to connection to Transpower's Network or any Supplier's Network; or

21.1.2 MARIA Rules: the MARIA Rules or the NZEM Rules.

21.2 Disclosure: The Obligor may disclose Confidential Information in the following circumstances:

21.2.1 where at the time of receipt by the Obligor the Confidential Information is already in the public domain; or

21.2.2 where after the time of receipt by the Obligor the Confidential Information enters the public domain, except where it does so as a result of a breach by the Obligor of its obligations under this clause 21 or a breach by any other person of an obligation of confidence to the party which is not the Obligor and the Obligor is aware of such breach; or

21.2.3 where the Obligor is required:

(a) by any statutory or regulatory obligation, body or authority; or

(b) by any judicial or arbitration process; or

(c) by the regulations of any stock exchange upon which the share capital of the Obligor or the other party (or either of their holding company) is from time to time listed or dealt in.

22. NON-WAIVER

22.1 Waiver to be in Writing: None of the provisions of this agreement will be considered to be waived by either party except when such waiver is given in writing.

22.2 Delay or Omission Not Waiver: 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 right, power, privilege or remedy shall not preclude any other future exercise of any other right, power, privilege or remedy.

23. ENTIRE AGREEMENT

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

24. SAVINGS CLAUSE

If any provision of this agreement is or becomes invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

25. GOVERNING LAW

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

26. NOTICES

26.1 Method: Any notice, demand, consent, certificate or other communication required or permitted to be given or sent under this agreement shall be in writing and shall be delivered personally or by pre-paid post, by courier delivery, or by facsimile.

26.2 Details: The required address, and facsimile number for a party for the purposes of this clause is set out in Schedule 2, provided that either party may alter its address and/or facsimile number for the purposes of this clause by notice in writing to the other party.

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

26.3.1 if given or delivered personally or by courier delivery, at the time when given or delivered;

26.3.2 if sent by pre-paid post, at the expiration of 48 hours after the documentation was delivered in to the custody of the postal authorities;

26.3.3 if sent by facsimile, on the day of sending, if the sending machine confirms transmission is successful.

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

27. VARIATIONS

No variations or modifications to this agreement will be effective unless made in writing and signed by or on behalf of both Parties.

28. COSTS

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

29. SUSPENSION

The parties acknowledge that certain provisions in this agreement are not applicable if AIAL is the only Customer of the Retailer. Accordingly, the parties agree that the application of clauses 2, 3.2.1, 5.6, 5.7, 5.8, 11.1.1 and 17.5.3 shall be suspended and of no force and effect if, and for so long as, AIAL is the only Customer of the Retailer.

30. SUBSIDIARIES

The Parties acknowledge that the obligations assumed by the Retailer under this agreement are for the benefit of, and are enforceable by, the Retailer and/or any of the Subsidiaries pursuant to the Contracts (Privity) Act 1982.

In witness of which this agreement has been executed.

SIGNED by AUCKLAND INTERNATIONAL AIRPORT LIMITED by affixing its common seal in the presence



John Packard Goulter

Name of director

Signature of director

Christopher John Curley

Name of director/authorised signatory

Signature of director/authorised signatory

Witness:

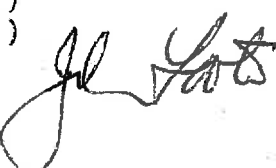
Witness' signature: K Dwyer

Witness' name: Karen Dwyer

Occupation: Solicitor

Address: Auckland

SIGNED for and on behalf of
MIGHTY RIVER POWER
LIMITED by:

)
)
)


John Foote

Signature

General Manager – Retail

SCHEDULE 1

Charges

1. LINE CHARGES

AIAL shall, as soon as practicable following receipt of a Customer Information Sheet in accordance with clause 2.1, and following receipt of advice from the Retailer as to that Customer's nominated demand, specify the following in respect of that Customer, as a monthly charge:

- 1.1 the applicable line charge(s); and
- 1.2 the penalty charge(s) applicable in respect of any unit of demand exceeding the specified nominated demand.

The monthly Line Charge in respect of that Customer shall be calculated by applying the relevant charges notified to the Retailer in respect of that Customer to the actual consumption and, if applicable, demand of that Customer during the relevant period, including, if applicable, penalty charges for demand exceeding nominated demand.

All Charges are exclusive of GST unless otherwise indicated and may be amended in accordance with clause 5.1 of the agreement.

2. OTHER CHARGES

- 2.1 **Reconnection Fee:** The Reconnection Fee will be calculated by measuring the actual cost to AIAL in performing the reconnection based on an hourly rate of \$45.
- 2.2 **Late Data Charge:** \$14 per day for each Customer's Point of Connection in respect of which the Retailer is late in providing the relevant data and supporting information required pursuant to clause 8.2.
- 2.3 **Assessment Charge:** The Assessment Charge will be calculated by measuring the actual cost to AIAL in performing the assessment based on an hourly rate of \$76.

~~2.4 **Disconnection Fee:** The Disconnection Fee will be calculated by measuring the actual cost to AIAL in performing the disconnection based on an hourly rate of \$45.~~

SCHEDULE 2

Auckland International Airport Limited
PO Box 73 020
Auckland International Airport
AUCKLAND

Facsimile: 256-8943

Attention: Steve Reindler, General Manager - Engineering

Mighty River Power Limited
Private Bag 92008
AUCKLAND

Facsimile: 580 3515

Attention: Steve Rawson, Commercial Services Manager

SCHEDULE 3

Loss Adjustment Factors

Factors

- 1.1 The loss adjustment factors reflect the total losses incurred via the various components of the Distribution Network when electricity is conveyed through that network. The appropriate loss adjustment factors are as set out in the following table. The loss adjustment factors may be amended by AIAL from time to time as contemplated for reconciliation purposes:

Capacity and Voltage Connection	Factor
Low Voltage Connection	4.5%
High Voltage Connection	2.5%

- 1.2 For the purpose of paragraph 1.1:

- (a) **"Low Voltage"** means that voltage not exceeding 1000 volts (and includes single phase, two phase and three phase supply).
- (b) **"Low Voltage Connection"** means a connection where the Customer receives supply from the Low Voltage network.
- (c) **"High Voltage"** means that voltage greater than 1000 volts.
- (d) **"High Voltage Connection"** means a connection where the Customer receives supply from the High Voltage network.

SCHEDULE 4

CUSTOMER INFORMATION SHEET

1. Customer Name _____ Retailer Name _____
2. Address _____ Address _____
3. Contact Person _____
- Position _____
- Telephone Number () _____
- Facsimile () _____

4. Address for Customer's Point of Connection*				AIAL TO COMPLETE THIS SIDE			
Street	Suburb	5. AIAL Power Account Supply Number	6. AIAL or Retailer to Provide Primary Metering Equipment AIAL/Retailer	7. Zone	8. Connection Capacity Capacity (KVA)	9. Loss Adjustment Factor	10. Transpower Point of Connection
					HV/TVL3/LV1		
					HV/TVL3/LV1		
					HV/TVL3/LV1		
					HV/TVL3/LV1		
					HV/TVL3/LV1		

* If there are more Customer's Points of Connection, please continue on a new sheet

NB: Shaded area to be completed by AIAL

Retailer: The Retailer named above hereby gives notice that it intends to supply electricity and line network services to the Customer named above at the Customer's Points of Connection set out above with effect from (insert date) _____ (or such later date on which a Commencement Notice is received from AIAL in relation to those Customer's Points of Connection).

Customer: The Customer named above hereby confirms that it has requested the Retailer named above to supply electricity and line network services to the Customer's Points of Connection in accordance with this notice.

Signed by the Retailer: _____

Signed by the Customer _____

Date: _____

Date: _____

SCHEDULE 5

AIAL - Metering Installation Notice

ENERGY RETAILER:			
CUSTOMER NAME:			
CUSTOMER ADDRESS:			
AIAL PROPERTY NUMBER:			
AIAL SUPPLY NUMBER:			
METERING VOLTAGE LEVEL (CIRCLE):		HV	LV
METERING CURRENT LEVEL (CIRCLE):	HV	LV	Direct Connect
VT RATIO CONNECTED:			
CT RATIO CONNECTED:			
METERING CT OWNER:			
CT ACCURACY CLASS:			
CT CERTIFICATION (CIRCLE):	Y (Attached)	N	NA
CT EXEMPT (CIRCLE):	Y (Attached)	N	NA
(RULE EMCO COP 3 CLAUSE 5.3.1)			
CT EXEMPTION SIGNED (CIRCLE):	Y (Attached)	N	NA
METERING VT OWNER:			
VT ACCURACY CLASS:			
VT CERTIFIED (CIRCLE):	Y (Attached)	N	NA
VT EXEMPT (CIRCLE):	Y (Attached)	N	NA
(RULE EMCO COP 3 CLAUSE 5.3.2)			
VT EXEMPTION SIGNED (CIRCLE):	Y (Attached)	N	NA
DATE CT/VT's MUST BE CERTIFIED WITHIN: 5 YEARS FROM METERING INSTALLATION (DATE)			
METER OWNER:			
METER MAKE AND MODEL(S):			
METER SERIAL NUMBER(S):			

CERTIFICATION STICKER SERIAL NUMBER:
CERTIFICATION EXPIRY DATE:
INTERVAL DATA LOGGER OWNER:
INTERVAL DATA LOGGER MAKE AND MODEL:
INTERVAL LOGGER SERIAL NUMBER:
PHONE LINE OWNER:
PHONE LINE TYPE:
PHONE NUMBER:
DATE PHONE LINE OPERATIONAL (MUST BE PRIOR TO COMMENCEMENT DATE)
AFTER INSTALLATION COMPANY:
METER INSTALLATION PERSONNEL:
INSTALLATION EXPIRY DATE:
DATE NEXT INSTALLATION INSPECTION DUE:
I HEREBY CONFIRM THAT ALL OF THE ABOVE DETAILS ARE CORRECT
SIGNED: _____
NAME: _____
ON BEHALF OF: _____ [NAME OF RETAILER]
DATE: _____

Definitions

CT: Current Transformer

VT: Voltage Transformer

EMCO COP 3: EMCO Code of Practice Three, this document details the requirements for MARIA metering installations. As part of the document not certified CT's and VT's are allowed to be operated for a maximum of five years without certification from the time of MARIA metering installation. After that time the distributor is responsible for the certification of the CT's.

SCHEDULE 6

Local Reconciliation Procedure

In order to enable the Retailer to reconcile the quantity of electricity used by Customers with the quantities of electricity purchased from the Supplier, the Retailer shall determine the losses of electricity deemed to have been incurred in the Distribution Network, by reference to the predetermined losses at specific voltage levels as are specified in Schedule 3 (as the same may be varied from time to time by AIAL and advised to the Retailer), and a statement reconciling Customers' metered purchases and losses as allocated by the Retailer shall, insofar as it relates to the Distribution Network, be provided to AIAL by the Retailer in accordance with the timeframes specified in clause 8.2 or such other period as agreed by AIAL.

