

Part H – Clearing and Settlement

1 Introductory Rules

1.1 Contents of part H

The rules in part H concern the processes for the settlement of ex post balances in relation to the sale and purchase of **electricity** under the **rules**. Part H also addresses how contracts for the sale and purchase of **electricity** are formed, the payments to the **clearing manager** for **electricity** purchased by **purchasers** and the payments from the **clearing manager** to **generators** for their supply of **electricity**. The section deals with further payments that may be received or paid by the **clearing manager**, such as **service provider fees**, **ancillary services** costs and the settlement of **hedge settlement agreements** lodged with the **clearing manager**.

1.2 Changing the rules in part H

Generators, purchasers and any other **member** to whom the costs of **ancillary services** are allocated under rule 6 of section IV of part C **are members** of part H. **Ancillary service agents** who are not otherwise **members** may elect to become **members** of part H.

Subject to rule 1.4, the rules in part H can be changed only by a **resolution** of **members** voting in accordance with the process set out in rule 2 of section IV of part A and the voting rights contained in schedule A6, or by the **Board** under rule 1.9 of section IV of part A.

1.3 Fees for part H

The proportion of total fees for part H allocated to each **member** of part H will be equal to the **member's** share of votes allocated under rule 1.7 of schedule A6 as at dates specified under rule 5 of schedule A7.

1.4 Changing the introductory rules

Rule 1 can be changed only in accordance with the process set out in rule 4 of section I of part A.

2 Prudential requirements

2.1 Object and administration of prudential requirements

2.1.1 *Prudential requirements to ensure financial obligations are met*

The intent of the prudential requirements in this rule 2 is to ensure that **purchasers** (and in relation to any obligation to pay for **ancillary services, generators, distributors, grid owners and direct consumers**) can meet their financial obligations under the **rules**.

2.1.2 *Clearing manager to administer prudential requirements*

The **clearing manager** is responsible for administering the prudential requirements set out in this rule 2, both for itself and on behalf of the **system operator** in relation to any obligation to pay for **ancillary services**.

2.2 Purchaser must satisfy prudential requirements

In order to purchase **electricity** under the **rules** each **purchaser** will:

2.2.1 *Maintain an acceptable credit rating*

Maintain an acceptable credit rating in accordance with rule 2.3; or

2.2.2 *Provide cash deposit*

Pay a **cash deposit**, of the amount required in accordance with this rule 2, into the **cash deposit accounts** or to the **clearing manager**; or

2.2.3 *Provide a guarantee or letter of credit*

Procure the provision and maintenance of an unconditional guarantee or letter of credit in favour of the **clearing manager** for the amount required in accordance with this rule 2. The guarantee or letter of credit must be in the form set out in schedule H2 or schedule H3, respectively, and be provided by a bank which maintains an acceptable credit rating in accordance with rule 2.3; or

2.2.4 *Obtain a third party guarantee*

Procure the provision and maintenance of an unconditional third party guarantee in favour of the **clearing manager** for the amount required in accordance with this rule 2 provided the guarantee is in the form set out in schedule H4 and the third party guarantor maintains an acceptable credit rating in accordance with rule 2.3; or

2.2.5 Provide a bond

Procure the provision and maintenance of a security bond in favour of the **clearing manager** for the amount required in accordance with this rule 2 provided the bond is in the form set out in schedule H5 and the surety maintains an acceptable credit rating in accordance with rule 2.3; or

2.2.6 Lodge a hedge settlement agreement

Lodge a **hedge settlement agreement** with the **clearing manager**, for settlement, for the amount required in accordance with this rule 2 where the value of the **hedge settlement agreement** for prudential purposes is determined by the **clearing manager**. The **hedge settlement agreement** must be lodged in the form set out in schedule H6 together with any other information reasonably requested by the **clearing manager** in the format prescribed by the **clearing manager** and notified to the **members** from time to time; or

2.2.7 Provide a mixture of security

Provide any combination of the securities listed in rules 2.2.2 to 2.2.6, or any like or similar securities as determined by the **Board** either generally or specifically at its absolute discretion from time to time.

2.3 Acceptable credit rating**2.3.1 Definition of acceptable credit rating**

For the purposes of rules 2.2.1, 2.2.3 to 2.2.5 and 3.1, an acceptable credit rating means that a **purchaser, distributor, grid owner, surety, bank** or guarantor (as the case may be), must carry a long term credit rating of at least A3 (Moody's Investor Services Inc.), A- (Standard & Poors Ratings Group), or B+ (AM Best) and must not be subject to negative credit watch or any similar arrangement by any of those agencies.

2.3.2 Evidence of acceptable credit rating

Each **purchaser, distributor, grid owner, surety, bank** or guarantor (as the case may be) will provide such evidence of the acceptable credit rating, as defined in rule 2.3.1, as the **clearing manager** may from time to time reasonably require.

2.3.3 Acceptable credit rating is sufficient security

Where a **purchaser distributor** or **grid owner** has an acceptable credit rating the **clearing manager** shall not require that person to provide any additional security.

2.4 Level of security

Where any **purchaser, generator, distributor or grid owner** is required to provide a **cash deposit**, guarantee, letter of credit, bond or **hedge settlement agreement** to satisfy any prudential requirements in rule 2.2 or elsewhere, the minimum amount of the **cash deposit**, or minimum amount which may be payable pursuant to the guarantee, letter of credit, bond or **hedge settlement agreement** will be provided in accordance with the following formulae:

2.4.1 Costs of energy purchases

average peak season day * number of days in settlement period *
adjustment factor

Where:

average peak season day is the daily average amount paid by the **purchaser** for **electricity** as calculated, other than as provided for in rules 2.5 and 2.6, as the payment referred to in rule 8.6.1, inclusive of **GST**, in the **peak month** of the same **season** of the preceding year and subtracting (if applicable) the daily average amount payable to the **purchaser** in its capacity as a **generator** for **electricity** as recorded on the pro forma invoices issued to the **purchaser** in accordance with rule 9.11, inclusive of **GST**, in the **peak month** of that **season** of the preceding year as the **season** in which the level of security is calculated.

peak month is the month during the **season** in which the **purchaser** paid the largest net amount, in monetary terms, for **electricity** once all amounts received by it as a revenue from sales of **electricity** in its capacity as a **generator** (if applicable) have been deducted from the amounts paid by it.

season means either summer or winter where winter means the **season** where the **billing period** occurred in the months of May to September and summer means the **season** where the **billing period** occurred in the months of October to April.

adjustment factor is a sum equal to the average of the **final prices** for each **trading period** for each **reference point** during the two complete **billing periods** immediately preceding the month in which the level of security is calculated, divided by the average of the **final prices** for each **trading period** for each **reference point** during the **season** of the preceding year which includes the first of the two **billing periods** used in its calculation.

2.4.2 Cost of ancillary service purchases

2.4.2.1 Black start and over frequency

$$\frac{\$ \text{ total fixed annual fee } \times \text{ number of days in settlement period}}{365}$$

365

2.4.2.2 Voltage support

$$\frac{\text{Average \$ paid for voltage support in previous 3 months} \times \text{number of days in settlement period}}{90}$$

90

2.5 Clearing manager to calculate new level of security for purchasers

When a person is approved for admission as a new **purchaser** and purchases **electricity** under the **rules** then, in order for the **clearing manager** to calculate the requisite level of security pursuant to rule 2.4 for the first year, subject to any reassessment of the security level pursuant to the **rules**, that new **purchaser** will submit to the **clearing manager** either:

2.5.1 *Historical purchase records*

Historical records of the quantity of **electricity** purchased or sold by that person prior to that person becoming a **purchaser**; or

2.5.2 *Otherwise, a business plan*

In the absence of records satisfying the requirements of rule 2.5.1, a bona fide business plan prepared in good faith to permit a realistic estimate of the **purchaser's average peak season day** as defined in rule 2.4. Such business plan will include certified copies of any contracts for the physical purchase or sale of **electricity** for the forthcoming **season** by that person in its capacity as a **purchaser** or **generator** with a party other than the **clearing manager**.

2.6 Price to be estimated by clearing manager

Where the **clearing manager** has received information under rule 2.5, the **clearing manager** will estimate price, subject to rule 2.8, based on the prices prevailing in the previous year for the **peak month** that the new **purchaser** will pay the most, in monetary terms, for **electricity** as shown by the information submitted under rule 2.5.

2.7 Substantial change of purchaser's business

When a **purchaser** gives a notice in accordance with rules 4.2 or 4.3 or if the **clearing manager** otherwise becomes aware of a change of the types referred to in rules 4.2 or 4.3, the **clearing manager** will expeditiously review and, if appropriate, adjust the level of security required to be provided by that **purchaser** in accordance with this rule 2.

2.8 Substantial prolonged change in price of electricity

When the **clearing manager**, after monitoring the changes in price, in accordance with rule 4.1, is satisfied that:

2.8.1 Price significantly reduced or increased for a season

The price of **electricity** for a **season** beginning in the current calendar year will be overall significantly reduced or increased compared to the price of **electricity** for that **season** in the previous year; and

2.8.2 Price significantly reduced or increased compared to peak month

The reduced or increased **seasonal** price of **electricity** will consequently significantly reduce or increase the price of **electricity** as compared to the price in the **peak month** for the relevant **season**;

then the **clearing manager** will expeditiously review the level of security required to be provided by **purchasers** in accordance with this rule 2.

2.9 Change in security level: notification and time of payment

If the **clearing manager**, following a review of a **purchaser's** security level pursuant to rules 2.7 or 2.8, considers that the level of security should be increased or decreased, the **clearing manager** will immediately notify the **purchaser** of its decision and the grounds for that decision. The **clearing manager** or the **purchaser**, as the case requires, will take all actions necessary to satisfy the requirement for the increase or decrease in the level of security notified by the **clearing manager**, within five **business day's** of notification under this rule 2.9. Refunds of **cash deposits** and reductions of guarantees, letters of credit and bonds will be made in accordance with rule 2.13.

2.10 Bi monthly changes in security levels: notification and time of payment

During each month prior to 1 January, 1 March, 1 May, 1 July, 1 September and 1 November in each year the **clearing manager** will calculate the level of security required for the two month period commencing on that date and will notify each **purchaser** of the new level no later than the second **business day** after the issuance of invoices to **purchasers**. Any increase or decrease of security will occur on the fifth **business day** of the two-month period the subject of the relevant notice from the **clearing manager**.

2.11 Clearing manager to calculate level of security for new distributor or grid owner

When a person is admitted as a new **distributor** or **grid owner** then the **clearing manager** will calculate the requisite level of security in conjunction with the **system operator**.

2.12 Change in form of security

2.12.1 *Change of security by purchaser, distributor or grid owner*

If a **purchaser, distributor or grid owner** elects to substitute a form of security or a combination of securities (which, in either case, would satisfy the requirements of rules 2.2.1 to 2.2.7) for the existing form of security or combination of securities, provided in accordance with this rule 2, then the **purchaser, distributor or grid owner** will notify the **clearing manager** of its intention, at least, two **business days** prior to the change occurring. Any resulting refund of a **cash deposit** will, or any resulting release or replacement of a guarantee, letter of credit, bond or **hedge settlement agreement** provided in accordance with this rule 2.12, will, provided the **purchaser, distributor or grid owner** has not committed an **event of default**, and upon confirmation satisfactory to the **clearing manager** that an alternative suitable security has, or securities have, been provided which satisfy the requirements of rules 2.2.1 to 2.2.7, take place in accordance with rule 2.12.

2.12.2 *Change in security by generator*

If a **generator** elects to cancel the lodgement of any **hedge settlement agreement** with the **clearing manager** then the **generator** will notify the **clearing manager** of its intention at least two **business days** prior to the cancellation taking effect. Following such notice of cancellation the **clearing manager** may require the **purchaser** to provide alternative suitable security or securities to satisfy the requirements of rules 2.2.1 to 2.2.7. The **purchaser** will satisfy any requirement made by the **clearing manager** pursuant to this rule 2.12.2 for security by 1600 hours on the business day following the business day on which the request for such security is made.

2.12.3 *Deemed change of security*

Where the provider of a guarantee, letter of credit, bond or **hedge settlement agreement** makes a payment to the **clearing manager** in order to be released from its obligations pursuant to the guarantee or letter of credit, bond or **hedge settlement agreement** such payment will be deemed to constitute a **cash deposit** provided in substitution for the letter of credit, guarantee, bond or **hedge settlement agreement** (as the case may be) and the **rules** will apply accordingly.

2.13 Refunds and reductions

If a **purchaser, distributor or grid owner** has not committed an **event of default** and elects to:

2.13.1 *Refund of cash deposits*

Decrease its **cash deposit** as a consequence of a review pursuant to rules 2.7, 2.8 or 2.10, or elects to decrease or withdraw its **cash deposit** as a consequence of a decision made in accordance with rule 2.12, a refund of

part or all, as the case may be, of the **cash deposit** will be made by the **clearing manager** from the **purchaser's, distributor's or grid owner's cash deposit** to a bank account nominated by the **purchaser, distributor or grid owner** on the **business day** following the day on which the **clearing manager** reached a decision to refund; or

2.13.2 *Reduction of guarantee, letter of credit, bond or hedge settlement agreement*

Decrease the level of its guarantee, letter of credit, bond or **hedge settlement agreement** as a consequence of a review pursuant to rules 2.7, 2.8, 2.10 or 2.12, then a guarantee, letter of credit or bond for the lesser amount which satisfies the requirements of rule 2.2 may be substituted for the existing guarantee, letter of credit, bond or **hedge settlement agreement**; or

2.13.3 *Return of cash deposit guarantee, letter of credit, bond or hedge settlement agreement on resignation*

Resign, as a **member**, then once all amounts that is owes (whether such amount became owing in its capacity as a **purchaser, distributor or grid owner** or otherwise) under the **rules** have been paid the **clearing manager** within one **business day** will return to the **purchaser** all remaining cash deposits guarantees, letters of credit or bonds held by it; or

2.13.4 *Cancellation of hedge settlement agreement*

Cancel the arrangements for settling a **hedge settlement agreement**, lodged with the **clearing manager** for the purposes of satisfying prudential requirements under this part H, for any subsequent **trading days** as a consequence of a review pursuant to rules 2.7, 2.8, 2.10 or 2.12, then a **hedge settlement agreement** for a lesser amount or any other form of security specified in rule 2.2, which satisfies the requirements of rule 2.2 may be substituted for the existing **hedge settlement agreement**.

2.14 Dispute as to security level referred to Rulings Panel

If the **purchaser, distributor or grid owner** wishes to dispute a decision of the **clearing manager** made pursuant to rules 2.7, 2.8, 2.9 or 2.10, it may refer the matter to the **Rulings Panel**. Until such time as the **Rulings Panel** makes a decision in favour of the **purchaser, distributor or grid owner**, the **purchaser, distributor or grid owner** will comply with the relevant decision of the **clearing manager**.

2.15 Rulings Panel may order refund

Where the **Rulings Panel** considers that the **clearing manager** should have ordered that a part or a greater part of a **cash deposit** should have been refunded, the **clearing manager** will refund the appropriate amount of the **cash deposit** within one **business day** of the **Rulings Panel's** decision.

3 Cash deposits to be held on trust

3.1 Cash deposit accounts to be established by clearing manager

The **clearing manager** will establish, in its name, two or more interest bearing **cash deposit accounts** into which will be paid the **cash deposits** paid to it. The **cash deposit accounts** will be held with **banks** which have and maintain an acceptable credit rating in accordance with rule 2.3. Such **cash deposit accounts** must be with more than one such bank. All cash deposit accounts will be clearly identified as such and will be entirely separate from the **operating account** and any other **bank** account of the **clearing manager**. The **clearing manager** will obtain acknowledgement from each such **bank** that the **cash deposits** are held on trust in the **cash deposit accounts** for the beneficiaries referred to in rule 3.3 and that the **bank** has no right of set-off or right of combination in relation to the **cash deposits**.

3.2 Cash deposits to be paid into cash deposit accounts

All **cash deposits** received by the **clearing manager** will be paid by the **clearing manager** forthwith into the **cash deposit accounts**. Each **cash deposit** will be held equally between **cash deposit accounts**.

3.3 Cash deposits to be applied subject to conditions

The **clearing manager** will hold each **cash deposit** in the **cash deposit accounts** upon trust for **generators, purchasers, service providers**, and other providers of **ancillary services** to be applied as follows:

3.3.1 *In event of default cash deposit transferred to operating account*

Following any **event of default**, the **clearing manager** will transfer to the **operating account** such part of the defaulter's **cash deposit** as is necessary or available in order to satisfy (to the extent possible) any amounts which may be due and owing by the defaulter to the **clearing manager** under the **rules**. **Cash deposit accounts** will be debited on a pro rata basis;

3.3.2 *The rights of purchaser*

3.3.2.1 Excess cash deposit repaid if no event of default

If there has been no **event of default**, the **purchaser, distributor or grid owner** will be entitled to be paid any excess **cash deposit** required to be repaid to it in accordance with rules 2.13, 5.7, 5.9 or 5.12;

3.3.2.2 Balance repaid

The balance of the **purchaser's, distributor's or grid owner's cash deposit**, if any, will be paid to the **purchaser, distributor or grid owner**, in accordance with rule 3.8, if the **purchaser, distributor or grid owner** ceases to be a **member** and the **clearing manager** has advised that it is satisfied that the **purchaser, distributor or grid owner** has met all of its financial obligations under part H. For the avoidance of doubt, until such time that such financial obligations are satisfied, the **purchaser, distributor or grid owner** will not be entitled to receive back any part of its **cash deposit**, irrespective of whether the **purchaser, distributor or grid owner** is in liquidation, receivership, or subject to statutory management or other analogous situation.

3.4 Interest will be earned on cash deposits

Subject to rules 3.3.1 and 3.6, a **purchaser, distributor or grid owner** will be entitled to the interest earned in accordance with rule 3.5 on its **cash deposit**. If a **purchaser, distributor or grid owner** does not wish the interest to accumulate in the **cash deposit accounts**, then the **clearing manager** will, at the request of the **purchaser, distributor or grid owner**, and if the **purchaser, distributor or grid owner** has not committed an **event of default**, pay such interest (less any deduction for resident withholding tax) within two **business days** of the end of the month to a bank account nominated by the **purchaser, distributor or grid owner** for this purpose.

3.5 Interest will accrue daily

Interest on **cash deposits** will accrue daily and be calculated at the **cash interest rate**.

3.6 Fees and taxes payable by purchasers, distributors and grid owners

A **purchaser, distributor or grid owner** is liable to reimburse the **clearing manager** for all bank fees in relation to its **cash deposit**, and any taxes which may from time to time be imposed either on its **cash deposit** or interest earned on such **cash deposit**. Such payments will be deducted by the **clearing manager** from any amounts paid to the **purchaser, distributor or grid owner** under rule 3.4, however, if, at the end of the month, any such amount payable to a **purchaser, distributor or grid owner** is less than the payments owed by that **purchaser, distributor or grid owner** under this rule 3.6, then the shortfall will be invoiced in accordance with rule 8.1.

3.7 Clearing manager will issue trust account statements each month

Each month, the **clearing manager** will issue or procure the issue of statements to each **purchaser, distributor or grid owner** which has provided a **cash deposit** regarding the balance of its **cash deposit**.

3.8 Refund of balance of cash deposit

Within one **business day** of the conditions in rule 3.3.2.2 being satisfied in respect of any **purchaser, distributor or grid owner**, the **clearing manager** will refund to the **purchaser** the remaining balance of that **purchaser's, distributor's or grid owner's cash deposit**. Refunds will be made to a bank account nominated by the **purchaser, distributor or grid owner** for this purpose.

4 Monitoring by clearing manager

4.1 Clearing manager will monitor price

The **clearing manager** will monitor the price of **electricity** in respect of the relevant **season** for the current year in relation to the price of **electricity** for that **season** in the previous year for the purpose of rule 2.8, and the level of **ancillary service** obligations in conjunction with the **system operator**.

4.2 Purchasers will provide information to clearing manager

Each **purchaser** will provide the following information to the **clearing manager** immediately upon the **purchaser** becoming aware of the situation:

4.2.1 *Substantial increase or decrease in size of business*

Any significant changes to that **purchaser's** business, including a merger or acquisition, loss or gain of a major customer, or sale or purchase of assets, which would significantly affect the quantity of **electricity** purchased or generated by that person in its capacity as a **purchaser or generator** over the course of any **billing period**;

4.2.2 *Any changes or likely changes to a credit rating*

Any change or likely change to that **purchaser's** credit rating (where that **purchaser** has a credit rating), regardless of whether or not that **purchaser** is relying on a credit rating as a prudential requirement in terms of rule 2.2; and

4.2.3 *Changes relating to other forms of security*

Where a letter of credit, guarantee or bond is provided, or **hedge settlement agreement** is lodged, in respect of that **purchaser** in accordance with rule 2:

4.2.3.1 Change to credit rating

Any change or likely change to the credit rating of the provider of such guarantee, letter of credit or bond such that the provider's credit rating would, as a result, not be an acceptable credit rating as defined in rule 2.3;

4.2.3.2 Enforceability of a guarantee, letter of credit or bond or hedge settlement agreement

Any claim by the provider of such guarantee, letter of credit, bond or **hedge settlement agreement** that the guarantee, letter of credit, bond or **hedge settlement agreement** provided has ceased to be valid and enforceable;

4.2.4 *Any other information*

Any other information which the **clearing manager** or the **Rulings Panel** may from time to time reasonably require and request.

4.3 Ancillary service payers will provide information

Each person that is liable to pay for any **ancillary services** will provide the **clearing manager** with information about any circumstance where it has caused an **under-frequency** event, immediately upon becoming aware of that circumstance.

4.4 Adverse information will be notified in advance

If, at any time, any person reasonably believes that its financial position is likely to be materially adversely affected such that its ability to purchase **electricity** or **ancillary services** will be consequently affected, that person must notify the **clearing manager** of this fact immediately.

4.5 Clearing manager will keep information confidential

The **clearing manager** will keep all information received by it pursuant to rules 4.2, 4.3 and 4.4 confidential and that information will not be disclosed to any other person other than with the written consent of the person who provided it which provided the information except where that information is required to be disclosed to or by the **Rulings Panel**.

5 Additional security

5.1 Clearing manager may assess a requirement for additional security

If the **clearing manager** is of the reasonable opinion that circumstances exist such that any current level of security provided pursuant to rule 2 is, or is likely to be, inadequate for the current **billing period** or the next **billing period**, then the **clearing manager** will review and, if appropriate, increase the amount of security that is required. Such increased amount will be an additional security which will be assessed and reviewed in accordance with this rule 5 and be treated separately from any review and increase of the base level of security in accordance with rule 2. Factors which the **clearing manager** will consider in determining the amount by which the security is to be increased include:

5.1.1 Information provided

Information received from any **purchaser generator** or any person that is liable to pay for **ancillary service**, in accordance with rules 4.2, 4.3 and 4.4;

5.1.2 Quantities of electricity purchased or generated

Changing quantities of **electricity** being purchased or generated by that person in its capacity as a **purchaser** or **generator** pursuant to the **rules** as compared to the quantity purchased or generated in the previous **billing period** or to the quantity calculated in accordance with rules 2.4 or 2.5, as the case may be;

5.1.3 Price levels

Any significant change in **electricity** price levels;

5.1.4 Costs of ancillary services

Any significant increase in the costs of **ancillary services** allocated under rule 6 of section IV of part C.

Notwithstanding how the base level of security is calculated under rule 2, such increased amount may also include an amount to cover any amount a **purchaser** is liable to pay pursuant to any **hedge settlement agreement** or **hedge settlement agreements** lodged with the **clearing manager** and any amount a **generator** is liable to pay as the cause of an **under frequency event**. Further, if a **generator** is liable pursuant to any **hedge settlement agreement** or as the cause of an **under frequency event** and any other liabilities it has incurred or amounts it owes under these **rules** to pay more to the **clearing manager** for a **billing period** than it is to be paid under these **rules** for that **billing period**, that **generator** is deemed to be a **net purchaser** and may be called upon by the **clearing manager** to provide security under rule 2.

5.2 Clearing manager may a requirement for new security from generators

If the **clearing manager** is of the reasonable opinion that circumstances exist such that any **generator** will or is likely to incur any liability in relation to any **ancillary service** for the current **billing period** or the next **billing period** that will or is likely to exceed the amount that will be payable to that **generator** in that **billing period**, then the **clearing manager** may require that **generator** to provide security. In forming that opinion the **clearing manager** will consider any significant cost of **ancillary services** allocated to that **generator** under rule 6 of section IV of part C.

5.3 Clearing manager to report weekly

Each week the **clearing manager** will provide:

5.3.1 *Individual report to payers*

Each person who is liable to make a payment for the purchase of electricity on **ancillary services** with a report detailing the amount estimated by the **clearing manager** to have been spent by that person on **electricity**, or allocated in relation to **ancillary services**, during the current **billing period** in relation to its current level of security and the amount of gross revenue from sales of **electricity** estimated by the **clearing manager** to have been received by that person in its capacity as a **generator** (if applicable). The report will also state whether the **clearing manager** considers that, in its opinion, an adjustment to the current level of security or any new security is likely within the next week and also whether an adjustment is likely for that particular **season** or **billing period**. The **clearing manager** will summarise the grounds for its opinion in the weekly report; and

5.3.2 *Summary report to sellers*

Provide each **generator** and other **ancillary service agent** with a report containing a summary of the position of payers. This report will not identify any individual payer unless identification is authorised by the **Board**. Each report will include:

5.3.2.1 Reassessment of primary security level

Information of any increased or decreased levels of security as a consequence of a review pursuant to rules 2.7 or 2.8, provided that, in the case of a decrease, the payer elects to withdraw the refund or reduce the amount value of its guarantee, letter of credit, bond or **hedge settlement agreement**;

5.3.2.2 Information authorised to be published by the Board

Any information relevant to the behaviour of any payer that has been authorised to be **published** by the **Board**;

5.3.2.3 Additional security

Notice of the amount of any new or additional security required by the **clearing manager** or additional security no longer required by the **clearing manager**, pursuant to rules 5.7, 5.9 and 5.12; and

5.3.2.4 Event of default

Notice of the occurrence of an **event of default** in relation to a payer.

5.4 **Clearing manager may make a call**

Once the **clearing manager** has established the amount of new security or by which any level of security is to be increased pursuant to rule 5.1, the **clearing manager** will give written notice to the person who is obliged to provide it of the requirement for the

new or additional security (a “**call**”). In making such a **call**, the **clearing manager** will set out the grounds upon which the **clearing manager** has based its decision to make the **call**. Any change in the form of security provided as additional security will be made in accordance with rule 2.12.

5.5 Calls must be met

In meeting any **call** made pursuant to rule 5.4, a provider of security will satisfy the requirement for additional security by 1600 hours on the fifth **business day** following the **business day** on which the **call** was received.

5.6 Failure to meet a call shall be an event of default

Failure to satisfy a **call** in accordance with rule 5.5 shall constitute an **event of default**.

5.7 Clearing manager will reduce security at its discretion

The **clearing manager**, if it considers that the level of any new or additional security obtained in accordance with this rule 5 should be reduced and provided that the person who provided the security has not committed an **event of default** which has not been remedied, will notify the person that it may, if it so elects, receive a refund, in the case of a **cash deposit**, or reduce the amount payable pursuant to the guarantee, letter of credit or bond. If the person wishes to receive a refund of the **cash deposit**, the **clearing manager** will, subject to rule 3.3.2, refund from that person’s **cash deposit** the additional security, either in whole or part, as the **clearing manager** considers appropriate. If the amount payable pursuant to a guarantee, letter of credit or bond is to be reduced, then a guarantee, letter of credit or bond, which satisfies the requirements of rules 2.2.1 to 2.2.7 for the lesser amount may be substituted for the existing guarantee, letter of credit or bond.

5.8 Provider of security may request a review

Notwithstanding rule 5.7, any person who has provided security to the **clearing manager** under rule 5 may, at any time, request the **clearing manager** to review the level of that security. The applicant will specify the grounds upon which it believes that the amount is either no longer necessary or should be reduced. Until such time as the **clearing manager** makes a decision in favour of the applicant, the applicant will meet the **call** made in accordance with rule 5.4.

5.9 Clearing manager may reduce level of security

If the **clearing manager**, in considering a review requested pursuant to rule 5.8, is of the opinion that the security provided under rule 5 should be reduced, either in whole or in part, and provided that the person who provided the security has not committed an **event of default**, then the **clearing manager** will notify the person of its decision. In the case of a reduction of a cash deposit, the **clearing manager** will make the appropriate refund, subject to rule 3.3.2, from that person’s **cash deposit** to a bank account, nominated by the person, within one **business day** of reaching this decision to refund.

5.10 Clearing manager may refuse reduction

If the **clearing manager** is of the opinion that any security (or any part thereof) provided by any person under rule 5 should not be reduced, it will notify the applicant of its decision and the grounds for that decision.

5.11 Dispute as to reduction referred to the Rulings Panel

If any person wishes to dispute the decision of the **clearing manager** made pursuant to rule 5.8, it may refer the matter to the **Rulings Panel**.

5.12 Rulings Panel may order refund

Where the **Rulings Panel** considers that either the whole or part of any **cash deposit** provided as security under rule 5 should be refunded, the **clearing manager** will refund the appropriate amount within one **business day** of the **Rulings Panel's** decision.

6 Formation of contracts for the sale and purchase of electricity

6.1 Generators have a contract to be paid when injection occurs

Each **generator** will supply to the **clearing manager** and the **clearing manager** will purchase from that **generator**, the **electricity** generated by that **generator**, injected during a **trading period** through a **point of connection** with the **grid** and reconciled in accordance with the **rules**. The price payable by the **clearing manager** for such **electricity** will be the **final price** for that **trading period** relevant to that **point of connection** and any **constrained on compensation** payable in respect of that **trading period**. The consideration for supply of **electricity** by the **generator** will be determined by the amount paid by the **clearing manager** to the **generator** in accordance with rule 5.3.

6.2 Purchasers have a contract to pay when offtake occurs

Each **purchaser** will purchase from the **clearing manager** and the **clearing manager** will sell to that **purchaser**, the **electricity** taken by that **purchaser** during a **trading period** through a **point of connection** with the **grid** and reconciled in accordance with the **rules**. The price payable by the **purchaser** for such **electricity** will be the **final price** for that **trading period** relevant to that **point of connection** and any **constrained on compensation** owing in respect of that **trading period**.

6.3 Setting price and quantity

The quantity of **electricity** either bought by a **purchaser** or sold by a **generator** pursuant to rule 6.1 or 6.2 will be determined in accordance with rule 11 of section V of part G, the **final price** will be determined in accordance with rule 3 of section IV of part G and **constrained on compensation** will be calculated in accordance with rules 4 and 5 of section IV of part G.

7 Notification of certain contracts

7.1 Generators and purchasers may make arrangements to offset payments to and from the clearing manager

Each **generator** that is party to a trading arrangement to offset payments to and from the **clearing manager** shall notify the **clearing manager** of all the relevant terms of that trading arrangement required by the **clearing manager** in order to enable the **clearing manager** to calculate:

7.1.1 *Amount deductible from payment to the generator*

The amount to be deducted from the payment made by the **clearing manager** to the **generator** for electricity injected by that **generator** in any given **trading period**; or

7.1.2 *Amount payable to the clearing manager*

Where the **generator** fails to inject **electricity**, or injects less **electricity** in any **trading period** than it previously notified, the amount which that the **generator** must pay under that trading arrangement.

7.2 Trading arrangements may be between multiple generators and purchasers

A trading arrangement notified under rule 7.1 may be between multiple **generators** and multiple **purchasers**. Any **generator** that is a party to a trading arrangement involving multiple **generators** or **purchasers** must notify the **clearing manager** of the relevant terms of that trading arrangement as required by rule 7.1.

7.3 Payments to clearing manager under trading arrangements

The **generator** may elect to fulfil its payment obligations calculated in accordance with rule 7.1.2 by:

7.3.1 *Making payment to the clearing manager*

Making a payment directly to the **clearing manager** in order to satisfy the trading arrangement; or

7.3.2 *Buying an equivalent amount of electricity*

Buying an amount of **electricity** from the **clearing manager** equal to its liability under the trading arrangement; or

7.3.3 *Providing the clearing manager a guarantee*

By guaranteeing that the **purchaser** will pay the **clearing manager** an amount equal to its liability under the trading arrangement; or

7.3.4 *Alternative Means*

Reaching an agreement with the **clearing manager** or an alternative means to satisfy its liability under the trading arrangement.

7.4 **Purchasers liability to be adjusted by clearing manager**

Where the **purchaser** is party to a trading arrangement notified to the **clearing manager** under rule 7.1, the **clearing manager** must adjust the **purchaser's** liability to the **clearing manager** under the **rules** according to the terms of that trading arrangement and the liability of any **generator** that follows from the adjustment of the liability of any **purchaser** under this rule.

7.5 **Costs**

All the costs relating to any trading arrangement under this rule 7 will be borne by the parties to those arrangements.

8 **Invoices to and payments by payers**

8.1 **Issue of invoices**

8.1.1 *To purchasers of electricity*

Two **business days** after the **clearing manager** receives **reconciliation information** from the **reconciliation manager**, in accordance with rule 11.2.3 of section V of part G, the **clearing manager** will issue to each **purchaser** an invoice in respect of the **trading period** of the **billing period** to which the **reconciliation information** applies.

8.1.2 *To payers for ancillary services*

Two **business days** after the **clearing manager** receives information from the **system operator** in relation to the costs of **ancillary services**, the **clearing manager** will issue each person to whom such costs are allocated an invoice in respect of the **billing period** to which the information applies.

8.1.3 *To payers of member fees*

No less than [ten] **business days** before payment is due, the **clearing manager** will issue to each **member** to whom fees are allocated an invoice in respect of the **billing period** to which the fees apply.

8.2 Payment of invoices

8.2.1 *Payment on 20th calendar day*

Subject to rule 8.5, for each **billing period**, payment of invoices issued in accordance with rules 8.1 and 8.6 will be made by each payer in **cleared funds** into the **operating account** by 1600 hours on the 20th calendar day of the month following the **billing period** in respect of which the invoice was issued. If that date is other than a **business day**, then payment must be made by 1600 hours on the next **business day** following. If the **clearing manager** does not issue an invoice within two **business days** of receiving **reconciliation information** from the **reconciliation manager**, or the invoice is delayed for any other reason, then payment will, if the payer so elects, be delayed for a period corresponding to the period of delay in the issue of the invoice. In the case of a late invoice, the **clearing manager** will notify the payer of the new payment date.

8.2.2 *Payment may not be allocated other than in accordance with rules*

The allocation by the **clearing manager** of any payment received from a payer in respect of an invoice will be dealt with in accordance with rule 9.4. Each payer agrees that it will not be entitled to direct the **clearing manager** to apply any funds paid in respect of an invoice other than in accordance with rule 9.4 and to the extent to which a payer may give such a direction, the **clearing manager** will not be bound by it.

8.3 Clearing manager will re-issue invoice where dispute resolved immediately

Where there is a dispute in relation to an invoice issued to a payer in accordance with rule 8.1 but the dispute is resolved prior to the 16th calendar day of the month following the **billing period** in respect of which the invoice was issued, then the **clearing manager**, if required, will issue a new invoice in replacement of the initial invoice. Payment of this new invoice will be made by 1600 hours on the 20th day of the month following the **billing period** in respect of which the invoice was issued, being within the same time period as allowed for payment of the initial invoice and will be paid in the same manner as provided for in rule 8.2.

8.4 Failure to pay invoice amount

Failure of a payer to pay the full amount stated in its invoice, in **cleared funds**, being the invoice issued under rule 8.1 unless replaced by an invoice issued under rule 8.3, by 1600 hours on the due date will constitute an **event of default**.

8.5 Where money is owed to a purchaser then deemed to be a generator

Where a **purchaser** is issued with an invoice by the **clearing manager** and the total sum of the items specified in that invoice is a credit such that the **clearing manager** is obliged to pay that total sum to the **purchaser**, the **purchaser** will, for the purpose of rules 8 and 9 only, be deemed to be, in relation to that invoice, a **generator**. Rules 8

and 9 will, therefore, apply to the **purchaser** as if it were a **generator** for the purposes of issue and payment of the invoice.

8.6 Content of invoice

Invoices issued to payers in accordance with rule 8.1 will specify the following, where relevant:

8.6.1 *Settlement of purchase of electricity*

Payment for the contracts formed in accordance with rule 6 as determined by the following formula:

$$Q_f * P_f$$

where:

Q_f = the **final quantity of electricity** purchased at the relevant **grid exit point** obtained from **reconciliation information** for a **trading period** of the **billing period**; and

P_f = the **final price** at that **grid exit point** for that **trading period** of the **billing period**;

8.6.2 *Constrained on compensation*

The amount to be debited for **constrained on compensation** calculated in accordance with rule 5.5 of section IV of part G;

8.6.3 *Washup*

The sum of the **washup** amount and any interest payable on that amount to be credited or debited in accordance with rule 12 as a result of the **clearing manager** receiving corrected information in accordance with rules 13.2 of section V of part G or rule 11.5 of this part H;

8.6.4 *Service provider, principals and other persons charges*

The fees and charges of each **service provider** or former **service provider**, each **principal** and the **Board** where that fee or charge is to be invoiced by the **clearing manager** in accordance with schedule A7 of part A;

8.6.5 *Auction revenue*

The **auction revenue** calculated in accordance with rule 1.6 of section VI of part I.

8.6.6 *Ancillary services costs*

The **ancillary services** pursuant to rule 6 of section IV of part C;

8.6.7 Other costs

All other charges, fees, interest payments, levies and taxes which may be from time to time payable, either at law or as imposed by the **rules**, individually itemised;

8.6.8 Hedge settlement agreement settlement amount

The amount to pay, or be paid, as a result of the settlement for that **billing period** of any **hedge settlement agreements** lodged with the **clearing manager**.

8.6.9 GST

The amount of goods and services tax payable. **GST** calculated in accordance with the provisions of the Goods and Services Tax Act 1985 will be charged on each supply made pursuant to the **rules**;

8.6.10 Total sum

The total sum of the relevant items listed in rules 8.6.1 to 8.6.9.

8.7 Procedure for invoice distribution

The **clearing manager** will comply with the following procedure when issuing invoices pursuant to rules 8.1 and 9.1. Proof of dispatch by the electronic facility contained in the **information system** for this purpose or facsimile shall be deemed to be proof of the issue of the invoice notwithstanding the procedures set out in this rule 8.7 and in rules 8.8 and 8.9. The **clearing manager** will, therefore:

8.7.1 Post invoices on electronic facilities

Post the invoice to each payer through the electronic facility contained in the **information system** for this purpose; or

8.7.2 Fax invoice where electronic facilities are unavailable

If the electronic facility, referred to in rule 8.7.1, is not available, the **clearing manager** will transmit the invoice to the payer by facsimile;

and in either case,

8.7.3 Post original invoice

Post or hand deliver the original invoice to the payer on the same day that the invoice is issued.

8.8 Payer to confirm receipt

Each payer will immediately confirm, through either the electronic facility contained in the **information system** for this purpose, or by facsimile, receipt of any invoice sent by the **clearing manager** under rules 8.7.1 or 8.7.2.

8.9 Clearing manager to check if no confirmation received

If the **clearing manager** has not received a confirmation that an invoice has been received by a payer by 1200 hours on the **business day** after the day of dispatch of the invoice, the **clearing manager** will telephone the payer to check if the invoice has been received. If the invoice has not been received by the payer, the **clearing manager** will resend the invoice.

8.10 Lack of confirmation does not allow delayed payment

Delayed confirmation by a payer that an invoice has been received does not extend the payment period for that invoice set out in rule 8.2.

8.11 Clearing manager will establish operating account

The **clearing manager** will establish in its name an **operating account** with a **bank**. Such **operating account** will be held by the **clearing manager** as a trust account for the benefit of the persons referred to in rule 9.4, will be clearly identified as such and will be entirely separate from the **cash deposit accounts** and any other account of the **clearing manager**. Payments from the **operating account** will be made in accordance with rule 9.5.

8.12 Acknowledgement from bank

The **clearing manager** will obtain an acknowledgement from the **bank** with which the **operating account** is held that the funds in that account are held on trust and that the **bank** has no right of set-off or combination in relation to such funds.

9 Payments to and from generators

9.1 Issue of invoices to generators

Generator invoices will be issued as follows:

9.1.1 *Issue of pro forma invoice where money is owed*

Concurrently with issuing invoices to **purchasers**, the **clearing manager** will issue pro forma invoices to each **generator**. Such pro forma invoices will detail the amount that the **clearing manager** will pay, subject to rule 9.4 and the issue of an actual **GST** invoice for the amount payable, to that **generator** in respect of a **billing period** upon receiving payment from the **purchasers**. **Generators** will not issue **GST** invoices for supplies of **electricity** to the **clearing manager**;

9.1.2 *Issue of invoices where money is due*

Where a **generator** is issued with a pro forma invoice by the **clearing manager** and the total sum of the items specified in that pro forma invoice is such that the **generator** is obliged to pay the **clearing manager**, the **generator** will be deemed to have been issued with an invoice and, that **generator** will be deemed to be, in relation to that invoice, a **purchaser**. Rules 8 and 9 will, therefore, apply to the **generator** as if it were a **purchaser** for the purposes of issue and payment of the invoice.

9.2 Content of pro forma invoice

Pro forma invoices issued to **generators** in accordance with rule 9.1 will specify the following, where relevant:

9.2.1 *Settlement of sale of electricity*

Payment for the contracts formed in accordance with rule 6 as determined by the following formula:

$$Q_f * P_f$$

where:

$Q_f =$ the final quantity of **electricity** sold at the relevant **grid injection point** obtained from reconciliation information for a **trading period** of the **billing period**; and

$P_f =$ the final price at that grid injection point for that trading period of the billing period;

9.2.2 *Constrained on compensation*

Constrained on compensation being **constrained on amounts** calculated in accordance with rule 5.3 of section IV of part G less any **constrained on amounts** calculated in accordance with rule 5.4 of section IV of part G;

9.2.3 *Washup*

The sum of the **washup** amount and any interest payable on that amount to be credited or debited in accordance with rule 12 as a result of the **clearing manager** receiving corrected information in accordance with rule 11.3 of section V of part G or rule 11.5;

9.2.4 *Auction revenue*

The sum calculated in accordance with rule 1.8 of section VI of part I;

9.2.5 Service providers' and other persons' charges

The fees and charges of each **service provider** or former **service provider** and the **Board** where that fee or charge is to be invoiced by the **clearing manager** in accordance with schedule A7 of part A;

9.2.6 Ancillary services

The amount to pay or to be paid in relation to **ancillary services** pursuant to rule 6 of section IV of part C;

9.2.7 Other costs

All other charges, fees, interest payments, levies and taxes which may be from time to time payable, either at law or as imposed by the **rules**, individually itemised;

9.2.8 Hedge settlement agreement settlement amount

The amount to pay, or be paid, as a result of the settlement for that **billing period** of any **hedge settlement agreements** lodged with the **clearing manager**;

9.2.9 GST

The amount of goods and services tax payable. **GST** calculated in accordance with the Goods and Services Tax Act 1985 will be charged on each supply made pursuant to the **rules**;

9.2.10 Total sum

The total sum of the relevant items listed in rules 9.2.1 to 9.2.9.

9.3 Clearing manager will make payments on the day money is received

On the final **business day** for payment under rule 8.2 and when the **clearing manager** receives notification from its bank that the **purchasers** have deposited **cleared funds** in the **operating account**, the **clearing manager** will, subject to rule 9.4, pay the amounts owing to the **generators** in accordance with **GST** invoices reflecting the pro forma invoices issued pursuant to rule 9.1 or where the total invoiced amount has not been paid by the final day for payment under rule 8.2, the formula stated in rule 9.6. The **clearing manager** will take all reasonable steps to ensure that it is promptly notified of the deposit of **cleared funds**.

9.4 Clearing manager will prioritise payment of funds

The **clearing manager** will hold each amount paid into the **operating account** by or on behalf of a **purchasers** in payment or part payment of an invoice rendered pursuant to rules 8.1, 9.1 or 13.1 upon trust for those persons who are entitled to receive payment from the **clearing manager**, in relation to that invoice and as

identified or referred to in rules 9.4.1 to 9.4.5 below, and will make such payments to be in the following order of priorities:

9.4.1 Goods and services tax

To satisfy any liability to pay **GST** and other governmental charges or levies, which may be payable by the **clearing manager**, in respect of the invoices issued under rules 8.1, 8.3, or 13.1, as the case requires;

9.4.2 Service providers and principals

To satisfy any amounts due to **service providers**, former **service providers**, **principals** and the **Board** in accordance with rule 16, as set out in the invoice, and, if such payment is inadequate to satisfy the amounts due, then pro rata between the **service providers**, former **service providers**, **principals** and the **Board**;

9.4.3 Ancillary service agents

To satisfy any amounts due to **ancillary service agents** as set out in the invoice, and if such payment is inadequate to satisfy the amounts due, then pro rata between the **ancillary service agents**;

9.4.4 Losses and constraint excess

To satisfy any amounts due to each **grid owner** for losses and constraint surpluses in accordance with rule 14 and, if such payment is inadequate to satisfy the amounts due, then pro rata between the **grid owners**;

9.4.5 Generators

To satisfy any amounts due to **generators** in accordance with amounts determined under rule 9.2,

and the balance, if any, consisting of interest payments on the amounts deposited in the **operating account**, will be paid to those persons listed in this rule 9.4 in proportion to the amounts held on trust for each such person in that account in respect of the previous **billing period**.

9.5 Payment from operating account

Subject to rules 9.3 and 13.3, all payments required to be made by the **clearing manager** from the **operating account** to the persons entitled to such payments will be made in **cleared funds** by direct payment to such bank accounts as the persons entitled to such payments may notify the **clearing manager** in writing from time to time. Except as expressly permitted by the **rules** or as required by law, such payments will be free and clear of any withholding or deduction, and without any set-off or counter claim.

9.6 Inadequate funds reduces amounts paid to generators

If, in respect of any **billing period**, any **purchaser** fails to pay the total amount invoiced by the **clearing manager**, then payment to each **generator** will be calculated according to the following formula:

$$\text{InvG} * (\text{RecP} / \text{InvP})$$

where:

InvG means the amount specified in a pro forma invoice issued pursuant to rule 10.1.1 as being payable to the **generator** in respect of that **billing period**;

RecP means the total amount actually received by the **clearing manager** from **purchasers** for that **billing period** excluding all payments that have been made by the **clearing manager** in accordance with rules 9.4.1 to 9.4.3;

InvP means the total amount invoiced to the **purchasers** for that **billing period** excluding all payments that have been made by the **clearing manager** in accordance with rules 9.4.1 to 9.4.3.

9.7 Interest is payable to generators

Subject to rule 17, where a **generator** does not receive the full amount specified in a pro forma invoice issued pursuant to rule 9.1.1, the **clearing manager** will be liable to pay interest on the unpaid amount at the **default interest rate** to be calculated daily in accordance with rule 10.5 from the date payment would otherwise have been due until the date that payment is actually made by the **clearing manager** to the **generator**, and compounded at the end of each calendar month.

9.8 Further funds paid according to priority

9.8.1 *Further funds paid in proportion to earlier reduction*

As further funds constituting late payments in respect of any **billing period** are received by the **clearing manager**, those funds will be paid in accordance with the priorities set out in rule 9.4.

9.8.2 *Further funds will be applied to oldest debts unless notice to contrary*

Where funds received by the **clearing manager** are identifiable as pertaining to a specific **billing period**, then the **clearing manager** will apply those funds in satisfaction or part satisfaction of amounts payable by the **clearing manager** in respect of that **billing period**. However, where it is not clear to which **billing period** the funds relate, the funds will be applied in satisfaction or part satisfaction of amounts payable by the **clearing manager** in respect of the earliest **billing period** in respect of which amounts are outstanding to

the extent that full payment has not been received by the relevant payees in relation to the relevant invoice.

9.9 Payer to remain in default

Notwithstanding any other provision of the **rules**, the application of money pursuant to rules 9.3 to 9.6, and 9.8 (provided that a payer has still not paid the full amount invoiced and any interest due on that amount) does not:

9.9.1 *Duty to pay remains*

Satisfy the obligation of the payer to pay the full amount invoiced together with the interest due on that amount to the **clearing manager** or to the **generators**, acting in accordance with rule 9.11; or

9.9.2 *Default remedies remain*

Prejudice any remedies available to the **clearing manager** in an **event of default** or to the **generators** pursuant to rule 9.11.

9.10 Clearing manager has no residual liability

If the **clearing manager** has received inadequate funds to pay a **generator** in accordance with the pro forma invoices issued pursuant to rule 9.1.1 together with any interest that may be payable, and the **clearing manager** has exercised such rights as are reasonable to recover any amounts outstanding from a **purchaser** which is in default, the **clearing manager** will be under no residual liability to **generators** in respect of the unpaid sum.

9.11 Generators assigned or subrogated to all clearing manager's rights of recovery

Subject to rule 10.8, if the situation in rule 9.10 arises whereby the **clearing manager** is unable to pay **generators** the full outstanding amount that would otherwise be payable to them, then the **generators** will be entitled to be assigned or subrogated to the rights of the **clearing manager** in respect of those amounts payable to the **clearing manager** by the relevant defaulting **purchaser** which, if paid, would have been required to be held on trust by the **clearing manager** for the **generators** in accordance with the **rules**. The **clearing manager** will do all that is reasonably necessary including the granting of a power of attorney in favour of the **generators** to assist the **generators** in the exercise of such rights. The **generators** may then:

9.11.1 *Enforce all rights of repayment*

In the name of the **clearing manager** (if requested), take any step to enforce repayment or exercise any other rights which may accrue in any way to the **clearing manager** in respect of any money for the time being due to the **clearing manager** from any payer in default or any guarantor of any payer or any person that has provided a letter of credit or bond in favour of the **clearing manager** in respect of such payer; and

9.11.2 Receive benefit of insolvency

Directly or indirectly, in the name of the **clearing manager** (if requested) prove in, claim, share in or receive the benefit of any distribution, dividend or payment arising out of any insolvency of any **purchaser** in default or any guarantor of any such payer or any person that has provided a letter of credit or bond in favour of the **clearing manager** in respect of such payer.

9.12 Generators decisions to be made by consent

Any decision made by **generators** in relation to their rights pursuant to rule 9.11 will be made by **generator** consent.

9.13 Definition of generator consent

For the purpose of rule 9.12, "**generator** consent" means:

9.13.1 Majority interest

The consent in writing of the **generators** who, if the **event of default** has or is likely to lead to non-payment of existing invoices issued under rule 9.1, would have a majority interest in the amounts not paid;

9.13.2 Voting rights

Otherwise, the consent in writing of the **generators** in accordance with their voting rights if a rule **change** was then proposed.

10 Default

10.1 Definition of an event of default

Each of the following events will constitute an **event of default**:

10.1.1 Failure to supply or maintain primary security

The failure of a payer to supply or to maintain an appropriate form and level of security including any claim by a provider of a guarantee, letter of credit, bond or **hedge settlement agreement** that such guarantee, letter of credit, bond or **hedge settlement agreement** in respect of a payer is no longer valid or enforceable;

10.1.2 Failure to pay additional security

The failure of a payer to satisfy a **call** in accordance with rule 5.5;

10.1.3 Failure to pay invoiced or guaranteed amount

The failure of a payer to pay the full amount invoiced to it in accordance with rules 8 or 9;

10.1.4 Statutory management or investigation

Any action taken for, or with a view to, the declaration of a payer as a corporation at risk pursuant to the Corporations (Investigation and Management) Act 1989 or any analogous legislation, or a statutory manager is appointed under that Act or any other legislation (or a recommendation or submission is made by any person to the Securities Commission supporting such an appointment), or any person is appointed pursuant to section 19 of the Corporations (Investigation and Management) Act 1989, or other legislation to investigate the affairs, or run the business of the payer;

10.1.5 Scheme of arrangement or composition with creditors

If a payer is (or admits that it is, or is deemed under any applicable law to be) unable to pay its debts as they fall due or is otherwise insolvent; or stops or suspends, or threatens to stop or suspend, or a moratorium is declared on, payment of its indebtedness; or makes or commences negotiations or takes any other steps with a view to making any assignment or composition with or for the benefit of its creditors, or any other arrangement for the rescheduling of its indebtedness or otherwise with a view to avoiding, or in expectation of its inability to pay, its debts;

10.1.6 Receivership or liquidation

Any holder of a security interest or other encumbrancer takes possession of, or a receiver, manager, receiver and manager, liquidator, provisional liquidator, trustee, statutory or official manager or inspector, administrator or similar officer, is appointed in respect of the whole or any part of the assets of the payer or if the payer requests that such an appointment be made.

10.2 Anticipated events of default will be referred to Rulings Panel

If the **clearing manager** has reasonable grounds to believe that an **event of default** is likely to occur, the **clearing manager** will refer the matter to the **Rulings Panel** for their urgent consideration and instruction of an appropriate course of action to minimise the risk of default occurring.

10.3 Procedure upon event of default**10.3.1 Notify defaulting person**

Upon an **event of default** occurring the **clearing manager** will, without prejudice to its rights under rule 10.4, notify the person in default that it has committed an **event of default**.

10.3.2 Referral to Rulings Panel

Without prejudice to its rights under rule 10.4, the **clearing manager** must refer any issue concerning an **event of default** to the **Rulings Panel**.

10.4 Event of default gives the clearing manager certain remedies

If an **event of default** has occurred, then the **clearing manager** has the power to exercise or recommend to the **Rulings Panel**, as appropriate, all or any of the following remedies without prejudice to any other remedy it may have at law:

10.4.1 Apply cash deposit

The **clearing manager** will apply the balance of the **cash deposit** of the defaulting **purchaser** in accordance with rules 3.3.1 and 9.4. In such a case, the **clearing manager** will give notice to the payer, and the payer will comply with such notice, requiring the payer to reinstate the cash deposit to at least the level of that **cash deposit** before the application of the **cash deposit** was made in accordance with the following procedure:

10.4.1.1 Notice before 1200

If notice is given prior to 1200 hours on a **business day**, then the payer must make reinstatement of the **cash deposit** no later than 1600 hours on that same day;

10.4.1.2 Notice between 1200 and 1700

If notice is given between 1200 hours and 1700 hours on a **business day** then the payer must make reinstatement of the **cash deposit** no later than 1200 hours on the next **business day** following the notice;

10.4.2 Demand on guarantee, letter of credit or bond

A demand may be made by the **clearing manager** under any guarantee, letter of credit or bond provided pursuant to the rules in part H, in respect of the payer and the **clearing manager** will pay any amounts received as a consequence of such demand into the **operating account**. In such a case, the payer will procure the reinstatement of the guarantee, letter of credit or bond to at least the level of that guarantee, letter of credit or bond before the demand was made in accordance with the following procedures:

10.4.2.1 Demand before 1200

If a demand is made prior to 1200 hours on a **business day**, then reinstatement of the level of the security must be procured by the **purchaser** no later than 1600 hours on that same day;

10.4.2.2 Demand between 1200 and 1700

If a demand is made between 1200 hours and 1700 hours on a **business day**, then reinstatement of the level of security must be procured by the payer no later than 1200 hours on the next **business day** following the demand;

10.4.3 *Clearing manager may set-off unpaid amount against future earnings*

In the event that a **generator** has not paid any amount due in respect of an invoice by the due date for payment (whether such amount became owing in its capacity as a **generator** or otherwise), the **clearing manager** may set-off the unpaid amount against any amount payable by the **clearing manager** to the **generator**. The amount payable by the **generator** to the **clearing manager** in respect of the invoiced amounts will be reduced by the amount set-off applied in accordance with this rule 10.4.3.

10.4.4 *Clearing manager may set-off unpaid amount against invoice credit*

In the event that any other payer has not paid any amount due in respect of an invoice by the due date for payment (whether such amount became owing in its capacity as a **purchaser**, **distributor** or **grid owner** or otherwise), the **clearing manager** may set-off any amounts payable by the **clearing manager** to the payer against the unpaid amount payable by the payer to the **clearing manager** in accordance with rules 8.5 or 8.6;

10.4.5 *Recommend appointment of receiver and manager*

Recommend to the **Rulings Panel** that it authorise the appointment of a receiver and manager by the **clearing manager** in accordance with rule 10.8. At the time that the **clearing manager** makes the recommendation to the **Rulings Panel**, it will also give notice (for the purposes of this rule 10, the "Notice of Application") to the defaulting payer and all other **generators** and **purchasers** that it is applying to the **Rulings Panel** for a determination that a receiver and manager be appointed. In making its determination, the **Rulings Panel** will consider the criteria set out in rule 10.6;

10.5 Pro rata call on security

10.5.1 *Pro rata application or demand where combination of prudential security provided*

Where the **clearing manager** exercises any of the remedies under rules 10.4.1 or 10.4.2 against a payer and where that payer has procured the provision of a combination of securities to meet any prudential requirements in this part H, the **clearing manager** will, for a period of seven days from the time the **event of default** occurred, exercise its remedies against each of any **cash deposit** guarantees, letters of credit or bonds provided by or on behalf of that payer on a pro rata basis in accordance with the following formula:

$$SA/TS \times DA = \$ML$$

Where:

- SA = the total amount of any **cash deposits** provided by or for the subject payer or the maximum liability of any person pursuant to a guarantee, letter of credit or bond provided in respect of the subject payer.
- TS = the total amount of all **cash deposits**, guarantees, letters of credit and bonds provided by or in respect of the subject payer.
- DA = the amount required to be paid to remedy the payer's **event of default**; and
- \$ML = the maximum amount that can be utilised or claimed against that security during the first seven days after the **event of default** occurs.

10.5.2 Clearing manager to specify pro rata proportion

Upon application of any part of a **cash deposit** under rule 10.4.1 and in any demand made under rule 10.4.2, the **clearing manager** will specify in writing to the providers of the relevant security the total amount required from the payer to remedy the **event of default** (the "default amount") and the pro rata proportion of any **cash deposit** applied under rule 10.4.1 or the pro rata proportion of the default amount demanded under rule 10.4.2 as appropriate.

10.5.3 Pro rata application or demand limited to seven days

If after seven days the default amount has not been recovered by the pro rata **call** methodology in rule 10.5.1, the **clearing manager** may **call** all or part of any security provided by the defaulting payer to meet any part of the default amount still outstanding.

10.5.4 If security to be pro rated

The **clearing manager** will only follow the procedures set down in this rule 10.5 if the payer against which the **clearing manager** is exercising any of the remedies under rules 10.4.1 or 10.4.2, and which has procured the provision of a combination of securities, has previously notified the **clearing manager** that it wishes to have those procedures followed in respect of its combination of securities.

10.6 Rulings Panel's determination to authorise appointment of receiver and manager

The **Rulings Panel** will, upon receipt of a recommendation pursuant to rule 10.4.5, determine whether or not to authorise the appointment of a receiver and manager by the **clearing manager** pursuant to rule 10.8. In coming to any such determination,

the **Rulings Panel** will, subject to the relevant information being available for consideration by the **Rulings Panel** within the time period provided by this rule 10, have regard to all circumstances which the **Rulings Panel** considers to be relevant, including but not limited to the following:

10.6.1 Materiality of default

The materiality of the default, having regard to the financial position of the defaulting payer, and the trading history of the defaulting payer;

10.6.2 Implications for defaulting purchaser

The implications for the defaulting payer of the appointment of a receiver and manager having regard to all of the circumstances surrounding the default;

10.6.3 Materiality of default for affected persons

The materiality of the default for those persons (the "Affected Persons") who would not receive money from the **clearing manager** as a direct consequence of the default having regard to the financial position of those persons;

10.6.4 Implications for affected persons if receiver not appointed

The implications for the affected persons if a receiver is not appointed having regard to all the circumstances surrounding the default, including the possibility of **electricity** continuing to be supplied for which payment may not be received;

10.6.5 Other more appropriate options

What other options may be available which in all of the circumstances may be more appropriate than the appointment of a receiver and manager and the implications for the affected persons if a receiver is not appointed, having regard to all of the circumstances surrounding the default;

10.6.6 Guiding Principles

The **Guiding Principles**, the credibility of the **rules** the implications for other **members** and the credibility and efficiency of the operation of the **rules**;

10.6.7 Members' submissions

Any submissions made by the **members**, pursuant to rule 10.7.

10.7 Right to make submissions

10.7.1 *Initial submissions*

In considering the factors listed in rule 10.6, the **Rulings Panel** will give **members** the opportunity to make written submissions to it, provided that each **member** will make any such submission by no later than 1600 hours on the third **business day** after receiving the Notice of Application.

10.7.2 *Copy to defaulting payer*

The **Rulings Panel** will, by no later than 1000 hours on the **business day** (the “distribution day”) following the last day for making submissions pursuant to rule 10.7.1, use all reasonable endeavours to provide the defaulting **purchaser** with a copy of all such submissions.

10.7.3 *Right of reply*

The defaulting payer may make further written submissions in response to the submissions made by the other **members**. Such submissions must be received by the **Rulings Panel** no later than 1500 hours on the distribution day.

10.8 Clearing manager may appoint receiver and manager

At any time after the occurrence of an **event of default** the **clearing manager** may, provided an authorisation from the **Rulings Panel** pursuant to rule 10.6 has been obtained and one **business day’s** notice of that determination by the **Rulings Panel** has been given to the defaulting payer’s appoint any person (subject to the provisions of the Receiverships Act 1993) to be receiver and manager over all or any part of the defaulting payer’s assets. The powers of the receiver and manager and further provisions relating to the receiver and manager’s position are set out in schedule H1.

10.9 Rights of generators to exercise rights

If either:

10.9.1 *Rights enforceable if no action within three business days*

The **clearing manager** has not, within three **business days** of receiving notice of, or otherwise becoming aware of, the occurrence of an **event of default**, taken any action under rule 10.4; or

10.9.2 *Rights enforceable if unpaid amounts after two months*

The **clearing manager** has failed within two months of an **event of default** to collect all amounts due from the defaulting payer;

then any one or more of the **generators** will be entitled to exercise their rights pursuant to rule 9.11.

10.10 Other rights

Nothing in this rule 10 will be construed as in any way limiting the statutory right of the **clearing manager** to apply to the Court for the appointment of a receiver, interim liquidator or liquidator.

11 Disputed invoices

11.1 Period between receipt and payment of invoice provided for resolving invoice disputes

The period between the receipt of an invoice, issued by the **clearing manager** in accordance with rule 8.1, and the payment date for that invoice, is available for resolving any disputes that a **generator** or payer has concerning that invoice. Where disputes are resolved within this period, invoices will be re-issued, if necessary, in accordance with rule 8.3. For the purposes of this rule 11, references to an invoice include a pro forma invoice.

11.2 Disputes should be resolved amicably

In the first instance, all disputes whatsoever which may arise between a **generator** and a payer and the **clearing manager** concerning any invoice issued pursuant to rules 8.1, 8.3 and 9.1 will be the subject of amicable bona fide discussion between the persons affected with a view to resolving the dispute.

11.3 Disputes between generator or purchaser and clearing manager as to accuracy of invoices

If a **generator** or payer disputes the accuracy of any invoice issued pursuant to rules 8.1, 8.3 or 9.1, then the **generator** or payer will notify the **clearing manager** of the dispute prior to the due date for payment or receipt of its invoiced amount. The **generator** or payer will pay or receive the invoiced amount in accordance with rules 8.2, 8.5, 9.1 and 9.3. The **clearing manager** and the **generator** or payer will act in good faith and take all steps necessary to resolve the dispute as soon as possible. No part payment will be accepted as being in full and final settlement of any obligation of the **generator** or payer.

11.4 Unresolved disputes to be referred to Rulings Panel

If any dispute referred to in rule 11.2 is not resolved within 15 **business days** of the date that the dispute was first notified to the **clearing manager**, the **clearing manager** will refer the matter to the **Rulings Panel**.

11.5 Corrected information leads to washups

If, upon the resolution of a dispute, there is a change to any **metering information** the **reconciliation manager** will carry out the process described in rule 11 of section V of part G. If, upon the resolution of a dispute, the **clearing manager** is notified that there is a change to any other information which has been used to prepare an invoice

by the **clearing manager**, **washups** will then be carried out in accordance with rule 12.

11.6 No disputes after two years

All disputes between any **generator** and any payer and the **clearing manager** concerning invoices must be commenced within two years of the date of issue of the invoice to which the dispute relates. Accordingly, an invoice, other than an invoice which is the subject of a dispute under this rule 11, will be deemed to be final and conclusive two years after the date of issue of that invoice.

12 Washups

12.1 Clearing manager will conduct washups

Where the **clearing manager** receives corrected information in accordance with rule 11 of section V of part G or rule 11.5, or rule 6 of section IV of part C it will conduct **washups** in relation to **generator**, payer invoices. **Washup** amounts will be invoiced in accordance with rules 8.1, 9.1 and this rule 12.

12.2 Washups for payers

All **washup** amounts relating to a payer will be specified as a credit or debit in that payer's invoice and will be paid as follows:

12.2.1 *Payer's washup amount is a credit*

Where a payer's **washup** amount is a credit, the **clearing manager** will subtract the credit from the amount invoiced, issued in accordance with rule 8.1, in respect of the then present **billing period**. However, where the **washup** amount is greater than the total sum of the other items to be invoiced for that **billing period**, then payment of the **washup** amount will be made in accordance with rule 8.5;

12.2.2 *Payer's washup amount is a debit*

Where a payer's **washup** amount is a debit, the **clearing manager** will add the debit to the payer's invoice issued in accordance with rule 8.1 in respect of the then present **billing period**;

12.2.3 *Interest will be paid on washup*

Daily interest (less any deduction for resident withholding tax) on the **washup** amount, calculated at the **bank bill bid rate**, will be debited or credited, as the case may be, to the invoice issued in accordance with rule 8.1 and will accrue from the date that payment of the invoice, based on the incorrect information to which the **washup** relates, was due as set out in rules 8.2 and 9.3 (as applicable) until the date of issue of the invoice for that **washup**

amount in accordance with rule 8.1, and will be compounded at the end of each calendar month.

12.3 Washups for generators

All **washup** amounts relating to a **generator**, will be specified as a credit or debit in that **generator's** invoice and will be paid as follows:

12.3.1 Generator's washup amount is a credit

Where a **generator's washup** amount is a credit, the **clearing manager** will add the credit to the amount invoiced by the **clearing manager**, in accordance with rule 9.1.1, in respect of the then present **billing period**;

12.3.2 Generator's washup amount is a debit

Where a **generator's washup** amount is a debit, the **clearing manager** will subtract the debit from the amount invoiced in accordance with rule 9.1.1 in respect of the then present **billing period**. However, where the **washup** amount is greater than the total sum of the other items invoiced for that **billing period**, then payment of the **washup** amount will be made by the **generator** in accordance with rule 9.1.2;

12.3.3 Interest will be paid on washup

Daily interest (less any deduction for resident withholding tax) on the **washup** amount, calculated at the **bank bill bid rate**, will be debited or credited, as the case may be, to the invoice issued in accordance with rule 9.1.1 and will accrue from the date that payment of the invoice based on the incorrect information to which the **washup** relates was due as set out in rule 8.2 and rule 9.3 (as applicable) until the date of issue of the invoice for that **washup** amount in accordance with rule 9.1, and will be compounded at the end of each calendar month.

12.4 Payment where membership has ceased

12.4.1 Payment of washup amount

Notwithstanding rules 12.2 and 12.3, if a **washup** amount affects a person who is no longer a **member**, an invoice will be issued by the **clearing manager** specifying the **washup** amount and will be payable in accordance with rule 8.2. The person to whom the invoice is issued will remain liable for outstanding obligations in accordance with rules 2.2 to 2.7 of section III of part A.

12.4.2 Interest will be paid on washup amount

Daily interest (less any deduction for resident withholding tax) on the **washup** amount, calculated at the **bank bill bid rate**, will be added to the **washup** amount invoiced in accordance with rule 12.4.1 and will accrue from the date

that payment of the invoice based on the incorrect information to which the **washup** relates was due as set out in rules 8.2 and 9.3 (as applicable) until the date of issue of the invoice for that **washup** amount, and will be compounded at the end of each calendar month.

12.5 Washups for grid owners

Where a **washup** has occurred due to incorrect **metering information** being used to prepare invoices issued in accordance with rules 8.1 and 9.1 which affects **grid owners**, then the **clearing manager** will either credit or debit a **washup** amount to or from each **grid owner** as follows:

12.5.1 *Grid owner's washup amount is a credit*

Where a **grid owner's washup** amount is a credit, the **clearing manager** will add the credit to any amount payable to that **grid owner** in accordance with rule 14, in respect of the then present **billing period**;

12.5.2 *Grid owner's washup amount is a debit*

Where a **grid owner's washup** amount is a debit, the **clearing manager** will subtract the debit from any amount payable to the **grid owner**, in accordance with rule 14, in respect of the then present **billing period**. However, where the **washup** amount is greater than such amount payable, then the **clearing manager** will issue an invoice for the **washup** amount concurrently with issuing invoices to payees under rule 8.1, and payment of the **washup** amount will be made by the **grid owners** in accordance with the time for payment of invoices set out in rule 8.2;

12.5.3 *Interest will be paid on washup*

Daily interest (less any deduction for resident withholding tax) on the **washup** amount, calculated at the **bank bill bid rate**, will be debited or credited, as the case may be, to the amount payable to the **grid owner** in accordance with rule 14 and will accrue from the date that payment based on the incorrect information to which the **washup** relates was made until the date of issue of the invoices to **generators** and/or payers resulting in the **grid owners' washup** amount, and will be compounded at the end of each calendar month.

13 Payments

13.1 Payment of fixed membership fees

The **clearing manager** will invoice each **member** for the fixed fees specified in rule 2 of schedule A7:

13.1.1 Upon joining

Upon joining as a **member** of the **rules**, where the amount invoiced will be pro rata of year remaining to the next annual payment date in rule 13.1.2; and

13.1.2 Annually thereafter

Annually on a payment date specified by the **Board**.

13.2 Other fees

With the exception of fees paid under rule 13.1, the **clearing manager** will invoice all fees payable under schedule A7 for each **billing period** as follows:

13.2.1 Board notifies cost allocation to each part of the rules

The **Board** will notify the **clearing manager** of the total annual fee attributed to each part or section of the **rules** or the **Board's** policy for allocating fees to each part or section, such notification to be made 20 **business days** prior to each **financial year** but which may be revised at the discretion of the **Board**.

13.2.2 Clearing manager divides into billing period and between members

The **clearing manager** will divide the amounts attributed to each part into 12 approximately equal month instalments and will calculate the amount payable by each **member** according to the **rules** specified in schedule A7. The **clearing manager** will notify each **member** of monthly payments for the next 12 **billing periods**;

13.2.3 Board determines annual washup

At the end of each **financial year**, the **Board** at its discretion will determine whether any costs attributed to each part should be revised and will notify the **clearing manager** accordingly. The **clearing manager** will then conduct a washup in accordance with rule 12.

13.3 Payment of fees

On the final **business day** for payment under rule 8.2, and when the **clearing manager** has received notification from its bank that **members** have deposited **cleared funds** in the **operating account**, the **clearing manager** will, subject to rule 13.4, pay the fees owing to the persons who are entitled to receive them.

13.4 Payments owing for part billing period

Where the resignation of a **member** from one or more parts of the **rules** is accepted by the **Board** to take effect during a **billing period**, then the **Board** will advise the **clearing manager** of the **member's** liability to pay fees pursuant to rule 13.2.

14 Payment of losses and constraint excess

14.1 Payment of appropriate excess to each grid owner

On the final day for payment under rule 8.2, and when the **clearing manager** has received notification from its bank that the **generators** and **purchasers** have deposited **cleared funds** in the **operating account**, the **clearing manager** will, subject to rule 9.4, pay the appropriate losses and constraint excess to each **grid owner**.

14.2 Excess is the difference between purchaser and generator payments

A losses and constraint excess will accrue for a **billing period** when the total amounts to be paid by the **clearing manager** to the **generators** for that **billing period** for the contracts formed in accordance with rules 6.1 and 6.2 differ from the total amounts to be paid to the **clearing manager** by the **purchasers** for that **billing period** for the contracts formed in accordance with rules 6.1 and 6.2.

15 Reporting obligations of the clearing manager

15.1 Monthly divergence reports to be prepared by the clearing manager

By 0900 hours, on the 10th **business day** of each calendar month, the **clearing manager** will report to the **market administrator** in writing. This report will include information on any situations where the **clearing manager** has breached the **rules**, or, in the opinion of the **clearing manager**, any other person has breached the **rules** in the previous calendar month. This report will include situations where an invoice was or will be issued late, and whether or not the delay was caused by the **clearing manager**. Unless exceptional circumstances exist (in which case the report is to be provided as soon as reasonably practicable) the report will be provided even if the **clearing manager** has no breaches of the **rules** to report and will include:

15.1.1 *Time of breach*

The time a breach or alleged breach took place;

15.1.2 *Nature of breach*

The nature of each breach or alleged breach including details of the person alleged to be in breach and any **generators** or **purchasers** believed to be affected by the breach or alleged breach, and, in the case of a late invoice, the part of the invoice process which was delayed; and

15.1.3 *Reason for breach*

The reason for the breach or alleged breach occurring, if the **clearing manager** is aware of the reason.

15.2 The market administrator to publish clearing manager reports

By 0930 hours on the day that the **market administrator** receives the report of the **clearing manager** provided pursuant to rule 15.1, the **market administrator** will publish the sections of that report which relate to any breaches of the **rules** by the **clearing manager** or any other person. The **market administrator** will also refer the report to the **Board**.

15.3 Generators, purchasers and ancillary service agents have a right to information concerning clearing manager's action

Any **generator, purchaser or ancillary service agent** may, by notice in writing to the **clearing manager**, request further information related to any situation set out in a **clearing manager's** report published pursuant to rule 15.2 which has materially affected that **generator, purchaser or ancillary service agent**. In such cases, the **clearing manager** will provide the requested information to that **generator, purchaser or ancillary service agent** provided that such information will not include any information that is confidential in respect of any other person.

15.4 Clearing manager to provide copies of generator reports

The **clearing manager** will also provide the **Board** with a copy of the weekly report described in rule 5.3.2, concurrently with providing that report to **generators**.

16 Special rules applying to the clearing manager

16.1 Constitution will limit the powers of the clearing manager

The **clearing manager** will be a company limited by shares which will have a constitution which limits the powers of the **clearing manager** to exercising the rights and performing the obligations as are permitted or prescribed by the **rules**.

16.2 Generators and purchasers to agree to constitution

The constitution of the **clearing manager** will be in such form as the **generators, purchasers and ancillary service agents** who are **members** may agree in accordance with the processes set out in rule [1.3 of section II of part A].

16.3 Generators and purchasers entitled to vote on amendments

The constitution of the **clearing manager** will provide that the **generators, purchasers and ancillary service agents** who are **members** will be entitled to vote on any **resolution** to amend the terms of the constitution.

17 Liability of clearing manager

17.1 The clearing manager is not liable except as contained within the rules

Each person which has agreed to be bound by party to the **rules** is prepared to and hereby agrees to limit its recourse against the **clearing manager** to those sums which the clearing manager actually receives and by the **rules** is obliged to hold on trust for that person, and is reasonably able to make payment of, in accordance with the **rules** (the "trust moneys"). Accordingly, and subject as hereinafter provided, all payments to be made to such persons by the **clearing manager** under or in respect of its obligations and liabilities under the **rules** will be recoverable by that person only from and to the extent of those trust moneys. Each such person agrees that it will look solely to such sums for payments to be made by the **clearing manager** under the **rules** and that it will not take or pursue any judicial or other steps or proceedings, or exercise any other right or remedy that it might otherwise have against the **clearing manager's** assets for the payment of any amounts owing under the **rules** and that the **clearing manager** will not be otherwise personally liable for such payments.

17.2 The clearing manager is liable for financial loss

Subject to rules 17.3 to 17.5, the **clearing manager** will be liable to any **generator** or **purchaser** who suffers financial loss as a result of any failure on the **clearing manager's** part to comply with its obligations under the **rules**. But, subject to rule 17.6, **generators** and **purchasers** will not have any cause of action other than pursuant to the **rules** against the **clearing manager** for any failure on the **clearing manager's** part to comply with its obligations under the **rules**.

17.3 Limit of liability for clearing manager

The **clearing manager** will not be liable under rule 17.2 for a sum in excess of:

17.3.1 **\$5,000,000 cap for any one event**

\$5,000,000 in respect of any one event or series of closely related events arising from the same cause or circumstance; or

17.3.2 **\$10,000,000 annual cap**

\$10,000,000 in respect of all events occurring in any 12 month period; or

17.3.3 **Fraud and dishonesty cap**

In respect of any financial loss resulting from any fraud or dishonesty committed by the **clearing manager** or by any of the **clearing manager's** employees, the amount recoverable by the **clearing manager** pursuant to the insurance required to be maintained pursuant to rule 17.5.

17.3.4 Compensation divided between generators and purchasers

Where more than one **generator** or **purchaser** suffers financial loss for which the **clearing manager** is liable pursuant to this rule 17, the amount payable will be divided amongst those **generators** and **purchasers** suffering any loss in the proportion that their individual losses bear to the total loss suffered by all **generators** and **purchasers** who suffered loss as a result of the particular event.

17.4 Clearing manager to maintain professional indemnity insurance

The **clearing manager** will maintain professional indemnity insurance cover sufficient to meet any liability that may arise pursuant to this rule 17.

17.5 Clearing manager to provide fidelity insurance

In addition to the insurance cover provided for in rule 17.4, the **clearing manager** will at all times maintain fidelity insurance of not less than \$100,000,000 for all such direct financial loss as the **clearing manager** may sustain from any acts of fraud or dishonesty committed by the clearing manager or any of the **clearing manager's** employees whether acting alone or with other persons.

17.6 Other agreements not affected

Nothing in this rule 17 will affect the liability of any person that arises under any other contract.

18 Notices

18.1 Notices to be given in specified manner

18.1.1 Notice by post, personal delivery or facsimile to recipient's address

Except as expressly provided to the contrary in the **rules**, any notice or demand given or required to be given under part H may be given by being delivered or transmitted to the intended recipient at its address, electronic address or facsimile number as last advised in writing to the sender and may be posted to such address by prepaid post.

18.1.2 Deemed delivery

If any such notice or demand is delivered by hand it will be deemed to be delivered on the date of such delivery, if posted it will be deemed to be delivered on the second **business day** following the date of posting, and if transmitted by facsimile (in good order) or through the information system it will be deemed to be delivered on the date it was transmitted, provided that any notice or demand delivered, or deemed to be delivered, on a day which

is not a **business day** or after 1600 hours on a **business day**, will be deemed not to have been delivered until the next **business day**.

Schedule H1 – Receivership

1 Receiver and manager’s powers

Every receiver and manager appointed under the **rules** will have the power (in addition to and without derogating from any statutory powers from time to time vested in the receiver and manager, including, but not limited to the Receiverships Act 1993) either in the name of the receiver and manager or in the name of the **payer**:

1.1 Collect in assets

To take possession of, get in and collect the **payer’s assets**, both present and future (the “**assets**”);

1.2 Transfer electricity business

To sell, transfer or otherwise dispose of the **payer’s** electricity business;

1.3 Carry on business

To carry on the business of the **payer** as the receiver and manager may think fit, in the receiver and manager’s absolute discretion;

1.4 Settle claims

To settle any disputes, claims, or demands involving any creditor or alleged creditor of the **payer**;

1.5 Effect repairs and insurance

To effect all repairs and insurance and do all other things which the **payer** might do in the ordinary conduct of its business;

1.6 Appoint and discharge officers

To appoint and discharge officers, agents, solicitors, accountants and others;

1.7 Borrow money

To raise or borrow money either unsecured or on the security of any of the **assets**;

1.8 Sell or lease assets

To sell, exchange, lease or otherwise dispose of any **assets**;

1.9 Bring proceedings

To bring, prosecute, enforce, defend or abandon all proceedings in relation to any **assets**;

1.10 Give receipts

To give receipts for money and do all things necessary or desirable for realising any **assets**;

1.11 Exercise powers as if owner

To exercise in relation to any **assets** all powers and authorities that the receiver and manager would be able to exercise if the receiver and manager were the owner of the **assets**;

1.12 Execute documents

To execute exercise all documents and to do anything else that the receiver and manager considers desirable or necessary for realising any **assets** or that is incidental to any of the powers or authorities given to the receiver and manager under the **rules** or at law; and

1.13 Use payer's name

To use the **payer's** name for any of the purposes set out in this clause 1.

2 Removal

The **clearing manager** may remove and replace any receiver and manager that it appoints and, subject to any direction made by a court or rule of law, it may also fix the receiver and manager's remuneration.

3 Payer responsible for receiver and manager

Any receiver and manager appointed by the **clearing manager** is the **payer's** agent. The **payer** alone is responsible for the receiver and manager's acts or omissions, for liabilities incurred by the receiver and manager and for the payment of the receiver and manager's remuneration.

4 Application of proceeds

4.1 Application

Subject to the payment of any claims that rank ahead of the **clearing manager's** claim, the receiver and manager will apply any money it receives pursuant to the carrying on of the business of the **payer** in such order as the receiver and manager thinks fit.

4.2 Suspense account

The receiver and manager may place any money received pursuant to the carrying on of the **payer's** business in a suspense account and keep it there for as long as the receiver and manager thinks fit.

4.3 New accounts

If the receiver and manager receive actual or constructive notice of any charge or other security interest affecting the **assets**, the receiver and manager may open a new account with the **payer**. If the receiver and manager does not open a new account, the receiver and manager will be treated as if that had been done at the time when the receiver and manager received the notice. As from that time, all payments made by the **payer** to the **clearing manager** are to be credited or treated as having been credited to the new account and will not operate to reduce the amount due from the **payer** to the **clearing manager** at the time when the **clearing manager** received the notice.

5 Protection of third member

No person dealing with the **clearing manager** or any receiver and manager or their respective agents need to ask on whose authority or why or how those persons are acting or check or confirm any of their actions.

6 Indemnity

The **clearing manager** and each receiver and manager, attorney, agent or other person appointed by the **clearing manager** is indemnified out of the **assets** in respect of all liabilities and expenses incurred in the execution of any of the powers, authorities or discretions given by the **rules** and against all actions, costs, claims, and demands in respect of anything done or not done in any way relating to the **assets**. The **clearing manager** and any receiver and manager may keep and pay all sums in respect of any such liability or expense out of any money received pursuant to the receiver and manager's carrying out of the **payer's** business.

7 Power of attorney

7.1 Appointment of receiver and manager

The **purchaser** in default irrevocably appoints any receiver and manager appointed by the **clearing manager** pursuant to the **rules** to be the attorney of the **purchaser**.

7.2 Power of attorney

Each attorney will in the **payer's** name and at its expense do all things which the **payer** agrees to do under the **rules** or which the **clearing manager** or the attorney considers necessary or expedient to do in the exercise by the **clearing manager** or by any receiver and manager of any of the powers, rights and remedies given to them by the **rules** or law in relation to any of the **assets**.

7.3 Ratification

The **payer** will ratify and confirm whatever any attorney does in the exercise of any of the attorney's powers, authorities and discretions.

Schedule H2 - Guarantee

To: **[Clearing Manager]** [address]

Attention: [name]

Dear Sir/Madam

1. [Bank] (“the Bank”) refers to each and every obligation pursuant to the rules of [the new arrangement] (“the rules”) of [**Purchaser**] (“the Principal”) to pay amounts the Principal, now or at any time, owes to, and is invoiced by, you (whether as principal or agent) together with default interest, if any, in relation to such amounts (“the Obligations”) pursuant to the rules.
2. The Bank hereby unconditionally guarantees the payment to you on demand of an amount specified in each such demand provided that:
 - (a) The aggregate liability of the Bank under this guarantee will not exceed [amount calculated in accordance with rule H.2.4] (the “Maximum Amount”); and
 - (b) Your demand is made in writing and is purported to be signed by an authorised signatory; and
 - (c) A certificate purported to be signed by your authorised signatory and certifying that the Principal has failed in whole or in part to fulfil the Obligations accompanies your demand, which certificate will be conclusive proof of such failure.
3. This guarantee will not be affected, discharged or diminished by any act or omission which would but for this provision have exonerated a guarantor but would not have affected or discharged the Bank’s liability had it been a principal debtor.
4. Subject to paragraph 5 below, this guarantee will continue in force until the date at which the Principal has ceased to be bound by the rules and has discharged its obligations to you pursuant to the rules at which time you will return this guarantee to the Bank.
- [5. Notwithstanding anything else in this guarantee the Bank may at any time pay you the Maximum Amount less any amount or amounts the Bank may previously have paid under this guarantee or such lesser sum as you may require. Upon payment of that sum the liability of the Bank under this guarantee will cease and determine.] [Note: Bank to elect either this clause or the following clause as a method of cancellation].
- [5. Notwithstanding anything else in this guarantee the Bank may cancel this guarantee as to subsequent liability by giving ninety (90) days’ notice in writing to [clearing

manager]; however, the Bank will remain liable with respect to the Obligations which relate to the period prior to the effective date of the ninety (90) days' notice.]

- 6. This guarantee may be assigned by you without the Bank's consent. It will bind the successors and assigns of the Bank, as well as any entity with which the Bank may amalgamate.
- 7. This guarantee will be governed by and interpreted in all respects in accordance with New Zealand law and the Member hereto irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

EXECUTED for and on behalf)
of [BANK])
by its Attorneys)
[Print Names]) Signature(s)

.....
in the presence of:

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

.....
Signature(s)

Schedule H3 – Letter of credit

To: **[Clearing Manager]** [address]

Attention: [name]

Dear Sir/Madam

We, [Bank] (“the Bank”) hereby issue our irrevocable transferable standby letter of credit (“the Letter of Credit”) as follows:

IRREVOCABLE TRANSFERABLE STANDBY □ LETTER OF CREDIT NO. [number] DATED [date]

The Account Party: **[Purchaser]** (“the Account Party”)

Beneficiary: **[Clearing Manager]** (“the Beneficiary”)

Issued in Connection With: Each and every obligation (“the Obligations”) of the Account Party to pay the amounts it, now or at any time, owes to, and is invoiced by the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts pursuant to the rules of [the new arrangement] (“the rules”).

Maximum Amount: [amount calculated in accordance with rule 2.4 of part H] less the amount of any sums drawn under this Letter of Credit.

Expiry: This Letter of Credit expires on the earliest of:

- (a) the date at which the Account Party has ceased to be bound by the rules and has discharged its obligations to the Beneficiary pursuant to the rules;
- (b) the date of satisfaction of this Letter of Credit in accordance with its terms;
- [(c) the date on which the Bank makes payment to the Beneficiary of the Maximum Amount either at its sole discretion or following demand by the Beneficiary under this Letter of Credit in accordance with its terms.] [Note: Bank to elect either this clause or the following clause as a method of cancellation.]
- [(c) ninety (90) days after notice in writing of cancellation of this Letter of Credit as to subsequent liability has been given to **[Clearing Manager]**; however, the Bank will remain liable with respect to the Obligations which relate to the period prior to the effective date of the ninety (90) days’ notice.]

(“the Expiry Date”).

Payable at: Sight.

Available at: [address]

By Drafts on: The Bank.

Enfaced: Drawn under [Bank] Irrevocable Standby Letter of Credit No [number] dated [date].

Returnable to: The Bank upon expiry.

The proceeds of this Letter of Credit are transferable by the Beneficiary. A claim may be made under this Letter of Credit by delivering to the address at which this Letter of Credit is expressed to be available, by no later than [time] New Zealand time on or before the Expiry Date, draft drawn on the Bank (enfaced as specified above) accompanied by:

- (a) This Letter of Credit; and
- (b) A Certificate purported to be signed by an authorised signatory of the Beneficiary in the following form:

To [Bank] [date]

[Clearing Manager] of [address] (“the Beneficiary”) hereby makes claim under the [Bank] Irrevocable Standby Letter of Credit No [number] (“the Letter of Credit”). Words and expressions defined in the Letter of Credit will have the same meaning herein.

[Purchaser] (“the Account Party”) has failed, in whole or in part, to fulfil the Obligations.

As at the date of this Certificate the amount owed to the Beneficiary by the Account Party in respect of the Obligations is the sum of [amount outstanding].

Accordingly, the Beneficiary is entitled to claim and hereby requests payment by [date] of the amount of [amount claimed] to be credited to account number [Beneficiary’s trust account number].

The signatory or signatories hereto is/are authorised by the Beneficiary to make the statements herein on behalf of the Beneficiary.

Signed.....

Authorised Signatory

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 except as otherwise provided in this Letter of Credit. Subject to that, this Letter of Credit will be governed by and construed in accordance with the laws of New Zealand, and the Member hereto irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

The Bank engages with the Beneficiary that drafts drawn under and in compliance with this Letter of Credit and, in aggregate, up to the Maximum Amount will be paid on presentation in the manner provided in this Letter of Credit.

EXECUTED for and on behalf)	
of [BANK])	
by its Attorneys)
[Print Names])	Signature(s)

.....
in the presence of:

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

Schedule H4 – Deed of guarantee & indemnity

DATED

BY

(1) [] (the “Guarantor”)

IN FAVOUR OF

(2) [Clearing Manager] (the “Beneficiary”)

1 Guarantee and indemnity

1.1 The Guarantor:

- (a) unconditionally and irrevocably guarantees to the Beneficiary the due performance and observance by [**Purchaser**] (“the Debtor”) of each and every obligation the Debtor may now or hereafter have to the Beneficiary to pay amounts it owes to, and is invoiced by, the Beneficiary (whether as principal or agent) together with default interest, if any, in relation to such amounts pursuant to the rules of [the new arrangement] (“the Obligations”) and promises to pay to the Beneficiary on demand all amounts now or hereafter owing, due or payable by the Debtor to the Beneficiary in respect of the Obligations; and
- (b) agrees as a primary obligation to indemnify the Beneficiary from time to time on demand from and against any loss incurred by the Beneficiary as a result of any of the Obligations being void, voidable or unenforceable for any reason whatsoever, whether or not known to the Beneficiary, the amount of such loss being the amount which the Beneficiary would otherwise have been entitled to recover from the Debtor.

1.2 This Deed is to be security in respect of each and every one of the Obligations but nevertheless the total amount payable by the Guarantor under this Deed will not exceed the aggregate of [amount calculated in accordance with rule 2.4 of part H] (the “Maximum Amount”) and any sums payable pursuant to clauses 1.3 and 9.1 of this Deed.

1.3 If any moneys payable by the Guarantor under this Deed are not paid on demand, the Guarantor will pay to the Beneficiary interest on such unpaid moneys (both before and after judgment) at the rate determined in accordance with clause 1.4 of this Deed from the date of demand to the date of their actual receipt by the Beneficiary calculated on a daily basis and capitalised as the Beneficiary will determine.

1.4 The rate at which interest will be calculated will be the aggregate of 5% per annum plus the then prevailing settlement bid rate for 90 day bills displayed on Reuters Screen BKBM at 10.45am on the date of demand or, if for any reason that rate is not

displayed, the rate determined by the Beneficiary to be the nearest practicable equivalent.

2 Preservation of rights

- 2.1 The obligations of the Guarantor under this Deed are in addition to and not in substitution for any other security or guarantee which the Beneficiary may at any time hold in respect of the Obligations or any of them and may be enforced without the Beneficiary first having recourse to any such security and without the Beneficiary first taking steps or proceedings against the Debtor.
- 2.2 Neither the obligations of the Guarantor under this Deed nor the rights, powers and remedies conferred in respect of the Guarantor upon the Beneficiary by this Deed or by law will be discharged, impaired or otherwise affected by anything which might operate to discharge, impair or otherwise affect the same, including:
- (a) the insolvency, liquidation or dissolution of the Debtor or any other person, the appointment of any receiver, manager, receiver and manager, inspector, trustee, statutory manager or other similar person in respect of the Debtor or any other person or any change in the Debtor's status, function, control or ownership;
 - (b) the Obligations or any of them, or the obligations of any person under any security or guarantee held in relation to the Obligations or any of them, being or becoming in whole or in part void, voidable, defective, illegal, invalid or unenforceable in any respect or ranking after any other security;
 - (c) any time, credit or other indulgence or other concession being granted or agreed to be granted by the Beneficiary to, or any composition or other arrangement made with or accepted from, the Debtor in respect of the Obligations or any of them or the obligations of any person under any security or guarantee held in relation to the same;
 - (d) any variation of the terms of any of the Obligations or of any security or guarantee (including this guarantee) held in relation to the same;
 - (e) any failure to realise or fully realise the value of, or any release, discharge, exchange or substitution of, any security or guarantee held in relation to the Obligations or any of them;
 - (f) any failure (whether intentional or not) to take, fully take or perfect any security now or hereafter agreed to be taken by the Beneficiary in relation to the Obligations or any of them; and
 - (g) any other act, event or omission which, but for this clause 2.2, would or might operate or discharge, impair or otherwise affect any of the obligations of the Guarantor under this Deed or any of the rights, powers or remedies conferred upon the Beneficiary by the rules of New Zealand electricity Market or by law.
- 2.3 If any payment to the Beneficiary under this Deed is avoided by law, the Guarantor's obligation to have made such payment will be deemed not to have been affected or discharged and the Guarantor will on demand indemnify the Beneficiary against all costs sustained or incurred by the Beneficiary as a result of it being required for any reason to refund all or part of any amount received or recovered by it in respect of such payment and will in any event pay to the Beneficiary on demand the amount so refunded by it. The Beneficiary and the Guarantor will, in any such case, be deemed to be restored to the position in which each would have been and will be entitled to

exercise the rights they respectively would have had if that payment had not been made.

- 2.4 The Beneficiary is not obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by law to make any demand on the Debtor, take any action or obtain judgment in any court against the Debtor, make or file any claim or prove in any liquidation of the Debtor or enforce or seek to enforce any security or guarantee taken in respect of the Obligations.
- 2.5 After a demand has been made by the Beneficiary under this Deed, and so long as the Guarantor is under any actual or contingent liability under this Deed, the Guarantor will not:
- (a) exercise in respect of any amount paid by the Guarantor under this Deed any right of subrogation or any other right or remedy which the Guarantor may have in respect of such amount paid;
 - (b) except with the Beneficiary's consent in writing, claim or receive payment of any other moneys for the time being due to the Guarantor by the Debtor or exercise any other right or remedy which the Guarantor may have in respect of the same; or
 - (c) unless so required by the Beneficiary, prove in the liquidation of the Debtor in competition with the Beneficiary for any moneys owing to the Guarantor by the Debtor on any account whatsoever.

Any moneys obtained by the Guarantor from the Debtor with such consent or as so required or in breach of this clause will, in each case, be held by the Guarantor upon trust to pay such moneys to the Beneficiary in or towards discharge of the Guarantor's obligations under this Deed.

- 2.6 Any moneys received by the Beneficiary which may be applied in or towards discharge of any of the obligations of the Guarantor under this Deed will be regarded as a payment in gross so that in the event of the liquidation of the Guarantor the Beneficiary may prove in the liquidation for the whole of such moneys.

3 Representations and warranties

The Guarantor represents that:

- (a) it is duly incorporated and validly existing under the laws of [], capable of suing and being sued and has the power to enter into and perform this Deed and has taken all necessary corporate action to authorise it to enter into, execute, deliver and perform its obligations under this Deed;
- (b) its entry into, execution, delivery and performance of this Deed will not contravene any law or regulation to which the Guarantor is subject or any provision of its constitutional documents and all things (including the obtaining of consents) requisite for such entry, execution, delivery and performance have been taken, fulfilled and done and are in full force and effect;
- (c) no obligation of the Guarantor [under this Deed] is secured by, and the execution, delivery and performance of this Deed will not result in the existence of, or oblige it to create, any mortgage, charge, pledge, lien or other encumbrance over any of its present or future revenues or **assets**; and
- (d) the execution, and delivery of and the performance of the Guarantor's obligations under this Deed will not cause the Guarantor to be in breach of or in default under any agreement binding on the Guarantor or any of its **assets** and no material litigation or

administrative proceeding before, by or of any court or governmental authority is pending or (so far as the Guarantor knows) threatened against the Guarantor or any of its **assets** [which, if decided against the Guarantor, would have a material adverse effect on the ability of the Guarantor to meet any or all of the obligations hereunder].

4 Payments

- 4.1 All payments to be made by the Guarantor to the Beneficiary under this Deed will be made without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the Guarantor in respect of such payment will be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Beneficiary receives a net amount equal to the amount the Bank would have received had no such deduction or withholding been required to be made.

5 Continuing security

- 5.1 This Deed will be a continuing security to the Beneficiary in respect of each and every one of the Obligations and will not be (or be construed so as to be) discharged by any intermediate discharge or payment of or on account of the Obligations or any settlement of accounts between the Beneficiary and the Debtor or anyone else.

6 Termination

- [6.1 Notwithstanding anything else in this Deed the Guarantor may at any time pay to you the Maximum Amount less any amount or amounts the Guarantor may previously have paid under this Deed or such lesser sum as you may require. Upon payment of that sum the liability of the Guarantor under this Deed will cease and determine.] [Note: Guarantor to elect either this clause or the following clause as a method of cancellation].
- [6.1 Notwithstanding anything else in this Deed the Guarantor may cancel this Deed as to subsequent liability by giving ninety (90) days' notice in writing to [**Clearing Manager**]; however, the Guarantor will remain liable with respect to the Obligations which relate to the period prior to the effective date of the ninety (90) days' notice.]

7 Assignment

- 7.1 This Deed may be assigned by the Beneficiary without the Guarantor's consent. It will bind the successors and assigns of the Guarantor, as well as any entity with which the Guarantor may amalgamate.

8 Notices

- 8.1 Any demand to be made on the Guarantor by the Beneficiary under this Deed may be made in writing and delivered to the address set out below or to any other address in New Zealand from time to time notified pursuant to clause 8.2. The Guarantor's address, as at the date of this Deed is: [address]
- 8.2 The Guarantor will immediately notify the Beneficiary of any change in the above address.

9 Costs and expenses

9.1 The Guarantor will on demand indemnify and hold harmless the Beneficiary from and against all costs and expenses (including legal fees and any taxes or duties) incurred by the Beneficiary in the enforcement and protection of its rights under this Deed.

10 Governing law

10.1 This Deed is governed by and construed in accordance with New Zealand law and the Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of the New Zealand Courts.

EXECUTED for and on behalf)
of [Guarantor])
in the presence of:) Director Director/Secretary

.....
Signature

.....
Full Name

.....
Address

.....
Occupation

Note I: If two directors sign, no witness is necessary. If a director and secretary sign, both signatories are to be witnessed. If the director and secretary are not signing together, a separate witness will be necessary for each signature.

Note II: If the Guarantor is incorporated outside of New Zealand, insert an appropriate execution clause for the country of incorporation.

Schedule H5 – Surety bond

To: **[Clearing Manager]** [address]

Bond Number:

We, **[Purchaser]** as Principal, and [name of Surety], as Surety, are held and firmly bound to **[Clearing Manager]**, a corporation organised and existing under the laws of New Zealand, its successors and assigns, in the amount of [amount in words] New Zealand dollars (NZ\$), lawful money of New Zealand for the payment of which the Principal and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound. WHEREAS, the Principal has obligations (the “Obligations”) pursuant to the rules of [] (the “rules”) to pay **[Clearing Manager]** amounts invoiced to it by **[Clearing Manager]**;

NOW THEREFORE, the Surety agrees to deliver payment to **[Clearing Manager]** of amounts invoiced to the Principal (together with any default interest payable in respect of those invoiced amounts) forthwith upon receipt of written demand for payment issued by a purported authorised representative of **[Clearing Manager]**. Such written demands to be delivered to the Surety at its above address and to certify that the Principal has failed in whole or in part to fulfil the Obligations.

PROVIDED FURTHER that the Surety will not be liable hereunder for a larger amount, in the aggregate, than the amount of this Bond; and

[PROVIDED FURTHER that the Surety may at any time pay to **[Clearing Manager]** the amount of this Bond less any amount or amounts the Surety may previously have paid under this Bond or such lesser sum as **[Clearing Manager]** may require. Upon payment of that sum the liability of the Surety under this Bond will cease and determine; and] [Note: Surety to elect either this proviso or the following proviso as a method of cancellation.]

[PROVIDED FURTHER that this Bond may be cancelled by the Surety as to subsequent liability by giving ninety (90) days’ notice in writing to **[Clearing Manager]**; however, the Surety will remain liable with respect to the Principal’s Obligations which relate to the period prior to the effective date of the ninety (90) days notice; and]

PROVIDED FURTHER that this Bond will not be affected, discharged or diminished by any act or omission which would but for this provision have exonerated a surety but would not have affected or discharged the Surety’s liability had it been a principal debtor; and

PROVIDED FURTHER that this Bond will be governed by and interpreted according to the laws of New Zealand, and the Principal and the Surety thereby agree to submit to the non exclusive jurisdiction of the Courts of New Zealand.

This Bond may be transferred or assigned by **[Clearing Manager]** without the Surety’s consent. Upon cancellation the Bond will be returned to the Surety.

[EXECUTION CLAUSE]

Schedule H6 – Hedge settlement agreement

[Note: There are a number of gaps for the parties to fill in and alternative wording that needs to be deleted as appropriate by the parties.]

DATED

BY

(1) [] (“Party A”)

(2) [] (“Party B”)

IN FAVOUR OF

(3) [M-co Clearing House Limited], as the **clearing manager** (the “**clearing manager**”)

BACKGROUND

A. Party A and Party B have a hedging arrangement which provides for payments for differences in respect of the price of Electricity, at specific grid exit points for a particular period (the CFD”).

B. Party A and Party B wish to:

(a) settle the CFD under the [] **rules** (the “rules”); and

(b) allow the CFD to be taken into account when considering the level of security that is required to be provided to satisfy the prudential requirements of either Party A or Party B under the **rules**,

on the terms and conditions of this Agreement.

C. Party A and Party B acknowledge the possibility that both Parties may be called on by the **clearing manager** to provide a level of security to satisfy the prudential requirements under the **rules** as a result of the lodgement of this Agreement with the **clearing manager**.

PARTY A AND PARTY B AGREE as follows:

1. Any bolded term in this Agreement has the same meaning as in the **rules**.

2. For the purpose of the CFD:

- a. Party [A/B] is the Floating Price Payer; and
- b. Party [A/B] is the Fixed Price Payer

[The parties are to elect the appropriate wording.]

3. The term of this Agreement is from [] hours on [] to [] hours on [].

4. This Agreement applies to the [following **grid injection points** and/or **grid exit point(s)** [**/grid injection points** and/or **grid exit points** [listed in the attached table]. [In

addition where a **grid injection point** or **grid exit point** [listed above/included in the attached table] is disconnected, then the **grid injection point** or **grid exit point** notified to the **clearing manager** by either party is the relevant **grid injection point** or **grid exit point** (as the case may be) for the purposes of this Agreement from and including the **trading period** during which the **clearing manager** was notified until the **clearing manager** is notified otherwise.] *[The parties are to elect the appropriate wording, including the possible deletion of the last sentence of this clause.]*

5. This Agreement applies to [[] MWh per **trading period** at \$[] per MWh/ the quantities of **electricity** per **trading period** and prices per MWh listed in the attached table]. [The parties are to elect the appropriate wording.]
6. [Notwithstanding clause 9, for the purposes of calculating the Amount Payable pursuant to this Agreement for a **billing period** (the "Amount Payable"), for the purposes of the "Business Day" definition in section 1.3 of the 1993 ISDA Commodity Definition, [] shall be the relevant place.] *[The parties should delete this clause if it is not appropriate]*
7. The Amount Payable will be established by the following procedure:
 - a. The **clearing manager** will by the 5th business day of the billing period following the relevant **billing period** notify Party A and Party B of the Amount Payable.
 - b. Either Party A or Party B may dispute the Amount Payable before or on the 7th business day of that **billing period**.
 - c. If neither party disputes the Amount Payable, that amount will be settled under the **rules** on the Settlement Date and in accordance with the **rules**.
 - d. If the Amount Payable is disputed, the clearing manager will use its reasonable endeavours to resolve that dispute by the 9th business day of the billing period. If:
 - i. the dispute is resolved by the 9th business day of the billing period, then the Amount Payable so resolved will be settled under the **rules** on the Settlement Date; and
 - ii. the dispute is not resolved by the end of the 9th business day of the **billing period**, the original Amount Payable notified by the **clearing manager** will be settled under the rules on the Settlement Date. For such unresolved disputes Party A and Party B release the **clearing manager** from any liability or obligation it may have in relation to the calculation of the Amount Payable, and agree that any unresolved dispute will be resolved between them pursuant to the CFD following payment of the Amount Payable under the **rules** and this Agreement.
8. For the avoidance of doubt, if either Party A or Party B dispute the Amount Payable under clause 7 and that dispute is not resolved within the time specified in clause 7(d), payment of the Amount Payable shall be without prejudice to any other rights or remedies available to Party A or Party B (as the case may be) pursuant to the CFD.
9. In this agreement "Settlement Date" means, in respect of a **billing period**, the 20th day of the month following that period or where that day is not a **business day**, the next **business day**; and

Force Majeure

10. [Party A and Party B confirm that the CFD has not force majeure clause.] *[The parties should elect either this clause or the following clause.]*

or

[Party A and Party B confirm that the CFD has a force majeure clause, and agree:

- a. that the party to the CFD invoking the force majeure clause will notify the clearing manager in writing (including by electronic means) of (i) any force majeure event that occurs, (ii) when that force majeure event ceases to apply and (iii) the total period to the nearest trading period during which the force majeure event applied;
- b. that settlement of this Agreement will occur as if the force majeure event has not occurred if the **clearing manager** is not notified of a force majeure event.

If a force majeure event is notified to the **clearing manager**, the **clearing manager** will not settle this Agreement for any **trading period** following the **trading period** during which it was notified of that force majeure event until it is notified that the force majeure event has ceased to apply. It is acknowledged that:

- c. the **clearing manager** will settle this Agreement for the **billing period** in which a force majeure event is notified to it up to and including the **trading period** it was notified of that force majeure event; and
- d. the value of this Agreement for prudential purposes may change as a result of notification of a force majeure event.

For the avoidance of doubt, the notification of a force majeure event to the **clearing manager** under this agreement and settlement of any Amount Payable pursuant to it shall be without prejudice to any other claims, rights, obligations or actions of either Party A or Party B under the CFD.]

Security

11. Party A and Party B acknowledge that, under the **rules**, Amounts Payable by Party A to Party B under this Agreement
 - a. will be applied on a Settlement Date to satisfy in whole or in part the liability on that Settlement Date pursuant to the **rules** (the "liability") of Party B; and
 - b. will be set off against any amount payable to Party A under those rules,
 and vice versa.
12. This Agreement shall be a continuing security to the clearing manager in respect of each and every one of the Liabilities and shall not be (or be construed so as to be) discharged by any intermediate discharge or payment of or on account of the Liabilities or any settlement of accounts between the clearing manager and Party B or anyone else.
13. Where at the end of any **billing period** either Party A or Party B:
 - a. is a **generator** and is liable to pay on the next Settlement Date more money pursuant to this Agreement and its other Liabilities in that **billing period** than it is to be paid under the rules, that party is deemed to be a net **purchaser** and may be called upon by the **clearing manager** to provide security under section H of the **rules**; or
 - b. is a **purchaser** and is liable to pay money to the other party on the next Settlement Date pursuant to this Agreement then the **clearing manager** may call upon that

purchaser to provide additional security under section H of the **rules** for all or part of the Amount Payable.

Cancellation

14. Notwithstanding anything in this Agreement or in the **rules**, this Agreement may only be cancelled in relation to **trading days** after the date of cancellation. The date of cancellation will be:
 - a. the date specified by Party A or Party B, with the consent of the other party, in written notice to the **clearing manager**; or
 - b. the date either Party A or Party B gives written notice to the **clearing manager** in accordance with rule 2 of section H of Part 2 of the **rules**.
15. For the avoidance of doubt and notwithstanding the fact that the date of cancellation has passed, Party A and Party B agree that the **clearing manager** will settle this Agreement up to and including midnight on the date of cancellation as determined pursuant to clause 14 on the relevant Settlement Date.

Notices

16. Any demand to be made on the Party A or Party B by the **clearing manager** under this Agreement may be made in writing and delivered to the address in New Zealand notified to the **clearing manager** from time to time. Party A's and Party B's addresses as at the date of this Agreement are:

Party A: [address]

Party B: [address]

Assignment

17. In the event that the **clearing manager** ceases to be the **clearing manager** under the **rules**, the **clearing manager** may assign this Agreement to the person appointed as the new **clearing manager** under those **rules**, without the consent of either the Party A or the Party B.

Governing Law

18. This Agreement shall be governed by and construed in accordance with New Zealand law.

Limits on Liability

19. Party A and Party B shall indemnify the **clearing manager** from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the negligence, wilful default or dishonesty of the **clearing manager**) including the **clearing manager's** reasonable costs and expenses in relation to enforcement of the indemnity which may be imposed on, or incurred by or asserted against the **clearing manager** solely by reason of the **clearing manager** performing any functions, obligations, discretions or duties of the **clearing manager** under this Agreement.
20. The **clearing manager's** liability under this agreement is subject to the limitations on the liability of the **clearing manager** as set out in the **rules**.

Executed by:

Signed for and on behalf of [Party A] by:

in the presence of:

Name:
Occupation:
Address:

Signed for and on behalf of [Party B] by:

in the presence of:

Name:
Occupation:
Address: