
CRITICAL CONTINGENCY OPERATOR SERVICE PROVIDER AGREEMENT

between

GAS INDUSTRY COMPANY LIMITED

and

CORE GROUP LIMITED

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THIS AGREEMENT made the 20th day of November 2013

BETWEEN **GAS INDUSTRY COMPANY LIMITED** a company registered under the Companies Act 1993 with its registered office at Level 8, Todd Building, 95 Customhouse Quay, Wellington (**Gas Industry Co**)

AND **CORE GROUP LIMITED** a company registered under the Companies Act 1993 with its registered office at first floor, 214 Devon Street East, New Plymouth (**Service Provider**)

BACKGROUND

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

1. DEFINITIONS AND INTERPRETATION

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

1.2 Other definitions

In this Agreement, unless the context requires otherwise:

Agreement means this agreement and the schedules to this agreement;

Anticipated Changes means the amendments to the Regulations arising out of the Recommendation to the Minister of Energy and Resources, dated July 2013, to amend the Gas Governance (Critical Contingency Management) Regulations 2008;

Appointment Date means 1 March 2014 or such other date notified in writing by Gas Industry Co under clause 2.3;

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

Commencement Date means the date of this Agreement;

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

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

Confidential Information does not include information that is:

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

Disengagement Services means the services described in Schedule 5;

Establishment Period means the period from the Commencement Date to the beginning of the Appointment Date;

Establishment Services means the services described in clause 1.5 of Schedule 1.

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

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

Fee Change Event means (subject to clause 6.3) a change to the Regulations or the Performance Standards, or to any taxes, levies or duties incurred by the Service Provider in providing the Services, after the date of this Agreement that has an effect on the Services and/or the costs of the Service Provider in providing the Services and/or the performance of its obligations under this Agreement;

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

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

that cannot be rectified by following the disaster recovery plan (required under clause 14) or by any other means within the reasonable control of the affected party.

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

Key Person means each of Graham Alexander, Ross Dixon and Richard Smith (or any replacement for them under clause 5.5);

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

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

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

Personnel means:

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

quarter means a three month period commencing on 1 July, 1 October, 1 December and 1 February;

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

Services means:

- (a) the Establishment Services;
- (b) the services, duties and obligations to be performed by the Service Provider as the critical contingency operator under the Regulations; and
- (b) the services, duties and obligations to be performed by the Service Provider under this Agreement from time to time, as described in Schedules 1 and 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. APPOINTMENT

2.1 Appointment:

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- 2.1.1** Gas Industry Co appoints the Service Provider to perform the Services from the Commencement Date and as the critical contingency operator with effect from the Appointment Date, pursuant to regulation 6 of the Regulations.
- 2.1.2** The Service Provider accepts such appointments and agrees to provide all of the Services, and in particular:
- (a) the Establishment Services during the Transition Period; and
 - (b) the other Services from the Appointment Date,
- on the terms and conditions of this Agreement.
- 2.1.3** The Service Provider agrees to be bound by the Regulations in its capacity as the critical contingency operator and will provide the Services in accordance with the Regulations.
- 2.2 Service Provider warranties:** The Service Provider warrants to Gas Industry Co that, as at the date of this Agreement:
- 2.2.1** it has the expertise, experience, resources, capacity and ability to, and will, provide the Services in accordance with the requirements of the Regulations and this Agreement; and
- 2.2.2** it is not aware of anything which will, or might be reasonably expected to, prevent it from providing the Services in accordance with the requirements of the Regulations and this Agreement.
- 2.3 Delayed Appointment:** If, having regard to the progress of the Transition-In Services, Gas Industry Co considers that the Service Provider will not be ready to act as critical contingency operator on 1 March 2014, Gas Industry Co may delay the Appointment Date by giving the Service Provider written notice of a replacement Appointment Date. For the avoidance of doubt, Gas Industry Co may delay the Appointment Date more than once.
- 2.4 Termination for delay:** Notwithstanding any other provision of this Agreement, if Gas Industry Co delays the Appointment Date by more than six months from 1 March 2014, either party may terminate this Agreement upon giving the other party prior written notice of at least three months.
- 3. TERM**
- 3.1 Term:** This Agreement will commence on the Commencement Date and will expire on the Termination Date.
- 3.2 Extension:** Gas Industry Co may, by notice in writing delivered to the Service Provider no less than 6 months prior to the Expiry Date, notify the Service Provider that it wishes to extend the Term, such that the Expiry Date will, subject to clause 10, be 8 years after the Appointment Date. The Service Provider will, by notice in writing delivered to Gas Industry Co no less than 3 months prior to the Expiry Date, confirm that it:

- 3.2.1 agrees to the proposed extension of the Expiry Date, in which case the Expiry Date will be deemed to have been amended; or
- 3.2.2 does not agree to the proposed extension to the Expiry Date, in which case no amendment will have been made to the Expiry Date.

4. PERFORMANCE

4.1 Service Provider Obligations: In providing the Services and otherwise performing its obligations under this Agreement, the Service Provider must:

- 4.1.1 comply with the Regulations, including undertaking all the duties and obligations of the critical contingency operator (from the Appointment Date) under the Regulations (for the avoidance of doubt, this clause is subject to the requirements of clause 6.1);
- 4.1.2 identify and provide all Personnel, resources and processes required to provide the Services in accordance with this Agreement;
- 4.1.3 ensure that the Key Persons take primary responsibility for undertaking the Services;
- 4.1.4 act with due care, skill and diligence and in accordance with a high level of industry knowledge and competence;
- 4.1.5 meet or exceed the applicable Performance Standards;
- 4.1.6 report its performance against the Performance Standards as provided for in Schedule 2 and provide such assistance and information to Gas Industry Co as is reasonably necessary to enable Gas Industry Co to review and measure the Service Provider's performance;
- 4.1.7 comply with the time frames and other requirements set out in this Agreement;
- 4.1.8 co-operate with Gas Industry Co in relation to the provision of the Services;
- 4.1.9 at all times deal with Gas Industry Co in good faith and do such things and sign such documents as are reasonably required for the provision of the Services in accordance with this Agreement;
- 4.1.10 comply with all directions given in writing by Gas Industry Co from time to time (except to the extent that such directions are inconsistent with the Regulations or any provision of this Agreement);
- 4.1.11 not by any act or omission damage the reputation or goodwill of Gas Industry Co;

- 4.1.12** provide Gas Industry Co with a copy of any advice or report obtained by the Service Provider in its role as the Service Provider and paid for by Gas Industry Co, including external legal advice and engineering advice;
- 4.1.13** in undertaking all the duties and obligations of the critical contingency operator under the Regulations or this Agreement, not favour or provide special treatment or priority to any persons other than in accordance with the requirements of the Regulations or this Agreement; and
- 4.1.14** on becoming aware of the same, promptly notify Gas Industry Co of any breach of its obligations under the Regulations or this Agreement or any matter which may impact on the Service Provider's ability to perform the Services, including the failure of any person to comply with directions of the Service Provider made in accordance with the Regulations.

4.2 Gas Industry Co obligations: Gas Industry Co must:

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

5. PERSONNEL**5.1 Personnel requirements:** The Service Provider must:

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

5.2 Key Persons: The Service Provider acknowledges that the availability of the Key Persons is of fundamental importance to the provision of the Services in accordance with this Agreement. The Service Provider will ensure that the Key Persons will be available to provide the relevant components of the Services throughout the Term, as follows:

- 5.2.1** At Commencement Date the following persons are identified as Key Persons:
 - (a) Ross Dixon;
 - (b) Graham Alexander; and
 - (c) Richard Smith
- 5.2.2** The Key Persons will ensure the Services are carried out by performing the following functions between them:
 - (a) routine day to day duties of the critical contingency operator;
 - (b) back up and support for those duties;
 - (c) be on the on call roster for critical contingency events; and
 - (d) lead the management of any critical contingency.

For the avoidance of doubt and subject to clause 5.3, any failure by the Service Provider to comply with this clause 5.2 at any time will amount to a material breach by the Service Provider of this Agreement.

5.3 Substitution: The Service Provider may change a Key Person provided that it:

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- 5.3.1 first consults with Gas Industry Co regarding the proposed change and obtains Gas Industry Co's written approval of the proposed change (such approval not to be unreasonably withheld);
 - 5.3.2 bears all costs relating to replacing that Key Person and up-skilling the replacement;
 - 5.3.3 (if required by Gas Industry Co) agrees on a transition plan for the replacement Key Person; and
 - 5.3.4 publishes and maintains a register of Key Persons on the critical contingency website that is kept up to date to reflect any personnel changes.
 - 5.4 **Representatives:** Each party will, immediately following the Commencement Date, appoint a representative who will:
 - 5.4.1 serve as the primary point of contact with the other party; and
 - 5.4.2 in the case of the Service Provider, be a person approved by Gas Industry Co, and who will be responsible for ensuring compliance with all notification, audit and reporting obligations the Service Provider owes to Gas Industry Co and other persons under the Regulations.
 - 5.5 **Replacement:** Each party may replace its representative from time to time provided it gives the other party prior written notice of such replacement. The Service Provider's replacement representative must be a person approved by Gas Industry Co in writing, approval not to be unreasonably withheld.
 - 5.6 **Meetings:** The representatives will meet together at least quarterly and as and when requested to by the other representative. The parties' representatives will also meet:
 - 5.6.1 prior to Gas Industry Co approving a proposed Critical Contingency Management Plan;
 - 5.6.2 prior to, during or after the Service Provider testing a Critical Contingency Management Plan;
 - 5.6.3 when Gas Industry Co conducts an audit under the Regulations;
 - 5.6.4 after a critical contingency has been terminated; and
 - 5.6.5 during or after the preparation of a report under the Regulations.
 - 5.7 **Method of meeting:** Meetings may be held:
 - 5.7.1 in person in Wellington, if reasonably requested by Gas Industry Co or;
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- 5.7.2 by means of audio, or audio and visual, communication by which all participants can simultaneously hear each other throughout the meeting.

6. CHANGE TO SCOPE OF SERVICES

6.1 Change in the Regulations or the Performance Standards:

6.1.1 If there is any change in the Regulations (not including the Anticipated Changes) which requires an amendment to this Agreement (either to give proper effect to such change, or to ensure consistency between this Agreement and the Regulations), failing agreement within 20 business days of commencing negotiations, Gas Industry Co will, acting reasonably and in consultation with the Service Provider, determine the extent to which amendments to this Agreement are required, and the parties agree that such amendments will be made to the Agreement as soon as practicable after they have been determined.

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

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

6.3 **Anticipated Changes:** The Service Provider acknowledges that the Anticipated Changes have been factored into pricing and accordingly the implementation of the Anticipated Changes is not a Fee Change Event, including if the final form of the Anticipated Changes requires amendment to this Agreement, provided that to the extent the Anticipated Changes differ materially from the Recommendation to the Minister in relation to the Anticipated Changes (dated July 2013) and will have a material effect on the Services, this will give rise to a Fee Change Event.

6.4 Gas Industry Co will, acting reasonably and in consultation with the Service Provider, determine the extent to which amendments to this Agreement are required as a result of the Anticipated Changes being implemented, and the parties agree that such amendments will be made to the Agreement as soon as practicable after they have been determined.

7. REPORTS AND RECORDS

7.1 **Maintenance of records:** The Service Provider will ensure that it maintains proper and complete records and documentation relating to all elements of the Services, including those records specified at Schedule 1, in a form that will allow such records and documentation to be audited.

7.2 **Availability of records:** The Service Provider will as soon as is reasonably practicable after receiving a written request from Gas Industry Co, provide to Gas Industry Co copies of any records and

documentation that the Service Provider is required to maintain under clause 7.1.

7.3 Audit: The Service Provider must, upon reasonable advance notice, and during normal business hours, allow Gas Industry Co or its representatives to have access to the Service Provider's premises, records and Personnel, to determine whether the Services are being furnished in accordance with the requirements of this Agreement and the Regulations. Gas Industry Co shall conduct all inspections in a manner that minimizes unnecessary interference with the operation of the Service Provider's business. Once an audit has been conducted, Gas Industry Co and the Service Provider will meet to discuss the outcome of the initial audit and any issues identified.

7.4 Initial Audit: Without limiting its audit rights under clause 7.3, the Service Provider acknowledges that Gas Industry Co will conduct an initial audit pursuant to clause 7.3 no earlier than 6 months after the Appointment Date, but no later than 12 months after the Appointment Date.

8. FEES

8.1 Basis of Fees: The Service Provider acknowledges that the Fees (as detailed in Schedule 3) are in full compensation for all Services contemplated by this Agreement. The Service Provider takes all risk as to the adequacy of the Fees for performance of the Services in accordance with this Agreement.

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

8.3 Fee changes:

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

8.3.2 Review of Fees: Without limiting clause 8.3.1, the Fees payable to the Service Provider may also be reviewed annually in accordance with Schedule 3, provided that such reviews shall not occur more than once in a financial year.

8.3.3 For the avoidance of doubt, clauses 8.3.1 and 8.3.2 do not apply in respect of the establishment fee portion of the Fees.

9. INVOICING AND PAYMENT

9.1 Invoicing: On or prior to the 4th business day of each month the Service Provider will issue an invoice for the Fees payable for the preceding month.

9.2 General invoicing requirements: Each invoice submitted to Gas Industry Co under this Agreement, in order to be validly issued for the purposes of this Agreement, must:

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- 9.2.1 be in the form of a valid tax invoice for GST purposes;
 - 9.2.2 be delivered by the means of communication requested in writing by Gas Industry Co from time to time;
 - 9.2.3 describe in adequate detail the Services that are the subject of the invoice and the timing of the provision of such Services; and
 - 9.2.4 be in the format specified by written notice given by Gas Industry Co to the Service Provider prior to the date of this Agreement (or as otherwise agreed by the parties from time to time).
 - 9.3 **Additional billing information:** The Service Provider will provide such information as reasonably requested by Gas Industry Co relating to any amount invoiced or proposed to be invoiced by the Service Provider under this Agreement, including copies of invoices and internal charging records for the purpose of verifying actual costs incurred by the Service Provider in performing its obligations under this Agreement.
 - 9.4 **Disputed invoices:** Where Gas Industry Co disputes any portion of any amount appearing as payable on an invoice issued by the Service Provider to Gas Industry Co under this Agreement:
 - 9.4.1 Gas Industry Co will notify the Service Provider of such dispute at the earliest reasonable opportunity;
 - 9.4.2 Gas Industry Co must pay the undisputed portion of that invoice on its due date, but will not be obliged to pay the disputed portion of that invoice until the parties' dispute has been resolved by agreement between the parties or, in the absence of such agreement, in accordance with clause 17; and
 - 9.4.3 If it is agreed by the parties or otherwise determined that a disputed portion of that invoice is payable by Gas Industry Co to the Service Provider, in addition to paying the determined amount Gas Industry Co must pay interest in accordance with clause 9.6.
 - 9.5 **Payment:** Any valid invoice received by Gas Industry Co from the Service Provider on the 4th business day of the month will be payable on the 20th day of that month in which the invoice is received by Gas Industry Co. Any invoices received by Gas Industry Co after the 4th business day of that month will be paid by the 20th business day of the following month. Gas Industry Co will not be required to pay any invoice which is not valid for the purposes of this Agreement, but will pay any valid replacement invoice issued by the Service Provider on or before the later of the original due date for that invoice and the date which is 10 business days after receipt of that replacement invoice.
 - 9.6 **Late payment:** If Gas Industry Co:
 - 9.6.1 does not pay any properly invoiced amount when due (other than in accordance with clause 9.4.2); or
 - 9.6.2 withholds payment of a portion of an invoice under clause 9.4.2, and the relevant dispute is resolved in favour of the Service

Provider such that an amount is determined to be payable by Gas Industry Co,

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

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

10. TERMINATION

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

10.1.1 by giving not less than 20 business days' prior written notice to the Service Provider if the Regulations are revoked, repealed or amended so that the role of the critical contingency operator is dis-established; or

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

- (a) the Service Provider has failed to comply with an earlier written notice given by Gas Industry Co:
 - (i) specifying a material breach of the Regulations or this Agreement by the Service Provider; and
 - (ii) requiring that the Service Provider remedy that breach within 20 business days after receipt of that earlier notice;
- (b) the Service Provider has committed a material breach of this Agreement which is not reasonably capable of being remedied by the Service Provider within 20 business days;
- (c) the Service Provider:
 - (i) goes into liquidation;
 - (ii) has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets or is placed in voluntary administration;
 - (iii) becomes unable to pay its debts as they fall due;
 - (iv) is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts; or
 - (v) is removed from the New Zealand Companies Register,

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

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

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

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

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

- (a) specifying a material breach of the Regulations or this Agreement by Gas Industry Co; and
- (b) requiring that Gas Industry Co remedy that breach within 20 business days after receipt of that earlier notice;

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

10.2.4 Gas Industry Co:

- (a) goes into liquidation;
- (b) has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets or is placed in voluntary administration;
- (c) becomes unable to pay its debts as they fall due;

(d) is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts;

(e) is removed from the New Zealand Companies Register,

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

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

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

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

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

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

10.3.3 the termination will be without prejudice to either party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement;

10.3.4 the provisions of clauses 9, 10.3, 10.4, 11, 12, 17 and 18, together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect and all provisions of this Agreement shall remain in full force and effect in respect of any Disengagement Services provided pursuant to clause 10.4; and

10.3.5 the establishment fee and disengagement fee portion of the Fees shall remain payable in accordance with Schedule 3.

10.4 Disengagement Services:

10.4.1 On expiry or termination of this Agreement, the Service Provider must continue to provide all Disengagement Services

requested by Gas Industry Co for up to 12 months after the Termination Date, and will reasonably co-operate with Gas Industry Co or Gas Industry Co's nominated new service provider (as the case may be) to ensure an orderly transition of the services to the new service provider in a timely fashion with minimal disruption.

10.4.2 If this Agreement has been terminated pursuant to clause 10.2, (except pursuant to clause 10.2.6) the Service Provider will only be obliged to continue providing Disengagement Services if Gas Industry Co:

- (a) within 10 business days of the Termination Date, makes payment to the Service Provider of:
 - (i) an amount equating to two months worth of Fees (a month's worth of Fees being the amount of the Fees payable monthly immediately prior to the Termination Date); and
 - (ii) all other amounts due to the Service Provider under this Agreement as at the Termination Date; and
- (b) thereafter in each month (including the month in which the payment in clause (a)(i) above is made), complies with its payment obligations under this Agreement in respect of the Fees payable for Disengagement Services provided that:
 - (i) no later than one month following the date on which the Service Provider ceases to provide Disengagement Services, the Service Provider shall repay to Gas Industry Co the payment made under clause (a)(i) above, less any outstanding amounts due to the Service Provider by Gas Industry Co; and
 - (ii) the continued performance of the Disengagement Services shall at all times be on and subject to the terms and conditions of this Agreement.

11. CONFIDENTIALITY

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

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

11.2.1 disclose or permit to be disclosed to any person;

11.2.2 use for itself; or

-
- 11.2.3 use to the detriment of the other party,
any Confidential Information except:
- 11.2.4 as required by the Regulations or this Agreement;
- 11.2.5 as required by Law;
- 11.2.6 with the prior written consent of the party that owns the Confidential Information;
- 11.2.7 as reasonably necessary in order to perform its obligations under this Agreement (and where any disclosure is required to be made to a third party for this purpose, then only after procuring a commitment from that third party to comply with the confidentiality obligations set out in this clause 11);
- 11.2.8 as reasonably necessary to ensure an orderly transition during Disengagement Services as set out in clause 10.4 with a view to providing a new service provider with all relevant documentation and information it may require, provided the new service provider has committed to comply with the confidentiality obligations in this clause 11; or
- 11.2.9 with the prior written authorisation of the party that provided the confidential information.
- 11.3 **Disclosure to Personnel:** The Service Provider may disclose Confidential Information to such of its Personnel, advisors and Subcontractors who reasonably require such information in order for the Service Provider to provide the Services, but the Service Provider shall ensure such persons maintain the confidentiality of the Confidential Information and will be liable for any breach of such confidentiality by such persons.
- 11.4 **Use:**
- 11.4.1 The Service Provider and its Personnel, advisors and Subcontractors:
- (a) will only use Confidential Information for the purpose of providing the Services and complying with the Regulations and the Gas Governance (Compliance) Regulations 2008 or the Gas Act 1992; and
 - (b) must not use any information (including Confidential Information) provided to it as critical contingency operator under the Regulations or this Agreement for any purpose other than the purpose of carrying out the Service Provider's obligations under this Agreement, the Regulations, the Gas Governance (Compliance) Regulations 2008 or the Gas Act 1992.
- 11.4.2 Gas Industry Co and its Personnel, advisors and Subcontractors:

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

11.5 Announcements:

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

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

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

12. LIABILITY

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

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

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

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

12.3.2 for any breaches of the Regulations;

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

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

13. INSURANCE

- 13.1 Maintain insurance:** The Service Provider will maintain, throughout the Term:

13.1.1 professional indemnity insurance for not less than \$10 million; and

13.1.2 public liability insurance for not less than \$10 million,

with reputable insurers and on such terms as are approved from time to time in writing by Gas Industry Co (such approval not to be unreasonably withheld).

- 13.2 Certificates:** The Service Provider will provide to Gas Industry Co written evidence of compliance by the Service Provider with its obligations under clause 13.1:

13.2.1 On the Commencement Date;

13.2.2 On each anniversary of the Commencement Date during the Term; and

13.2.3 whenever reasonably requested by Gas Industry Co to do so,

14. DISASTER RECOVERY PLAN

- 14.1 Development:** The Service Provider must seek to develop, and implement, a disaster recovery plan to a standard reasonably required by Gas Industry Co having regard to the fact that situations that give rise to a critical contingency may also affect the Service Provider and the Service Provider must be prepared to provide the Services in such circumstances, in accordance with the following:

14.1.1 By the Appointment Date, the Service Provider must have a disaster recovery plan that evidences the Service Provider's resilience against any disaster which may affect the provision of the Services and sets out its business continuity procedures.

14.1.2 In addition to the review under clause 14.2, the parties will seek to review and develop the disaster recovery plan as appropriate from time to time in order to enhance the Service Provider's resilience and implement any changes or new additional measures that the parties agree are necessary for the disaster recovery plan.

- 14.2 Review:** The Service Provider must review the disaster recovery plan annually on or around the anniversary of the Appointment Date, in

consultation with Gas Industry Co. If Gas Industry Co seeks any changes to the disaster recovery plan and those changes incur costs for the critical contingency operator, then the changes will constitute a Fee Change Event.

15. FORCE MAJEURE

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

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

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

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

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

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

15.2 For the avoidance of doubt, it is acknowledged that a Force Majeure event may also constitute an event where the critical contingency operator will be required to perform the Services. The disaster recovery plan required under clause 14 must set out how the critical contingency operator will perform the Services in the event of such an event. Only in exceptional circumstances where the procedures in the disaster recovery plan are ineffective due to the Force Majeure event will the Service Provider be able to rely on clause 15.1 for non-performance of the Services.

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

16. ASSIGNMENT

16.1 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 or as otherwise required by Law upon reasonable prior written notice to the Service Provider.

- 16.2 Any other assignment:** Subject to clause 16.1, neither party will transfer or assign or sub-contract 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).

17. DISPUTE RESOLUTION

- 17.1 Dispute resolution process to apply:** This clause 17 will apply to any dispute between the parties relating to this Agreement, except where the party seeks urgent interlocutory relief or where the dispute relates to a breach of the Regulations.

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

- 17.2.1** 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;

- 17.2.2** if the dispute is not resolved under clause 17.2.1 above, then either party may (by written notice to the other party) require that the dispute be referred to mediation, in which case:

- (a) the parties will appoint a mediator agreed by the parties, or if there is no agreement, approved by the President of the New Zealand Law Society or his or her nominee;
- (b) the mediator will determine the process and timetable for the mediation; and
- (c) the cost of the mediation will be shared equally between the parties; and

- 17.2.3** if the dispute is not referred to mediation, or is not resolved as a result of a mediation undertaken under clause 17.2.2 above, then either party may (by written notice to the other party) refer the dispute to a sole arbitrator for a binding resolution under the Arbitration Act 1996. If the parties are unable to agree on an arbitrator within 15 business days of notice being given referring the dispute to arbitration, such arbitrator to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

- 17.3 Interlocutory Relief:** Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with clauses 17.1 and 17.2.

- 17.4 Service Provider to continue providing the Services:** Without limiting the remedies available to the Service Provider at Law, in the event of a dispute between the parties concerning this Agreement, the Service

Provider will continue to supply the Services (unless Gas Industry Co requests otherwise).

18. GENERAL

18.1 Entire arrangement: This Agreement:

18.1.1 records the entire arrangement between the parties relating to the matters dealt with in this Agreement; and

18.1.2 supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to these matters, except where expressly incorporated.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 Remedies cumulative: The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

18.9 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:

- 18.9.1 delivered by hand to the intended recipient's address as set out below; or
- 18.9.2 sent by facsimile to the intended recipient's facsimile number as set out below and the sender's facsimile machine confirms transmission to the intended recipient; or
- 18.9.3 sent by electronic mail to the intended recipient's electronic mail address as set out below, and the electronic mail system confirms the notice was delivered successfully.

Notices to Gas Industry Co:

Contact Name: Ian Dempster
Fax Number: 04 472-1801
Physical Address: Level 8, Todd Building
95 Customhouse Quay
Wellington
Email address: ian.dempster@gasindustry.co.nz

Notices to Service Provider:

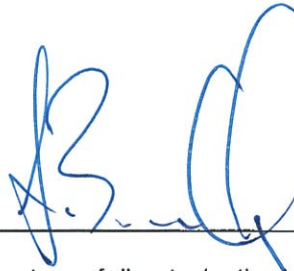
Contact Name: Graham Alexander
Fax Number: n/a
Physical Address: Level 1, West Wing
214 Devon Street East
New Plymouth
Email address: grahamalexander@coregroup.co.nz

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

- 18.10 **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.
- 18.11 **Privity:** Only the parties to this Agreement may pursue remedies or redress under this Agreement in the event of the other party breaching this Agreement.

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

Full name of director/authorised signatory



Signature of director/authorised signatory



Full name of director/authorised signatory

Signature of director/authorised signatory

SIGNED by CORE GROUP 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

- 1.1** The Service Provider will perform all of the duties and obligations of the critical contingency operator under the Regulations and in accordance with the Performance Standards, including:
- (a) providing a critical contingency internet site, with up-to-date information;
 - (b) considering a proposed critical contingency management plan or proposed amendment and, at its discretion, providing a report on the proposed plan or proposed amendment;
 - (c) publishing critical contingency management plans and any amendments to them on the critical contingency internet site;
 - (d) instigating exercises to test critical contingency management plans and providing any required reports;
 - (e) publishing and maintaining a communications plan and an information guide;
 - (f) complying with r38 and r38A in respect of the information provided by transmission system owners and liaising with transmission system owners to obtain the information required by the Service Provider to act as critical contingency operator;
 - (g) keeping a record of consumer information (as to curtailment bands, essential service providers and minimal load consumers) provided by retailers, large consumers and the allocation agent, and giving required notifications;
 - (h) giving notice to Gas Industry Co where the consumer information provided by retailers, large consumers or the allocation agent is materially incorrect or has not been provided;
 - (i) providing any information required by a technical expert;
 - (j) keeping a record of deferred curtailment designations notified to it and as updated on the industry body list;
 - (k) identifying and notifying any event that has the potential to become a critical contingency;
 - (l) determining, declaring and notifying a critical contingency and regional critical contingency;
 - (m) during a critical contingency:
 - (i) monitoring the pressure (including linepack) levels in the affected sections of the transmission system;

-
- (ii) exploring available opportunities to increase upstream gas production and draw on gas storage in order to mitigate the severity of the critical contingency;
 - (iii) considering communications from transmission system owners and any other persons identified in the information guide;
 - (iv) directing the curtailment and restoration of gas supply in accordance with the Regulations;
 - (v) consulting with the electricity system operator on security implications and making determinations for electricity system security providers;
 - (vi) making decisions about calling for media appeals arising out of a critical contingency;
 - (vii) consulting on and directing transmission system reconfiguration, if feasible;
 - (viii) notifying the transmission system owner and industry body of consumer non-compliance with curtailment directions or the terms of designations;
 - (ix) giving formal notices regarding curtailment and restoration to transmission system owners;
 - (x) ensuring interested persons are kept informed of the status of the critical contingency;
 - (xi) publishing and updating information on the status of the critical contingency;
 - (xii) evaluating new events and assessing whether regional critical contingency decisions need to be made;
 - (xiii) having regard to asset owner information about failed assets
 - (xiv) calling for and having regard to retailer and large consumer updates;
 - (xv) giving notice of a continuing critical contingency;
 - (n) terminating a critical contingency or regional critical contingency and giving notice of that termination;
 - (o) preparing and publishing an incident report; and
 - (p) after an exercise, preparing and publishing a performance report, and after an actual critical contingency, preparing and publishing a report including the initial publication of a draft report for submissions and providing the submissions to the industry body.

1.2 The Service Provider must also:

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

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

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

Other Incident reports

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

Annual performance review report

- (d) no later than 20 business days after each anniversary of the Appointment Date, a detailed report of the previous 12 months containing the following information:
 - (i) an assessment, with reasons, on the extent to which the Performance Standards were met or exceeded;
 - (ii) a log of the critical contingency operator's activities (including any significant events where a critical contingency was avoided);

- (iii) a list of all Service Provider activities under this Agreement that have incurred costs that are additional to the base fee (including those costs covered by the critical contingency event fee);
- (iv) results of the exercise to test critical contingency management plans;
- (v) any suggested amendments to the Performance Standards, critical contingency management plans or the Regulations.

1.4 The Service Provider must develop and implement a strategic action plan in consultation with Gas Industry Company within one year of the Appointment Date. This plan must include the following:

- (a) Objectives of the strategic action plan;
- (b) Staff training initiatives;
- (c) A procedure for the review of processes, systems and documentation;
- (d) Implementation of and development of responses to findings from incident and performance reports; and
- (e) Any further actions, processes or procedures that the parties agree should be documented in such plan.

1.5 The Establishment Services are all steps necessary to be taken by the Service Provider so that it is ready to act as critical contingency operator on the Appointment Date. For the avoidance of doubt, the Service Provider acknowledges that it is responsible for obtaining information it requires from the outgoing service provider, but Gas Industry Co will provide reasonable assistance to the Service Provider in obtaining such information.

1.6 The Service Provider acknowledges that it is responsible for obtaining information, services and assistance it requires from transmission system owners in order to perform the Services.

SCHEDULE 2 - PERFORMANCE STANDARDS

The Service Provider shall meet or exceed the following performance standards, as well as perform the Services to the standards set out in this Agreement and in the Regulations.

Establishment of the following by Appointment Date:

1. The critical contingency website;
2. Relationship protocols with the TSOs so as to facilitate the provision of information;
3. A consumer database and band information;
4. A communication system, including an integrated voice response system; and
5. The critical contingency risks register.

Ongoing services

Service	Performance Standard	Target/Measure
Critical contingency internet site maintenance	Maintain on the internet site up to date copies of all documents required to be published by the critical contingency operator under the Regulations or this Agreement	Update internet site within one business day of the later of approval or receipt of any new or updated document
Maintain consumer database	Review, develop and document consumer database and band information and keep CCO model up to date	Information to be updated weekly
Maintain communication system	Maintain an integrated voice response system	Maintain operability and test on a monthly basis
Communications with TSOs	Maintain dedicated 24 hour contactability between TSOs and the CCO for early warning calls and emergency calls to the CCO	Duty CCO responds to TSO within 30 minutes
Training	Implement and run a training programme to familiarise industry participants and other stakeholders with the Regulations, the role of CCO, TSO, retailer and consumer obligations to curtail.	Training sessions offered in Auckland, Wellington and New Plymouth annually
Maintain the CCO Risk Register	Use and update the CCO risk register	Update Gas Industry Co on new or changed risks of significance within 5 business days of identifying those risks. Review risks on a quarterly basis.

Service	Performance Standard	Target/Measure
Test critical contingency management plans	Prepare a report on the outcomes of any test under r34 of the Regulations	Provide a report with 10 business days of receiving reports on the test from TSOs
Compliance reporting	Allege any breaches of the Regulations the CCO may become aware of	Within 5 business days of becoming aware of the potential breach.
Reporting on activities performed under the Agreement	Quarterly report	Provide within 20 business days of the end of each quarter
Respond to requests for information in relation to the Gas Governance (Compliance Regulations) 2008 and the Gas Governance (Critical Contingency Management Regulations) 2008	Timely response to information requests including requests to provide reasonable assistance under the offence provisions of the relevant gas governance legislation	As soon as reasonably practicable once the information has been requested

During and after a critical contingency

Service	Performance Standard	Target/Measure
Determining and declaring a critical contingency	Timely declaration of a critical contingency	Where a threshold has been breached, the critical contingency was declared as soon as is reasonably practicable, but in any event within 30 minutes of becoming aware that the breach has occurred.
Decision making during critical contingency	Timely decision making during critical contingency	Decisions made as soon as is reasonably practicable during a critical contingency, consistent with achieving the purpose of the Regulations
Communication during critical contingency	Complying with communication plan and making timely communications with stakeholders	Communication in accordance with the Regulations and communication plan as soon as reasonably practicable, but in any event within 30 minutes of the communication trigger arising, and as required under schedule 5 of the Regulations
Termination of critical contingency	Timely and stable termination of critical contingency	Critical contingency terminated appropriately and in a stable manner

SCHEDULE 3 - FEES**3.1 Fees Composition:** The Fees comprise:

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

or alternatively where this Agreement has expired or has been terminated under clause 10 of this Agreement a disengagement fee as set out in paragraph 3.5 of this Schedule.

3.2 Establishment Fee

- (a) The establishment fee is \$62,840.

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

- (b) The establishment fee will be payable as follows:

- (i) 25% at the end of the month of the Commencement Date;
- (ii) 25% at the end of each month following, until the establishment fee is paid in full.

3.3 Base fee

- (a) The base fee:

- (i) for each year in the Term commencing on the Appointment Date is the amount of **\$34,900 per month**; and
- (ii) is payable monthly in arrears from the Appointment Date.

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

3.4 Critical contingency event fee

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

- (A) during a critical contingency (as from when a critical contingency is declared under regulation 49 until terminated under regulation 60);
- (B) in respect of the notification and publication of the termination of a critical contingency under regulations 61 to 63, and the preparation and publication of an incident report and a performance report under regulations 64 and 65; and
- (C) in respect of providing assistance with processing breaches under the Gas Governance (Compliance) Regulations 2008 or supporting prosecutions under the Gas Governance (Critical Contingency Management) Regulations 2008.

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

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

Resource	Hourly rate (excl GST)
General Manager	\$240
Senior Manager (CCO)	\$220
Senior Project Manager	\$180
Senior Engineer	\$180
IT Support	\$160
Business Analyst	\$140
Administration Support	\$85
External Legal Support	\$400
External Media Support (Consultant)	\$200

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

3.5 Disengagement fee

- (a) The disengagement fee is a fee payable in respect of any Disengagement Services provided by the Service Provider.
- (b) The disengagement fee is the sum of:

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

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

- (a) **Basis of variation to Fees:** The basis of any Fee change will be to ensure that the Service Provider continues to receive a Fee that represents the actual cost (including a reasonable margin) to the Service Provider of providing the Services, taking into account any change to the Services and/or changes to the Service Provider's costs (whether caused by a Fee Change Event or otherwise).
- (b) **Commencement of fee variation process:**
- (i) **Fee Change Event:** In accordance with clause 8.3.1 of this Agreement, if either party considers at any time that:
 - (A) a Fee Change Event has occurred; and
 - (B) the effect of such Fee Change Event (together with any other Fee Change Events that have occurred since the date of this Agreement or since the last agreed fee change (as the case may be)) is sufficiently significant that it warrants a variation to the fees;that party may give a Fee change request to the other party, provided that a Fee change request may not be given later than 12 months after the occurrence of the Fee Change Event to which that Fee change request relates.
 - (ii) **Review:** In accordance with clause 8.3.2 either party considers that the Fees need to be reviewed to reflect the cost (including a reasonable margin) of providing the Services, that party may give a Fee change request to the other party, provided that:
 - (A) The Fee change request must be made in writing and received by the other party at least 4 months prior to the commencement of the financial year (so as to enable Gas Industry Co to fulfil its obligations to estimate and publish the critical contingency ongoing costs in accordance with regulation 18 of the Regulations); and

- (B) A Fee change request under this subparagraph (ii) may not occur more than once in a financial year.
- (iii) In accordance with clause 8.3.3 of this Agreement, this paragraph 3.6 does not apply in respect of the establishment fee portion of the Fees.
- (c) **Fee change request:** A Fee change request must contain the following information:
 - (i) the event(s) claimed to be a Fee Change Event or that has/have given rise to the request to review the Fees ;
 - (ii) the change(s) to the Services and/or the cost (including a reasonable margin) to the Service Provider in providing the Services;
 - (iii) the variation(s) of the Fees proposed by the party that has given the Fee change request, together with reasonable information supporting the proposed fee variation(s); and
 - (iv) the date(s) on which the party considers that the variation(s) to the Fees should be calculated to take effect from (being the date on which the event giving rise to the Fee change request came into existence).
- (d) **Initial response to Fee change request:** Within 20 business days of receipt of a Fee change request, the recipient will respond to the party that gave the Fee change request with a written notice advising whether it agrees to the variation to the Fees proposed in the Fee change request. If the notice advises of agreement, the proposed Fee variation set out in the Fee change request will be an agreed Fee change.
- (e) **Process where no initial agreement:** Where the recipient of a Fee change request does not agree to the proposed Fee variation set out in the Fee change request (or where the recipient does not give a notice under subparagraph (d)) the following process will apply:
 - (i) in the first instance the parties shall meet to discuss the matter in good faith to see whether they can reach agreement as to whether a fee change event has occurred, and whether there should be a variation to the fees (and the amount of such variation), and the date on which such variation should be effective. If the parties reach agreement, the agreed variation (if any) shall be an agreed Fee change;
 - (ii) if the parties cannot reach agreement within 20 business days after the date the Fee change request was received, the party that gave the Fee change request may require the matter to be referred to dispute resolution under clause 16 of this Agreement (but subject to subparagraph (iii) below);
 - (iii) if the matter is referred to dispute resolution under subparagraph (ii) above the scope of the dispute resolution will solely be to resolve:

- (A) In respect of a Fee change request made under subparagraph (b)(i) above only, whether a Fee Change Event (or events) has occurred;
- (B) In respect of all Fee change requests (under subparagraph (b)(i) or (ii)):
 - the amount (if any) by which the fees should be varied on the basis set out in subparagraph (a) above; and
 - the date from which any variation to the Fees should be calculated to take effect from (being the date on which the event giving rise to the Fee change request came into existence);

provided that, if the parties have reached agreement on any of the matters in subparagraphs (i) to (iii), the role of dispute resolution will be limited to those matters in subparagraphs (i) to (iii) that have not been agreed; and

- (iv) if dispute resolution determines, or the parties have agreed, that there should be a variation to the fees, such variation will be an agreed Fee change.

(f) Giving effect to agreed Fee changes:

- (i) In respect of a Fee change request made under subparagraph (b)(i) above as a result of a Fee Change Event, the Fees will be adjusted to take effect from the month following the date on which the Fee change request is agreed or determined;
- (ii) In respect of a Fee change request made under subparagraph (b)(ii) above, the Fees will be adjusted to take effect from the commencement of the financial year following the date on which the Fee change request is agreed or determined.

SCHEDULE 4 - CHANGE CONTROL PROCESS

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

Gas Industry Co or the Service Provider (as applicable) will send the other party a variation agreement reflecting those terms. The Service Provider will not undertake any Change until both parties have signed this variation agreement, and Gas Industry Co will not be bound to pay for any Change unless both parties have signed this variation agreement.

4.6 Dispute Resolution: If the parties cannot agree on a Change Request within 10 business days of Gas Industry Co giving notice under subparagraph 4.4(d) of this Schedule then the matter will be resolved under clause 17 of this Agreement. In determining this matter, the mediator or arbitrator will:

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

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

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

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

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

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

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

- (d) demanding unreasonable charges for the Change;
- (e) imposing unreasonable conditions for undertaking the Change; or

- (f) refusing to include the Change under this Agreement despite the subject matter of the Change being reasonably related to or connected with the Services as they are at the relevant time.

4.10 No Obligation: Gas Industry Co will not be bound to accept or pay for any unauthorised variations or changes to this Agreement or the scope of the Services carried out by the Service Provider.

4.11 Truncated Process: Where:

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

4.12 Costs of Change Request:

- (a) Subject to subparagraph (b) below, any costs incurred by a party in respect of the Change Request shall be borne by the party that made that Change Request.
- (b) Where Gas Industry Co has given notice under subparagraph 4.4(d) of this Schedule (and, in accordance with paragraph 4.6, the matter is to be resolved under clause 17 of this Agreement), any costs incurred by a party in respect of the Change Request after the date such notice was given shall be borne by the party that incurred those costs.
- (c) Unless agreed otherwise in writing by the parties in advance, the costs charged by the Service Provider in respect of a Change Request (if chargeable under this clause 4.12) must be at the hourly rates set out in clause 3.4(b)(ii) of Schedule 3 (as amended from time to time in accordance with the Change Control Process). The Service Provider must provide Gas Industry Co with a written breakdown of time spent on the Change Request on request by Gas Industry Co.

SCHEDULE 5 - DISENGAGEMENT SERVICES

- 5.1** The Service Provider shall provide the following Disengagement Services if requested by Gas Industry Co:
- (a)** the continued provision of the Services, or part of the Services, prior to termination as requested by Gas Industry Co in accordance with this agreement. Gas Industry Co must continue to pay the Fees for such Services in accordance with this Agreement (or a reasonable proportion of those fees if only part of the Services are required);
 - (b)** co-operation and support, to the new service provider's personnel and/or Gas Industry Co, to enable an orderly transition to a new service provider in a timely fashion with minimal disruption;
 - (c)** training for the new service provider's personnel and/or Gas Industry Co in respect of the relevant Services provided by the Service Provider under this Agreement; and
 - (d)** providing an electronic editable copy of all documents used in its role as the Service Provider and which are reasonably necessary for use by the new service provider, including template documents and manuals.
- 5.2** Gas Industry Co will pay the Service Provider for any Disengagement Services in accordance with Schedule 3.
- 5.3** Subject to paragraph 5.1 of this Schedule, the Service Provider will:
- (a)** transfer all data that it holds and that it has received or processed in the performance of its obligation under this Agreement in the 5 years (or 8 years if this Agreement is extended pursuant to clause 3.2) immediately preceding the Termination Date (in a form reasonably required by Gas Industry Co) to Gas Industry Co or if Gas Industry Co requests, to the new service provider; and
 - (b)** will provide a certificate to Gas Industry Co confirming that the data and documents it has transferred is, to the best of its knowledge, all the data and documents it holds that it has received or processed in the performance of its obligation under this Agreement during the Term.
- 5.4** Notwithstanding any obligation on the Service Provider under this Agreement to transfer data, the Service Provider will be entitled to retain a copy of the data and documents to comply with any obligations it has at Law.
- 5.5** For so long as the Disengagement Services are provided, the Service Provider agrees to work in good faith with any new service provider in relation to the transfer of data under paragraph 5.3 of this Schedule.