

REGISTRY OPERATOR SERVICE PROVIDER AGREEMENT

between

GAS INDUSTRY COMPANY LIMITED

and

JADE SOFTWARE CORPORATION (NZ) LIMITED

dated 1 September 2008

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT	7
3.	TERM	7
4.	PERFORMANCE	8
5.	PERFORMANCE STANDARDS AND REVIEW	10
6.	PERSONNEL	10
7.	RELATIONSHIP MANAGEMENT AND RESPONSIVENESS	11
8.	CHANGE	12
9.	DOCUMENTATION, RECORDS AND AUDIT	13
10.	ONGOING FEES.....	14
11.	INVOICING AND PAYMENT.....	15
12.	TERMINATION	16
13.	POST-TERMINATION SERVICES	17
14.	INTELLECTUAL PROPERTY	18
15.	CONFIDENTIALITY	20
16.	WARRANTIES	20
17.	INDEMNITY AND INSURANCE.....	21
18.	FORCE MAJEURE.....	22
19.	ASSIGNMENT.....	23
20.	DISPUTE RESOLUTION	24
21.	GENERAL	24
22.	NEW RELEASES.....	26
23.	CPI	27
24.	CONSUMER GUARANTEES ACT	27

SCHEDULE 1 – SERVICES AND DELIVERABLES

SCHEDULE 2 – SPECIFICATIONS

SCHEDULE 3 – TRAINING SERVICES

SCHEDULE 4 – PERFORMANCE STANDARDS

SCHEDULE 5 – FEES

SCHEDULE 6 – CHANGE CONTROL PROCESS

SCHEDULE 7 – REPORTING

SCHEDULE 8 – KEY PERSON LIST

THIS AGREEMENT

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

AND **JADE SOFTWARE CORPORATION (NZ) LIMITED** a company registered under the Companies Act 1993 with its registered office at 19 Sheffield Crescent, Christchurch (**Service Provider**);

Who are the **Parties** to this Agreement

BACKGROUND

- A.** The Gas (Switching Arrangements) Rules 2008 (the Rules) provide for the industry body (which is Gas Industry Co) to appoint a Registry Operator to develop, establish and operate a gas registry (Registry) of ICP related information. Amongst other things the Registry will be used to support the switching of customers between gas retailers.
- B.** Gas Industry Co has selected the Service Provider as its Registry Operator.
- C.** The Service Provider has agreed to supply Registry Services to Gas Industry Co in accordance with this Agreement and the Rules. These Registry Services shall comprise:
- (a) Registry development and establishment, which shall be in accordance with a separate Registry Development Agreement
 - (b) Registry operations which are covered by this Agreement

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

In this Agreement, unless the context requires otherwise:

Acceptance Certificate means a written notice from Gas Industry Co to the Service Provider recording that Gas Industry Co is satisfied that the Acceptance Tests have been successfully completed;

Acceptance Tests means the acceptance tests recorded or specified in Schedule 9 or as otherwise mutually agreed in writing by the parties;

Agreement means this agreement and the schedules to this agreement;

Best Industry Practice means, in relation to any activity or service, the best practice or standard (recognised nationally or internationally) for that type of activity or service (in terms of quality, productivity, effectiveness and performance);

Business Day means Monday to Friday, excluding any day which is a public holiday in Wellington for the purposes of the Holidays Act 2003;

Business Hours means between the hours of 08:30 to 17:00 on a Business Day;

Change has the meaning set out in clause 1 of schedule 6;

Change Control Process means the process set out in schedule 6;

Change Request has the meaning set out in clause 2 of schedule 6.

Commencement Date means the date on which an "Acceptance Certificate" is issued in respect of the Registry System under the Registry Development Agreement, or the Go-Live date, whichever is earlier;

Compliance Regulations means the Gas Governance (Compliance) Regulations 2008 published in the New Zealand Gazette on 14 August 2008;

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

- (a) that is confidential to that party and relating to the Deliverables and the Services;
- (b) relating to the business, operations, facilities or Intellectual Property of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential;
- (d) in relation to the Service Provider, includes information obtained by Gas Industry Co during an audit under clause 9; or
- (e) which might reasonably be expected by that party to be confidential in nature,

and, in relation to Gas Industry Co, includes information (in any form whether written, electronic or otherwise) relating to Participants. Confidential Information does not include information that is:

- (f) at the date of receipt by either party, in the public domain or that subsequently enters the public domain without any breach of this Agreement;
- (g) at the date of receipt by either party, already known to that party;
- (h) received in good faith by either party from a third party without an obligation of confidentiality;
- (i) agreed by either party in writing to be information to which this Agreement does not apply; or
- (j) independently acquired or developed by either party without breaching their respective obligations under this Agreement;

CPI means the official New Zealand Consumer Price Index;

Data means any information (including information in electronic form or transferred into electronic form by the Service Provider) which the Service Provider:

- (a) held under the Registry Development Agreement;
- (b) directly or indirectly received from or provided to gas industry Participants or the Gas Industry Co in relation to this Agreement; or
- (c) generated by the Service Provider in the course of its operation and management of the Registry;

Deliverable means any deliverable to be supplied by the Service Provider to Gas Industry Co under this Agreement, including any specified in schedule 1, and including each item of Software and Documentation;

Detailed Non-Functional Requirements Specification has the same meaning as in the Registry Development Agreement;

Documentation has the same meaning as in the Registry Development Agreement;

Extended Business Hours means between the hours of 07:00 to 19:30 on a Business Day;

Fault means an operational incident where a Participant or Gas Industry Co reports that the Registry is unobtainable or where there is a defect, error or malfunction in the Registry that renders all or any part of it (including, for the avoidance of doubt, any function) inoperable or unusable;

Fees mean the fees set out in schedule 5, which are payable by Gas Industry Co to the Service Provider;

Financial Year means each 12 month period beginning on 1 July;

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

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

but does not include any event or circumstance which could have been avoided, prevented or circumvented by the Affected Party exercising Best Industry Practice;

Gas Industry Co Documentation has the same meaning as in the Registry Development Agreement;

Go-Live Date has the same meaning as in the Registry Development Agreement;

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

Hours of Coverage means the periods that the Service Provider will support the Services as set out in section 1 of Schedule 4;

Impact Assessment has the meaning set out in clause 3 of schedule 6;

Intellectual Property means patents, registered designs, petty patents, utility models, trade marks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, know-how and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

IP Claim has the meaning set out in clause 14.2;

JADE means a released version of the Service Provider's object orientated software and Documentation, known as JADE™, in which the Software is written including all necessary schemas and any associated documentation and any new JADE release or part thereof provided to the Gas Industry Co by the Service Provider;

Key Person means a person specified as such in Schedule 8, or any person appointed as a replacement under clause 6.5;

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

Maintenance Release means any software released generally to users to replace, modify or attach to any Software to rectify any Error, including releases which, in addition to rectifying an Error, provide additional functionality as a result of any Change Requests;

New Release means any Maintenance Release or New Version;

New Version means any new version of software released generally to users to replace, modify or attach to any Software to provide additional functionality, not being a Maintenance Release. For the avoidance of doubt, as Gas Industry Co is the only user of the Software, no New Versions of the Software will be released. Gas Industry Co will be entitled to receive New Versions of JADE;

Participant means a Registry Participant as defined under the Rules which can be a retailer, distributor or meter owner;

Personnel means:

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

Performance Notice has the meaning set out in clause 7.5;

Performance Standards mean, for any Services, the standards of service the Service provider must attain in providing those Services under this Agreement, including those in Schedule 3.

Processed Data means Data which has been processed by the Service Provider by the Software or by other means pursuant to this Agreement or the Rules.;

Processing Environment means the designated equipment and the technical environment supplied by the Service Provider that the Registry is located on.

Registry means the database facility provided in terms of the Registry Development Agreement (including all relevant hardware and Software) that meets the requirements set out in rule 38 to 42 of the Rules, and which is operated by the Registry Operator in accordance with the Rules;

Registry Development Agreement means the Registry System Development and Establishment Agreement between Gas Industry Co and the Service Provider;

Registry System has the same meaning as in the Registry Development Agreement;

Rules mean the Gas (Switching) Rules 2008 published in the New Zealand Gazette on 14 February 2008;

Services means the support and maintenance services, training services, and/or other services provided by the Service Provider under this Agreement from time to time, including those described in schedule 1;

Site means, in relation to the Services, the premises for delivery provision of the relevant Service;

Software means software that is used to operate the Registry System, whether or not it has been specifically developed for that purpose;

Specifications has the same meaning as in the Registry Development Agreement;

Standard Daily Rates means the daily rates for defined roles as set out in Schedule 5;

Subcontractor means any third party appointed by the Service Provider to supply any of the Deliverables and/or perform any of the Services;

Systems Management Business Hours means between the hours of 07:00 to 19:30 on each calendar day of the year;

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

Termination Date means, subject to clause 3.2, the date five years after the Go-Live Date, or such earlier date as this Agreement is terminated in accordance with its terms.

1.2 Interpretation

Capitalised terms: capitalised terms in this Agreement which are not defined in this Agreement but which are defined in the Rules have the meanings given to them in the Rules;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) appoint and/or remove the majority of the members of the governing body of that person;
- (b) appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
- (c) control, by any other means, the affairs and policies of that person,

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

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

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

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

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

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

2. APPOINTMENT

2.1 Appointment: Gas Industry Co appoints the Service Provider, and the Service Provider agrees, to provide the Deliverables and the Services:

2.1.1 on the terms and conditions set out in this Agreement; and

2.1.2 in accordance with the Rules.

2.2 **Role of the Registry Operator:** The role of the Registry Operator is set out in schedule 2.

3. TERM

3.1 **Term:** This Agreement will commence on the Commencement Date and will end on the Termination Date.

3.2 **Extension:** Gas Industry Co may, by notice in writing delivered to the Service Provider no less than three months (or such shorter period agreed by the Service Provider) prior to the Termination Date extend the Term, such that the Termination Date will, subject to clause 12 or a further extension under this clause 3.2, be two years later than the previously scheduled Termination Date. Gas Industry Co may, unless

the Service Provider agrees otherwise, only exercise this extension option twice.

4. PERFORMANCE

4.1 Service Provider obligations: In providing the Deliverables and/or Services and otherwise complying with its obligations under this Agreement, the Service Provider must:

- 4.1.1 comply with the Rules, including undertaking all of the duties and obligations of the Registry Operator under the Rules;
 - 4.1.2 identify and provide all personnel, resources and processes required to provide the Deliverables and the Services in accordance with this Agreement;
 - 4.1.3 act with care, skill and diligence and in accordance with Best Industry Practice;
 - 4.1.4 meet the applicable Performance Standards and use all reasonable endeavours to exceed the applicable Performance Standards;
 - 4.1.5 keep Gas Industry Co fully advised of progress and changes, or possible changes, to the scope or timing of the provision of the Deliverables and Services;
 - 4.1.6 provide such assistance and information to Gas Industry Co as is necessary to enable Gas Industry Co (acting reasonably) to obtain the full benefit of the Registry System, the Deliverables and the Services, taking into account the fact that, because of Gas Industry Co's function, it will benefit from the Registry System working well for those that use the Registry System, even though Gas Industry Co will not itself use the Registry System;
 - 4.1.7 at all times deal, and fully co-operate, with Gas Industry Co in good faith, and do such things and sign such documents as are reasonably required for the provision of the Deliverables and the Services;
 - 4.1.8 not damage the reputation and goodwill of Gas Industry Co;
 - 4.1.9 comply with all Laws and obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by Law in order for it to provide the Deliverables and the Services and otherwise perform its obligations under this Agreement, provided that, for the purposes of this paragraph 4.1.9, the term "Law" shall not include the Rules; and
 - 4.1.10 promptly notify Gas Industry Co of any breach of the Service Provider's obligations under this Agreement or any matter which may impact the Service Provider's ability to perform its obligations under this Agreement.
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- 4.2 Gas Industry Co obligations:** Gas Industry Co must:
- 4.2.1** comply with the Rules to the extent necessary to enable the Service Provider to provide the Deliverables and Services;
 - 4.2.2** co-operate with the Service Provider and its Personnel in relation to the provision of the Deliverables and the Services;
 - 4.2.3** identify and provide all personnel, resources and processes required to meet the obligations of Gas Industry Co in accordance with this Agreement;
 - 4.2.4** ensure that in meeting the obligations under clause 4.2.3 that Gas Industry Co acts with care, skill and diligence and in accordance with Best Industry Practice;
 - 4.2.5** comply with the timeframes and other requirements set out in this Agreement;
 - 4.2.6** keep the Service Provider fully advised of progress and changes or possible changes to the scope or timing of the provision of the Deliverables and Services;
 - 4.2.7** allow the Personnel of the Service Provider to access the Sites as reasonably required for the proper provision of the Deliverables and the Services, provided that the Service Provider must ensure that its Personnel comply with all of the Service Provider's obligations under this Agreement;
 - 4.2.8** at all times deal with the Service Provider in good faith, and do such things and sign such documents as are reasonably required by the Service Provider to enable it to provide the Deliverables and the Services;
 - 4.2.9** promptly notify the Service Provider of any breach of Gas Industry Co's obligations under this Agreement or any matter which may impact Gas Industry Co's or the Service Provider's ability to perform their obligations under this Agreement;
 - 4.2.10** comply with any Software licence terms provided that they are clearly communicated to it by the Service Provider;
 - 4.2.11** provide such assistance and information to the Service Provider as is reasonably requested and is necessary to enable the Service Provider to perform its obligations under this Agreement;
 - 4.2.12** comply with all Law and obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by Law in order for it to be the recipient of the Deliverables and the Services and perform its obligations under this Agreement;
 - 4.2.13** not damage the reputation and goodwill of the Service Provider; and
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4.2.14 comply with the timeframes and other requirements set out in this Agreement.

5. PERFORMANCE STANDARDS AND REVIEW

5.1 **General performance standards:** Services will be provided in accordance with the performance standards set out in Schedule 4.

5.2 Annually set performance standards:

5.2.1 In accordance with Rule 17 of the Rules, the parties will, at the beginning of each Financial Year, seek to mutually agree on a set of performance standards against which the Registry Operator's actual performance must be reported and measured at the end of the Financial Year. These performance standards shall be in addition to the general standards set out in Schedule 4.

5.2.2 For these purposes the Financial Year ending 30 June 2009, shall be deemed to commence on the Go-Live Date.

5.3 Self review and reports:

5.3.1 In accordance with Rules 18 and 19 of the Rules, the Service Provider will carry out a monthly self-review of its performance and shall report the results of that review to Gas Industry Co.

5.3.2 Reports on self reviews shall be published by Gas Industry Co as set out in Rule 19.3 of the Rules.

5.4 **Annual review:** At the end of each Financial Year and in accordance with Rule 20 of the Rules, Gas Industry Co may review the manner in which the Service Provider has performed its duties.

6. PERSONNEL

6.1 **Personnel requirements:** Both Parties must:

6.1.1 use an adequate number of Personnel to provide the Deliverables and Services; and

6.1.2 ensure that all of its Personnel are properly educated, trained, skilled, experienced and fully qualified for the obligations they perform.

6.2 **Representatives:** Each party will, immediately following the Commencement Date, appoint a representative ("the **Representative**") who will:

6.2.1 serve as the primary point of contact with the other party; and

6.2.2 have overall responsibility for the performance of that party's obligations under this Agreement.

- 6.3 Replacement:** Each party may replace its Representative from time to time provided it gives prior written notice of such replacement to the other party.
- 6.4 Key Person:** The Service Provider shall make reasonable endeavours to ensure that each Key Person is available to perform the relevant functions assigned to him or her and otherwise in accordance with this Agreement.
- 6.5 Replacement Key Person:** Without limiting clause 6.4, as far as reasonably practicable the Service Provider may replace a Key Person only if:
- 6.5.1** the Service Provider has given Gas Industry Co reasonable written notice of the proposed replacement, such notice to include full details of the replacement for the Key Person (including an up-to-date curriculum vitae);
 - 6.5.2** Gas Industry Co has approved the replacement for the Key Person (such approval will not be unreasonably withheld or delayed);
 - 6.5.3** the Service Provider bears all costs relating to replacing that Key Person and upskilling the replacement Key Person; and
 - 6.5.4** the Service Provider, if required by Gas Industry Co, agrees on a transition plan with Gas Industry Co for the replacement Key Person and manages the replacement in accordance with such plan.

7. RELATIONSHIP MANAGEMENT AND RESPONSIVENESS

- 7.1 Meetings:** The Representatives will meet, at no more than monthly intervals via conference calls or if mutually agreed in person, to:
- 7.1.1** monitor progress of the Service Provider in providing the Deliverables and the Services;
 - 7.1.2** review resource needs and detail timing for upcoming tasks;
 - 7.1.3** as far as they are able, settle and agree any issues arising in the course of providing the Deliverables and/or the Services, and review risks and agree risk management actions;
 - 7.1.4** monitor compliance by each party of any other of their respective obligations under this Agreement; and
 - 7.1.5** provided that Gas Industry Co may, in its reasonable discretion, direct that such meetings be held more frequently or less frequently.
- 7.2 Reporting:** The Service Provider must provide reports at the frequency, and containing the detail, set out in schedule 7.
- 7.3 Exchange of Information:** The commitment to meetings under clause 7.1 notwithstanding, the Representatives will be proactive in exchanging
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information relevant to the timely and effective delivery of the Services, whenever and by whatever means is reasonably appropriate to the circumstances.

- 7.4 Responsiveness:** The Service Provider shall respond in a prompt, informative and helpful way to any requests or enquiries made by Gas Industry Co or any Participant relevant to the delivery of the Services. The parties recognise that, depending on the nature of the request, the Service Provider's response may not be one which complies with the request.
- 7.5 Performance Notices:** Gas Industry Co may, if it considers that the Service Provider has failed to comply with clause 7.4, issue a notice to the Service Provider (**Performance Notice**) setting out the details of such non-compliance. Without limiting Gas Industry Co's right to claim that a particular incidence of non-compliance with clause 7.4 is a material breach of this Agreement for the purposes of clause 12.2.2, if it issues three Performance Notices in any 6 month period, a material breach for the purposes of clause 12.2.2 shall be deemed to have occurred.
- 7.6 Waiver of Performance Notice:** Following receipt of a Performance Notice, the Service Provider may, within 5 Business Days, provide a written explanation for the alleged incidence of non-compliance and, if Gas Industry Co considers (acting reasonably) that a non-compliance has not occurred, or that there is a satisfactory explanation, it shall waive the Performance Notice. For the avoidance of doubt, a Performance Notice that has been waived shall be discounted for the purposes of clause 7.5.

8. CHANGE

8.1 Change Control Process: If:

- 8.1.1** Gas Industry Co requires any new deliverables or services that are not within the scope of this Agreement; or
- 8.1.2** either party proposes any change to the Deliverables and/or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing of the delivery of the Deliverables or the Services) and such change cannot be accommodated by another process in this Agreement;

then the change ("**Change**") shall be managed in accordance with the change control process set out in Schedule 6. For the avoidance of doubt, this clause 8 includes any changes arising as a result of an amendment to the Rules.

- 8.2 Development:** The Service Provider acknowledges that Gas Industry Co may look to significantly develop the Registry System after the Go-Live Date. Although the Service Provider shall not unreasonably refuse a request for a Change to give effect to such developments, any such developments must comply with the Change Control Process.
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9. DOCUMENTATION, RECORDS AND AUDIT

- 9.1 Requirements for Documentation:** The Service Provider will supply Gas Industry Co with the Documentation in accordance with the requirements set out in schedule 1. The Documentation must:
- 9.1.1** contain sufficient information for the full and efficient operation of the relevant Deliverables and/or Services to which the Documentation relates in the manner contemplated by Gas Industry Co;
 - 9.1.2** correctly represent the attributes of the subject matter to which it relates;
 - 9.1.3** provide proper and adequate instructions for its intended purpose; and
 - 9.1.4** be written or delivered in English and at a level appropriate for the intended audience.
 - 9.1.5** For the avoidance of doubt the Documentation is based on the Service Provider's pre-existing Registry Documentation. The Documentation has been enhanced to reflect the requirements as set out in the Detailed Business Requirements Specification and has been reviewed to ensure it is correct.
- 9.2 Maintenance of records:** The Service Provider will ensure that it, and where appropriate all of its Subcontractors, at all times create and maintain proper and complete records and documentation relating to all elements of the Deliverables and the Services, including those records and Documentation required by this Agreement (as per clause 9.1) to be created and maintained by the Service Provider. The Service Provider must ensure that it and, where appropriate, all of its Subcontractors maintain such records and documentation to a standard and containing sufficient detail to allow an experienced information technology service provider to use the Deliverables and to perform the Services or any similar services in the event the Service Provider ceases to do so in whole or in part.
- 9.3 Availability of records:** The Service Provider will, immediately upon receipt of a request from Gas Industry Co, provide to Gas Industry Co any relevant records and documentation that the Service Provider or any Subcontractor is required to maintain under clause 9.2.
- 9.4 Audits:** The Service Provider:
- 9.4.1** must allow Gas Industry Co and its Personnel access to the Service Provider's Personnel and premises during Business Hours:
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- (a) to perform annual reviews of the manner in which the Service Provider has performed its duties and obligations under the Rules; and
- (b) conduct audits of the records and procedures of the Registry and the Service Provider;

9.4.2 in accordance with rule 21 of the Rules shall allow Gas Industry Co and its Personnel to inspect and copy the Service Provider's accounts, records and documentation relating to the Deliverables and/or the Services;

9.4.3 for the purposes of Gas Industry Co auditing the Service Provider's compliance with this Agreement and/or in order for Gas Industry Co to comply with any Law, provided that Gas Industry Co must:

- (a) provide the Service Provider with reasonable prior written notice of any proposed audit, including the proposed time for the audit, the name of the auditor and how Gas Industry Co intends to conduct the audit;
- (b) obtain the Service Provider's agreement (such agreement not to be unreasonably withheld) regarding the date for the audit and how the audit is to be conducted; and
- (c) conduct the audit in a manner and at a frequency that does not unreasonably disrupt the Service Provider's business or Personnel.

9.5 Assistance: For the purposes of complying with clause 9.4, the Service Provider will promptly and efficiently give Gas Industry Co and its Personnel such assistance as is reasonably required by Gas Industry Co for the purposes of auditing the Service Provider under clause 9.4.

9.6 Subcontractors: The Service Provider will ensure that each of its Subcontractors gives Gas Industry Co the same rights, and agrees to fulfil the same obligations to Gas Industry Co as set out in clauses 9.2 to 9.4.

9.7 Costs of audit: Both parties will meet their own costs if an audit is carried out under clause 9.4 for one audit a year. Unless it is proven that the Service Provider is materially non-compliant under clause 9.4 then the Service Provider will be able to charge Gas Industry Co for any subsequent audits in the same year.

9.8 Implementation of audit recommendations: The Service Provider will implement any Changes necessary to give effect to any reasonable recommendations made following an audit or review, with the objective of constantly improving services.

10. ONGOING FEES

- 10.1 Fees:** Gas Industry Co must pay the Fees to the Service Provider for the Services and Deliverables in accordance with the payment terms set out in clause 11 and Schedule 5.
- 10.2 Fixed amount:** Subject to any changes made in accordance with Schedule 6, the Fees are the total amount payable by Gas Industry Co for the relevant Deliverables and/or Services to be provided under this Agreement. All costs and expenses relating to the supply of the Deliverables and the provision of the Services, and the Service Provider's performance of its obligations under this Agreement, are the sole responsibility and expense of the Service Provider unless Gas Industry Co has expressly agreed to pay for them in this Agreement. For the avoidance of doubt, the Fees include any applicable licence fees.

11. INVOICING AND PAYMENT

- 11.1 Invoicing:** The Service Provider must issue an invoice:
- 11.1.1** for any instalment of the Fees only upon supply of the Deliverables and/or Services to which that instalment relates; and
 - 11.1.2** Based on the payment schedule as set out in Schedule 5.
- 11.2 General invoicing requirements:** Each invoice submitted to Gas Industry Co under this Agreement, in order to be validly issued for the purposes of this Agreement, must:
- 11.2.1** be in the form of a valid tax invoice for GST purposes;
 - 11.2.2** be delivered by the means of communication requested by Gas Industry Co from time to time;
 - 11.2.3** describe in adequate detail the Deliverables and/or the Services that are the subject of the invoice and the timing of the provision of such Deliverables and/or the Services; and
 - 11.2.4** be in the format specified by written notice given by Gas Industry Co to the Service Provider from time to time.
- 11.3 Disputed invoices:** Where Gas Industry Co disputes any portion of any amount appearing as payable on an invoice issued by the Service Provider to Gas Industry Co under this Agreement:
- 11.3.1** Gas Industry Co will notify the Service Provider of such dispute at the earliest reasonable opportunity; and
 - 11.3.2** Gas Industry Co must pay the undisputed portion of the invoice on its due date, but will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 20.
- 11.4 Payment:** Any valid invoice received by Gas Industry Co from the Service Provider will be payable on the 20th day of the month following the month in which the invoice is received by Gas Industry Co. Gas
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Industry Co will not be required to pay any invoice which is not valid for the purposes of this Agreement.

- 11.5 Tax:** Other than GST, the Service Provider will be responsible for all taxes, levies or duties assessed on, or in relation to, the Service Provider's supply of the Deliverables and provision of the Services.

12. TERMINATION

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

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

- (a) specifying a material breach of this Agreement by the Service Provider; and
- (b) requiring that the Service Provider remedy that breach within 10 Business Days after receipt of that earlier notice;

- 12.1.2** the Service Provider has committed a material breach of this Agreement which is not reasonably capable of being remedied by the Service Provider within 10 Business Days;

- 12.1.3** the Service Provider goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register; or if any event analogous in nature has occurred in respect of the Service Provider under any other Law of any jurisdiction;

- 12.1.4** the Service Provider ceases to be controlled by the same persons as at the date of this Agreement, without the prior written consent of Gas Industry Co (such consent not to be unreasonably withheld or delayed), provided that if the Service Provider becomes a publicly listed company, this clause 12.1.4 does not apply;

- 12.1.5** Service Provider suspends, for 10 Business Days or longer, or ceases, or sells, its principal business undertaking or assets without Gas Industry Co's prior written consent (such consent not to be unreasonably withheld or delayed);

- 12.1.6** the Service Provider makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring);
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- 12.1.7** the Registry Development Agreement is terminated for any reason prior to the Commencement Date;
 - 12.1.8** Gas Industry Co becomes entitled to terminate the Agreement under clause 14.5;
 - 12.1.9** any Force Majeure is of such magnitude or will be of such duration that it is, or is reasonably likely to be, impossible or impractical for the Service Provider to comply, to a material extent, with the Service Provider's obligations under this Agreement (taken as a whole) for a period of two consecutive months or longer.
 - 12.2 Termination by Service Provider:** In addition to any other right or remedy conferred on the Service Provider under this Agreement or by Law, the Service Provider may terminate this Agreement at any time and with immediate effect by written notice to Gas Industry Co if:
 - 12.2.1** Gas Industry Co has failed to make any payment to Service Provider in accordance with this Agreement, and has not remedied such failure within 20 Business Days of receiving written notice from the Service Provider of such failure;
 - 12.2.2** Gas Industry Co materially breaches its obligations under clause 4.2.10 and does not remedy such breach within 30 Business Days of receiving written notice from the Service Provider of such failure;
 - 12.2.3** Gas Industry Co materially breaches its obligations under this agreement and does not remedy such breach within 60 Business Days of receiving written notice from the Service Provider of such failure;
 - 12.2.4** Gas Industry Co goes into liquidation; has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets; becomes unable to pay its debts as they fall due; is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; is removed from the New Zealand Companies Register;
 - 12.2.5** Gas Industry Co makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring).
 - 12.3 Consequences of termination:** Without limiting any other rights or remedies of either party:
 - 12.3.1** the Service Provider shall return to Gas Industry Co all of the Data and Processed Data generated by the Registry including Participant information in a form that is useable by Gas Industry Co;
 - 12.3.2** termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party; and
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12.3.3 the provisions of clauses 12, 13, 14, 15, 16, 17, 20, and 21 together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

13. POST-TERMINATION SERVICES

13.1 In the event of termination for any reason, the Service Provider will provide in a timely fashion, co-operation and support for orderly transitioning to an alternative Registry or any alternative Service Provider for up to 18 months after termination. Those services will include, if requested by Gas Industry Co:

13.1.1 the continued provision of the Services, or part of the Services, being provided to Gas Industry Co prior to termination as requested by Gas Industry Co in accordance with this Agreement. Gas Industry Co must continue to pay the Fees for such Services in accordance with this Agreement (or a reasonable proportion of those Fees if only part of the Services is required) and;

13.1.2 training for Gas Industry Co and the new Service Provider's personnel in respect of the relevant Services provided by the Service Provider under this Agreement.

13.2 Gas Industry Co will pay the Service Provider for any post-termination services that are in addition to the Services being provided to Gas Industry Co prior to termination at the rates set out in schedule 6.

13.3 Subject to clause 13.1, the Service Provider will, at no additional cost, transfer all Data and Processed Data (in a commonly accepted industry standard format (e.g. CSV) or as reasonably required by Gas Industry Co) to Gas Industry Co, or if Gas Industry Co requests, to the incoming Service Provider, and will provide a certificate to Gas Industry Co confirming that it has transferred all the Data and Processed Data it is required to transfer under this clause 13.3.

13.4 Notwithstanding any obligation on the Service Provider under this Agreement to transfer Data and Processed Data, the Service Provider will be entitled to retain a copy of such Data and Processed Data to comply with any obligations it has at Law.

13.5 The parties will negotiate in good faith to agree a data transfer plan which sets out the timing and other requirements for the transfer of Data and Processed Data in accordance with clause 13.3. When determining timing, the parties will take into account the volume of Data and Processed Data to be transferred.

13.6 If the parties are not able to agree a data transfer plan within 20 business days after the termination of this Agreement, either party may refer the matter to arbitration as set out in clause 20.2 of this Agreement.

13.7 The Service Provider agrees to work in good faith with any incoming Service Provider in relation to the transfer of Data and Processed Data under clause 13.3 in accordance with the data transfer plan.

14. INTELLECTUAL PROPERTY

- 14.1 Ownership of Intellectual Property:** Unless otherwise agreed between the parties in writing:
- 14.1.1** all Intellectual Property of the Service Provider, including but not limited to the Software, Deliverables and Service Provider Documentation, and its licensors together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by the Service Provider or the relevant licensors;
 - 14.1.2** all Intellectual Property of Gas Industry Co, including but not limited to the Gas Industry Co Documentation, the Data and the Processed Data and its licensors that together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by Gas Industry Co or the relevant licensors; and
 - 14.1.3** both parties must use all best endeavours to protect the other's Intellectual Property rights and interests from infringement during and after the expiry of this Agreement.
- 14.2 Intellectual Property Indemnity:** The Service Provider indemnifies Gas Industry Co against all liabilities, damages, expenses and losses (including legal costs) arising from any claim or proceeding brought against Gas Industry Co to the extent that the claim or proceeding is based on an allegation that Gas Industry Co's possession or use of any Deliverable and/or Service supplied or licensed by the Service Provider under this Agreement infringes any third party's Intellectual Property ("IP Claim").
- 14.3 Conditions Applying to Intellectual Property Indemnity:** The Service Provider's obligations under clause 14.2 are conditional on:
- 14.3.1** Gas Industry Co promptly notifying the Service Provider in writing of any IP Claim;
 - 14.3.2** Gas Industry Co making no admission regarding the IP Claim without the Service Provider's consent;
 - 14.3.3** the Service Provider conducting and/or settling (at its own cost) all negotiations and litigation; and
 - 14.3.4** Gas Industry Co giving the Service Provider all reasonable assistance. The Service Provider must reimburse Gas Industry Co's reasonable costs and expenses associated with providing such assistance.
- 14.4 Rectifying an IP Claim:** If at any time an IP Claim is made, or in the Service Provider's reasonable opinion is likely to be made, then in defence or settlement of such an IP Claim the Service Provider must (at its option):
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14.4.1 obtain for Gas Industry Co the right to continue using the items which are subject to the IP Claim; or

14.4.2 at the Service Provider's expense, modify, replace or re-perform the items which are the subject of the IP Claim so that they become non-infringing.

14.5 Termination for IP Infringement: If the remedies in clause 14.4 are exhausted without remedying or settling to Gas Industry Co's reasonable satisfaction the IP Claim, Gas Industry Co may terminate this Agreement under clause 12.1.

14.6 Ownership of Data: The Service Provider shall have no rights to the Data or Processed Data contained in the Registry, or any use of that data beyond that specified in this Agreement.

15. CONFIDENTIALITY

15.1 Publication of Agreement: Gas Industry Co shall publish this Agreement as required by rule 15 of the Rules.

15.2 Confidentiality: The parties must maintain as confidential at all times, and will not at any time, directly or indirectly:

15.2.1 disclose or permit to be disclosed to any person;

15.2.2 use for itself; or

15.2.3 use to the detriment of the other party;

15.2.4 any Confidential Information of the other party except:

15.2.5 as required by Law;

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

15.2.6 if necessary for the party to perform its obligations under this Agreement and then only after procuring a commitment from the third party to comply with the confidentiality obligations set out in this clause 6.

15.3 Announcements: The Service Provider will not make any announcements or disclosures about the subject matter of this Agreement, except in a form and manner and at a time previously approved in writing by Gas Industry Co (such approval not to be unreasonably withheld or delayed).

16. WARRANTIES

16.1 Reciprocal warranties: Each party warrants to the other that:

16.1.1 it has obtained all authorisations and has done all things necessary in order to enter into this Agreement and to perform its obligations under this Agreement; and

- 16.1.2** it is not aware of anything which will, or might be reasonably expected to, prevent that party from performing, or impair that party's performance of, its obligations under this Agreement, in the manner and at the times contemplated by this Agreement.
- 16.2 Service Provider warranties:** The Service Provider warrants, undertakes and represents to Gas Industry Co that:
- 16.2.1** it has the expertise, experience, resources, capacity and ability to, and will, perform and discharge its obligations under this Agreement in a timely manner, efficiently, diligently and with due care and skill, and to a level reflective of, and in accordance with, a high level of industry knowledge and competence;
- 16.2.2** all information provided by the Service Provider to Gas Industry Co under or in relation to this Agreement is materially true, accurate and not misleading in any respects, and that, to the best of its knowledge, Gas Industry Co's use of that information will not infringe the Intellectual Property rights of any third person;
- 16.2.3** the Service Provider has made appropriate checks regarding the honesty and reliability of any Personnel taking account, in particular, of such persons' access to Confidential Information of Gas Industry Co and access to secure parts of the Registry System; and
- 16.2.4** to the best of its knowledge, Gas Industry Co's use or possession of the Deliverables and/or the Services will not infringe the Intellectual Property rights of any third party.
- 16.3 Service Provider warranties in respect of New Releases:** The Service Provider warrants, undertakes and represents to Gas Industry Co in respect of each New Release that, at the time of delivery to Gas Industry Co:
- 16.3.1** following installation, the Registry System will comply with the Specifications in all material respects;
- 16.3.2** the New Release is free from material defects in design, materials, workmanship, performance and installation; and
- 16.3.3** the New Release does not contain any computer viruses, interruptions, logic bombs, Trojan horses or other forms of malicious code or performance impediments; and
- 16.3.4** the New Release complies with all applicable Laws affecting it or any of its functions or facilities.
- 16.4 Third party warranties:** The Service Provider will assign to Gas Industry Co or, if it is unable to do so, will hold for the sole benefit of Gas Industry Co, all warranties and guarantees for products provided by third parties to the Service Provider, where those products are embedded in
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the Service Provider's products, in relation to the Deliverables and/or the Services.

17. INDEMNITY AND INSURANCE

- 17.1 Gas Industry Co Indemnity:** The Service Provider indemnifies Gas Industry Co and gas industry Participants at all times against any losses, damages or costs (including enforcement costs, on a solicitor and own client basis) suffered or incurred by Gas Industry Co and gas industry Participants as a direct result of a breach by the Service Provider of any of its obligations or warranties under this Agreement.
- 17.2 Insurance:** The Service Provider has in place at the Commencement Date and will maintain:
- 17.2.1** professional indemnity insurance in an amount not less than \$5 million; and
 - 17.2.2** public liability insurance in an amount of not less than \$10 million;
 - 17.2.3** with reputable insurers, approved by Gas Industry Co, and shall use reasonable endeavours to ensure that such terms are acceptable to Gas Industry Co (acting reasonably). The Service Provider will provide to Gas Industry Co, whenever requested by Gas Industry Co, the most recent certificate of currency provided to it by its insurers and warrants on providing such certificate that the details set out in it remain accurate.
- 17.3 Gas Industry Co Liability cap:** Gas Industry Co's maximum aggregate liability under or in connection with this Agreement (whether in contract, tort or otherwise), except for liability arising as a result of wilful breach or fraud on the part of Gas Industry Co or from breaches of clauses 14, 15 and 16, is limited to an amount equal to the Fees paid and/or payable under this Agreement for Deliverables and/or Services at the date the relevant cause of action arose provided that this clause will not limit Gas Industry Co's obligation to pay any Fees payable for Deliverables and/or Services which are properly due.
- 17.4 Service Provider Liability Cap:** The Service Provider's maximum aggregate liability under or in connection with this Agreement (whether in contract, tort or otherwise) for each year of the Term of this Agreement, except for liability arising as a result of wilful breach or fraud on the part of the Service Provider or from breaches of clauses 14, 15 and 16, is limited to the Fees payable for that year of the Term of the Agreement, provided that where any breach of this Agreement also constitutes a breach of the Rules then the only remedy shall be that available under the Compliance Regulations.
- 17.5 Indirect Loss:** Neither party shall be liable to the other party for any indirect losses, damages or costs incurred or suffered by that other party as a result of a breach of this Agreement.
- 17.6 General Liability Cap:** Notwithstanding clauses 17.3 and 17.4 neither party's liability arising under or in connection with this Agreement
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(whether in contract, tort or otherwise) shall not exceed \$5,000,000 in respect of all events arising in any financial year.

18. FORCE MAJEURE

18.1 Force Majeure: Subject to clause 2, if and to the extent either party is unable to carry out any of its obligations under this Agreement because of any event or circumstance which is, in relation to that party, a Force Majeure (such party being referred to in this clause 19 as the "**Non-Performing Party**") the Non-Performing Party will have no liability to the other party in respect of the non-performance by the Non-Performing Party of such obligations, provided that:

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

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

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

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

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

19. ASSIGNMENT

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

19.2 Any other assignment: Subject to clause 19.1, neither party will transfer or assign all or any of its rights or obligations under this Agreement to any other person without the other party's prior written approval (such consent not to be unreasonably withheld or delayed).

19.3 Effect of subcontracting: The Service Provider will use all reasonable endeavours to ensure that its Subcontractors comply with the terms of this Agreement that are applicable to the Service Provider. The entry by the Service Provider into a subcontract will not create a contractual relationship between Gas Industry Co and the relevant Subcontractor and will not relieve the Service Provider from liability for the performance of any obligations under this Agreement. The Service Provider is liable to Gas Industry Co for the acts and omissions of each of its Subcontractors as fully as if they were acts or omissions of the Service Provider.

19.4 Removal of a Subcontractor: If Gas Industry Co considers the performance of any of the Services by a Subcontractor to be

unacceptable or inadequate, Gas Industry Co may, by written notice to the Service Provider, require the Service Provider to, and the Service Provider will, remove that Subcontractor from the performance of the relevant obligations within 10 Business Days of receipt of the notice.

20. DISPUTE RESOLUTION

- 20.1 Dispute resolution process to apply:** This clause 21 will apply to any dispute between the parties (except where the party seeks urgent interlocutory relief) relating to this Agreement.
- 20.2 Dispute resolution process:** If either party believes that there is a dispute between the parties concerning this Agreement, that party will give written notice to the other party setting out details of the dispute. If a notice of dispute is given:
- 20.2.1** each party will direct its Representative to use his or her reasonable endeavours to resolve the dispute within 10 Business Days of the date of the notice;
 - 20.2.2** if the dispute is not resolved under clause 20.2.1 above, the dispute will be referred to the parties' respective Chief Executive Officers, who will use their reasonable endeavours to resolve the dispute within 10 Business Days from the date the dispute is referred to him or her;
 - 20.2.3** if the dispute is not resolved under clause 21.2.2 above, then either party may (by written notice to the other party) require that the dispute be referred to mediation. The parties will appoint a mediator agreed by the parties, or if there is no agreement, approved by the President for the time being of the New Zealand Law Society or his or her nominee. The mediator will determine the process and timetable for the mediation. The cost of the mediation will be shared equally between the parties; and
 - 20.2.4** if the dispute is not referred to mediation, or is not resolved as a result of a mediation undertaken under clause 20.2.3 above, then either party may (by written notice to the other party) refer the dispute to a sole arbitrator under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 10 Business Days of notice being given referring the dispute to arbitration, such arbitrator is to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.
- 20.3 Service Provider to continue providing the Deliverables and Services:** In the event of a dispute between the parties concerning this Agreement, the Service Provider will continue, in good faith, to supply
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the Deliverables and to provide the Services (unless Gas Industry Co requests otherwise).

21. GENERAL

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

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

21.9.2 sent by facsimile to the intended recipient's facsimile number as set out below and the sender's facsimile machine confirms transmission to the intended recipient.

Notices to Gas Industry Co:

Contact Name: Bas Walker, Senior Adviser

Fax Number: 04-472-1801

Physical Address: Level 9, State Insurance Tower
1 Willis Street
Wellington

Notices to Service Provider:

Contact Name: Contracts Manager

Fax Number: +64 3 358 7276

Physical Address: 19 Sheffield Crescent
Bishopdale
Christchurch

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

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

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

22. NEW RELEASES

22.1 Notification of New Releases: As part of the Service Provider's provision of Services under this Agreement the Service Provider will immediately notify Gas Industry Co of any New Releases which will be, or have become available relating to the Software. The Service Provider's notification of any New Releases pursuant to this clause 22.1 will include advising Gas Industry Co (at no additional cost) as to the extent that the installation of the relevant New Release will affect any

part of the Registry System, including any likely functionality and/or performance consequences.

22.2 Gas Industry Co's right to obtain New Releases: Gas Industry Co may, at any time after receiving notification under clause 22.1 elect to obtain a New Release notified by the Service Provider. Gas Industry Co will be entitled to rely on the Service Provider's advice in deciding whether to obtain any New Release.

22.3 Supply of New Releases: Where Gas Industry Co elects to obtain any New Release under clause 22.2 the Service Provider will promptly supply the New Release to Gas Industry Co (or, if the New Release is the product of a third party, use best endeavours to source and supply the New Release) and provide the following services, if requested by Gas Industry Co:

22.3.1 installation and testing of the New Release;

22.3.2 training of Gas Industry Co to allow it to fully utilise the New Release; and

22.3.3 provision of any updated Documentation incorporating information on the New Release, such as user manuals, systems manuals and training manuals.

22.4 Right to refuse or delay New Releases: Subject to the New Release still being supported by the Service Provider Gas Industry Co will be under no obligation to obtain any New Release notified by the Service Provider pursuant to clause 22.1. Refusal by Gas Industry Co to obtain any New Release will not affect its entitlement to the Services under this agreement, except that if the New Release corrects an Error, or prevents it from occurring, Gas Industry Co will not be entitled to the Services free from such Error if it unreasonably refuses to obtain the relevant New Release. Gas Industry Co may elect to obtain a New Release but specify a future time at which it should be supplied, rather than having it supplied immediately.

22.5 New Releases not to detrimentally affect the Software: The Service Provider will ensure that each New Release supplied by the Service Provider pursuant to this agreement does not cause any disruption or have any adverse impact on the Software previously supplied to Gas Industry Co or the Registry System (or any part of it) except in the manner and to the extent specifically and clearly described by the Service Provider and accepted by Gas Industry Co prior to the supply of the New Release.

23. CPI

23.1 CPI: Annually on the 31st day of March starting from 2010 or as soon as practically possible thereafter the Service Provider will review and may at its option increase all or any of the Fees (including, without limitation, the Standard Daily Rates as set out in Schedules 5 to this Agreement) in accordance with the increase in the official New Zealand Consumer Price Index as published on the 31st March in that calendar year for the preceding 12 months.

24. CONSUMER GUARANTEES ACT

- 24.1** The parties acknowledge that the goods and/or services supplied under this Agreement are acquired by Gas Industry Co for the purpose of a business and accordingly (to the extent permitted by law) the Consumer Guarantees Act 1993 shall not apply to the transactions evidenced by this Agreement.
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EXECUTION

SIGNED by GAS INDUSTRY COMPANY LIMITED by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SIGNED by JADE SOFTWARE CORPORATION (NZ) LIMITED by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

SCHEDULE 1**SERVICES AND DELIVERABLES**

The Service Provider will provide Gas Industry Co with the following Services and Deliverables:

- (a) Operate, support and maintain the Registry in accordance with the Rules, schedule 2 and schedule 4;
 - (b) provide training services in accordance with schedule 3;
 - (c) Maintain and update as appropriate copies of the Documentation; and
 - (d) Provide management and related reports as set out in schedule 7.
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SCHEDULE 2**REGISTRY OPERATION****1. Principles of the Registry Operation**

- 1.1** The Registry Operator will have the functions, rights, powers, and obligations set out in the Rules. Gas Industry Co and the Registry Operator may agree on any other terms and conditions, not inconsistent with the functions, rights, powers, and obligations of the Registry Operator under the Rules.
- 1.2** This Schedule sets out the responsibilities of the Registry Operator for on-going operations. Responsibilities for the development and establishment of the Registry are set out in a separate Development and Establishment Agreement.
- 1.3** This Schedule sets out the responsibilities for on-going operations of the Registry and must be carried out in accordance with the Performance Standards set out in Schedule 4.
- 1.4** The Registry Operator must meet the obligations of the Detailed Non-Functional Requirements Specification during the Term of this Agreement.
- 1.5** The Registry Operator will provide the various Services set out in this Schedule based on the Hours of Coverage.
- 1.6** The Registry Operation is split into 5 discrete areas being:
- 1.6.1** Registry Administration covering the day to day administration task of the Registry;
 - 1.6.2** Registry Application Support covering the resolution of faults within the Registry software;
 - 1.6.3** Registry Maintenance covering the high-level maintenance obligations for both Registry Application Support and Registry Systems Management;
 - 1.6.4** Registry Systems Management covering the management of the infrastructure that the Registry resides on; and
 - 1.6.5** Registry Reporting which covering the reporting requirements that the Registry Administration must meet.

2. Registry Administration

- 2.1** The Registry Operator will be the sole point of contact for day-to-day administration of the Registry.
- 2.2** In accordance with rule 14.2 of the Rules, the Registry Operator must maintain close contact with distributors, retailers and meter owners, and provide additional services and support to ensure that the Registry
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remains responsive to and consistent with the needs of the Registry Participants, provided that:

2.2.1 it is Gas Industry Co's expectation that if the Service Provider performs its other obligations under this Agreement, it will have met its obligations under this clause; and

2.2.2 if either party forms the view that, although the Service Provider is performing its other obligations under this Agreement, it is not satisfying its obligations under this clause, that party shall initiate a Change Request under clause 8 to amend the Agreement to include any additional obligations which, when performed, will ensure that the Service Provider is satisfying its obligations under this clause.

2.3 The role of the Registry Operator will be to supply or undertake the management of supply of the following:

2.3.1 creation and maintenance of Registry and Documentation;

2.3.2 maintenance of Registry availability and usability at levels agreed in schedule 4;

2.3.3 administrative support for the parameters value control tables and other relevant elements of the Registry required for process and data integrity;

2.3.4 registry performance monitoring and reporting;

2.3.5 registry technical support including a fault management service;

2.3.6 registry user support (including helpdesk) and training;

2.3.7 additional services as may be agreed with individual Participants and subject to Gas Industry Co approval, or with Gas Industry Co directly, to ensure that the Registry continues to support the needs of the gas industry;

2.3.8 participant registration process; and

2.3.9 completion of the Registry Reporting requirements as set out in section 6 of this Schedule.

3. Registry Application Support

3.1 The Service Provider will carry out regular maintenance of the registry.

3.2 The Service Provider will provide the support necessary to remedy Faults reported by Gas Industry Co.

3.3 The Performance Standard for Fault resolution will be in accordance with the Fault classifications specified in Schedule 4.

3.4 The Service Provider shall include statistics of performance against these service levels in the monthly performance report.

Commentary/explanation will be provided where service levels are not met.

- 3.5 The Service Provider may as a temporary measure provide a workaround for a reported Fault. If agreed by Gas Industry Co, this will permit a downgrade of Fault classification.
- 3.6 Assistance to investigate and remedy Faults outside of Business Hours will be provided on a Best Endeavours basis and will be chargeable at the Service Provider's Standard Daily Rates. Gas Industry Co's written approval will be required prior to the Service Provider commencing such chargeable work.
- 3.7 All source code will be appropriately versioned and managed in accordance with generally accepted practices.

4. Registry Maintenance

- 4.1 The Registry Operator must undertake all preventative and corrective maintenance and the implementation of enhancements outside of Extended Business Hours where possible.
- 4.2 For urgent corrective maintenance to fix Registry faults that are threatening stated services levels, the Registry Operator may, having notified Gas Industry Co, undertake maintenance at any time. Any such unavailability will count against the Performance Standards in Schedule 4.

5. Registry Systems Management

5.1 Service Management

- 5.1.1 The Registry Operator should employ industry service management methodologies such as ITIL (Information Technology Infrastructure Library), or have process equivalent of such, and include robust quality assurance processes. Any methodology should cover the service management functions being provided.
 - 5.1.2 The Registry Operator shall provide the means to report Faults and to receive Change Requests. The Registry Operator must proactively assist Participants to resolve their Faults. If a Fault affects more than one Participant, the Registry Operator must notify all Participants.
 - 5.1.3 The Registry Operator must provide a fault management service to record and rectify Faults.
 - 5.1.4 The Registry Operator must proactively manage all aspects of the service, including:
 - (a) conducting ongoing service improvement reviews;
 - (b) conducting general tuning;
 - (c) carrying out housekeeping tasks; and
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- (d) conducting day-to-day monitoring of logs and performance levels.

5.1.5 The Registry Operator must maintain a register of all helpdesk Faults and other operational incidents that are closed prior to becoming a Fault reported by each user during the previous 12 month period. The register must contain the user, time and details of the incident, as well as the time and details of its resolution.

5.1.6 The Registry Operator will directly notify Participants when Critical Faults are resolved or of the time when they are expected to be resolved.

5.1.7 The Registry Operator must have the process for the Participants to report any Fault via email and for Critical Faults via telephone.

5.1.8 A summary of all Faults and their resolution times must be included in the monthly report described in schedule 7.

5.2 Hosting Services

5.2.1 The Service Provider will install and host the Registry on the Processing Environment including connection of the Registry to the Service Provider's network provider of choice and power supply.

5.2.2 The Service Provider will provide cabinet space at the site capable of, and appropriate for, being used for the installation of the Registry.

5.2.3 The Service Provider will provide the site with appropriate and robust, environment control support systems, which include:

- (a) Redundant air-conditioning capacity / units;
- (b) Air conditioning, fire, smoke alarms, and air conditioning and fire suppression systems;
- (c) Professionally racked equipment with appropriate cable labelling and cable management systems;
- (d) Centrally controlled security system;
- (e) Redundant power feeds to cabinet racks; and
- (f) UPS power backup capable of supporting the Registry until automatically initiated generator supplied backup power is provided.

5.2.4 Any changes to the site, whether associated with the Registry or not, that increase the operating risk of the Registry (for example taking a redundant power supply out of commission

for maintenance) or impact the availability of the Registry (for example a total network outage for upgrade purposes) must be submitted to, and approved by Gas Industry Co, such approval not to be unreasonably withheld.

5.2.5 The Service Provider will take reasonable steps to ensure that the Registry is protected at all times from:

- (a) radio or electrical interference;
- (b) power fluctuations;
- (c) water damage (including flood);
- (d) abnormal environmental conditions;
- (e) fire;
- (f) theft;
- (g) dust;
- (h) shock;
- (i) viruses; and
- (j) any other risks of loss or damage.

5.2.6 The Service Provider will monitor all alarms and hardware error logs, operating system errors, database error logs and application error logs in a proactive manner, and promptly take corrective action where a fault is indicated.

5.2.7 The Service Provider warrants that the environment of the site is environmentally suited to house the Registry and that the Service Provider will maintain that environment throughout the term of this agreement. This includes the maintenance of temperature, humidity and dust within the recommended ranges as specified by the manufacturers of the components of the System.

5.3 Recoverability and Business Continuity

5.3.1 The Service Provider will carry out continuous replication of the production Software and production Processed Data to a remote disaster recovery site located at least 100Km from the premises used to provide the regular service.

5.3.2 The Service Provider will conduct nightly backups of the Software and Processed Data to tape. The two most recent nightly backup copies must be stored off-site in a secure, flood-resistant and fire-resistant location within 24 hours of their creation. The previous ten cycles of tape backups will be stored at the premises used to provide the regular service.

5.3.3 The vendor must develop and keep up to date a disaster recovery plan as agreed with Gas Industry Co. The disaster recovery plan must be designed to recover the Registry in the event that the Registry Operator's site (that contains the Registry) is inoperable. Recovery of the Registry is required to have a target restoration timeframe of 12 hours and in any case be restored within 36 hours following a major disaster.

5.3.4 The Registry Operator must test the disaster recovery procedure prior to the commencement of operation and once every six months thereafter. The Registry Operator must provide a written report to Gas Industry Co, on completion of the disaster recovery test, of the results and consequential actions. The test must include:

- (a) restoration of a copy of the Registry at a known time to the remote location;
- (b) verification of Registry availability to an external user.

5.4 Capacity Planning

5.4.1 The Registry Operator must promptly advise Gas Industry Co if increases in transactional volumes threaten the achievement of service levels. The Registry Operator and Gas Industry Co must promptly review the capacity of the Registry and increase its capacity, if necessary, to maintain the service levels. In this respect:

- (a) if the transaction and/or database volumes are less than those agreed in the Registry Operator Operating Service Provider Agreement, the Registry Operator will be responsible for taking such remedial action as is necessary to meet service levels; and
- (b) where transaction or database volumes exceed those agreed in the Registry Operator Operating Service Provider Agreement, or in the opinion of Gas Industry Co changes to the Rules have increased in complexity to the extent that service levels cannot be met, then the Registry Operator and Gas Industry Co will initiate agreed change control procedures.

6. Registry Reporting: The Registry Operator must provide reports as set out in schedule 7 of this Agreement.

7. Fault Exclusions

7.1 The Service Provider while investigating a reported Fault, may assess it as being an excluded Fault under Clause 7.2 or a Change Request (acting reasonably). In the event the Fault is excluded, the Service Provider reserves the right to require Gas Industry Co's prior written approval that any further time spent by the Service Provider will be chargeable at the Standard Rate. In the event the Fault is a Change Request, the Service Provider will request Gas Industry Co to log a Change Request.

- 7.2** Fault remedy Services provided under this Agreement do not cover Faults which (on the reasonable determination of the Service Provider) are:
- 7.2.1** faults caused by using the Registry outside design or other specifications or outside the provisions laid down in any Documentation;
 - 7.2.2** faults caused by modification, revision, variation, or change of the Registry by any third party not authorised by the Service Provider in writing; or
 - 7.2.3** faults caused by failure of any hardware, where such failures are not directly caused by the Service Provider.
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SCHEDULE 3**TRAINING SERVICES**

The Service Provider will provide Gas Industry Co and users of the Registry System with ad-hoc training sessions covering how to use the Registry System as and when required. Training will be on a user pays basis as agreed between Gas Industry Co and the Service Provider.

SCHEDULE 4
PERFORMANCE STANDARDS

1. Coverage Hours

Services	Description	Hours of Coverage
Helpdesk	Logging Faults and other operational incidents	24 * 7 * 365 days
Registry Administration	As set out in section 2 of Schedule 2	Business Hours
Registry Application Support	As set out in section 3 of Schedule 2	Business Hours
Registry Systems Management	As set out in section 5 of Schedule 2	Systems Management Business Hours

2. Fault Resolution

2.1 The following table sets out the Faults categories and Responses Timeframes based on the Hours of Coverage:

Level	Definition	Response Time
Critical	All Registry operations are unable to be carried out and there is no workaround	The Service Provider will during the Hours of Coverage respond to the Fault immediately (and in any case within 60 minutes) and within 4 hours will have resolved the Fault or be continuing to provide assistance until either the Fault is resolved or an alternative processing option acceptable to both parties is found
Medium	Registry operations are impacted, but there is a short term workaround	The Service Provider will respond to the Fault within 2 Business Days and within 5 Business Days will have either resolved the Fault by remedying and closing the Fault or providing a plan and timetable that targets a future release of the Software that development work is scheduled to commence on that contains the resolution.
Low	Registry operations are not impacted including: Cosmetic and formatting changes to the Registry General queries about Registry features or operations	The Service Provider will respond to the Fault within 2 Business Days and within 20 Business Days will have either resolved the Fault by remedying and closing the Fault or providing a plan and timetable that targets a future release of the Software.

3. Registry performance:

Function	Monthly Registry Performance Standard
Registry Availability	<p>During Extended Business Hours the provider must ensure that the system is available to participants for no less than 99.5 per cent of the time in any one month.</p> <p>Outside Extended Business Hours the provider must ensure that the system is available to participants for no less than 98.0 per cent of the time in any month.</p> <p>The Registry must use its best endeavours to provide a service availability of 99.8 per cent or better, with nil or minimal outages.</p> <p>There must be no more than four unplanned outages in any one month.</p> <p>Planned outages must only take place with the prior approval of the Gas Industry Co.</p> <p>There should be no more than one planned outage to be taken outside Extended Business Hours and of no more than 2 hours duration, per month.</p> <p>Planned outages in excess of one per month and/or in excess of 2 hours duration must have the prior approval of the Gas Industry Co, such timely approval not to be unreasonably withheld.</p>
Registry Reliability	Unplanned downtime less than 0.5% of Extended Business Hours.
Registry Integrity	Every accepted transaction recorded in the expected manner.
Responsiveness	<p>Response time of less than 1 second from the Registry Operator's server to the Registry Operator's ISP for single ICP-based queries through the web browser.</p> <p>Response time of less than five seconds for single address-based queries through the web browser.</p> <p>On-demand report response files provided within 24 hours of receipt of request.</p> <p>Standard month-end report files provided within the timeframes as set out in the Documentation.</p>

4. Other Performance Standards

Function	Operational Performance Standard
Incident reports	Report provided within 72 hours of the Service Provider becoming aware of any breach of its obligations.
Monthly reports	Reports provided within 10 Business Days of the end of each month
Annual reports	Reports provided within one month of the end of each Financial Year

SCHEDULE 5

FEES

1. **Fees:** The Fees (exclusive of GST) comprise:
 - (a) the monthly fee set out in paragraph 2; and
 - (b) the Standard Daily Rates set out in paragraph 3.
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2. **Monthly fee:** The monthly fee for the term of this Agreement is set out in the table below plus GST (if any) payable in accordance with clause 11. The monthly fee includes the licence fee for the Registry System and the costs of providing system support, maintenance, hosting and network costs, and third party software, and all other services required.

Service Description	Annual Costs (including DR)	Monthly Fees	Contract Basis
JADE Care Systems Management Technology	\$15,360	\$1,280	Fixed (1)
24 x 7 Monitoring	\$24,600	\$2,050	Fixed (1)
Application Management	\$32,208	\$2,684	Fixed (1)
Extended Active management (24 x 7, 3-Tier Support)	\$16,560	\$1,380	Fixed (1)
Platform Management	\$29,100	\$2,425	Fixed (1)
Data Centre hosting costs	\$6,816	\$568	Fixed (1)
Secure Data Centre Firewall Infrastructure, National backbone bandwidth between data centres (CHC-AKL) for DR Replication, External DNS management	\$8,820	\$735	Fixed (1)
Ongoing provision and maintenance of the dedicated and shared server and network infrastructure components	\$42,503	\$3,542	Fixed (1)
Application Support	\$42,000	\$3,500	Fixed (1)
Registry Administrator	\$15,000	\$1,250	See Notes (2)
JADE Maintenance and Support (for 70 JADE Processes that will service 20 Web Service Clients and 50 Registry Background JADE Processes. The recommended number of concurrent users connected to a single Web Service Client is 10) NB: Fees are based on the DR option being selected	\$7,440	\$620	Fixed (1)
Total Payable	\$240,407	\$20,034	

- (1) Fixed means fixed price for term with no scope for price increase during term of contract except for CPI adjustments as described in clause 23 of the Agreement
- (2) We have allowed for one day per month to perform the Registry Administration, any requirements additional to this will be charged as agreed.

3. **Standard Daily Rates:** The Standard Daily Rates are set out in the table below. These hourly rates will only be charged by the Service Provider for work it does preparing Impact Assessments (as set out in schedule 6, paragraph 4), and for services which the Service Provider is not required to carry out under this Agreement, but which Gas Industry Co has requested and agreed will be charged on a time and materials basis.

Resource	Standard Daily Rates under this Agreement
Business Architect	\$2,000.00
Project Manager	\$1,500.00
Jade Architect / Consultant	\$1,500.00
Managed Services Consultant	\$1,500.00
Managed Services Engineer	\$1,300.00
Business / Systems Analyst	\$1,300.00
Developer	\$1,300.00
Network Engineer	\$1,300.00
Interface Engineer	\$1,300.00
Trainer	\$1,300.00

All charges must be pre-approved in writing by Gas Industry Co and Gas Industry Co will only be responsible for disbursements such as travel and accommodation that has been pre-approved in writing.

Standard Daily Rates will be increased by a factor of 1.5 for any requirements that are required to be completed outside of Business Hours.

SCHEDULE 6**CHANGE CONTROL PROCESS**

1. **Change Control Process:** The parties will follow the change control process described in this schedule 6 to initiate and consider:
 - (a) changes to the Deliverables or the Services (including any changes to the nature or scope of the Deliverables or the Services or to the timing or the delivery of the Deliverables or the Services) which cannot be accommodated by another process in this Agreement; or
 - (b) new deliverables or services that are not within the scope of this Agreement,each being referred to in this Agreement as a "**Change**".
 2. **Change Request:** If either party wants to initiate a Change that party will describe the details of the Change in a written request to the other party ("**Change Request**").
 3. **Impact Assessment:** The Service Provider will, within 10 Business Days of receiving a Change Request from Gas Industry Co, prepare an impact assessment ("**Impact Assessment**") detailing an explanation of the Change, including how the Change is to be implemented and, to the extent relevant, detailing:
 - (a) the feasibility of the Change;
 - (b) the effect of the Change on the ability of the Service Provider to meet its obligations under this Agreement;
 - (c) any cost implication for either party in relation to the Change, including the cost of the Impact Assessment;
 - (d) any consequential material impacts of the Change;
 - (e) where appropriate, suggested Acceptance Testing procedures and acceptance criteria for the proposed Change; and
 - (f) such other information which is likely to be material to Gas Industry Co.
 4. **Costs for Preparing Impact Assessment:** If the Service Provider, acting reasonably, takes more than three hours to prepare an Impact Assessment, Gas Industry Co will pay the Service Provider at the Standard Daily rate, or part hourly rates of, as specified in schedule 5 for each full hour reasonably spent preparing the Impact Assessment over and above three hours.
 5. **Notify:** Gas Industry Co will, within 10 Business Days of receiving an Impact Assessment or Change Request, notify the Service Provider of whether it:
 - (a) accepts the Change Request from the Service Provider, or wishes to proceed with a Change following receipt of an Impact Assessment;
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- (b) wishes to renegotiate any aspect of the implementation of a Change Request, in which case the parties will negotiate in good faith to try and reach agreement on the terms for implementing the Change Request;
 - (c) withdraws the Change Request if initiated by Gas Industry Co; or
 - (d) does not accept the Change Request.
 - 6. **Agreeing a Change Request:** If the terms for implementing a Change Request have been:
 - (a) accepted under paragraph 5(a) of this schedule;
 - (b) agreed under paragraph 5(b) of this schedule; or
 - (c) determined under paragraph 7 of this schedule,

Gas Industry Co or the Service Provider (as applicable) will send the other party a variation agreement reflecting those terms. The Service Provider will not undertake any Change until both parties have signed this variation agreement, and Gas Industry Co will not be bound to pay for any Change unless both parties have signed this variation agreement.
 - 7. **Dispute Resolution:** If the parties cannot agree on a Change Request within 10 Business Days of Gas Industry Co giving notice under paragraph 5(b) of this schedule then the matter will be resolved under clause 19. In determining this matter, the mediator or arbitrator will:
 - (a) take into account the matters referred to in paragraph 3 of this schedule;
 - (b) ensure that the terms for implementing the Change Request reflect a fair and reasonable allocation of risk; and
 - (c) ensure that any changes to the Fees are reasonable, competitive and include a reasonable profit.
 - 8. **Not Unreasonably Refusing a Change:** Subject to paragraph 9 of this schedule, the Service Provider must not unreasonably refuse (directly or indirectly) any Change Request submitted by Gas Industry Co, including (without limitation) where the Change is necessary to:
 - (a) avoid or minimise any risk to the integrity and operation of the Registry System;
 - (b) enable Participants to access and use the Registry System in accordance with the Rules.
 - 9. **Reasonable Grounds for Refusing a Change:** The Service Provider, acting reasonably, may refuse a Change submitted by Gas Industry Co including (without limitation) where it can demonstrate to Gas Industry Co that:
 - (a) the Service Provider does not have the qualified resources needed to undertake the work required to implement the Change;
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- (b) the Service Provider cannot meet the proposed timeframe for implementing the Change because of resourcing constraints or other constraints;
- (c) the Change is technically unfeasible;
- (d) the Change will substantially alter the Service Provider's risk profile, for example, by exposing it to greater liability.

10. Pricing Principles: The following pricing principles will apply in respect of a Change:

- (a) the Service Provider will only charge Gas Industry Co for a Change to the extent that the Change is not already covered by the Fees;
- (b) if there is a cost impact associated with implementing the Change then the parties will use genuine efforts to agree a reasonable price for the Change (taking into account the nature and extent of the Change);
- (c) the pricing for any Change will:
 - (i) to the extent that the resources listed in clause 3 of Schedule 5 are used more or less, be calculated on the basis that the pricing of the change in usage will be calculated using the Standard Daily Rates;
 - (ii) to the extent that paragraph 10(c)(i) does not apply, be reasonable and competitive and include a reasonable profit;
 - (iii) to the extent that paragraph 10(c)(i) does not apply, be no higher than the pricing the Service Provider offers its most preferred customers for products or services, which are the same as, or similar to, the products or services proposed to be provided to Gas Industry Co as part of the Change.

11. Truncated Process: Where a Change Request is relatively minor (in terms of cost and impact) and is fairly routine, and the parties agree (such agreement not to be unreasonably withheld), a truncated Change Control Process (acceptable to Gas Industry Co and the Service Provider) may be adopted to deal with that Change Request.

12. Rule Changes: The parties acknowledge that this Agreement has been agreed on the basis of the Rules approved by the Minister and published in the New Zealand Gazette on 14 February 2008, and that any changes to the Rules after that date will be treated as changes subject to the Change Control Process. Notwithstanding anything else in this Agreement, any change to the Rules after the date of this Agreement will not affect the Service Provider's obligations or liabilities under this Agreement, except to the extent that the Agreement has been varied in accordance with the Change Control Process.

SCHEDULE 7**REPORTING**

1. **Monthly Reporting:** From the Go live date the Service Provider will provide Gas Industry Co with monthly self-reviews and reports by the Service Provider of its performance in relation to:
 - (a) its compliance with its obligations under the Rules; and
 - (b) the operation of the Rules and the provisions of this Agreement with Gas Industry Co;
 - (c) whether the agreed Service Levels and Performance Standards were met during the month and, if not, the reasons for any failure and steps taken to avoid recurrence.

As set out in rule 19 these reports shall be provided to Gas Industry Co no later than 10 business days after the end of each month. Gas Industry Co will provide a response to each such report within 10 business days of receipt. The response will set out any actions that Gas Industry Co proposes to take in response to the report.

A template or format for these reports and the responses will be agreed between the parties prior to go-live.

2. **Annual Reporting:** In order to give effect to rule 17, as set out also in section 5.2 of this Agreement, the Service Provider will provide Gas Industry Co with an annual report on the actual performance of the Service Provider during the Financial Year as measured against the performance standards set prior to the start of each Financial Year. The report will be provided no later than one month after the finish of each Financial Year.

Gas Industry Co will provide a response to each such report within one month of receipt. The response will set out any actions that Gas Industry Co proposes to take in response to the report.

A template or format for these reports and the responses will be agreed between the parties prior to go-live.

3. **Incident Reporting:** From the go-live date the service provider will provide a detailed report in respect of any breach by the Service Provider of its obligations under this Agreement within 72 hours of the Service Provider becoming aware of that breach.

SCHEDULE 8
KEY PERSON LIST

Key Person	Role
Robert Barr	Lead Developer
Greg Matthews	Registry Administrator
Joel Langley	Client Services Representative
Alison Hitchcock	Business Manager

SCHEDULE 9**ACCEPTANCE TESTS**

1. The Acceptance Tests will be based on a pass/fail evaluation based on the description provided for each functional and non functional requirement. The Service Provider will provide such assistance as is reasonably required by Gas Industry Co in relation to the Acceptance Tests.
 2. The Acceptance Tests will be based on the section 3(e) of Schedule 6. Acceptance Tests will be performed on an agreed environment prior to going live to ensure tests are as accurate as possible with regards to performance and connectivity.
 3. The purpose of the Acceptance Test is to allow users who have detailed business knowledge to test that the completed Registry System functionality and characteristics are in accordance with the requirements as detailed in the Change Request.
 4. Acceptance Testing will be carried out by Gas Industry Co at the end of successful system acceptance testing to be completed by the Service Provider.
 5. The Acceptance Test scripts will be mutually developed between the parties and completed in accordance with the agreed requirements and will be reviewed and signed off by Gas Industry Co and the Service Provider before testing commences.
 6. Gas Industry Co and the Service Provider will jointly agree entry and exit criteria ("Acceptance Criteria") as part of each plan.
 7. Acceptance Tests will be completed on the change Request to identify any Faults. Faults can be opened against each Change Request during the Acceptance Testing period for the specific phase.
 8. Acceptance of the Change Request shall be deemed to have occurred on whichever is the earliest of:
 - 8.1 the signing by Gas Industry Co of an Acceptance Certificate for the Change Request. The signing of the Acceptance Certificate must occur within 5 Business Days of the completion of the Acceptance Testing and meeting Gas Industry Co's Acceptance Criteria; or
 - 8.2 Gas Industry Co has not completed the Acceptance Testing within 20 Business Days from the Acceptance Testing completion date agreed between the parties, adjusted to reflect any delay caused solely by the Service Provider;
-