

WEL NETWORKS LIMITED ('the Company')
TERMS OF SUPPLY

1. AGREEMENT GOVERNS ELECTRICITY SERVICES

Services received on or after the Effective Date will be supplied on these Terms. These Terms supersede all previous arrangements regarding Electricity Services. Unless otherwise agreed in writing, receipt of Services after the Effective Date, whether or not pursuant to a completed Application Form, shall be deemed to be acceptance of these Terms.

2. APPLICATION FOR ELECTRICITY SERVICES

All new Customers must make application for Services on the Company's Application Form. All new Customers must meet the Company's Prudential Requirements. The Company reserves in its absolute discretion the right to require any Customer to prepay for Services to be supplied. The Company may require verification of data supplied by the Customer and the Customer warrants the accuracy of all information supplied to the Company.

3. DURATION OF TERMS

These Terms shall commence on the Effective Date and shall continue in full force and effect until terminated in accordance with clause 34 (*Termination*).

4. LINE SERVICES AND COMPANY'S OBLIGATIONS

- (a) The Company shall, in accordance with these Terms:
 - (i) Subject to clause 4(a) (*Line Services And Company's Obligations*) provide Services in accordance with Good Industry Practice; and
 - (ii) If the Customer requests, upgrade or extend its Network; provided that, the Company may require the Customer(s) needing the upgrade or extension to enter into an agreement to record the terms and conditions (including as to price) agreed upon between the Company and the Customer in relation to the upgrade and/or extension. For the avoidance of any doubt, the Company shall not be obliged to upgrade or extend the Network unless such agreement is entered into;
 - (iii) Determine the Charges;
 - (iv) Perform Load Control Services.
- (b) The Company may interrupt or reduce the Services at any time the Company considers it appropriate to do so for planned or unplanned interruptions.
- (c) Planned Interruptions: Planned Interruptions occur in situations where the Company determines the need for the interruption at least twenty four hours in advance, such as:
 - (i) To enable the Company to inspect, effect alterations, maintenance, repairs or additions to any part of the Network; or
 - (ii) To avoid the risk of danger to persons, damage to property or interference with the regularity or efficiency of Services or Line Services; or
 - (iii) To preserve and protect the proper working of the Network;

- (iv) To meet the Company's obligations to System Operator in respect of System Operator's Network or to any other network owner in respect of that network owner's distribution network; or
 - (v) If supply of Electricity to a Point of Connection is or will be reduced, impaired or interrupted; or
 - (vi) In accordance with Good Industry Practice;
 - (vii) To accommodate any Retailer in the event of an envisaged shortage of electricity; or
 - (viii) To allow any Retailer to inspect, effect alterations, maintain or repair any fittings owned by any Retailer.
- (d) Unplanned Interruptions: Unplanned interruptions occur in situations where the Company does not know of the need for the interruption in advance, such as:
- (i) Faults on the Network caused by equipment failure, accident, storm or similar event;
 - (ii) In the event of an occurrence of Force Majeure;
 - (iii) Overloading arising from a capacity shortage in the Network or System Operator's Network;
 - (iv) Emergencies; or
 - (v) As a condition of the supply of transmission service from System Operator, for the automatic low frequency-initiated tripping of specified 11kV feeders in the event that the System Operator Network integrity is endangered.
- (e) Where the Company interrupts Services pursuant to clause 4(c) (*Line Services And Company's Obligations*), the Company shall give at least 24 hours prior notice to the Customer of the interruption.
- (f) Where the Company interrupts Services pursuant to clause 4(d), (*Line Services And Company's Obligations*) the Company shall give as much notice as is reasonably possible to the Customer about the reasons for the interruption and its expected duration.
- (g) In all situations of interruptions, the Customer shall use all reasonable endeavours to minimise the period of interruption.
- (h) If there is a capacity shortage in the Network or System Operator's Network associated with an interruption which creates a difficulty in providing Services and/or transmission of electricity through the System Operator Network, the Company shall determine the priorities for maintaining and restoring electricity supply.
- (i) The Company shall also be entitled to interrupt or reduce Services for the purposes of operating the Company's Load Control Service as specified in clause 20 (*Load Control*).

5. PRUDENTIAL REQUIREMENTS

- (a) In these Terms, '**Prudential Requirements**' means meeting the requirements of one of (at the Company's discretion) clauses 5(a)(i) to (iv) (inclusive) (*Prudential Requirements*). The Customer will:
- (i) Maintain an acceptable credit rating in accordance with clause 5(b); (*Prudential Requirements*) or
 - (ii) Pay and maintain a cash bond up to the amount required under clause 5(b) (*Prudential Requirements*) to the Company; or

- (iii) Procure and maintain the provision and maintenance of an unconditional guarantee or letter of credit in favour of the Company for the amount equivalent to the bond requirement in clause 5(c) (*Prudential Requirements*). The guarantee or letter of credit must be in a form satisfactory to the Company (acting reasonably) and the third party guarantor must maintain an acceptable credit rating in accordance with clause 5 (*Prudential Requirements*); or
 - (iv) Provide a combination of the securities(b) referred to in clauses, to the satisfaction of the Company (acting reasonably).
- (b) For the purpose of clause 5 (*Prudential Requirements*), an acceptable credit rating means that the Customer, or guarantor, as the case may be, must carry a long term credit rating of at least A3 (Moody's Investor Services Inc), A- (Standard & Poors Rating Group) or B+ (AM Best) as applying at the commencement of these Terms or such other equivalent rating as may be satisfactory to the Company (acting reasonably).
- (c) A Bond may be required by the Company up to the equivalent of an estimate of three (3) months of Charges payable by the Customer to the Company (averaged over a period of 12 months). The level of Bond shall be reviewed at intervals of six months by the Company having regard to the average level of Charges over that period, subject to seasonal variations. The Bond shall be held by the Company on the following terms:
 - (i) In a separate bank account on trust for the Customer until such time as either the Customer is entitled to have access to the Bond under these Terms or the cash bond is returned to the Customer;
 - (ii) The separate bank account shall be an interest bearing account, and interest shall be paid to the Customer at annual intervals;
 - (iii) The Bond may be transferred to the Company in accordance with the provisions of these Terms to apply against monies owing by the Customer to the Company. Where any part of the Bond is utilised by the Company in accordance with this provision the Customer shall within 5 (five) Business Days of receiving written notice from the Company, pay to the Company a further cash bond to meet the prudential requirements of this clause;
 - (iv) Upon the expiry of these Terms, but after the Customer has paid all monies owing under these Terms to the Company, the Company shall then repay any remaining Bond held to the Customer.
- (d) In the event the Customer is not in full compliance with the Prudential Requirements set out in this clause 5(a) (*Prudential Requirements*), this shall represent an Event of Default for the purposes of clause 34 (*Termination*).
- (e) If the Customer withholds payment of any invoice duly rendered by the Company and does not dispute the level of the Charges contained therein in accordance with clause 12 (*Disputing Invoices*), the Company may make up any such shortfall from the Customer's bond, guarantee or letter of credit (if any).
- (f) If the Customer fails to meet the Prudential Requirements of the Company, the Customer will pay a surcharge to that Company of an amount not exceeding 10% of the cost of providing the Services. Such amount will be increased by, and payable to, the Company, in the manner, and timing as the Company determines from time to time.

6. ALLOCATION OF RESPONSIBILITY

- (a) Unless otherwise agreed to in writing between the Customer and the Company, the Company will be responsible for the installation, repair and maintenance of the Network up to the boundary of the Customer's Property.

- (b) Unless otherwise specifically agreed to in writing between the Customer and the Company or required by law, the Customer under these Terms will be responsible for and will procure the installation, repair and maintenance in good order of the electricity line from the boundary of the Customer's Property.

7. METERING

- (a) The Customer shall ensure that there is Metering Equipment which complies with the Rules and the Distribution Code. The Parties agree that metering data shall be reconciled in accordance with Rules.
- (b) The Company may at its own cost maintain and service an additional set of Metering Equipment at each Point of Connection for checking and Network management purposes.
- (c) The measurements taken by the Customer from the Metering Equipment shall be binding on the Parties for the purpose of determining the Charges, as applicable, unless either of the Parties disputes the accuracy of the Metering Equipment by giving written notice to the other Party. In the event such written notice is given:
 - (i) Each Party shall provide the other with any available information relevant to the checking of the Metering Equipment; and
 - (ii) The Metering Equipment shall be checked for defective or inaccurate functioning or calibration in accordance with Good Industry Practice.
- (d) If it is discovered that the Metering Equipment used in the determination of Charges is not measuring accurately then the quantity of electricity conveyed or the demand during the Period of Inaccuracy shall be determined by the Parties:
 - (i) By using the measurements of any check metering equipment, if installed, pursuant to Good Industry Practice, or
 - (ii) By calculation of a corrected quantity of electricity conveyed during the Period of Inaccuracy if the percentage of inaccuracy is ascertainable by calibration, re-calibration, tests or mathematical calculation; or
 - (iii) By the Company estimating the appropriate quantity during periods of similar conditions when the Metering Equipment was measuring accurately; or
 - (iv) By such other method as is agreed between the Parties.
- (e) Where the Parties are unable to agree over the determination of the appropriate quantity under this clause 7(d), the matter shall be referred to Dispute Resolution under clause 28 (*Dispute Resolution Process*).
- (f) The Customer shall provide the Company with Ready Access to the data from the Metering Equipment at all reasonable times, in a format advised by the Company (acting reasonably) and at no cost to the Company.

8. ACCESS

The Customer must provide Ready Access to the Customer's Premises and Property to Duly Authorised Agents of the Company where in the opinion of the Company it is required for the purpose of: protecting persons or property from electrical hazard; inspecting or testing electrical Equipment wiring or apparatus; maintaining or removing any Equipment belonging to the Company; ascertaining the quantity of Electricity or Services supplied; reading the meter; connecting or disconnecting Electricity or Services; or ensuring the continuity or safety of Electricity or Services to the Customer or other Customers.

9. CHARGES

In consideration of the Company providing Services to the Customer, the Customer shall pay the Charges on the due date for payment specified in each invoice, without any set-off, counterclaim or other deduction whatsoever.

10. OTHER SERVICES

The Company may in its absolute discretion at the request of the Customer from time to time provide such other services as it sees fit, and may provide such services as are reasonably required in order to maintain the Network or protect Services. The Charges will specify the prices (excluding Goods and Services Tax and other taxes) of those other services. The Customer will be responsible for Goods and Services Tax and any other taxes or levies made on those other services.

11. INFORMATION REQUESTS

- (a) At the Company's request, the Customer shall as soon as reasonably practicable provide such information as the Company may reasonably require for the performance of its obligations.
- (b) Where the Customer becomes aware of anticipated material consumption changes by Customers which could impact on the capacity of the Network, the Customer shall forthwith notify the Company accordingly.
- (c) The information required by the Company under this clause shall only be provided to the extent that such request is reasonable, and does not breach the confidentiality requirements of these Terms or any other agreement to which the Customer is a party.
- (d) The information required under this clause shall be provided by the Customer as part of its obligations to the Company under these Terms, at no cost to the Company.

12. DISPUTING INVOICES:

- (a) If the Customer wishes to dispute the charges on any invoice received, the Customer must write to or telephone the Company giving details of the dispute and the disputed amount ('**Customer's First Notice**') within 5 Business Days of receiving the invoice.
- (b) Payment of the full amount (disputed and undisputed amount) shall remain due and payable by the due date for payment specified on the invoice and the Disputes Resolution Procedure must be instigated by the Customer, within the time limits specified in this clause.
- (c) The Company will respond in writing within 15 Business Days of receiving the Customer's First Notice ('**Company's Response**').
- (d) If the Customer does not accept the Company's Response, it must notify the Company within 5 Business Days of receipt of the Company's Response ('**Customer's Second Notice**').
- (e) Both parties will meet within 10 Business Days of the receipt of the Customer's Second Notice by the Company.
- (f) If within 5 Business Days of the meeting under this clause 12(c) the parties cannot resolve the dispute, then either party may refer the dispute to the Dispute Resolution Process.

13. DISCONNECTION FOR NON-PAYMENT

Without prejudice to any other remedies the Company may have under the Contractual Remedies Act 1979 or at law, if the Customer does not pay the Charges pursuant to the Terms, and has not disputed the Charges pursuant to clause 0 (*Disputing Invoices*), then without prejudice to the Company's right to terminate, the Customer will pay to the Company default interest on that amount at the Default Interest Rate, which will accrue daily from the due date for payment until the actual date for payment and such interest will accrue after, as well as before judgment. The Company will give the Customer a notice of disconnection, which will also specify the final date for payment of the amount payable before the disconnection is made. The Company shall be entitled to charge a fee if the Customer does not pay the arrears on the unpaid invoice or invoices within 5 Business Days of the Company's notice of disconnection. When, after payment by the Customer of all amounts payable on account of Services, the Company resumes Services to the Customer, the Company shall (without limiting its other remedies under these Terms) be entitled to charge a fee for re-supply of Services.

14. VOLUNTARY DISCONNECTION

If the Customer wishes to have its Services disconnected, the Customer must give at least 20 Business Days notice (**'Termination Notice'**) of the requested termination date so that a final meter reading can be made by the Company on the termination date. The meter reading will be undertaken by the owner of the meter, at a convenient time to the meter owner. The Company and/or the Customer's chosen Electricity Retailer will forward the final invoice to the Customer's new address which must be advised by the Customer in the Termination Notice. The final invoice will take into account the amount of any Bond paid by the Customer and all charges up to the Termination date including costs of the final reading and disconnection. If any Bond paid exceeds the amount of the invoice, the difference will be refunded to the Customer.

15. MAINTENANCE AND REPAIR COSTS

The Customer agrees to pay the Company's charges for maintenance of the Network, where in the Company's opinion, that maintenance required was caused by matters which were the responsibility of the Customer under clause 4 (*Line Services and Company's Obligations*) these Terms, including by way of example but not by way of limitation, overhanging trees or faulty appliances or wiring on the Customer's property. Subject to any statutory or regulatory requirement including the Electricity (Hazards from Trees) Regulations 2003, the Customer will meet the Company's Tree Requirements.

16. UNAUTHORISED INTERFERENCE

The Customer must not remove or interfere with or damage any Equipment including Metering Equipment maintained by the Company upon the Customer's Premises. Where the Company learns of the unauthorised removal of or damage to, or unauthorised interference with, any Equipment including Metering Equipment maintained by the Company upon the Customer's Premises, the Company shall without prejudice to its other rights or remedies under the Contractual Remedies Act 1979 or at law or under these Terms be entitled to take such of the following steps as it may deem appropriate:

- (a) To assess the extent and period of Services and to charge the Customer for all use of the Services at the highest rate prescribed in the Charges; and/or
- (b) To charge the Customer for the repair of any damaged Equipment or any damaged Metering Equipment; and or
- (c) To disconnect Services and cancel these Terms on 1 Business Day's Notice.

17. USE OF LINES SERVICES

The Customer must not use the Premises or any Services in any manner which:

- (a) May cause damage to or interference with any electrical Installation used to supply Electricity; or
- (b) May interfere with Services to any other person or with the electrical Installation of any other person; or
- (c) Is in breach of any legal requirements; or
- (d) May jeopardise the safety of any person or property

18. PROTECTION OF THE NETWORK

The Customer must not act to impair the quality or safety of the Services. The Company will require the Customer to remedy any situation where the Customer's actions or inactions affect the quality or safety of the Services. Without limiting the foregoing, the Customer must take reasonable care not to damage any Equipment (including any underground cables which are located on the Customer's Property or Premises. If the Company discovers any damage to or interference with any Equipment, if any without prejudice to its rights under the Contractual Remedies Act 1979 or at law or under these Terms, at its discretion take any of the following actions:

- (a) Repair the damage at the cost of the Customer; and/or
- (b) Install additional or replacement equipment at the cost of the Customer which the Company considers necessary or desirable; and/or
- (c) Charge the Customer at the highest rate applicable for all Services estimated by the Company to have been supplied to the Customer that was not recorded by the equipment as a result of the interference; and/or
- (d) Disconnect Services to the Customer's property until the matter has been fully investigated and resolved to the Company's satisfaction.

19. PROTECTION OF ELECTRICAL APPLIANCES

Where the Customer operates Electrical Appliances, the Customer shall ensure that adequate arrangements are made to protect such Electrical Appliances. Except where the Company has specifically agreed to bear the risk of the consequences of a disruption of Services by a supplemental agreement in writing, the Customer shall bear the risk of consequences of a disruption of Services and accordingly shall have no claim against the Company for any damage to electrical Appliances or other loss, whether direct or indirect and howsoever caused and whether by negligence or otherwise arising out of any failure, interruption or fluctuation in Services.

20. LOAD CONTROL

Where the Customer elects to take Services under Charges which allows the Company to exercise Load Control, the Company reserves the right to exercise Load Control at any time without notice.

21. PHASES, VOLTAGES AND POSITION OF METERS

The Company shall have the sole right to determine the number of phase and the voltage at which Services shall be provided, and the location of meters and other Equipment on the Customer's Premises.

22. POWER FACTOR

The power factor of any installation connected to the Network shall be maintained by the Customer at an average power factor of 0.95 (lagging) or greater.

23. INDEMNITY BY THE CUSTOMER

- (a) In consideration of the Company supplying Services to the Customer, the Customer indemnifies the Company and each of its Subsidiary companies against all loss (including any consequential loss) liabilities costs and expenses which may be incurred by the Company or any of its Subsidiaries, arising out of, or in connection with:
 - (i) Any breach of the Customer's representations in the Application Form; or
 - (ii) Any breach or non-performance by the Customer of its obligations under these Terms; or
 - (iii) Any errors omissions or mistakes made by the Customer in connection with the receipt by the Customer of Services.
 - (iv) Any claim, in relation to the Company, by any third party arising from:
 - (a) Any failure by the Customer to perform any obligation pursuant to these Terms;
 - (b) The disconnection of the Services to the Customer in accordance with these Terms;
 - (c) Any failure by the Customer to perform any obligation pursuant to any agreement between the Customer and any electricity Retailer;
 - (d) Any action undertaken by the Company under or in connection with these Terms at the request of the Customer.
- (b) The benefit of clause 4(a) (*Line Services and Company's Obligations*) is intended to extend to the Company's directors, officers, employees authorised agents, contractors and professional advisers and to be enforceable by them pursuant to the Contracts (Privity) Act 1982.

24. LIABILITY

- (a) Neither Party shall be liable to the other for any breach of these Terms, which is directly or indirectly caused by a circumstance of Force Majeure.
- (b) The Company shall not in any circumstances be liable to the Customer in respect of:
 - (i) Momentary fluctuations in the voltage or frequency of electricity conveyed or momentary nonconformity with harmonic voltage and current levels;
 - (ii) Any failure to convey electricity arising from the failure of the Customer or other person to observe or comply with the requirements of the Good Industry Practice;
 - (iii) Any failure to convey electricity arising from a failure or reduction of injection or supply of electricity into the Network;

- (iv) Any failure to convey electricity arising from any defect or abnormal conditions in or about the Customer's Premises; or
 - (v) Any failure to convey electricity as a result of action by the Company accordance with clauses 4 (*Line Services and Company's Obligations*) and 20 (*Load Control*);
 - (vi) Any failure to convey electricity due to an occurrence caused by the System Operator, a generator, or an electricity Retailer;
 - (vii) Any outage or fault caused by a failure in the Network that was not foreseeable and could not have been prevented by Good Industry Practice.
- (c) The Customer shall not in any circumstances be liable to the Company for:
- (i) Any failure to perform any obligation pursuant to these Terms caused by the Company's failure to comply with the same; or
 - (ii) Any failure to perform any obligation pursuant to these Terms directly caused by any defect or abnormal conditions in the Network.
- (d) The Company will not be liable for any Delay in performing, or failure to perform, obligations under these Terms if that delay or failure results from events or circumstances beyond the control of the Company including but not limited to:
- (i) Any act of God, strike, lockout, other industrial disturbances not involving the Company, acts of the public enemy, civil disturbances, riots, epidemics, landslips, landslides, geomagnetically-induced currents, earthquakes, fires, storms, floods, drought, other natural catastrophes; or
 - (ii) A partial or entire failure of or reduction in transmission by the National Grid or the Network for any cause other than arising out of a failure on the part of the Company to act as a Reasonable and Prudent operator; or
 - (iii) Any other event or circumstance beyond the control of the Company.
- (e) Despite any other provision in these Terms the Company will not be liable for any amount in excess of \$10,000 for any one event, or series of related events, and \$30,000 in any 12 month period.
- (f) The benefits of this clause will extend to the offices, employees and agents of the Parties, and may be enforced by those persons pursuant to the Contracts (Privity) Act 1982.
- (g) All other liability of the company, including any liability in tort, is hereby excluded to the fullest extent permitted by the law.

25. LIMITATION OF LOSS – THE CONSUMER GUARANTEE ACT 1993

If the Customer uses Services or Lines Services from the Company for business purposes the liability of the Company for any loss or damage is negated, whether under the Consumer Guarantees Act 1993 or any other statutory or common law provision, to the fullest extent legally possible.

26. PROTECTION OF SYSTEM OPERATOR

The Company has entered into contracts with the System Operator for the supply of Services to the Company by means of the national grid. Except to the extent that those obligation cannot lawfully be limited or excluded, the Customer agrees that the System Operator will not be liable to the Customer for any act or omission including negligence relating directly or indirectly to the supply of Services under its contracts with the Company. For the purposes of the Contracts

(Privacy) Act 1982, it is hereby declared that this immunity is intended to confer legally enforceable rights on the System Operator.

27. SUPPLEMENTAL AGREEMENT

The Customer may by special agreement in writing with the Company enter into a supplemental agreement varying modifying or adding to these Terms. In that event these Terms will be read subject to the supplemental agreement. The Company also reserves the right to stipulate special terms and condition on which Services will be made in any case when the Company considers it necessary or expedient to do so.

28. DISPUTE RESOLUTION PROCESS

- (a) The Company and the Customer shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference that may arise between them concerning any matter arising under these Terms.
- (b) Every dispute or difference that is not resolved by discussion between the Company and the Customer may be referred by either party to mediation.
- (c) If a dispute has been referred to mediation then the Parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the Parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. Each party shall each bear their own costs in the mediation, and each party shall each pay half the costs of the mediator.
- (d) The matter in dispute shall be referred to arbitration if:
 - (i) The parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
 - (ii) Mediation has taken place and no agreement has been reached.
- (e) The dispute or difference shall be referred to a sole arbitrator for resolution if the Parties agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.
- (f) Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- (g) The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.
- (h) This clause 28 (*Dispute Resolution Process*) does not apply to the Charges, or the methodology by which they are calculated, which may be set and determined at the discretion of the Company in accordance with clause 4 (*Line Services and Company's Obligations*).

29. ASSIGNMENT

- (a) The Customer may not assign the benefit of these Terms or any part of these Terms to any other person.

- (b) The Company may assign their benefits and/or obligations under these Terms to any other person or company.

30. NOTICES

Any notice or invoice sent to the Customer by the Company shall be properly sent if posted, delivered or emailed, or sent by facsimile transmission, to the Customer's last known address (including email address or facsimile number) as notified in writing by the Customer to the Company and will be deemed to have been received by the Customer:

- (a) Two (2) Business Days after the date of posting; or
- (b) On the date of delivery; or
- (c) On the date of transmission if by facsimile or email.

Any notice from the Customer to the Company ('**Customer Notice**') must be in writing and either posted to and received by the Company at the Company's Address.

31. ALTERNATIVE SUPPLIER

Subject to the Electricity Retailer having entered into the Company's use of system agreement, the Customer may elect to receive Services from an Electricity Retailer. If the Customer elects to receive Services from a Retailer, the Customer must not give less than thirty (30) days Customer Notice to the Company of the Customer's intention to take Services from that Retailer. In that event the Customer will remain liable for all amounts owing to the Company under these Terms.

32. NETWORK ADDITIONS AND ALTERATIONS

If a Customer or a prospective Customer makes an application for Services which, in the opinion of the Company, cannot reasonably be provided from the existing facilities on the Network, or which requires additions or alterations to the Network, the Company may require the Customer to contribute to the cost of those additions or alterations. The Company also reserves to itself the absolute discretion on any decision to add to or alter the Network.

33. AMENDMENTS TO TERMS

These Terms may be amended at any time by the Company giving prior Notice to the Customer of the proposed amendment and /or by the Company causing a notice to be Published, in each case specifying the proposed amendment and the date on which such amendment is to take effect. Any such amendment shall come into force on the date so specified in the Notice given to the Customer and/or Published, and except where otherwise specifically agreed to in writing between the Customer and the Company, the Customer shall be deemed to have accepted the amendment if the Customer continues to receive Services from the Company after the date specified in the Notice as the date the amendment is to take place.

34. TERMINATION

- (a) An Event of Default occurs if:
 - (i) A Party fails to pay any amount due and owing to the other Party under these Terms and the default is unremedied at the expiry of 5 (five) Business Days immediately following the giving of written notice by the other Party to the first Party of such non-payment; or

- (ii) A Party fails in the reasonable opinion of the other Party in any material respect to perform or comply with any of its obligations under these Terms and (if it is capable of remedy) such failure is not remedied to the reasonable satisfaction of the other Party within 10 Business Days of the first Party receiving a written notice from the other Party specifying the failure and requiring it to be remedied;
 - (iii) A Party: becomes subject to any distress, attachment, execution or other legal process levied, enforced, issued on or against any material part of its property which is not discharged or stayed within 10 Business Days; or
 - (iv) A Party has a receiver or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets; or
 - (v) A Party is deemed or presumed to be unable to pay its debts as they fall due, becomes or is deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, 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;
 - (vi) A Party is removed from the register of companies or is subject to liquidation, either where an application for an order is made or an effective resolution is passed for its liquidation or a petition for winding up the Party is made; or
 - (vii) A Party ceases to hold any licence or fails to comply with any other statutory or regulatory requirement.
 - (viii) In the case of the Customer sells its business (or its undertaking, property or assets comprising the major part of its business) without the prior consent of the Company (such consent not to be unreasonably withheld); or
 - (ix) In the case of the Customer, breaches clauses 5 (*Prudential Requirements*), 6(b) (*Allocation of Responsibility*), 7 (*Metering*) or 8 (*Access*).
- (b) If an Event of Default has occurred in accordance with clauses 5(a) (*Prudential Requirements*), 6(b) (*Allocation of Responsibility*) 7 (*Metering*) or 8 (*Access*) which relates to the Customer, and which remains unremedied then, in addition to any other rights under these Terms, the Company may, after giving prior written notice to the Customer, disconnect the supply of Services to the Customer.
- (c) In the event the Event of Default remains unremedied, and the non-defaulting Party gives not less than one (1) day's written notice:
- (i) The Company (if the non-defaulting Party) may apply any cash bond or enforce any other form of security for payment provided under clause 3 (*Duration of Terms*), to payment of all or part of the Charges; and/or
 - (ii) The non-defaulting Party may terminate these Terms, without prejudice to any of its other rights and remedies in which event the Company shall cease providing Services and, if the Customer is the defaulting Party, the Customer will be disconnected (at the cost of the Customer);
- (d) Following termination of these Terms the Company may, without further recourse to the Customer, access any Metering Equipment to determine charges outstanding at the time of termination.
- (e) These Terms may also expire if:
- (i) It becomes illegal for either Party to perform any provision of these Terms to an extent which is material and the Party (for whom it has become illegal) properly gives not less than 5 (five) Business Day's written notice of termination to the other Party (provided that before giving the notice that Party consults with the other as to the means available to either Party to remedy or overcome the illegality); or

- (ii) If the Customer is unable to perform any provision of these Terms to an extent which is material by reason of any statute and the Customer (unable to perform) properly gives not less than 5 (five) Business Day's written notice to the other Company; or
 - (iii) If the Customer has properly given notice to the Company pursuant to clause 14 (*Voluntary Disconnection*); or
 - (iv) If the Company gives the Customer not less than 30 days notice; or
 - (v) Upon written agreement of the Parties; or
- (f) Expiration of these Terms (for any reason) shall be without prejudice to the right of either Party to recover from the other any amount which is or may become due to it under these Terms and is without waiver of any remedy to which either Party may become entitled.
- (g) Upon expiration of these Terms (for any reason):
- (i) A Party will return to the other Party all property of that other Party held by the first Party and will take all reasonable steps to procure the return of any such property held or controlled by a Customer;
 - (ii) The Customer will cease its use of the Network and the Company may, at the Customer's cost, disconnect and/or cease all or any of the Services to the Customer from the Network.
 - (iii) The Customer shall provide to the Company all information relating to the consumption of electricity at Customer's Premises that the Company may reasonably require to determine the Charges outstanding at the time of termination; and
 - (iv) All other agreements and arrangements that relate to the use of the Network by the Customer shall terminate immediately.

35. SEVERABILITY

If any provision of these Terms is invalid, illegal or unenforceable, it will be severed and all other provisions will remain in full force and effect.

36. INTERPRETATION

- (a) In these Terms, unless the context otherwise requires, the following words and phrases shall bear the following meaning:
- (i) 'Agreement' means these Terms as amended from time to time;
 - (ii) 'Application Form' means the Company's standard form of application for Services pursuant to which a Customer requests the supply of Services;
 - (iii) 'Bond' means a bond provided by a financial institution or other person acceptable to the Company pursuant to which the obligor under the bond promises to pay the Company an amount to be determined by the Company as the amount necessary (acting reasonably).
 - (iv) 'Business Day' means any day of the week other than a Saturday or a Sunday or a statutory holiday as observed in Hamilton;
 - (v) 'Charges' means the charges payable by the Customer to the Company determined from time to time in accordance with these Terms, as defined more

particularly on the Company's website as advised by the Company to the Customer from time to time, and currently at www.wel.co.nz;

- (vi) 'Company' means WEL Networks Ltd, its successors and assigns, and where the context permits includes any wholly owned Subsidiary of the Company through which the Company provides any part of its services under these Terms.
- (vii) 'Company Address' means such as address the Company advises the Company of from time to time, and until further notice means one or more of;
 - (a) WEL Networks Ltd
P O Box 925
Hamilton
 - (b) 3rd Floor
WEL House
711 Victoria Street
Hamilton
 - (c) Fax: 07 858 1447
 - (d) supply@wel.co.nz
- (viii) 'Company's response' has the meaning given to it in clause 12 (*Disputing Invoices*)
- (ix) 'Customer' means a person connected to the Network to whom Services has been, is being or will be made by any person;
- (x) 'Customer Notice' has the meaning given to it in clause 30 (*Notices*)
- (xi) 'Customer's First Notice' has the meaning given to it in clause 12 (*Disputing Invoices*)
- (xii) 'Customer's Second Notice' has the meaning given to it in clause 12 (*Disputing Invoices*)
- (xiii) 'Default Interest Rate' means 15% per annum.
- (xiv) 'Dispute Resolution Process' means the process specified in clause 28 (*Dispute Resolution Process*).
- (xv) 'Distribution Code' means any code, rules, standards or other provisions adopted by the Company from time to time stating the Company's requirements in respect of Customers' Installations and their operation;
- (xvi) 'Duly Authorised Agent' means any person carrying the Company's identification and authorised by the Company to carry out any of its activities;
- (xvii) 'Effective Date' means 1 January 1999, or the date of Publication of these Terms.
- (xviii) 'Electrical Appliance' means any appliance that uses or is designed or intended to use Electricity whether or not it uses or is designed or intended to use any other form of energy;
- (xix) 'Electricity' means electrical energy as measured by the Company in kilowatt-hours (kWh) in accordance with these Terms;
- (xx) 'Equipment' means any fittings or instruments relating to the supply, control or measurement of Services installed or located either on a Network or on the Customer's Premises and includes meters;
- (xxi) 'Event of Default' means any of the circumstances specified in 34(a) (*Termination*).

- (xxii) 'Force Majeure' means:
- (1) fire, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, elements of nature or acts of God;
 - (2) acts of war, terrorism, acts of public enemy, explosion, epidemic, embargo, riot or civil disturbance;
 - (3) strike or other labour dispute, sabotage, expropriation, confiscation or requisitioning of facilities;
 - (4) orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction obtained by a party who is not a Party to, nor related to a Party to, these Terms; or
 - (5) any other matter or event which is beyond the control of the relevant party and the effects of which the relevant party could not take reasonable measures to prevent or mitigate;
- (xxiii) 'GST' means goods and services tax payable pursuant to the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefore;
- (xxiv) '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 in New Zealand;
- (xxv) 'Installation' means any installation on the Customer's Premises that forms part of a system for conveying electricity and includes wiring and any Electrical Appliances;
- (xxvi) 'Line Services' means the provision by the Company to the Customer through a Network of transmission and distribution services for the supply of Electricity and includes the operation and maintenance of Equipment on the Customer's Premises, the control of voltage, and the Load Control Service for the purposes of conveying electricity purchased by the Customer;
- (xxvii) 'Load Control' means the function of reducing or interrupting a part of the Customer's supply of electricity;
- (xxviii) 'Load Control Service' means the provision by the Company of Load Control on the basis of the Distribution Code, and these Terms. Load Control Services may be provided in respect of, without limitation, the supply of water heating; ;
- (xxix) 'Metering Equipment' means any apparatus which permits the measurement of the quantity of Electricity and/or Services supplied to the Customer, or to interrupt Electricity Supply and/or Services;
- (xxx) 'Network' means the existing plant, lines and other facilities (including all associated civil works and fixtures and the Company's load control equipment) utilised by the Company for the purposes of distributing Electricity Services to Customers, and includes all additions and alterations thereto, fault repairs and maintenance thereof;
- (xxxi) 'Notice' means a notice given to the Customer in accordance with clause 30 (*Notices*) of these Terms;
- (xxxii) 'Party' and 'Parties' mean either or both of the Company and the Customer as the case may be;
- (xxxiii) 'Period of Inaccuracy' means the period between the most recent prior test (pursuant to Good Industry Practice) conducted on the Metering Equipment by

the Company or by or on behalf of the Customer, and the time at which it is determined that Metering Equipment cannot measure or measures inaccurately;

- (xxxiv) 'Point of Connection' means a point at which a supply of electricity may flow between the Network and the Customer's Installation as defined by the Company.
 - (xxxv) 'Premises' in relation to a Customer means any part of any building or structure of Electrical Appliance to which Services are made;
 - (xxxvi) 'Property' means in relation to a Customer any interest or estate in land including a license on which the Premises are situated;
 - (xxxvii) 'Prudential Requirements' has the meaning given to it in clause 5 (*Prudential Requirements*).
 - (xxxviii) 'Publication' or 'Publish' means one or more of the following, as determined by the Company in their sole discretion, from time to time:
 - (a) making available on the Company's website, being www.wel.co.nz or such other website as the Company may advise from time to time.
 - (b) notice in a paper circulated or available in the Hamilton City area.
 - (c) by Notice to the Customer.
 - (xxxix) 'Ready Access' includes the requirement by the Customer to make arrangements satisfactory to the Company (including the removal of all impediments) for access by the Company's Duly Authorised Agents to the Customer's Metering Equipment.
 - (xl) 'Retailer' has the meaning given to it in the Rules;
 - (xli) 'Rules' means the Electricity Governance Rules 2003 or the Electricity Governance Regulations 2004, as amended and updated from time to time.
 - (xlii) 'Services' means the provision of Line Services and such other Services as the parties may agree on, by the Company to a Customer through the Network in accordance with these terms.
 - (xliii) 'Subsidiary' means a subsidiary of the Company as defined by the Companies Act 1993;
 - (xliv) 'System Operator' means system operator as defined in the Rules;
 - (xlv) 'System Operators' Network' means the electricity transmission system owned and operated as the national grid by the System Operator.
 - (xlvi) 'Tariff Schedule' means the list or lists prepared from time to time by the Company setting out the standard prices for Services, Line Services and other services provided by the Company to customers.
 - (xlvii) 'Termination Date' means the date these Terms are terminated in accordance with Clause 34 (*Termination*).
 - (xlviii) 'Termination Notice' has the meaning given to it in clause 14 (*Voluntary Disconnection*).
 - (xlix) 'Terms' means these Terms as published by the Company and amended, altered, and updated from time to time;
 - (l) 'Tree Requirements' means the Company's policy on trees and vegetation as Published from time to time
- (b) In these Terms, if not inconsistent with the context:

- (i) Plural and Singular - words importing only the singular number include the plural and vice versa, and words importing any gender include all other genders.
 - (ii) Persons - person includes an individual, a company, a partnership, a body corporate, a firm, joint venture, a trust, an unincorporated body, a local authority, a statutory authority and the Crown;
 - (iii) Negative obligations - any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause something to be done.
- (c) Headings shall not affect the interpretation of these Terms;
- (d) Unless the context requires otherwise, references to a statute include;
- (i) Amendments to that statute; and
 - (ii) Any statute passed in substitution for that statute; and
 - (iii) Regulations passed under that statute and under any amendment to that statute.
- (e) References to clauses are to clauses of these Terms unless the context otherwise requires.
- (f) Clause 5 (*Prudential Requirements*), Clause 8 (*Access*), Clause 9 (*Charges*), Clause 16 (*Unauthorised Interference*), Clause 17 (*Use of Line Services*), Clause 18 (*Protection of the Network*) are essential clauses of these Terms and accordingly any breach by the Customer of any such provision shall entitle the Company to cancel these Terms in relation to the Customer immediately without notice.
- (g) These Terms shall also be deemed to incorporate the Charges and these Terms shall be construed as if the Charges were set out in a schedule to these Terms and were incorporated by reference into these Terms.
- (h) In performing any of its obligations under these Terms, the Company may act through independent contractors.
- (i) Except as otherwise specifically provided in these Terms, the Parties do not intend to create rights in or grant remedies to any third party as a beneficiary of these Terms and all covenants, stipulations, promises and agreements herein contained shall be for the sole and exclusive benefit of the Customer and the Company.
- (j) The rule of construction known as the *contra proferentem* rule does not apply to these terms.