

CRITICAL CONTINGENCY OPERATOR SERVICE PROVIDER AGREEMENT

between

GAS INDUSTRY COMPANY LIMITED

and

VECTOR GAS LIMITED

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	3
2.	APPOINTMENT	7
3.	TERM	8
4.	PERFORMANCE	8
5.	PERSONNEL.....	10
6.	CHANGE TO SCOPE OF SERVICES	10
7.	REPORTS AND RECORDS.....	11
8.	FEES.....	11
9.	INVOICING AND PAYMENT	12
10.	TERMINATION	13
11.	CONFIDENTIALITY.....	17
12.	LIABILITY.....	18
13.	FORCE MAJEURE	19
14.	ASSIGNMENT	19
15.	DISPUTE RESOLUTION.....	20
16.	GENERAL.....	21
	SCHEDULE 1 - SERVICES	24
	SCHEDULE 2 - PERFORMANCE STANDARDS	27
	SCHEDULE 3 - FEES	28
	SCHEDULE 4 - CHANGE CONTROL PROCESS.....	36
	SCHEDULE 5 - DISENGAGEMENT SERVICES	39

THIS AGREEMENT made the 28TH day of NOVEMBER 2008

BETWEEN **GAS INDUSTRY COMPANY LIMITED** a company registered under the Companies Act 1993 with its registered office at Level 9, State Insurance Tower, 1 Willis Street, Wellington (**Gas Industry Co**)

AND **VECTOR GAS LIMITED** a company registered under the Companies Act 1993 with its registered office at 101 Carlton Gore Road, Newmarket (**Service Provider**)

BACKGROUND

- A. Gas Industry Co is the industry body and wishes to appoint the Service Provider to be the critical contingency operator under the Gas Governance (Critical Contingency Management) Regulations 2008.
- B. The Service Provider has agreed to perform the role of the critical contingency operator in accordance with the Gas Governance (Critical Contingency Management) Regulations 2008 and this Agreement.
- C. The parties now wish to enter into an agreement for the appointment of the critical contingency operator and the performance of those services on the terms and conditions contained in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Terms defined in the Regulations: In this Agreement, unless the context requires otherwise, a word or expression that is defined in the Gas Governance (Critical Contingency Management) Regulations 2008 has the same meaning as it has in those Regulations.

1.2 Other definitions

In this Agreement, unless the context requires otherwise:

Agreement means this agreement and the schedules to this agreement;

Change Control Process means the process set out at Schedule 4;

Commencement Date means the Commencement Date as defined in the Regulations and which shall be the commencement date of this Agreement;

Confidential Information means, in relation to either party, any information (in any form whether written, electronic or otherwise):

- (a) provided by any person to the Service Provider pursuant to the Regulations or this Agreement which:
-

- (i) is disclosed by that person on the express basis that such information is confidential; or
 - (ii) might reasonably be expected by the Service Provider to be confidential;
- (b) that is confidential to that party and relating to the Services; or
- (c) relating to the business, operations, facilities or intellectual property of that party or its suppliers or customers;

Confidential Information does not include information that is:

- (d) at the date of receipt by either party, in the public domain or that subsequently enters the public domain without any breach of this Agreement or the Regulations;
- (e) at the date of receipt by either party, already known to that party;
- (f) received in good faith by either party from a third party without an obligation of confidentiality;
- (g) agreed by either party in writing to be information to which this Agreement does not apply;

Disengagement Services means the services described in Schedule 5;

Expiry Date means (subject to clause 3.2) the date that is 5 years after the Commencement Date;

Fees means the fees set out in Schedule 3, which are payable by Gas Industry Co to the Service Provider;

Fee Change Event means a change to the Regulations or the Performance Standards, or to any taxes, levies or duties incurred by the Service Provider in providing the Services, after the date of this Agreement that has an effect on the Services and/or the costs of the Service Provider in providing the Services and/or the performance of its obligations under this Agreement;

Force Majeure means, in relation to a party, an event or circumstance which is beyond the reasonable control of that Party, including (without limitation):

- (a) an act of God; or
 - (b) an act of public enemy, or declared or undeclared war or threat of war; or
 - (c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by that Party); or
 - (d) a national emergency, pandemic, epidemic or loss of supply of essential services, including electrical power and telecommunication services;
-

GST means goods and services tax payable under the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply;

Late Interest means, in respect of any amount properly invoiced by the Service Provider and not paid when due, interest accrued on that amount at a rate of the 90 day commercial bill rate as published on the Reuters monitor service and applying at 10.30am on the relevant day, plus 2% per annum for the period from (but excluding) the due date to (and including) the date on which the amount is paid, with such interest accruing daily and compounding annually;

Law means any rules of common law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time and, in the case of the Service Provider, includes any applicable industry codes of conduct and any contract or other enforceable obligation of the Service Provider relating to the Services;

Performance Standards means the standards of service the Service Provider must attain in providing the Services as specified in, or determined in accordance with, Schedule 2;

Personnel means:

- (a) in relation to Gas Industry Co, Gas Industry Co's personnel (including its representatives, employees and agents); and
- (b) in relation to the Service Provider, the Service Provider's and each Subcontractor's personnel (including their representatives, employees and agents) used to provide any Services;

Regulations means the Gas Governance (Critical Contingency Management) Regulations 2008;

Services means the services, duties and obligations to be performed by:

- (a) the Service Provider as the critical contingency operator under the Regulations; and
- (b) the Service Provider under this Agreement from time to time, as described in Schedules 1 and 5;

Subcontractor means any third party appointed by the Service Provider to perform any of the Services;

Term means the term of this Agreement described in clause 3; and

Termination Date means the Expiry Date or such earlier date on which the Agreement is terminated under clause 10.

1.3 Interpretation: In this Agreement, unless the context indicates otherwise:

Monetary amounts: all monetary amounts are stated exclusive of GST and in New Zealand dollars;

GST: GST is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST under the Goods and Services Tax Act 1985;

Expressions: expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

Headings: sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this Agreement;

Obligation: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Reference to party: references to any "party" are to a party to this Agreement and include that party's successors, executors, administrators and permitted assignees including any person taking by way of novation (as the case may be);

Reference to person: references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;

Reference to related company: references to a related company are to a related company as defined by section 2(3) of the Companies Act 1993;

Singular and plural: the singular includes the plural and vice versa;

Conflict with Regulations: For the avoidance of doubt, in the event of any conflict between this Agreement and the Regulations, the Regulations will prevail;

Conflict within Agreement: if there is any conflict between the documents which are part of this Agreement, the order of precedence will be as follows:

- (a) the terms of the body of this Agreement; and
- (b) the schedules to this Agreement;

References to clauses and schedules: references to clauses and schedules are to clauses in, and the schedules to, this Agreement and each schedule forms part of this Agreement and, subject to the Conflict provision above, has effect as if set out in the body of this Agreement;

Control: references to one person being "controlled" by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to:

- (a) appoint and/or remove the majority of the members of the governing body of that person;
 - (b) appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of,
-

more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or

- (c) control, by any other means, the affairs and policies of that person,

and, "control" and "change in control" have corresponding meanings;

References to documents: references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time;

Statutory provision: references to any statutory provision include any statutory provision which amends or replaces it and any subordinate legislation made under it;

Grammatical forms: other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a meaning corresponding to the meaning of the defined word or phrase;

Including: wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation"; and

Approvals: where there is any reference in this Agreement to something being subject to the approval or consent of a party, unless expressly stated otherwise, such approval or consent will not be unreasonably withheld or delayed.

2. APPOINTMENT

2.1 Appointment:

2.1.1 Gas Industry Co appoints the Service Provider as the critical contingency operator pursuant to regulation 6 of the Regulations, and the Service Provider accepts such appointment and agrees to provide the Services on the terms and conditions of this Agreement.

2.1.2 The Service Provider agrees to be bound by the Regulations in its capacity as the critical contingency operator and will provide the Services in accordance with the Regulations.

2.2 Service Provider warranties: The Service Provider warrants to Gas Industry Co that, as at the date of this Agreement:

2.2.1 it has the expertise, experience, resources, capacity and ability to, and will, provide the Services in accordance with the requirements of the Regulations and this Agreement; and

2.2.2 it is not aware of anything which will, or might be reasonably expected to, prevent it from providing the Services in accordance with the requirements of the Regulations and this Agreement.

3. TERM

- 3.1 Term:** This Agreement will commence on the Commencement Date and will expire on the Termination Date.
- 3.2 Extension:** Gas Industry Co may, by notice in writing delivered to the Service Provider no less than 6 months prior to the Expiry Date, notify the Service Provider that it wishes to extend the Term, such that the Expiry Date will, subject to clause 10, be 7 years after the Commencement Date. The Service Provider will, by notice in writing delivered to Gas Industry Co no less than 3 months prior to the Expiry Date, confirm that it:
- 3.2.1** agrees to the proposed extension of the Expiry Date, in which case the Expiry Date will be deemed to have been amended; or
- 3.2.2** does not agree to the proposed extension to the Expiry Date, in which case no amendment will have been made to the Expiry Date.

4. PERFORMANCE

- 4.1 Service Provider Obligations:** In providing the Services and otherwise performing its obligations under this Agreement, the Service Provider must:
- 4.1.1** comply with the Regulations, including undertaking all the duties and obligations of the critical contingency operator under the Regulations (for the avoidance of doubt, this clause is subject to the requirements of clause 6.1);
- 4.1.2** identify and provide all Personnel, resources and processes required to provide the Services in accordance with this Agreement;
- 4.1.3** act with due care, skill and diligence and in accordance with a high level of industry knowledge and competence;
- 4.1.4** meet or exceed the applicable Performance Standards;
- 4.1.5** report its performance against the Performance Standards as provided for in Schedule 2 and provide such assistance and information to Gas Industry Co as is reasonably necessary to enable Gas Industry Co to review and measure the Service Provider's performance;
- 4.1.6** comply with the time frames and other requirements set out in this Agreement;
- 4.1.7** co-operate with Gas Industry Co in relation to the provision of the Services;
- 4.1.8** at all times deal with Gas Industry Co in good faith and do such things and sign such documents as are reasonably required for the provision of the Services in accordance with this Agreement;
-

- 4.1.9 comply with all directions given in writing by Gas Industry Co from time to time (except to the extent that such directions are inconsistent with the Regulations or any provision of this Agreement);
- 4.1.10 not by any act or omission damage the reputation or goodwill of Gas Industry Co;
- 4.1.11 in undertaking all the duties and obligations of the critical contingency operator under the Regulations or this Agreement, not favour or provide special treatment or priority to any persons other than in accordance with the requirements of the Regulations or this Agreement; and
- 4.1.12 on becoming aware of the same, promptly notify Gas Industry Co of any breach of its obligations under the Regulations or this Agreement or any matter which may impact on the Service Provider's ability to perform the Services, including the failure of any person to comply with directions of the Service Provider made in accordance with the Regulations.

4.2 Gas Industry Co obligations: Gas Industry Co must:

- 4.2.1 comply with the Regulations to the extent necessary to enable the Service Provider to provide the Services and perform its obligations under this Agreement;
 - 4.2.2 co-operate with the Service Provider and its Personnel in relation to the provision of the Services;
 - 4.2.3 at all times deal with the Service Provider in good faith, and do such things and sign such documents as are reasonably required by the Service Provider to enable it to provide the Services;
 - 4.2.4 act with due care, skill and diligence and in accordance with a high level of industry knowledge and competence;
 - 4.2.5 in undertaking all of its duties and obligations under the Regulations or this Agreement, not favour or provide special treatment or priority to any persons other than in accordance with the requirements of the Regulations or this Agreement;
 - 4.2.6 on becoming aware of the same, promptly notify the Service Provider of any breach of Gas Industry Co's obligations under the Regulations or this Agreement or any matter which may impact on Gas Industry Co's or the Service Provider's ability to perform their respective obligations under this Agreement;
 - 4.2.7 provide such assistance and information to the Service Provider as is reasonably requested and is necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 4.2.8 comply with the time frames and other requirements set out in this Agreement; and
-

- 4.2.9 not by any act or omission damage the reputation or goodwill of the Service Provider.

5. PERSONNEL

5.1 Personnel requirements: The Service Provider must:

- 5.1.1 make an adequate number of Personnel available to provide the Services as and when necessary;
- 5.1.2 ensure that all of its Personnel are appropriately educated, trained, skilled, experienced and fully qualified for the obligations they perform;
- 5.1.3 ensure that all of its Personnel comply with:
- (a) all Laws relevant to the performance of the Service Provider's obligations under the Regulations and this Agreement from time to time; and
 - (b) the Service Provider's obligations under the Regulations and this Agreement.

5.2 Representatives: Each party will, immediately following the Commencement Date, appoint a representative who will:

- 5.2.1 serve as the primary point of contact with the other party; and
- 5.2.2 in the case of the Service Provider, be responsible for ensuring compliance with all notification, audit and reporting obligations it owes to the Gas Industry Co under the Regulations.

5.3 Replacement: Each party may replace its representative from time to time provided it gives the other party prior written notice of such replacement.

5.4 Meetings: The representatives will meet together at least quarterly and as and when requested to by the other representative. The parties' representatives will also meet:

- 5.4.1 prior to the Gas Industry Co approving a proposed Critical Contingency Management Plan;
- 5.4.2 prior to, during or after the Service Provider testing a Critical Contingency Management Plan;
- 5.4.3 when the Gas Industry Co conducts an audit under the Regulations;
- 5.4.4 after a critical contingency has been terminated; and
- 5.4.5 during or after the preparation of a report under the Regulations.

6. CHANGE TO SCOPE OF SERVICES

6.1 Change in the Regulations or the Performance Standards:

6.1.1 If there is any change in the Regulations or to the Performance Standards which requires an amendment to this Agreement (either to give proper effect to such change, or to ensure consistency between this Agreement and the Regulations), failing agreement within 20 business days of commencing negotiations, Gas Industry Co will, acting reasonably and in consultation with the Service Provider, determine the extent to which amendments to this Agreement are required, and the parties agree that such amendments will be made to the Agreement as soon as practicable after they have been determined.

6.1.2 If an amendment to this Agreement is either agreed by the parties or otherwise determined as contemplated by clause 6.1.1, such amendment is a Fee Change Event.

6.2 Other change: If either party proposes any change to the Services that is not a result of a change in the Regulations, the parties will comply with the Change Control Process in respect of each proposed change.

7. REPORTS AND RECORDS

7.1 Maintenance of records: The Service Provider will ensure that it maintains proper and complete records and documentation relating to all elements of the Services, including those records specified at Schedule 1.

7.2 Availability of records: The Service Provider will as soon as is reasonably practicable after receiving a written request from Gas Industry Co, provide to Gas Industry Co copies of any records and documentation that the Service Provider is required to maintain under clause 7.1.

8. FEES

8.1 Fees: Gas Industry Co must pay the Fees to the Service Provider for the Services in accordance with the payment terms set out in clause 9 and Schedule 3.

8.2 Fee changes:

8.2.1 Fee Change Event: On the occurrence of a Fee Change Event, either party may apply to have the Fees payable to the Service Provider reviewed in accordance with Schedule 3.

8.2.2 Review of Fees: Without limiting clause 8.2.1, the Fees payable to the Service Provider may also be reviewed annually in accordance with Schedule 3, provided that such reviews shall not occur more than once in a financial year.

8.2.3 For the avoidance of doubt, clauses 8.2.1 and 8.2.2 do not apply in respect of the establishment fee portion of the Fees.

9. INVOICING AND PAYMENT

- 9.1 Invoicing:** On or prior to the 10th day of each month the Service Provider will issue an invoice for the Fees payable for the preceding month.
- 9.2 General invoicing requirements:** Each invoice submitted to Gas Industry Co under this Agreement, in order to be validly issued for the purposes of this Agreement, must:
- 9.2.1** be in the form of a valid tax invoice for GST purposes;
 - 9.2.2** be delivered by the means of communication requested in writing by Gas Industry Co from time to time;
 - 9.2.3** describe in adequate detail the Services that are the subject of the invoice and the timing of the provision of such Services; and
 - 9.2.4** be in the format specified by written notice given by Gas Industry Co to the Service Provider prior to the date of this Agreement (or as otherwise agreed by the parties from time to time).
- 9.3 Additional billing information:** The Service Provider will provide such information as reasonably requested by Gas Industry Co relating to any amount invoiced or proposed to be invoiced by the Service Provider under this Agreement, including copies of invoices and internal charging records for the purpose of verifying actual costs incurred by the Service Provider in performing its obligations under this Agreement.
- 9.4 Disputed invoices:** Where Gas Industry Co disputes any portion of any amount appearing as payable on an invoice issued by the Service Provider to Gas Industry Co under this Agreement:
- 9.4.1** Gas Industry Co will notify the Service Provider of such dispute at the earliest reasonable opportunity;
 - 9.4.2** Gas Industry Co must pay the undisputed portion of that invoice on its due date, but will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 15; and
 - 9.4.3** If it is agreed by the parties or otherwise determined that a disputed portion of that invoice is payable by the Gas Industry Co to the Service Provider, in addition to paying the determined amount Gas Industry Co must pay interest in accordance with clause 9.6.
- 9.5 Payment:** Any valid invoice received by Gas Industry Co from the Service Provider will be payable on the 20th day of the month following the month in which the invoice is received by Gas Industry Co. Gas Industry Co will not be required to pay any invoice which is not valid for the purposes of this Agreement, but will pay any valid replacement invoice issued by the Service Provider on or before the later of the original due date for that invoice and the date which is 10 business days after receipt of that replacement invoice.
-

9.6 Late payment: If Gas Industry Co:

9.6.1 does not pay any properly invoiced amount when due (other than in accordance with clause 9.4.2); or

9.6.2 withholds payment of a portion of an invoice under clause 9.4.2, and the relevant dispute is resolved in favour of the Service Provider such that an amount is determined to be payable by Gas Industry Co,

Gas Industry Co must pay Late Interest in respect of that amount.

9.7 Tax: Other than GST, the Service Provider will be responsible for all taxes, levies or duties assessed on, or in relation to, the Service Provider's provision of the Services. The parties acknowledge that to the extent any such taxes, levies or duties are validly incurred by the Service Provider in providing the Services, these will be able to be recovered by the Service Provider through the Fees.

10. TERMINATION

10.1 Termination by Gas Industry Co: In addition to any other right or remedy conferred on Gas Industry Co under this Agreement or by Law, Gas Industry Co may terminate this Agreement:

10.1.1 by giving not less than 20 business days prior written notice to the Service Provider if:

- (a) the Service Provider ceases to be the System Operator for any or all of the transmission system; or
- (b) the Regulations are revoked, repealed or amended so that the role of the critical contingency operator role is dis-established; or

10.1.2 with immediate effect by giving written notice to the Service Provider if:

- (a) the Service Provider has failed to comply with an earlier written notice given by Gas Industry Co:
 - (i) specifying a material breach of the Regulations or this Agreement by the Service Provider; and
 - (ii) requiring that the Service Provider remedy that breach within 20 business days after receipt of that earlier notice;
- (b) the Service Provider has committed a material breach of this Agreement which is not reasonably capable of being remedied by the Service Provider within 20 business days;
- (c) the Service Provider:
 - (i) goes into liquidation;

- (ii) has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets or is placed in voluntary administration;
- (iii) becomes unable to pay its debts as they fall due;
- (iv) is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; or
- (v) is removed from the New Zealand Companies Register,

or if any event analogous in nature has occurred in respect of the Service Provider under any other law of any jurisdiction;

- (d) the Service Provider makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring);
- (e) the Service Provider ceases to be controlled by the same persons as at the date of this Agreement, without the prior written consent of Gas Industry Co (such consent not to be unreasonably withheld or delayed); or
- (f) any Force Majeure is of such magnitude or will be of such duration that it is, or is reasonably likely to be, impossible or impractical for the Service Provider to comply, to a material extent, with the Service Provider's obligations under this Agreement (taken as a whole) for a period of two consecutive months or longer.

10.2 Termination by Service Provider: In addition to any other right or remedy conferred on the Service Provider under this Agreement or by Law, the Service Provider may terminate this Agreement at any time and with immediate effect by written notice to Gas Industry Co if:

10.2.1 Gas Industry Co has failed to make any payment to the Service Provider in accordance with this Agreement (other than pursuant to a dispute under clause 9.4.2), and has not remedied such failure within 20 business days of receiving written notice from Service Provider of such failure;

10.2.2 Gas Industry Co has failed to comply with an earlier written notice given by the Service Provider:

- (a) specifying a material breach of the Regulations or this Agreement by Gas Industry Co; and

- (b) requiring that the Gas Industry Co remedy that breach within 20 business days after receipt of that earlier notice;

10.2.3 Gas Industry Co has committed a material breach of this Agreement which is not reasonably capable of being remedied by Gas Industry Co within 20 business days;

10.2.4 Gas Industry Co:

- (a) goes into liquidation;
- (b) has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets or is placed in voluntary administration;
- (c) becomes unable to pay its debts as they fall due;
- (d) is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts;
- (e) is removed from the New Zealand Companies Register,

or if any event analogous in nature has occurred in respect of Gas Industry Co under any other law of any jurisdiction;

10.2.5 Gas Industry Co makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring); or

10.2.6 There occurs any change in Law or change to the Regulations or the Performance Standards after the date of this Agreement that has a material adverse effect on the Service Provider's ability to perform its obligations under this Agreement, and such material adverse effect is not reasonably able to be recompensed by an increase in the Fees payable to the Service Provider effected through a Fee Change Event.

10.3 Consequences of termination: Without limiting any other rights or remedies of either party, on the termination of this Agreement:

10.3.1 where under clause 10.4 the Service Provider is required to continue providing Disengagement Services after the Termination Date, the provisions of this Agreement remain in effect insofar as required to give effect to the provision of the Disengagement Services;

10.3.2 without limiting any Fees which may be charged in respect of the establishment fee and the disengagement fee, Gas Industry Co shall pay the Service Provider an amount equal to any Fees which have accrued up to the Termination Date but are unpaid (which Fees shall be calculated on a pro-rata basis in respect of any items for which periodic Fees are payable);

10.3.3 the termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the

other party, where the breach occurred before the termination of this Agreement;

- 10.3.4** the provisions of clauses 9, 10.3, 10.4, 11, 12, 15 and 16, together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect and all provisions of this Agreement shall remain in full force and effect in respect of any Disengagement Services provided pursuant to clause 10.4; and
- 10.3.5** the establishment fee and disengagement fee portion of the Fees shall remain payable in accordance with Schedule 3.

10.4 Disengagement Services:

- 10.4.1** On expiry or termination of this Agreement, the Service Provider must continue to provide all Disengagement Services requested by Gas Industry Co for up to 12 months after the Termination Date, and will reasonably co-operate with Gas Industry Co or Gas Industry Co's nominated new service provider (as the case may be) to ensure an orderly transition of the services to the new service provider in a timely fashion with minimal disruption.
- 10.4.2** If this Agreement has been terminated pursuant to clause 10.2, (except pursuant to clause 10.2.6) the Service Provider will only be obliged to continue providing Disengagement Services if Gas Industry Co:
- (a) within 10 business days of the Termination Date, makes payment to the Service Provider of:
 - (i) an amount equating to two months worth of Fees (a month's worth of Fees being the amount of the Fees payable monthly immediately prior to the Termination Date); and
 - (ii) all other amounts due to the Service Provider under this Agreement as at the Termination Date; and
 - (b) thereafter in each month (including the month in which the payment in clause (a)(i) above is made), complies with its payment obligations under this Agreement in respect of the Fees payable for Disengagement Services provided that:
 - (i) no later than one month following the date on which the Service Provider ceases to provide Disengagement Services, the Service Provider shall repay to Gas Industry Co the payment made under clause (a)(i) above, less any outstanding amounts due to the Service Provider by Gas Industry Co; and

- (ii) the continued performance of the Disengagement Services shall at all times be on and subject to the terms and conditions of this Agreement.

11. CONFIDENTIALITY

11.1 Publication of Agreement: Gas Industry Co must publish this Agreement.

11.2 Confidentiality: Subject to clauses 11.1 and 11.3, each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

11.2.1 disclose or permit to be disclosed to any person;

11.2.2 use for itself; or

11.2.3 use to the detriment of the other party,

any Confidential Information except:

11.2.4 as required by the Regulations or this Agreement;

11.2.5 as required by Law, or the rules of the New Zealand Stock Exchange;

11.2.6 with the prior written consent of the party that owns the Confidential Information;

11.2.7 as reasonably necessary in order to perform its obligations under this Agreement (and where any disclosure is required to be made to a third party for this purpose, then only after procuring a commitment from that third party to comply with the confidentiality obligations set out in this clause 11); or

11.2.8 with the prior written authorisation of the other party.

11.3 Disclosure to Personnel: The Service Provider may disclose Confidential Information to such of its Personnel, advisors and Subcontractors who reasonably require such information in order for the Service Provider to provide the Services, but the Service Provider shall ensure such persons maintain the confidentiality of the Confidential Information and will be liable for any breach of such confidentiality by such persons.

11.4 Use:

11.4.1 The Service Provider and its Personnel, advisors and Subcontractors:

(a) will only use Confidential Information for the purpose of providing the Services; and

(b) must not use any information (including Confidential Information) provided to it as critical contingency operator under the Regulations or this Agreement for

any purpose other than the purpose of carrying out the Service Provider's obligations under this Agreement, the Regulations or the Gas Governance (Compliance) Regulations 2008.

11.4.2 Gas Industry Co and its Personnel, advisors and Subcontractors:

- (a) will only use Confidential Information for the purpose of performing its obligations under this Agreement or, the Regulations or the Gas Governance (Compliance) Regulations 2008; and
- (b) must not use any information (including Confidential Information) provided to it under the Regulations or this Agreement for any purpose other than the purpose of carrying out its obligations under this Agreement, the Regulations, the Gas Governance (Compliance) Regulations 2008, or the Gas Act 1992.

11.5 Announcements:

11.5.1 Subject to clause 11.5.2, the parties will not make any announcements or disclosures as to the subject matter of this Agreement, except in a form and manner, and at a time, previously approved in writing by the other party (such approval not to be unreasonably withheld or delayed).

11.5.2 Gas Industry Co may make any announcements or disclosures as to the subject matter of this Agreement without the approval in writing of the Service Provider where such announcements or disclosures:

- (a) are required by the Regulations, this Agreement or otherwise by Law; or
- (b) relate to its role and functions as the industry body, approved under section 43ZL of the Gas Act 1992.

12. LIABILITY

12.1 Obligations to Gas Industry Co: The Service Provider's obligations and duties under this Agreement are obligations and duties owed solely to Gas Industry Co and are not obligations and duties for the benefit of any other person.

12.2 Breach of Agreement and Regulations: Where any breach of this Agreement by the Service Provider also constitutes a breach of the Regulations, the Gas Industry Co's sole remedy will be as provided for in the Gas Governance (Compliance) Regulations 2008 and the Service Provider shall have no liability under this Agreement in respect of such breaches (provided, for the avoidance of doubt, that this does not prevent Gas Industry Co from exercising any right of termination it may have under this Agreement in respect of such breach).

12.3 Limitation on liability: The Service Provider's maximum aggregate liability for each year of the Term of this Agreement:

12.3.1 under or in connection with this Agreement (whether in contract, tort or otherwise), except for liability arising as a result of wilful breach or fraud on the part of the Service Provider; or

12.3.2 for any breaches of the Regulations;

is limited to the Fees payable for that year of the Term of the Agreement, in respect of all events occurring in any year of the Term of this Agreement.

12.4 Indirect Loss: Neither party shall be liable to the other party for any special, indirect or consequential loss, damage, cost or expense of any type incurred or suffered by that other party as a result of a breach of this Agreement.

13. FORCE MAJEURE

13.1 Force Majeure: Subject to clause 10, if and to the extent to which either party is unable to carry out any of its obligations under this Agreement because of any event or circumstance which is, in relation to that party, a Force Majeure (such party being referred to in this clause as the "Non-Performing Party") the Non-Performing Party will have no liability to the other party under this Agreement in respect of the non-performance by the Non-Performing Party of such obligations, provided that:

13.1.1 the Non-Performing Party must, as soon as reasonably practicable after becoming aware of the Force Majeure, notify the other party in writing accordingly, describing the event or circumstance of Force Majeure;

13.1.2 neither party will be released from any liability which existed before the commencement of the Force Majeure;

13.1.3 the Non-Performing Party must use reasonable endeavours to overcome, and to mitigate the effects of, the Force Majeure and to complete the Non-Performing Party's obligations under this Agreement on time;

13.1.4 the Non-Performing Party will, as soon as reasonably practicable after becoming aware of the cessation of the Force Majeure, notify the other party in writing accordingly; and

13.1.5 this Agreement will otherwise remain in effect in all respects.

The parties acknowledge that these Force Majeure provisions only apply to liability under this Agreement, and will not apply to excuse either party from any potential liability under the Gas Governance (Compliance) Regulations 2008.

14. ASSIGNMENT

14.1 Assignment to Energy Commission: Gas Industry Co may assign all of its rights and obligations under this Agreement to any Energy Commission established under section 43ZZH of the Gas Act 1992 upon reasonable prior written notice to the Service Provider.

- 14.2 Any other assignment:** Subject to clause 14.1, neither party will transfer or assign all or any of its rights or obligations under this Agreement to any other person without the other party's prior written approval (such consent not to be unreasonably withheld or delayed).

15. DISPUTE RESOLUTION

- 15.1 Dispute resolution process to apply:** This clause 15 will apply to any dispute between the parties relating to this Agreement, except where the party seeks urgent interlocutory relief or where the dispute relates to a breach of the Regulations.

- 15.2 Dispute resolution process:** If either party believes that there is a dispute between the parties concerning this Agreement that is not also a dispute under the Regulations that party will give written notice to the other party setting out details of the dispute. If a notice of dispute is given:

15.2.1 each party will direct its representative to use his or her reasonable endeavours to resolve the dispute within 10 business days of the date of the notice;

15.2.2 if the dispute is not resolved under clause 15.2.1 above, the dispute will be referred to the parties' respective Chief Executive Officers, who will use their reasonable endeavours to resolve the dispute within 10 business days from the date the dispute is referred to him or her;

15.2.3 if the dispute is not resolved under clause 15.2.2 above, then either party may (by written notice to the other party) require that the dispute be referred to mediation, in which case:

(a) the parties will appoint a mediator agreed by the parties, or if there is no agreement, approved by the President of the New Zealand Law Society or his or her nominee;

(b) the mediator will determine the process and timetable for the mediation; and

(c) the cost of the mediation will be shared equally between the parties; and

15.2.4 if the dispute is not referred to mediation, or is not resolved as a result of a mediation undertaken under clause 15.2.3 above, then either party may (by written notice to the other party) refer the dispute to a sole arbitrator for a binding resolution under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 15 business days of notice being given referring the dispute to arbitration, such arbitrator to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

- 15.3 Interlocutory Relief:** Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with clauses 15.1 and 15.2.

- 15.4 Service Provider to continue providing the Services:** Without limiting the remedies available to the Service Provider at Law, in the event of a dispute between the parties concerning this Agreement, the Service Provider will continue to supply the Services (unless Gas Industry Co requests otherwise).

16. GENERAL

- 16.1 Entire arrangement:** This Agreement:
- 16.1.1** records the entire arrangement between the parties relating to the matters dealt with in this Agreement; and
 - 16.1.2** supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters.
- 16.2 Amendment:** Subject to any other provision of this Agreement expressly providing for the updating or amendment of any particular plan or document, no amendment to this Agreement will be valid unless it is in writing and executed by both parties.
- 16.3 No waiver:** Any waiver by either party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing, and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this Agreement this will not (unless stated otherwise) operate as a waiver of any other breach of that provision.
- 16.4 Governing law and jurisdiction:** This Agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 16.5 Severability:** If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Agreement and will not affect the validity or enforceability of any other provisions in this Agreement.
- 16.6 Relationship of the parties:** Nothing expressed or implied in this Agreement will constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party. Neither party will make any contrary representation to any other person. The relationship of the Service Provider to Gas Industry Co is that of an independent contractor.
- 16.7 Counterparts:** This Agreement may be executed in one or more counterpart copies which, read together, will constitute one and the same instrument. Any facsimile copy of this Agreement (including any facsimile copy of any document evidencing either party's execution of this Agreement) may be relied on by the other party as though it were an original copy.
- 16.8 Remedies cumulative:** The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

16.9 Method of Delivery: Any written notice required under this Agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:

16.9.1 delivered by hand to the intended recipient's address as set out below; or

16.9.2 sent by facsimile to the intended recipient's facsimile number as set out below and the sender's facsimile machine confirms transmission to the intended recipient; or

16.9.3 sent by electronic mail to the intended recipient's electronic mail address as set out below, and the electronic mail system confirms the notice was delivered successfully.

Notices to Gas Industry Co:

Contact Name: Ian Dempster

Fax Number: 04 472-1801

Physical Address: *(Prior to 5 January 2009)*
Level 9, State Insurance Tower
1 Willis Street
Wellington

(From 5 January 2009)
Level 8, Todd Building
95 Customhouse Quay
Wellington

Email address: ian.dempster@gasindustry.co.nz

Notices to Service Provider:

Contact Name: Steve Mutton

Fax Number: n/a

Physical Address: 101 Carlton Gore Road
Newmarket

Email address: steve.mutton@vector.co.nz

For the purposes of this Agreement, any notice transmitted by facsimile or electronic mail or delivered after 5.00 pm New Zealand time on a business day, or at any time on a non business day, will be deemed received at 9.00 am New Zealand time on the next business day (being, in each case, the time of day at the intended place of receipt of that notice).

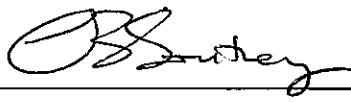
16.10 Further Assurances: Each party will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.

16.11 Privity: Only the parties to this Agreement may pursue remedies or redress under this Agreement in the event of the other party breaching this Agreement.

EXECUTION

SIGNED by **GAS INDUSTRY COMPANY LIMITED** by:

CHRISTINE SOUTHBY.



Full name of director/authorised signatory

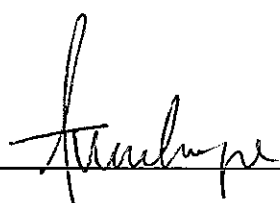
Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SIGNED by **VECTOR GAS LIMITED** by:

Simon Mackenzie



Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SCHEDULE 1 - SERVICES

- 1.1** The Service Provider will perform all of the duties and obligations of the critical contingency operator under the Regulations, including:
- (a) developing, operating and maintaining a critical contingency internet site, with up-to-date information (r9);
 - (b) considering a proposed critical contingency management plan or proposed amendment and, at its discretion, providing a report on the proposed plan or proposed amendment (r28);
 - (c) publishing the critical contingency managements plan on the critical contingency internet site (r32);
 - (d) instigating exercises to test critical contingency management plans (r34);
 - (e) preparing and publishing a communications plan and an information guide (r35, 36 and 37);
 - (f) complying with r38 in respect of the information provided by transmission system owners (r38);
 - (g) keeping a record of consumer information (as to curtailment bands, essential service providers and minimal load consumers) provided by retailers and large consumers (r39, 40 and 41);
 - (h) giving notice to Gas Industry Co where the consumer information provided by retailers and large consumers is materially incorrect or has not been provided (r41 and r42);
 - (i) determining, declaring and notifying a critical contingency (r48 to r52);
 - (j) during a critical contingency (r53):
 - (i) monitoring the pressure (including linepack) levels in the affected section(s) of the transmission system;
 - (ii) exploring available opportunities to increase upstream gas production and draw on gas storage in order to mitigate the severity of the critical contingency;
 - (iii) receiving/considering communications from transmission system owners and any other persons identified in the information guide;
 - (iv) directing the curtailment and restoration of gas supply in accordance with the Regulations;
 - (v) giving formal notices regarding curtailment and restoration to transmission system owners;
 - (vi) ensuring interested persons are kept informed of the status of the critical contingency;
-

- (vii) publishing information on the status of the critical contingency;
- (k) giving notice of a continuing critical contingency (r59);
- (l) terminating a critical contingency and giving notice of that termination (r60 to r63); and
- (m) preparing and publishing an incident report and performance report (r64 and r65).

1.2 The Service Provider must also:

- (a) assist with the investigation and/or determination of any complaints under the Gas Governance (Compliance) Regulations 2008 concerning an alleged breach of the Regulations;
- (b) assist with any audits performed under the Regulations, as reasonably required to do so by the Gas Industry Co; and
- (c) maintain proper and complete records and documentation relating to the Services specified in this Schedule, as agreed with Gas Industry Co.

1.3 The Service Provider will prepare and provide the following reports and documentation to the Gas Industry Co:

Implementation report

- (a) a detailed report outlining the procedures and resources to be used by the Service Provider immediately prior to, during and immediately after a critical contingency (no later than 20 business days after the go-live date);

Quarterly report

- (b) a quarterly brief containing the following information:
 - (i) a summary of the Services provided by the Service Provider in the quarterly period;
 - (ii) a summary of the Services planned over the next quarterly period; and
 - (iii) a summary of any issues or risks in relation to events that are reasonably likely to lead to a critical contingency or the arrangements in place to address such a critical contingency;

Other Incident reports

- (c) a report in respect of any alleged breach of the Regulations, to the extent practicable, within 5 business days of the Service Provider becoming aware of the alleged breach;
 - (d) a report in respect of any breach by the Service Provider of its obligations under this Agreement within 2 business days of the Service Provider becoming aware of that breach; and
-

Annual performance review report

- (e) no later than 20 business days after each anniversary of the Commencement Date, a detailed report of the previous 12 months containing the following information:
 - (i) an assessment, with reasons, on the extent to which the Performance Standards were met or exceeded;
 - (ii) a log of the critical contingency operator's activities (including any significant events where a critical contingency was avoided);
 - (iii) a list of all Service Provider activities under this Agreement that have incurred costs that are additional to the base fee (including those costs covered by the critical contingency event fee);
 - (iv) results of the exercises to test critical contingency management plans;
 - (v) the current critical contingency management plans and any amendments to the plans during the previous 12 months; and
 - (vi) any suggested amendments to the Performance Standards, critical contingency management plans or the Regulations.
-

SCHEDULE 2 - PERFORMANCE STANDARDS

The Service Provider shall meet or exceed the following performance standards.

Service	Performance Standard	Standard
Critical contingency internet site	Maintain up-to-date copies of all relevant documents on the internet site	Update internet site within 1 business day of the later of approval or receipt of any new or updated document
Communication plan and information guide	Produce, publish and update	Publish on go-live date and update as and when required
Test critical contingency management plans	Run a test exercise	1 test per year in accordance with the requirements of r34(4) (not required if there has been a critical contingency during the year and requirements of r34(4) are satisfied)
Test critical contingency management plans	Report	Provide within 10 business days of completing test
Determining and declaring critical contingency	Timely declaration of critical contingency	Where a threshold has been breached, the critical contingency was declared as soon as is reasonably practicable, but in any event within 30 minutes of becoming aware that the breach has occurred.
Incident report and performance report	Report on performance and identify any improvements to the arrangements	Following termination of critical contingency produce: Incident report within 5 business days Performance report within 15 business days
Compliance reporting	Report on any alleged breach of Regulations	Within 5 business days of becoming aware of the alleged breach
Reporting on activities performed under the contract	Quarterly report	Provide within 20 business days of the end of each quarter

SCHEDULE 3 - FEES

3.1 Fees Composition: The Fees are comprised of:

- (a) an establishment fee as set out in paragraph 3.2 of this Schedule;
- (b) a base fee as set out in paragraph 3.3 of this Schedule; and
- (c) a critical contingency event fee as set out in paragraph 3.4 of this Schedule;

or alternatively where this Agreement has expired or has been terminated under clause 10 of this Agreement:

- (d) an establishment fee as set out in paragraph 3.2 of this Schedule; and
- (e) a disengagement fee as set out in paragraph 3.5 of this Schedule

3.2 Establishment Fee

- (a) Subject to subparagraphs (b) to (e) below, the establishment fee:
 - (i) is the amount payable monthly in accordance with the formula set out in paragraph (c) below; and
 - (ii) is payable monthly in arrears from the Commencement Date.
- (b) The establishment fee has been agreed to reflect:
 - (i) the parties' estimate (being **\$540,000.00**) of the total expected establishment costs (including a reasonable margin) incurred or to be incurred up until the go-live date by the Service Provider in developing and establishing any arrangements considered necessary to provide the Services ("the total expected establishment costs"); and
 - (ii) the reasonable finance costs to the Service Provider, over the 5 year period from the Commencement Date, in developing and establishing any arrangements considered necessary to provide the Services, as accounted for in subparagraph (c) below:

The parties acknowledge that the actual cost to the Service Provider may be greater or less than the establishment fee, but the establishment fee will only be amended in accordance with this Schedule or otherwise by the agreement of the parties.

- (c) The amount payable monthly in respect of the establishment fee:
 - (i) is to be calculated in accordance with the following formula:

$$M = \frac{P \times i}{1 - (1 + i)^{-n}}$$

Where:

M = the monthly amount payable by Gas Industry Co

P = the unpaid portion of the total expected establishment costs

i = the monthly interest rate, being the 90 day commercial bill rate as published on the Reuters monitor service and applying at 10.30am on the first day of the current quarter, plus 2.5% per annum, and divided by 12

n = the remaining number of months in the 5 year period from the Commencement Date; and

(ii) is to be apportioned as follows:

$P \times i$ = the amount attributable to the finance costs of the Service Provider

$M - P \times i$ = the amount attributable to the unpaid portion of the total expected establishment costs; and

$P - (M - (P \times i))$ = the amount constituting the unpaid portion of the total expected establishment costs for the following month.

(d) *Establishment Fee Wash-Up:*

(i) As at the Commencement Date, the total expected establishment costs incurred or to be incurred up until the go-live date are **\$540,000.00**.

(ii) No later than 3 business days prior to the go-live date, the Service Provider must provide Gas Industry Co with the total actual establishment costs and describe in adequate detail the Services and associated costs that form the total actual establishment costs.

(iii) The difference between the total actual establishment costs and the total expected establishment costs shall be payable before the go-live date (so as to enable Gas Industry Co to fulfil its obligations in relation to the actual critical contingency development costs in accordance with regulation 16 of the Regulations) in accordance with the following terms:

(A) Where the difference is due to the total actual establishment costs exceeding the total expected establishment costs, that difference is payable by Gas Industry Co to the Service Provider; and

(B) Where the difference is due to the total expected establishment costs exceeding the total actual

establishment costs, that difference is payable by Service Provider to the Gas Industry Co.

(iv) To avoid doubt:

(A) In this subparagraph (d), references to the "total actual establishment costs" and "total expected establishment costs" include all such costs incurred or to be incurred up until the go-live date but exclude for the purposes of this subparagraph (d) only, any finance costs of the Service Provider; and

(B) This subparagraph (d) does not affect the establishment fee that is otherwise payable monthly in accordance with this Schedule.

(e) Where this Agreement is terminated under clause 10 of this Agreement, the establishment fee (which, to avoid doubt, includes the unpaid portion of the total expected establishment costs and reasonable finance costs) remains payable, monthly in arrears, by Gas Industry Co to the Service Provider for the period from the Termination Date until the date that is 5 years after the Commencement Date.

(f) Where an extension option is exercised in accordance with clause 3.2 of this Agreement, the establishment fee ceases:

(i) to be payable by Gas Industry Co to the Service Provider under this Agreement from the date of the previous Expiry Date; and

(ii) to comprise part of the Fees from such date.

3.3 Base fee

(a) The base fee:

(i) as at the go-live date is the amount of **\$28,333.33** *per month*; and

(ii) is payable monthly in arrears from the go-live date.

(b) The base fee has been agreed to reflect the parties' estimate of the monthly average actual cost (including a reasonable margin) to the Service Provider of providing the Services. The parties acknowledge that the actual cost to the Service Provider may be greater or less than the base fee and the base fee may be amended in accordance with the provisions of this Schedule (or Schedule 4 where applicable) or otherwise by the agreement of the parties.

(c) To avoid doubt, the base fee does not include the additional event-specific costs incurred by the Service Provider in providing the Services during a critical contingency.

3.4 Critical contingency event fee

(a) The critical contingency event fee is the fee payable in respect of the additional event-specific costs incurred by the Service Provider in providing the Services during a critical contingency declared under the Regulations.

(b) The critical contingency event fee is:

(i) the sum of the additional event-specific costs incurred by the Service Provider in providing the Services:

(A) during a critical contingency (as from when a critical contingency is declared under regulation 49 until terminated under regulation 60); and

(B) in respect of the notification and publication of the termination of a critical contingency under regulations 61 to 63, and the preparation and publication of an incident report and a performance report under regulations 64 and 65,

at the hourly rates set out below and the reasonable expenses of the Service Provider; or

(ii) any other amount previously agreed in writing between the parties for the Services described in subparagraph (i) above.

Resource	Category	Hourly rate (excl GST)
Group Manager (Vector VL1 Level)	A	\$260
Senior Project Manager.	B	\$220
Senior Business Analyst (Vector VL2 Level)	C	\$180
IT Developer	D	\$155
Business Analyst (Vector VP1 Level)	E	\$135
Trainer	F	\$110
Admin Support (Vector VS1 Level)	G	\$85
External Legal Support (Average Rate)	X	\$400

- (c) To avoid doubt, the critical contingency event fee does not include:
 - (i) the costs incurred by the Service Provider in providing the Services prior to and subsequent to the duration of a critical contingency (with the exception of the Services specified in subparagraph (i)(B) above); or
 - (ii) any costs that are otherwise included in the base fee or the establishment fee.
- (d) The critical contingency event fee is payable monthly in arrears from the go-live date.

3.5 Disengagement fee

- (a) The disengagement fee is a fee payable in respect of any Disengagement Services provided by the Service Provider.
- (b) The disengagement fee is the sum of:
 - (i) in respect of the Services being provided by the Service Provider at the Termination Date, the base fee and the critical contingency event fee as at the Termination Date (or an appropriate proportion of the base fee and the critical contingency event fee if only part of the Services are required); and
 - (ii) in respect of Services additional to those being provided by the Service Provider prior at the Termination Date, the cost of the Services provided for that month at the hourly rates set out in subparagraph 3.4(b) and reasonable expenses of the Service Provider.
- (c) Subject to clause 10.4.2 of this Agreement, the disengagement fee is payable monthly in arrears.

3.6 Adjustment of Fees for Fee Change Event or review of Fees

- (a) **Basis of variation to Fees:** The basis of any Fee change will be to ensure that the Service Provider continues to receive a Fee that represents the actual cost (including a reasonable margin) to the Service Provider of providing the Services), taking into account any change to the Services and/or changes to the Service Provider's costs (whether caused by a Fee Change Event or otherwise).
- (b) **Commencement of fee variation process:**
 - (i) **Fee Change Event:** In accordance with clause 8.2.1 of this Agreement, if either party considers at any time that:
 - (A) a Fee Change Event has occurred; and
 - (B) the effect of such Fee Change Event (together with any other Fee Change Events that have occurred

since the date of this Agreement or since the last agreed fee change (as the case may be)) is sufficiently significant that it warrants a variation to the fees;

that party may give a Fee change request to the other party, provided that a Fee change request may not be given later than 12 months after the occurrence of the Fee Change Event to which that Fee change request relates.

- (ii) **Review:** In accordance with clause 8.2.2 of this Agreement, if either party considers that the Fees need to be reviewed to reflect the cost (including a reasonable margin) of providing the Services, that party may give a Fee change request to the other party, provided that:

 - (A) The Fee change request must be made in writing and received by the other party at least 4 months prior to the commencement of the financial year (so as to enable Gas Industry Co to fulfil its obligations to estimate and publish the critical contingency ongoing costs in accordance with regulation 18 of the Regulations); and
 - (B) A Fee change request under this subparagraph (ii) may not occur more than once in a financial year.
 - (iii) In accordance with clause 8.2.3 of this Agreement, this paragraph 3.6 does not apply in respect of the establishment fee portion of the Fees.
 - (c) **Fee change request:** A Fee change request must contain the following information:

 - (i) the event(s) claimed to be a Fee Change Event or that has/have given rise to the request to review the Fees ;
 - (ii) the change(s) to the Services and/or the cost (including a reasonable margin) to the Service Provider in providing the Services;
 - (iii) the variation(s) of the Fees proposed by the party that has given the Fee change request, together with reasonable information supporting the proposed fee variation(s); and
 - (iv) the date(s) on which the party considers that the variation(s) to the Fees should be calculated to take effect from (being the date on which the event giving rise to the Fee change request came into existence).
 - (d) **Initial response to Fee change request:** Within 20 business days of receipt of a Fee change request, the recipient will respond to the party that gave the Fee change request with a written notice advising whether it agrees to the variation to the Fees proposed in the Fee change request. If the notice advises of agreement, the proposed Fee variation set out in the Fee change request will be an agreed Fee change.
-

- (e) **Process where no initial agreement:** Where the recipient of a Fee change request does not agree to the proposed Fee variation set out in the Fee change request (or where the recipient does not give a notice under subparagraph (d)) the following process will apply:
- (i) in the first instance the parties shall meet to discuss the matter in good faith to see whether they can reach agreement as to whether a fee change event has occurred, and whether there should be a variation to the fees (and the amount of such variation), and the date on which such variation should be effective. If the parties reach agreement, the agreed variation (if any) shall be an agreed Fee change;
 - (ii) if the parties cannot reach agreement within 20 business days after the date the Fee change request was received, the party that gave the Fee change request may require the matter to be referred to dispute resolution under clause 16 of this Agreement (but subject to subparagraph (iii) below);
 - (iii) if the matter is referred to dispute resolution under subparagraph (ii) above the scope of the dispute resolution will solely be to resolve:
 - (A) In respect of a Fee change request made under subparagraph (b)(i) above only, whether a Fee Change Event (or events) has occurred;
 - (B) In respect of all Fee change requests (under subparagraph (b)(i) or (ii)):
 - the amount (if any) by which the fees should be varied on the basis set out in subparagraph (a) above; and
 - the date from which any variation to the Fees should be calculated to take effect from (being the date on which the event giving rise to the Fee change request came into existence);
- provided that, if the parties have reached agreement on any of the matters in subparagraphs (i) to (iii), the role of dispute resolution will be limited to those matters in subparagraphs (i) to (iii) that have not been agreed; and
- (iv) if dispute resolution determines, or the parties have agreed, that there should be a variation to the fees, such variation will be an agreed Fee change.
- (f) **Giving effect to agreed Fee changes:**
- (i) In respect of a Fee change request made under subparagraph (b)(i) above as a result of a Fee Change Event, the Fees will be adjusted to take effect from the month following the date on which the Fee change request is agreed or determined;
 - (ii) In respect of a Fee change request made under subparagraph (b)(ii) above, the Fees will be adjusted to take effect from the
-

commencement of the financial year following the date on which the Fee change request is agreed or determined.

SCHEDULE 4 - CHANGE CONTROL PROCESS

- 4.1 Change Control Process:** The parties will follow the change control process described in this Schedule 4 to initiate and consider any change to the Services, other than a change resulting from a change to the Regulations or Performance Standards ("Change").
- 4.2 Change Request:** If either party wants to initiate a Change that party will describe the details of the Change in a written request to the other party ("Change Request").
- 4.3 Impact Report:** As soon as practicable, and no later than 25 business days, after a Change Request has been made, the Service Provider will prepare an impact report ("Impact Report") detailing an explanation of the Change, including how the Change is to be implemented and, to the extent relevant, detailing:
- (a) the feasibility of the Change;
 - (b) the effect of the Change on the ability of the Service Provider to meet its obligations under this Agreement;
 - (c) any cost implication for either party in relation to the Change;
 - (d) any consequential material impacts of the Change;
 - (e) where appropriate, suggested acceptance testing procedures and acceptance criteria for the proposed Change; and
 - (f) such other information which is likely to be material to Gas Industry Co.
- 4.4 Notify:** Gas Industry Co will, within a reasonable period of time from receipt of the relevant Impact Report, notify the Service Provider of whether it:
- (a) accepts the Change Request from the Service Provider, or wishes to proceed with a Change following receipt of an Impact Report;
 - (b) wishes to renegotiate any aspect of the Change Request, in which case the parties will negotiate in good faith to try and reach agreement on the terms for implementing the Change Request;
 - (c) withdraws the Change Request if initiated by Gas Industry Co; or
 - (d) does not accept the Change Request.
- 4.5 Agreeing a Change Request:** If the terms for implementing a Change Request have been:
- (a) accepted under subparagraph 4.4(a) of this Schedule;
 - (b) agreed under subparagraph 4.4(b) of this Schedule; or
 - (c) determined under paragraph 4.6 of this Schedule,
- Gas Industry Co or the Service Provider (as applicable) will send the other party a variation agreement reflecting those terms. The Service Provider will not
-

undertake any Change until both parties have signed this variation agreement, and Gas Industry Co will not be bound to pay for any Change unless both parties have signed this variation agreement.

4.6 Dispute Resolution: If the parties cannot agree on a Change Request within 10 business days of Gas Industry Co giving notice under subparagraph 4.4(d) of this Schedule then the matter will be resolved under clause 15 of this Agreement. In determining this matter, the mediator or arbitrator will:

- (a) take into account the matters referred to in paragraph 4.3 of this Schedule;
- (b) ensure that the terms for implementing the Change Request reflect a fair and reasonable allocation of risk; and
- (c) ensure that any changes to the Fees are reasonable, competitive and include a reasonable margin.

4.7 Pricing Principles: The following pricing principles will apply in respect of any Change:

- (a) the Service Provider will only charge Gas Industry Co for a Change to the extent the Change is not already covered by the Fees;
- (b) if there is a cost impact associated with implementing the Change then the parties will use genuine efforts to agree a reasonable price for the Change (taking into account the nature and extent of the Change); and
- (c) the pricing for any Change will be the reasonable cost (including any reasonable margin) to the Service Provider of providing the Change.

4.8 Not unreasonably refuse Change: Subject to paragraph 4.9 of this Schedule, the Service Provider must not unreasonably refuse (directly or indirectly) any Change Request submitted by Gas Industry Co.

4.9 Reasonable Grounds for Refusing a Change: The Service Provider, acting reasonably, may refuse a Change submitted by Gas Industry Co where the Service Provider can demonstrate to Gas Industry Co that, without limitation:

- (a) it is not consistent with the Regulations;
- (b) the Service Provider does not have the qualified resources needed to undertake the work required to implement the Change; or
- (c) the Service Provider cannot meet the timeframe for implementing the Change because of resourcing constraints or other constraints.

Unreasonable grounds for refusing to provide a Change include, without limitation:

- (d) demanding unreasonable charges for the Change;
 - (e) imposing unreasonable conditions for undertaking the Change; or
 - (f) refusing to include the Change under this Agreement despite the subject matter of the Change being reasonably related to or connected with the Services as they are at the relevant time.
-

- 4.10 No Obligation:** Gas Industry Co will not be bound to accept or pay for any unauthorised variations or changes to this Agreement or the scope of the Services carried out by the Service Provider.
- 4.11 Truncated Process:** Where:
- (a) the Change requested is relatively minor (in terms of cost and impact) and is fairly routine; and
 - (b) the parties agree (such agreement not to be unreasonably withheld);
 - (c) a truncated Change Control Process (acceptable to Gas Industry Co and the Service Provider) may be adopted to deal with that Change Request.
- 4.12 Costs of Change Request:**
- (a) Subject to subparagraph (b) below, any costs incurred by a party in respect of the Change Request shall be borne by the party that made that Change Request.
 - (b) Where Gas Industry Co has given notice under subparagraph 4.4(d) of this Schedule (and, in accordance with paragraph 4.6, the matter is to be resolved under clause 15 of this Agreement), any costs incurred by a party in respect of the Change Request after the date such notice was given shall be borne by the party that incurred those costs.
-

SCHEDULE 5 - DISENGAGEMENT SERVICES

- 5.1** The Service Provider shall provide the following Disengagement Services if requested by Gas Industry Co:
- (a)** the continued provision of the Services, or part of the Services, prior to termination as requested by Gas Industry Co in accordance with this agreement. Gas Industry Co must continue to pay the Fees for such Services in accordance with this Agreement (or a reasonable proportion of those fees if only part of the Services are required);
 - (b)** co-operation and support, to the new service provider's personnel and/or Gas Industry Co, to enable an orderly transition to a new service provider in a timely fashion with minimal disruption; and
 - (c)** training for the new service provider's personnel and/or Gas Industry Co in respect of the relevant Services provided by the Service Provider under this Agreement.
- 5.2** Gas Industry Co will pay the Service Provider for any Disengagement Services in accordance with Schedule 3.
- 5.3** Subject to paragraph 5.1 of this Schedule, the Service Provider will:
- (a)** transfer all data that it holds and that it has received or processed in the performance of its obligation under this Agreement in the 5 years immediately preceding the Termination Date (in a form reasonably required by Gas Industry Co) to Gas Industry Co or if Gas Industry Co requests, to the new service provider; and
 - (b)** will provide a certificate to Gas Industry Co confirming that the data it has transferred is, to the best of its knowledge, all the data it holds that it has received or processed in the performance of its obligation under this Agreement in the 5 years immediately preceding the Termination Date.
- 5.4** Notwithstanding any obligation on the Service Provider under this Agreement to transfer data, the Service Provider will be entitled to retain a copy of the data to comply with any obligations it has at Law.
- 5.5** For so long as the Disengagement Services are provided, the Service Provider agrees to work in good faith with any new service provider in relation to the transfer of data under paragraph 5.3 of this Schedule.
-