November 2008

USE OF SYSTEM AGREEMENT

between

AUCKLAND INTERNATIONAL AIRPORT LIMITED

and

MERIDIAN ENERGY LIMITED

Auckland Airport

AUCKLAND INTERNATIONAL AIRPORT LIMITED
PO BOX 73-020
AUCKLAND AIRPORT
AUCKLAND, NEW ZEALAND
Phone: (+649) 256-8815
Fax: (+649) 275-4927
Email: admin@aial.co.nz

CONTENTS

AGREEMENT dated 5th December 2008

PARTIES

AUCKLAND INTERNATIONAL AIRPORT LIMITED ("AUCKLAND AIRPORT")

MERIDIAN ENERGY LIMITED ("Retailer")

INTRODUCTION

A. Auckland Airport 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. Auckland Airport 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. Auckland Airport and the Retailer acknowledge that in addition to this agreement they are separately bound by the Rules.

AGREEMENT

1. INTERPRETATION

1.1 **Definitions**: In this agreement:

"Auckland Airport Equipment" means the Fittings belonging to Auckland Airport or leased by Auckland Airport which are from time to time installed in, over or upon a Customer's Premises.

"Auckland Airport Nominated Data Contractor" means Auckland Airport's current data contractor as nominated by Auckland Airport from time to time and notified in writing to the Retailer.

"Auckland Airport Nominated Metering Contractor" means Auckland Airport's current metering contractor as nominated by Auckland Airport from time to time and notified in writing to the Retailer.

"Auckland Airport Retailer Procedure Manual" means, at the time, Auckland Airport's then current version of the manual, a copy of which has been provided by Auckland Airport to the Retailer and as may be amended or replaced from time to time upon written notice to the Retailer.

"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'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 Auckland Airport.

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

"**Disconnection Fee**" means the fee referred to in paragraph 2 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1).

"**Distribution Network**" means Auckland Airport's system, including any other system leased by Auckland Airport, 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 a 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 Auckland Airport 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 Auckland Airport 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.

"**Line Charges**" means the aggregate charges payable by the Retailer to Auckland Airport 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 Auckland Airport for the conveyance of electricity and the operation of such Fittings, provided that Auckland Airport shall not be obliged to maintain any Fittings not owned or leased by it.

"**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 Auckland Airport (acting reasonably).

"**Metering Installation Notice**" means a notice in the form set out in Schedule 5 or such other form as Auckland Airport may reasonably require.

"**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 Auckland Airport receives a supply of electricity.

"**New Connection Information Sheet**" means the information sheet in the form set out in Schedule 4 (or such other form as Auckland Airport shall notify the Retailer in writing) to be completed by the Retailer and provided to Auckland Airport in terms of clause 2.1.

"**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 any 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 that Customer or jointly with others.

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

"**Reconciliation Manager**" means the person appointed as the Reconciliation Manager under the Rules or such other person from time to time to whom metering information is to be sent pursuant to the Rules.

"**Reconnection Fee**" means the fee referred to in paragraph 2 of Schedule 1 (as the same may be varied from time to time in accordance with clause 5.1).

"**Retailer's Equipment**" means the Fittings and/or Metering Equipment owned by the Retailer, the Retailer's agent or any other third party with whom the Retailer has contracted for the use by the Retailer of such third party's Fittings or Metering Equipment, which are from time to time installed in, over, or upon a Customer's Premises.

"**Rules**" means the Electricity Governance Rules 2003, as amended from time to time and as replaced by other rules or law, and any predecessor rules as applicable.

"**Supplier**" means any entity which shall either generate electricity supplied to the Retailer or Auckland Airport, or shall supply electricity to the Retailer or Auckland Airport, or, if the Retailer or Auckland Airport is purchasing electricity in accordance with the Rules, means the Clearing Manager or the Reconciliation Manger under the Rules, as the case may require, and their respective successors and assigns.

"**Supplier's Network**" means the electricity network, owned by any Supplier, through which Auckland Airport receives a supply of electricity.

"**Transpower**" means Transpower New Zealand Limited and its successors and assigns, or any organisation providing the services provided by Transpower at the date of this agreement.

"**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 **Interpretation**: In this agreement, unless the context otherwise requires:

(a) clause and other headings are for ease of reference only and shall be ignored in construing this agreement;

(b) references to clauses and schedules are references to clauses of and schedules to this agreement;

(c) 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;

(d) references to parties are, unless the context requires otherwise, parties to this agreement and shall be deemed to include their successors or permitted assigns; and

(e) 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.

2. NEW CONNECTION INFORMATION SHEET

2.1 **New Connection Information Sheet**: The Retailer shall provide Auckland Airport with a completed New Connection 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 New Connection Information Sheet to Auckland Airport 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 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 Auckland Airport with a completed Metering Installation Notice in respect of that Customer's Point of Connection.

2.3 **Auckland Airport to provide information**: On receipt of each New Connection Information Sheet, Auckland Airport 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** Auckland Airport: Subject to clause 3.2, Auckland Airport will allow Use of the Distribution Network by the Retailer and will provide Line Function Services.

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

(a) in relation to Customer's Points of Connection in respect of which:

(i) Auckland Airport has been in receipt of a duly completed New Connection 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 in writing; and

(ii) Primary Metering Equipment and the telephone link referred to in clause 8.8 (both satisfactory to Auckland Airport) are in place and Auckland Airport 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

(iii) 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 Auckland Airport; and

(b) 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 Auckland Airport.

3.3 **Notice when conditions satisfied:** Auckland Airport shall, as soon as practicable following it becoming aware that the conditions set out in clauses 3.2(a) and 3.2(b) have been satisfied in respect of each Customer's Point of Connection specified in a New Connection 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 Auckland Airport 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. Auckland Airport 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 Auckland Airport giving the Retailer a Commencement Notice pursuant to clause 3.3, the conditions set out in clause 3.2(a)(ii) to 3.2(b) cease to be satisfied in respect of one or more Customer's Point of Connection referred to in that notice, Auckland Airport 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 Auckland Airport gives a further Commencement Notice to the Retailer in respect of each such Customer's Point of Connection. Auckland Airport 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 terminated earlier pursuant to clause 14 or clause 16, this agreement will continue until terminated by either party giving not less than 30 days' written notice to the other.

3.6 **Termination by Retailer conditional:** The Retailer may not terminate this agreement pursuant to clause 3.5 unless:

(a) 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 Auckland Airport;

(b) Auckland Airport 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 Auckland Airport 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 ensure that no interconnection is made at any time between those Customer's Points of Connection without the prior consent of Auckland Airport which may be withheld at the discretion of Auckland Airport.

5. PAYMENT OF CHARGES

5.1 **Charges**: In consideration of Auckland Airport providing the Line Function Services and allowing the Use of the Distribution Network, the Retailer shall pay the Charges plus GST thereon to Auckland Airport. Auckland Airport 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, Auckland Airport shall invoice the Retailer for:

(a) the Line Charges relating to each Customer's Point of Connection in respect of the previous Charging Period; and

(b) 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 Auckland Airport 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 Auckland Airport and a charge or a credit shall be made by Auckland Airport 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 Auckland Airport (or to the credit of Auckland Airport 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 when due, default interest shall accrue on that overdue amount at the rate that is the aggregate of 5% per annum and Auckland Airport's commercial overdraft rate at that time, calculated on a daily basis from the due date until the date of payment in full (both before and after any judgement). The Retailer shall pay default interest to Auckland Airport upon demand, provided that, if the applicable default interest is not paid on demand, it shall itself become an overdue amount and shall compound on a monthly basis until paid in full. Nothing in this clause shall affect any rights Auckland Airport may have to discontinue its services for non-payment of any such amount (or any other right or remedy Auckland Airport may have at law).

5.6 **Security for Charges**: Subject to clause 5.8, Auckland Airport 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 Auckland Airport may reasonably require to secure payment of the Charges by the Retailer. From time to time Auckland Airport 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 Auckland Airport.

5.7 **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 Auckland Airport of the same.

5.8 **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 Auckland Airport 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 Auckland Airport in accordance with this agreement to the date of termination.

6. APPLICATION OF METERING RULES

6.1 **Rules to apply:** The Retailer covenants it is bound by the Rules 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 **Rules to cease to apply**: If at any time during the term of this agreement:

(a) Auckland Airport becomes aware that the Retailer is not bound, or has ceased to be bound, by the Rules, notwithstanding the provisions of clause 6.1; or

(b) Auckland Airport 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 Rules in a reasonably timely manner (whether as a result of delay or as a result of the Rules 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, Auckland Airport may, by notice in writing to the Retailer, advise the Retailer that, until further notice, the provisions of clauses 6.1, 6.3 and 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 Auckland Airport (in its reasonable discretion) and which satisfies the requirements set out in the Rules.

6.4 **Reconciliation Manager**: The Retailer shall provide to the Reconciliation Manager within the time frame set out in the Rules 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 Auckland Airport and advised to the Retailer) and otherwise in accordance with the Rules . Copies of such information shall be

contemporaneously provided to Auckland Airport on request. Copies of all reports and other information provided by the Reconciliation Manager shall, insofar as they relate to the Distribution Network, be provided to Auckland Airport 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 ensure that each Customer ensures) that its employees, agents and invitees do not interfere with the Metering Equipment (whether it is owned by Auckland Airport 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 Auckland Airport 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 Auckland Airport:

(a) ensure that such Metering Equipment remains in place and is operational for a period of at least 10 Business Days (or such lesser period as Auckland Airport may specify to the Retailer in writing) from the date on which such supply ceases (**"Holdover Period"**).

(b) 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

(c) provide the information from the readings referred to in clause 7.3(b) to the retailer within 3 Business Days of the reading being taken in the manner referred to in clause 8.4.

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 **Auckland Airport's requirements:** The Retailer agrees to provide Auckland Airport with consumption data for each Customer as set out in and in accordance with the provisions of the Auckland Airport Retailer Procedure Manual.

8.2 **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**".

8.3 **Meter Reading Services:** The Retailer shall be responsible for entering into arrangements to procure the reading of the Primary Metering Equipment in compliance with the Auckland Airport Retailer Procedure Manual. The Retailer shall be deemed to have satisfied its obligations under clause 8.3 if it enters into an agreement with Auckland Airport's Nominated Metering Contractor in a form reasonably satisfactory to Auckland Airport.

8.4 **Monthly reading by Retailer:** The Retailer shall cause the Primary Metering Equipment to be read each month in accordance with the Auckland Airport Retailer Procedure Manual 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 ancilliary information as Auckland Airport may reasonably require) to be submitted to Auckland Airport's Nominated Data Contractor in the Metering File Format by 4pm on the sixth Business Day following the end of the Charging Period to which the readings relate, at no cost to Auckland Airport.

8.5 **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.

8.6 **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:

(a) each party will provide the other with any available information relevant to the checking of the Primary Metering Equipment; and

(b) 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 Rules, in which case such costs shall be borne by the party that provided the Primary Metering Equipment.

8.7 **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:

(a) 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;

(b) 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

(c) 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.

8.8 **Telephone link**: The Retailer shall provide a direct telephone link to the Retailer's Metering Equipment to facilitate remote reading by Auckland Airport or for such other purpose as Auckland Airport may reasonably require.

8.9 **Failure to provide:** If the Retailer fails to cause the provision of information to Auckland Airport as required pursuant to this clause, Auckland Airport shall be entitled to assess or estimate the relevant consumption and demand information in such manner as it thinks fit.

8.10 **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 the 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 Auckland Airport's customers, or materially interferes with the operation of any of Auckland Airport's load control, signalling or other Fittings, the Retailer shall, upon notice from Auckland Airport, 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, Auckland Airport may remedy the interference and the Retailer shall reimburse to Auckland Airport the cost of Auckland Airport doing so, within 10 days of receiving an invoice from Auckland Airport 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, Auckland Airport 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 Auckland Airport in the notice. If the Retailer fails to ensure that the Power Factor meets the prescribed minimum within such period, Auckland Airport may:

(a) take such measures as it considers reasonably necessary to ensure that the Power Factor meets the prescribed minimum, and the Retailer shall reimburse to Auckland Airport the costs of Auckland Airport taking such measures, within 10 days of receiving an invoice in respect of the same;

(b) charge the Retailer for all relevant excessive reactive units, at a price determined by Auckland Airport from time to time.

10. INTERFERENCE TO EQUIPMENT AND THEFT OF ELECTRICITY

10.1 **Interference or damage to Auckland Airport Equipment:** The Retailer will, and will provide in its agreements with its Customers that the Customer will, ensure that its employees, agents and invitees do not interfere with or damage Auckland Airport Equipment (including, without limitation, after termination of this agreement) without the

prior written consent of Auckland Airport (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect Auckland Airport Equipment from damage. If any Auckland Airport Equipment is damaged by the negligence or wilful act or omission of the Retailer or the Retailer's employees, agents or invitees, then the Retailer shall pay the cost of making good the damage to Auckland Airport.

10.2 **Interference or damage to Retailer's Equipment**: Auckland Airport will ensure that its employees, agents and invitees do not interfere with or damage the Retailer's Equipment (including, without limitation, after termination of this agreement) without the prior written consent of the Retailer (except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property) and shall take all reasonable precautions necessary to protect that equipment from damage. If the Retailer's Equipment is damaged by the negligence or wilful act or omission of Auckland Airport or Auckland Airport's employees, agents or invitees, then Auckland Airport shall pay the cost of making good the damage to the Retailer.

10.3 **Interference with Distribution Network:** The Retailer will use all reasonable endeavours to procure in its agreements with its Customers that they will not without the prior agreement of Auckland Airport:

(a) inject or attempt to inject any energy into the Distribution Network; and

(b) convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than energy pursuant to that agreement and load control signals transmitted by or with written consent of Auckland Airport) over the Distribution Network or cause or permint any other person to do so.

10.4 **Notification of interference, damage or theft:** If Auckland Airport or the Retailer discovers any interference or damage to the other party's equipment, or to the Customer's Installation, discovers evidence of theft of electricity or loss of electricity, or interference with the Distribution Network, the discovering party will notify the affected party as soon as it is practicable to do so.

10.5 **Metering Equipment:** Either party may at its own cost, install and maintain additional Metering Equipment for metering data verification purposes or other purposes, provided that it does not interfere with any other Metering Equipment.

11. DISCONNECTION OF CUSTOMER

11.1 **Disconnection:**

(a) 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, in all cases other than where the Retailer disconnects a Customer's Installation for non-payment by the Customer or for reasons of emergency (in which case the provisions of paragraphs (i) and (ii) below shall not apply):

(i) 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 Auckland Airport that such notice has been given; or

(ii) the Customer provides a written notice to Auckland Airport advising that it no longer requires a supply of electricity.

(b) If requested in writing by the Retailer and a Customer, Auckland Airport 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 Auckland Airport in accordance with this clause, the Retailer shall pay to Auckland Airport the Disconnection Fee.

(c) The Retailer will indemnify Auckland Airport against any costs, liability, loss or damage suffered or incurred by Auckland Airport as a result of disconnection or any reason whatsoever whether by the Retailer or Auckland Airport, provided, in the case of disconnection by Auckland Airport, that Auckland Airport 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 Auckland Airport's reasonable opinion, a Customer's Installation is unsafe or otherwise does not comply with Auckland Airport's reasonable requirements, Auckland Airport 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 Auckland Airport to make the Customer's Installation safe or compliant with Auckland Airport's reasonable requirements. Auckland Airport shall give prior notice of the intention to disconnect the Customer's Installation except where Auckland Airport 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, Auckland Airport will give to the Retailer and the relevant Customer:

(a) 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 Auckland Airport's requirements before disconnection is effected; or

(b) if Auckland Airport 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 Auckland Airport, require Auckland Airport 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 Auckland Airport to exclude a Customer if:

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

(b) either:

(i) 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 Auckland Airport that such notice has been given; or

(ii) the Customer provides a written notice to Auckland Airport 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 Auckland Airport (in its absolute discretion) that the Customer's Installation is safe and complies with Auckland Airport'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 Auckland Airport to the effect that the Customer may be reconnected. Where Auckland Airport is requested by the Retailer and the relevant Customer to reconnect such Customer's Installation to the Distribution Network, the Retailer will pay to Auckland Airport, in respect of any such reconnection, the Reconnection Fee.

12. INTERRUPTION OF SUPPLY

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

(a) as part of a programme of planned outages of the Distribution Network;

(b) to enable Auckland Airport to inspect, effect alterations, maintain, repair or add to any part of the Distribution Network;

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

(d) in case of emergency to preserve and protect the proper working of the Distribution Network or any other system through which Auckland Airport directly or indirectly takes a supply of electricity;

(e) 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

(f) in the national interest.

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

(a) give the Retailer and the relevant Customer five days' prior notice of its intention to interrupt the conveyance of electricity unless, in the reasonable opinion of Auckland Airport, 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;

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

(c) 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 Auckland Airport and enforceable by Auckland Airport 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:

(a) the Customer will give the employees, agents, sub-contractors, invitees and other authorised representatives of Auckland Airport at all reasonable times, safe and unobstructed access to any Metering Equipment or Auckland Airport 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

(b) Auckland Airport shall be entitled to disconnect the Customer's installation from the Distribution Network forthwith upon the Customer failing to grant Auckland Airport access as contemplated in clause 13.1(a),

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

13.2 **Failure to grant access**: If a Customer fails to grant to Auckland Airport access as contemplated by clause 13.1(a), Auckland Airport may forthwith disconnect the Customer's Installation from the Distribution Network. Auckland Airport shall not be liable for any loss the Retailer may suffer or incur as a result of any such disconnection, provided that Auckland Airport acts reasonably in the manner in which it effects the disconnection. The Retailer shall reimburse Auckland Airport for all costs relating to the disconnection and of any reconnection.

14. DEFAULT AND TERMINATION

14.1 **Default events**: If any of the following occurs:

(a) 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 Auckland Airport;

(b) 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 Auckland Airport within 7 days of receiving a notice from Auckland Airport of the failure and requiring it to be remedied;

(c) the Retailer:

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

(ii) has a receiver appointed to the whole or any substantial part of its undertaking, property or assets;

(iii) 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;

(iv) 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;

(v) sells its business (or its undertaking, property or assets comprising the major part of its business) without the prior consent of Auckland Airport, such consent not to be unreasonably withheld having regard to the obligations of the Retailer under this agreement; or

(vi) 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 Auckland Airport may:

(d) 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

(e) give notice to the Retailer terminating this agreement, without prejudice to any other rights and remedies of Auckland Airport. Upon the expiry of the notice, the Retailer shall immediately cease its Use of the Distribution Network and Auckland Airport 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 Auckland Airport and enforceable by Auckland Airport pursuant to the Contracts (Privity) Act 1982.

14.3 **Other supply**: Following termination of this agreement (including pursuant to clause 3.5), Auckland Airport 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:

(a) 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;

(b) the suspension of obligations is of no greater scope and of no longer duration than is required by the Force Majeure;

(c) no obligations of either party which shall have accrued before the notice referred to in clause 16.1(a) is given are suspended as a result of the Force Majeure; and

(d) 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 against 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(d), 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 **Payment of charges:** Nothing in this clause 17 shall operate to limit the liability of either party to pay all charges amd other sums due under this agreement.

17.2 **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.

17.3 **Auckland Airport not liable**: Auckland Airport shall not in any circumstances be liable to the Retailer or a Customer for any loss or damage arising as a result of:

(a) momentary fluctuations in the voltage or frequency of electricity conveyed;

(b) any failure to convey electricity caused by no or reduced injection or supply of electricity into the Distribution Network;

(c) any failure to convey electricity caused by any default or abnormal conditions in any Customer's Premises; or

(d) any failure to convey electricity in accordance with clause 12.

17.4 **Auckland Airport liable for direct loss only**: Auckland Airport 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, Auckland Airport shall not be liable as aforesaid 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;

(b) any indirect or consequential loss;

(c) any loss resulting from the liability of such other party to any other person; or

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

17.5 **Limitation**: Notwithstanding any other provision of this agreement, the liability of the parties 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:

(a) in the case of Auckland Airport:

(i) $10,000 in respect of any one event or series of related events; and

(ii) $50,000 in aggregate in any 12 month period, and

(b) in the case of the Retailer:

(i) $50,000 in respect of any one event or series of related events; and

(ii) $250,000 in aggregate in any 12 month period.

17.6 **Retailer to indemnify**: Auckland Airport shall be indemnified and kept indemnified by the Retailer against all expenses, damages, costs, pecuniary penalties and other financial liabilities incurred by Auckland Airport arising out of, or in connection with any Claim by or from any third party arising from or as a result of:

(a) any failure by the Retailer to perform its obligations under this agreement;

(b) any disconnection performed by the Retailer or Auckland Airport under this agreement (including the issue of any Withdrawal Notice);

(c) 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 Auckland Airport, such demand, supply or use materially interferes with the quality of supply to Auckland Airport, 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 Auckland Airport's customers, or materially interferes with the operation of any of Auckland Airport's load control (except to the extent that the relevant Customer's Intstallation is owned or operated by Auckland Airport); or

(d) any failure by the Retailer, except to the extent that such failure is due to an act or omission of Auckland Airport, to comply with any of its obligations to any Customer or Supplier of the Retailer.

17.7 **Auckland Airport to indemnify:** The Retailer shall be indemnified and kept indemnified by Auckland Airport against all expenses, damages, costs, precuniary penalities and other financial liablities incurred by the Retailer arising out of, or in connection with any Claim by or from any third party arising from or as a result of any disconnection performed by Auckland Airport otherwise than in accordance with clause 11.

17.8 **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.

17.9 **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.

17.10 **Agreement with Customers:** The Retailer shall ensure that every agreement between it and each Customer will contain a term that limits the liability of Auckland Airport 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 Auckland Airport 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 60 Business 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 Auckland Airport, at Auckland Airport's request as soon as reasonably practicable:

(a) 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

(b) such information as Auckland Airport 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 **Non-disclosure**: 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:

(a) any agreement with Transpower or any Supplier relating to connection to Transpower's Network or any Supplier's Network; or

(b) the Rules.

21.2 **Disclosure**: The Obligor may disclose Confidential Information where:

(a) at the time of receipt by the Obligor, the Confidential Information is already in the public domain;

(b) 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

(c) the Obligor is required by:

(i) any statutory or regulatory obligation, body or authority;

(ii) any judicial or arbitration process; or

(iii) 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, courier delivery or 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:

(a) if given or delivered personally or by courier delivery, at the time when given or delivered;

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

(c) 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 Auckland Airport is the only Customer of the Retailer. Accordingly, the parties agree that the application of clauses 2, 3.2(a), 5.6, 5.7, 5.8, 11.1(a) and 17.5(c) shall be suspended and of no force and effect if, and for so long as, Auckland Airport is the only Customer of the Retailer.

SIGNATURES

SIGNED by **AUCKLAND INTERNATIONAL AIRPORT LIMITED** by affixing its common seal in the presence of:)

Simon Paul Moutter

Name of ~~director/authorised signatory~~/ attorney

Signature of ~~director/authorised~~ signatory/ attorney

Charles Francis Spillane

Name of ~~director/authorised signatory~~/ attorney

Signature of ~~director/authorised signatory~~/ attorney

AUCKLAND INTERNATIONAL AIRPORT LIMITED
The Common Seal of

Witness:

Witness' signature: .....

Witness' name: .....

Occupation: .....

Address: .....

SIGNED by **MERIDIAN ENERGY LIMITED** by:

Kevin Patrick Currie

~~Name of director~~/authorised signatory

Network Services & Metering Manager

~~Signature of director~~/authorised signatory

Name of ~~director/authorised~~ signatory

Signature of ~~director/authorised~~ signatory

Witness: *(if other than two directors sign)*

Witness' signature: .....

Witness' name: Janene Chapman

Occupation: Network Services Coordinator

Address: Meridian Energy Ltd,
322 Manchester St
Christchurch.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Simon Paul Moutter of Auckland, Chief Executive Officer, certify that:

(a) by deed dated 22 August 2008, Auckland International Airport Limited, having its registered office at Jean Batten International Terminal, Auckland International Terminal, Auckland, ("**Appointor**") appointed me the Appointor's attorney on the terms, and subject to the conditions, set out in that deed;

(b) at the date of this certificate, I have not received any notice or information of the revocation of that appointment by the dissolution of the Appointor or otherwise.

DATED: 5 December 2008

SIGNED:

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Charles Francis Spillane of Auckland, Corporate Secretary, General Counsel, certify that:

(a) by deed dated 22 August 2008, Auckland International Airport Limited, having its registered office at Jean Batten International Terminal, Auckland International Terminal, Auckland, ("**Appointor**") appointed me the Appointor's attorney on the terms, and subject to the conditions, set out in that deed;

(b) at the date of this certificate, I have not received any notice or information of the revocation of that appointment by the dissolution of the Appointor or otherwise.

DATED: 5 December 2008

SIGNED:

SCHEDULE 1

Charges

1. LINE CHARGES

Auckland Airport shall, as soon as practicable following receipt of a New Connection 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:

(a) the applicable line charge(s); and

(b) the penalty charge(s) applicable in respect of any unit of demand exceeding the specified nominated demand,

(each as a monthly charge per kVA).

A minimum monthly Line Charge shall be applicable in respect of each Customer and shall be calculated by multiplying the line charge specified in 1.(a) above with the nominated demand for the Customer.

The monthly Line Charges in respect of that Customer shall be calculated by multiplying the Customer's actual demand by the line charge(s) and, if applicable, the penalty charge(s), specified in 1.(b) above.

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 Auckland Airport in performing the reconnection based on an hourly rate of $45.

2.2 **Disconnection Fee**: The Disconnection Fee will be calculated by measuring the actual cost to Auckland Airport in performing the disconnection based on an hourly rate of $45.

SCHEDULE 2

Address for Notices

Auckland International Airport Limited
PO Box 73 020
Auckland Airport
AUCKLAND

Facsimile: (09) 256-8943

Attention: Steve Reindler

Meridian Energy Limited
P O Box 2128
Christchurch
New Zealand

Facsimile: (03) 353 9501

Attention: Rose Macadam

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 Auckland Airport from time to time as contemplated for reconciliation purposes:

Capacity and Voltage Connection	Factor	CODE
Low Voltage Connection	1.038	LF1
High Voltage Connection	1.015	LF2
Vector Distribution Network	as per Vector's	VECA4

Note: For the avoidance of doubt, the loss adjustment factor for the Vector Distribution Network set out above is in addition to Auckland Airport loss adjustment factors. The Vector loss adjustment factor may be amended by Vector from time to time.

1.2 For the purpose of paragraph 1.1:

(i) "**Low Voltage**" means that voltage not exceeding 1000 volts (and includes single phase, two phase and three phase supply).

(ii) "**Low Voltage Connection**" means a connection where the Customer receives supply from the Low Voltage network.

(iii) "**High Voltage**" means that voltage greater than 1000 volts.

(iv) "**High Voltage Connection**" means a connection where the Customer receives supply from the High Voltage network.

SCHEDULE 4

New Connection Information Sheet

1. Customer Name .....

2. Customer Address .....
.....
.....

3. Contact Person .....

4. Position .....

5. Contact Numbers Telephone .....
Mobile .....
Facsimile .....

6. Retailers Name .....

7. Retailers Address .....
.....
.....

8. Metering Required TOU / Non TOU
(cross out whichever is not applicable)

9. Provider of Metering Services .....

10. Nominated Maximum Demand .....
(TOU Customers only)

Note: for the first 4 months, the Maximum Demand = Maximum Capacity requested by the Customer.

This schedule is to be faxed to Auckland Airport, Attn: Utilities Engineer at Fax no. 09-256 8861.

SCHEDULE 5

Metering Installation Notice

Auckland Airport - Metering Installation Notice			
ENERGY RETAILER:			
CUSTOMER NAME:			
CUSTOMER ADDRESS:			
AUCKLAND AIRPORT PROPERTY NUMBER:			
AUCKLAND AIRPORT 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): (RULE COP 3 CLAUSE 5.3.1)	Y (Attached)	N	NA
CT EXEMPTION SIGNED (CIRCLE):	Y (Attached)	N	NA
METERING VT OWNER:			
VT ACCURACY CLASS:			
VT CERTIFIED (CIRCLE):	Y (Attached)	N	NA
VT EXEMPT (CIRCLE): (RULE COP 3 CLAUSE 5.3.2)	Y (Attached)	N	NA
VT EXEMPTION SIGNED (CIRCLE):	Y (Attached)	N	NA
DATE CT/VT's MUST BE CERTIFIED WITHIN:			
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)
METER 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
COP 3:	Code of Practice Three, this document details the requirements for compliant metering installations.

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 Auckland Airport 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 Auckland Airport by the Retailer in accordance with the timeframes specified in clause 8.4 or such other period as agreed by Auckland Airport.