

# **REGISTRY OPERATOR SERVICE PROVIDER AGREEMENT**

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**between**

**GAS INDUSTRY COMPANY LIMITED**

**and**

**JADE SOFTWARE CORPORATION (NZ) LIMITED**

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**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2018

**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** **JADE SOFTWARE CORPORATION (NZ) LIMITED** a company registered under the Companies Act 1993 with its registered office at 5 Sir Gil Simpson Drive, Burnside, Christchurch (**Provider**)

## **INTRODUCTION**

- A. The Gas (Switching Arrangements) Rules 2008 provide for the industry body (Gas Industry Co) to appoint a Registry Operator to develop, establish and operate a gas 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 Provider as its Registry Operator.
- C. The Provider agrees to supply registry services to Gas Industry Co in accordance with this Agreement, the Registry Development Agreement and the Rules. These registry services shall comprise:
  - (a) Registry development and establishment, which shall be provided in accordance with the Registry Development Agreement dated 1 September 2008; and
  - (b) Registry operations, which are covered by this Agreement.

## **1. DEFINITIONS**

In this agreement unless the context requires otherwise:

**Act** means the Gas Act 1992;

**agreement** means this service provider agreement and includes the schedules;

**business day** means a day other than a Saturday, Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington;

**business process information** means information developed, held or received by the **Provider** relating to how the **services** are provided, including how the **System** and/or **software** is used to provide the **services**, including process diagrams,

flowcharts, checklists, operating procedures, validation procedures and training materials;

**commencement date** means 1 March 2018;

**Compliance Regulations** means the Gas Governance (Compliance) Regulations 2008;

**confidential data** means:

(a) **data** that is:

- (i) provided by, or to, **participants** for the purpose of complying with the **Rules**; or
- (ii) received or created within the **System** or through the **Provider** carrying out the **services**; or
- (iii) any **processed data**; or
- (iv) marked or designated by the disclosing party as being confidential; or
- (v) by its nature clearly confidential to the supplying party; or

(b) the **documentation**,

but excluding:

- (c) information that the **Rules** or **functional specification** requires to be **published**;
- (d) information which, at the time it was received, was or thereafter without breach of the **Rules** or this **agreement** by either party becomes in the public domain; and
- (h) information that was, independently of the **Rules** or this **agreement**, acquired or developed by the **Provider**, other than the **documentation**;

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

- (a) holds in accordance with this **agreement**; or
- (b) directly or indirectly receives from or provides to **participants** or Gas Industry Co in relation to this **agreement**;

**data transfer plan** has the meaning set out in clause 13.5;

**documentation** means:

- (a) the user and technical documentation supplied, or to be developed, by the **Provider** for the **System**, or provided by a third party provider of third party

software or equipment forming part of the **System**, to enable **users** to properly use the **System**, and Gas Industry Co and third party **service providers** to properly use, maintain and operate the **System**;

- (b) the **business process information**; and
- (c) the **user manual, the data transfer plan** and any other documents to be supplied pursuant to this **agreement**, and

includes any update of the **documentation**. **Documentation** may be online, hard copy or digital;

**existing intellectual property rights** means all **intellectual property rights** of a party or any of its third party licensors that existed as at the **commencement date** and are not developed, commissioned or created under or in connection with this Agreement. For the avoidance of doubt, **existing intellectual property rights** include any **intellectual property rights** developed, commissioned or created under or in connection with any previous service provider agreement between the parties;

**fees** means the fees set out in schedule 1, as varied from time to time in accordance with this **agreement**;

**financial year** means Gas Industry Co's financial year, being the twelve-month period beginning on 1 July and ending on 30 June in the following year;

**force majeure event** means, in relation to either party (the **Affected Party**), an event or circumstance which is beyond the reasonable control of the Affected Party, including:

- (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 **Industry Best Practice**;

**functional specification** means the functional specification in schedule 3 as at the **commencement date**, provided that where such document is amended pursuant to clause 7, the **functional specification** means the then current version of such document;

**GST** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985;

**hourly rate(s)** means the hourly rate(s) set out in schedule 1;

**Industry Best Practice** means, in relation to any **services**, the exercise of the skill, diligence, prudence, foresight and judgement which would be expected from a highly skilled and experienced and well-resourced person engaged in the same type of undertaking under the same or similar circumstances, applying the best standards and practices currently applied in, as the circumstances require, the relevant industry;

**infrastructure** means the infrastructure owned by the **Provider** and forming part of the **System**;

**installation** means the loading of **software** or **updates** on the appropriate **infrastructure** and the carrying out and satisfaction of any applicable testing as required by Gas Industry Co to confirm the continuing integrity of the **software** and any **updates**, and **install** and **installed** have corresponding meanings;

**intellectual property rights** includes copyright, and all rights conferred under statute, common Law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, confidential information, know-how, and all other rights resulting from intellectual activity in any field, together with all right, interest or licence in or to any of the foregoing;

**interest rate** means the 90 day commercial bill rate as published on page BKBM of Reuters monitor service and applying at 10.30am on the relevant day, plus 2%;

**Law** means any rules of common law, statute, regulation, order-in-council, by-law, ordinance or other subordinate or secondary legislation in force from time to time;

**non-functional specification** means the non-functional specification in schedule 2, provided that where such document is amended pursuant to clause 7, the **non-functional specification** is the current version of such document;

**participant** means a registry participant as defined in the **Rules**, which can be a retailer, distributor or meter owner;

**performance standards** means the performance standards and/or service levels set out in the **non-functional specification**;

**PPSA** means the Personal Property Securities Act 1999;

**processed data** means **data** which has, by use of the **software** or otherwise, been processed by the **Provider** pursuant to this **agreement** or the **Rules**;

**Provider Software** means the **Provider's software** licensed to Gas Industry Co under the **Registry Development Agreement** with all updates of such software;

**Registry Development Agreement** means the Registry System Development and Establishment Agreement dated 1 September 2008;

**Rules** means the Gas (Switching Arrangements) Rules 2008;

**Rulings Panel** means the Rulings Panel as defined in the **Compliance Regulations**;

**services** means the services referred to in clause 3.2.1;

**software** means the software forming part of the **System** including the **Provider Software**;

**specifications** means:

- (a) the **non-functional specification**, the **functional specification** and the **performance standards**; and
- (b) all third party product descriptions and specifications to the extent that they are not inconsistent with the **specifications** under paragraph (a) of this definition;

**System** means the system used to perform the registry operator role as at the **commencement date** (including **software** and **infrastructure**), as modified from time to time in accordance with this **agreement**;

**update** means the object code and source code of all fixes, modifications, revisions, releases and versions of the **software**;

**users** means **participants**, Gas Industry Co or individuals;

**user manual** means the instructional documentation to be provided by the **Provider** and agreed with Gas Industry Co to enable **users** to properly use the **System**; and

**year** means a period of 12 consecutive months.

## 2. CONSTRUCTION

2.1 **Interpretation:** The following rules of interpretation apply in this **agreement** unless the context requires otherwise:

2.1.1 **clauses, schedules and paragraphs:** a reference to a clause or a schedule is to a clause or schedule of this **agreement**, a reference in a schedule to a paragraph is to a paragraph in that schedule, the schedules to this **agreement** form part of this **agreement** and a reference to a schedule includes a reference to that schedule as amended or replaced from time to time;

2.1.2 **defined terms:** words or phrases appearing in this **agreement** in bold type are defined terms and have the meanings given to them in this **agreement**, or, if not defined in this **agreement**, have the meanings given to them in the **Rules**;

- 2.1.3 **documents:** a reference to any document, including this **agreement**, includes a reference to that document as amended or replaced from time to time;
- 2.1.4 **headings:** headings are included for convenience only and do not affect the construction of this **agreement**;
- 2.1.5 **inclusions:** references to inclusions or examples do not imply any limitation;
- 2.1.6 **joint and several liability:** any provision of this **agreement** to be performed or observed by two or more persons binds those persons jointly and severally;
- 2.1.7 **negative obligations:** a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;
- 2.1.8 **no contra proferentem construction:** the rule of construction known as the *contra proferentem* rule does not apply to this **agreement**;
- 2.1.9 **number and gender:** words importing the singular include the plural and vice versa, and words importing one gender include the other genders;
- 2.1.10 **parties:** a reference to a party to this **agreement** or any other document includes that party's personal representatives, successors and permitted assigns;
- 2.1.11 **currency:** a reference to dollars or "\$" is a reference to New Zealand currency;
- 2.1.12 **person:** a reference to a person includes any individual, corporation, unincorporated association, government department or local authority;
- 2.1.13 **related terms:** where a word or expression is defined in this **agreement**, other parts of speech and grammatical forms of that word or expression have corresponding meanings; and
- 2.1.14 **statutes, regulations, rules and codes:** references to a statute, regulation, rule or code include reference to regulations, orders, directions or notices made under or pursuant to such statute, regulation, rule or code and all amendments to that statute, regulation, rule or code whether by subsequent statute, regulation, rule, code amendment or otherwise and a statute, regulation, rule or code amendment passed in substitution for the statute, regulation, rule or code provision referred to or incorporating the relevant provisions.

2.2 **Conflict:** Unless specified otherwise in this **agreement** or the context requires otherwise, if there is a conflict between any of this **agreement**, the schedules to



this **agreement**, the **Act** or the **Rules**, the following order of priority will prevail (in descending priority):

2.2.1 the **Act**;

2.2.2 the **Rules**;

2.2.3 this **agreement**; and

2.2.4 the schedules to this **agreement**.

2.3 **Continuation of Registry Development Agreement:** The **Registry Development Agreement**, in particular the licence under clause 15 of that agreement, continues unaffected. Any references to the “Operating Agreement” in that agreement shall be deemed to refer to this **agreement**.

### 3. APPOINTMENT

3.1 **Appointment:** Gas Industry Co appoints the **Provider** as registry operator from the **commencement date** pursuant to rule 13 of the **Rules** on the terms and conditions set out in this **agreement**, and the **Provider** accepts such appointment.

3.2 **Services:** The **Provider** agrees to:

3.2.1 undertake the following services in accordance with the **Rules** and **Compliance Regulations** and this **agreement**:

- (a) the duties and obligations to be undertaken by the registry operator under the **Rules** and **Compliance Regulations**;
- (b) the services contemplated in the **non-functional specification** and the **functional specification**; and
- (c) all other obligations and duties of the **Provider** under this **agreement**;

3.2.2 promptly perform the **services** with diligence, efficiency and skill, and to **Industry Best Practice**;

3.2.3 comply with all applicable **Law** and obtain, maintain and comply with all consents, permits, standards and licences (whether statutory, regulatory, contractual or otherwise) necessary for the provision and receipt of the **services**;

3.2.4 provide the **services** in accordance with the **Rules**, **performance standards** and such additional or substitute **performance standards** as are agreed between the parties:

- (a) at the beginning of each **financial year** in accordance with rule 17 of the **Rules**; or

- (b) at any other time during a **financial year** following a request by Gas Industry Co to alter the **performance standards**.

Agreement to additional or substitute **performance standards** may not be unreasonably withheld. If the parties cannot agree on **performance standards** within 20 **business days** of the beginning of each **financial year** or following a request by Gas Industry Co, the matter may be referred to dispute resolution under clause 16;

3.2.5 promptly inform Gas Industry Co if:

- (a) the **Provider** breaches the **Rules**, this **agreement** or any requirement of the **specifications**; or
- (b) the **Provider** becomes aware of any error or ambiguity in or in respect of the **non-functional specification** or the **functional specification**;

3.2.6 co-operate and maintain close contact with Gas Industry Co's other service providers and **participants** to facilitate effective provision of, and changes to, the **services** and all other services provided to Gas Industry Co;

3.2.7 maintain close contact with **participants**;

3.2.8 with the exception of the web application firewall and network service protection services, provide the **services** from New Zealand;

3.2.9 maintain a substantial presence and office in New Zealand; and

3.2.10 from the **commencement date**, ensure that the **System**, on a continuing basis:

- (a) functions, operates and performs so that the **services** are provided in accordance with this **agreement**;
- (b) meets and satisfies the **specifications**; and
- (c) is free from:
  - (i) viruses, to the extent reasonably possible (which includes the **Provider** using its best endeavours to protect against and eliminate viruses); and
  - (ii) material defects and errors.

3.2.11 continually plan and cater for the evolution of the **services** and seek to improve its performance under this **agreement** without additional cost to Gas Industry Co including performing the **services** more efficiently so as to reduce costs to Gas Industry Co, reduce the costs of providing the **services** and reduce costs to **participants**;

3.2.12 provide the **documentation** to Gas Industry Co.

### 3.3 **Provider's representative:**

3.3.1 The **Provider** will at all times during the term of this **agreement** provide a representative approved by Gas Industry Co (such approval not to be unreasonably withheld) to be the **Provider's** representative. The representative will:

- (a) be authorised to receive all directions and instructions in connection with provision of the **services** on behalf of the **Provider**;
- (b) monitor the performance of the **services**;
- (c) proactively identify and resolve any issues that may affect the provision of the **services**; and
- (d) review risks and agree risk management actions.

3.3.2 The representative (or a delegate appointed by the representative) will be contactable by Gas Industry Co from 8.30am to 5.00pm on **business days** (including by mobile telephone and email).

3.3.3 The representative (or a delegate appointed by the representative) will be contactable by Gas Industry Co at any time outside the hours in clause 3.3.2 in the event of any situation which Gas Industry Co reasonably considers requires immediate action by the **Provider**.

3.3.4 The **Provider** may appoint a replacement representative with Gas Industry Co's prior written consent, such consent not to be unreasonably withheld.

3.3.5 Gas Industry Co may at any time by notice to the **Provider** object on reasonable grounds to any representative (or any delegate appointed by the representative). Gas Industry Co's notice will state the grounds upon which the objection is based. As soon as practicable the **Provider** will, subject to clause 3.3.1, appoint a replacement representative (or delegate as applicable).

### 3.4 **Records, reviews and reporting:**

3.4.1 The **Provider** shall keep full, accurate and up-to-date records relating to the performance of the **services**.

3.4.2 The **Provider** will review its performance of the **services** monthly in accordance with rule 18 of the **Rules** and provide reports to Gas Industry Co in accordance with rule 19 of the **Rules**. Such reports will include such other information as Gas Industry Co reasonably requests.

3.4.3 The **Provider** will provide other reports required by the **specifications**.

- 3.4.4 The **Provider** will provide any ad hoc reports to Gas Industry Co at Gas Industry Co's reasonable request, such reports to be paid for at the **hourly rates**.
- 3.4.5 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 **Provider** has performed its duties.
- 3.4.6 All reports provided under this clause 3.4 must be presented in a format that is determined by Gas Industry Co, acting reasonably.
- 3.5 **Meetings:** The **Provider** will ensure that the representative appointed in accordance with clause 3.3 of this **agreement** attends monthly and annual meetings with Gas Industry Co (and additional meetings as reasonably required by Gas Industry Co) to discuss matters relating to the **services**. Meetings will be held at venues and times reasonably specified by Gas Industry Co. Without limitation the annual meetings shall include discussion of the outcome of any review conducted by Gas Industry Co and the **performance standards** to apply for the coming year.
- 3.6 **Responsiveness:** The **Provider** shall respond in a prompt, informative and helpful way to any reasonable 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 **Provider's** response may not be one which complies with the request.
- 3.7 **Performance Notices:** For the purposes of clause 3.6 Gas Industry Co may, if it considers that a reasonable request or enquiry is within the scope of the services that the Provider should reasonably provide under this **agreement** and the **Provider** has failed to comply with clause 3.6, issue a notice to the **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 3.6 is a material breach of this **agreement** for the purposes of clause 12.2 if it issues three or more Performance Notices in any 6 month period, a material breach for the purposes of clause 12.2 may be deemed to have occurred.
- 3.8 **Waiver of Performance Notice:** Following receipt of a **Performance Notice**, the **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 3.7.
- 3.9 **Audits:**

3.9.1 Gas Industry Co may conduct (and the **Provider** must co-operate with) audits of the **Provider's** performance of the **services** in accordance with this clause 3.9 and rule 21 of the **Rules**.

- (a) Audits may be held annually or at a greater or lesser frequency as required in good faith by Gas Industry Co.
- (b) Gas Industry Co will give the **Provider** reasonable prior notice of any audit, unless the circumstances are such that it is unreasonable for Gas Industry Co to be required to give prior notice.
- (c) Any audit will be conducted in a manner that does not unreasonably disrupt the **Provider's** business or staff.
- (d) The costs of conducting audits will be borne by Gas Industry Co (except the **Provider's** costs of co-operating with any audit in connection with clause 3.9.1) unless any material non-compliance with this **agreement** is disclosed, in which case the **Provider** must reimburse Gas Industry Co for the reasonable cost of the audit.
- (e) Gas Industry Co will keep all information obtained from the **Provider** as a result of an audit confidential, except as required by **Law**.
- (f) Gas Industry Co will provide the **Provider** with a copy of the draft audit report and give the **Provider** a reasonable opportunity to comment on the draft before the audit report is finalised.
- (g) Gas Industry Co will provide the **Provider** with a copy of the final audit report once the audit report is finalised.
- (h) Gas Industry Co will publish the final audit report on its website once the audit report has been finalised, except for any **confidential data** or information or configurations pertaining to the access mechanisms and security systems of Gas Industry Co or the **Provider** contained in the final audit report.
- (i) The **Provider** must implement any changes necessary to give effect to any reasonable recommendations made by an auditor, with the objective of constantly improving the **services**.
- (j) Where any recommendations in (i) are agreed by Gas Industry Co and the **Provider** to be outside of the scope of the **services**, any variations will be agreed in accordance with clause 7.

3.9.2 During the term of this **agreement**, the **Provider** must, at its own cost conduct two audits of its systems and processes. The first audit must be conducted, and the audit report finalised, between two years six months and three years from the **commencement date** and the second audit must

be conducted between five years six months and six years from the **commencement date**.

- (a) The auditor must be independent from the part of the **Provider's** business that provides the **services**, and must be approved by Gas Industry Co;
- (b) **Provider** initiated audits are to cover the full end to end scope of the **services**. The scope brief to the auditor is to be agreed with Gas Industry Co prior to the audit commencing;
- (c) If the **Provider** has annual business assurance audits that cover part or all of the scope and those business assurance audits are approved by Gas Industry Co, then the **Provider** may include the results of these business assurance audits in place of auditing that part of the **services**;
- (d) The **Provider** will provide a copy of the audit report to Gas Industry Co within five **business days** of the audit report being finalised. The audit report must include a description of the resolution and completion timeframes for all non-compliances, conditions and recommendations made by the auditor;
- (e) Gas Industry Co may, at its sole discretion and cost, meet the auditor to discuss the audit results. Gas Industry Co may at its sole discretion hold such meetings without the **Provider** being present and without reporting the results of such meetings to the **Provider**; and
- (f) If the term is extended in accordance with clause 4.2, a third **Provider** initiated audit must be conducted between two years and two years six months from the expiry of the **initial term**.

### 3.10 Warranties:

#### 3.10.1 The **Provider** warrants that:

- (a) All information provided by the **Provider** to Gas Industry Co under or in connection with the **services** or this **agreement** is:
  - (i) if prepared or generated by the **Provider**, true, accurate and not misleading in any material respect (including by omission); and
  - (ii) if prepared for or on behalf of the **Provider** by a third party, or provided to the **Provider** by a third party to the best of the **Provider's** knowledge and belief, true, accurate and not misleading in any material respect (including by omission);

- (b) its employees, contractors and agents have the suitable skills, training and experience for, and are properly supervised in, the provision of the **services**;
- (c) it is not aware as at the **commencement date** of anything within its reasonable control which might or will adversely affect its ability to perform its obligations under this **agreement** or the **Rules**;
- (d) all **documentation** provided by the **Provider** under or in connection with this **agreement** will:
  - (i) contain sufficient information for the full and efficient operation of the **System** or relevant **services** to which the documentation relates;
  - (ii) correctly represent the attributes of the subject matter to which it relates;
  - (iii) provide proper and adequate instructions for its intended purpose; and
  - (iv) be written or delivered in language and at a level appropriate for the intended audience;
- (e) each such warranty will be deemed to be repeated continuously by the **Provider** during the term of this **agreement**.

3.10.2 Without limiting Gas Industry Co's remedies, the **Provider** acknowledges that if, whilst performing the **services**, it omits to include all **data** made available to it at the relevant time in accordance with this **agreement** and the **Rules**, then it will re-perform the **services** in respect of all of that **data**, at no cost to Gas Industry Co or the **participants**.

3.11 **Third party warranties:** The **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 **Provider**, where those products are embedded in the **System** or the **Provider's** products, in relation to the **services**.

3.12 **Personnel:** If Gas Industry Co is at any time dissatisfied on reasonable grounds with the conduct or performance of a particular person providing the **services**, Gas Industry Co may, after consulting with the **Provider**, require the person to be replaced at the **Provider's** cost.

3.13 **Use of the System:** From the **commencement date**, the **Provider** shall use the **System** as required to provide the **services** to Gas Industry Co in accordance with this **agreement**.

#### 4. TERM

- 4.1 **Term:** This **agreement** will come into effect on the **commencement date** and, subject to clause 4.2, unless otherwise terminated under this **agreement**, or the **Rules**, will expire on 28 February 2025 (the **Initial Term**).
- 4.2 **Renewal:** Gas Industry Co may, at its discretion, by giving notice to the **Provider** at any time up to six months before the expiry of the Initial Term, renew this **agreement** for a further term of three years from the expiry of the Initial Term (the **Second Term**).

#### 5. NOT USED

#### 6. FEES

- 6.1 **Invoicing:** The **Provider** will provide Gas Industry Co with a valid tax invoice for the relevant **fees** for the **services** by the 5th **business day** of the month following provision of the relevant **services**.
- 6.2 **Payment:** Gas Industry Co will pay the **Provider** the **fees** for the **services** monthly in arrears by:
- 6.2.1 the 20<sup>th</sup> of the month, or if that is not a **business day** the next **business day**, provided that the **Provider** has complied with clause 6.1; or
- 6.2.2 if the **Provider** does not comply with clause 6.1, the 20<sup>th</sup> of the month, or if that is not a **business day** the next **business day**, of the month following receipt of a valid tax invoice from the **Provider**.
- 6.3 **Interest on default:** If Gas Industry Co does not comply with clause 6.2, the **Provider**, upon written notice to Gas Industry Co, will be entitled to charge, and Gas Industry Co will be liable to pay if Gas Industry Co has not remedied the non-compliance by close of business two **business days** after that notice is issued, interest on the relevant **fees** at the **interest rate** from the due date until payment.
- 6.4 **Payment method:** Gas Industry Co will pay the **fees** for the **services** by means of direct credit of immediately available funds to the **Provider's** bank account as notified by the **Provider** to Gas Industry Co, or in such other manner as may be mutually agreed in writing from time to time.
- 6.5 **Total fees:** Subject to clause 7, the **fees** are fixed and will not change unless agreed in writing between the parties. Gas Industry Co will not be liable to pay the **Provider** any fees or charges for the **services** other than the **fees**.
- 6.6 **No charge to participants:** The **Provider** may not charge any **participant** for the **services** except as approved in writing by Gas Industry Co.
- 6.7 **Disputed invoices:** Gas Industry Co may withhold payment of an invoice or part of an invoice if:



- 6.7.1 Gas Industry Co disputes, on reasonable grounds, any invoice or part of any invoice submitted by the **Provider** provided that Gas Industry Co promptly notifies the **Provider** of the reasons for the dispute but must not delay payment of any undisputed portion provided the **Provider** complies with Gas Industry Co's administrative requirements in relation to the payment of the undisputed portion; or
- 6.7.2 the **services** to which the invoice relates have not been supplied in accordance with this **agreement** and the non-performance has not been remedied to Gas Industry Co's reasonable satisfaction within 10 **business days** of the **Provider** receiving written notice of the non-performance,
- 6.8 Any dispute under clause 6.7 must be dealt with in accordance with the dispute resolution procedures set out in clause 16. If the outcome of any dispute under clause 6.7 is that the **Provider** was not at fault, then Gas Industry Co shall pay to the **Provider** the withheld amount plus interest on the withheld amount at the **interest rate** from the due date for payment until the date of payment.
- 6.9 **Overcharging:** If it is found at any time that Gas Industry Co has been overcharged for any reason and Gas Industry Co has actually paid the invoice containing such overcharge then, within 10 **business days** after such error has been discovered and the amount has been agreed to by the parties or determined in accordance with clause 16, the **Provider** must refund to Gas Industry Co the amount of any such overcharge. The **Provider** will issue a **GST** credit note in accordance with the Goods and Services Tax Act 1985 in order to correct the incorrect invoice. In addition, the **Provider** will pay interest on the overcharged amount at the **interest rate** calculated from the date of payment of the invoice to the date of repayment of the overcharged amount.
- 6.10 **GST:** The **fees** do not include GST, which if due must be paid by Gas Industry Co in addition to the **fees**. Such GST will be payable to the **Provider** at the same time as the payment in respect of which the GST is payable.
- 6.11 **Other taxes:** The **Provider** will bear the cost of all withholding and income taxes on payments made by Gas Industry Co to the **Provider** under this **agreement** and customs and other duties on or in respect of the services supplied by the **Provider** under this **agreement** (together referred to as Taxes).
- 6.12 **Deductions:** Should any Taxes be levied and should they be required to be paid, deducted or withheld by Gas Industry Co, Gas Industry Co must make such payment, deduction or withholding and obtain appropriate receipts for such payment, deduction or withholding from the proper authority in the name of the **Provider** and must promptly forward the originals to the **Provider**.
- 6.13 **Obligations to employees:** The **Provider** must meet all legal requirements in respect of its employees engaged in the supply of the services including payment

of all wages, salaries, holiday pay or allowances, Accident Compensation levies, PAYE and other taxes, duties, redundancy compensation and any other item of remuneration or compensation due in respect of those employees.

## 7. CHANGES

7.1 **Gas Industry Co-initiated change:** Gas Industry Co may, by notice to the Provider, require a variation to the terms of this **agreement**, the **services**, or the **System** as required to meet:

7.1.1 changes to the **Rules**; or

7.1.2 material changes to the **performance standards** under clause 3.2.4; or

7.1.3 Gas Industry Co's reasonable requirements in connection with the registry operator role.

The parties will, as applicable, carry out the change control process in the **non-functional specification** for variations to the **services** notified under this clause 7.1 (if applicable given the nature of the variation). The **Provider** will not unreasonably refuse any variation to the terms of this **agreement**, the **services**, or the **System** that falls outside the scope of this clause 7.1.

7.2 **Variation:** If Gas Industry Co requires a variation in accordance with clause 7.1, the parties will negotiate in good faith and act reasonably to try to reach agreement on the terms of the variation, and the process and plan for implementation of the variation, including any appropriate increase or decrease in the **fees** to reflect such variation.

7.3 **Pricing principles:** The following pricing principles will apply in respect of any variation:

7.3.1 the **Provider** will only charge Gas Industry Co for a variation to the extent the variation cannot reasonably be considered already within the scope of this **agreement**;

7.3.2 if there is a cost impact of the variation then the parties will use genuine efforts to agree a reasonable price for the variation (taking into account the nature and extent of the variation) in accordance with the rest of this clause 7.3;

7.3.3 the pricing for any variation must be:

7.3.3.1 reasonable;

7.3.3.2 competitive;

7.3.3.3 based on the rates specified in Schedule 1 (to the extent applicable);

- 7.3.3.4 no higher than pricing the **Provider** offers its most preferred customers for products or services the same or similar to the products or services proposed to be provided to Gas Industry Co as part of the variation; and
  - 7.3.4 without limiting clause 7.4, if requested by Gas Industry Co, the **Provider** will obtain and provide (at the reasonable cost of Gas Industry Co) a certificate from an auditor confirming that any pricing of a variation complies with the requirements of this clause 7.3.
- 7.4 **Disputes:** If the parties cannot reach agreement on any matter under clause 7.2 within 10 **business days** of Gas Industry Co's notice under clause 7.1 then the matter will be resolved under clause 16, such resolution to reflect the principles of clause 7.3 in respect of an inability to reach agreement on a variation to the **fees**. The **Provider's** costs and profit will be assessed on a fully transparent open book basis and the **Provider** will make available to Gas Industry Co and any mediator, expert or arbitrator appointed under clause 16 all information required for this purpose.
- 7.5 **Additional work:** Notwithstanding clauses 7.2 and 7.3, where there is a variation to the **services** or the **System** under clause 7.1 that requires the **Provider** to carry out additional work, Gas Industry Co may (at Gas Industry Co's sole discretion) elect to pay for such additional work at the rates no higher than the applicable **hourly rates**. Where the **Provider** is providing **services** at the **hourly rates** (under this or any other clause):
  - 7.5.1 the **Provider** will keep proper records of the hours worked by its personnel and provide such records to Gas Industry Co on request; and
  - 7.5.2 the number of hours worked by its personnel must be reasonable in the circumstances.
- 7.6 **Changes to the Rules:** Notwithstanding anything else in this **agreement**, any change to the **Rules** or **specifications** after the date of this **agreement** will not affect the **Provider's** obligations or liability under this **agreement**, except to the extent expressly provided in a variation to the terms of this **agreement** implemented in accordance with this clause 7.
- 7.7 **Provider-initiated changes:** The **Provider** may, by notice to Gas Industry Co, request a variation to the terms of this **agreement**, the **services**, or the **System**. Gas Industry Co will consider any such request in good faith, provided that Gas Industry Co shall not be obliged to accept such variation request. If Gas Industry Co accepts a variation request under this clause then clauses 7.2 to 7.5 will apply as if Gas Industry Co had required the variation.

## 8. FORCE MAJEURE

- 8.1 **Force Majeure:** 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 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:
- 8.1.1 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;
  - 8.1.2 neither party will be released from any liability which existed before the commencement of the Force Majeure;
  - 8.1.3 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;
  - 8.1.4 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
  - 8.1.5 this **agreement** will otherwise remain in effect in all respects.
- 8.2 **Relief:** To the extent that the **Provider** does not perform any of the **services** as a result of a **force majeure event**, **Gas Industry Co** is relieved of its obligation to pay the **Provider** any **fees** in respect of any such **services**.

## 9. INTELLECTUAL PROPERTY

- 9.1 **Warranties:** The **Provider** warrants that:
- 9.1.1 any material provided as part of the **services**, including the **documentation**, does not and will not infringe any **intellectual property rights** of any third party; and
  - 9.1.2 the provision of the **services** and the use of the **services** by Gas Industry Co and the **participants** does not and will not infringe any third party's **intellectual property rights**.

provided that this warranty shall not apply to **data** which the **Provider** received pursuant to the **Rules** in circumstances where the **Provider** had no knowledge, and could not reasonably be expected to have known, of any infringement of third party **intellectual property rights** in respect of such **data**.

- 9.2 **Indemnity:** The **Provider** indemnifies Gas Industry Co in respect of any costs (including legal costs on a solicitor-client basis), expenses, claims, liabilities, damages or losses incurred by Gas Industry Co as a result of a breach of any of

the warranties in clause 9.1 except to the extent that the breach is caused by Gas Industry Co.

9.3 **Existing rights:** All **existing intellectual property rights** will be owned and remain owned by the relevant party or its third party licensors. The trademarks of Gas Industry Co comprise **existing intellectual property rights** of Gas Industry Co.

9.4 **New rights:** Except as set out in this clause, all new **intellectual property rights** that are developed, commissioned or created for the purposes of this **agreement** or the **services**, including all new **intellectual property rights** in:

9.4.1 the schedules to this **agreement (including the functional specification and non-functional specification)**, together with all modifications, adaptations and additions to the same; and

9.4.2 modifications, adaptations and additions to a party's **existing intellectual property rights** that are developed, commissioned or created for the purposes of this **agreement** or the **services**,

will be owned by Gas Industry Co as such rights arise. To the extent such rights vest in the **Provider** from time to time, the **Provider** shall, upon request of Gas Industry Co, assign such rights to Gas Industry Co or its nominee for nominal consideration. This clause:

9.4.3 is subject to the terms of the **Registry Development Agreement** that relate to ownership of **intellectual property rights** in the **Provider Software**; and

9.4.4 does not apply to:

(a) the **Provider's** corporate publications or the **Provider's** business planning documents; or

(b) the parties' know-how developed in the course of this **agreement** or the **services**.

9.5 **Trademarks:** The **parties** agree that:

9.5.1 the **intellectual property rights** in any and all trademarks used in relation to the **services** shall be the absolute property of Gas Industry Co as such rights arise, other than:

9.5.1.1 third party trademarks; and

9.5.1.2 the **Provider's** trade marks in general use by the **Provider** before the date of this **agreement**; and

9.5.2 the **Provider** must not apply its own or a third party's trademarks to the **services** except with Gas Industry Co's prior written approval.

9.6 **Licence:** Gas Industry Co grants to the **Provider** a royalty free, non-exclusive licence (for the term of this **agreement**) to use Gas Industry Co's trademarks solely to the extent necessary to perform the **services** in accordance with this **agreement**. The **Provider** agrees to comply with Gas Industry Co's brand guidelines as issued and amended from time to time when using Gas Industry Co's trademarks.

9.7 **No interest in data:** The **Provider** acknowledges that it will not:

9.7.1 obtain any rights to, interest in or ownership of any **data**, including any **processed data** derived from that **data**;

9.7.2 except with Gas Industry Co's prior written consent, use **data** or **processed data** as described in clause 9.7.1 for any purpose other than for providing the **services**, provided that no written consent will be required if such **data** or **processed data** has entered the public domain (that is, the data is able to be obtained by any member of the public without charge, such as from a website).

## 10. CONFIDENTIALITY AND SECURITY OF INFORMATION

10.1 **Restraints on use or disclosure:** Each party agrees that it will not without the prior written consent of the other use **confidential data** or disclose **confidential data** to any person other than those of its officers, employees and advisers essential to the implementation of the provisions contained in it or as required by law (including by the **Rules**) or under the Standing Orders of the New Zealand House of Representatives. Except to the extent it is transferred under clause 10.5, the **Provider** must at its own expense store all **data** and **processed data** held by the **Provider** as registry operator.

10.2 **Personnel compliance:** Each party shall use its best endeavours to ensure those of its officers, employees and advisers to whom **confidential data** is disclosed in terms of clause 10.1 are aware of and comply with the confidentiality obligations imposed by that paragraph.

10.3 **Standard of protection:** In fulfilling the obligations in clauses 10.1 and 10.2 each party will as a minimum standard use the same degree of care to avoid disclosure as it uses to protect its own **confidential data**.

10.4 **Disclosure required by law:** If a party is required by law (including by the **Rules**) to disclose any **confidential data** it will immediately, to the extent legally permissible, and prior to such disclosure, advise the other party.

10.5 **Transfer of data:**

Gas Industry Co may at any time during the term of this **agreement** request that the **Provider**, at the **Provider's** own cost, either transfer to Gas Industry Co copies of, or grant Gas Industry Co access to, the **data**, **processed data** or **documentation**.

Upon receipt of such a request from Gas Industry Co, the **Provider** will promptly transfer copies of the **data, processed data** and/or **documentation** to Gas Industry Co in a format(s) reasonably determined by Gas Industry Co.

10.6 **No announcements:** The **Provider** must not make or release public or media statements, or publish material related to this **agreement** or the **services**, without Gas Industry Co's prior written approval (such approval not to be unreasonably withheld).

10.7 **Publication of agreement:** Gas Industry Co will be entitled to **publish** this **agreement** (including the schedules) as required by rule 15 of the **Rules**.

10.8 **Documentation:** The fact that the **documentation** comprises or contains **confidential data** shall not prejudice or limit Gas Industry Co's rights under this **agreement** or the **Registry Development Agreement** or the **Provider's** obligations under this **agreement**.

## 11. BUSINESS CONTINUITY PLANS

11.1 **Business continuity plan:** The **Provider** must comply with the requirements set out in clauses 6.1 and 6.4 of the **non-functional specification** throughout the term of this **agreement**:

11.2 **Invoking the business continuity plan:** Whenever the business continuity plan is invoked, the **Provider** will:

11.2.1 notify Gas Industry Co as soon as possible. Such advice is to include the time of invocation, the reason for invocation, and the estimated time of restoration to business as usual **services**;

11.2.2 provide regular updates, at least once a day, of progress towards restoration while the business continuity plan is invoked;

11.2.3 notify Gas Industry Co as soon as possible after business as usual **services** are restored.

## 12. TERMINATION

12.1 **Immediate termination by Gas Industry Co:** Gas Industry Co may terminate this **agreement** with immediate effect on written notice to the **Provider** if:

12.1.1 the **Provider** ceases, or it becomes apparent that the **Provider** intends to cease, carrying on its business;

12.1.2 the **Provider** passes a resolution to be wound up or goes or is put into receivership, liquidation or statutory management or circumstances arise which entitle a Court or a creditor to appoint a receiver or manager or which would entitle a Court to make a winding up order, or suffers any other form of insolvency administration;

- 12.1.3 the **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 **Provider** becomes a publicly listed company, this clause 12.1.3 does not apply;
- 12.1.4 the **Provider** makes any arrangement for the benefit of its creditors;
- 12.1.5 at any time the limit on the **Provider's** liability to Gas Industry Co specified in clause 14.3 is exceeded; or
- 12.1.6 the **Rules** change so that the registry operator ceases to exist.
- 12.2 **Termination for material breach:** Either party (**non-defaulting party**) may terminate this **agreement** by giving not less than 15 **business days'** notice to the other party (**defaulting party**) if the **defaulting party** commits a material breach, or a series of breaches that when taken together constitute a material breach, of this **agreement** or the **Rules**, and the **defaulting party** does not within 15 **business days** of the **non-defaulting party** requiring it to do so rectify the breach(es), or despite the **defaulting party** remedying the breach(es), the number of breaches causes the **non-defaulting party**, acting reasonably, to lose faith in the **defaulting party's** ability to comply with its obligations in a manner that is substantially compliant with the **Rules** or this **agreement**.
- 12.3 **Provider termination:** The **Provider** may terminate this **agreement** by giving not less than 15 **business days'** notice to Gas Industry Co if Gas Industry Co has not paid the **Provider** the relevant **fees** within one month after the due date for those **fees** provided that:
- 12.3.1 the **Provider** is not in material breach of this **agreement** or the **Rules** which breach remains unremedied;
- 12.3.2 the **Provider** notified Gas Industry Co within 8 **business days** after the due date that Gas Industry Co had not paid the **Provider** the relevant **fees**;
- 12.3.3 the unpaid amount is not disputed by Gas Industry Co; and
- 12.3.4 such notice will not be effective if Gas Industry Co pays the outstanding amount, plus interest in accordance with clause 6.3, before expiry of the 15 **business days'** notice period.
- 12.4 **Accrued rights and liabilities:** Termination of this **agreement** is without prejudice to the rights and liabilities accrued up to and including the effective date of termination.
- 12.5 **Mitigation:** Each of the parties must take reasonable steps to mitigate any claim for loss or damage it may have against the other under or arising out of this **agreement**, howsoever such claim may arise.



12.6 **Survival:** Expiry or termination of this **agreement** does not affect rights and obligations which by their nature survive expiry or termination including those contained in clauses 9, 10, 12.4, 12.5, 13, 14, 15, 16 and 17.

### 13. DISENGAGEMENT SERVICES

13.1 **Disengagement services:** On expiry or termination of this **agreement**, the **Provider** must provide all disengagement services requested by Gas Industry Co or specified in the **non-functional specification** for up to 18 months after expiry or termination, and will reasonably co-operate with Gas Industry Co or Gas Industry Co's nominated new provider (as the case may be) to ensure an orderly transition of the **services** to Gas Industry Co's new provider in a timely fashion with minimal disruption to Gas Industry Co's business and to **participants'** respective businesses. Those disengagement 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 the **agreement** (or a reasonable proportion of those **fees** if only part of the **services** are required). For the purposes of this clause 13.1.1, the reasonable proportion of such **fees** shall reflect:

- (a) the **Provider's** actual costs of continuing to perform the relevant **services** (as revised); plus
- (b) a reasonable profit, consistent with the nature and quantum of fees that would be payable to a provider of services comparable to the **services** (as revised) provided under this **agreement**.

If there is any disagreement between the parties as to the reasonable proportion of such **fees** payable by Gas Industry Co the dispute shall be resolved by mediation and, if necessary, expert determination in accordance with clause 16 (Dispute Resolution) of this **agreement**. Each party agrees to provide to the mediator or expert all information and assistance required for this purpose. Each party will bear an equal share of the costs and expense of the mediation or expert determination. The costs and profit referred to in this clause 13.1.1 will be assessed on a fully transparent, open book basis.

13.1.2 the supply to Gas Industry Co for its ongoing use up to date copies of the **documentation**; and

13.1.3 training for Gas Industry Co and the new provider's personnel in respect of the relevant **services** provided by the **Provider** under this **agreement**.

- 13.2 **Payment:** Gas Industry Co will pay the **Provider** for any disengagement services that are in addition to the **services** being provided to Gas Industry Co prior to termination at the **hourly rates**.
- 13.3 **Data transfer:** Subject to clause 13.1, the **Provider** will, at the **Provider's** own cost, transfer all **data** and **processed data** (in a form reasonably required by Gas Industry Co and in accordance with the **data transfer plan**) that the **Provider** holds as registry operator to Gas Industry Co or if Gas Industry Co requests, to the incoming registry operator, and will provide a certificate to Gas Industry Co confirming that the **data** it has transferred is all the **data** and **processed data** it is required to transfer under this clause 13.3.
- 13.4 **Retention for compliance:** Notwithstanding any obligation on the **Provider** under this **agreement** to transfer **data** and **processed data**, the **Provider** will be entitled to retain a copy of such **data** to comply with any obligations it has at **Law**.
- 13.5 **Data transfer plan:** The parties will negotiate in good faith to agree a data transfer plan (the **data transfer plan**) which sets out the timing and other requirements for the transfer of **data** and **processed data** in accordance with clause 13.2. When determining timing, the parties will take into account the volume of **data** and **processed data** to be transferred.
- 13.6 **Disputes:** If the parties are not able to agree a **data transfer plan** within 20 **business days** after the expiry or termination of this **agreement**, either party may refer the matter to expert determination under clause 16.2 (which determination, notwithstanding clause 16.3, shall be final).
- 13.7 **Co-operation:** The **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**.
- 13.8 **Re-tender:** On request by Gas Industry Co at any time the **Provider** must promptly provide to Gas Industry Co all required information on the **System** and the provision of the **services**, including **documentation**, **business process information** and source and object code to enable Gas Industry Co to prepare and conduct procurement processes in connection with the registry operator and other service provider roles under gas governance arrangements. Such information may include, if requested by Gas Industry Co, the supply to Gas Industry Co for its ongoing use of up to date copies of the **documentation**.
- 13.9 **Non-compete:** On expiry or termination of this **agreement**, the **Provider** shall not enforce against any personnel any provision of any contract with such personnel which would prevent them from ceasing their engagement or employment with the **Provider** following termination or expiry of this **agreement** and entering to any contract (employment or otherwise) with Gas Industry Co or any third party contracted by Gas Industry Co in connection with the **System** or the **services**.

## 14. GENERAL LIABILITY AND INDEMNITY

14.1 **Indemnity:** The **Provider** indemnifies and keeps indemnified Gas Industry Co from and against any loss, claim, demand, damage, cost, expense and liability incurred or suffered by Gas Industry Co:

14.1.1 in respect of damage to property or in respect of personal injury to, or the death of, any person arising out of, or in the course of, the provision of the **services** by the **Provider**, its personnel, agents or subcontractors;

14.1.2 arising from the wilful breach of this **agreement** by acts or omissions of the **Provider**, its personnel, agents or subcontractors; or

14.1.3 arising from the **Provider's** breach of any obligation under clause 10,

except to the extent Gas Industry Co's loss, claim, demand, damage, cost, expense or liability directly resulted from breach of this **agreement** by Gas Industry Co or negligent or wilful acts or omissions of Gas Industry Co, its personnel, agents or contractors (other than the **Provider**).

14.2 **Obligations owed to Gas Industry Co:** The **Provider's** obligations and duties under this **agreement** are obligations and duties owed solely to Gas Industry Co and are not obligations or duties for the benefit of any other person.

14.3 **Provider cap:** Subject to clause 14.4, the **Provider's** liability to Gas Industry Co:

14.3.1 for each claim under or in connection with this **agreement** occurring in any **financial year**, whether in contract, tort (including for negligence), breach of statutory duty or otherwise is limited to \$500,000; and

14.3.2 for all claims under or in connection with this **agreement** in respect of all events occurring in any **financial year**, whether in contract, tort (including for negligence), breach of statutory duty or otherwise is limited to \$1,000,000, 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**.

14.4 **Wilful breach and fraud:** Clause 14.3 does not apply to limit the **Provider's** liability arising from any wilful breach or fraud by the **Provider** or the **Provider's** liability under clauses 9.2, 10 or 14.1, nor does it limit Gas Industry Co's liability to pay any of the **fees** properly due and payable.

14.5 **Relationship to Rules liability:** It is intended that the total liability of the **Provider** in respect of all events occurring in any **financial year** for all breaches of the **Rules** in its capacity as registry operator, and under or in connection with this **agreement**, (with the exception of liability arising from any wilful breach or fraud on the part of the **Provider** or for liability arising under clauses 9.2 or 10 of this **agreement**) will be limited to the amount set out in clause 14.3.2. If the **Provider** incurs any liability

in excess of such limit for all events in any **financial year** (whether in breach of the **Rules** or under or in connection with this **agreement**):

14.5.1 the liability of the **Provider** under this **agreement** will be reduced accordingly; and

14.5.2 Gas Industry Co will refund to the **Provider** any payments already made by the **Provider** to Gas Industry Co in respect of liability under this **agreement** to the extent required to give effect to this clause 14.5.

14.6 **Indirect loss:** In no circumstances will Gas Industry Co be liable to the **Provider**, whether in contract, tort (including negligence) or otherwise, for any loss of profit, loss of revenue or for any indirect or consequential loss arising out of a breach of this **agreement**, or otherwise in connection with this **agreement** (provided that this clause will not limit Gas Industry Co's obligation to pay any **fees** for the **services** which are properly due).

14.7 **Gas Industry Co cap:** The maximum aggregate liability of Gas Industry Co in respect of all claims or liability of Gas Industry Co to the **Provider** for any matter arising under or in connection with this **agreement** (whether based on any action or claim in contract, equity, tort, including negligence or otherwise) in any year is limited to an amount equal to the total **fees** payable by Gas Industry Co in the first 12 months of this **agreement** (and if the liability arises within that first 12 months the total will be calculated on the basis of the average monthly charges multiplied by the balance of the 12 months). This clause 14.7 will not apply to:

- (a) any liability arising for wilful breach or fraud by Gas Industry Co;
- (b) Gas Industry Co's obligation to refund any payments to the **Provider** under clause 14.5; and
- (c) Gas Industry Co's obligation to pay the **fees** for the **services** under clause 6.

## 15. INSURANCE

15.1 **Obligation to insure:** The **Provider** will, from the **commencement date** until at least 2 years following the end of any disengagement period under clause 13, maintain adequate insurance cover (in respect of this **agreement**, its own business, the **infrastructure** and the supply of the **services**) for all normal commercial risks and in respect of any potential liability it may incur under this **agreement** or under the **Rules**, to ensure that any problems encountered by the **Provider** will not result in the disruption of the efficient performance of this **agreement** (except to the extent such cover is not reasonably available in the market). Such insurance will be in a form, and with an insurer, approved by Gas Industry Co, such approval not to be unreasonably withheld, and will be accompanied by a certificate of currency confirming the level of insurance cover

held by the Provider in accordance with clause 15.2. Gas Industry Co may request a copy of such insurance at any time.

- 15.2 **Certificates of insurance:** The **Provider** shall promptly following each annual renewal of its insurance provide to Gas Industry Co a copy of its certificate(s) of insurance in respect of each insurance policy maintained pursuant to this clause 15 in order to establish compliance with clause 15.1.

## 16. DISPUTE RESOLUTION

- 16.1 **Notice of disputes:** The parties agree to use their best endeavours to resolve any dispute which may arise under this **agreement** through good faith negotiations. Either party may provide notice to the other of a dispute arising under this **agreement (disputes notice)**. Except as provided in clause 16.6, no party shall commence any arbitration or litigation in relation to this **agreement** unless it has first invited the chief executive (or equivalent) of the other party to meet with its own chief executive (or equivalent) for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

- 16.2 **Mediation:** Any dispute arising under this **agreement** which cannot be settled by negotiation between the parties pursuant to clause 16.1 within 15 **business days** of the **disputes notice** may be referred by either party to non-binding mediation or, if agreed by the parties, to expert determination. Any mediation shall be held at a location to be agreed by the parties and conducted in accordance with the standard mediation agreement of the Resolution Institute or its successor. If the parties cannot reach agreement as to the identity of the mediator or the expert within 10 **business days**, the mediator or expert, as the case may be, will be appointed at the request of either party by the chairperson or any other equivalent office holder for the time being of the Resolution Institute or its successor. The mediator's or experts costs will be borne equally by the parties. The parties agree that nothing in this clause 16.2 will oblige either party to mediate a dispute for a period exceeding 10 **business days** from the date on which the mediation commences.

- 16.3 **Arbitration:** Any dispute which is not settled pursuant to clause 16.2 within 60 **business days** shall be submitted, by written request of either party, to arbitration to be held in Wellington under the Arbitration Act 1996 before a single arbitrator who will decide the dispute. In the absence of agreement concerning the appointment of an arbitrator within 5 **business days** of referral to arbitration, either party may request for a suitably qualified, independent arbitrator to be appointed:

- 16.3.1 in the case of a dispute as to fees, operating costs or accounting matters, by the President for the time being of Chartered Accountants Australia and New Zealand; or

16.3.2 in all other cases or if the parties do not agree that the dispute relates to fees, operating costs or accounting matters, by the President for the time being of the New Zealand Law Society,

to hear and determine the dispute and every arbitration will otherwise be conducted under and in accordance with the provisions of the Arbitration Act 1996. The arbitrator's costs will be borne equally by the parties.

16.4 **Continued performance:** The parties shall continue to perform their obligations under this **agreement** as far as possible as if no dispute had arisen pending the final settlement of any matter referred to arbitration.

16.5 **Final and binding:** The decision of any arbitrator appointed under clause 16.3 shall be final and binding.

16.6 **Urgent relief:** Nothing in this clause 16 shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

16.7 **Breach of Rules:** Any breach of the **Rules** will be dealt with in accordance with the procedures under the **Compliance Regulations**.

## 17. MISCELLANEOUS

17.1 **Assignment:** Gas Industry Co may assign or transfer any of its rights to the Energy Commission if section 43ZZH of the Act comes into force. The **Provider** must not assign or transfer any of its rights or obligations under this **agreement** without the prior written consent of Gas Industry Co (such consent not to be unreasonably withheld or delayed). A change in the effective control of the Provider is deemed to be an assignment that requires the consent of Gas Industry Co under this clause.

17.2 **Non-solicitation:** Gas Industry Co and the **Provider** agree that, during the term of this **agreement**, neither party will approach the other's employees or contractors who are directly involved in the provision or receipt of the **services** with an unsolicited offer of employment. For the avoidance of doubt, this clause does not prevent either party from publicly advertising employment positions or contract work and then offering employment or contracts to employees or contractors of the other party as a result of such public advertising.

17.3 **Relationship:** The relationship between the **Provider** and Gas Industry Co is that of independent contractor and nothing in this **agreement** will be taken as constituting the **Provider**, or its agents or employees, as agents, employees, joint venturers or partners of Gas Industry Co. Neither party has the power or authority to act for or on behalf of the other party other than as expressly authorised in writing and signed by the authorised representatives of the parties.

17.4 **Reliance:** The **Provider** acknowledges that:

17.4.1 it has entered into this **agreement** in reliance entirely on its own judgment and not on any representation or warranty made or information provided by Gas Industry Co or by any of its officers, employees or agents or any other person in the negotiation of this **agreement**; and

17.4.2 Gas Industry Co has entered into this **agreement** in reliance on the representations in the **Provider's** proposal dated 25 February 2016 and all other representations in writing made by the **Provider** or its officers, employees or agents relating to such proposal or this **agreement**.

**17.5 No third party benefits:**

17.5.1 Only the parties to this **agreement** may pursue any remedies or redress under or in connection with this **agreement**.

17.5.2 However, notwithstanding clause 17.5.1, nothing in this **agreement** will prevent any **participant** or the **Rulings Panel** from pursuing any remedies provided for in the **Act, Compliance Regulations** or the **Rules** in connection with a breach of the **Rules** by the **Provider**.

17.6 **Waiver:** Any failure or delay by any person in exercising any of its rights under this **agreement** will not operate as a waiver of its rights and will not prevent such party from subsequently enforcing such rights or treating any breach by the other party as a repudiation of this **agreement**. Neither party is deemed to have waived any right under this **agreement** unless the waiver is in writing.

17.7 **No amendments:** Except as expressly set out in this **agreement** or the **Rules**, this **agreement** may only be amended in writing and signed by both parties.

17.8 **Entire Agreement:** This **agreement** constitutes the entire understanding and agreement of the parties relating to the matters dealt with in it and supersedes and extinguishes all prior agreements between the parties relating to the matters dealt with in this **agreement**. To avoid doubt, this clause does not limit clause 17.4.2.

17.9 **Notices:** Any notice relating to this **agreement** must be in writing, delivered to the designated address of the person to whom the notice is to be given by hand, pre-paid mail or email to the relevant person at the addresses set out below, or such other address as is specifically designated by a party by notice to the other party in substitution for it. Any such notice is deemed to have been given as soon as it is personally delivered, two **business days** following posting or, if sent by email, when actually received in readable form by the recipient provided that any communication received after 5pm or on a day which is not a **business day** is deemed not to have been received until the next **business day**.

**Gas Industry Co:**

Gas Industry Co  
PO Box 10 646  
Level 8, Todd Building

95 Customhouse Quay  
Wellington

Email: registry@gasindustry.co.nz  
Attention: Senior Adviser, Market Operations

**Provider:**

Jade Software Corporation (NZ) Limited  
PO Box 20152  
Christchurch 8543  
5 Sir Gil Simpson Drive  
Christchurch 8053  
New Zealand

Email: finance1@jadeworld.com  
Attention: The Chief Financial Officer

- 17.10 **Severability:** If any clause or provision of this **agreement** is held illegal or unenforceable by any judgment or award of any arbitrator, court or tribunal having competent jurisdiction, such judgment or award will not affect the remaining provisions of this **agreement** which will remain in full force and effect as if such clause or provision held illegal or unenforceable had not been included in this **agreement**, to the extent permitted by Law.
- 17.11 **Further assurances:** Each party shall, at its own expense, promptly sign and deliver any documents and do all things, which are reasonably required to give full effect to the provisions of this **agreement**.
- 17.12 **Governing law:** This **agreement** is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.



**EXECUTED** as an agreement:

Signed for and on behalf of **Gas Industry Co** by:

---

[name]

---

[role/position]

in the presence of:

---

*Name:*

*Occupation:*

*Address:*

Signed for and on behalf of **Jade Software Corporation (NZ) Limited** by:

---

[Name, position]

in the presence of:

---

*Name:*

*Occupation:*

*Address:*

## SCHEDULE 1

### FEES

1. The **fees** (exclusive of GST) are:
  - 1.1. the monthly fee in paragraph 2; and
  - 1.2. the fees under this **agreement** that are to be calculated in accordance with the hourly rates in paragraph 7.
  
2. The monthly fee:
  - 2.1. Assuming the **infrastructure services** described in paragraph 3 of this schedule, the monthly fee is as follows (the **Monthly Fee**):
    - 2.1.1. if at the **commencement date** of this **agreement** the **Provider** has entered into an agreement with the Electricity Authority to perform the Registry Manager role (the **Registry Manager Agreement**) then until the expiry or termination of the **Registry Manager Agreement**, the monthly fee will be \$20,535.97 per month;
    - 2.1.2. if at the **commencement date** of this **agreement**, the **Provider** has not entered into the **Registry Manager Agreement** , or if the **Registry Manager Agreement** expires or is terminated, then the monthly fee will be \$23,488.47 per month.
  - 2.2. For the avoidance of doubt, if the **Registry Manager Agreement** is assigned or otherwise transferred to a successor to the **Provider** (that is controlled by the **Provider**) or a successor to the Electricity Authority, the monthly fee in paragraph 2.1.1 will apply.
  
3. The following are the specifications for the **infrastructure** to apply in respect of the **Provider's** initial provision of the hosting environment under this **agreement**.

Server Specifications	Quantity	Operating System	vCPUs	Memory
Production Database Server	1	Windows Server	2	14GB
Disaster Recovery Database Server	1	Windows Server	2	14GB
UAT Database Server	1	Windows Server	2	10GB
Production Web Server	1	Windows Server	4	12GB
Disaster Recovery Web Server	1	Windows Server	4	12GB
UAT Web Server	1	Windows Server	2	8GB

Disk and Network Specifications	
Disk	1,699GB

Backup	268GB
Internet Usage	80GB / month
WAN Usage	40GB / month
Web Application Firewall and Ddos protection	Incapsula Enterprise 20 + 1 additional site

Software Specifications	
Complete SFTP Server	Enterprise Distributed Technologies
SFTP Client	WinSCP (GNU General Public Licence)
Jade DirMon - directory monitoring	Jade Software
Winrar	Winrar
PkZip25	PKWARE
OfficeScan Anti-Virus	Trend Micro
SSL Certificate	Comodo

4. The follow are the rates to be used for any future changes to the **infrastructure** specifications for the hosting environment listed in paragraph 3.

Hosting Component Description	Charge per Unit per Month
Server Base Charge (per server)	\$100.00
Virtual CPU (per vCPU)	\$65.00
Memory (per GB)	\$30.00
Disk (per GB)	\$0.25
Backup (per GB)	\$0.30
Internet Bandwidth (per GB)	\$3.00
WAN Bandwidth (per GB)	\$2.00
Incapsula - Enterprise 20	\$825.00
Incapsula – Additional sites	\$82.50

5. **Software maintenance and support costs:** To avoid doubt, the **fees** cover all third party software maintenance and support costs for the **System** (to the extent that those costs are required for the **Provider** to perform its obligations under this **agreement**). The fees for new third party software including updates, provided by the **Provider**

pursuant to a change under clause 7 of the **agreement** shall be passed through to Gas Industry Co at cost.

6. The **fees** will be adjusted on and from each anniversary of the **commencement date** (each a "review date") in accordance with the following formula:

$$d = a * b$$

d =	the adjusted fees;
a =	the current fee
b =	the cumulative % change in the consumer price index from the immediately preceding review date to the most recently reported quarter.

except that if the cumulative % change in the consumer price index from the immediately preceding review date to the most recently reported quarter is negative, in which case  $d = a$  in the above calculation.

7. The hourly rates for chargeable work are as follows:

<b>Resource</b>	<b>Hourly Rate (excl GST)</b>
Project Management / Architect / Consultant / Designer	\$185 ex GST
Development	\$160 ex GST

It is expected that the **Provider** will agree to lower hourly rates for a major project, such as a major variation to the **System** under clause 7 of this agreement. Nothing in this schedule prevents the parties agreeing on lower hourly rates for the above resources or different hourly rates for specialist contractors for a major project.

**SCHEDULE 2**  
**NON-FUNCTIONAL REQUIREMENTS**

**SCHEDULE 3**  
**FUNCTIONAL SPECIFICATION**