

Effective Date: 1 January 2009

Dated 1 January 2009

**CONSTITUTION FOR THE ELECTRICITY AND GAS
COMPLAINTS COMMISSIONER SCHEME**

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CONSTITUTION FOR THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME

DATED 7 AUGUST 2001

THIS CONSTITUTION IS MADE BY DEED IN THE FOLLOWING CIRCUMSTANCES:

The parties to this Constitution are Retailers and Lines Companies who wish to establish an Electricity and Gas Complaints Commissioner Scheme for the electricity and gas sectors. This Scheme is supported by an Electricity Code of Practice and a Gas Code of Practice for Consumer Contracts, a Land Code of Practice, an Electricity Consumer Dispute Resolution Protocol, a Gas Consumer Dispute Resolution Protocol and a Land Complaints Dispute Resolution Protocol.

THE PARTIES TO THIS DEED AGREE AS FOLLOWS:

1. INTERPRETATION

Definitions

1.1 The following terms have the meanings set out below:

<i>Term</i>	<i>Meaning</i>
"Board"	The Board of the Council.
"Chief Ombudsman"	The Chief Ombudsman appointed under the Ombudsmen Act 1975.
"Class"	A class referred to in Clause 3.2.
"Clause(s)"	A clause in the main body of this Constitution and in the Schedules to this Constitution. References to a clause prefixed by the letters A, B, C, CA, CB, D, DA, or DB relate to clauses of Schedules A, B, C, CA, CB, D, DA, or DB respectively.
"Codes of Practice"	The Electricity Consumer Code of Practice, the Gas Consumer Code of Practice, and the Land Code of Practice.
"Commencement Date"	7 August 2001, which is the date on which this Constitution comes into force.
"Commission"	The Electricity and Gas Complaints Commission.
"Commission Member"	A person appointed to the Commission.

Term	Meaning
“Complaint Managing Company”	The Council Member designated under the Electricity Consumer Dispute Resolution Protocol, Gas Consumer Dispute Resolution Protocol or Land Complaints Dispute Resolution Protocol as the Council Member responsible for managing and resolving a Complaint.
“Complainant”	<p>In relation to a Consumer Complaint, a Consumer making a Complaint or any person making the Complaint with the Consumer’s authority on the Consumer’s behalf.</p> <p>In relation to a Land Complaint, a Land Owner or Land Occupier making a Complaint or any person making the Complaint with the Land Owner or Land Occupier’s authority on the Land Owner or Land Occupier’s behalf.</p>
“Complaint”	A Consumer Complaint or a Land Complaint, as the case may be.
“Constitution”	This constitutional deed, including the Schedules, agreed and adopted by all Council Members listed in the Register or as amended or substituted from time to time in accordance with this Deed.
“Consumer”	<p>In the case of an electricity Consumer:</p> <ul style="list-style-type: none">(a) a Person who is supplied, or who applies to be supplied, with electricity by an Electricity Retailer in accordance with a Consumer Contract for consumption of electricity;(b) a Person who is supplied, or who applies to be supplied, with Line Function Services for electricity in accordance with a Consumer Contract;(c) a Person using the Services supplied under that Consumer Contract or paying part or all of the fees for the Services provided under the Consumer Contract; and(d) a Person in relation to a Consumer Complaint under paragraph (b) or (c) of the definition of “Consumer Complaint” who:<ul style="list-style-type: none">(i) has been disconnected in error by an Electricity Company Council Member (whether or not that Council Member has a Consumer

Term

Meaning

Contract with the Consumer); or

- (ii) has been transferred (switched) without consenting to the transfer from his or her Electricity Retailer Council Member to another Electricity Retailer Council Member.

In the case of a Gas Consumer:

- (a) a Person who is supplied, or who applies to be supplied, with Gas by a Gas Retailer in accordance with a Consumer Contract for consumption of Gas;
- (b) a Person who is supplied, or who applies to be supplied, Line Function Services for Gas in accordance with a Consumer Contract;
- (c) a Person using the Services supplied under that Consumer Contract or paying part or all of the fees for the Services provided under the Consumer Contract; and
- (d) a Person in relation to a Consumer Complaint under paragraph (b) or (c) of the definition of "Consumer Complaint" who:
 - (i) has been disconnected in error by a Gas Company Council Member (whether or not that Council Member has a Consumer Contract with a Consumer); or
 - (ii) has been transferred (switched) without consenting to the transfer from his or her Gas Retailer Council Member to another Gas Retailer Council Member.

"Consumer Complaint"

A Complaint made by a Complainant about:

- (a) the provision of Services by a Council Member to a Consumer under a Consumer Contract;
- (b) the disconnection of a Consumer in error by a Council Member (whether or not that Council Member has a Consumer Contract with the Consumer); or
- (c) the transfer (switching) of a Consumer without that Consumer consenting to the transfer from his or her

<i>Term</i>	<i>Meaning</i>
	Retailer Council Member to another Retailer Council Member.
“Consumer Contract”	A Conveyance Only Consumer Contract, an Interposed Consumer Contract, or a Supply Only Consumer Contract and includes any other publications which contain information about the Services supplied to Consumers.
“Contracting Company”	A Retailer or a Lines Company who is a party to a Consumer Contract.
“Conveyance Only Consumer Contract”	A contract between a Consumer and a Lines Company for the supply of Line Function Services to the Consumer.
“Council”	The Electricity and Gas Complaints Council.
“Council Member(s)”	A Retailer or Lines Company that is a Member of the Council.
“Deed”	This constitutional Deed, excluding the Schedules, agreed and adopted by all Council Members listed in the Register or as amended or substituted from time to time in accordance with this Deed.
“Deed of Adoption”	The deed in Schedule E or any document with similar intent that is approved by the Board.
“Defaulting Council Member”	Any Council Member who neglects or wilfully refuses to: (a) comply with this Constitution; or (b) pay any fee or levy required by the Board or the Commission within three months of a demand for the amount owing and being paid, or who fails to comply with any binding decision, award or recommendation made by the Electricity and Gas Complaints Commissioner in accordance with the Terms of Reference.
“Distribution System”	“Distribution system” as that term is defined in section 2 of the Gas Act 1992.
“Electricity and Gas Complaints Commissioner”	The Electricity and Gas Complaints Commissioner appointed by the Commission.
“Electricity Company”	A Person that is an Electricity Retailer and/or an Electricity Lines Company.

<i>Term</i>	<i>Meaning</i>
“Electricity Consumer Code of Practice”	The Electricity Consumer Code of Practice set out in Schedule C as amended or substituted from time to time by the Council.
“Electricity Consumer Dispute Resolution Protocol”	The Electricity Consumer Dispute Resolution Protocol set out in Schedule D as amended or substituted from time to time by the Council.
“Electricity Lines Company”	<p>In relation to Consumer Complaints, a Person who operates a local network for conveying electricity and provides Line Function Services to Electricity Retailers or directly to Consumers.</p> <p>In relation to Land Complaints:</p> <p>(a) A person who operates a local network for conveying electricity and providing Line Function Services to Electricity Retailers or directly to Consumers; and</p> <p>(b) Transpower New Zealand Limited.</p>
“Electricity Registry”	The Electricity Registry is the national database established by the Electricity Commission containing information on every point of connection on a network from which electricity is supplied to a site. It includes any registry or recording system that may replace this arrangement and that is recognised by Electricity Companies for electricity reconciliation purposes
“Electricity Retailer”	A Person who supplies electricity to Consumers.

Term	Meaning
“Electricity Works”	<p>(a) Any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but</p> <p>(b) does not include:</p> <p>(i) any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person’s use and not for supply to any other person; or</p> <p>(ii) any part of any electrical installation,</p> <p>and for the purposes of this definition, any terms defined in the Electricity Act 1992 have the same meaning in this definition.</p>
“Financial Year”	<p>The period from Commencement Date to 31 March 2002 and for every subsequent period commencing on 1 April and ending on 31 March of the following year.</p>
“Gas”	<p>Natural gas, which meets the New Zealand Specification for Reticulated Natural Gas NZS5442:1990 (as amended or replaced from time to time), that is supplied to a Consumer through a Distribution System but excludes, to avoid doubt:</p> <p>(a) LPG; and</p> <p>(b) CNG for transportation purposes.</p>
“Gas Company”	<p>A Person that is a Gas Retailer and/or a Gas Lines Company.</p>
“Gas Consumer Code of Practice”	<p>The Gas Consumer Code of Practice set out in Schedule CA as amended or substituted from time to time by the Council.</p>
“Gas Consumer Dispute Resolution Protocol”	<p>The Gas Consumer Dispute Resolution Protocol set out in Schedule DA as amended or substituted from time to time by the Council.</p>

<i>Term</i>	<i>Meaning</i>
“Gas Lines Company”	<p>In relation to Consumer Complaints, a Person who operates pipelines for the conveyance of Gas and provides Line Function Services to a Gas Retailer (including to itself as a Gas Retailer) or directly to Consumers. A Gas Lines Company may also be a Gas Retailer.</p> <p>In relation to Land Complaints, a Person who operates pipelines for the conveyance of Gas and provides Line Function Services to any person (including to itself as a Gas Retailer), including the conveyance of Gas by means of Gas Transmission Pipelines.</p>
“Gas Pipeline”	<p>Any equipment that is used in, or in connection with, the conveyance of Gas.</p>
“Gas Registry”	<p>The databases of gas ICPs maintained by Gas Lines Companies relating to their energised Consumer ICPs and those energised Consumer ICPs of Gas Retailers to which a Gas Lines Company provides Line Function Services, which as a whole provide a complete register of gas ICPs. It includes any registry or recording system that may replace this arrangement and that is recognised by Gas Companies for Gas reconciliation purposes.</p>
“Gas Retailer”	<p>A Person who supplies Gas to Consumers.</p>
“Gas Transmission Pipelines”	<p>Pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals.</p>
“General Enquiry”	<p>An enquiry made to the Electricity and Gas Complaints Commissioner regarding the Scheme about how a Consumer, Land Owner or Land Occupier can resolve a Complaint but does not include a Consumer or Land Complaint.</p>

Term	Meaning
“Installation Control Point (ICP)”	<p>In the case of electricity, the point at which a Consumer’s property is supplied with electricity and at which the supply of electricity may flow between the Lines Company’s network and that Consumer’s property only, subject to any amendment to the term “point of supply” under the Electricity Act 1992. Each ICP has a unique identifier.</p> <p>In the case of Gas, the point on a Gas Lines Company’s Distribution System at which Gas may flow between the Distribution System and the Consumer’s premises, which the Gas Lines Company nominates as the point at which a Gas Retailer is deemed to supply Gas to a Consumer. Each ICP has a unique identifier.</p>
“Interposed Consumer Contract”	<p>A contract between a Consumer and a Retailer that includes the provision of Line Function Services to the Consumer.</p>
“Joint Class”	<p>In the case of Lines Companies, all Electricity Lines Companies together with all Gas Lines Companies.</p> <p>In the case of Retailers, all Electricity Retailers together with all Gas Retailers.</p>
“Land”	<p>Includes any estate or interest in land.</p>
“Land Agreement”	<p>Any agreement, including any easement or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer Contract.</p>
“Land Code of Practice”	<p>The Land Code of Practice set out in Schedule CB as amended or substituted from time to time by the Council.</p>
“Land Occupier”	<p>In relation to Land, either:</p> <ul style="list-style-type: none">(a) an inhabitant occupier of the Land; or(b) any person who has a right to occupy the Land by virtue of a lease, sub-lease, or licence granted by the Land Owner or another Land Occupier entitled to so grant.

Term	Meaning
“Land Owner”	<p>In relation to Land that is held under:</p> <ul style="list-style-type: none">(a) the Land Transfer Act 1952, the person(s) that own(s) the Land in fee simple;(b) the Land Act 1948, the Crown; and.(c) any other statute, the legal or beneficial owner of the Land (as appropriate) as specified in that statute.
“Land Complaint”	<p>A Complaint that a Lines Company has unlawfully affected a Land Owner’s or Land Occupier’s rights, in respect of the Land Owner’s or Land Occupier’s Land, in the course of the Lines Company’s exercise, purported exercise, or failure to exercise rights, powers or obligations under:</p> <ul style="list-style-type: none">(a) the Gas Act 1992 and the Gas Regulations 1993; or(b) the Electricity Act 1992, the Electricity Regulations 1997 and the Electricity (Hazards from Trees) Regulations 2003; or(c) a Land Agreement; <p>but does not include a complaint in respect of any of the matters listed in Clause 1.3.</p>
“Land Complaints Dispute Resolution Protocol”	<p>The Land Complaints Dispute Resolution Protocol set out in Schedule DB as amended or substituted from time to time by the Council.</p>
“Lines Company”	<p>An Electricity Lines Company or a Gas Lines Company.</p>
“Lines Complaint”	<p>Any Consumer Complaint about Line Function Services and, in relation to Conveyance Only Consumer Contracts, includes Consumer Complaints about billing.</p>
“Lines Equipment”	<p>Electricity Works or Gas Pipelines, as the case may be.</p>

Term	Meaning
“Line Function Services”	<p>In the case of electricity, has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in a Consumer Contract and includes metering services where an Electricity Lines Company provides these services.</p> <p>In the case of Gas, has the meaning set out in section 2 of the Gas Act 1992 (but excludes Gas transmission, as that term is defined in the Gas Act 1992, unless the Gas transmission is provided to a Consumer as Line Function Services under an Interposed Consumer Contract) and as further provided for in a Consumer Contract and includes metering services where a Gas Lines Company provides these services.</p>
“Month”	A calendar month.
“Person(s)”	A partnership, body corporate, trust, unincorporated association, authority, or natural person and includes a group of persons.
“Proportionate Basis”	The formula for determining the amount of funding each Council Member must contribute and the way funding must be distributed as set out in Clause 4.1A or Clause 4.1B.
“Protocols”	The Electricity Consumer Dispute Resolution Protocol, the Gas Consumer Dispute Resolution Protocol, and the Land Complaints Dispute Resolution Protocol.
“Register”	The public register provided for in the Rules which records the membership of the Council, and the names of Commission Members and the Electricity and Gas Complaints Commissioner.
“Retail Complaint”	Any Consumer Complaint about Retail Services.
“Retail Services”	All services supplied under an Interposed Consumer Contract (except Line Function Services) and all services supplied under Supply Only Consumer Contracts and includes metering services where a Retailer provides these services.
“Retailer”	An Electricity Retailer or a Gas Retailer.
“Rule(s)”	The Rules of the Commission, as set out in Schedule A and as amended or substituted from time to time.
“Schedule(s)”	A Schedule to this Constitution.

Term	Meaning
“Scheme”	The Electricity and Gas Complaints Commissioner Scheme established under this Constitution (insofar as it relates to the Rules, Terms of Reference and Codes of Practice) to provide a mechanism for resolving Complaints.
“Secretary”	The Secretary appointed under the Rules.
“Services”	Retail Services and Line Function Services which a Retailer or Lines Company contracts to provide to a Consumer under a Consumer Contract. References to the provision of Services include, where the context requires, references to their non-provision.
“Supply Only Consumer Contract”	A contract between a Consumer and a Retailer that does not include the provision of Line Function Services to the Consumer.
“Terms of Reference”	The Terms of Reference governing the powers and duties of the Electricity and Gas Complaints Commissioner, which are set out in Schedule B or as amended or substituted from time to time by the Council.
"Use of System Agreement"	An agreement between a Lines Company and a Retailer relating to the supply of Line Function Services to the Retailer.
“Working Day”	Every Monday to Friday, but does not include a public holiday.
“Writing” or “Written”	Any mode of representing or reproducing words or figures in a visible form, including words or figures displayed on an electronic screen.

References to statutes, etc

- 1.2 A reference to a statute, regulation or other statutory instrument includes consolidations, amendments, re-enactments or replacements of the provision(s) referred to.

Exclusions from the definition of Land Complaint

- 1.3 The following matters are not included in the definition of Land Complaint under Clause 1.1:
- (a) any dispute as to whether Lines Equipment was lawfully fixed or lawfully installed in terms of section 22 of the Electricity Act 1992 in respect of Electricity Works and section 23 of the Gas Act 1992 in respect of Gas Pipelines;

- (b) any dispute as to whether, in respect of Lines Equipment that was constructed or for which construction commenced before 1 October 2006 but to which neither section 22 of the Electricity Act 1992 nor section 23 of the Gas Act 1992 (as the case may be) apply, a Lines Company holds the legal right for that Lines Equipment to be fixed in, over, under or across Land;
- (c) any dispute as to whether or not Lines Equipment constructed or for which construction commenced before 1 October 2006 is owned by a Lines Company;
- (d) any dispute involving a local authority or other body or person having jurisdiction over a road or level crossing that relates to or arises from the construction or maintenance of Lines Equipment in, on, along, over or across roads and level crossings under sections 24–33 of the Electricity Act 1992 and sections 25–35 of the Gas Act 1992;
- (e) any dispute relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981;
- (f) any dispute relating to or arising from a refusal to grant a dispensation under regulation 20 of the Electricity (Hazards from Trees) Regulations 2003 or the terms of a dispensation granted under regulation 20;
- (g) any dispute as to whether the maintenance programme carried out by a Lines Company on Lines Equipment is adequate or reasonable;
- (h) any dispute as to whether or not a replacement or upgrade of an Electricity Work causes Land to be injuriously affected in terms of section 23(3)(b) of the Electricity Act 1992;
- (i) any dispute as to whether any changes to Lines Equipment carried out in the exercise of powers under the Electricity Act 1992 or the Gas Act 1992 have injuriously affected Land in terms of section 57(1) of the Electricity Act 1992 or section 51(1) of the Gas Act 1992, including disputes about the amount of compensation that may be payable in relation to such injurious affection. For the avoidance of doubt, this Clause does not exclude disputes about whether or not a Lines Company has complied with any obligation it may have to mitigate or repair damage to Land or property in or under any of the Acts or regulations referred to in the definition of “Land Complaint” in Clause 1.1, a Land Agreement, or Clause CB6 or Appendix A or B of the Land Code of Practice; and
- (j) any dispute relating to the quality of electricity or Gas supplied by a Lines Company to a Consumer, or any interruption in the supply of electricity or Gas or the provision of Line Function Services.

1.4 For the avoidance of doubt:

- (a) a Consumer Complaint cannot be made under the Scheme in relation to the services provided by Transpower New Zealand Limited or any failure by Transpower New Zealand Limited to provide any services;

- (b) a Consumer Complaint cannot be made under the Scheme in relation to the services provided by any Gas Lines Company Council Member that relate to the conveyance of Gas by means of Gas Transmission Pipelines or any failure by such a person to provide any such services;
- (c) a Land Complaint cannot be made under the Scheme in relation to a Retailer Council Member;
- (d) Transpower New Zealand and any Gas Lines Company Council Member, to the extent that the Council Member conveys Gas by means of Gas Transmission Pipelines, are not subject to the provisions of this Deed or the Scheme relating to Consumer Complaints, but are otherwise subject to the provisions of this Deed and the Scheme in full; and
- (e) Retailer Council Members are not subject to the provisions of this Deed or the Scheme relating to Land Complaints except as provided in the Land Complaints Dispute Resolution Protocol, but are otherwise subject to the provisions of this Deed and the Scheme in full.

2. FUNCTIONS AND POWERS

Establishment of a Council and Commission

2.1 There is hereby established:

- (a) a Council to be known as the Electricity and Gas Complaints Council; and
- (b) a Commission to be known as the Electricity and Gas Complaints Commission.

2.2 The Council has the function of providing industry support for the Scheme.

Powers

2.3 The Council has all the powers of a natural person when implementing and administering the Constitution including (without limitation) the power to do all or any of the following things:

- (a) **Invest:** To invest the income and capital of the Council in any property in New Zealand and to vary those investments;
- (b) **Purchase:** To purchase goods and services or acquire any property in New Zealand from any Person;
- (c) **Sell:** To sell any property to any Person in such manner and on such terms as the Board thinks fit;
- (d) **Lease:** To lease any property in New Zealand to any Person on such terms as the Board thinks fit and to accept renewals or surrenders of leases;
- (e) **Take on lease:** To lease, licence or take on bailment of any property in New Zealand from any Person on such terms as the Board thinks fit, and to renew or surrender such leases, licences and bailments and generally to deal with these as the Board thinks fit;

- (f) **Lend:** To lend or advance moneys to or leave moneys with any Person either with or without security and at such rate of interest or without any interest and generally upon such terms as the Board thinks fit;
- (g) **Borrow:** To borrow moneys with or without security from any Person;
- (h) **Levy:** To levy, charge, collect and receive levies and fees from Council Members and expend the funds on administering the functions of the Council;
- (i) **Employ:** To employ and pay fees, salary, wages or other remuneration;
- (j) **Guarantee:** To guarantee the actions of the Commission, the Electricity and Gas Complaints Commissioner, the Secretary or any employee of the Commission where necessary to enable those Persons to implement the Rules or Terms of Reference; and
- (k) **General:** To do all things and make such arrangements and enter into such agreements as are incidental or conducive to the functions of the Council and which in the opinion of the Council can advantageously be carried out, performed, done or executed for the benefit of the Council or for the furtherance of its functions.

Powers of the Council to be exercised by the Board

- 2.4 The powers of the Council may be exercised by the Board, in accordance with the provisions in Clause 5 of this Constitution, as trustees for all Council Members.

Inconsistencies with other agreements

- 2.5 If there is any inconsistency between a Council Member's obligations under this Constitution and the Council Member's rights or obligations under any other agreement or arrangement between Council Members or under a Consumer Contract or under a Land Agreement, the Council Member's obligations under this Constitution prevail.
- 2.6 Clause 2.5 is subject to Clause 9.1 (enforcement), Clauses D4.1 to D4.3, Clauses DA4.1 to DA4.3, and Clause DB2.3.

3. MEMBERSHIP OF THE COUNCIL

Council Members

- 3.1 Council Members of the Council are:
- (a) Electricity Retailers and Electricity Lines Companies that agree to be bound by this Constitution by signing this Deed; and
 - (b) Retailers and Lines Companies that agree to be bound by this Constitution by signing a Deed of Adoption.
- 3.1A To avoid doubt, any Council Member that is bound by this Constitution prior to 1 April 2005 is deemed to be either an Electricity Retailer or an Electricity Lines Company depending on within which definition that Council Member falls.

Classification of Council Members

- 3.2 Council Members are classified as Electricity Retailers, Electricity Lines Companies, Gas Retailers, or Gas Lines Companies. Unless otherwise specified, the obligations, rights and responsibilities arising under this Constitution apply equally to Electricity Retailer, Electricity Lines Company, Gas Retailer, and Gas Lines Company Council Members.
- 3.3 The Council chairperson is a nominal Council Member. Obligations of Council Members only apply to the Council chairperson where expressly stated.

[3.4 DELETED]

[3.5 DELETED]

[3.6 DELETED]

Council Members joining after the initial adoption of this Constitution

- 3.7 Any Retailer or Lines Company may apply to the Board to become a Council Member in its Class or Classes if the Retailer or Lines Company:
- (a) undertakes, by signing a Deed of Adoption, that it agrees to be bound by this Constitution and will participate fully in the functions of the Council;
 - (b) supplies the Board with information requested (if any) at the time the application is made;
 - (c) pays the entry fee determined necessary by the Board under Clause 4.9 or Clause 4.10 for new Electricity Company Council Members, Clause 4.10B or Clause 4.10C for new Gas Company Council Members, or Clause 4.10G or Clause 4.10I for new Lines Company Council Members; and
 - (d) pays the annual levy on a Proportionate Basis for that part of the Financial Year remaining if considered necessary by the Board.
- 3.8 In relation to Clause 3.7(b), the Board must only request information that is relevant to determining any amount payable under Clause 3.7(c) or (d).
- 3.8A Despite Clause 3.1, an Electricity Retailer or Electricity Lines Company that is a Council Member prior to 22 November 2004 and who wishes to be a Gas Retailer and/or Gas Lines Company Council Member may, by notice in writing to the Board, become a Council Member in that other Class(es) if the Council Member pays the fee and levy referred to in Clause 3.7(c) and (d) if determined or considered necessary by the Board (as the case may be). The calculation of:
- (a) the entry fee is subject to Clauses 4.10B and 4.10D; and
 - (b) the annual levy is subject to Clause 4.7A.

Acceptance of applications

- 3.9 The Board must accept any application of a Retailer or Lines Company to be a Council Member unless the applicant:

- (a) qualifies the undertaking required under Clause 3.7;
- (b) does not, in the opinion of the Board, have the ability to carry out its obligations under the Constitution;
- (c) does not have the ability to pay any entry fee or the annual levy the Board requires; or
- (d) does not qualify for the membership Class(es) to which the application relates because it is not an Electricity Retailer, Electricity Lines Company, Gas Retailer, or Gas Lines Company (as the case may be). This Clause 3.9(d) does not apply to the extent that the applicant will qualify for that Class as at the date of acceptance of the application.

3.10 Any Board proposal to decline an application because of the reason in Clause 3.9(b) must be put to a vote of Council Members at a general meeting to determine whether the application is to be declined.

3.11 The Board must inform the Retailer or Lines Company whose application is declined of its reasons for declining the application.

3.12 Once the Board accepts an application, the Retailer or Lines Company is deemed to be a Council Member from the date of acceptance.

Voluntary withdrawal from the Council

3.13 Council Members may withdraw from being a Council Member on any date after 12 months written notice has been given to the Board. Membership ceases on expiry of such notice.

3.14 The Board may agree, on terms and conditions it considers appropriate, to reduce the required notice period, for example, to coincide with the end of a Financial Year.

3.15 Cessation of Membership:

- (a) does not entitle the Council Member to repayment of the whole or any part of any fee or levy paid to the Council or Commission by that Council Member;
- (b) is without prejudice to the Council Member's liability for any debts, levies or other fiscal obligations arising from membership up to the date of expiry of the notice; and
- (c) is without prejudice to the Council Member's obligations in respect of any Complaint already referred to the Electricity and Gas Complaints Commissioner and which remains unresolved or outstanding on the date on which the notice expires.

Cessation of membership due to default

3.16 If any Council Member becomes a Defaulting Council Member, the Board may pass a resolution, which must be unanimous (and if the Defaulting Council Member is on the Board, the unanimous resolution of all other Board Members) recommending the expulsion of the Defaulting Council Member from the Council.

3.17 The Board must, within 21 working days of passing a unanimous resolution recommending the expulsion of a Defaulting Council Member, convene a general meeting to consider the Board's

recommendation to expel the Defaulting Council Member. Any resolution to adopt the Board's recommendation to expel the Defaulting Council Member must be put to a vote at the general meeting. If the resolution is passed, the expulsion takes effect from the date on which the vote is taken. This date is known as the date of cessation of membership. The Board must give public notice of the cessation of membership of any Council Member.

3.18 Any Defaulting Council Member expelled:

- (a) forfeits all rights of membership as at the date of cessation of membership and has no further right against, or claim upon, the Council or the Commission or the property or funds of the Council or the Commission;
- (b) is liable for any debts, levies or other fiscal obligations arising from membership up to the date of cessation of membership;
- (c) in the case of any levy that is levied annually by the Board or the Commission, regardless of any arrangements to pay by instalments, is liable for the amount of the levy not yet paid;
- (d) is without prejudice to the Defaulting Council Member's obligations in respect of any Complaint already referred to the Electricity and Gas Complaints Commissioner and unresolved or outstanding at the date of cessation of membership; and
- (e) in the case of a Defaulting Council Member that belongs to more than one Class of membership, is expelled in relation to all of its Classes of Council membership.

Compliance

3.19 The Board may take such measures as it thinks fit to encourage a Council Member to comply with this Constitution. Measures may include (but are not limited to):

- (a) publication of the name of any Council Member or any action which does not comply with this Constitution; or
- (b) discounting levies of Council Members that comply with the Constitution.

3.20 The Board must explain, at the request of any Council Member affected by the measure or by any Council Member if raised at a general meeting of the Council, why a compliance measure has been taken.

Subsidiaries and related companies

3.21 If a Council Member's subsidiary within the meaning in the definition in section 5 of the Companies Act 1993 or any company related to the Council Member in the manner described in section 2(3)(a), (d) or (e) of the Companies Act 1993 fails to comply with this Constitution, the Council Member is responsible for remedying that failure and ensuring compliance.

Remuneration

3.22 Council Members and their representatives may not be paid any remuneration from Council funds for ordinary services to the Council or Board. Any proposal to pay Council Members or their

representatives for services to the Council or Board must be put to a vote of Council Members at a general meeting.

3.23 The Council chairperson (excluding, for the avoidance of doubt, the interim Council chairperson) may be remunerated on any basis the Board considers appropriate for services provided to the Board or the Council generally in his or her position as Council chairperson.

3.24 A Board Member may be remunerated for costs arising from attending Board meetings and other identifiable and reasonable costs arising from serving on the Board but such remuneration does not include remuneration for a Council Member's representative's time.

3.25 Clause 3.24 applies to consumer representative members of the Scheme Amendment Committee as if they were Board Members.

4. FUNDING FOR THE COUNCIL

Proportionate Basis for funding

[4.1 DELETED]

4.1A Where any Clause in this Constitution (except Clause A3.4) requires amounts to be raised or distributed on a Proportionate Basis between Council Members, and subject to Clause 4.1B(a), the allocation (whether there is an amount of money to be raised or an amount of money to be distributed) is as follows:

(a) Retailer Joint Class:

(i) 60%, or such other percentage determined by the Board, of the total amount to be raised is from Retailer Joint Class Council Members; and

(ii) of that amount, each Retailer Council Member's proportion is determined by the percentage of its market share of the retail sector based on all energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Council Members; and

(iii) the total number of energised Consumer ICPs mapped to all Retailer Council Members is:

(1) the total number of energised Consumer ICPs mapped to all Electricity Retailer Council Members; plus

(2) the total number of energised Consumer ICPs mapped to all Gas Retailer Council Members.

(b) Lines Company Joint Class:

(i) 40%, or such other percentage determined by the Board, of the total amount to be raised is from Lines Company Joint Class Council Members, including Transpower New Zealand Limited; and

- (ii) of that amount, \$65,000 is to be raised from Transpower New Zealand Limited;
- (iii) of the remaining amount referred to in subparagraph (b)(i) and less the amount raised under subparagraph (b)(ii), each Lines Company Council Member's (excluding Transpower New Zealand Limited) proportion is to be determined by the percentage of its market share based on the number of energised Consumer ICPs on its network or Distribution System, compared with the total number of energised Consumer ICPs mapped to all Lines Company Council Members other than Transpower New Zealand Limited; and
- (iv) the total number of energised Consumer ICPs mapped to all Lines Company Council Members other than Transpower New Zealand Limited is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Lines Company Council Members other than Transpower New Zealand Limited; plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Company Council Members.

4.1B For the purpose of raising the fixed levy for funding the Commission in accordance with Clause A3.4, the Proportionate Basis allocation is as follows:

- (a) 63%, or such other percentage determined by the Board, of the total amount is raised in accordance with the allocation method in Clause 4.1A, except that the minimum amount payable by a Council Member in any year shall be \$1,000;
- (bA) 37%, or such other percentage determined by the Board, of the total amount is raised as follows:
 - (i) for the period from 1 January 2009 to 31 March 2009, less the amount raised under paragraph (c) below, is raised from all Council Members other than Transpower New Zealand Limited. Each of those Council Member's proportion is determined by the percentage share of all Complaints reaching the stages set out in Clause 4.1D, excluding Complaints concerning Transpower New Zealand Limited, in the 3 month period from 1 October 2008 to 31 December 2008; or
 - (ii) from 1 April 2009, for Complaints concerning all Council Members other than Transpower New Zealand Limited, by means of Complaints levies, facilitation levies, investigation levies, and ruling levies raised in accordance with Clause 4.1D; and
- (c) for Complaints concerning Transpower New Zealand Limited received on or after 1 October 2006, a portion of that percentage is raised from Transpower New Zealand Limited by means of the Transpower charges, as set out in Clause 4.1C. For the avoidance of doubt, Transpower New Zealand Limited must also pay levies under paragraph (a) above, but does not pay any levies under paragraph (bA) above.

4.1C Transpower charges:

- (a) The Transpower charges are payable by Transpower New Zealand Limited on the basis of an hourly rate or rates set in accordance with paragraph (b) below for the amount of time

spent by the Electricity and Gas Complaints Commissioner and his or her staff in dealing with Complaints concerning Transpower New Zealand Limited; and

- (b) For the period from 1 October 2006 to 31 March 2007, the hourly rate or rates under paragraph (a) above shall be set in advance by the Board, in consultation with the Commission, on the basis that Complaints relating to Transpower New Zealand Limited will involve approximately \$75,000 worth of the Electricity and Gas Complaints Commissioner's and his or her staff's time, and thereafter the hourly rate or rates will be set in advance annually by the Commission in consultation with the Board. The Commission will notify Transpower New Zealand Limited of the hourly rate or rates under paragraph (a) above as soon as reasonably practicable after they are set.

4.1D The levies specified in Clause 4.1B(bA)(ii) are to be raised as follows:

- (a) Complaint stage levies:
 - (i) A Complaint stage levy is payable by a Council Member for each Complaint that the Electricity and Gas Complaints Commissioner receives about that Council Member; and
 - (ii) The amount of the Complaint stage levy shall be determined in accordance with Clause 4.1F.
- (b) Facilitation stage levies:
 - (i) A facilitation stage levy is payable by a Council Member for each Complaint in respect of which the Electricity and Gas Complaints Commissioner receives a waiver of the relevant Council Member's duty of confidentiality referred to in Clause B1.10(e) (for the purposes of this Clause 4.1D, a "privacy waiver") from a Complainant (or any Consumer he or she represents); and
 - (ii) The amount of the facilitation stage levy shall be determined in accordance with Clause 4.1F.
- (c) Investigation stage levies:
 - (i) An investigation stage levy is payable by a Council Member if:
 - (1) the Complaint is not resolved (including situations where there is no final agreement on a settlement) within 20 Working Days of the Electricity and Gas Complaints Commissioner receiving a privacy waiver from a Complainant;
 - (2) the Complaint is not resolved (including situations where there is no final agreement on a settlement) after eight hours of work by the Electricity and Gas Complaints Commissioner or his or her staff in attempting to mediate or facilitate a settlement; or
 - (3) the Complainant and the Council Member to whom the Complaint relates agree that the Electricity and Gas Complaints Commissioner should begin to

investigate the Complaint without attempting to mediate or facilitate a settlement first; and

- (ii) The amount of the investigation stage levy shall be determined in accordance with Clause 4.1F.
- (d) Rulings stage levies:
 - (i) A rulings stage levy is payable by a Council Member in respect of each Complaint for which the Electricity and Gas Complaints Commissioner issues a notice of intention to make a recommendation in accordance with Clause B3.2; and
 - (ii) The amount of the rulings stage levy shall be determined in accordance with Clause 4.1F.

4.1E [DELETED]

4.1F Subject to Clause 4.1H, the amounts of the levies payable under Clause 4.1D shall be determined, and invoiced, each year by the Commission in consultation with the Board as follows:

- (a) before the beginning of each Financial Year, the Commission will estimate the number of Complaints that are likely to be made and to reach each stage set out in Clause 4.1D in that Financial Year, and calculate how much of the amount to be raised under Clause 4.1B(b)(iii) is to be raised by means of the levies charged for each stage;
- (b) the Commission will divide the amount to be raised for the Financial Year by means of the levies charged for each stage, as calculated under Clause 4.1F(a), by four to determine the amount of levies to be raised in each quarter under Clause 4.1B(b)(iii); and
- (c) the Commission will invoice Council Members at the start of each quarter in a Financial Year for the amounts calculated under Clause 4.1F(b), on the basis of each Council Member's proportionate share of Complaints reaching each stage set out in Clause 4.1D in the previous quarter.

4.1G At the end of each Financial Year, the Commission, in consultation with the Board will:

- (a) divide the total amount raised by means of the levies charged for Complaints reaching each stage set out in Clause 4.1D by the total number of Complaints reaching that stage in the Financial Year (for the purposes of this Clause 4.1G, this amount is the "average levy" for each stage);
- (b) divide the total amount paid by each Council Member by means of the levies charged for Complaints reaching each stage set out in Clause 4.1D by the total number of Complaints concerning that Council Member reaching that stage in the Financial Year (for the purposes of this Clause 4.1G, this amount is the "levy paid" by a Council Member at each stage);
- (c) if a Council Member's levy paid for Complaints reaching each stage is lower than the average levy for that stage, add an additional amount to the next invoice to the Council Member so that the total amount paid for Complaints reaching that stage by that Council

Member in that Financial Year is the same as if the Council Member had paid the average levy for each Complaint reaching that stage in that Financial Year; and

- (d) if a Council Member's levy paid for Complaints reaching each stage is higher than the average levy for that stage, credit an amount to the next invoice to the Council Member so that the total amount paid for Complaints reaching that stage by that Council Member in that Financial Year is the same as if the Council Member had paid the average levy for each Complaint reaching that stage in that Financial Year.

4.1H Despite Clause 4.1F, the amount payable by each Council Member for the period between 1 April 2007 and 30 June 2007 shall be determined by apportioning the amount to be raised for that period between all Council Members other than Transpower New Zealand Limited on the basis of each Council Member's percentage share of all "deadlocked" Complaints, excluding Complaints concerning Transpower New Zealand Limited, in the 12 month period from 1 April 2006 to 31 March 2007.

4.2 For the purpose of Clauses 4.1A and 4.1B:

- (a) Electricity Company Council Members agree that numbers of energised Consumer ICPs are to be taken from the MARIA Registry on 1 March of each year and accordingly authorise the Board or any person authorised by the Board to access the MARIA Registry for this purpose. Those numbers of energised Consumer ICPs apply until the following 1 March; and
- (b) Gas Company Council Members agree that numbers of energised Consumer ICPs are to be taken from the Gas Registry on 1 March of each year and accordingly authorise the Board or any person authorised by the Board to request the relevant information from those Persons maintaining the Gas Registry.

4.2A If a Council Member is a Council Member for more than one Class of membership, that Council Member's proportion of the total allocation between all Council Members is the sum total of each amount allocated to it in the Classes to which that Council Member belongs.

4.2B For the purpose of Clause 4.1B(b):

- (a) a "deadlocked" Complaint:
 - (i) means a Complaint:
 - (1) that the Electricity and Gas Complaints Commissioner has decided to investigate after being satisfied of those matters in Clause B1.9; and
 - (2) for which the Electricity and Gas Complaints Commissioner has received from the Complainant (or any Consumer he or she represents) a waiver of the relevant Council Member's duty of confidentiality referred to in Clause B1.10(e); but
 - (ii) excludes a Complaint:
 - (1) that is not upheld against the Council Member by the Electricity and Gas Complaints Commissioner; and/or

(2) in relation to which a Council Member offered a settlement (which the Electricity and Gas Complaints Commissioner considers is fair and reasonable) before the Complaint met the criteria in Clause 4.2B(a)(i); and

(b) Council Members authorise the Board or any person authorised by the Board to request the requisite information from the Electricity and Gas Complaints Commissioner for the purpose of this Clause. Those numbers of “deadlocked” Complaints apply in respect of the periods specified in Clause 4.1B(b).

4.3 The Board must supply the Commission with details of each Council Member’s market share.

Costs of expert witnesses

4.3A In addition to any levies payable under any other provision of this Deed or Schedule A, if the Electricity and Gas Complaints Commissioner requires expert witnesses to assist with his or her investigation or resolution of a Complaint, the costs of any such expert witnesses shall be charged by the Electricity and Gas Complaints Commissioner to the Council Member(s) that is or are the subject of the Complaint.

[4.3B DELETED]

Working capital

4.4 The working capital requirements of the Council for the next Financial Year must be determined by the Board and put to a vote of the Council Members at the annual general meeting. The Board must state how the working capital is to be raised (for example, from existing funds or an annual levy).

Annual levies

4.5 Each Council Member agrees to pay an annual levy. The annual levy and the manner of payment is:

- (a) determined annually by the Board and based on the amount of working capital required as set out in a budget for the relevant Financial Year;
- (b) raised from Council Members on a Proportionate Basis; and
- (c) advised to Council Members, along with each Council Member’s specific contribution to the levy, no later than three months after the budget for the relevant Financial Year is finalised.

4.6 The Board may agree to a Council Member(s) paying the annual levy by instalments. Any such agreement does not affect the Council Member’s liability to the Council for the full amount of any annual levy.

4.7 In relation to a Person applying to become a new Council Member, the Board must estimate the amount of the annual levy required to cover the period from the date of acceptance until the next 31 March and discuss that estimate with that new Council Member. The Board and the new Council Member must endeavour to agree on the amount of the levy. If agreement is not reached, the new Council Member may withdraw its application. The Board has the discretion to waive all or

part of the annual levy payable by a new Council Member. To avoid doubt, any Person who joins the Scheme as a Gas Retailer or Gas Lines Company prior to 1 April 2005 is not required to pay an annual levy for the Financial Year ending 31 March 2005.

- 4.7A Where a Council Member is joining the Scheme in respect of a particular Class and that Council Member is already a Council Member in another Class, the Board's estimate of the Council Member's annual levy must be based on the Board's determination of the Council Member's market share in the Class to which the current application relates only.
- 4.8 Any annual levy amount collected by the Board from a new Council Member is to be distributed at the end of the Financial Year to Council Members existing at the time such new Council Member joined on a Proportionate Basis as a refund on annual levies paid or off-set against annual levies payable by those existing Council Members in the next Financial Year.

Entry fee for Electricity Company Council Members

- 4.9 All Electricity Company Council Members on joining must pay an entry fee to the Board. Subject to Clause 4.10D, the fee payable by each Electricity Company Council Member is based on the Board's determination of the Electricity Company Council Member's electricity market share as at the date the Electricity Company Council Member joins the Scheme, using the Proportionate Basis as a guide. For the purpose of Clause 4.9, each joining Electricity Company Council Member authorises the Board or any person authorised by the Board to access the MARIA Registry to determine the joining Electricity Company Council Member's electricity market share as set out in Clause 4.1. The entry fee must be used for the purposes of repaying the establishment loan.
- 4.10 After the establishment loan is repaid, the Board may charge an entry fee to new Electricity Company Council Members (as it sees fit) and distribute the fee paid on a Proportionate Basis to all existing Electricity Company Council Members at the end of the Financial Year or off-set that amount against levies payable by existing Electricity Company Council Members in the next Financial Year.

Entry fee for Gas Company Council Members

- 4.10A Gas Company Council Members acknowledge that the Gas Industry Steering Group (GISG) has paid the Electricity and Gas Complaints Commissioner's administrative costs of incorporating Gas into the Scheme. These costs are known as the incorporation grant.
- 4.10B All Gas Company Council Members must pay an entry fee to the Board within 20 Working Days of receipt of an invoice from the Board for this purpose. Subject to Clause 4.10D, the fee payable by each Gas Company Council Member is based on the Board's determination of the Gas Company Council Member's Gas market share as at 1 April 2005 or such later date that the Gas Company Council Member joins the Scheme, using the Proportionate Basis as a guide. For the purpose of clause 4.10B, each joining Gas Company Council Member authorises the Board or any person authorised by the Board to request the relevant information from those Persons maintaining the Gas Registry to determine the joining Gas Company Council Member's Gas market share as set out in Clause 4.1. The entry fee must be used for the purposes of repaying the incorporation grant.

4.10C After the incorporation grant is repaid, the Board may charge an entry fee to new Gas Company Council Members (as it sees fit) and distribute the fee paid on a Proportionate Basis to all existing Gas Company Council Members at the end of the Financial Year or off-set that amount against levies payable by existing Gas Company Council Members in the next Financial Year.

4.10D Where a Council Member is joining the Scheme in respect of a particular Class and that Council Member is already a Council Member in another Class, the Council Member's entry fee is based on the Board's determination of the Council Member's market share in the Class to which the current application relates only.

Fee for administrative costs related to expansion of the Scheme to cover Land Complaints

4.10E Lines Company Council Members acknowledge that Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company have paid:

- (a) the Electricity and Gas Complaints Commissioner's administrative costs of incorporating Land Complaints into the Scheme; and
- (b) legal costs, the Council chairperson's costs, and other development costs involved in incorporating Land Complaints into the Scheme.

Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company shall provide information to the Board identifying these costs. These costs are known as the "Land Complaints Incorporation Grant". The amounts of the Land Complaints Incorporation Grant paid by Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company are known as the "Transpower Grant", "ENA Grant" and "GIC Grant" respectively.

4.10F Lines Company Council Members acknowledge that the Land Complaints Incorporation Grant is to be shared between Lines Company Council Members in the following proportions:

- (a) Transpower New Zealand Limited: one third (the "Transpower Share"); and
- (b) all other Lines Company Council Members: two thirds (the "Lines Company Share")

4.10G After determining the amount of the Land Complaints Incorporation Grant, the Board will issue invoices to each Lines Company Council Member other than Transpower New Zealand Limited for each Lines Company Council Member's share of the Lines Company Share in the same proportion as each Lines Company Council Member's proportionate share of the levies most recently determined in accordance with Clause 4.1A(b)(ii) (the "Land Complaints Incorporation Fees"). Each Lines Company Council Member must pay its Land Complaints Incorporation Fee to the Board within 20 Working Days of receipt of the invoice from the Board.

4.10H The Land Complaints Incorporation Fees will be used for the purpose of repaying the Land Complaints Incorporation Grant to Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company in proportion to the costs referred to in Clause 4.10E that were met by those persons, and for adjusting the Transpower Share. For the avoidance of doubt, the amounts to be repaid are as follows:

- (a) to Transpower New Zealand Limited; the Transpower Grant less the Transpower Share;

- (b) to the Electricity Networks Association; the ENA Grant; and
- (c) to the Gas Industry Company, the GIC Grant.

4.10 After the Land Complaints Incorporation Grant is repaid, the Board may charge a Land Complaints Incorporation Fee to new Lines Company Council Members (as it sees fit) and either:

- (a) distribute the fee paid to existing Lines Company Council Members in proportion to the number of votes that the Lines Company Council Member would be entitled to exercise under Clause 7.5(b) at a general meeting in comparison to the votes exercisable by all Lines Company Council Members if a general meeting were to be held on the date the distribution is made; or
- (b) off-set that amount against levies by existing Lines Company Council Members in the next Financial Year.

Increase to working capital during a Financial Year

4.11 The Board may obtain an increase to the amount of working capital from Council Members where necessary for a specific purpose. However, if the increase exceeds 2% of the amount agreed at the annual general meeting, the Board must obtain written approval for the increase in funding from the majority of Council Members of each Class or put the matter to a vote at a general meeting. The Board must, before seeking agreement from Council Members, inform Council Members of:

- (a) the purpose for which funds are to be raised; and
- (b) the amount to be raised.

[4.12 DELETED]

Administration of levies

4.13 The entry fee and levies must:

- (a) be plus GST payable (if any); and
- (b) be due and payable within 30 days of the Board notifying a Council Member of the amount to be paid (unless otherwise agreed).

4.14 For the avoidance of doubt, the Board's determination of levies and fees payable for a Financial Year is final.

5. THE BOARD

Role of the Board generally

5.1 The Board is to provide the executive management of the Council, including:

- (a) fulfilling its responsibilities under this Constitution;

- (b) managing general meetings, the funds of the Council, and the election of Council Members to the Board;
- (c) facilitating the resolution of Council Members' disputes with each other arising under the Deed and the Protocols (which are not within the jurisdiction of the Electricity and Gas Complaints Commissioner); and
- (d) carrying out all legal actions necessary to carry out and implement this Constitution.

Powers of the Board

- 5.2 Subject to the terms of this Constitution, the Board has all the powers necessary to provide effective executive management of the Council.
- 5.3 The Board may determine the most appropriate manner in which the following will be signed, drawn, accepted, endorsed or otherwise executed on behalf of Council Members:
- (a) all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by the Council;
 - (b) all receipts for money paid to the Council;
 - (c) guarantees given to third parties for the actions of the Commission; and
 - (d) the Deed of Adoption.
- 5.4 The Board may amend the Electricity and Gas Complaints Commissioner's title if the Board considers it to be in the interests of the Scheme after consultation with the Commission and the Electricity and Gas Complaints Commissioner.

Duties of the Board

- 5.5 The Board is required, in a manner consistent with the Rules and Terms of Reference:
- (a) to appoint representatives of Council Members, being representatives of one Retailer Council Member and one Lines Company Council Member (who may or may not also be Council Members on the Board), as Commission Members;
 - [(b) **DELETED**]
 - [(c) **DELETED**]
 - [(d) **DELETED**]
 - (e) to engage in consultation with the Commission over the Commission's proposed budget;
 - (f) to facilitate the determination by the Scheme Amendment Committee of proposals for amendment of the Scheme in accordance with Clause 6; and
 - (g) subject to Clause 7.12, to propose to the Council amendments to the Deed and the Protocols at any time.

- 5.6 In carrying out its requirements in relation to Clause 5.5(e), the Board must not take into consideration the business decisions of the Electricity and Gas Complaints Commissioner or the Commission in determining how funds should be allocated within any particular budget or any decisions made in relation to any Complaints referred to the Electricity and Gas Complaints Commissioner. However, the Board may request information about the budget and expenditures, both past and projected, to assist the Board in its discussions with the Commission.
- 5.6A In carrying out the functions and duties, and performing the powers, of the Board (including acting on the Scheme Amendment Committee under Clause 6), the Council chairperson and each Council Member on the Board must have regard to the interests of all Council Members.

Board may facilitate resolution of disputes between Council Members arising under the Protocols

- 5.7 The Board may, at the cost of the Council Members concerned, facilitate or arrange for a mediator or expert to facilitate the resolution of disputes between Council Members over the application of the relevant Protocol and the allocation of responsibilities and obligations between them under that Protocol providing that nothing in this Clause may be construed as limiting the independent and exclusive jurisdiction of the Electricity and Gas Complaints Commissioner under the Terms of Reference in respect of a matter arising under that Protocol.

Minutes of Board meetings

- 5.8 The Board must keep minutes of:
- (a) the names of the Council Members on the Board present at general meetings of the Council and Council Members on the Board present at Board meetings; and
 - (b) all resolutions and proceedings at general meetings of the Council and meetings of the Board.

Upon confirmation by the Council chairperson of any minutes made, he or she must sign the minutes. The minutes must be made available to Council Members on request.

Composition of the Board

- 5.9 A Board consisting of the representatives of six Council Members and the Council chairperson must manage the Council in accordance with this Constitution.

[5.10 DELETED]

[5.11 DELETED]

[5.12 DELETED]

Election of Boards

- 5.13 The Board must comprise:
- (a) the representatives of three Electricity Retailer Council Members, nominated and elected by the Electricity Retailer and Gas Retailer Council Members;

- (b) the representatives of three Electricity Lines Company Council Members, nominated and elected by the Electricity Lines Company and Gas Lines Company Council Members; and
- (c) the Council chairperson.

5.14 Board Council Members may be elected at any general meeting of the Council.

5.15 A chief executive officer of a Board Member may nominate a representative from time to time and appoint a person to attend in the place of the representative at Board meetings in the event that the representative is unavailable.

Term of office for Members on the Board

5.16 Subject to Clause 5.17, the longest-serving Council Member on the Board in each Joint Class must retire at each annual general meeting, unless another Council Member in the relevant Joint Class has since the previous annual general meeting:

- (a) given notice of resignation from the Board under Clause 5.24(a)(i); or
- (b) ceased to be a Member on the Board.

5.17 If two or more Council Members in a Joint Class were elected to the Board at the same time, the Council Member that must retire shall be decided by agreement between those Council Members or, failing agreement, by lot drawn by the Council chairperson.

5.17A Subject to Clause 5.17B, a Council Member retiring from the Board at an annual general meeting is immediately eligible for re-election at that annual general meeting.

5.17B A Council Member retiring from the Board under Clauses 5.16 and 5.17 is not eligible for re-election at the annual general meeting at which the Council Member retires if a Council Member that is not already serving on the Board has been nominated to serve on the Board in the same Joint Class as the retiring Council Member. In any such case, the retiring Council Member's nomination shall be deemed to have been withdrawn.

5.17C The Council Members who are to retire from the Board under Clauses 5.16 and 5.17 shall be determined by the Council chairperson in sufficient time before the annual general meeting to allow the Board to call for nominations of Council Members in each Joint Class. After nominations are received, the Council chairperson shall determine whether a Council Member retiring from the Board under Clauses 5.16 and 5.17 and who has been nominated for re-election is eligible under Clauses 5.17A and 5.17B to stand for re-election at the annual general meeting at which the Council Member retires. The Council chairperson shall determine this matter in sufficient time to allow the Board to give notice of the nominations of Council Members to serve on the Board.

The Council chairperson

5.18 The Board must appoint a Council chairperson who is independent from the electricity and Gas industry. The Council chairperson may be appointed for any period up to three years that the Board considers appropriate. In setting the term for the Council chairperson, the Board must ensure as far as possible that the expiry of the term will not coincide with the election of Board Members.

- 5.19 The Council chairperson's role is to:
- (a) attend, chair and facilitate all meetings of the Board and general meetings of the Council to ensure efficient consideration of the business of the meeting;
 - (b) monitor and record votes at meetings; and
 - (c) attempt to mediate with Council Members any issue which becomes deadlocked.
- 5.20 The Council chairperson can vote at Board meetings but cannot vote at general meetings of the Council or form part of the quorum for any meeting.
- 5.21 If, for any reason, the Council chairperson is not present at a meeting within 30 minutes and there is a quorum, Council Members present may elect, by a "show of hands" of those present, one of their number to chair that meeting or may adjourn the meeting.
- 5.22 The Board may revoke the Council chairperson's appointment by unanimous decision (excluding the vote of the Council chairperson) if there is a compelling reason to do so.
- 5.23 The Council chairperson may resign at any time by giving one Month's notice to the Board. The Board may continue to act, after appointing one of the Council Members on the Board as chair until a new person is appointed Council chairperson. Such appointment must be made as soon as is reasonably practicable after such resignation.

Vacancy of office

- 5.24 A Council Member must cease to be on the Board if:
- (a) the Council Member's representative:
 - (i) resigns on behalf of the Council Member he or she represents by giving one Month's notice in writing to the Board; or
 - (ii) is not present or the Council Member is not represented at meetings of the Board for more than three consecutive meetings without the permission of the Board; or
 - (b) the Council Member ceases to be a Council Member.

Board meetings

- 5.25 The Board must meet as and when necessary for the purposes of the Board. The Council chairperson must, on receipt of a request from four or more Board Members, call a meeting of the Board.
- 5.26 There must be at least four Board Members present (excluding the Council chairperson) to form a quorum for a meeting. If, due to vacancies on the Board, the number of Board Members falls below four, the Board may only act to call a general meeting of the Council to elect new Board Members.
- 5.27 Any form of communication where the Board Members can hear each other simultaneously is sufficient for the Board Members to consider that each is present and attending the meeting.

Voting at Board meetings

5.28 Subject to Clause 5.29, each Board Member, including the Council chairperson, has one vote on matters put to a vote at Board meetings. Unless otherwise specified in this Constitution, Board Members must decide matters by a majority vote. If, for any reason, a Board Member is acting as the chair of a meeting, that Board Member may only exercise one vote. An even number of votes for and against a matter means that the status quo prevails.

Resolutions in Writing

5.29 A resolution in Writing authorised and signed by all Board Members is valid and effectual as if it were a decision made at a meeting of the Board. Any such resolution may consist of several identical documents each signed by one or more Board Members.

Decisions and recommendations affecting Transpower

5.30 The Board must consult with Transpower before making any decision or recommendation that may materially affect Transpower's interests as a Council Member, unless:

- (a) a representative of Transpower is a Board Member at the relevant time; or
- (b) in the Board's reasonable opinion the decision or recommendation does not affect Transpower's interests as a Council Member to any greater extent than it affects the interests of all other Electricity Lines Companies as Council Members.

6. AMENDMENTS TO THE SCHEME

Scheme Amendment Committee

6.1 Where the Commission reports to the Board the findings of an independent review of the Scheme and proposed amendments in accordance with Clause A6.1 or amendments proposed to the Scheme in accordance with Clause A6.2, the Council chairperson must establish within 10 Working Days of receiving the proposed amendments to the Scheme a Scheme Amendment Committee to determine whether to adopt the proposed amendments or amendments in respect of the subject matter.

6.2 The Scheme Amendment Committee must comprise:

- (a) The six Board Members;
- (b) The six consumer representatives nominated by the Consumers' Institute Inc. as representing affected consumer interests and notified to the Board no later than 3 Working Days of the Board receiving the proposed amendments; and
- (c) The Council chairperson, who will be the chairperson of the Scheme Amendment Committee.

6.2A In nominating consumer representatives under Clause 6.2(b), the Consumers' Institute Inc. will consider the extent to which any of the representatives are able to represent affected Land Owner and Land Occupier interests.

- 6.3 If a consumer representative is indisposed or otherwise prevented from carrying out his or her duties, the Consumers' Institute Inc. must appoint a person as representing the affected consumer representative's interest in an acting capacity for as long as the Consumers' Institute Inc. considers necessary and notify the Board. The acting consumer representative may exercise all the powers that the consumer representative would have been able to exercise if he or she was not indisposed or otherwise prevented from carrying out his or her duties.
- 6.4 There must be at least 5 consumer representative members on the Scheme Amendment Committee to form a quorum for a meeting.

Approval of amendments

- 6.5 An amendment to the Scheme is approved:
- (a) by vote of the Scheme Amendment Committee in accordance with Clause 6.9 or Clause 6.10 unless the amendment has been referred to the Council under Clause 6.11; or
 - (b) where the amendment has been referred to the Council under Clause 6.11 after 5 of the 6 consumer representatives on the Scheme Amendment Committee have approved the amendment and the Council has approved the amendment in accordance with Clause 6.12.
- 6.6 Where an amendment to the Scheme is approved in one of the two ways specified in Clause 6.5, the Scheme must be so amended.

Scheme Amendment Committee approval

- 6.7 The chairperson of the Scheme Amendment Committee must convene the Scheme Amendment Committee and manage its business so as to ensure that amendments proposed by the Commission and any amendments in a form approved under Clause 6.10 are put to the vote of the Scheme Amendment Committee within the maximum period for approval set out in Clauses 6.9 and 6.10.
- 6.8 The Scheme Amendment Committee must first consider and if possible determine whether it will approve one or more of the amendments proposed by the Commission.
- 6.9 All Scheme Amendment Committee members, excluding, for the avoidance of doubt, the chairperson of the Scheme Amendment Committee, have one vote on an amendment put to a vote at a Scheme Amendment Committee meeting. An amendment put to the vote must be approved by a resolution of at least 10 out of the 12 Scheme Amendment Committee members within 40 Working Days of the Board receiving the amendment.
- 6.10 If the Scheme Amendment Committee members do not approve an amendment proposed by the Commission, under Clause 6.9 it may approve another form of amendment so long as the other form of amendment relates directly to the subject matter of the original amendment and is approved by a resolution of at least 10 out of 12 Scheme Amendment Committee members within 40 Working Days of the Board receiving the amendment proposed by the Commission.

Referral to Council

6.11 If, within 20 Working Days of the Board receiving an amendment proposed by the Commission and a particular amendment has not been approved by the Scheme Amendment Committee under Clause 6.9, or Clause 6.10, 3 Board Members (excluding, for the avoidance of doubt, the chairperson of the Scheme Amendment Committee) may:

- (a) in the case of a particular amendment proposed by the Commission where that amendment has been approved by a separate vote of at least five out of six consumer representative members of the Scheme Amendment Committee, require the chairperson of the Scheme Amendment Committee to refer that amendment to the Council for consideration under Clause 6.12; or
- (b) in the case of a particular amendment which relates directly to the subject matter of the amendment proposed by the Commission and has been approved by a separate vote of at least five out of six consumer representative members of the Scheme Amendment Committee, refer that amendment to the Council for consideration under clause 6.12.

Council approval

6.12 Unless either Clauses 6.13A and 6.13B or Clause 6.13C apply, any amendment to the Scheme referred to the Council by the Scheme Amendment Committee in accordance with Clause 6.11 must be approved within 40 Working Days of the Board receiving the proposed amendments by:

- (a) a resolution at a general meeting of more than 50% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not); or
- (b) more than 50% of each Joint Class of Council Member agreeing in writing to the proposed amendment.

6.13 The chairperson of the Scheme Amendment Committee's reference to the Council must give Council Members notice of the precise details of the proposed amendment to the Scheme and the date of the general meeting or, as the case may be, the date on which written agreement is sought from the Council Members. The chairperson of the Scheme Amendment Committee must allow a notice period of no less than 10 working days before the date of a general meeting or the date on which written agreement is sought from Council Members of the Council.

6.13A Any amendment to:

- (a) the Electricity Consumer Code of Practice that does not apply to the Gas Consumer Code of Practice may only be voted on by Electricity Company Council Members; and
- (b) the Gas Consumer Code of Practice that does not apply to the Electricity Consumer Code of Practice may only be voted on by Gas Company Council Members,

provided that when voting on such amendment, Electricity Company Council Members or Gas Company Council Members (as the case may be) must be mindful of the desirability of consistency between the Codes of Practice, but only in circumstances where it is appropriate.

6.13B If Clause 6.13A applies, Clauses 6.12 and 6.13, and Clauses 7.5 to 7.7 must be read, with all necessary modifications, as if the other Class of Council Member in the Joint Class did not exist.

6.13C Any amendments to the Land Code of Practice may only be voted on by Lines Company Council Members, provided that:

- (a) when voting on such amendments, Lines Company Council Members must be mindful of the desirability for consistency between the Codes of Practice, but only in circumstances where it is appropriate;
- (b) amendments to Clause CB6.2, Appendix A, and those parts of Clauses CB6.1 and CB6.3 that apply to Transpower New Zealand Limited must be approved by Transpower New Zealand Limited;
- (c) amendments to Appendix B and those parts of Clauses CB6.1 and CB6.3 that apply to Gas Lines Companies that operate Gas Transmission Pipelines must be approved by all Gas Lines Companies that operate Gas Transmission Pipelines; and
- (d) amendments to Clauses CB6.4 to CB6.14 must be approved by a majority of Lines Companies other than Transpower and Gas Lines Companies that operate only Gas Transmission Pipelines.

If this Clause 6.13C applies, Clauses 6.12 and 6.13, and Clauses 7.5 to 7.7 must be read, with all necessary modifications, as if the Retailer Joint Class of Council Member did not exist.

Approved amendments

6.14 The Board must advise Council Members and the Commission of any amendment to the Scheme and provide a copy of the Constitution incorporating the approved amendment at least 20 Working Days before the amendment takes effect.

7. GENERAL MEETINGS

Requirements for general meetings

7.1 Unless specifically stated, all requirements for general meetings apply to annual general meetings.

Requirement to arrange general meetings

7.2 The Board must arrange and hold an annual general meeting of the Council each Financial Year except for the Financial Year to 31 March 2002.

7.3 Other general meetings of the Council may be held at any time, either at the request of the Board or two or more Council Members.

Quorum for general meetings

7.4 A quorum for a general meeting of the Council is four Council Members present (by proxy, attorney or representative), being two Retailer Council Members and two Lines Company Council Members, that represent a majority of the votes of both Retailers and Lines Companies. If, for any reason, a

quorum is not present within 30 minutes of the time appointed for the general meeting, the meeting is adjourned until another time that the Council chairperson determines (which must not be more than 30 days after the original scheduled date).

Number of votes allocated to each Council Member

7.5 The number of votes that each Council Member may exercise is determined as follows:

- (a) Retailer Joint Class:
 - (i) Retailers exercise 50% of the voting rights.
 - (ii) Each Retailer Council Member has one vote for each 0.01% of its market share of all energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Council Members.
 - (iii) The total number of energised Consumer ICPs mapped to all Retailer Council Members is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Retailer ICPs; plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Retailer ICPs.
- (b) Lines Company Joint Class:
 - (i) Lines Companies other than Transpower New Zealand Limited exercise 40% of the voting rights.
 - (ii) Each Lines Company other than Transpower New Zealand Limited has one vote for each 0.01% of its market share of energised Consumer ICPs on its network or Distribution System, comparative to the total number of energised Consumer ICPs mapped to all Lines Company Council Members, and the calculation of each Lines Company Council Member's market share shall take into account Transpower New Zealand Limited's deemed market share calculated under Clause 7.5(b)(iv)(2).
 - (iii) The total number of energised Consumer ICPs mapped to all Lines Company Council Members is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Lines Company Council Members; plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Lines Company Council Members.
 - (iv) Transpower New Zealand Limited:
 - (1) exercises 10% of the voting rights, or such other percentage determined by the Board; and

- (2) for the purposes of calculating each Lines Company Council Member's (other than Transpower New Zealand Limited's) market share under Clause 7.5(b)(ii), is deemed to have a market share of 20%, or such other percentage determined by the Board,

the determination of such percentages taking into account the total value of Transpower New Zealand Limited's system fixed assets as compared to the total value of other Lines Company Council Members' system fixed assets. The values of Lines Company Council Members' system fixed assets for the purposes of this Clause shall be those which were most recently disclosed under the Electricity Information Disclosure Requirements 2004 (made by the Commerce Commission under the Commerce Act 1986).

- (v) For each Gas Transmission Lines Company that operates Gas Transmission Pipelines, the energised Consumer ICPs on those pipelines for the purposes of Clause 7.5(b)(ii) shall be determined by the Board from time to time, based on the Board's estimate of the value of those pipelines, taking into account the number of energised Consumer ICPs on the networks of other Gas Lines Company Council Members.

- 7.6 A Council Member must not be entitled to exercise more than 49% of the votes in its Joint Class. Any votes that a Council Member would otherwise be entitled to exercise above the 49% threshold must be distributed to the other Council Members in its Joint Class on the basis of the remaining respective market shares and the 49% threshold cap.
- 7.7 Council Members agree that the number of energised Consumer ICPs must, for the purposes of this Clause be taken from the Electricity Registry and Gas Registry two weeks before the annual general meeting of the Council each year and accordingly, authorise the Board or any person authorised by the Board to access the Electricity Registry and to request the relevant information from those Persons maintaining the Gas Registry for this purpose. Those numbers of energised Consumer ICPs apply until the following Financial Year.

Voting in general meetings

- 7.8 Except for matters arising under Clause 6, issues put to the vote at any general meeting of the Council, unless provisions of this Constitution require otherwise, are passed when there is a 75% vote in favour by each Joint Class of Council Member taken among the number of votes also to be cast by those Council Members present at the meeting.
- 7.9 A Council Member is deemed to be "present" for the purposes of a general meeting and voting if the Council Member's chief executive officer, a representative of the Council Member's chief executive officer or the Council Member's proxy is attending the meeting and any form of communication where the Council Members can hear each other simultaneously is sufficient for the Council Members to consider that each is present and attending the meeting.

Alterations to the Deed or Protocol

7.10 Unless Clauses 7.11A and 7.11B apply, any proposals for amendments to or substitution for this Deed or Protocol or any part of them must be approved by:

- (a) a resolution at a general meeting of 75% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not); or
- (b) all Council Members agreeing in Writing to the proposed amendment or substitution.

7.11 The Board must give Council Members notice of the precise details of the proposal for amendment or substitution, including details of any consultation on the proposal, and at least 14 Working Days to consider the proposal.

7.11A Any proposals for amendments to or substitution of:

- (a) the Electricity Consumer Dispute Resolution Protocol that do not apply to the Gas Consumer Dispute Resolution Protocol may only be voted on by Electricity Company Council Members; and
- (b) the Gas Consumer Dispute Resolution Protocol that do not apply to the Electricity Consumer Dispute Resolution Protocol may only be voted on by Gas Company Council Members,

provided that when voting on such amendments or substitutions, Electricity Company Council Members and Gas Company Council Members (as the case may be) must be mindful of the desirability of consistency between the Protocols, but only in circumstances where it is appropriate.

7.11B If Clause 7.11A applies, Clauses 7.5 to 7.7, 7.10 and 7.11 must be read, with all necessary modifications, as if the other Class of Council Member in the Joint Class did not exist.

7.11C Any proposals for amendments to or substitution of:

- (a) Clauses DB1.1 to DB1.3, DB1.5 and DB1.8 of the Land Complaints Dispute Resolution Protocol may be voted on by all Council Members; and
- (b) The rest of the Land Complaints Dispute Resolution Protocol may only be voted on by Lines Company Council Members, provided that, when voting on such amendments or substitutions, Lines Company Council Members must be mindful of the desirability of consistency between the Protocols, but only in circumstances where it is appropriate.

7.12 Notwithstanding Clauses 7.10 and 7.11, the Board must not give Council Members notice of an amendment under Clause 7.11 and no amendment may be approved under Clause 7.10 in respect of Clause 6 of the Deed unless:

- (a) the Council chairperson has convened a meeting of the Scheme Amendment Committee for the specific purpose of considering the proposal; and
- (b) the proposed amendment has been approved by a resolution of at least 10 out of 12 Scheme Amendment Committee members.

- 7.13 The provisions of Clauses 6.1, 6.2, 6.3, 6.4 and 6.7 apply to a proposal under Clause 7.12 as if it were a proposal by the Commission for amendment to the Scheme.

Winding-up of Council and functions

- 7.14 Council Members may wind up the Council and its functions and rescind this Constitution or any part of it by a resolution at a general meeting of 75% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not).

Defaulting Council Member's voting rights suspended

- 7.15 A Defaulting Council Member's right to vote is suspended until any outstanding amounts have been paid or the issue on which that Council Member is in default is otherwise resolved, as the case may be.

Proxies

- 7.16 The chief executive officer of any Council Member may appoint another Council Member to act as the Council Member's proxy, in such event the proxy's representative may act as the Council Member's proxy. A proxy must vote as directed. If a proxy receives no directions, the proxy may vote as it thinks fit. The instrument appointing a proxy may be in any common or usual form acceptable to the Board.
- 7.17 Unless the Council chairperson receives an indication in Writing before the commencement of the general meeting at which the instrument is to be used, a vote given in accordance with the terms of an instrument of proxy or attorney or representative is valid notwithstanding:
- (a) revocation of the instrument; or
 - (b) revocation of the authority under which the instrument was executed.

8. INDEMNITY

- 8.1 The Council Members jointly indemnify:
- (a) the Commission Members, the Electricity and Gas Complaints Commissioner, any staff employed by the Commission, persons engaged in contract by the Commission and the Council chairperson;
 - (b) Board Members while acting in their capacity as Board Members; and
 - (c) consumer representative members on the Scheme Amendment Committee while acting in their capacity as Scheme Amendment Committee Members,

for any liabilities incurred as a result of an act or omission performed in good faith in complying with and administering this Constitution except that this indemnity will not extend to protect any of those parties from any damage or loss arising out of deliberate neglect or default on their part.

- 8.2 For the purposes of the Contracts (Privity) Act 1982, the indemnity given in this Clause 8 is for the benefit of the Commission, the Electricity and Gas Complaints Commissioner, any staff employed

by the Commission, persons engaged in contract by the Commission, the Council chairperson, Board Members while acting in their capacity as Board Members, and consumer representative members of the Scheme Amendment Committee while acting in their capacity as Scheme Amendment Committee members, and is enforceable by any of them.

9. ENFORCEMENT

9.1 Subject to Clauses 8.2 and 9.2, this Deed is enforceable by a Council Member, the Council, the Board or the Council chairperson only and is not intended to create rights enforceable by any other Person under the Contracts (Privity) Act 1982.

9.2 In addition to the right of any Council Member to enforce any provision of this Deed, the Consumers' Institute Inc. may enforce a duty of the Council chairperson under Clause 6 (Scheme Amendment).

10. GENERAL

Contributions on winding-up

10.1 Council Members are jointly liable for outstanding liabilities, and for the costs, charges and expenses of the winding up, of the Council and the Commission and must continue to be jointly liable for the costs, charges and expenses of a winding up 12 Months after the Council and the Commission are wound up. Council Members must contribute on a Proportionate Basis to winding up the Scheme in the event of the Scheme being wound up while they are Council Members or within 12 Months of ceasing to be a Council Member.

Distribution of assets on winding-up

10.2 If on the winding up of the Council and its functions there is property or other assets remaining after the satisfaction of all the Council's and the Commission's debts and liabilities, that property and those assets must be distributed on a Proportionate Basis to Council Members and former Council Members (excluding Defaulting Council Members to the extent that they are in default) whose membership ceased within the 12 months prior to the date of winding up.

Governing law

10.3 This Constitution is governed by New Zealand law.

Counterparties

10.4 This Agreement may be signed in counterparts which together shall constitute one agreement binding on Council Members, notwithstanding that all Council Members are not signatories to the original or same counterpart.

11. COMMENCEMENT

[11.1 **DELETED**]

11.2 This Constitution comes into effect on 7 August 2001.

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SCHEDULE A

RULES OF THE ELECTRICITY AND GAS COMPLAINTS COMMISSION

A1. ESTABLISHMENT OF THE COMMISSION

Purpose of the Commission

A1.1 The purpose of the Commission is to establish and maintain the office of the Electricity and Gas Complaints Commissioner and to provide independent implementation and administration of the Scheme to ensure that the Scheme is:

- (a) free to Consumers, Land Owners, and Land Occupiers;
- (b) accessible;
- (c) fair;
- (ca) efficient
- (d) effective;
- (e) accountable; and
- (f) independent.

Composition of the Commission

A1.2 The Commission comprises:

- (a) a Commission chairperson initially appointed by the Board and thereafter by the Commission;
- (b) two representatives of Council Members, being one Retailer and one Lines Company, appointed by the Board; and
- (c) two consumer representatives appointed by the Minister of Consumer Affairs (or if there is no such portfolio, such other Minister of the Crown responsible for consumer issues).

A1.3 The chief executive officer of the Retailer and the chief executive officer of the Lines Company appointed as a Commission Member may from time to time nominate a representative.

A1.4 In acting in their role as Commission Members, each appointed Council Member, and its nominated representative, must have regard to the interests of all Council Members.

A1.5 One alternate Commission Member may be appointed by the Minister of Consumer Affairs for each consumer representative Commission Member. Each alternate Commission Member:

- (a) must be appointed at the same time and for the same term as the Commission Member for whom he or she acts as alternate (unless that Commission Member's term finishes before his or her appointed expiry date, in which case the alternate Commission Member acts as the Commission Member until a new Commission Member is appointed);

- (b) is entitled to notice of all meetings of the Commission and if the Commission Member for whom he or she acts as alternate is not present, to attend and vote in that Commission Member's stead; and
- (c) may exercise all the powers of the Commission Member for whom he or she acts as alternate and may exercise powers as a Commission Member.

A1.5A In appointing consumer representatives to the Commission under Clause A1.2, and alternate Commission Members under Clause A1.5, the Minister of Consumer Affairs may take into account the extent to which the representatives are able to represent the interests of Land Owners and Land Occupiers.

A1.5B In acting in their role as Commission Members, the consumer representatives appointed by the Minister of Consumer Affairs must take into account the interests of Consumers and Land Owners and Land Occupiers.

Termination of Commission Member's appointments

A1.6 A Commission Member must immediately cease to be a Commission Member if:

- (a) in the case of a Commission Member who is a natural person, he or she:
 - (i) is adjudged bankrupt;
 - (ii) becomes of unsound mind;
 - (iii) is absent for more than three meetings without permission of the Commission chairperson;
 - (iv) is convicted of an indictable offence or commits any act of dishonesty whether relating to the Commission or otherwise;
 - (v) is removed in Writing by the Person that appointed the Commission Member; or
 - (vi) has resigned by notice in Writing to the Commission and copies the notice to the appointee; or
- (b) in the case of a Commission Member who is a body corporate, it:
 - (i) becomes insolvent;
 - (ii) is not represented at a meeting of the Commission for more than three meetings without permission of the Commission chairperson;
 - (iii) has ceased to be a Council Member; or
 - (iv) has resigned by notice in Writing to the Commission and copies the notice to the Board.

Term of office

- A1.7 Subject to Clause A1.9, Commission Members may be appointed for periods of up to two years. A Commission Member may be re-appointed at the expiry of any period of office but he or she cannot hold office for more than six consecutive years.
- A1.8 Subject to Clause A1.9, the independent Commission chairperson is appointed for a four year period.
- A1.9 The Commission may, in consultation with the Board or, as the case may be, the Minister of Consumer Affairs that appointed the Commission Member(s) concerned, extend the duration of a Commission Member's term by up to six Months to ensure that the final period of office of the Commission chairperson or of two or more Commission Members does not coincide in the same half of any calendar year.

Requirements for Commission chairperson

- A1.10 The Commission must use its best endeavours to ensure that the individual appointed as the Commission chairperson is independent, that he or she has no material interest (including but not limited to employment in an electricity or Gas related capacity or the provision of consultancy advice on electricity or Gas sector issues) in the electricity or Gas sector that may conflict with his or her duties as the Commission chairperson. Such endeavours may include consulting with Consumer, Land Owner and Land Occupier, and electricity and Gas industry interest groups, and Government.

A2. POWERS AND DUTIES OF THE COMMISSION

Powers of the Commission

- A2.1 The Commission has all the powers of a natural person when implementing and administering the operation and administration of these Rules and the Terms of Reference, including but without limitation, the power to do all or any of the following things:
- (a) **Invest:** To invest the income and capital of the Commission not immediately required in any property in New Zealand and to vary those investments;
 - (b) **Purchase:** To purchase goods and services or acquire any property in New Zealand from any Person;
 - (c) **Sell:** To sell any property to any Person in such manner and on such terms as the Commission thinks fit;
 - (d) **Lease:** To lease any property in New Zealand to any Person on such terms as the Commission thinks fit and to accept renewals or surrenders of leases;
 - (e) **Take on lease:** To lease, licence or take on bailment of any property in New Zealand from any Person on such terms as the Commission thinks fit, and to renew or surrender such leases, licenses and bailments and generally to deal with these as the Commission thinks fit;

- (f) **Lend:** To lend or advance moneys to or leave moneys with any Person either with or without security and at such rate of interest or without any interest and generally upon such terms as the Commission thinks fit;
- (g) **Levy:** To levy, charge, collect and receive levies and fees from Council Members and expend the funds on administering the Scheme;
- (h) **Borrow:** To borrow moneys with or without security from any Person;
- (i) **Employ:** Taking into account the financial budget for the Commission, to retain or employ Persons in connection with the objects of the Commission and to pay them fees, salary, wages or other remuneration;
- (j) **Remunerate:** To remunerate:
 - (i) the Commission chairperson, the consumer representative Commission Members and the Electricity and Gas Complaints Commissioner for services to the Commission;
 - (ii) the Commission chairperson, Commission Members and the Electricity and Gas Complaints Commissioner for costs arising from attending Commission meetings and other identifiable and reasonable costs arising from services actually rendered to the Commission; and
 - (iii) identifiable and reasonable costs incurred by any Council Member in return for any services actually rendered to the Commission; and
- (k) **General:** To do all things and make such arrangements and enter into agreements as are incidental or conducive to the functions of the Commission and which in the opinion of the Commission can advantageously be carried out, performed, done or executed for the benefit of the Commission or for the furtherance of its functions.

Duties of the Commission

A2.2 Subject to these Rules, the Commission must:

- (a) give any assistance it considers necessary to the Electricity and Gas Complaints Commissioner concerning the performance of his or her duties;
- (b) subject to Clause 5.5(b), appoint an independent chairperson to the Commission after consulting with, and taking account of the views of, the Council chairperson;
- (c) receive and consider all recommendations from the Electricity and Gas Complaints Commissioner for changes to the Scheme;
- (d) commission independent reviews of the Scheme in accordance with Clause A6.1 and, at any other time, propose to the Board amendments to the Scheme in accordance with Clause A6.2;
- (e) monitor the Scheme (generally and by way of the review procedure set out in Clause A6) and, if it considers that amendments are required, make recommendations to the Board;

- (f) at its annual meeting receive and, if considered appropriate, approve the annual report of the Electricity and Gas Complaints Commissioner for the period corresponding to the Commission's previous Financial Year, but this subclause does not entitle the Commission to consider, approve or disapprove the exercise of the independent responsibility of the Electricity and Gas Complaints Commissioner in respect of a particular Complaint;
- (g) subject to (h), consider the proposed annual Electricity and Gas Complaints Commissioner's plan, prepare the overall financial budget, and refer the proposed annual plan and overall financial budget to the annual general meeting of the Commission for approval;
- (h) before referring an overall financial budget to the annual general meeting of the Commission for approval, consult with the Board on the proposed overall financial budget; and
- (i) in relation to each Financial Year, prepare or procure the preparation of appropriate financial statements of the Commission in respect of that period.

Exercising and delegating Commission powers

- A2.3 The Commission may determine the most appropriate and prudent manner in which to exercise its powers, including the manner of signing all cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Commission.
- A2.4 The Commission may delegate any of its powers and duties where it is appropriate or prudent to do so to the Electricity and Gas Complaints Commissioner, the Secretary, a committee or the Commission chairperson. The delegate must exercise the powers, duties or functions delegated in accordance with these Rules, the Terms of Reference and any directions or instructions issued to the delegate by the Commission.

Committees

- A2.5 Committees can consist of Commission Members, officers and/or employees of the Commission and any other Person the Commission considers appropriate. The chairperson(s) of committees must manage meetings and proceedings according to these Rules (with any necessary alterations to the Rules made by the Commission in its instructions to the committee).

General requirements for the application of income

- A2.6 The Commission must:
 - (a) operate on a not for profit basis; and
 - (b) apply all the income and property of the Commission as set out in these Rules and towards the promotion of the purpose and objects of the Commission.

A3. FUNDING

[A3.1 DELETED]

[A3.2 DELETED]

[A3.3 DELETED]

Fixed levy

A3.4 Council Members must pay a fixed levy required by the Commission to fund the Commission. The fixed levy and the manner of payment is:

- (a) determined annually by the Commission;
- (b) raised from Council Members on a Proportionate Basis; and
- (c) notified to Council Members, along with each Council Member's specific contribution to the fixed levy.

[A3.5 DELETED]

[A3.6 DELETED]

[A3.7 DELETED]

[A3.8 DELETED]

Administration of levies

A3.9 The Commission must give notice to each Council Member requesting payment of any levy amount to be raised from that Council Member stating the total amount to be raised and the amount of the Council Member's contribution. The Commission may at its absolute discretion allow Council Members to pay their contributions in instalments.

A3.10 The amount of any Council Member's contribution to a levy:

- (a) must be plus GST payable (if any); and
- (b) is due and payable by each Council Member within 30 Working Days of the Commission sending the notice requesting payment.

A4. THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER

Appointment of the Electricity and Gas Complaints Commissioner

A4.1 The Commission must appoint an Electricity and Gas Complaints Commissioner under a contract for services.

A4.2 The Commission must require the Electricity and Gas Complaints Commissioner to implement the Terms of Reference and must set out in the contract for services its terms of appointment and provision for annual performance agreements, to be entered into from time to time between the Commission and the Electricity and Gas Complaints Commissioner.

Term of office for the Electricity and Gas Complaints Commissioner

A4.3 The Electricity and Gas Complaints Commissioner must be engaged by the Commission to hold office with the Commission for such period on such terms and conditions as the Commission thinks fit. The individual holding the office of Electricity and Gas Complaints Commissioner may be re-appointed at the expiry of any period of office.

Requirements for Electricity and Gas Complaints Commissioner

A4.4 The Electricity and Gas Complaints Commissioner must not be, nor have been, an employee of, nor hold nor have held any office or position with a Council Member, nor must he or she, either personally or by his or her firm, act in a professional capacity for the Commission or any Council Member.

A4.5 In the exercise of his or her Complaint functions the Electricity and Gas Complaints Commissioner must act independently and not be subject to the direction or control of any other Person.

Discretion to suspend or terminate appointment and appointment of acting Electricity and Gas Complaints Commissioner

A4.6 The Commission has an absolute discretion to suspend or remove the Electricity and Gas Complaints Commissioner at any time for:

- (a) not complying with the terms of his or her contract for services or performance agreement;
- (b) becoming incapacitated on health grounds; or
- (c) being adjudged bankrupt or convicted of any offence involving dishonesty or likely to bring the Commission into disrepute.

A4.7 If the Electricity and Gas Complaints Commissioner is suspended, indisposed or otherwise prevented from carrying out his or her duties, the Commission must appoint a person in an acting capacity as the Electricity and Gas Complaints Commissioner for as long as the Commission considers necessary. While an acting Electricity and Gas Complaints Commissioner holds office, the Terms of Reference and performance agreement (if any) applies to him or her, with any necessary alterations, as if he or she were the Electricity and Gas Complaints Commissioner.

A5. ADMINISTRATION

Use of Information

A5.1 Commission Members and the Electricity and Gas Complaints Commissioner must establish procedures for the use of and holding of information (taking into account legal requirements relating to the management and release of information).

A5.2 Employees of the Commission and the Electricity and Gas Complaints Commissioner must not disclose to any Person, other than to each other, or the Commission chairperson, any

information concerning a Complaint referred to the Electricity and Gas Complaints Commissioner from which it would or might be possible to identify the Complainant or any Council Member named in a Complaint or any other information or matter of a confidential nature. This Clause does not prohibit the disclosure of any information to any Council Member named in a Complaint.

Reporting

- A5.3 The Commission is responsible for the preparation of detailed accounts for each Financial Year and reporting, quarterly, to the Board on the Commission's financial status. In addition to the detailed accounts, the Commission must report separately on the costs of its activities relating to Land Complaints and the costs of its activities relating to Consumer Complaints.
- A5.4 In addition, the Commission must also report, consider and refer to the Board any comments or submissions regarding the electricity and Gas sector and any initiative that impacts, or potentially will impact, on the Scheme. The Commission must also refer any similar reports, comments or submissions from the Electricity and Gas Complaints Commissioner.

Commission meetings

- A5.5 Commission Members may meet together and regulate their meetings as they think is necessary but must have the Commission chairperson and at least three Commission Members, one of whom must be a Commission Member appointed as a consumer representative and one of whom must be Commission Member which is a Council Member, present to constitute a quorum.
- A5.6 A Commission Member may request the Secretary to convene a meeting of the Commission at any time.
- A5.7 Any form of communication where the Commission Members (and any other Persons required to be present) can hear each other simultaneously is sufficient for the parties to consider that each is present, for the purposes of the Rules, at the meeting.

Questions decided by majority

- A5.8 Each Commission Member has one vote. Except where these Rules provide otherwise, questions arising at a meeting of the Commission are decided by a majority of votes of Commission Members present and voting. In the event of there being an equality of votes, the Commission chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote. Any question decided by a vote is deemed a decision of the Commission.

Written Resolution by the Commission

- A5.9 If all the Commission Members have signed a document containing a statement that they are in favour of a resolution of the Commission in the terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Commission held on the date on which the document was last signed by a Commission Member.
- A5.10 For the purposes of Clause A5.9, two or more separate documents containing statements in identical terms signed by one or more Commission Members are together deemed to constitute

one document containing a statement in those terms signed by those Commission Members on the respective dates on which the separate documents are signed.

Validity of acts of Commission Members

A5.11 Even if it is discovered after a meeting that there was some defect in the appointment of a Person as a Commission Member or power to act as a Commission Member or that a Person so appointed was disqualified, all acts done by that meeting of the Commission or by any Person acting as a Commission Member are valid.

Minutes

A5.12 The Commission must:

- (a) take minutes of:
 - (i) the names of those present at all meetings of the Commission or its committees; and
 - (ii) all proceedings of annual meetings and other meetings of the Commission or its committees, and
- (b) make those available within one Month to all Commission Members after the relevant meeting is held.

A5.13 The Commission chairperson or chairperson of the committee of each meeting must sign correct the minutes of each meeting.

Conflicts of interest

A5.14 Except as otherwise provided by these Rules, a Commission Member cannot vote at a meeting of the Commission on any resolution concerning a matter in which he or she has directly or indirectly an interest which is material and which conflicts or may conflict with the interest of the Commission and the Commission Member is not to be counted in the quorum present at the meeting. However:

- (a) the Commission may suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Rules prohibiting a Commission Member from voting at a meeting of the Commission;
- (b) if a question arises at a meeting of the Commission as to the right of a Commission Member to vote, the question may, before the conclusion of the meeting, be referred to the Commission chairperson and his or her ruling in relation to a Commission Member other than him or herself is final and conclusive; and
- (c) Commission Members that are representatives of Council Members do not have a conflict of interest merely because they operate within the electricity and Gas sector.

A5.15 Commission Members may not hold another office of profit under the Commission nor, either personally or by his or her firm, act in a professional capacity for the Commission.

Appointment of Secretary

A5.16 The Commission must appoint a person to act as Secretary to the Commission. The appointment may be an employee of or party contracted to the Commission. The appointment may be made on such terms, at such remuneration and upon such conditions as the Commission thinks fit. The Commission has the power to suspend or remove the Secretary.

Powers and duties of Secretary

A5.17 The Commission may vest in the Secretary any powers, duties and authorities it considers appropriate and the Secretary must accept all such powers, duties and authorities subject at all times to the control of the Commission.

Secretary to attend meetings

A5.18 The Secretary must attend all annual and other meetings of the Commission but is not required to attend committee meetings unless he or she is a member of the committee. The Secretary may be heard on any matter.

Inspection of records

A5.19 The Commission may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Commission will be opened to the inspection of Council Members. A Council Member does not have the right to inspect any document of the Commission except as provided by law or authorised by the Commission.

Annual meetings to be held

A5.20 The Commission must, in addition to any other meeting held by it, hold a meeting to be called the annual meeting within 3 months of the end of each Financial Year at which it receives the Annual Report of the Electricity and Gas Complaints Commissioner.

The Commission must, in addition to the annual meeting, hold a general meeting before the end of each Financial Year at which it must approve the financial budget for the Electricity and Gas Complaints Commissioner and the Commission for the succeeding Financial Year.

A5.21 Notice of every annual and general meeting under Clause A5.20 must be given to:

- (a) every Council Member;
- (b) every Commission Member;
- (c) the Board;
- (d) the Electricity and Gas Complaints Commissioner;
- (e) the Secretary;
- (f) any auditor appointed to audit the Commission's or the Electricity and Gas Complaints Commissioner's financial records;

- (g) the Ministry of Consumer Affairs;
- (h) consumer groups recommended by the Consumers' Institute Inc; and
- (i) Land Owner and Land Occupier groups recommended by the Ministry of Consumer Affairs.

A5.22 No other Person is entitled to receive notices of annual and general meetings under Clause A5.20.

A5.23 Persons notified may attend annual or general meetings held under Clause A5.20 of the Commission. However, only Commission Members may vote on matters put to the meeting.

A5.24 Any Person who is entitled to receive notice under Clause A5.21 may speak at an annual or general meeting held under Clause A5.20 of the Commission.

Publication of Annual Report

A5.25 After the Electricity and Gas Complaints Commissioner's Annual Report is accepted, the Commission must make it publicly available, together with any additional comments it considers appropriate.

A6. GENERAL

Review of the Scheme

A6.1 The Commission must commission an independent review:

- (a) of the Electricity Consumer Code of Practice 12 months after its adoption; and
- (b) of the performance and effectiveness of the Scheme three years after its adoption and subsequently every five years, and

report to the Board on the findings of the independent review and any amendment to the Scheme proposed by the Commission as a result of the independent review. The findings of the independent review must be made publicly available.

A6.1A To avoid doubt, any changes made to the Scheme as a result of Gas being incorporated into the Scheme (including the Gas Consumer Code of Practice and the Gas Consumer Dispute Resolution Protocol) must not form part of the initial three year review provided for in Clause A6.1(b).

A6.2 The Commission may at any other time propose to the Board amendments to the Scheme that the Commission considers necessary or conducive to the continuing effectiveness of the Scheme.

A6.3 Before putting any proposal to the Board under Clause A6.1 or A6.2, the Commission must consult with the Chief Ombudsman (in relation to any applicable guidelines issued by the Chief Ombudsman under section 28A of the Ombudsmen Act 1975), the Ministry of Consumer Affairs, Council Members, representatives of consumer, Land Owner and Land Occupier organisations and any other person that the Commission considers should be consulted.

Notices

A6.4 The Commission may give a notice to any Council Member or other Persons in any Written form where it is clear that the notice is authentic and originated from the Commission.

Register

A6.5 The Secretary must keep a Register recording the names and contact details of Council Members, the names of Commission Members and the name of the Electricity and Gas Complaints Commissioner.

A6.6 The Register must be publicly available and be updated at least once a Financial Year.

SCHEDULE B

TERMS OF REFERENCE

B1. POWERS AND OBLIGATIONS OF THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER

Statement of jurisdiction

- B1.1 The Electricity and Gas Complaints Commissioner's principal powers and duties are to:
- (a) consider, at no charge to the Consumer, a Consumer Complaint by a Consumer:
 - (i) about the provision of Services to the Consumer; or
 - (ii) about any other matter in respect of which a Complaint may be made under this Scheme;
 - (b) consider, at no charge to the Land Owner or Land Occupier, any Land Complaint; and
 - (c) facilitate the resolution of such Complaints in accordance with these Terms of Reference, the Codes of Practice, and the Protocols.
- B1.2 In considering any Complaint and in granting any remedy under Clause B3 the Electricity and Gas Complaints Commissioner must determine what he or she considers is fair and reasonable in the circumstances after:
- (a) observing and applying any applicable law, rule of law or judicial authority;
 - (b) applying the Consumer Contract or, in the case of Land Complaints, any applicable Land Agreement provided that:
 - (i) where the Consumer Contract does not comply with any provision of the relevant Code of Practice, that provision in the relevant Code of Practice prevails;
 - (ii) in the case of a Consumer Complaint, where the Consumer Contract does not comply with good industry practice prevailing in New Zealand or any relevant technical codes of practice prevailing in New Zealand and applicable to the subject matter of the Complaint which are not in conflict with the Code of Practice, good industry practice and the relevant technical codes of practice prevail; and
 - (iii) in the case of a Land Complaint, Clause CB5.3 of the Land Code of Practice applies; and
 - (c) in relation to a Consumer Complaint under Clause B1.1(a)(ii), having regard to any agreement (including a deed) or a code of practice between Council Members in respect of Consumer switching between competing Retailers.
- B1.3 In determining what is good industry practice, the Electricity and Gas Complaints Commissioner must consult within the industry and, as he or she thinks fit, with the Board.
- B1.4 In considering any Complaint and in granting any remedy under Clause B3, the Electricity and

Gas Complaints Commissioner is not bound by any previous decision made by the Electricity and Gas Complaints Commissioner or any predecessor in his or her office.

Limits on jurisdiction

- B1.5 The Electricity and Gas Complaints Commissioner does not have the jurisdiction to:
- (a) consider a complaint about the price Council Members choose to set for their goods or services but the Electricity and Gas Complaints Commissioner may consider whether appropriate information about charges has been made available to the Consumer and whether these charges for Services specified in a Consumer Contract have been correctly applied;
 - (b) consider any matter where it appears to the Electricity and Gas Complaints Commissioner that the Complaint is part of, or is related to, another Complaint which the Complainant has made;
 - (c) consider a Complaint that involves a claim in excess of the applicable monetary amount set out in Clause B1.5A, unless agreed to by the Council Member concerned in accordance with Clause B3.10 and that Council Member has given any consent that is required by Clause D3.2(a) or DA3.2(a);
 - (d) consider a Complaint which has become a “test case” in accordance with Clause B4 and proceedings have been initiated;
 - (e) consider a Complaint if it appears to the Electricity and Gas Complaints Commissioner that on the basis of the facts presented by the Complainant that the relevant Council Member has made a reasonable offer in settlement of the Complaint; or
 - (f) consider any matter excluded from the definition of Land Complaint under Clause 1.3.
- B1.5A For the purposes of Clauses B1.5(c), B3.9, B3.10, and B3.11, the applicable monetary amount is:
- (a) where the act or omission giving rise to the Complaint first occurred prior to 18 April 2005, \$10,000; or
 - (b) where the act or omission giving rise to the Complaint first occurred on or after 18 April 2005, \$20,000.
- B1.5B For Land Complaints:
- (a) in determining the value of a claim for the purposes of Clause B1.5(c), the Electricity and Gas Complaints Commissioner will take into account the reasonable costs that would be incurred by a Council Member in carrying out any actions that might reasonably be required by any award in respect of the Complaint, if it is upheld; and
 - (b) in determining the value of an award or Complaint for the purposes of Clauses B3.9, B3.10, and B3.11, the Electricity and Gas Complaints Commissioner will take into

account the reasonable costs that would be incurred by a Council Member in carrying out any actions required by the award.

- B1.5C For the avoidance of doubt, in applying Clause B1.5B, the Electricity and Gas Complaints Commissioner must not take into account:
- (a) any administrative (including legal) costs of a Council Member in responding to a Complaint or any request from the Electricity and Gas Complaints Commissioner relating to a Complaint; or
 - (b) any levy payable by a Council Member under Clause 4.1B(b).

Limit on jurisdiction in relation to Council Members that are subject to the Chief Ombudsman's jurisdiction

- B1.6 The Electricity and Gas Complaints Commissioner may act as a first-point of review for Complaints against Council Members who are subject to the Chief Ombudsman's jurisdiction under the Ombudsmen Act 1975 (the Chief Ombudsman's jurisdiction) if the Complaint relates to a matter within the Electricity and Gas Complaints Commissioner's jurisdiction.
- B1.7 When conveying his or her decision to a Complainant, who has made a Complaint against a Council Member which is subject to the Chief Ombudsman's jurisdiction, the Electricity and Gas Complaints Commissioner must advise the Complainant that he or she has the right to reject the Electricity and Gas Complaints Commissioner's decision and seek an investigation of his or her Complaint by the Chief Ombudsman's office.

Council Members can extend jurisdiction on ad hoc basis

- B1.8 Subject to Clause D3.2(a) and Clause DA3.2(a), a Council Member may consent to a Complaint being received by the Electricity and Gas Complaints Commissioner where the Electricity and Gas Complaints Commissioner would not otherwise have jurisdiction to determine that Complaint. A Council Member extending the Electricity and Gas Complaints Commissioner's jurisdiction on this ad hoc basis can elect to limit the Electricity and Gas Complaints Commissioner's ability to resolve the Complaint to making a recommendation or a finding of facts.

Consideration, or continued consideration, of a Complaint

- B1.9 The Electricity and Gas Complaints Commissioner may only consider (or continue to consider) a Complaint if he or she is satisfied that:
- (a) the Complainant is, or has the authority to represent the Consumer, Land Owner or Land Occupier to whom the Complaint relates;
 - (b) the Complaint has been referred to the in-house complaints handling service of the Council Member concerned and has reached "deadlock", that is:
 - (i) the Complaint has taken longer to resolve than 20 Working Days and the Council Member concerned has not notified the Complainant in Writing that it has good

reason to extend the time for resolving the Complaint and what that good reason is; and

- (ii) in any case, the Complaint has taken longer to resolve than 40 Working Days; or
 - (iii) if the Complainant is dissatisfied with a proposal for resolution of the Complaint made by a Council Member at any time;
- (c) the Council Member concerned has informed the Complainant that deadlock has been reached and the Complainant makes the Complaint to the Electricity and Gas Complaints Commissioner within two Months of being informed that deadlock is reached. (The Electricity and Gas Complaints Commissioner may extend the two Month time limit if the Council Member did not comply with Clause D1.3(a) and Clause D1.3(g), Clause DA1.3(a) and Clause DA1.3A(c), or Clause DB1.4(a) and Clause DB1.7(c), or there are good grounds for doing so); and
- (d) the act or omission giving rise to the Complaint first occurred:
- (i) in the case of an electricity-related Complaint, on or after **1 October 2001**;
 - (ii) in the case of a Gas-related or a combined electricity and Gas Complaint, on or after **1 April 2005**; or
 - (iii) in the case of a Land Complaint, on or after **1 October 2006**,

provided that the Electricity and Gas Complaints Commissioner may decide not to consider (or continue to consider) a Complaint if the Complainant knew of the act or omission giving rise to the Complaint for more than three Months before the Complaint was made to the Council Member.

Factors relevant to decision not to investigate a Complaint

B1.10 The Electricity and Gas Complaints Commissioner may decide not to investigate a Complaint if he or she considers that:

- (a) it is more appropriate that the Complaint be considered by another body or Person or under a statutory process;
- (b) a Complaint is or is being pursued in a manner that is trivial, vexatious or was not made in good faith;
- (c) a Complainant does not, or ceases to, have a sufficient interest in the subject matter of the Complaint;
- (d) the Complaint and any other Complaint by the same Complainant in respect of the same subject matter is, has been or during the course of any investigation by the Electricity and Gas Complaints Commissioner becomes, the subject of any proceedings in or before any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by an Ombudsman under the Ombudsmen Act 1975; or

- (e) the Complainant (or any Consumer he or she represents), to whom any Council Member concerned or interested in the Complaint owes a duty of confidence, has not waived the duty of confidence owed to the Complainant (or the Consumer, as the case may be) in respect of any information which the Electricity and Gas Complaints Commissioner may request a Council Member to produce for the purpose of his or her consideration of a Complaint.

B2. PROCEDURAL REQUIREMENTS

Establishing procedures

- B2.1 Subject to the other provisions of these Terms of Reference, the Electricity and Gas Complaints Commissioner must, in his or her own discretion, decide the procedure to be adopted for considering Complaints made to the Electricity and Gas Complaints Commissioner.
- B2.2 If the Complaint is a Lines Complaint in respect of Services provided under an Interposed Consumer Contract the relevant Lines Company or the Retailer with the Consumer Contract (whichever Council Member is not the Council Member designated under the relevant Protocol as the Council Member responsible for managing and resolving the Complaint) must be recognised by the Electricity and Gas Complaints Commissioner as a Person with an interest in the Complaint.

Confirmation of waivers

- B2.3 The Electricity and Gas Complaints Commissioner must promptly advise the Council Member named in the Complaint (and where necessary, any Council Member with an interest in the Complaint) that the Complainant has waived that Council Member's duty of confidentiality referred to in Clause B1.10(e)..

Initial consideration of jurisdiction to consider Land Complaints

- B2.3A For a Land Complaint, as soon as reasonably possible after receiving a Complaint, the Electricity and Gas Complaints Commissioner must:
 - (a) identify the matters that the Complaint relates to and the Lines Company Council Member that the Complaint is about;
 - (b) request the Council Member to provide any information by a specified date (which must allow a reasonable period of time to provide the information) that, in the view of the Electricity and Gas Complaints Commissioner, would assist the Electricity and Gas Complaints Commissioner in determining the value of the claim for the purposes of Clause B1.5(c);
 - (c) after receiving any information requested under Clause B2.3A(b) or the date specified under Clause B2.3A(b) (in the event no information is provided) or as soon as reasonably possible after notifying the Council Member of the Complaint (in the event no request is made under Clause B2.3A(b)), determine whether or not he or she has jurisdiction to consider, and should investigate, the Complaint under the Terms of Reference and the Constitution.

Information relating to Complaints

- B2.4 The Electricity and Gas Complaints Commissioner may require:
- (a) a Council Member named in a Complaint and any Council Member with an interest in a Complaint to provide any information that, in the view of the Electricity and Gas Complaints Commissioner, relates to that Complaint; and
 - (b) that any Council Member provide the Electricity and Gas Complaints Commissioner with any information reasonably requested regarding the Council Member's in-house Complaints handling process and a nominated point of contact to work with the Electricity and Gas Complaints Commissioner in the resolution of any Complaint in which the Council Member is named or the Council Member has an interest and to update this information when necessary.
- B2.5 Council Members must, as soon as is reasonably required, disclose the information requested by the Electricity and Gas Complaints Commissioner. However, a Council Member is exempt from disclosing such information if the Council Member certifies to the Electricity and Gas Complaints Commissioner:
- (a) that the disclosure of the information would place the Council Member in breach of its duty of confidentiality to a third Person who has refused its consent to disclosure despite the Council Member using its best endeavours to obtain such consent; or
 - (b) the Council Member does not have the information requested.

Disclosure of information to parties

- B2.6 If any party to a Complaint:
- (a) supplies information to the Electricity and Gas Complaints Commissioner and requests that he or she treat it as confidential, the Electricity and Gas Complaints Commissioner must not disclose that information to any other Person (subject to Clauses A5.1 and A5.2), except with the consent of the party supplying the information;
 - (b) requests access to any information on the Electricity and Gas Complaints Commissioner's file, the Electricity and Gas Complaints Commissioner must, subject to these Terms of Reference, legal requirements and any procedural standard developed by Commission and the Electricity and Gas Complaints Commissioner, make the information available; and
 - (c) supplies information to the Electricity and Gas Complaints Commissioner in relation to a Complaint and the Electricity and Gas Complaints Commissioner has resolved the Complaint or ceased to consider the Complaint, he or she must if requested return any information supplied by the party to that party as soon as is reasonably practicable.
- B2.7 If any Person threatens a Council Member's staff, agents or property and the Electricity and Gas Complaints Commissioner becomes aware of that threat, the Electricity and Gas Complaints Commissioner must report that threat to that Council Member.

Responding to General Enquiries

B2.8 The Electricity and Gas Complaints Commissioner may respond to General Enquiries, provide general information and give advice on the procedure for referring a Complaint to the Electricity and Gas Complaints Commissioner. It is not a function of the Electricity and Gas Complaints Commissioner to provide information about Retailers or Lines Companies or Services if that information is not related to a Council Member's participation in the Scheme or resolving a Complaint.

Use of company information on ownership of Lines Equipment.

B2.9 Where a Land Complaint is dependent for its resolution on determining whether or not a Lines Company owns the Lines Equipment that the Complaint relates to, and the Electricity and Gas Complaints Commissioner would be prevented by Clause B1.5(f) from considering that matter, the Lines Company's geographical information system or equivalent network records will be taken by the Electricity and Gas Complaints Commissioner as evidence of ownership, unless the Complainant provides evidence to the contrary. The Electricity and Gas Complaints Commissioner will not inquire into the issue of whether the Lines Company's records are accurate, unless such contrary evidence is provided by the Complainant.

B3. SETTLEMENTS, RECOMMENDATIONS AND AWARDS

Settlement by agreement

B3.1 At any time that the Electricity and Gas Complaints Commissioner is considering a Complaint he or she may seek to promote a settlement or withdrawal of the Complaint by agreement between the Complainant and the Council Member(s) concerned.

Recommendations

B3.2 If there is no such agreement, the Electricity and Gas Complaints Commissioner, at the request of the Complainant or the Council Member concerned, may make a recommendation for settlement or withdrawal of the Complaint. He or she must:

- (a) first give the Complainant and the Council Member concerned (and any Council Member with an interest in the Complaint) 15 Working Days notice of his or her intention to make such recommendation;
- (b) during the period of that notice (or such longer period as the Electricity and Gas Complaints Commissioner may agree) allow the Complainant and the Council Member(s) concerned to make further representations to the Electricity and Gas Complaints Commissioner in respect of the Complaint; and
- (c) if no agreement has been reached at the end of the period of notice, make a recommendation-

provided that if no response is received from either party within the 15 Working Days, the Electricity and Gas Complaints Commissioner may, at his or her discretion, not proceed to make a recommendation.

- B3.3 A recommendation must:
- (a) state the name of the Council Member(s) concerned in relation to the Complaint;
 - (b) be in Writing;
 - (c) state the recommendation, and if the Complaint is upheld against a Council Member (and if upheld against more than one Council Member the proportions to which each is recommended to contribute to resolve the Complaint); and
 - (d) include a summary of the Electricity and Gas Complaints Commissioner's reasons for making his or her recommendation.

- B3.4 If, in making a recommendation:
- (a) the Electricity and Gas Complaints Commissioner is minded to:
 - (i) propose that a Complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the Complainant and the Council Member concerned; or
 - (ii) make a recommendation for the settlement or withdrawal of a Complaint; and
 - (b) that settlement or withdrawal would involve the provision by a Council Member(s) of any service or require an action to be taken or the provision of valuable consideration (whether in the form of a money payment or otherwise);

the Electricity and Gas Complaints Commissioner's recommendation must, unless the Council Member(s) concerned named in the recommendation has otherwise requested or agreed, state that it is open for acceptance by the Complainant only if he or she accepts it in **full and final settlement** of the subject matter of the Complaint.

- B3.5 [Not used]

Awards

- B3.6 If the Electricity and Gas Complaints Commissioner has made a recommendation which, within 15 Working Days after it is made, has been accepted by the Complainant but not by the Council Member(s) named in the recommendation, the Electricity and Gas Complaints Commissioner may make an award against that Council Member(s).
- B3.7 Council Members are bound by the terms of an award and they must pay any money sum, provide any service (in respect of a Consumer Complaint only) or take any action required to carry out and implement an award made against them in accordance with these Terms of Reference.
- B3.8 An award may comprise the provision of a service (in respect of a Consumer Complaint only) or require an action to be taken or the provision of valuable consideration (whether in the form of money payment or otherwise).
- B3.9 Subject to Clause B3.10, the value of any award must not exceed the applicable monetary

amount set out in Clause B1.5A and must not include any sum granted under Clause B3.16 or any award levy payable (or part thereof) by the Council Member(s).

B3.10 Any Complaints involving a claim with a value in excess of the applicable monetary amount set out in Clause B1.5A may be considered by the Electricity and Gas Complaints Commissioner if the Council Member concerned:

- (a) in the case of a Complaint not exceeding the Extended Amount in value, agrees to extend the Electricity and Gas Complaints Commissioner's jurisdiction to allow the Electricity and Gas Complaints Commissioner to make a recommendation and if required make an award up to the value of the Extended Amount (whether in the form of money or otherwise). The Council Member is then be bound by any such award made; and
- (b) in the case of a Complaint exceeding the Extended Amount in value, agrees to allow the Electricity and Gas Complaints Commissioner to review the circumstances of the Complaint and make a finding of fact for the Council Member (but the Electricity and Gas Complaints Commissioner cannot make any recommendation or award).

For the purposes of this Clause B3.10, the **Extended Amount** means:

- (c) where the act or omission giving rise to the Complaint first occurred prior to 18 April 2005, \$25,000; or
- (d) where the act or omission giving rise to the Complaint first occurred on or after 18 April 2005, \$50,000.

B3.11 For the avoidance of doubt, any decision of a Council Member not to allow Complaints exceeding the applicable monetary amount set out in Clause B1.5A in value to be considered by the Electricity and Gas Complaints Commissioner must not be able to be the subject of a further Complaint to the Electricity and Gas Complaints Commissioner from the Complainant (or if representing a Consumer, from that Consumer).

B3.12 An award must:

- (a) state the name of the Council Member(s) against whom the Complaint is being upheld;
- (b) be in Writing;
- (c) state the nature and value of the award and if the award is made against more than one Council Member, the proportions to which each Council Member must contribute to the cost of the award;
- (d) include a summary of the Electricity and Gas Complaints Commissioner's reasons for making the award; and
- (e) state that, if within 15 Working Days after its issue the Complainant agrees to accept it in full and final settlement of the subject matter of the Complaint, the award is binding on the Complainant and (in accordance with Clause B3.6) the Council Member(s) against which it is made.

- B3.13 Despite the requirements in Clause B2.6, the Electricity and Gas Complaints Commissioner must issue a copy of the award to:
- (a) the Complainant;
 - (b) any Council Member against which the award is made; and
 - (c) any Council Member interested in the Complaint.
- B3.14 The Electricity and Gas Complaints Commissioner must require a Written statement from the Complainant or any Consumer he or she represents which:
- (a) is addressed to the Electricity and Gas Complaints Commissioner and the Council Member(s) against which the award is made and any Council Member interested in the Complaint; and
 - (b) indicates his or her acceptance of the award together with any amount awarded under Clause B3.15 in **full and final settlement** of the subject matter of the Complaint.
- B3.15 If a Complainant elects not to accept a recommendation or award of the Electricity and Gas Complaints Commissioner, then the Complainant is entitled to pursue his or her remedies in any other forum and the Council Member will be fully released from the Electricity and Gas Complaints Commissioner's decisions in relation to that Complaint.

Reimbursement for incidental expenses or inconvenience suffered

- B3.16 The Electricity and Gas Complaints Commissioner may, in addition to any award, specify a sum to be paid to the Complainant (or any person the Complainant represents), up to a maximum of \$2,000, that he or she considers is appropriate:
- (a) reimbursement for incidental expenses reasonably incurred in making and pursuing the Complaint; or
 - (b) compensation for inconveniences arising from making and pursuing the Complaint, including any inconvenience attributable, in whole or in part, to the failure of one or more Council Members to comply with the Protocol.

Publication of names

- B3.17 The Electricity and Gas Complaints Commissioner may:
- (a) in respect of any award accepted by a Complainant, make publicly available through any medium he or she thinks fit from time to time, and in his or her annual report:
 - (i) the name of the Council Member in respect of whom the award is made;
 - (ii) the subject matter of the Complaint;
 - (iii) the amount of the award and any additional sums ordered in respect of the Council Member; and
 - (iv) if the Complainant has given his or her consent, the name of the Complainant; or

- (b) in any general summary information relating to awards accepted by Complainants made publicly available through any medium, the name of a Council Member(s) in respect of whom an award has been made that in the Electricity and Gas Complaints Commissioner's opinion warrants particular attention in the context of the general summary information.

B4. TEST CASES

Pursuing a Complaint as a "test case"

B4.1 At any time before the Electricity and Gas Complaints Commissioner has made an award, a Council Member named in the Complaint may (subject to Clause D3.2(c) or Clause DA3.2(c) where applicable) give the Electricity and Gas Complaints Commissioner notice in Writing stating that in the opinion of the Council Member and for the reasons set out in the notice, the Complaint should be pursued in court proceedings, as it involves or may involve:

- (a) an issue which may have important consequences for the business of the Council Member or similar businesses to the Council Member's business; or
- (b) an important or novel point of law.

B4.2 The Council Member must also write to the Complainant (addressing the notice to any Consumer the Complainant may be representing) stating that it proposes to pursue the Complaint as a "test case" and outlining the process by which this will occur. The Council Member must copy that correspondence to the Electricity and Gas Complaints Commissioner.

Requirements on Council Members for "test cases"

B4.3 The Council Member must:

- (a) institute in any Court in New Zealand proceedings in respect of the Complaint within four Months of the date of the notice to the Complainant; or
- (b) assist the Complainant (or any Consumer, Land Owner or Land Occupier the Complainant represents) to institute proceedings in any Court in New Zealand within six months of the date of the notice to the Complainant;
- (c) pay the Complainant's (or any Consumer, Land Owner or Land Occupier the Complainant represents) costs and disbursements (including reasonable costs of legal representation on a solicitor/own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Council Member (except by way of respondent's notice, cross-appeal or other similar procedure); and
- (d) make interim payments on account of such costs identified in Clause B4.3(c) if and to the extent that it is reasonable to do so.

B4.3A For the avoidance of doubt, in relation to a Land Complaint, the Council Member is liable to pay the Complainant's costs under Clause B4.3(c) only to the extent the costs relate to the aspect of the Court proceedings that was the subject of the Complaint.

Effect on Electricity and Gas Complaints Commissioner

- B4.4 Providing the Electricity and Gas Complaints Commissioner concurs with the Council Member's statement and considers the notice required under Clause B4.2 to the Complainant (and any Consumer the Complainant represents) is accurate and clear, the Electricity and Gas Complaints Commissioner must suspend consideration of the Complaint for six Months.
- B4.5 Once proceedings are instituted, the Complaint is deemed to be withdrawn. If proceedings are not instituted within six Months, the Electricity and Gas Complaints Commissioner may elect to resume consideration of the Complaint.

B5. ADMINISTRATIVE RESPONSIBILITIES

Responsibilities and requirements

- B5.1 The Electricity and Gas Complaints Commissioner is responsible for:
- (a) meeting the performance standards and other requirements agreed with the Commission from time to time as set out in the Electricity and Gas Complaints Commissioner's performance agreement including:
 - (i) ensuring that he or she employs or contracts, at a reasonable cost and as considered necessary to assist in resolving disputes, one or more persons with expertise in and knowledge of the electricity and gas sectors, including in the operation of electricity lines and gas pipelines and in dealing with Land-related issues; and
 - (ii) forming a technical advisory panel with particular knowledge of the electricity and gas sectors, including good industry practice in the operation of electricity lines and gas pipelines and in dealing with Land-related issues;
 - (b) attending, in a non-voting capacity, meetings of the Commission and/or the Board at the invitation of the Commission and/or the Board;
 - (c) liaising, and consulting with other industry bodies, and developing working procedures with these bodies where appropriate;
 - (d) promoting the Scheme and the Electricity and Gas Complaints Commissioner's complaint-handling procedures;
 - (e) reviewing these Terms of Reference and the Codes of Practice and making recommendations to the Commission on any amendments he or she considers are required;
 - (f) in consultation with the Commission, preparing:
 - (i) an Electricity and Gas Complaints Commissioner's plan that includes goals, output targets and performance standards for a period corresponding with the Financial Year; and
 - (ii) a financial budget in respect of a period that corresponds with the Financial Year;

- (g) controlling and monitoring expenditure within the financial budget and providing regular reports to the Commission on expenditure;
- (h) preparing an annual report containing, in relation to the preceding Financial Year of the Electricity and Gas Complaints Commissioner, a general review of his or her activities during that year (including information identifying the separate costs of the Commissioner's activities relating to Land Complaints and the Electricity and Gas Complaints Commissioner's activities relating to Consumer Complaints) and any other information the Commission requests and, at least 28 days before the Commission's annual general meeting, sending that annual report to the Commission, the Council chairperson and Council Members;
- (i) at the Electricity and Gas Complaints Commissioner's discretion, making:
 - (i) ad hoc confidential reports to Council Members on matters coming to his or her attention concerning their general compliance with Scheme;
 - (ii) general observations about the purpose and operation of the Scheme in any public forum; and
 - (iii) a report to the Commission on issues arising that relate to the electricity and Gas sector as a whole, or any other initiative, affecting the Scheme; and
- (j) keeping data in accordance with the Privacy Act 1993, on General Enquiries and Complaints and remedies for reporting purposes, to identify the sources of practices giving rise to similar Complaints, and to assist in the Board and Commission's determination and application of award levies.

B5.2 The Electricity and Gas Complaints Commissioner is responsible to the Commission for the day to day administration and conduct of the operations of the Electricity and Gas Complaints Commissioner. He or she has the power to incur expenditure on behalf of the Commission in accordance with the current financial budget and expenditure authority approved by the Commission.

B5.3 The Electricity and Gas Complaints Commissioner must not exercise any power which the Rules expressly give to the Commission or to any other Person.

B5.4 In consultation with the Commission chairperson and subject to his or her approval, the Electricity and Gas Complaints Commissioner has the power on behalf of the Commission to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.

SCHEDULE C

THE ELECTRICITY CONSUMER CODE OF PRACTICE

C1. WHAT IS THE ELECTRICITY CODE?

- C1.1 The Code contains undertakings by Electricity Company members of the Electricity and Gas Complaints Council to their Consumers under the Scheme for fair and reasonable dealings with Consumers.
- C1.2 The provisions of the Code should be interpreted in light of Clause C2 and Clause C3 and should be applied in a manner which is consistent with these Statements of Purpose and Principles.

C2. STATEMENT OF PURPOSE

- C2.1 The Electricity and Gas Complaints Commissioner Scheme is designed to create a forum where Consumers can access an independent dispute resolution service for complaints about their electricity Lines Company or Retailer.
- C2.2 The purpose of the Electricity and Gas Complaints Commissioner Scheme is to provide a service that is:
- (a) Free to Consumers;
 - (b) Accessible;
 - (c) Fair;
 - (d) Effective;
 - (da) Efficient;
 - (e) Accountable; and
 - (f) Independent.

- C2.3 The Code is a document which sets out the principles, requirements, services and actions a Consumer can reasonably expect from their Electricity Retailer or Electricity Lines Company.

C3. STATEMENT OF PRINCIPLES

- C3.1 The following Principles articulate the basic values which underpin the Code's purpose and objectives:
- (a) Consumer complaints should be handled promptly, fairly, and with respect to complainants throughout the process;
 - (b) All information given to Consumers should be accurate, up to date and easy to understand;

- (c) Consumer Contracts should clearly define the rights and obligations of the contracting parties, and companies must bring these rights and obligations to the attention of Consumers; and
- (d) The Code sets out certain minimum standards of behaviour of good industry practice, and Consumer Contracts should seek to exceed those minimums where possible.

C4. LOCATION OF DEFINITIONS

C4.1 Words that are capitalised (e.g. Consumer Contract, and Company) have specific meanings in this Code. If these words are not defined when first used, they are defined under C29 Definitions at the back of the Code.

C5. WHO IS COVERED BY THE CODE?

C5.1 Every Electricity Retailer and Electricity Lines Company who is a member of the Electricity and Gas Complaints Council is covered by this Code.

C5.2 This means that they must follow the provisions set out in the Code.

C6. WHAT IS A CONSUMER CONTRACT?

C6.1 A Consumer Contract is an agreement between a Consumer and a Company for the supply of electricity and/or Line Function Services.

C7. WHAT IS THE CONNECTION BETWEEN THE CODE AND A CONSUMER CONTRACT?

C7.1 The Code explains to Consumers what they can expect in their dealings with an Electricity Retailer or Electricity Lines Company.

C7.2 A Consumer Contract must not contain provisions which are inconsistent with the Code. The provisions of the Code will apply to the extent of any inconsistency.

C7.3 A Consumer Contract may include terms or conditions additional to or more favourable to the Consumer than those set out in the Code but these terms or conditions must not be inconsistent with the undertakings of the Code.

C8. WHO DEALS WITH COMPLAINTS RELATING TO THE CODE?

C8.1 Only the Company and the Electricity and Gas Complaints Commissioner can deal with complaints relating to the Code.

C9. WHAT CAN THE CONSUMER EXPECT FROM A CONSUMER CONTRACT?

C9.1 A Consumer Contract must:

- Be easy to understand;
- Clearly set out the rights and obligations of both the Company and the Consumer;
- Refer to any other information that is part of the terms and conditions of the Consumer Contract;

- Be easy for Consumers to obtain;
- Allow Disconnection only as a last resort except for reasons of safety or other reasons authorised under the Electricity Regulations 1997; and
- Provide for free, accessible, fair and effective systems for resolving Complaints within a Company.

C10. CHANGES TO CONSUMER CONTRACTS

C10.1 If a Company changes the terms and conditions of a Consumer Contract, the Company must:

- Give no less than 30 days notice before making any changes to the terms and conditions of the Consumer Contract; and
- Explain the reasons for the changes to the Consumer Contract terms and conditions when it gives the Consumer notice about the change.

C10.2 The Consumer Contract must describe how the Company will communicate any changes to the terms and conditions of the Consumer Contract that may be made under the Consumer Contract. However, any change in the frequency of billing and/or frequency of meter reading must be individually communicated to the Customer in writing.

C11. CHANGES TO PRICE

C11.1 If a Company increases the price of electricity supplied under a Consumer Contract, including for example any increase in variable electricity prices and/or daily fixed charge prices, the Company must:

- Give no less than 30 days notice before increasing the price of electricity; and
- Explain the reasons for the increase in price when it gives the Consumer notice about the change.

C11.2 The Consumer Contract must describe how the Company will communicate any increases in the price of electricity. If the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the Consumer in writing as soon as practicable.

C11.3 For the avoidance of doubt, a Company is not required to give a Consumer advance notification of a decrease in the price of electricity supplied.

C12. SERVICES PROVIDED

C12.1 The Consumer Contract must describe the services provided to the Consumer. This includes any quality standards that the Consumer should expect from the Company in providing these services.

C12.2 A Consumer Contract must set out how the Company will respond to the Consumer where quality of service standards are not met, including any compensation that would be paid to the Consumer if the Company does not meet its obligations.

- C12.3 The quality of service standards must:
- Comply with the Electricity Act 1992 and the technical regulations and technical electrical codes of practice;
 - Be no less than good industry practice prevailing in New Zealand; and
 - Require that equipment used in the provision of Line Function Services will be monitored and maintained in line with good industry practice prevailing in New Zealand.

C12.4 The Consumer Contract must include a warning to Consumers to protect Sensitive Appliances from voltage spikes.

C13. PRICE INFORMATION

C13.1 The Consumer Contract must refer to the relevant prices or pricing schedule (as may be produced by the Company from time to time) of products and services available to the Consumer.

C14. BILLING

C14.1 Consumer Contracts must set out:

- That the Consumer is liable for the charges for all the services included in the Consumer Contract and is responsible for making sure that the contractual requirements are met;
- That the Consumer will only be liable for charges from the date of occupancy or responsibility unless another date has been agreed between the Consumer and the Company;
- That, except in the case of bills based on estimates, if the Company makes an error and charges an incorrect amount, the Consumer:
 - is entitled to a refund of the difference between the incorrect and correct amounts where the Consumer has paid too much; or
 - is only liable to the Company for the correct amount.
- The billing period and/or reconciliation period.

C14.2 Where a Consumer has chosen a price option offered by an Electricity Retailer that includes fixed charges for electricity and Line Function Services, the Company's bill must identify the fixed charge component of the bill separately from the variable charge.

C14.3 If a Company's bill includes charges for goods and services other than the supply of electricity or Line Function Services, these should be itemised separately unless the Consumer has agreed otherwise under the Consumer Contract.

C14.4 If a Company's bill to a Consumer is based on a method of estimating electricity and/or Line Function Services usage:

- The Consumer should be given the opportunity of reading their own meter(s) and giving the reading(s) to the Company until the Company arranges for the meter to be read;
- The Company must provide, on request, a simple explanation of how estimates are calculated and amend an estimated bill when the Consumer provides a valid meter reading;
- The Company must make sure that its bills state clearly if an estimate has been used; and
- The Company must state in the Consumer Contract whether the Consumer is required to pay estimated accounts.

C15. METERING

C15.1 Meter readings used by a Company for billing a Consumer must comply with electricity industry standards and codes of practice for meter reading. Meter readings should take place a minimum of four times a year unless the Consumer agrees individually otherwise or does not provide the Company with reasonable access to the meter.

C15.2 On request the Company must inform the Consumer of the results of any meter test, and, if it is not clear in the Consumer Contract, inform the Consumer of any extra charge the Consumer may incur as a result of the Company testing the Consumer's meter prior to undertaking the work.

C15.3 The Company must inform the Consumer prior to taking any action on the Consumer's meter which may impact on the Consumer's bill or result in an extra charge.

C15.4 The obligations on Companies to inform Consumers under Clause C15.2 and Clause C15.3 do not apply where the Company has reasonable cause to suspect that fraud, theft or meter tampering has taken place.

C16. PAYMENT OPTIONS

C16.1 A Company with a Consumer Contract (or the person who does that Company's billing on its behalf) must have policies in place that assist a Consumer who is having difficulty paying a bill.

C16.2 Where currently offered payment options are to change, reasonable notice must be given and adequate information provided to explain the changes to Consumers before the change takes effect. The minimum notification provisions of Clause C10 Changes to Consumer Contracts apply.

C16.3 If alternative payment options are offered to Consumers, these should be supported by a simple explanation of how the options operate, either in the Consumer Contract or in a separate publication or notice.

C17. BONDS

C17.1 If a Company requires a Bond:

- The Company must give to the Consumer the reason for that decision;

- The Bond must not be more than the expected loss if a Consumer doesn't pay;
- The Consumer Contract should state if interest is payable on the Bond;
- The Bond must be held on trust in a separate account; and
- The Consumer Contract must state:
 - the period of time within which the Bond must be paid to the Company;
 - how long the Company will keep the Bond and that if the Company keeps the Bond for longer than 12 months, it must provide its reasons for doing so to the Consumer; and
 - how the Bond will be refunded.

C18. DISCONNECTION AND RECONNECTION

- C18.1 Consumer Contracts must set out the conditions under which Consumers can be disconnected.
- C18.2 Consumer Contracts must state that a Company may only disconnect a Consumer for non-payment where the non-payment relates to bills (including a Bond) associated with the supply of Retail Services, Line Function Services, and/or electrical energy.
- C18.3 Where a Company intends to disconnect a Consumer because the Company considers that the Consumer has not paid a bill (including a Bond), Disconnection should be the Company's last course of action.
- C18.4 If a Consumer has started using and is pursuing the dispute resolution processes set out in the Consumer Contract (including the Electricity and Gas Complaints Commissioner Scheme) in relation to that Consumer not paying the bill, the Company must not disconnect that Consumer or commence credit recovery action until the processes are exhausted.
- C18.5 This means that a Consumer should not be disconnected for non-payment of part of an account that is the subject of a dispute resolution process. However, a Consumer may be disconnected for non-payment of that part of an account which is not in dispute.
- C18.6 A Consumer should not be disconnected on the basis of an estimated account unless it is fair and reasonable in the circumstances to do so.
- C18.7 Except in the case of agreed or emergency Disconnections, Consumer Contracts must:
- Provide for at least seven days notice of warning of Disconnection and allow an additional three days for the delivery of the notice; and
 - Provide for a Final Warning no less than 24 hours nor more than seven days before Disconnection. The Final Warning must specify these timeframes. If the Disconnection is not prevented by the Consumer and not completed within these timeframes, the Company must issue another Final Warning.

C18.8 Consumer Contracts must explain when charges for temporary Disconnection and/or Reconnection apply. When warnings are delivered as per the provisions of C18.7, they must include and make explicit what additional charges over and above the recovery of billing arrears will apply.

C18.9 Temporary Disconnection and/or Reconnection charges should not be more than the level required to meet the overall costs of the Disconnection and/or Reconnection service.

C18.10 Disconnection notices should include:

- Information about the Company's dispute resolution processes;
- Contact details of the Company's credit department so that the Consumer can contact that credit department to arrange payment of a bill that has not been paid, and
- The cost of Reconnection.

C19. FAULTS

C19.1 Information about 24-hour telephone numbers to call for faults must be provided on every bill to a Consumer.

C20. PLANNED SHUTDOWNS

C20.1 A Consumer Contract must clearly state a minimum notice period before a Planned Shutdown which should be no less than four days unless agreed otherwise in the Consumer Contract.

C20.2 Companies must notify Consumers of a Planned Shutdown within the notice period.

C21. OBLIGATIONS FROM POINT OF SUPPLY

C21.1 Company must supply information (on request) to a Consumer about a Consumer's electricity supply that explains where the Electricity Lines Company's ownership and responsibilities end in relation to the network.

C21.2 A Consumer Contract must set out the responsibilities of the Consumer, the Electricity Retailer and the Electricity Lines Company in relation to ownership of equipment. For example, a Consumer Contract must clearly set out the extent to which the Consumer is responsible for the maintenance of trees and/or other structures on the property where these could affect the supply.

C21.3 A Consumer Contract must explain the Consumer's responsibilities for compliance with all Line Function Services safety and technical requirements under regulations and codes of practice.

C22. ACCESS TO PREMISES

C22.1 Consumer Contracts must include provisions permitting reasonable access to a Consumer's Premises for the direct purposes of the Electricity Retailer or Electricity Lines Company and any agent or subcontractor of that Company. The consequences of not granting access should also be set out in the Consumer Contract. Other conditions of access should be in line with the provisions of the Electricity Act 1992.

C22.2 Where a Company is in the possession of keys and/or security information for a Consumer's Premises, the Company should have formal procedures for the secure storage and use of and return of these keys and/or security information.

C23. CONSUMER COMPLAINT RESOLUTION

C23.1 Companies must have a free, accessible, fair and effective, internal Consumer Complaints handling process.

C23.2 Companies must accept Consumer Complaints in any reasonable form from a Consumer including written and oral, and via a variety of delivery mechanisms including face-to-face, posted, hand-delivered, facsimile or electronic.

C23.3 Companies must:

- Provide information to Consumers about how their Complaint will be dealt with, and by when;
- Provide written information about their Consumer Complaints handling processes; and
- Treat Consumers courteously, and with respect.

C23.4 Companies must also:

- Train their staff about their Consumer Complaints handling processes;
- Use processes that are easy to understand, easy to use and free to Consumers;
- Provide adequate resources for their Complaints handling processes;
- Tell Consumers that there is an Electricity and Gas Complaints Commissioner to whom they can go if their complaint is not resolved; and
- Review their Consumer Complaints handling process regularly.

C23.5 Companies must provide for appropriate remedies to Consumers

C23.6 Companies must collect and analyse information about Complaints, and use it to adjust business practices as required.

C23.7 For Consumers, Electricity Retailers, must have in place an effective process to ensure there has been an offer and acceptance of the Consumer Contract.

C24. LIABILITY

C24.1 Except as permitted under Clauses C24.2 and C24.3, a Consumer Contract must not limit the scope of liability, in contract or tort, of a Company to a Consumer to less than liability for physical damage to property where it can be shown that the Company has been negligent and the amount and nature of the Consumer's loss was reasonably foreseeable.

C24.2 A Consumer Contract must not limit the monetary amount of liability, whether in contract or tort, of a Company to a Consumer for an event or a series of closely related events occurring on a

network system to any amount less than \$10,000. This clause does not prevent or limit any provision in a Consumer Contract stating that liability is subject to any monetary cap contained in the Consumer Contract for an event or series of closely related events in relation to more than one Consumer on a network system.

C24.3 A Consumer Contract must not fix a per annum cap on liability in respect of one or more Consumers on a network system or for events or a series of closely related events occurring on a network system.

C24.4 Notwithstanding the provisions of the Code, and in particular Clause C24, Consumers have access to any remedies that arise under the Consumer Guarantees Act 1993. Where the Code conflicts with the Consumer Guarantees Act, the Consumer Guarantees Act will take precedence.

C25. FORCE MAJEURE CLAUSES

C25.1 A Consumer Contract must define the situations covered under Force Majeure clauses and explain how a Company will respond in such circumstances.

C26. PRIVACY

C26.1 A Consumer Contract must adhere to the provisions of the Privacy Act 1993 and accordingly:

- Set out the purposes for which the Company collects information from individuals; and
- Confirm that Consumers will have ready access to information held about them and the opportunity to correct this information.

C27. OVERSIGHT AND REVIEW OF THIS CODE

C27.1 The Electricity and Gas Complaints Commission is responsible for overseeing and reviewing this Code.

C28. ENFORCEMENT OF THE CODE

C28.1 The undertakings of a Company in this Code are not intended to create rights enforceable by a Consumer against a Company under the Contracts (Privity) Act 1982.

C29. DEFINITIONS

C29.1 Terms used in this Code have the following meanings:

Bond means the bond or sum of money provided by a Consumer as security for non-payment.

Code means this Code of Practice which comprises Schedule C of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.

Company means a member of the Electricity and Gas Complaints Commissioner Scheme who is either an Electricity Retailer or an Electricity Lines Company. "Companies" and Electricity Companies have corresponding meaning.

Consumer means:

- A person who is supplied, or who applies to be supplied, with electricity by an Electricity Retailer in accordance with a Consumer Contract for consumption of electricity;
- A person who is supplied, or who applies to be supplied, with Line Function Services in accordance with a Consumer Contract and who also consumes electricity; and
- Includes any person using the services supplied under that Consumer Contract or paying part or all of the fees for the services provided under the Consumer Contract.

Consumer Contract means the agreement with a Consumer providing for the supply of electricity and/or Line Function Services to a Consumer and includes any additional publications, which contain information about the service to Consumers.

Disconnection means the movement or removal of equipment so that no electricity can flow to a Consumer's Premises.

Electricity and Gas Complaints Commission means the Commission set up under the Electricity and Gas Complaints Commissioner Scheme. It provides an independent overview of the Scheme and comprises an independent chairperson, two representatives of industry members and two Consumer representatives appointed by the Minister of Consumer Affairs.

Electricity and Gas Complaints Commissioner is the person appointed to that position by the Electricity and Gas Complaints Commission.

Electricity and Gas Complaints Commissioner Scheme means the Electricity and Gas Complaints Commissioner Scheme implemented by the Electricity and Gas Complaints Council.

Electricity and Gas Complaints Council means the governing body under the Electricity and Gas Complaints Commissioner Scheme.

Electricity Lines Company means a Company which operates a local network for conveying electricity and provides Line Function Services to Electricity Retailers or directly to Consumers. Electricity Lines Companies includes lines services businesses, whether incorporated or not.

Electricity Retailer means any supplier of electricity to Consumers.

Force Majeure means circumstances beyond the control of the Company, for example failure to supply electricity due to causes beyond the Company's control such as a storm.

Line Function Services has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in a Consumer Contract and includes metering services where an Electricity Lines Company provides or has provided these services.

Planned Shutdown means the period when electricity is not available due to routine planned maintenance. A planned shutdown excludes situations where the electricity network needs to be taken out of service for emergency reasons such as to ensure the integrity of the electricity network or for safety. In general, planned shutdowns (where required) would be used for all work falling under the Lines Company's Asset Management Plan.

Point of Supply has the same meaning as given to it in the Electricity Act 1992.

Premises means the site to which electricity is supplied or is to be supplied to a Consumer.

Provide a Final Warning means that the Company must take all reasonable steps to ensure a Consumer receives this warning. This may include making contact to the Consumer's last known address or phone number.

Reconnection means the movement or replacement of equipment so that electricity can flow to a Consumer's Premises which had been disconnected.

Retail Services mean all services supplied under an interposed Consumer Contract (except Line Function Services) and all services supplied under a supply only Consumer Contract and includes metering services where an Electricity Retailer provides or has provided these services.

Sensitive Appliances means electrical equipment that has electronic circuitry or control systems in them. Major household appliances that fall into this category include, but are not limited to, TVs, microwaves, stereos, computers, radios, washing machines and driers, fridges, freezers, videos, DVDs and dishwashers.

SCHEDULE CA

THE GAS CONSUMER CODE OF PRACTICE

CA1. WHAT IS THE GAS CODE?

- CA1.1 The Code contains undertakings by Gas Company members of the Electricity and Gas Complaints Council to their Consumers under the Scheme for fair and reasonable dealings with Consumers.
- CA1.2 The provisions of the Code should be interpreted in light of Clause CA2 and Clause CA3 and should be applied in a manner which is consistent with these Statements of Purpose and Principles.

CA2. STATEMENT OF PURPOSE

- CA2.1 The Electricity and Gas Complaints Commissioner Scheme is designed to create a forum where Consumers can access an independent dispute resolution service for complaints about their Gas Retailer and Gas Lines Company.
- CA2.2 The purpose of the Electricity and Gas Complaints Commissioner Scheme is to provide a service that is:
- (a) Free to Consumers;
 - (b) Accessible;
 - (c) Fair;
 - (d) Effective;
 - (da) Efficient;
 - (e) Accountable; and
 - (f) Independent.

- CA2.3 The Code is a document which sets out the principles, requirements, services and actions a Consumer can reasonably expect from their Gas Retailer or Gas Lines Company.

CA3. STATEMENT OF PRINCIPLES

- CA3.1 The following Principles articulate the basic values which underpin the Code's purpose and objectives:
- (a) Consumer complaints should be handled promptly, fairly, and with respect to complainants throughout the process;
 - (b) All information given to Consumers should be accurate, up to date and easy to understand;

- (c) Consumer Contracts should clearly define the rights and obligations of the contracting parties, and Companies must bring these rights and obligations to the attention of Consumers; and
- (d) The Code sets out certain minimum standards of behaviour of good industry practice, and Consumer Contracts should seek to exceed those minimums where possible.

CA4. LOCATION OF DEFINITIONS

CA4.1 Words that are capitalised (e.g. Consumer Contract, and Company) have specific meanings in this Code. If these words are not defined when first used, they are defined under CA29 Definitions at the back of the Code.

CA5. WHO IS COVERED BY THE CODE?

CA5.1 Every Gas Retailer and Gas Lines Company who is a member of the Electricity and Gas Complaints Council is covered by this Code.

CA5.2 This means that they must follow the provisions set out in the Code.

CA6. WHAT IS A CONSUMER CONTRACT?

CA6.1 A Consumer Contract is an agreement between a Consumer and a Company for the supply of Gas and/or Line Function Services.

CA7. WHAT IS THE CONNECTION BETWEEN THE CODE AND A CONSUMER CONTRACT?

CA7.1 The Code explains to Consumers what they can expect in their dealings with a Gas Retailer or Gas Lines Company.

CA7.2 A Consumer Contract must not contain provisions which are inconsistent with the Code. The provisions of the Code will apply to the extent of any inconsistency.

CA7.3 A Consumer Contract may include terms or conditions additional to or more favourable to the Consumer than those set out in the Code but these terms or conditions must not be inconsistent with the undertakings of the Code.

CA8. WHO DEALS WITH COMPLAINTS RELATING TO THE CODE?

CA8.1 Only the Company and the Electricity and Gas Complaints Commissioner can deal with complaints relating to the Code.

CA9. WHAT CAN THE CONSUMER EXPECT FROM A CONSUMER CONTRACT?

CA9.1 A Consumer Contract must:

- Be easy to understand;
- Clearly set out the rights and obligations of both the Company and the Consumer;
- Refer to any other information that is part of the terms and conditions of the Consumer Contract;

- Be easy for Consumers to obtain;
- Allow Disconnection only as a last resort except for reasons of safety or other reasons authorised under the Gas Regulations 1993; and
- Provide for free, accessible, fair and effective systems for resolving Complaints within a Company.

CA10. CHANGES TO CONSUMER CONTRACTS

CA10.1 If a Company changes the terms and conditions of a Consumer Contract, the Company must:

- Give no less than 30 days notice before making any changes to the terms and conditions of the Consumer Contract; and
- Explain the reasons for the changes to the Consumer Contract terms and conditions when it gives the Consumer notice about the change.

CA10.2 The Consumer Contract must describe how the Company will communicate any changes to the terms and conditions of the Consumer Contract that may be made under the Consumer Contract. However, any change in the frequency of billing and/or frequency of meter reading, must be individually communicated to the Consumer in writing.

CA11. CHANGES TO PRICE

CA11.1 If a Company increases the price of Gas supplied under a Consumer Contract, including for example any increase in variable Gas prices and/or daily fixed charge prices, the Company must:

- Give no less than 30 days notice before increasing the price of Gas; and
- Explain the reasons for the increase in price when it gives the Consumer notice about the change.

CA11.2 The Consumer Contract must describe how the Company will communicate any increases in the price of Gas. If the increase in price is more than 5%, then a separate notice of the increase must be individually communicated to the Consumer in writing as soon as practicable.

CA11.3 For the avoidance of doubt, a Company is not required to give a Consumer advance notification of a decrease in the price of Gas supplied.

CA12. SERVICES PROVIDED

CA12.1 The Consumer Contract must describe the services provided to the Consumer. This includes any quality standards that the Consumer should expect from the Company in providing these services.

CA12.2 A Consumer Contract must set out how the Company will respond to the Consumer where quality of service standards are not met, including any compensation that would be paid to the Consumer if the Company does not meet its obligations.

CA12.3 The quality of service standards must:

- Comply with the Gas Act 1992 and the technical regulations and technical Gas codes of practice;
- Be no less than good industry practice prevailing in New Zealand; and
- Require that equipment used in the provision of Line Function Services will be monitored and maintained in line with good industry practice prevailing in New Zealand.

CA13. PRICE INFORMATION

CA13.1 The Consumer Contract must refer to the relevant prices or pricing schedule (as may be produced by the Company from time to time) of products and services available to the Consumer.

CA14. BILLING

CA14.1 Consumer Contracts must set out:

- That the Consumer is liable for the charges for all the services included in the Consumer Contract and is responsible for making sure that the contractual requirements are met;
- That the Consumer will only be liable for charges from the date of occupancy or responsibility unless another date has been agreed between the Consumer and the Company;
- That, except in the case of bills based on estimates, if the Company makes an error and charges an incorrect amount, the Consumer:
 - is entitled to a refund of the difference between the incorrect and correct amounts where the Consumer has paid too much; or
 - is only liable to the Company for the correct amount; and
- The billing period and/or reconciliation period.

CA14.2 Where a Consumer has chosen a price option offered by a Gas Retailer that includes fixed charges for Gas and Line Function Services, the Company's bill must identify the fixed charge component of the bill separately from the variable charge.

CA14.3 If a Company's bill that relates to the supply of Gas and Line Function Services includes charges for other goods and services, those goods and services should be itemised separately unless the Consumer has agreed otherwise under the Consumer Contract.

CA14.4 If the Consumer Contract is a Combined Electricity and Gas Consumer Contract, the amount payable for electricity and the amount payable for Gas should be itemised separately.

CA14.5 If a Company's bill to a Consumer is based on a method of estimating Gas and/or Line Function Services usage:

- The Consumer should be given the opportunity of reading their own meter(s) and giving the reading(s) to the Company until the Company arranges for the meter to be read;
- The Company must provide, on request, a simple explanation of how estimates are calculated and amend an estimated bill when the Consumer provides a valid meter reading;
- The Company must make sure that its bills state clearly if an estimate has been used; and
- The Company must state in the Consumer Contract whether the Consumer is required to pay estimated accounts.

CA15. METERING

- CA15.1 Meter readings used by a Company for billing a Consumer must comply with Gas industry standards and codes of practice for meter reading. Meter readings should take place a minimum of four times a year unless the Consumer agrees individually otherwise or does not provide the Company with reasonable access to the meter.
- CA15.2 On request the Company must inform the Consumer of the results of any meter test, and, if it is not clear in the Consumer Contract, inform the Consumer of any extra charge the Consumer may incur as a result of the Company testing the Consumer's meter prior to undertaking the work.
- CA15.3 The Company must inform the Consumer prior to taking any action on the Consumer's meter which may impact on the Consumer's bill or result in an extra charge.
- CA15.4 The obligations on Companies to inform Consumers under Clause CA15.2 and Clause CA15.3 do not apply where the Company has reasonable cause to suspect that fraud, theft or meter tampering has taken place.

CA16. PAYMENT OPTIONS

- CA16.1 A Company with a Consumer Contract (or the person who does that Company's billing on its behalf) must have policies in place that assist a Consumer who is having difficulty paying a bill.
- CA16.2 Where currently offered payment options are to change, reasonable notice must be given and adequate information provided to explain the changes to Consumers before the change takes effect. The minimum notification provisions of CA10 Changes to Consumer Contracts apply.
- CA16.3 If alternative payment options are offered to Consumers, these should be supported by a simple explanation of how the options operate, either in the Consumer Contract or in a separate publication or notice.
- CA16.4 In the case of a Combined Electricity and Gas Consumer Contract, a Consumer may direct a Company on how payments for the supply of electricity and/or Gas must be applied to that Consumer's account.

CA17. BONDS

CA17.1 If a Company requires a Bond:

- The Company must give to the Consumer the reason for that decision;
- The Bond must not be more than the expected loss if a Consumer doesn't pay;
- The Consumer Contract should state if interest is payable on the Bond;
- The Bond must be held on trust in a separate account; and
- The Consumer Contract must state:
 - the period of time within which the Bond must be paid to the Company;
 - how long the Company will keep the Bond and that if the Company keeps the Bond for longer than 12 months, it must provide its reasons for doing so to the Consumer; and
 - how the Bond will be refunded.

CA18. DISCONNECTION AND RECONNECTION

CA18.1 Consumer Contracts must set out the conditions under which Consumers can be disconnected.

CA18.2 Consumer Contracts must state that a Company may only disconnect a Consumer for non-payment where the non-payment relates to bills (including a Bond) associated with the supply of Gas Retail Services, Line Function Services, and/or Gas.

CA18.3 Where a Company intends to disconnect a Consumer because the Company considers that the Consumer has not paid a bill (including a Bond), Disconnection should be the Company's last course of action.

CA18.4 If a Consumer has started using and is pursuing the dispute resolution processes set out in the Consumer Contract (including the Electricity and Gas Complaints Commissioner Scheme) in relation to that Consumer not paying the bill, the Company must not disconnect that Consumer or commence credit recovery action until the processes are exhausted.

CA18.5 This means that a Consumer should not be disconnected for non-payment of part of an account that is the subject of a dispute resolution process. However, a Consumer may be disconnected for non-payment of that part of an account which is not in dispute.

CA18.6 A Consumer should not be disconnected on the basis of an estimated account unless it is fair and reasonable in the circumstances to do so.

CA18.7 Except in the case of agreed or emergency Disconnections or in the case of Disconnections under the Gas Act or Gas Regulations for safety reasons, Consumer Contracts must:

- Provide for at least seven days notice of warning of Disconnection and allow an additional three days for the delivery of the notice; and

- Provide for a Final Warning no less than 24 hours nor more than seven days before Disconnection. The Final Warning must specify these timeframes. If the Disconnection is not prevented by the Consumer and not completed within these timeframes, the Company must issue another Final Warning.

CA18.8 Consumer Contracts must explain when charges for temporary Disconnection and/or Reconnection apply. When warnings are delivered as per the provisions of CA18.7, they must include and make explicit what additional charges over and above the recovery of billing arrears will apply.

CA18.9 Temporary Disconnection and/or Reconnection charges should not be more than the level required to meet the overall costs of the Disconnection and/or Reconnection service.

CA18.10 Disconnection notices should include:

- Information about the Company's dispute resolution processes;
- Contact details of the Company's credit department so that the Consumer can contact that credit department to arrange payment of a bill that has not been paid, and
- The cost of Reconnection.

CA19. FAULTS AND EMERGENCIES

CA19.1 Information about 24-hour telephone numbers to call for faults and emergencies must be provided on every bill to a Consumer.

CA19.2 The Company must provide advice, whether in the Consumer Contract or by any other means (for example in brochures or advertisements), to Consumers on how to turn off their Gas supply in an emergency situation. This advice must be easy for Consumers to obtain and understand.

CA20. PLANNED SHUTDOWNS

CA20.1 A Consumer Contract must clearly state a minimum notice period before a Planned Shutdown which should be no less than four days unless agreed otherwise in the Consumer Contract.

CA20.2 Companies must notify Consumers of a Planned Shutdown within the notice period.

CA21. OBLIGATIONS FROM POINT OF SUPPLY

CA21.1 A Company must supply information (on request) to a Consumer about a Consumer's Gas supply that explains where the Gas Lines Company's ownership and responsibilities end in relation to the distribution system.

CA21.2 A Consumer Contract must set out the responsibilities of the Consumer, the Gas Retailer and the Gas Lines Company (the Gas Retailer and Gas Lines Company may be the same Company) in relation to ownership of equipment. For example, a Consumer Contract must clearly set out the extent to which the Consumer is responsible for maintaining a tree's root system and whether a Consumer may build over underground equipment.

CA21.3 A Consumer Contract must explain the Consumer's responsibilities for compliance with all Line Function Services safety and technical requirements under regulations and codes of practice.

CA22. ACCESS TO PREMISES

CA22.1 Consumer Contracts must include provisions permitting reasonable access to a Consumer's Premises for the direct purposes of the Gas Retailer or Gas Lines Company and any agent or subcontractor of that Company. The consequences of not granting access should also be set out in the Consumer Contract. Other conditions of access should be in line with the provisions of the Gas Act 1992.

CA22.2 Where a Company is in the possession of keys and/or security information for a Consumer's Premises, the Company should have formal procedures for the secure storage and use of and return of these keys and/or security information.

CA23. CONSUMER COMPLAINT RESOLUTION

CA23.1 Companies must have a free, accessible, fair, and effective internal Consumer Complaints handling process.

CA23.2 Companies must accept Consumer Complaints in any reasonable form from a Consumer including written and oral, and via a variety of delivery mechanisms including face-to-face, posted, hand-delivered, facsimile or electronic.

CA23.3 Companies must:

- Provide information to Consumers about how their Complaint will be dealt with, and by when;
- Provide written information about their Consumer Complaints handling processes; and
- Treat Consumers courteously and with respect.

CA23.4 Companies must also:

- Train their staff about their Consumer Complaints handling processes;
- Use processes that are easy to understand, easy to use and free to Consumers;
- Provide adequate resources for their Complaints handling processes;
- Tell Consumers that there is an Electricity and Gas Complaints Commissioner to whom they can go if their Complaint is not resolved; and
- Review their Consumer Complaints handling process regularly.

CA23.5 Companies must provide for appropriate remedies to Consumers.

CA23.6 Companies must collect and analyse information about Complaints, and use it to adjust business practices as required.

CA23.7 For Consumers, Gas Retailers must have in place an effective process to ensure there has been an offer and acceptance of the Consumer Contract.

CA24. LIABILITY

CA24.1 Except as permitted under Clauses CA24.2 and CA24.3, a Consumer Contract must not limit the scope of liability, in contract or tort, of a Company to a Consumer to less than liability for physical damage to property where it can be shown that the Company has been negligent and the amount and nature of the Consumer's loss was reasonably foreseeable.

CA24.2 A Consumer Contract must not limit the monetary amount of liability, whether in contract or tort, of a Company to a Consumer for an event or a series of closely related events occurring on a distribution system to any amount less than \$10,000. This clause does not prevent or limit any provision in a Consumer Contract stating that liability is subject to any monetary cap contained in the Consumer Contract for an event or series of closely related events in relation to more than one Consumer on a distribution system.

CA24.3 A Consumer Contract must not fix a per annum cap on liability in respect of one or more Consumers on a distribution system or for events or a series of closely related events occurring on a distribution system.

CA24.4 Notwithstanding the provisions of the Code, and in particular Clause CA24, Consumers have access to any remedies that arise under the Consumer Guarantees Act 1993. Where the Code conflicts with the Consumer Guarantees Act, the Consumer Guarantees Act will take precedence.

CA25. FORCE MAJEURE CLAUSES

CA25.1 A Consumer Contract must define the situations covered under Force Majeure clauses and explain how a Company will respond in such circumstances.

CA26. PRIVACY

CA26.1 A Consumer Contract must adhere to the provisions of the Privacy Act 1993 and accordingly:

- Set out the purposes for which the Company collects information from individuals; and
- Confirm that Consumers will have ready access to information held about them and the opportunity to correct this information.

CA27. OVERSIGHT AND REVIEW OF THIS CODE

CA27.1 The Electricity and Gas Complaints Commission is responsible for overseeing and reviewing this Code.

CA28. ENFORCEMENT OF THE CODE

CA28.1 The undertakings of a Company in this Code are not intended to create rights enforceable by a Consumer against a Company under the Contracts (Privity) Act 1982.

CA29. DEFINITIONS

CA29.1 Terms used in this Code have the following meanings:

Bond means the bond or sum of money provided by a Consumer as security for non-payment.

Code means this Code of Practice which comprises Schedule CA of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.

Combined Electricity and Gas Consumer Contract means a Consumer Contract for the sale of electricity and for the sale of Gas by the Company to a Consumer. To avoid doubt, a Consumer who has separate Consumer Contracts for the sale of electricity and for the sale of Gas does not, by virtue of having those two separate Consumer Contracts, have a Combined Electricity and Gas Consumer Contract.

Company means a member of the Electricity and Gas Complaints Commissioner Scheme who is either a Gas Retailer and/or a Gas Lines Company. "Companies" and Gas Companies have corresponding meaning.

Consumer means:

- A person who is supplied, or who applies to be supplied, with Gas by a Gas Retailer in accordance with a Consumer Contract for consumption of Gas;
- A person who is supplied, or who applies to be supplied, with Line Function Services in accordance with a Consumer Contract and who also consumes Gas; and
- Includes any person using the services supplied under that Consumer Contract or paying part or all of the fees for the services provided under the Consumer Contract.

Consumer Contract means the agreement with a Consumer providing for the supply of Gas and/or Line Function Services to a Consumer and includes any additional publications, which contain information about the service to Consumers.

Disconnection means the movement or removal of equipment so that no Gas can flow to a Consumer's Premises.

Electricity and Gas Complaints Commission means the Commission set up under the Electricity and Gas Complaints Commissioner Scheme. It provides an independent overview of the Scheme and comprises an independent chairperson, two representatives of industry members and two consumer representatives appointed by the Minister of Consumer Affairs.

Electricity and Gas Complaints Commissioner is the person appointed to that position by the Electricity and Gas Complaints Commission.

Electricity and Gas Complaints Commissioner Scheme means the Electricity and Gas Complaints Commissioner Scheme implemented by the Electricity and Gas Complaints Council.

Electricity and Gas Complaints Council means the governing body under the Electricity and Gas Complaints Commissioner Scheme.

Force Majeure means circumstances beyond the control of the Company. For example, failure to supply Gas due to causes beyond the Company's control such as a storm.

Gas means natural gas that is supplied to a Consumer through a gas distribution system (a network of pipelines) but excludes, to avoid doubt:

- LPG; and
- CNG for transportation purposes.

Gas Lines Company means a Company which operates a Gas distribution system for supplying Gas and provides Line Function Services to Gas Retailers or directly to Consumers. Gas Lines Companies includes line function services businesses, whether incorporated or not. A Gas Lines Company may also be a Gas Retailer.

Gas Retailer means a person who supplies Gas to Consumers. A Gas Retailer may also be a Gas Lines Company.

Line Function Services has the meaning set out in section 2 of the Gas Act 1992 (but excludes Gas transmission, as that term is defined in the Gas Act 1992) and as further provided for in a Consumer Contract and includes metering services where a Lines Company provides these services.

Planned Shutdown means the period when Gas is not available due to routine planned maintenance. A planned shutdown excludes situations where the Gas distribution system needs to be taken out of service for emergency reasons such as to ensure the integrity of the Gas distribution system or for safety. In general, Planned Shutdowns (where required) would be used for all work falling under the Gas Lines Company's Asset Management Plan.

Point of Supply means the point at which a Gas Lines Company's distribution system is connected to a Consumer's Premises.

Premises means the site to which Gas is supplied or is to be supplied to a Consumer.

Provide a Final Warning means that the Company must take all reasonable steps to ensure a Consumer receives this warning. This may include making contact to the Consumer's last known address or phone number.

Reconnection means the movement or replacement of equipment so that Gas can flow to a Consumer's Premises which had been disconnected.

Retail Services mean all services supplied under an interposed Consumer Contract (except Line Function Services) and all services supplied under a supply only Consumer Contract and includes metering services where a Gas Retailer provides or has provided these services.

SCHEDULE CB

THE CODE OF PRACTICE FOR LAND OWNERS, LAND OCCUPIERS, ELECTRICITY LINES COMPANIES AND GAS LINES COMPANIES ("LAND CODE")

CB1. WHAT IS THE LAND CODE?

- CB1.1 The Land Code contains undertakings by Lines Companies for fair and reasonable dealings with Land Owners and Land Occupiers. It sets out standards of behaviour Land Owners and Land Occupiers can reasonably expect from Lines Companies.
- CB1.2 The Land Code relates solely to dealings between Land Owners and Land Occupiers, on the one hand, and Lines Companies on the other hand, in relation to access to and use of the Land occupied by Lines Equipment, and the actions of Lines Companies' staff and contractors while on that Land.
- CB1.3 The Land Code does not apply in the circumstances arising in connection with or leading to the types of disputes listed in Clause 1.3 of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.
- CB1.4 The Land Code comprises Schedule CB of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.
- CB1.5 The provisions of the Land Code should be interpreted in light of Clause CB2 (Statement of Principles) and should be applied in a manner which is consistent with law and this Clause CB1.

CB2. STATEMENT OF PRINCIPLES

- CB2.1 The following principles articulate the basic values that underpin the Land Code's purpose:
- (a) Lines Companies dealing with Land Owners and Land Occupiers should be fair and respect the interests of Land Owners and Land Occupiers.
 - (b) At the same time, Lines Companies have a commitment to, and are obliged to, ensure the efficient, safe and reliable supply of electricity and/or gas for the benefit of energy consumers.
 - (c) The Land Code sets out minimum standards of conduct for all Lines Companies. A Lines Company's conduct, including the provisions of a Land Agreement, may exceed the standards of conduct set out in the Land Code. Land Owners and Land Occupiers may agree on a lesser standard of conduct with a Lines Company, but only in accordance with Clauses CB5.3 and CB5.4.
 - (d) Complaints from Land Owners and Land Occupiers should be handled promptly, fairly and with respect to complainants throughout the process.

CB3. DEFINITIONS

CB3.1 Terms used in the Land Code have the following meanings:

Effective Date means 1 October 2006.

Electricity and Gas Complaints Commissioner means the Electricity and Gas Complaints Commissioner appointed by the Electricity and Gas Complaints Commission.

Electricity and Gas Complaints Commissioner Scheme means the Electricity and Gas Complaints Commissioner Scheme implemented by the Electricity and Gas Complaints Council.

Electricity Lines Company means a member of the Electricity and Gas Complaints Commissioner Scheme that is:

- (a) A company that operates a local network for conveying electricity and providing line function services to electricity retailers or directly to consumers; or
- (b) Transpower New Zealand Limited.

Electricity Works means:

- (a) any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but
- (b) does not include:
 - (i) any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; or
 - (ii) any part of any electrical installation,

and for the purposes of this definition, any terms defined in the Electricity Act 1992 have the same meaning in this definition.

Emergency Situation means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity or gas.

Existing Land Agreement means a Land Agreement entered into before the Effective Date.

Gas means natural gas, which meets the New Zealand Specification for Reticulated Natural Gas NZS5442:1990 (as amended or replaced from time to time), that is supplied to a consumer through a distribution system (as that term is defined in the Gas Act 1992), but excludes, to avoid doubt:

- (a) LPG; and
- (b) CNG for transportation purposes.

Gas Lines Company means a member of the Electricity and Gas Complaints Commissioner Scheme that operates pipelines for the conveyance of Gas and provides line function services to any person

(including to itself as a Gas retailer), including the conveyance of Gas by means of Gas Transmission Pipelines. A Gas Lines Company may also be a Gas retailer.

Gas Pipelines means any equipment that is used in, or in connection with, the conveyance of Gas.

Gas Transmission Lines Company means a company that operates Gas Transmission Pipelines for the purposes of supplying Gas.

Gas Transmission Pipelines means any Gas Pipelines that are operated at a gauge pressure exceeding 2000 kilopascals.

Land includes any interest or estate in land.

Land Agreement means any agreement, including any easement, lease or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer Contract.

Land Code means this Land Code of Practice, which comprises Schedule CB of the Constitution for the Electricity and Gas Complaints Commissioner Scheme, as amended or substituted from time to time by the Council.

Land Occupier means, in relation to Land, an inhabitant occupier of the Land, or any person who has a right to occupy the Land by virtue of a lease, sub-lease or licence granted by the Land Owner or another Land Occupier entitled to so grant.

Land Owner means:

in relation to Land that is held under:

- (a) the Land Transfer Act 1952, the person(s) that own(s) the Land in fee simple;
- (b) the Land Act 1948, means the Crown; and
- (c) any other statute, means the legal or beneficial owner of the Land (as appropriate) as specified in that statute.

Legislation includes any statute, regulation or Order in Council.

Lines Company means an Electricity Lines Company or a Gas Lines Company.

Lines Equipment means Electricity Works and Gas Pipelines, as the case may be.

New Land Agreement means a Land Agreement entered into on or after the Effective Date.

CB3.2 Any term that is defined in the Constitution for the Electricity and Gas Complaints Commissioner Scheme and used in this Code, but not defined in this Code, has the same meaning as in the Constitution.

CB4. SCOPE OF THE LAND CODE

- CB4.1 Every Lines Company must comply with the Land Code from the Effective Date, and must also ensure that their employees, contractors and other permitted representatives comply with the obligations contained in the Land Code.
- CB4.2 Subject to Clauses CB5.3 and CB5.4, the Land Code applies to the exercise by Lines Companies of their rights of access to Land under Legislation and Land Agreements and the actions of their staff and contractors while on the Land. The Land Code applies regardless of whether the Lines Equipment on the Land was in existence or operational before or after the Effective Date. However, the Land Code does not apply in the circumstances arising in connection with or leading to the types of disputes listed in Clause 1.3 of the Constitution for the Electricity and Gas Complaints Commissioner Scheme.

CB5. THE LAND CODE, LAND AGREEMENTS AND LEGISLATION

- CB5.1 Certain legal rights and obligations of Land Owners, Land Occupiers and Lines Companies in respect of access to, use of, and behaviour on Land are set out in Land Agreements, and:
- (a) For Electricity Lines Companies, in the Electricity Act 1992 (and associated Legislation¹); and
 - (b) For Gas Lines Companies, in the Gas Act 1992 (and associated Legislation).
- CB5.2 Subject to Clauses CB5.3 and CB5.4, this Land Code sets out the minimum standards that Land Owners and Land Occupiers can expect in their dealings with a Lines Company in the exercise of the particular rights and in undertaking the particular obligations set out in Land Agreements and Legislation.
- CB5.3 In relation to Land Agreements:
- (a) if a Land Agreement provides for terms or conditions additional to, or more favourable to the Land Owner or Land Occupier than, those set out in the Land Code, the Lines Company must comply with the additional or more favourable terms or conditions of the Land Agreement;
 - (b) in the case of any ambiguity as to the meaning of a term or condition of a Land Agreement, the relevant provisions of the Land Code will apply to resolve that ambiguity; and
 - (c) if a Land Agreement provides for terms or conditions less favourable to the Land Owner or Land Occupier than those set out in the Land Code, the Lines Company need only comply with the lesser or less favourable terms of the Land Agreement, but in the case of a New Land Agreement, only if the specific provisions of the Land Code that do not apply are stated in the New Land Agreement.

¹ Such as the Electricity (Hazards from Trees) Regulations 2003.

CB5.4 In relation to Legislation:

- (a) if Legislation provides for obligations on a Lines Company additional to, or more favourable to the Land Owner or Land Occupier than, those set out in the Land Code, the Lines Company must comply with the additional or more favourable obligations in the Legislation;
- (b) if Legislation provides for obligations on a Lines Company less favourable to the Land Owner or Land Occupier than those set out in the Land Code, the Lines Company need only comply with the less favourable obligations in the Legislation; and
- (c) the obligations of a Lines Company under this Land Code shall otherwise apply to the fullest extent permitted under the Legislation.

CB6. LINES COMPANY OBLIGATIONS UNDER THE LAND CODE

CB6.1 Transpower New Zealand's obligations under the Land Code are set out in Appendix A "Transpower's Commitment to Land Owners and/or Occupiers and the Community (The Charter)". For Gas Transmission Lines Companies, to the extent that they operate Gas Transmission Pipelines, the obligations are set out in Appendix B "Gas Transmission Lines Companies' Obligations under the Land Code".

CB6.2 The exclusions in Clause 1.3 of the Constitution for the Electricity and Gas Complaints Commissioner Scheme and the definition of "Land Complaint" in the Constitution apply to the Charter. As a result, complaints about some of the obligations in the Charter cannot be considered by the Commissioner under the Scheme, notwithstanding their inclusion in the Charter.

CB6.3 The obligations under the Land Code set out in this Clause CB6 apply to all other Lines Companies but not to Transpower or Gas Transmission Lines Companies, to the extent that the Gas Transmission Lines Companies operate Gas Transmission Pipelines.

CB6.4 In carrying out any work on particular Lines Equipment, Lines Companies will take reasonable steps to minimise any direct impacts on the Land on which the Lines Equipment is situated, or that is near the Lines Equipment. However some direct impact to Land while work is being carried out may be inevitable.

CB6.5 Subject to Clause CB6.10, Lines Companies undertake to consult to the extent possible in the circumstances with Land Owners or Land Occupiers, as appropriate, before entering Land. In consulting, Companies will:

- (a) Make reasonable efforts to identify the relevant Land Owner or Land Occupier;
- (b) Identify the work they intend to carry out;
- (c) Advise the Land Owner or Land Occupier of the matters set out in Clause CB6.7 (unless already advised when notice given); and

- (d) Consider any concerns of Land Owners or Land Occupiers, as appropriate, and accommodate these if practical.

For the avoidance of doubt, consultation can occur after the Lines Company has given notice to the Land Owner or Land Occupier, as appropriate, to enter the Land. Lines Companies are not required by reason of the obligations in this Clause to delay entry onto the Land by more than 15 working days from the date notified.

- CB6.6 Subject to Clause CB6.10, the Lines Company (or their contractors or agents) must give at least 10 working days notice of their intention to enter the Land to undertake construction, upgrade, repair or maintenance work to the Land Owner or Land Occupier (as appropriate). In meeting this obligation, Lines Companies will take all reasonable measures to identify the relevant Land Owner or Land Occupier.

Subject to Clause CB6.10, the Lines Company (or their contractors or agents) must give reasonable prior notice of their intention to enter the Land to inspect or operate the Lines Equipment to the Land Owner or Land Occupier (as appropriate). In meeting this obligation, Lines Companies will take all reasonable measures to identify the relevant Land Owner or Land Occupier.

- CB6.7 Subject to Clause CB6.10, notices must specify:

- (a) Location of the proposed entry and work;
- (b) Reasons for the entry and nature of the work to be undertaken;
- (c) Date and time of the proposed entry;
- (d) Length of time that the Lines Company expects to be on the Land; and
- (e) Contact details of the Lines Company's authorised representative for follow-up communications in respect of the proposed work.

Notices of intention to enter the Land to undertake construction, upgrade, repair or maintenance work must be conveyed in writing (not electronically). Notices of intention to enter Land to inspect or operate Lines Equipment may be conveyed in writing (not electronically) or verbally.

- CB6.8 In entering land, Lines Companies must take reasonable steps to minimise inconvenience to the Land Owner or Land Occupier and must comply with the reasonable requirements of the Land Owners or Land Occupiers (as appropriate), including (but without limiting the ability of Land Owners or Land Occupiers to impose reasonable requirements):

- (a) The time of entry (unless this is not possible due to an Emergency Situation);
- (b) Leaving gates as found;
- (c) Driving in a safe manner and taking reasonable steps not to disturb stock; and
- (d) Avoiding access through specific areas unless necessary to access the Lines Equipment,

but Lines Companies are not required to delay entry onto the Land by more than 15 working days or to pay any money or other consideration (apart from compensation for actual damage caused) by reason of the obligations in this Clause.

CB6.9 Lines Companies must ensure that their authorised representatives who enter or intend to enter land:

- (a) Carry identification that shows they are authorised representatives of the Lines Company and present this identification on request;
- (b) Identify themselves to the Land Owner or Land Occupier before entering land, unless this is not practicable; and
- (c) Act courteously, considerately and professionally at all times, answer any queries from Land Owners or Land Occupiers and do their best to comply with any reasonable requests made by Land Owners or Land Occupiers.

CB6.10 The Lines Company is not required to give notice as required in Clauses CB6.6 and CB6.7 or consult under Clause CB6.5 if access to the Lines Equipment is necessary due to an Emergency Situation.

CB6.11 If it is not possible for the Lines Company to give notice to the Land Owner or Land Occupier (as appropriate) before entering Land, the Lines Company will advise the Land Owner or Land Occupier (as appropriate) of the times they accessed the Land, and the work they carried out, as soon as reasonably practicable afterwards and in no case later than 5 working days after entry.

CB6.12 If, in carrying out any work, the Lines Company causes damage to Land, the Lines Company must restore the Land to as close as reasonably possible to the condition it was in prior to commencement of the work or pay compensation to the Land Owner or Land Occupier (as appropriate) in accordance with the Lines Company's legal or contractual obligations. If it is likely that carrying out the work proposed could result in significant damage to the Land, the Lines Company must make a record of the condition of the Land prior to commencement of the work and verify this record with the Land Owner or Land Occupier (as appropriate).

CB6.13 The Lines Company undertakes to respond to enquiries from Land Owners or Land Occupiers (including as to the likely impact of the work on the Land) as soon as reasonably possible and, where requested, provide Land Owners or Land Occupiers with information on any Lines Equipment installed on the Land Owner's or Land Occupier's Land.

CB6.14 Each Lines Company must identify on their company website, and in any relevant published material available to Land Owners and Land Occupiers, an appropriate contact person who can deal with land-related issues on behalf of the Lines Company.

CB7. COMPLAINTS RELATING TO THE LAND CODE

CB7.1 Only the Lines Company and the Electricity and Gas Complaints Commissioner can deal with complaints relating to the Land Code.

CB7.2 Lines Companies must:

- (a) Provide a free, accessible, fair and effective internal process for handling complaints;
- (b) Upon request, provide information to Land Owners and Land Occupiers about how and within what timeframe their complaint will be responded to, along with information about the Lines Company's complaint handling process;
- (c) Provide adequate trained resources for their internal complaints handling process;
- (d) Provide for appropriate remedies to Land Owners and Land Occupiers;
- (e) Review internal complaints handling process regularly; and
- (f) Inform Land Owners and Land Occupiers about their right to refer their complaint to the Electricity and Gas Complaints Commissioner if their complaint is not resolved by the Lines Company.

CB7.3 Where a complaint has been made by a Land Owner or Land Occupier to the Lines Company or the Electricity and Gas Complaints Commissioner about work to be undertaken in what a Lines Company reasonably believes is an Emergency Situation, the Lines Company can still enter the Land Owner or Land Occupier's Land and undertake the required work, despite the complaint.

CB7.4 Where a complaint has been made by a Land Owner or Land Occupier to the Lines Company or the Electricity and Gas Complaints Commissioner about work to be undertaken in situations other than Emergency Situations, the Lines Company will attempt to defer the date of entry to the extent that this is reasonably possible and will not involve the Lines Company incurring significant expense. If such deferral is not reasonably possible, the Lines Company will be entitled to enter the land, despite the complaint.

CB8. ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME

CB8.1 This Land Code of Practice is part of the Electricity and Gas Complaints Commissioner Scheme. In addition to dealing with Consumer Complaints, the Scheme is designed to create a forum where Land Owners and Land Occupiers can access an independent dispute resolution service for certain complaints about Lines Companies in relation to this Land Code.

CB8.2 The purpose of the Electricity and Gas Complaints Commissioner Scheme is to provide a service that is:

- (a) Free to Consumers, Land Owners and Land Occupiers;
- (b) Accessible;
- (c) Fair;
- (d) Effective;
- (da) Efficient;

(e) Accountable; and

(f) Independent.

CB9. PRIVACY

CB9.1 Lines Companies must protect the privacy of information relating to Land Owners and Land Occupiers, consistent with the Privacy Act 1993.

CB10. OVERSIGHT AND REVIEW OF THE LAND CODE

CB10.1 The Electricity and Gas Complaints Commission is responsible for overseeing and reviewing the Land Code.

CB11. ENFORCEMENT OF THE LAND CODE

CB11.1 The Land Code is not intended to create any rights enforceable by a Land Owner, Land Occupier or other person against a Company under the Contracts (Privity) Act 1982.

**APPENDIX A OBLIGATIONS FOR TRANSPOWER NEW ZEALAND LIMITED UNDER THE
LAND CODE**

**CB12. TRANSPOWER'S COMMITMENT TO LAND OWNERS AND/OR OCCUPIERS AND THE
COMMUNITY ("THE CHARTER")**

The Charter comprises fourteen specific commitments to land owners, occupiers of land and communities within which Transpower operates.

CB12.1 Transpower is committed to ensuring that the national grid provides a reliable supply of electricity for the benefit of all New Zealanders.

CB12.2 Transpower will comply with all applicable Acts and Regulations including the Resource Management Act 1991, the Electricity Act 1992, the Electricity Regulations 1997 and the Electricity (Hazards from Trees) Regulations 2003.

CB12.3 Transpower will explain to interested groups and individuals the need for new transmission investment at the commencement of its consultation process.

CB12.4 Consultation with affected land owners and/or occupiers and their communities will be a central element of major grid upgrades or new transmission line projects undertaken by Transpower. Stakeholders will be consulted at a stage early enough that the results of consultation can be considered in the design of the project.

CB12.5 Transpower acknowledges that transmission projects can result in adverse environmental effects. It will use best practice techniques to assess and manage environmental impacts at an early stage of a project.

CB12.6 Transpower will actively investigate and implement reasonable measures to mitigate adverse environmental impact of transmission projects.

CB12.7 Transpower will negotiate easements for new transmission works and pay the land owner appropriate consideration in return for the easements. Where proposed new transmission work restricts the normal use of the land, Transpower will negotiate compensation with the land owner concerned.

CB12.8 Transpower is responsible for the maintenance and operation of its transmission lines. Consequently the cost associated with meeting this responsibility will be met by Transpower. Transpower will maintain, to its standards, tracks that provide it with access to its works.

CB12.9 Transpower will ensure that vegetation growing in the vicinity of its lines that could pose a threat to the continuity of supply, or safe operation of its assets, now and in the future is cut, trimmed or felled. Transpower may achieve this by issuing cut or trim notices under the Electricity (Hazards from Trees) Regulations 2003.

CB12.10 Transpower undertakes to consult with affected land owners and/or occupiers over the timing of entry, points of entry, method of entry, access routes, location of any facilities required for temporary storage of equipment and any other works necessary.

- CB12.11 Transpower will give the required notice to affected land owners and/or occupiers prior to entering land to inspect, operate, or maintain its transmission assets unless alternative arrangements have been made. In giving notice, Transpower will take reasonable steps to minimise disturbance to land owner and/or occupier operations. Occasionally under Emergency Situations the notice may need to be given after the entry as provided in the Electricity Act.
- CB12.12 Employees, contractors and agents of Transpower will provide evidence when requested of their authority to enter land and appropriate identification.
- CB12.13 Transpower will repair any damage to land, reinstating it to its previous condition where its employees, contractors or agents cause this, or if necessary, compensate individual land owners and/or occupiers where reinstatement is not possible. Before any material work has begun, Transpower will take a record of the condition of any affected property. The land owner and/or occupier will be given an opportunity to confirm its accuracy.
- CB12.14 In designing and operating transmission lines, Transpower will comply with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines for electric and magnetic fields as recommended by the Ministry of Health.

**APPENDIX B GAS TRANSMISSION LINES COMPANIES' OBLIGATIONS UNDER THE LAND
CODE**

CB13. GAS TRANSMISSION LINES COMPANIES' OBLIGATIONS

- CB13.1 Gas Transmission Lines Companies will take all practicable steps to notify any occupier of any piece of land through, on or under which a pipeline passes of their intention to enter the land to undertake operational and/or maintenance works.
- CB13.2 Gas Transmission Lines Companies will send a standard written notice to occupiers of planned routine inspections for operational or maintenance work. This includes fence post painting, replacing missing or damaged warning signs, corrosion prevention surveying and foot patrol inspection of the pipeline easement.
- CB13.3 For any proposed work where vehicle access is required and/or the surface of the land is to be disturbed then notification must be conveyed either in writing or verbally and should specify:
- (a) Location of proposed work;
 - (b) Nature of the work;
 - (c) Date and time of proposed entry;
 - (d) Length of time the Gas Transmission Lines Company expects to be on the land; and
 - (e) Contact details of the Gas Transmission Lines Company representative for follow-up communications in respect of the proposed work.
- CB13.4 Gas Transmission Lines Companies will have regard to the reasonable requirements of occupiers or controlling authorities regarding access and timing of the work.
- CB13.5 Gas Transmission Lines Companies will take all reasonable steps to minimise damage to the surface of the land and to minimise any disruption and disturbance to the occupiers' use of the land as is reasonably consistent with the nature of the proposed operational and maintenance works.
- CB13.6 Gas Transmission Lines Companies will reinstate disturbed areas to as near as is practicable to the conditions present prior to the work. If this is not possible, the Gas Transmission Lines Company will meet the reasonable costs of restoring any damage caused to the surface of the land or any fences.
- CB13.7 The Gas Transmission Lines Company is not required to give notice under Clause CB13.1 if access to the gas pipeline is necessary:
- (a) In circumstance of probable danger to life or property; or
 - (b) To maintain the continuity or safety of the conveyance of gas; or
 - (c) In any other Emergency Situations.

SCHEDULE D

ELECTRICITY CONSUMER DISPUTE RESOLUTION PROTOCOL

D1. GENERAL PROVISIONS APPLYING TO ALL ELECTRICITY COMPANY COUNCIL MEMBERS

Objectives of Protocol

- D1.1 The primary objectives of this Protocol in accordance with the provisions of the Constitution are to:
- (a) ensure ease of access for Consumers to a means of dispute resolution with Council Members which is also free, fair and effective;
 - (b) promote the efficient and timely resolution of Consumer Complaints; and
 - (c) prevent disputes between Electricity Retailers and Electricity Lines Companies over their relative responsibilities from impeding the efficient and timely resolution of Consumer Complaints.

Application

- D1.1A This Protocol applies to Electricity Retailer Council Members and Electricity Lines Company Council Members only.

General obligations under the Protocol

- D1.2 Council Members have the following general obligations under this Protocol:
- (a) the Council Member who is the Contracting Company with the Consumer for the supply of electricity or Line Function Services, or both, which is the subject of the Complaint must comply with the provisions of this Protocol for the referral (if any), management and resolution of Consumer Complaints;
 - (b) the Council Member designated under this Protocol as the Council Member responsible for managing and resolving a Consumer Complaint (the Complaint Managing Company) must comply with the provisions of this Protocol relating to Consumer Complaints received by them from the Consumer or referred to them by the Contracting Company;
 - (c) Council Members must not allow disputes between them about the responsibility of a Council Member as a Contracting Company or a Complaint Managing Company for Consumer Complaint to compromise the efficient and timely resolution of Consumer Complaints;
 - (d) all Council Members must have an in-house Consumer Complaints handling service for responding to Consumer Complaints which complies with this Protocol;

- (e) Council Members must act as clearing-houses for any Consumer Complaints made to them as a Contracting Company in error and refer the Complaint to the correct Contracting Company in accordance with this Protocol;
- (f) if a Consumer is dissatisfied with the Complaint Managing Company's decision on a Consumer Complaint, or any settlement offered in relation to a Complaint (i.e. the dispute is "deadlocked"), the Complaint Managing Company must inform the Consumer that the Consumer may ask the Electricity and Gas Complaints Commissioner to consider the Complaint in accordance with his or her jurisdiction under the Terms of Reference; and
- (g) Council Members must co-operate with each other in order to achieve the objectives in Clause D1.1, and to give full effect to these obligations and the requirements of Council Members under this Protocol.

Requirements for in-house Consumer Complaints handling service

D1.3 Council Members must comply with the following requirements in providing their in-house Consumers Complaints handling services:

- (a) a Contracting Company must inform Consumers, in its Consumer Contract, on its website and in any other relevant Consumer information materials it makes available to Consumers from time to time, of the way in which, and to whom in the Contracting Company, Consumer Complaints may be made and of the Council Member's participation in the Electricity and Gas Complaints Commissioner Scheme;
- (b) all Council Members must have an efficient system for receipting, recording and monitoring Complaints received, referred (to or by them), managed and resolved by them;
- (c) all Council Members must nominate an individual(s) to be the point of contact for the receipt, referral management and resolution of Consumer Complaints;
- (d) Consumer Complaints must be acknowledged by the Contracting Company in Writing as soon as possible but not later than two Working Days after the receipt of a Complaint;
- (e) if a Contracting Company refers a Consumer Complaint to another Council Member which is to be the Complaint Managing Company, it must:
 - (i) conform with the provisions of this Protocol governing referrals; and
 - (ii) monitor and facilitate the management and resolution of the Complaint by the Complaint Managing Company;
- (f) a response by the Contracting Company or the Complaint Managing Company to a Consumer Complaint (whether an initial response or otherwise) must be given to the Consumer as soon as possible, commensurate with the urgency of the Consumer Complaint, but in any event no later than seven Working Days, after the Complaint is received by the Contracting Company; and

- (g) if the Consumer is dissatisfied with the Complaint Managing Company's decision on the Consumer Complaint or any settlement offered in relation to a Consumer Complaint, or the Consumer Complaint:
 - (i) has taken longer than 20 Working Days after receipt of the Complaint to resolve and the Company has not notified the Consumer in Writing that the Company has good reason to take further time to resolve the Complaint and what the good reason is; or
 - (ii) has, in any case, taken longer than 40 Working Days after receipt of Complaint to resolve the Complaint;

the Complaint is considered to have reached deadlock and the Complaint Managing Company must inform the Consumer of his or her right to take the Complaint to the Electricity and Gas Complaints Commissioner for determination in accordance with his or her jurisdiction under Schedule B.

Clearing-house mechanism for referral of Consumer Complaints to correct Contracting Company

- D1.4 If a Consumer makes a Complaint to a Council Member, which is not the Contracting Company in respect of the subject of the Consumer Complaint, that Council Member must:
- (a) forward, within 1 Working Day, the Complaint on the Consumer's behalf to the Contracting Company which has agreed that it is the correct Contracting Company; or
 - (b) where it is not clear which Council Member is the correct Contracting Company, use its best endeavours to identify as soon as possible after receiving the Complaint the correct Contracting Company and forward the Complaint to that Contracting Company; and
 - (c) provide the Consumer at that time with the point of contact details of the correct Contracting Company.

To avoid doubt, this clause D1.4 applies even if the Complaint relates to Gas and is made to an Electricity Company in error.

- D1.5 When the correct Contracting Company receives a Complaint forwarded to it, it must:
- (a) acknowledge the referral; and
 - (b) inform the Consumer of its receipt of the Complaint, the date of receipt and the process it will follow for the referral (if any), management and resolution of the Complaint by the Complaint Managing Company.

D2. OBLIGATIONS OF ELECTRICITY COMPANIES FOR MANAGEMENT AND RESOLUTION OF CONSUMER COMPLAINTS UNDER DIFFERENT KINDS OF CONSUMER CONTRACT

Conveyance Only Consumer Contracts

D2.1 Conveyance Only Consumer Contracts must provide that:

- (a) the Contracting Electricity Lines Company is responsible as the Complaint Managing Company for managing and resolving Consumer Complaints relating to the Services provided under the Conveyance Only Consumer Contract; and
- (b) if a Complaint is not resolved under its in-house Consumer Complaints handling service in accordance with Clause D1.3(g), the Consumer may refer the dispute to the Electricity and Gas Complaints Commissioner for determination in accordance with the Electricity and Gas Complaints Commissioner's jurisdiction under the Terms of Reference.

D2.2 [Not used]

Compensation under Conveyance Only Consumer Contracts

D2.3 The Electricity Lines Company is responsible for the payment of all compensation (including any award of the Electricity and Gas Complaints Commissioner) and its management costs and for taking all remedial action with respect to a Consumer Complaint arising out of a Conveyance Only Consumer Contract.

Supply Only Consumer Contracts

D2.4 Supply Only Consumer Contracts must provide that:

- (a) the Electricity Retailer is responsible as the Complaint Managing Company for managing and resolving Consumer Complaints relating to the Services provided under the Supply Only Consumer Contract; and
- (b) if a Complaint is not resolved under its in-house Consumer Complaints handling service in accordance with Clause D1.3(g), the Consumer may refer the dispute to the Electricity and Gas Complaints Commissioner for determination in accordance with the Electricity and Gas Complaints Commissioner's jurisdiction under the Terms of Reference.

Compensation under Supply Only Consumer Contracts

D2.5 The Electricity Retailer is responsible for the payment of all compensation (including any awards of the Electricity and Gas Complaints Commissioner) and its management costs and for taking all remedial action with respect to a Consumer Complaint arising out of a Supply Only Consumer Contract.

Interposed Consumer Contracts

D2.6 Interposed Consumer Contracts must provide:

- (a) that Consumer Complaints should, in the first instance, be made to the Electricity Retailer, as the Contracting Company;

- (b) That the Electricity Retailer is responsible as the Complaint Managing Company for managing and resolving Retail Complaints arising under the Interposed Consumer Contract;
- (c) Unless otherwise agreed with an Electricity Lines Company, that all Lines Complaints arising under the Interposed Consumer Contract must be referred by the Electricity Retailer to an Electricity Lines Company as the Complaint Managing Company to manage and resolve;
- (d) if the Electricity Retailer has agreed with an Electricity Lines Company not to refer certain Lines Complaints to the Electricity Lines Company, the circumstances in which it will not do so, and that the Electricity Retailer must be the Complaint Managing Company for managing and resolving those Lines Complaints; and
- (e) if a Consumer Complaint is not resolved under the Complaint Managing Company's in-house Consumer Complaints handling service then, in accordance with Clause D1.3(g), the Consumer may refer the Complaint to the Electricity and Gas Complaints Commissioner for determination in accordance with his or her jurisdiction under the Terms of Reference.

Complaint management referral requirements for Interposed Consumer Contracts

- D2.7 The Electricity Retailer must refer all Lines Complaints arising under its Interposed Consumer Contract to the Electricity Lines Company, whose Services are the subject of the Complaint, for management and resolution as the Complaint Managing Company unless the Electricity Retailer has agreed with that Electricity Lines Company that certain Lines Complaints may be managed and resolved by the Electricity Retailer as the Complaint Managing Company. Unless so agreed:
- (a) the Electricity Retailer must refer full details of the Complaint and relevant information held by the Electricity Retailer on the identity of the Complainant and its ICP details to the Electricity Lines Company, as the Complaint Managing Company, as soon as possible but no later than two Working Days after the Complaint is made to the Electricity Retailer;
 - (b) the Electricity Retailer must inform the Consumer in Writing of the Electricity Lines Company that will manage and resolve the Complaint and the point of contact details of the Electricity Lines Company; and
 - (c) the Electricity Lines Company must acknowledge the referral to both the Electricity Retailer and the Consumer within two Working Days of the referral.
- D2.8 Where an Electricity Retailer is authorised to deal with a Lines Complaint, the Electricity Retailer must not admit breach or liability or offer or agree to any compensation without the prior agreement of the Electricity Lines Company, and must comply with any reasonable directions given by the Electricity Lines Company on the handling of that Complaint where that compliance is required in accordance with the agreement between the Electricity Retailer and the Electricity Lines Company.

D2.9 If the Electricity Retailer and the Electricity Lines Company have agreed that the Electricity Retailer is authorised to resolve an individual Consumer Complaint, or categories of Consumer Complaints, by way of defined maximum amounts ex gratia, the Electricity Retailer must advise the Electricity Lines Company of the Complaint, the action taken to resolve the Complaint and the amount paid (if any).

Compensation under Interposed Consumer Contracts

D2.10 The responsibilities of Council Members are as follows:

- (a) the Electricity Retailer is responsible for compensation (including any award of the Electricity and Gas Complaints Commissioner) or remedial action and management costs in respect of any Retail Complaint; and
- (b) the Electricity Lines Company, whether or not the Complaint is referred to the Electricity Lines Company, is responsible for any compensation paid or payable to the Consumer and the costs of the management of a Lines Complaint, including the compensation paid by or management costs of the Electricity Retailer in the case of a Lines Complaint not referred to the Electricity Lines Company.

D2.11 The management costs to be paid by the Electricity Lines Company to the Electricity Retailer in the case of a Lines Complaint not referred to the Electricity Lines Company under D2.10(b) may be determined in advance by agreement between the Electricity Retailer and the Electricity Lines Company in relation to an individual Consumer Complaint, or categories of Consumer Complaint.

D2.12 Electricity Lines Company's responsibility for compensation or management costs incurred by an Electricity Retailer in respect of a Lines Complaint not referred to the Electricity Lines Company does not apply to the extent that the Electricity Retailer has not complied with its obligations under Clauses D2.7 and D2.8 or an agreement under D2.11.

Responsibility for management costs not to conflict with award for expenses by Electricity and Gas Complaints Commissioner

D2.13 A Council Member is not liable under this Clause D2 to pay the Complaint management costs of another Council Member to the extent that those costs comprise an award of the Electricity and Gas Complaints Commissioner against that other Council Member under Clause B3.15.

D3. RESPONSIBILITIES OF ELECTRICITY COMPANIES IN RESPECT OF PROCEEDINGS BEFORE THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER

Lines Complaints under Interposed Consumer Contracts

D3.1 If a Lines Complaint is referred by a Consumer to the Electricity and Gas Complaints Commissioner, and

- (a) if the Electricity Retailer is the Complaint Managing Company, the Electricity Retailer must inform the Electricity Lines Company whose Line Functions Services are the subject of the proceedings; or

- (b) if the Electricity Lines Company is the Complaint Managing Company, the Electricity Lines Company must inform the Electricity Retailer,

of the reference within two Working Days of being notified of the reference by the Electricity and Gas Complaints Commissioner.

Electricity Retailers acting as Complaint Managing Companies for Electricity Lines Companies require consent of Electricity Lines Companies for discretionary or “test case” proceedings

D3.2 An Electricity Retailer which is the Complaint Managing Company in respect of a Lines Complaint referred to the Electricity and Gas Complaints Commissioner may not without the prior agreement in Writing of the Electricity Lines Company whose Line Functions Services are the subject of the proceedings:

- (a) consent to an extension of the Electricity and Gas Complaints Commissioner’s jurisdiction under Clause B1.8;
- (b) allow an increase in the amount able to be awarded to the Extended Amount (as that term is defined in Clause B3.10) or make a request for a finding of fact by the Electricity and Gas Complaints Commissioner under Clause B3.10; or
- (c) notify the Electricity and Gas Complaints Commissioner under Clause B4 that a Consumer Complaint will be pursued as a “test case”.

Electricity Companies to co-operate in the provision of information in respect of Lines Complaints

D3.3 An Electricity Lines Company or an Electricity Retailer which is not the Complaint Managing Company in respect of a Consumer Complaint referred to the Electricity and Gas Complaints Commissioner must provide all relevant information and assistance reasonably required by the Complaint Managing Company for its effective participation in the proceedings before the Electricity and Gas Complaints Commissioner.

D4. AGREEMENTS BETWEEN ELECTRICITY COMPANIES

Bilateral agreements between Electricity Companies

D4.1 This Protocol neither prevents nor limits an Electricity Lines Company and an Electricity Retailer from giving effect to or entering into a bilateral agreement which divides or allocates between themselves any responsibility or liability under this Protocol or the Deed or has the effect of limiting responsibility or liability of either of them to the other for compensation payable to a Consumer or the cost of managing any Consumer Complaints in respect of any Services either of them supply to a Consumer. However, such an agreement must neither override nor compromise the responsibility of an Electricity Lines Company or an Electricity Retailer to pay compensation or expenses awarded by the Electricity and Gas Complaints Commissioner, any award levy, and provide remedial action, to a Consumer in accordance with the Scheme.

D4.2 To the extent that a Use of System Agreement, or any other agreement between two or more Council Members, is otherwise inconsistent with the provisions of this Protocol, the Protocol overrides such provisions to the extent they conflict with this Protocol.

Resolution of disputes between Electricity Companies about Consumer Complaints

D4.3 Electricity Retailers and Electricity Lines Companies must:

- (a) use their best endeavours to ensure that any disputes between them about which of them is the Contracting Company or the Complaints Managing Company, the payment of compensation and management costs for resolving a Consumer Complaint (if applicable) or any other matter connected with this Protocol (inter-company disputes) does not adversely affect the efficient and timely resolution of Consumer Complaints; and
- (b) subject to any agreement between the parties governing inter-company disputes, refer any inter-company dispute to mediation, arbitration or expert determination undertaken under the auspices of the Council if the matter is not one determined by the Electricity and Gas Complaints Commissioner under this Deed and it cannot be resolved by agreement between the Council Members concerning the handling and management of, and responsibility for, or action required to resolve, Consumer Complaints.

SCHEDULE DA

GAS CONSUMER DISPUTE RESOLUTION PROTOCOL

DA1. GENERAL PROVISIONS APPLYING TO ALL GAS COMPANY COUNCIL MEMBERS

Objectives of Protocol

DA1.1 The primary objectives of this Protocol are to:

- (a) ensure Consumers can easily resolve disputes with Council Members;
- (b) promote the efficient and timely resolution of Complaints; and
- (c) prevent disputes between Gas Retailers and Gas Lines Companies (where they are not the same Person) over their relative responsibilities.

Application

DA1.1A This Protocol applies to Gas Retailer Council Members and Gas Lines Company Council Members only.

DA1.1B Clauses DA2 and DA3 do not apply to a Gas Company Council Member to the extent that it provides both the Retail Services and Line Function Services to which the Consumer Contract relates.

General obligations under the Protocol

DA1.2 A Council Member must:

- (a) comply with the provisions of this Protocol that are applicable to it; and
- (b) co-operate with other Council Members in order to achieve the objectives in Clause DA1.1 and to give full effect to this Protocol.

Requirements for an in-house Consumer Complaints handling service

DA1.3 A Council Member must:

- (a) inform Consumers in its Consumer Contract (where it is the Council Member contracting with the Consumer), on its website, and in any other relevant Consumer information materials it makes available to Consumers from time to time, of:
 - (i) the way in which, and to whom in the Council Member's organisation, Complaints may be made; and
 - (ii) the Council Member's participation in the Scheme;
- (b) have an efficient system for receipting, recording and monitoring Complaints received, referred (to or by them), managed, and resolved by, them; and
- (c) nominate an individual(s) to be the point of contact for dealing with Consumer Complaints.

General timeframes for dealing with Complaints

DA1.3A The Council Member responsible under this Protocol for a Complaint must:

- (a) acknowledge the Complaint in Writing as soon as possible but not later than two Working Days after receipt of the Complaint. However, if the Council Member responsible for a Complaint is not the Council Member contracting with the Consumer, then the Council Member contracting with the Consumer must perform this obligation;
- (b) provide a response (whether an initial response or otherwise) to the Consumer as soon as possible, commensurate with the urgency of the Complaint, but in any event no later than seven Working Days, after the Complaint is received; and
- (c) notify the Consumer that the Complaint has reached “deadlock”, and inform the Consumer of his or her right to refer the Complaint to the Electricity and Gas Complaints Commissioner, if:
 - (i) the Consumer is dissatisfied with the Council Member’s decision on, or proposed settlement for, the Complaint; or
 - (ii) the Complaint has taken longer than 20 Working Days after receipt of the Complaint to resolve and the Council Member has not notified the Consumer in Writing that it has good reason to take further time to resolve the Complaint and what the good reason is; or
 - (iii) the Complaint has, in any case, taken longer than 40 Working Days after receipt of Complaint to resolve;

Clearing-house mechanism for referral of Complaints to correct Council Member

DA1.4 If a Consumer makes a Complaint to a Council Member who is not the Council Member contracting with the Consumer, that Council Member must:

- (a) forward, within 1 Working Day, the Complaint to the Council Member who has agreed that it is the Council Member contracting with the Consumer; or
- (b) where it is not clear which Council Member has the contract with the Consumer, use its best endeavours to identify the Council Member contracting with the Consumer as soon as possible after receiving the Complaint and forward the Complaint to that correct Council Member; and
- (c) at the time of forwarding the Complaint, provide the Consumer with the contact details of the Council Member contracting with the Consumer.

To avoid doubt, this Clause DA1.4 applies even if the Complaint relates to electricity and is made to a Gas Company in error.

DA1.5 When the Council Member contracting with the Consumer receives a Complaint forwarded to it, it must:

- (a) acknowledge the referral to the Council Member that forwarded the Complaint; and

- (b) inform the Consumer of its receipt of the Complaint, the date of receipt, and the process it will follow for dealing with the Complaint.

DA2. OBLIGATIONS OF GAS COMPANIES FOR MANAGING AND RESOLVING COMPLAINTS

Conveyance Only Consumer Contracts

DA2.1 Conveyance Only Consumer Contracts must provide that:

- (a) the Gas Lines Company is responsible for managing and resolving Complaints relating to the Services provided under the Conveyance Only Consumer Contract; and
- (b) if a Complaint is not resolved by the Gas Lines Company in accordance with Clause DA1.3A(c), the Consumer may refer the dispute to the Electricity and Gas Complaints Commissioner.

Compensation under Conveyance Only Consumer Contracts

DA2.2 The Gas Lines Company is responsible for paying all compensation (including any award of the Electricity and Gas Complaints Commissioner), its management costs, and for taking all remedial action for a Complaint arising out of a Conveyance Only Consumer Contract.

Supply Only Consumer Contracts

DA2.3 Supply Only Consumer Contracts must provide that:

- (a) the Gas Retailer is responsible for managing and resolving Complaints relating to the Services provided under the Supply Only Consumer Contract; and
- (b) if a Complaint is not resolved by the Gas Retailer in accordance with Clause DA1.3A(c), the Consumer may refer the dispute to the Electricity and Gas Complaints Commissioner.

Compensation under Supply Only Consumer Contracts

DA2.4 The Gas Retailer is responsible for paying all compensation (including any award of the Electricity and Gas Complaints Commissioner), its management costs, and for taking all remedial action for a Complaint arising out of a Supply Only Consumer Contract.

Interposed Consumer Contracts

DA2.5 Interposed Consumer Contracts must provide:

- (a) that Consumers should complain, in the first instance, to the Gas Retailer;
- (b) that the Gas Retailer is responsible for managing and resolving Retail Complaints arising under the Interposed Consumer Contract;
- (c) unless otherwise agreed by the Gas Lines Company, that the Gas Retailer must refer all Lines Complaints arising under the Interposed Consumer Contract to the relevant Gas Lines Company to manage and resolve;

- (d) if the Gas Retailer has agreed with a Gas Lines Company not to refer certain Lines Complaints to the Gas Lines Company, the circumstances in which it will not do so, and that the Gas Retailer is responsible for managing and resolving those Lines Complaints; and
- (e) if a Complaint is not resolved by the Council Member responsible for managing and resolving the Complaint in accordance with Clause DA1.3A(c), the Consumer may refer the Complaint to the Electricity and Gas Complaints Commissioner.

Referrals for Interposed Consumer Contracts

- DA2.6 If a Gas Retailer is required to refer a Lines Complaint to a Gas Lines Company under clause DA2.5:
- (a) as soon as possible but not later than two Working Days after the Complaint is made to the Gas Retailer, the Gas Retailer must refer to the Gas Lines Company full details of the Complaint, relevant information held by the Gas Retailer on the identity of the Consumer (or the Complainant, as the case may be), and the Consumer's ICP details;
 - (b) the Gas Retailer must inform the Consumer in Writing of the Gas Lines Company that will manage and resolve the Complaint and the contact details of the Gas Lines Company; and
 - (c) the Gas Lines Company must acknowledge the referral to both the Gas Retailer and the Consumer within two Working Days of receiving the referral.
- DA2.7 Where a Gas Retailer is authorised to deal with a Lines Complaint, the Gas Retailer must not admit a breach of contract or liability, or offer or agree to any compensation on the Gas Lines Company's behalf, without the prior agreement of the Gas Lines Company.
- DA2.8 If the Gas Lines Company has authorised the Gas Retailer to resolve an individual Consumer Complaint, or categories of Consumer Complaints, by way of defined maximum amounts ex gratia, the Gas Retailer must advise the Gas Lines Company of the Complaint, the action taken to resolve the Complaint, and the amount paid (if any).

Compensation under Interposed Consumer Contracts

- DA2.9 The Gas Retailer is responsible for paying all compensation (including any award of the Electricity and Gas Complaints Commissioner), its management costs, and for taking all remedial action for any Retail Complaint arising out of an Interposed Consumer Contract.
- DA2.10 The Gas Lines Company is responsible for paying all compensation (including any award of the Electricity and Gas Complaints Commissioner), management costs, and for taking all remedial action for any Lines Complaint arising out an Interposed Consumer Contract, including all compensation paid by, and management costs of, the Gas Retailer if a Lines Complaint is not referred to the Gas Lines Company.
- DA2.11 The management costs to be paid by the Gas Lines Company to the Gas Retailer for a Lines Complaint that is not referred to the Gas Lines Company may be agreed in advance by the parties.

DA2.12 The Gas Lines Company's responsibility for compensation and management costs incurred by a Gas Retailer for a Lines Complaint that is not referred to the Gas Lines Company does not apply to the extent that the Gas Retailer has not complied with its obligations under Clauses DA2.6 and DA2.7, or an agreement under DA2.11.

Responsibility for management costs not to conflict with award for expenses by Electricity and Gas Complaints Commissioner

DA2.13 A Council Member is not liable under this Clause DA2 to pay the Complaint management costs of another Council Member to the extent that those costs comprise an award of the Electricity and Gas Complaints Commissioner against that other Council Member under Clause B3.15.

DA3. RESPONSIBILITIES OF GAS COMPANIES IN RESPECT OF PROCEEDINGS BEFORE THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER

Lines Complaints under Interposed Consumer Contracts

DA3.1 If a Lines Complaint that is being managed by a Gas Retailer is referred to the Electricity and Gas Complaints Commissioner, the Gas Retailer must inform the relevant Gas Lines Company of the referral within two Working Days of the Gas Retailer being notified of the referral by the Electricity and Gas Complaints Commissioner.

DA3.1A If a Lines Complaint that is being managed by a Gas Lines Company is referred to the Electricity and Gas Complaints Commissioner, the Gas Lines Company must inform the relevant Gas Retailer of the referral within two Working Days of the Gas Lines Company being notified of the referral by the Electricity and Gas Complaints Commissioner.

Gas Retailers require Gas Lines Companies' consent for certain discretionary or "test case" proceedings

DA3.2 A Gas Retailer that is managing a Lines Complaint that has been referred to the Electricity and Gas Complaints Commissioner may not, without the prior agreement in Writing of the relevant Gas Lines Company:

- (a) consent to an extension of the Electricity and Gas Complaints Commissioner's jurisdiction under Clause B1.8;
- (b) allow an increase in the amount able to be awarded to the Extended Amount (as that term is defined in Clause B3.10) or make a request for a finding of fact by the Electricity and Gas Complaints Commissioner under Clause B3.10; or
- (c) notify the Electricity and Gas Complaints Commissioner under Clause B4 that a Consumer Complaint will be pursued as a "test case".

Gas Companies to co-operate in the provision of information in respect of Complaints

DA3.3 A relevant Gas Lines Company or a relevant Gas Retailer who is not managing a Complaint referred to the Electricity and Gas Complaints Commissioner must provide all information and assistance reasonably required by the Council Member managing the Complaint so that Council

Member managing the Complaint may effectively participate in the proceedings before the Electricity and Gas Complaints Commissioner.

DA4. AGREEMENTS BETWEEN GAS COMPANIES

Bilateral agreements between Gas Companies

DA4.1 A Gas Lines Company and a Gas Retailer may agree to divide or allocate between themselves any responsibility or liability under this Protocol, including responsibility or liability of either of them to the other for compensation payable to a Consumer or the cost of managing any Complaint. However, such an agreement does not override the responsibility of a Gas Company to pay compensation, expenses, or provide any remedial action, to a Consumer under an Electricity and Gas Complaints Commissioner award, or to pay any award levy.

DA4.2 To the extent that a Use of System Agreement, or any other agreement between two or more Gas Company Council Members, is otherwise inconsistent with the provisions of this Protocol, the Protocol overrides such provisions.

Resolution of disputes between Gas Companies about Complaints

DA4.3 Gas Retailers and Gas Lines Companies must:

- (a) use their best endeavours to ensure that any dispute between them about who is the Council Member contracting with the Consumer or who is the Council Member responsible for managing a Complaint, about the payment of compensation and management costs for a Complaint, or about any other matter connected with this Protocol ("**inter-company disputes**"), does not adversely affect the efficient and timely resolution of Complaints; and
- (b) subject to any agreement between the parties governing inter-company disputes, refer any inter-company dispute about responsibility for a Complaint to the Council to arrange mediation, arbitration or expert determination.

SCHEDULE DB

LAND COMPLAINTS DISPUTE RESOLUTION PROTOCOL

DB1. GENERAL PROVISIONS APPLYING TO ALL COUNCIL MEMBERS

Objectives of Protocol

DB1.1 The primary objectives of this Protocol are to:

- (a) ensure Land Owners and Land Occupiers can easily resolve disputes with Lines Company Council Members;
- (b) promote the efficient and timely resolution of Land Complaints; and
- (c) prevent disputes between Lines Companies, and between Retailers and Lines Companies, over their relative responsibilities from impeding the efficient and timely resolution of Land Complaints.

Application

DB1.2 This Protocol applies to all Council Members.

General obligations under the Protocol

DB1.3 A Council Member must:

- (a) comply with the provisions of this Protocol that are applicable to it; and
- (b) co-operate with other Council Members in order to achieve the objectives in Clause DB1.1 and to give full effect to this Protocol.

Requirements for an in-house Land Complaints handling service

DB1.4 A Lines Company Council Member must:

- (a) inform Land Owners and Land Occupiers on its website and in any other relevant information it makes available to Land Owners and Land Occupiers from time to time, of:
 - (i) the way in which, and to whom in the Council Member's organisation, Land Complaints may be made; and
 - (ii) the Council Member's participation in the Scheme;
- (b) have an efficient system for receipting, recording and monitoring Land Complaints received, referred (to or by them), managed, and resolved by, them; and
- (c) nominate an individual(s) to be the point of contact for dealing with Land Complaints.

DB1.5 A Retailer Council Member must have an efficient system for receipting Land Complaints and expeditiously referring those Land Complaints to the Lines Company that is responsible for the Complaint under Clause DB1.6.

Responsibility for Land Complaints

DB1.6 The Lines Company Council Member that owns the Lines Equipment on the Land Owner's or Land Occupier's Land that is the subject of a Land Complaint is responsible for that Land Complaint.

General timeframes for dealing with Land Complaints

DB1.7 The Lines Company Council Member responsible under this Protocol for a Land Complaint must:

- (a) acknowledge the Complaint in Writing as soon as possible but not later than two Working Days after receipt of the Complaint, such acknowledgement to include confirmation that the Council Member is a member of the Scheme and information on the Land Owner's or Land Occupier's right to complain to the Electricity and Gas Complaints Commissioner;
- (b) provide a response (whether an initial response or otherwise) to the Land Owner or Land Occupier as soon as possible, commensurate with the urgency of the Complaint, but in any event no later than seven Working Days after the Complaint is received; and
- (c) notify the Land Owner or Land Occupier that the Complaint has reached "deadlock", and inform the Land Owner or Land Occupier of his or her right to refer the Complaint to the Electricity and Gas Complaints Commissioner, if:
 - (i) the Land Owner or Land Occupier is dissatisfied with the Council Member's decision on, or proposed settlement for, the Complaint; or
 - (ii) the Complaint has taken longer than 20 Working Days after receipt of the Complaint to resolve and the Council Member has not notified the Land Owner or Land Occupier in Writing that it has good reason to take further time to resolve the Complaint and what the good reason is; or
 - (iii) the Complaint has, in any case, taken longer than 40 Working Days after receipt of Complaint to resolve.

Clearing-house mechanism for referral of Land Complaints to correct Council Member

DB1.8 If a Land Owner or Land Occupier makes a Land Complaint to a Council Member who is not the Council Member responsible for the Complaint under Clause DB1.6, that Council Member must:

- (a) forward, within 1 Working Day, the Complaint to the Lines Company Council Member who has agreed that it is the Lines Company Council Member responsible for the Complaint; or
- (b) where it is not clear which Lines Company Council Member is responsible for the Complaint, use its best endeavours to identify the Lines Company Council Member responsible for the Complaint as soon as possible after receiving the Complaint and forward the Complaint to that correct Lines Company Council Member; and

- (c) at the time of forwarding the Complaint, provide the Land Owner or Land Occupier with the contact details of the Lines Company Council Member responsible for the Complaint.

To avoid doubt, this Clause DB1.8 applies even if the Land Complaint is made to a Retailer in error.

DB1.9 If Transpower, or any Gas Lines Company Council Member who operates Gas Transmission Pipelines and does not operate any Gas Pipelines at a gauge pressure of less than 2,000 kilopascals, receives a Consumer Complaint, it must:

- (a) forward, within 1 Working Day, the Complaint to the Council Member who has agreed under the Electricity Consumer Dispute Resolution Protocol or the Gas Consumer Dispute Resolution Protocol that it is the Council Member contracting with the Consumer; or
- (b) where it is not clear which Council Member has the contract with the Consumer, use its best endeavours to identify the Council Member contracting with the Consumer as soon as possible after receiving the Complaint and forward the Complaint to that correct Council Member; and
- (c) at the time of forwarding the Complaint, provide the Consumer with the contact details of the Council Member contracting with the Consumer.

DB1.10 When the Lines Company Council Member responsible for the Land Complaint under Clause DB1.6 receives a Land Complaint forwarded to it, it must:

- (a) acknowledge the referral to the Council Member that forwarded the Complaint; and
- (b) inform the Land Owner or Land Occupier of its receipt of the Complaint, the date of receipt, and the process it will follow for dealing with the Complaint.

DB2. AGREEMENTS BETWEEN COMPANIES

Bilateral agreements between Companies

DB2.1 Council Members may agree to divide or allocate between themselves any responsibility or liability under this Protocol, including responsibility or liability of either of them to the other for the cost of referring any Land Complaint. However, such an agreement does not override the responsibility of a Lines Company to pay compensation, expenses, or provide any remedial action, to a Land Owner or Land Occupier under an Electricity and Gas Complaints Commissioner award, or to pay any award levy.

DB2.2 To the extent that any agreement between two or more Council Members is otherwise inconsistent with the provisions of this Protocol, the Protocol overrides such provisions.

Resolution of disputes between Companies about Land Complaints

DB2.3 Council Members must:

- (a) use their best endeavours to ensure that any dispute between them about whether the Complaint is a Consumer Complaint or a Land Complaint, about the payment of compensation and management costs for a Land Complaint, or about any other matter connected with this Protocol ("**inter-company disputes**"), does not adversely affect the efficient and timely resolution of Complaints; and
- (b) subject to any agreement between the parties governing inter-company disputes, refer any inter-company dispute about responsibility for a Complaint to the Council to arrange mediation, arbitration or expert determination.

SCHEDULE E

DEED OF ADOPTION

Date:

PARTIES:

- (1) **THE BOARD OF THE ELECTRICITY AND GAS COMPLAINTS COUNCIL** on behalf of the Council Members (the "Council Members")
- (2) *[Insert full legal name]* having its registered office (or head office if it does not have a registered office) at *[Insert address]* (the "New Party")

BACKGROUND

- B. The Council Members are the parties to the Electricity and Gas Complaints Scheme Deed which came into effect on 7 August 2001 (the "Constitution").
- C. Under the Constitution, the New Party is required to execute this Deed of Adoption to become a Council Member.

NOW BY THIS DEED the parties agree as follows:

1. With effect from *[Insert date]* (the "Effective Date"), the New Party:
 - (a) becomes a party to the Constitution as if it had been named as a Council Member and had executed the Constitution; and
 - (b) must observe and perform all of the obligations of a Council Member under the Constitution and will be bound by the terms of the Constitution.
- 1A. The New Party will be a Council Member in the following class(es):
[Electricity Retailer/Electricity Lines Company/ Gas Retailer/ Gas Lines Company] [Delete as appropriate.]
2. All the parties to this Deed of Adoption confirm that the Constitution remains in full force and effect.
3. The New Party agrees with the Council Members that it will observe and perform its obligations under the Constitution and will be bound by the terms of the Constitution.
4. For the purposes of the Constitution, the designated address of the New Party is as follows:
[Insert address details]
5. All terms defined in the Constitution and used in this Deed of Adoption have the same meaning herein as contained in Clause 1 of the Constitution.

