

Date
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ORION NEW ZEALAND LIMITED

(Orion)

[]

(the Retailer)

CONVEYANCE AGREEMENT



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"Customer's Premises" means the premises owned or occupied by the Customer connected to the Network to which the Retailer proposes to supply Electricity.

"Delivery Services" means the services to be provided by Orion to a Customer in respect of a Customer's Premises as more particularly defined in the Terms and Conditions of Providing Delivery Services to Major Customers.

"Due Date for Payment" means the date specified by Orion as the date a Customer's account be must be paid.

"Electricity" means alternating current electricity used descriptively to apply to current and voltage varying sinusoidally at the System Frequency.

"Electricity Retailers" means all persons or companies in the business of supplying electricity to the Connections.

"Embedded Generation" means generation of electricity that is injected directly into the Network.

"Generator" means the party who sells Electricity to the Retailer for supply to the Customer's Premises.

"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 having regard to common industry practice at the time.

"Grid Exit Point" means a Point of Connection between the TPNZ Grid and the Network.

"Interest Rate" means the 11 a.m. 90 day bank bill buy rate as published on Reuters screen BKBM or in the absence of the quoted rates the rate determined by the Manager of the Bank of New Zealand, Christchurch branch, for 90 Day Bills calculated on a daily basis.

"Loss Factor" means the ratio of electricity injected into the network to the corresponding electricity delivered from the Network at the Connection.

"Major Customer Connection" means a connection to the Network classified as a Major Customer Connection as advised by Orion from time to time.

"MARIA" means the "Metering and Reconciliation Information Agreement" administered by the The Marketplace Company Limited (M-co) for the purpose of assigning electricity purchased by Electricity Retailers.

"M-co" means the Marketplace Company Limited or its assigns or successors.

"Metering Installation" has the same meaning as that attributed to the term in MARIA and means any apparatus for the purpose of measuring the quantity of electricity Delivered through a Connection, but for the purposes of this definition shall exclude current and voltage transformers, wiring connections, test terminals and panels considered to be Fittings owned by the Connected Customer or the Distributor.

"Network" means Orion's system for the conveyance and distribution of Electricity including all fittings comprising part of that system which system terminates at the Network Connection Point.

"Network Connection Point" means each point of connection at which a supply of electricity may flow between the Distribution Network and the Customer's Installation (as defined in the Terms and Conditions of Providing Delivery Services to Major Customers).

"Network Operators" means the owners of electricity distribution networks throughout New Zealand excluding TPNZ.

"NZEM" means the New Zealand Electricity Market.

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

"Points of Connection" means the points at which the Electricity is transmitted into the Network and the Network Connection Point to the Customer's Premises.

"System Frequency" means the fundamental frequency of the alternating current and voltage in the Network measured in cycles per second (hertz).

"Termination Date" means the date agreed in writing between the parties as being the Termination Date or in the event of no agreement so specifying a termination date the term of this Agreement shall be determined pursuant to clause 2.1.

"Terms and Conditions of Providing Delivery Services to Major Customers" means the terms and conditions, constituting an agreement between Orion and the Customer relating to the connection of the Network to the Customer's Premises and the provision of Delivery Services.

"TPNZ" means Transpower New Zealand Limited or its assigns or successors.

"TPNZ Grid" means TPNZ's system throughout New Zealand for the transmission of electricity.

"Working Day" means any day of the week other than a Saturday, Sunday or a statutory holiday.

Headings: Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the construction of this contract.

Plurals and Singular: Words importing the singular number shall include the plural and vice versa.

Parties: References to parties are references to Orion and the Retailer and their respective successors and assignees.

Persons: References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations,

trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not they have separate legal personality.

Clauses, Schedules: References to clauses and schedules are references to clauses of and schedules of this agreement. References to paragraphs or columns are references to paragraphs or columns (as the case may be) of a schedule.

Obligations: Any obligation not to do something shall be deemed to include an obligation not to suffer, permit, or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.

Discretions: Where a provision confers on either party a discretion (including a discretion to determine something, form an opinion on something or to exercise a right) and the discretion is not expressly qualified by an obligation to act reasonably, the exercise of that discretion by that party shall not be subject to any dispute resolution procedure. However, if the discretion is expressly qualified by an obligation to consult with the other party, or to act reasonably any question or difference between the parties as to whether that obligation has been complied with, performed or observed (as opposed to the exercise of the discretion) shall be a question or difference referred to in clause 13.1 and shall (if necessary) be referred to arbitration pursuant to clause 13.2.

Statutes and Regulations: References to a statute include references to regulations, orders or notices made under or pursuant to such statute or regulations and references to a statute or regulation include:

References to all amendments to that statute or regulation, whether by subsequent statute or otherwise.

Reference to a statute or regulation passed in substitution for that statute or regulation.

2. TERM OF CONTRACT

2.1 Term

This Agreement shall commence on the Commencement Date and (subject to the terms of this Agreement) shall terminate at midnight on the Termination Date or if no Termination Date is specified shall continue from the Commencement Date and shall thereafter terminate on the giving of three months notice in writing by either party subject to clause 2.2.

2.2 Early Termination

This Agreement shall terminate if:

- (a) Either party fails to comply with or observe or perform any material provision of this Agreement and (if the default is capable of remedy) has not remedied such failure within 10 Working Days of a notice given by the other party to the defaulting party of such default and the intention of termination.

- (b) The Retailer is 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 10 Working Days.
- (c) The Retailer has a receiver appointed to the whole or any substantial part of its undertaking, property or assets.
- (d) The Retailer is deemed or is presumed in the reasonable opinion of Orion to be unable at any time during this Agreement to satisfy the solvency test in section 4 of the Companies Act 1993.
- (e) The Retailer is removed from the Register of Companies or is subject to liquidation (namely an application for or an order is made for or an effective resolution is passed for its liquidation) or a petition for winding up of the Retailer is made except for the purposes of a reconstruction or relating to a bona fide disputed debt.
- (f) All contracts between the Customers and the Retailer to supply Electricity are terminated. Termination on this ground shall take place only on request in writing from the Retailer.
- (g) The Retailer ceases to hold any licence or comply with any other statutory or regulatory requirement in respect of the supply of Electricity to the Customers.
- (h) It becomes unlawful for either party to perform any provision of this Agreement to an extent which is material and the party (for whom it has become unlawful) properly gives not less than one Working Days notice of termination to the other.
- (i) Either party was unable to perform any provision of this Agreement to an extent which is material by reason of any statute or directive of the Crown and the party (unable to perform) properly gives not less than 10 Working Days notice of termination to the other.
- (j) The parties agree in writing.

2.3 **Renewal**

If the Retailer so requires no later than three months prior to the Termination Date (if one is specified) Orion and the Retailer shall meet with the other and in good faith endeavour to agree with the other upon new terms and conditions for Orion to continue to convey Electricity over the Network to enable the Retailer to continue to supply Electricity to the Customers. However, a failure to agree shall not be the subject of any dispute resolution procedure.

2.4 **Termination of Agreement with Customer**

The Retailer shall ensure that every agreement between it and its Customers provides for cessation of supply of Electricity by the Retailer if for any reason this Agreement shall terminate.

2.5 **Review**

Notwithstanding the term of this Agreement, and without limiting either party's rights in relation to termination, the parties shall, upon notice from either party, during the term of this Agreement, review its provisions for the purposes of considering and reaching agreement on any amendments or a new agreement, necessary to give effect to any material change in circumstances relating to the provision of Delivery Services or electricity to the Customer's Premises or changes to MARIA or NZEM Rules. Unless and until any such amendments have been agreed or a new agreement has been entered into, this Agreement shall remain in full force and effect (without limiting either party's right in relation to termination).

3. CUSTOMER'S NETWORK CONNECTION CONTRACT

3.1 Acknowledgement by Retailer

The Retailer acknowledges it has notice of the terms which apply at the Commencement Date under which the Customer's Premises are connected to the Network and Orion provides Delivery Services to the Customers as set out in the Terms and Conditions of Providing Delivery Services to Major Customers.

3.2 No Inconsistent Action with Customer's Network Connection Contract

The Retailer covenants it shall take no action inconsistent with the Terms and Conditions of Providing Delivery Services to Major Customers or cause the Customers to take any action which would place the Customers in breach of their obligations to Orion under the Terms and Conditions of Providing Delivery Services to Major Customers.

3.3 Acknowledgement by Orion

Orion covenants it shall meet its obligations to the Customers under the Terms and Conditions of Providing Delivery Services to Major Customers.

4. CONDITIONS TO CONVEYANCE OF ELECTRICITY

The conveyance of the Retailer's Electricity through the Network from time to time to a Customer's Premises shall be conditional upon:

- (a) The Retailer having an agreement to supply Electricity to the Customer.
- (b) Each Network Connection Point at the Customer's Premises having a functioning Metering Installation as and where required by the rules of MARIA and as needed to produce the quantities required to calculate the charges for the Chargeable Services.
- (c) Evidence from the Retailer that it has adopted MARIA and agrees to be bound by its terms and/or is bound by the NZEM rules as applicable.
- (d) The Customer having agreed to be bound by the Terms and Conditions of Providing Delivery Services to Major Customers in a form satisfactory to Orion.

5. ELECTRICITY CONVEYANCE AND OWNERSHIP

5.1 Conveyance Over Network

Subject to the terms of this Agreement Orion agrees to convey Electricity over the Network to Customers' Premises.

5.2 Electricity Ownership

The parties acknowledge that Electricity injected into the Network cannot be physically identified as the property of any Electricity Retailer. For the purposes of this Agreement Electricity shall be deemed:

- (a) the property of the Retailer; and
- (b) to have been taken

at the time it is conveyed through a Customer's Network Connection Point.

5.3 Quantity of Electricity Conveyed

The Retailer and Orion agree that Orion shall be deemed to have conveyed to the Customer the quantity of Electricity recorded as having been delivered at the Network Connection Point as recorded through the Metering Installation together with amounts of Electricity calculated having regard to the Loss Factor subject to clause 8.3.

5.4 Responsibility for Payment for Electricity

The Retailer shall be responsible for the Generator in relation to the payment to the Generator for any Electricity injected into the Network for supply to Customers.

5.5 Orion's Functions

For the purposes of this clause 5 Orion's functions shall be to:

- (a) Convey Electricity over the Network to the Customers' Network Connection Points in accordance with Good Industry Practice.
- (b) Comply with its obligations under MARIA
- (c) Ensure that all Electricity Retailers operating over the Network, whether by way of conveyance agreement or delivery services agreement have covenanted to be bound by and comply with MARIA
- (d) Declare Loss Factors. All Loss Factors shall be declared by Orion at least seven days in advance of their application. Loss Factors will apply equally to all Customers and other recipients of Electricity from the Network which have similar supply circumstances.
- (e) Treat all Electricity Retailers and all Customers in an economically equivalent manner.

5.6 Information to Orion

For the purposes of Orion preparing its invoices for the Chargeable Services, the Retailer shall provide Orion with information on sales as stipulated in its document on delivery charges. Upon Orion's request (at any time and from time to time or as soon thereafter as reasonably practical) the Retailer shall provide such other information as Orion may reasonably require for the performance of Orion's functions under this Agreement.

5.7 Information to the Retailer

Orion shall provide to the Retailer upon request:

- (a) Such information relating to the calculation and value of the Loss Factors as the Retailer may reasonably require.
- (b) Upon the Retailer's request (at any time and from time to time or as soon thereafter as is reasonably practicable) Orion shall provide such other information as the Retailer may reasonably require for the performance of the Retailer's functions under this Agreement.

5.8 Restrictions on Information

The obligations of the parties under clauses 5.6 and 5.7 to make information available is subject to:

- (a) Any obligation of confidence in respect of any information; and
- (b) A request for information being strictly relevant to the requesting party's obligations under this Agreement.
- (c) Orion's obligations under clause 8.4(a).

6. QUALITY OF CONVEYANCE

6.1 Maintaining Quality of Conveyance

Orion shall comply with its obligations under the Terms and Conditions of Providing Delivery Services to Major Customers with Customers with respect to the quality of conveyance of Electricity.

6.2 Maintenance of Continuous Conveyance

Orion shall use its best endeavours to provide continuous conveyance of Electricity to each Network Connection Point subject to sufficient Electricity being available for injection into the Network.

6.3 Capacity Shortage

If there is a capacity shortage caused by a fault contingency which creates a difficulty in conveying electricity over the Network and/or the TPNZ Grid, then Orion shall determine the priorities for maintaining the conveyance of electricity to Customers. Orion shall not

make any determination under this clause for the purposes of favouring any Electricity Retailers' customers.

6.4 Energy Shortage

Where the Distributor interrupts Delivery due to an envisaged shortage of electricity the Retailer shall be responsible for dealing with the Generators and other electricity retailers and the Distributor shall use its best endeavours to co-operate with the Electricity Retailer and all other electricity retailers who have electricity conveyed over the Network.

6.5 Planned Interruption of Conveyance

Notwithstanding clauses 6.1 through 6.4 Orion may interrupt or reduce conveyance to any Network Connection Point in accordance with Good Industry Practice, either totally or partially for any period which in the reasonable opinion of Orion is necessary for purposes such as testing, adding to, altering, repairing, replacing or maintaining electrical lines, cables, machinery, equipment or any other apparatus including structures and supports. Subject to clause 6.6 in the event of an interruption to or reduction of conveyance Orion shall:

- (a) If in the reasonable opinion of Orion it is reasonably practical for it to give notice of its intention to interrupt or reduce conveyance and it is practical to seek agreement with the Retailer on the timing of the interruption to or reduction of conveyance, seek such agreement with a view to minimising the disturbance to the business of the Retailer (and if agreement is reached, comply with the same) or the Customers.
- (b) Use all reasonable endeavours to notify the Retailer as early as reasonably practical of its intention to interrupt or reduce conveyance.
- (c) Use all reasonable endeavours to minimise the period of interruption to or reduction in conveyance.

6.6 Immediate Danger

Notwithstanding clauses 6.1 to 6.5 if in the reasonable opinion of Orion there is an immediate danger to any persons or electrical lines, cable, machinery, equipment or other plant or property of whatever kind, Orion may without notice to the Retailer immediately interrupt or reduce conveyance either totally or partially for any period as in the opinion of Orion is necessary to remove the danger. Orion shall use all reasonable endeavours to minimise the period of interruption or reduction in conveyance.

6.7 Retailer to be Informed of Circumstances

Orion shall as soon as reasonably practicable inform the Retailer of the circumstances where the Customer is affected by:

- (a) A planned interruption of Conveyance pursuant to clauses 6.5 or 6.6.
- (b) A capacity shortage per clause 6.3 if the Customer is a Major Customer.

7. MAINTENANCE AND OPERATION OF NETWORK

7.1 Orion's Obligations

Orion shall:

- (a) Maintain and operate the Network in accordance with Good Industry Practice, to the level and extent set out in the Terms and Conditions of Providing Delivery Services to Major Customers.
- (b) If undertaking any modifications to the Network, arrange for the design and construction of the same in accordance with Good Industry Practice in each case with the objective of maintaining the required capacity in accordance with the Customer's Terms and Conditions of Providing Delivery Services to Major Customers in respect of each Network Connection Point.
- (c) Ensure that there is an Electricity Retailer for every person receiving a supply of Electricity via the Network.

7.2 Retailer's Obligations

The Retailer shall:

- (a) Not interfere with the Network;
- (b) Not convey or attempt to convey any signals or other forms of communication over the Network unless express approval is given by Orion in writing.
- (c) Be bound by and comply with MARIA and/or the NZEM Rules as applicable.

8. METERING

8.1 Provision of Metering Installation

The Retailer shall be responsible at its costs to ensure that a Metering Installation required by MARIA and as required to produce the quantities needed to calculate the charges for the Chargeable Services is provided in respect of each Customer's Premises. Nothing in this clause shall be construed as requiring the Retailer to replace, maintain or repair any high voltage metering voltage transformers or current transformers which form part of the Network.

8.2 Event of Inaccuracy

If it is discovered that the Metering Installation is not functioning or is inaccurate then the quantity of the supply of Electricity delivered shall be determined via the procedures given in the rules of MARIA.

8.3 Non Interference with Metering Installation

Orion shall not interfere with the Metering Installation provided by the Retailer and neither party shall interfere with the immediate connections to the Metering Installation owned by the

other party without the prior written consent of the other party, except to the extent that in an emergency action has to be taken to protect the health and safety of persons or to preventing serious damage to property. In this event, the party taking the action shall give written notice to the other party as soon as practicable as to the course of action and reasons behind such action.

8.4 Data from Metering Installation

The Retailer shall provide secure and selective access to Orion to all necessary information from the Metering Installation for the purpose of Orion meeting its obligations under this Agreement and in charging Customers for the Chargeable Services.

9. RETAILER AS AGENT OF CUSTOMER

9.1 Customer May Appoint Retailer as Agent

Where a Customer and the Retailer notify Orion that the Customer has appointed the Retailer to act as the Customer's agent in settlement of payment for the Chargeable Services:

- (a) Orion shall forward all invoices for the Chargeable Services in respect of that Customer to the Retailer.
- (b) The Retailer shall pay the amounts in all such invoices to Orion by the Due Date for Payment, subject to receiving payment from the Customer provided that if Orion has not received payment on the Due Date it may exercise any rights it may have in the Terms and Conditions of Providing Delivery Services to Major Customers, including disconnection.

In addition a Customer may appoint the Retailer as its agent (with the consent of the Retailer) in relation to any dealing or negotiation with Orion.

9.2 Customer's Chargeable Services

Unless the Customer appoints the Retailer as its agent for the purpose of being charged and paying the charges payable by the Customer in respect of the Chargeable Services under the Customer's Terms and Conditions of Providing Delivery Services to Major Customers pursuant to clause 9.1 Orion shall charge the Customer directly for the Chargeable Services under the Customer's Terms and Conditions of Providing Delivery Services to Major Customers.

10. DISCONNECTION OF CUSTOMER'S PREMISES FROM THE NETWORK

10.1 Reasons for Disconnection

Subject to all statutory and regulatory requirements Orion may disconnect a Customer's Premises from the Network in any of the following situations:

- (a) Within two Working Days upon receiving written instructions from the Retailer in which event the Retailer agrees to indemnify Orion from all damage, direct loss or claims accruing to Orion by virtue of the disconnection of the Customer's Premises.
- (b) Upon the written instructions from the Customer.
- (c) On the termination of this Agreement or upon expiry of a notice of termination given to the Retailer pursuant to clause 2.2(b) to (l).
- (d) On the terms set out in the Customer's Terms and Conditions of Providing Delivery Services to Major Customers.

10.2 Payment for Disconnection

Where Orion undertakes any disconnection service for the Retailer, Orion shall charge for this service at the prices, as notified to the Retailer, from time to time.

10.3 Alternative Arrangements

Orion may arrange an alternative supplier of Electricity to a Customer where this Agreement is terminated pursuant to clause 2.2. Orion shall give written notice to the Retailer that an alternative Supplier has been arranged which includes the date on which the supply is deemed to have been disconnected. Such alternative supply will be for the purposes of clause 10.1 be deemed a disconnection of supply by the Retailer.

10.4 Failure to Disconnect

If Orion does not disconnect the Customer's Premises when requested to do so under clause 10.1(a) or (b), Orion agrees to indemnify the Retailer against any damage, loss or claims accruing to the Retailer, arising directly from this failure.

11. FORCE MAJEURE

11.1 Events of Force Majeure

If either party shall fail to comply with or observe any provision of this Agreement and such failure is caused by:

- (a) Any event or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, animals, aircraft, landslips, landslides, lightning, earthquakes, fires, storms, floods, washouts, geomagnetically induced currents, arrests and restraints of rules, civil disturbances.
- (b) A partial or entire failure of the supply of Electricity to the Network or a partial or entire failure of any Customer to take Electricity from the Network when Electricity is available at the Network Connection Point.
- (c) The binding order of any court, or government or local authority.

- (d) Breakage or failure of, or an accident to, any plant, equipment or other facility owned or operated by the party invoking this clause which occurs notwithstanding that such party has taken all reasonable steps to safeguard against the same.
- (e) Any other event or circumstances beyond the control of the party invoking this clause (but not including lack of financial means) being such that by the exercise of reasonable care such party could not have prevented such failure.

That failure shall not give rise to any cause of action or liability based on breach of the provision provided that event could not have been prevented by the application of Good Industry Practice by Orion. Nothing in this clause shall be construed to require either party to settle a strike, lock-out or other industrial disturbance by acceding against its own judgement to the demands of opposing parties.

11.2 Notice

Full particulars of any event or circumstances of force majeure shall be notified by the party invoking clause 11.1 to the other party as soon as practicable after the event or circumstances of force majeure occurs or its consequences become apparent.

11.3 Removal of and Mitigation of Effect of Force Majeure

The party invoking clause 11.1 shall, with respect to the event or circumstances of force majeure:

- (a) Use all reasonable endeavours to overcome or avoid this.
- (b) Use all reasonable endeavours to mitigate the effects or consequences.
- (c) Where reasonably practicable, furnish regular reports to the other party.

However, nothing in this clause 11.3 shall be construed as requiring the party invoking clause 11.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgement to the demands of opposing parties.

11.4 Payments

No event or circumstances of force majeure shall relieve the party invoking clause 11.1 from its obligations to make payments of amounts due.

11.5 Termination on Account of Force Majeure

If the event or circumstance of force majeure is of such magnitude or will be (or it is more probable than not that it will be) of such duration that it is unreasonable for either party to perform, comply with or observe this contract, that party may upon not less than 10 Working Days notice terminate this contract.

12. LIABILITY

12.1 Exclusions From Orion's Liability

Notwithstanding any other provision of this contract, Orion shall not in any circumstances be liable to the Retailer for:

- (a) Momentary fluctuations in the voltage or frequency of Electricity conveyed.
- (b) Any failure to convey caused by no or reduced injection of supply of Electricity into the Network.
- (c) Any failure to convey caused by any defect or abnormal conditions in the Customer's Premises or the Network Connection Point.
- (d) Any damage caused as a result of any action of the Retailer or any third party not under the control or supervision of Orion and/or an event of force majeure which could not have been avoided by the application of Good Industry Practice by Orion.

12.2 Exclusions from Retailer's Liability

The Retailer shall not in any circumstances be liable to Orion for:

- (a) Any failure to perform any obligation pursuant to this Agreement caused by Orion'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 Network.
- (c) An event of force majeure which could not have been avoided by the application of Good Industry Practice by the Retailer.

12.3 Direct Loss

Neither party nor any of its officers, employees or agents shall be liable to the 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.

12.4 Neither Party Liable

Neither party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other party for:

- (a) Any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill of any person including a Customer; or
- (b) Any indirect or consequential loss; or
- (c) Any loss resulting from the liability of such other party to any other person; or
- (d) Any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.

12.5 Limitation on Liability

If there is any event or circumstances other than those described in clause 12.1, clause 12.3 or clause 12.4 resulting in liability to one party then notwithstanding any other provision of this Agreement that party (including its directors, officers, employees, authorised agents, contractors, subcontractors and professional advisors) shall be liable, only in respect of such direct loss or damage to the other's property, up to the maximum amount specified in Schedule A for any single event or circumstances of failure (and a series of such failures arising from the same event or circumstances shall be a single event or circumstance of failure) and up to the maximum sum specified in Schedule A in respect of events or circumstances of failure occurring in any one 365 day period. This limitation shall not apply in relation to any fraudulent or grossly negligent behaviour on the part of one party.

12.6 Indemnities

The Retailer hereby indemnifies and shall keep indemnified and save harmless Orion and its employees, agents and contractors from direct loss, damage, liability or expense incurred in respect of any loss suffered by any Customer or any other party in relation to the conveyance of Electricity to the Customer's Premises due to any action by the Retailer or the Retailer's failure to comply with this Agreement, its agreement with the Customer or its agreement with a Generator. The Retailer further indemnifies Orion and shall keep indemnified and save harmless Orion and its employees, agents and contractors from direct loss, damage, liability or expense accruing to Orion by the Customer under the Customer's Network Connection Contract due to any act or omission of the Retailer.

Orion hereby indemnifies and shall keep indemnified and save harmless the Retailer and its employees, agents and contractors from loss, damage liability or expense incurred in respect of any loss suffered by any Customer or any other party in relation to the conveyance of Electricity to the Customer's Premises due to any action by Orion or Orion's failure to comply with this Agreement or the Customer's Network Connection Contract.

12.7 Consumer Guarantees Act 1993 (CGA)

The Retailer shall ensure, that every agreement between it and a Customer provides that where the Customer is utilising the electricity for business purposes, the provisions of the CGA shall not apply both to the provision of electricity and the supply of Delivery Services.

13. DISPUTE RESOLUTION

13.1 Mediation

In the event of any dispute arising between the parties to this agreement in respect of or in connection with the agreement (including the validity, breach or termination of it) the parties shall, without prejudice to any other right or entitlement they may have pursuant to the agreement or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other such alternative dispute resolution technique. The rules governing such technique adopted shall be as agreed between the parties or as recommended by the New Zealand Law Society or as selected by LEADR. In the event that the dispute is not resolved by such agreement within 20 Working Days of written notice

by one party to the other of the dispute (or such further period agreed in writing between the parties) either party may refer the matter to arbitration under clause 13.2.

13.2 Unresolved Disputes to be Resolved by Arbitration

If any question or difference referred to in clause 13.1 is not resolved by written agreement between the parties within 20 Working Days of one party giving notice to the other of a proposal for resolution of the difference or question, the question or difference shall be referred to arbitration.

13.3 Reference to Arbitrator

Where any matter is to be referred to arbitration the following provisions shall apply:

- (a) A reference to arbitration shall be initiated by one party giving notice to the other (the date on which such notice is given called "the Date of Reference") that it requires the matter to be referred to arbitration in accordance with this clause 13.3.
- (b) If the parties can agree upon the person who is to be appointed as the arbitrator within 30 days of the Date of Reference the matter shall thereupon be referred to such arbitrator.
- (c) If the parties cannot agree on the appointment of an arbitrator within 30 days of the Date of Reference, the arbitrator shall upon the request of either party be appointed by the President for the time being of the New Zealand Law Society or his or her nominee and the matter shall thereupon be referred to the arbitrator so appointed.
- (d) The arbitration shall be concluded in accordance with the provisions of the Arbitration Act 1996.

13.4 Continued Performance

Notwithstanding the fact that any matter between the parties is to be referred or has already been referred to an arbitrator the parties shall continue to comply with, observe and perform their respective obligations and duties and may exercise their respective rights hereunder as if the matter had not arisen.

14. ASSIGNMENT

- 14.1 The Retailer shall not assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of Orion, which consent shall not be unreasonably withheld.
- 14.2 Any such consent granted under clause 14.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned unless Orion, at its discretion, agrees otherwise.
- 14.3 Orion may assign or subcontract any or all of its rights and obligations under this Agreement. In addition the Retailer shall not unreasonably refuse its consent to a novation of this

Agreement to a third party by Orion subject to the Retailer being satisfied (acting reasonably) as to the ability of the third party to meet its obligations under this Agreement. If the Retailer unreasonably refuses its consent to a novation, then upon any assignment to that third party, Orion shall not remain liable for the performance of the assignee under this Agreement and shall be released from any further liability to the Retailer under this Agreement for all matters arising prior to the date of the assignment.

- 14.4 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.
- 14.5 The Retailer may notify Orion that one or more of its subsidiaries ("*the Subsidiary*") may also be selling electricity to Customers, and also wishes to become a party to this Agreement. Subject to the Subsidiary agreeing to be bound by the provisions of this Agreement, the Subsidiary shall become a supplementary party to this Agreement and be bound by it. In that event the Retailer and the Subsidiary shall each be responsible for the performance of the other, under this Agreement, and Orion shall treat the Retailer and the Subsidiary, as one party for such provisions of this Agreement as may be applicable to give full effect to this provision.

15. MISCELLANEOUS

15.1 Non Waiver

Failure by either party to enforce any right or obligation with respect to any matter arising in connection with this contract shall not constitute a waiver as to that matter or any other matter either then or in the future. Any waiver of any right or obligation under this Agreement shall only be of any force and effect if such waiver is in writing and is expressly stated to be a waiver of a specified right or obligation under this contract.

15.2 Governing Law

This Agreement shall be construed and take effect in accordance with the domestic laws of New Zealand.

15.3 Regulation

During the term of this Agreement each party shall comply with and observe all applicable regulations and statutory requirements for the time being in force. In the event any statutory or regulatory requirement is inconsistent with the terms of this Agreement the parties agree to vary this Agreement to ensure consistency with all regulatory and statutory requirements.

15.4 Notices

If any party to this Agreement wishes to give notice to any other party for the purposes of or in connection with this Agreement, such notice shall be well and sufficiently given to either party as the case may be only by way of:-

- (a) A letter posted by airmail or fastpost to the postal address of the party concerned or delivered to that party by hand at the address shown below; or
- (b) A facsimile sent to the facsimile number set out below and confirmed by airmail or fastpost letter sent on the same day.

The addresses of the parties for notices shall be:-

the Retailer

Address:

Attention:

Telephone Number:

Facsimile Number:

Orion

Address 218 Manchester Street
 PO Box 13896
 Christchurch

Facsimile Number: 363 9899

or such other address as that party may designate as its address for this purpose by notice to the other party.

15.5 Costs

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

15.6 Option to Adopt Current Standard Conveyance Agreement

The parties acknowledge that Orion has at any point of time a standard Conveyance Agreement (being a contract which has the same purpose as this Agreement and called the "Standard Conveyance Agreement").

Orion undertakes to:

15.6.1 Publicly disclose the current Standard Conveyance Agreement including making a copy available on its web site;

15.6.2 enter into the Standard Conveyance Agreement (as changed) in lieu of this Agreement on the basis of a written request to do so from the Electricity Retailer;

15.6.3 provide, on request, marked-up changes from the previous Standard Conveyance Agreement;

15.6.4 advise the Electricity Retailer whenever a new Standard Conveyance Agreement is established.

EXECUTION BY THE PARTIES:**SIGNED** for and on behalf of)**ORION NEW ZEALAND LIMITED**)

in the presence of:) Director

Director/Authorised
Signatory

Signature

Full Name

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

SIGNED for and on behalf of)

))

in the presence of:) Director

Director/Authorised
Signatory

Signature

Full Name

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

SCHEDULE A - MAXIMUM LIABILITY (CLAUSE 12.5)

An amount equivalent to:

- (a) the monetary value of the Chargeable Services applied by Orion to the Retailer's Customers during the previous 12 month period; or
 - (b) \$100,000
- whichever is the lesser.

Maximum for all events in any 365 day period: \$100,000