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15<sup>th</sup> October 2019

To whom it may concern,

**ENA submission to Electricity Authority *Code amendment proposal: Default Distributor Agreement* consultation**

The Electricity Networks Association (ENA) appreciates the opportunity to make a submission to the Electricity Authority (the Authority) consultation on “Code amendment proposal: Default Distributor Agreement”.

ENA represents the 27 electricity distribution businesses (EDBs) in New Zealand (see Appendix A) who own and operate the local electricity lines that are critical to the well-being of communities throughout the country. ENA’s submission is on behalf of our members and in addition to any individual submissions that they may make.

ENA accepts that the Authority may introduce a Default Distributor Agreement to govern the relationship between traders and distributors with respect to the provision of distribution services. However, we have many concerns with the proposed drafting of the Default Distributor Agreement and associated Code amendments (hereafter referred to collectively as the DDA) contained in the consultation material. We urge the Authority to consider our comments, and those of our members, carefully, as it may be very difficult to address errors or omissions once the DDA comes into effect.

Because of the significance of the Authority’s proposals, we strongly encourage the Authority to run a two-stage consultation process and allow cross-submissions from interested parties following this first stage. This will help to ensure that any inadvertent errors or oversights in the DDA drafting can be identified and amended prior to the proposals coming into effect in the Code.

We have limited our comments and proposed amendments to the most important issues that we consider are essential to achieving the Authority’s objectives and ensuring that the DDA functions

efficiently and in the interests of all market participants. We have grouped our comments and amendments under the following themes:

- **Contract formation, variation and termination** – No contract is designed to last forever. Circumstances and the parties' requirements will change over time. In an unregulated environment, parties manage these risks through specified contractual terms and provisions relating to amendment, termination and renewal. In a regulated environment, where parties are required to offer to contract on regulated terms, it is important to consider how these risks will be managed. As currently drafted, Part 12A contemplates evergreen contracts with limited options for updating and revision. This creates unacceptable risks to all market participants and means there will be inevitable variance between the practical commercial realities on the ground and the distribution agreements that are in force. We have therefore proposed a number of targeted safeguards to ensure that distribution agreements can evolve appropriately, within the overall structure of a regulated must-offer standard contract.
- **Risk management** – In the proposed drafting of the DDA, the Authority has presumed to determine the appropriate balance of risk and liability between EDBs and traders. This is a significant intervention for the Authority to make and should be undertaken with the utmost care and caution. As a general rule, risk should be allocated to the party best able to bear it. The Authority has failed to set this balance correctly in the current DDA drafting. The consequence is that the costs associated with these risks will be borne by consumers through regulated distribution prices. We have therefore made targeted comments relating particularly to prudential and indemnity arrangements to ensure an appropriate allocation of risk.
- **Access to data** – ENA is pleased to see that the Authority has taken a pro-active approach to enable EDBs to access metering consumption data via traders in the drafting of Appendix C of Schedule 12A.1. Unfortunately, there are several proposed restrictions on the use of consumption data that will significantly undermine its usefulness to EDBs, and therefore potential benefit to consumers. There are also improvements that could be made to this drafting that would ease some of the administrative and logistical burden on both EDBs and traders whilst still providing appropriate safeguards for the management of this data. We have proposed amendments to resolve these issues.
- **Workability** – there are a number of areas in which the current drafting is insufficiently clear, appears to give rise to unintended consequences, or does not account for some of the practical realities of the environment in which distributors operate. We have therefore suggested a number of changes to improve the workability of the DDA. In our view, these should be uncontroversial.

We expand on each of these themes in the body of our submission. A detailed explanation of our proposed amendments and the reasons for them is set out in Annex A to this submission. We also enclose mark-ups of Part 12A and the draft DDA showing our proposed amendments (in track changes).

### **Contract formation, variation and termination**

As currently drafted, when a trader elects to contract under them, the DDA will apply in perpetuity. There is no mechanism by which the EDB can elect to amend, update or terminate the agreement

without the trader also agreeing to do so (other than a mechanism to amend operational terms). This locks distributors into an evergreen contractual arrangement that can never evolve to reflect changes in market conditions or the parties' reasonable requirements.

Over time, this inflexibility could become increasingly onerous for the EDB as they are unable to keep the terms of the various DDA contracts synchronised to their internal businesses process (which will naturally change over time) and one another.

In addition, it is difficult to foresee or predict with any certainty how the electricity market in New Zealand might develop over time. The current roles and responsibilities, both of industry participants and regulators, could quite conceivably change significantly in a comparatively short space of time. In the face of such uncertainty, the contracts between EDBs and traders formed under the DDA would continue to operate provided the traders in question wished them to do so.

This level of inflexibility is also unnecessary to achieve the Authority's objectives. Consistency and stability can still be achieved alongside reasonable mechanisms to ensure that the process of entering into, and operating under, the default distribution agreement, does not create unnecessary risks to EDBs or to market functioning.

Our key changes in relation to these issues include:

- providing greater flexibility to enter into alternative agreements at a later date, and in relation to the subject matter of the Appendices;
- establishing a mechanism to periodically refresh all distribution agreements to reflect the distributor's current DDA;
- allowing distributors to apply to the Authority for an exemption from the requirement to offer the DDA to address the risk of rogue traders;
- specifying the circumstances in which the Rulings Panel may unilaterally amend operational terms;
- obliging the Authority to periodically review Part 12A of the Code and the template DDA to ensure it remains fit for purpose; and
- removing from the DDA the obligation to comply with guidelines promulgated by the Authority from time to time. It is inappropriate for the Authority to arrogate to itself a parallel rule-making power that bypasses the statutory framework for amending the Code through the Electricity Industry Act.

We provide further detail below in relation to certain of these proposals.

#### *Power to exempt distributors from the obligation to contract with rogue traders*

The DDA gives traders the absolute right in all circumstances to trade on an EDB network with no scope for the EDB to refuse them. This has the effect of transferring some risk from traders (particularly new entrant start-up retailers) to the EDB, and via the EDB charges to other consumers.

Over the last 12-18 months EDBs have seen a marked increase in the number of traders defaulting on their payments for distribution services. This then triggers a relatively lengthy process for the EDB to remove the trader in question from their network, often incurring bad debts which are borne by both retailers' and EDBs' wider consumer base.

Under the DDA proposal, there would be no mechanism by which an EDB could stop a trader that has defaulted in the manner above from simply establishing a new DDA with the EDB and starting again.

We note that this balance of risk that has been struck by the Authority for the relationship between traders and EDBs is significantly different to the risk the wholesale electricity market (via the clearing manager) carries for these traders.

We do not think the Authority has set the balance of risk between traders and EDBs (and by extension their consumers) appropriately. If the Authority is of the view that the benefits of competition brought about by supporting traders in this way is in the public interest, then the additional risk borne by EDBs should also be carried to a similar extent by the wider electricity industry, via the wholesale market clearing manager.

We propose that distributors be permitted to apply to the Authority for an exemption from the requirement to contract with traders that persistently fail to comply with their obligations. It would be within the Authority's discretion whether or not to grant that exemption.

#### *Rulings Panel's discretion to amend operational terms*

ENA has significant concerns that the role of the Rulings Panel, the scope of its determinations, and the effects that these might have upon agreements made under the DDA, are insufficiently defined in the current draft Part 12A. As currently drafted, the principles for operational terms are not clearly articulated and it is not clear that the Rulings Panel is required to identify an actual error before it intervenes to substitute its own terms.

It is also not clear to us how determinations made by the Rulings Panel would flow through into agreements made between the EDB in question and other traders, if at all. If these do flow through, would the other traders, who might be quite content with their existing agreement with the EDB, be happy? If they do not flow through, would the EDB end up having to support multiple different sets of operational terms for different traders? Either outcome could be unsatisfactory for the parties involved.

We have proposed narrow and targeted amendments to:

- clarify the principles for operational terms;
- make clear that the Rulings Panel, before it exercises its power to amend, must be satisfied that the operational term in question is actually inconsistent with the principles, as opposed to intervening merely because it has identified an alternative term that it considers is also consistent, or more consistent, with the principles; and
- require the Rulings Panel to consider the impact on the distributor of adopting the amended term.

#### *Inappropriate rule-making through guidelines*

ENA believes that it is inappropriate of the Authority to include within the DDA an absolute requirement for EDBs to comply with several guidelines issued by the Authority. This requirement has the effect of elevating what were simply guidance documents to the status of quasi-regulation, something that they were never intended to be. It also bypasses the statutory framework for rule-making through the Code. These documents were not subject to the rigorous development processes that true regulations would be subject to and are also not subject to the same level of consultation and scrutiny should they be revised in the future.

Finally, it creates unacceptable risk to all market participants, because it means that key obligations in distributor agreements are open to redetermination on an ad hoc basis through revisions to the guidelines. This represents a significant and avoidable inefficiency.

### **Risk management**

We consider that the Authority's proposed prudential security regime is largely ineffective because:

- the cost of posting additional security is prohibitive, and allows traders to earn a risk-free return significantly in excess of cost of capital; and
- the amount of security an EDB can require of a trader is insufficient to reflect the true extent of the risk posed by the trader defaulting.

There are also a number of issues with the structure of the liability and indemnity provisions that will lead to unintended consequences and unnecessary cost and risk for distributors. These costs will ultimately be borne by consumers through regulated prices, and therefore should be minimised to the extent possible. We have proposed targeted amendments to improve the functioning of the risk allocation mechanisms of Part 12A and the DDA.

### **Data access**

ENA applauds the changes that the Authority has made to the DDA to allow EDBs to access smart meter consumption data via traders. We note that this is entirely consistent with the recommendations arising from the Government's Electricity Price Review, and the recently published Government response to those recommendations.

Whilst the principle is sound however, there are several requirements in the proposed Appendix C that are overly onerous, to the point of rendering the consumption data provided to EDBs useless. These are as follows:

- **Inability to combine data:** as drafted the proposed Appendix C prohibits EDBs from combining data with any other data without the consent of the trader. Without such consent, the data is essentially worthless, as it cannot be combined with any pre-existing network information to generate a benefit to the EDB (and ultimately EDB consumers). The 'permitted purposes' defined in Appendix C should be sufficient to ensure that the data is used for appropriate reasons, and therefore this requirement for trader consent prior to combining data sets should be removed.
- **Overly onerous audit requirements:** Appendix C currently allows for each individual trader on an EDB network, where they are providing smart meter consumption data to that EDB, to undertake an audit of the EDBs data handling processes. In the extreme, this could lead to as many as 38 trader audits per annum, which is clearly inefficient and unnecessary. EDBs are already subject to multiple different audit regimes and, if this audit is genuinely required, it would be better to include it within one of the pre-existing audits on behalf of all traders. For example, the Authority's participant audit process may be an appropriate place for this to sit.
- **Requirement to destroy data after use:** similar to the point made above, the requirement to destroy smart meter consumption data after use will, at best, significantly reduce the benefit that EDBs can generate from that data. At worst, it will render the data worthless and completely remove any benefit that might otherwise have been obtained. In practice, many of the benefits that EDBs can generate from the use of

smart meter data will be informing certain decisions on network planning and these decisions will need to be justified after the fact. Also, the ability to monitor and track consumption over time to inform decision-making will be another key benefit arising from use of the smart meter data. In both these scenarios these benefits will be unobtainable, or significantly inhibited, by the requirement to destroy data.

We have also made a number of proposed changes to address ambiguities or potential inaccuracies in the current drafting.

### **Workability**

Asides from the major issues described above, there are a range of issues that go to the workability of the agreement that we wish to bring to the Authority's attention. These are detailed in the Annex and should be uncontroversial. We highlight the most significant issues below:

**Load Control:** the DDA should allow for future development of load control. The availability of consumer load to other parties (EDBs, traders, others) should be at that consumer's discretion. The DDA as drafted does not allow for consumers to benefit from future opportunities that might arise related to load control. Specifically,

- clause 5.1 is just based on a price category selection – this is how it has been done in the past. New TOU price plans, the removal of Low Fixed Plans, multiple traders, new technology (e.g. controllable EV chargers) may mean that it is not a simple price category selection. We have made a change to clause 5.1 to permit consumers, at their discretion, to take advantage of other load control options offered by distributors.

**Conveyance contracts:** similar to the point above, these consumers are obtaining distribution services (small “d” small “s”), but not via a Direct Customer Agreement (as defined in the DDA) as they are billed for network services via their retailer. The contract is backward looking with the assumption that the retailer provides energy. In the future, the customers may be their own supplier of the energy and EDBs should have scope to provide layers of distribution services. Our key points include the following:

- Traders can use an EDB network to provide their energy to consumers who are being billed for conveyance services by the EDB (current key accounts) and that EDBs are responsible for the debt.
- EDBs should be able to offer distribution services (or a subset of distribution services) to consumers directly.
- Perhaps the simple approach is to remove the words “at the Customer's written request” and rather have “as agreed by the Customer or Customer's agent”. And adding some wider wording and removing the “unless otherwise agreed with the Trader, includes the direct billing...” in the definition sections.

**Billing:** EDBs need to be able to issue pro forma invoices, not just actuals to reflect current practice. The best approach may be to have the issuing of invoices section (9.3) inserted as an operational term at the back of the contract. This would allow EDBs to improve billing processes to allow new pricing options to be implemented and promote greater retail competition and consumer benefits.

For example, EDBs may be able to help some small new entrant retailers billing consumers weekly by aligning their billing with the new entrant retailer's billing process, etc.

- Alternatively, the definition of Tax Invoice could be amended to make sure it can include EDB pro forma invoices.
- Or perhaps, by amending clause 9.2, EDBs could issue an estimated tax invoice even if the information is provided on time.

If you would like to discuss any of the points raised in this submission in further detail please contact Richard Le Gros (details below).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'GP' followed by a long, sweeping diagonal stroke.

Graeme Peters  
Chief Executive  
Electricity Networks Association

For more information contact Richard Le Gros, [richard@electricity.org.nz](mailto:richard@electricity.org.nz)  
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## **Appendix A – ENA Member Companies**

Alpine Energy  
Aurora Energy  
Buller Electricity  
Centralines  
Counties Power  
Eastland Network  
Electra  
EA Networks  
Horizon Networks  
Mainpower NZ  
Marlborough Lines  
Nelson Electricity  
Network Tasman  
Network Waitaki  
Northpower  
Orion New Zealand  
Powerco  
PowerNet  
Scanpower  
The Lines Company  
Top Energy  
Unison Networks  
Vector  
Waipa Networks  
WEL Networks  
Wellington Electricity  
Westpower



# Electricity Industry Participation Code 2010

## Part 12A

### Distributor agreements and arrangements

#### Contents

- 12A.1 Contents of this Part
- 12A.2 Participants to which this Part applies

#### Schedule 12A.1

##### Requirements for entering into distributor agreements

*Appendix A: Income distribution services*

*Appendix B: Provision of trust and co-operative company information*

*Appendix C: Provision of customer information*

#### Schedule 12A.2

##### Other provisions applying to distributor and participant arrangements

#### Schedule 12A.3

##### Requirements for distributors and traders on embedded networks (interposed)

#### Schedule 12A.4

##### Requirements for developing, making available, and amending default distributor agreements

*Appendix A: Default distributor agreement for distributors and traders on local networks (interposed)*

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#### 12A.1 Contents of this Part

This Part—

- (a) specifies requirements with which each **local network distributor** and each **trader** trading on the **distributor's network** must comply when entering into a **distributor agreement**; and
- (b) specifies other requirements that apply to each **distributor** that has an **interposed arrangement** with 1 or more **traders**, and each **trader** trading on the **distributor's network**; and
- (c) specifies requirements that apply in respect of each **embedded network distributor** that has an **interposed arrangement** with 1 or more **traders**; and
- (d) requires each **local network distributor** that has an **interposed arrangement** with 1 or more **traders** to develop and publish a **default distributor agreement** based on the relevant **default distributor agreement template**.

### 12A.2 Participants to which this Part applies

- (1) Each **distributor** described in a row in column 1 below, and each **participant** described in column 2 of the row, must comply with the provisions set out in each schedule referred to in column 3 of the row:

Row	Column 1 – Distributor	Column 2 – Participant	Column 3 – Schedule
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row	Schedule 12A.1 Schedule 12A.2 Schedule 12A.4
2	Each <b>distributor</b> that owns or operates an <b>embedded network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>embedded network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row	Schedule 12A.2 Schedule 12A.3

- (2) The schedules to this Part also specify requirements for appeals to the **Rulings Panel**.

## Schedule 12A.1

### Requirements for entering into distributor agreements

cl 12A.2(1)

#### 1 Content of this Schedule

This Schedule sets out provisions that apply to each **distributor** described in a row in column 1 below, and each **participant** described in column 2 of the row:

Row	Column 1 – Distributor	Column 2 – Participant
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row

#### 2 Obligation to have a distributor agreement

- (1) A person that wishes to be a **participant** that trades on, is connected to, or uses a **distributor's network** or equipment connected to a **distributor's network** must have a **distributor agreement** with the **distributor**.
- (2) The person must ensure that the **distributor agreement** comes into force on or before the day on which the person commences trading on or using, or is connected to or using equipment connected to, the **distributor's network**.

#### 3 Notice of intention to trade on, be connected to, or use a network

- (1) A person described in clause 2(1) must give notice to the **distributor** that it wishes to trade on, be connected to, or use the **distributor's network** or equipment connected to the **distributor's network** as a **participant**, at least ~~4020~~ **business days** before the person proposes to do so.
- (2) The person may withdraw the notice at any time before it enters into, or is deemed to have entered into, a binding contract with the **distributor** under clause 6, by giving notice of the withdrawal of the notice to the **distributor**.

*Negotiating, and entering into, distributor agreements*

#### 4 Clauses that apply if distributor has published default distributor agreement

Clauses 5 to 8 apply if a **distributor** receives a notice from a person under clause 3(1) after the **distributor** has made the relevant **default distributor agreement** available on its website under clause 6(1) of Schedule 12A.4.

#### 5 Distributor must offer default distributor agreement terms to contract

The **distributor** must ~~provide~~offer to contract with the person that gives notice under clause ~~32~~(1), ~~on~~ the distributor's terms set out in the **default distributor agreement** no later than 5 **business days** after receiving the notice.

## 6 When default distributor agreement applies as a binding contract

- (1) At any time before the relevant **default distributor agreement** applies as a binding contract between the **distributor** and the person who gave notice under clause 3(1), either the **distributor** or the person may give the other party notice that it wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (2) If either party gives a notice under subclause (1), the **default distributor agreement** applies as a binding contract between the parties with effect from—
  - (a) the later of—
    - (i) the 205<sup>th</sup> **business day** after the date on which the notice is given; or
    - (ii) the day on which the person becomes a **participant**; or
  - (b) any other date agreed by the parties.
- (3) If, at the expiry of 4020 **business days** after a notice is received by a **distributor** under clause 3(1), or any other date agreed by the parties, the parties have not agreed on the terms of a **distributor agreement** and neither party has given a notice under subclause (1), the **default distributor agreement** applies as a binding contract (being a **distributor agreement**) between the parties with effect from—
  - (a) the later of—
    - (i) the expiry of the 420 **business day** period; or
    - (ii) the day on which the person becomes a **participant**; or
  - (b) any other date agreed by the parties.
- (4) At any time before the relevant **default distributor agreement** applies as a binding contract between the parties, the person who gave notice under clause 3(1) may give the **distributor** notice that it does not agree to the inclusion of one or more **collateral terms** in the **default distributor agreement** published in accordance with clause 6(1) or 123(1) of Schedule 12A.4. If any particular collateral terms are identified in the default distributor agreement as terms that can be included or excluded as a group but not individually, then the notice in this subclause 6(4) can only provide that the person does not agree to those collateral terms as a group.
- (5) For the purposes of this clause, a **distributor agreement** that applies as a binding contract between the parties in accordance with subclause (2) includes—
  - (a) all **core terms**, **operational terms**, and **recorded terms** (if any) included in the **default distributor agreement** published in accordance with clause 6(1) or 123(1) of Schedule 12A.4; and
  - (b) all **recorded terms** otherwise notified by the **distributor** to the other party; and
  - (c) subject to subclause (6), all **collateral terms** included in the **default distributor agreement** published in accordance with clause 6(1) or 123(1) of Schedule 12A.4; and
  - (d) either:
    - (i) any ~~appendix terms~~ relating to additional services that ~~neither~~ party ~~notifies is~~ required ~~to~~ be appended to the distributor agreement in accordance with clause ~~7(2)-8~~; or
    - (+)(ii) any alternative terms for an additional service that the parties agree to include in the distributor agreement in accordance with clause ~~7(4)~~ and clause ~~9~~;
- (6) A **distributor agreement** that applies as a binding contract under subclause (5) does not include any **collateral term** to which a notice given under subclause (4) applies.

*Additional services*

**7 Terms relating to additional services**

- (1) This clause applies if a **distributor** receives a notice from a person under clause 3(1) that the person wishes to trade on, be connected to, or use the **distributor's network** or equipment connected to the **distributor's network** as a **participant**.

- (2) A **participant** described in a row in column 1 below may by notice require that the **distributor agreement** agreed between the parties in accordance with this Schedule includes the appendix described in column 2 of the row:

Row	Column 1 – Participant that may elect additional services	Column 2 – Appendix
1	<b>Distributor</b>	Appendix A (Income distribution services)
2	<b>Distributor</b>	Appendix B (Provision of trust and co-operative company information)
3	<b>Distributor or trader</b>	Appendix C (Provision of <u>Consumption Data-</u>

- (3) Subject to subclause (4), if, in relation to a **distributor agreement**, a 1 or more parties gives notice requiring the inclusion of an appendix in accordance with subclause (2), the terms in that appendix are deemed to form part of the **distributor agreement** between the parties from the date the notice is given.
- (4) A distributor and a participant may agree to alternative terms relating to additional services in accordance with clause 9.
- (5) For the avoidance of doubt, a participant may give notice under subclause (2) at the commencement of the distributor agreement or at any time thereafter.
- (4) —

*Alternative agreements and alternative terms for additional services*

## 8 Alternative agreements

- (1) A **distributor** and a **participant** may enter into an agreement on terms that differ from the terms set out in the relevant **default distributor agreement** (an "**alternative agreement**").
- (2) A **distributor agreement** that differs from the relevant **default distributor agreement** only because one or more **collateral terms** in the **default distributor agreement** has been omitted is not an **alternative agreement** for the purposes of this Part.
- (3) If a **distributor** and a **participant** enter into an **alternative agreement** under this clause, the **distributor** and **participant** must ensure that the **alternative agreement** does not include any term that is inconsistent with, or modifies the effect of, any term included under clause 7(3).
- (4) To avoid doubt, an **alternative agreement** is a **distributor agreement** for the purposes of this Code.
- (5) To avoid doubt, nothing prevents parties to an existing distributor agreement based on the default distributor agreement from entering into an alternative agreement, in which case the alternative agreement will replace the existing distributor agreement based on the default distributor agreement.

## 9 Alternative terms for additional services

- (1) A **distributor** and a **participant** may agree to include, as an appendix to a **distributor agreement**, an appendix that addresses the subject-matter of an appendix described in clause 7(2) ("alternative terms for an additional service"). The alternative

terms for an additional service will form part of the distributor agreement from the date the parties agree to its inclusion.

- (2) If a **distributor** and a **participant** agree to include alternative terms for an additional service in a **distributor agreement** to which clause 6 applies, the **distributor** and **participant** must ensure that none of those terms are inconsistent with, or modify the effect of—
- (a) **core terms** in the relevant **default distributor agreement** and **default distributor agreement template**; or
  - (b) **operational terms** in the relevant **default distributor agreement**.

*Other agreements*

## 10 Other agreements and arrangements

Nothing in this Part prevents a **distributor** and a **participant** from entering into any other agreement or arrangement, provided that the terms of the other agreement or arrangement—

- (a) do not address the subject-matter of the terms of a **default distributor agreement**; and
- (b) do not relate to the service or services described in a **default distributor agreement**; and
- (c) are not inconsistent with, and do not modify the effect of, any **default distributor agreement** or **alternative agreement**.

### *Providing distributor agreements to the Authority*

## 11 Participants must provide distributor agreements to Authority

- (1) A **participant** who enters into a **distributor agreement** with a **distributor** in accordance with clause 6 or clause 8 must give the **Authority** a copy of—
  - (a) the **distributor agreement**, no later than 10 **business days** after the agreement is executed; and
  - (b) any variation to the **distributor agreement**, no later than 10 **business days** after the variation is executed; ~~and~~
  - ~~(c) any other agreement that the participant enters into with the distributor at any time during the period commencing on the date on which the participant gives the distributor notice under clause 3(1) and ending on the date on which the participant and the distributor enter into a distributor agreement, no later than 10 business days after the distributor agreement is executed.~~
- (2) To avoid doubt, a **distributor agreement** includes, for the purpose of this clause—
  - (a) all **core terms**, **operational terms**, and **recorded terms**; and
  - (b) all terms relating to additional services included in the **distributor agreement** in accordance with clause 7 ~~or clause 9~~; and
  - (c) all other terms included in the same agreement as **core terms**, **operational terms**, and **recorded terms**, including **collateral terms**;
  - (c) an **alternative agreement** entered into in accordance with clause 8, including all terms for additional services included in the **distributor agreement** in accordance with clause 7 or clause 9 and any other terms included in the **alternative agreement**.
- (3) The **Authority** may **publish** any **distributor agreement** ~~or other agreement~~ given to it under subclause (1).

### *Transitional provisions for parties with existing agreements*

## 12 Transitional provisions for existing agreements

- (1) This clause applies to a **distributor** and a **participant** that entered into an agreement for services that commenced before the date on which the **distributor** made a **default distributor agreement**, that applies in respect of the arrangement between the



**distributor** and the **participant**, available on its website under clause 6(1) of Schedule 12A.4 ("existing agreement").

- (2) The **distributor** must, no later than 10 **business days** after the date on which the **distributor** makes its **default distributor agreement** available on its website, ~~offer to contract with~~provide the **participant** ~~on~~with the terms set out in the **default distributor agreement**.
- (3) At any time before the **default distributor agreement** applies as a binding contract between the **distributor** and the **participant** under subclause (5), either the **participant** or the **distributor** may give the other party notice that the **participant** or **distributor** wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (4) If either party gives a notice under subclause (3), the relevant **default distributor agreement** applies as a binding contract between the **distributor** and the **participant** with effect from the 20<sup>th</sup> **business day** after the date on which the notice is given, or any other date agreed by the parties.
- (5) Subject to subclause (4), if the **distributor** and the **participant** have not agreed on the terms of a **distributor agreement** to replace the existing agreement at the expiry of 60 business days ~~2 months~~ after the date on which the **distributor** makes its **default distributor agreement** available on its website, or any other day agreed by the parties,—
  - (a) the relevant **default distributor agreement** applies as a binding contract (being a **distributor agreement**) between the **distributor** and the **participant** with effect from the expiry of that period, and clause 6(5) applies (with all necessary modifications) in respect of the **distributor agreement**; and
  - (b) the provisions of the existing agreement that directly or indirectly relate to the services described in the relevant **default distributor agreement**, or any additional services described in an appendix to this Schedule, are deemed to have been terminated with effect from that date.
- (6) Clause 6(4) to (6) apply to a **distributor** and a **participant** to which this clause applies as if the **participant** had given a notice under clause 3(1) and the **distributor** is the **distributor** to whom the notice was given.
- (7) Clauses 8 and 9, which relates to alternative agreements and alternative terms for additional services, applies if the parties agree to wish to replace an existing agreement with an agreement that is not the relevant default distributor agreement.
- (8) Clause 9 applies if the parties agree to include alternative terms for an additional service in the distributor agreement that replaces the existing agreement.

*Refreshing existing distributor agreements based on default distributor agreements*

### 13 Replacement of existing agreements

- (1) This clause applies to a distributor and each participant that is party to an existing distributor agreement with the distributor (including as replaced from time to time by this clause 13) which is based on the default distributor agreement and which first took effect as a binding contract under clause 6 ("older distributor agreement").

- (2) At the expiry of each Triennial Period, the **distributor** may give notice to the **participants** requiring the replacement of each **older distributor agreement** with a new **distributor agreement**, in accordance with this clause 13. The distributor must provide the **participants** with the terms set out in the distributor's current **default distributor agreement** at the time the **distributor** gives notice. The obligations described in sub-clauses clauses (3) – (8) apply as between the **distributor** and each **participant** to whom the distributor gives notice.
- (3) At any time before the current **default distributor agreement** applies as a binding contract between the **distributor** and the **participant** under subclause (5), either the **participant** or the **distributor** may give the other party notice that the **participant** or **distributor** wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (4) If either party gives a notice under subclause (3), the current **default distributor agreement** applies as a binding contract between the **distributor** and the **participant** with effect from the 20<sup>th</sup> **business day** after the date on which the notice is given, or any other date agreed by the parties.
- (5) Subject to subclause (4), if the **distributor** and the **participant** have not agreed on the terms of a **distributor agreement** to replace the **older distributor agreement** at the expiry of 60 **business days** after the date on which the **distributor** gives notice under clause (2), or any other day agreed by the parties,—
- (a) the current **default distributor agreement** applies as a binding contract (being a **distributor agreement**) between the **distributor** and the **participant** with effect from the expiry of that period, and clause 6(5) applies (with all necessary modifications) in respect of the **distributor agreement**; and
- (b) the provisions of the **older distributor agreement** are deemed to have been terminated with effect from that date.
- (6) Clause 6(4) to (6) apply to a **distributor** and a **participant** to which this clause applies as if the **participant** had given a notice under clause 3(1) and the **distributor** is the **distributor** to whom the notice was given.
- (7) Clause 8, which relates to **alternative agreements**, applies if the parties agree to replace an **older distributor agreement** with an agreement that is not the current **default distributor agreement**.
- (8) Clause 9 applies if the parties agree to include alternative terms for an additional service in the **distributor agreement** that replaces the **older distributor agreement**.
- (9) In this clause 13, “Triennial Period” means:
- (a) three years from the date the **distributor** first entered into a **distributor agreement** based on the **default distributor agreement** with any **participant** (“First Triennial”); and
- (b) after the First Triennial, three years from the date the **distributor** last gave notice to **participants** under sub-clause (2).

*Exception to the requirement to contract with traders*

## 14 Power to block certain traders

- (1) A **distributor** may apply to the Authority for an exemption from clauses 4 – 9 and 12 of this Schedule 12A.1 (“Contracting Requirements”) as they relate to any specified person, if:
- (c) the **distributor** has previously terminated a **distributor agreement** or other agreement relating to **distribution** services (including a use of systems agreement) due to the specified person’s default (including for any insolvency-related event) or due to the default of any related company of the specified person; or
  - (d) the **distributor** has reasonable grounds to believe that the specified person will not satisfactorily perform its obligations arising under any future **distributor agreement** between the parties or its obligations under the Code.
- (2) A **distributor** that makes an application under subclause (1) is exempted from the Contracting Requirements as they relate to the specified person(s) until the Authority has notified the **distributor** of its decision under subclause (4), provided the application is made in good faith.
- (3) Where the Authority receives an application under subclause (1), it may:
- (a) exempt the **distributor** from the Contracting Requirements as they relate to any specified person(s) stated in the application or any other person the Authority deems fit, for a period set by the Authority at its discretion; or
  - (b) refuse to grant the **distributor** any exemption from the Contracting Requirements.
- (4) The Authority must notify the **distributor** of its decision under subclause (3) not more than 40 business days after it receives the distributor’s application.
- (5) The Authority may on its own motion exempt every **distributor** from the Contracting Requirements as they relate to any specified person(s), for a period set by the Authority at its discretion, by publishing the name(s) of the specified person(s).

## **Schedule 12A.1, Appendix A**

### **Income distribution services**

Sch 12A.1, cl 7(2)

#### **1 Distributor can require the Trader to pass on income distributions**

- (1) The Distributor [has a Shareholder Trust as a shareholder/is a Co-operative] and requires from time to time to distribute income to [the Shareholder Trust's beneficiaries/its shareholders].
- (2) The Distributor may require that the Trader pay income distributions on behalf of the [Shareholder Trust/Distributor] to each of the Trader's qualifying Customers by crediting each qualifying Customer's electricity account ("Income Distribution Services"), by giving the Trader at least 40 Business Days' notice of the requirement in accordance with clause 2.
- (3) The Distributor may not require the Trader to pay income distributions under subclause (2) any more frequently than necessary to ensure that income distributions are credited to Customers on or by any date that the [Shareholder Trust/Distributor] resolves to distribute income to its [beneficiaries/shareholders].

#### **2 Distributor notice of income distribution requirements**

- (1) A notice given by a Distributor under clause 1 must include the following:
  - (a) the time period within which the [Shareholder Trust/Distributor] has set the eligibility date for Customers to be qualifying Customers;
  - (b) a description of the information the [Shareholder Trust/Distributor] requires to identify qualifying Customers, including any exclusions;
  - (c) the ICPs on the Network in respect of which an income distribution is payable;
  - (d) a description of the information the [Shareholder Trust/Distributor] requires to calculate the income distributions payable;
  - (e) the proposed process and timelines for information to be exchanged between the parties to enable efficient implementation;
  - (f) a draft of any promotional material relating to the income distributions that the Distributor wants the Trader to include with the invoice that records the credit given;
  - (g) copies of any proposed publicity information relating to the income distributions, including media releases;
  - (h) contact details of persons who can be contacted in respect of Customer queries that cannot be addressed by the Trader;
  - (i) expected frequently asked questions by Customers and the answers to those questions;
  - (j) the format in which Customer information is to be exchanged in accordance with clause 6;
  - (k) whether the Distributor[, on behalf of the Shareholder Trust,] requires any other information in respect of each qualifying Customer for the purposes set out in clause 9(3); and
  - (l) whether the Distributor[, on behalf of the Shareholder Trust,] requires confirmation of the number of Customers connected to the Distributor's Network to whom an income distribution is not paid.
- (2) The Trader must, acting reasonably, advise the Distributor if the Trader is unable to meet any of the requirements set out in the notice, and the reasons for that.

### **3 Payment for income distribution services**

- (1) The Distributor must pay the Trader's reasonable costs incurred in providing any Income Distribution Services that the Distributor requests in a notice given under clause 1.
- (2) If requested by the Distributor, the Trader must give the Distributor a quote for providing the Income Distribution Services before the Trader provides those services.
- (3) The Distributor must pay the Trader's GST invoice for the Income Distribution Services no later than the 20th of the month following the invoice date.

### **4 File with Customer information**

- (1) The Distributor may request from the Trader any information that the Distributor reasonably requires to enable it to identify qualifying Customers and to calculate the income distribution payable to each qualifying Customer.
- (2) The Trader must provide a file to the Distributor containing any information reasonably requested by the Distributor under subclause (1) no later than 10 Business Days after the Distributor's request.
- (3) The Distributor must return the file to the Trader with information identifying qualifying Customers and the income distribution amounts payable to each qualifying Customer no later than 2 Business Days after receipt of the Trader's file.
- (4) If there are any changes to the type of information to be exchanged, or changes to the eligibility criteria compared with the criteria that applied to the last income distribution passed on by the Trader, the parties must test the information exchange process in advance.

### **5 Distributing income to qualifying Customers**

- (1) The Trader must, as soon as reasonably practicable after receiving a file from the Distributor under clause 4(3):
  - (a) credit the income distribution amount determined by the Distributor and included in the file in accordance with clause 4(3) to each qualifying Customer's account; and
  - (b) provide the Distributor with a file that includes the information set out in clause 6.
- (2) The Trader must, if its billing systems allow it to do so, ensure that the income distribution is separately identified on each qualifying Customer's invoice, with the words "[Distributor Name] income distribution" (or any similar words as advised by the Distributor).
- (3) If applicable, the Trader must provide the Distributor's promotional material relating to the income distribution to the Customer along with the Trader's invoice that includes the income distribution.

### **6 File with information about income distributions paid on by the Trader**

The Trader must, as soon as reasonably practicable after paying income distributions in accordance with clause 5, provide the Distributor with a file containing the following information:

- (a) in respect of each qualifying Customer to whom the Trader paid an income distribution:
  - (i) the ICP identifier;
  - (ii) the amount of the income distribution paid;
  - (iii) the Customer's name;
  - (iv) the Customer's physical or residential address (if available); and
  - (v) any other information specified by the Distributor under clause 2(1)(k); and

- (b) if the Distributor has specified under clause 2(1)(l) that it requires that information, confirmation of the number of Customers connected to the Distributor's Network to whom an income distribution was not paid.

## **7 Confidentiality obligations**

- (1) Subject to subclause (2), the Distributor undertakes that, in respect of any information provided to it by the Trader under clause 4 or clause 6 (“Confidential Customer Information”), the Distributor will:
  - (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose the existence of, the Confidential Customer Information except as expressly permitted in this Appendix;
  - (c) only use the Confidential Customer Information for a purpose expressly permitted in this Appendix; and
  - (b) only disclose the Confidential Customer Information for a purpose expressly permitted in this Appendix and on a ‘need to know’ basis.
- (2) For the purposes of this Appendix:
  - (a) the Distributor may disclose Confidential Customer Information if it is required to disclose the Confidential Information by:
    - (i) law, or by any statutory or regulatory body or authority; or
    - (ii) any judicial or other arbitration process; and
  - (b) Confidential Customer Information does not include aggregated and anonymised information.
- (3) The Distributor’s liability for breach of this clause is not limited by any terms in this Agreement or in any other agreement between the parties.
- (4) To avoid doubt, the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by the Distributor's employees, contractors, directors, agents, or advisors.

## **8 Payment of income distribution amounts**

- (1) The Trader must issue the Distributor with a GST invoice for the total amount of income distributions credited, or to be credited, to qualifying Customers under clause 5.
- (2) The Distributor must deposit the total amount of such income distributions, without offset, into the Trader’s nominated bank account no later than 5 Business Days (or any alternative agreed date) after the Trader issues its GST invoice.
- (3) Any income distribution payments received by the Trader from the Distributor must be held by the Trader in an appropriate bank account as separately identifiable funds, for the benefit of the Customers who are entitled to receive the income distributions.
- (4) If, for any reason, the income distribution payable to a qualifying Customer is unable to be paid by the Trader (by way of example but without limitation, because the person ceases to be a Customer and its account with the Trader has a credit balance after the date of processing of the income distribution), and the Trader has received funds from the Distributor in respect of the income distribution, the Trader must, as soon as practicable:
  - (a) refund to the Distributor the income distribution received for the person, or the net credit of the account for the person if that is less than the amount of the income distribution for the person; or
  - (b) refund the person directly the remaining amount by cheque.

## **9 Permitted additional use and disclosure of Confidential Customer Information**

- (1) The Distributor may use Confidential Customer Information to:

- (a) assess whether the Distributor is Consumer-Owned; and
  - (b) comply with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.
- (2) To avoid doubt, the Distributor may disclose Confidential Customer Information to the Commerce Commission, including in circumstances where the Commerce Commission has not exercised a power under the Commerce Act 1986 to require the Distributor to disclose Confidential Customer Information.
- (3) [The Distributor may disclose Confidential Customer Information provided by the Trader to the Shareholder Trust, but the Distributor must enter into arrangements with the Shareholder Trust to ensure that the Shareholder Trust only uses the/The Distributor may use] Confidential Customer Information for the purposes of:
  - (a) ensuring that income is distributed to [beneficiaries/shareholders] in accordance with the [Shareholder Trust's/Distributor's] requirements;
  - (c) enabling a third party to carry out audits of the Distributor [or the Shareholder Trust].
- (4) In the case of Confidential Customer Information disclosed to a Shareholder Trust:
  - (a) the Distributor may enter into arrangements with the Shareholder Trust that allow the Shareholder Trust to disclose Confidential Customer Information if required by:
    - (i) law, or by any statutory or regulatory body or authority; or
    - (ii) any judicial or other arbitration process; and
  - (b) the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by the Shareholder Trust, or by the Shareholder Trust's employees, contractors, directors, agents, or advisors.

## 10 Distributor indemnity

- (1) The Distributor indemnifies the Trader against any costs, losses, liabilities, claims, charges, demands, expenses or actions incurred by the Trader, or made against the Trader, as a result of, or in relation to, any illegal, defamatory, or offensive content in the Distributor's promotional material, except to the extent that such costs, losses, liabilities, claims, charges, demands, expenses or actions arise as a result of, or in connection with, any breach by the Trader of its obligations under this Appendix.
- (2) This clause applies despite any other provisions in this Agreement or in any other agreement between the parties.

## 11 Definitions

In this Appendix:

**"Agreement"** means this distributor agreement, including each Schedule, this Appendix, and any other attachment or document incorporated by reference into this Agreement;

**"Appendix"** means this Appendix A;

**"Code"** means the Electricity Industry Participation Code 2010 made under the Electricity Industry Act 2010;

**"Confidential Customer Information"** has the meaning set out in clause 7(1);

**"Consumer-Owned"** has the meaning given to it in section 54D of the Commerce Act 1986;

**"Co-operative"** means a co-operative company under the Co-operative Companies Act 1996 in respect of which any of the shareholders to whom income distributions are paid comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network; or
- (e) the person's liability for payment for Distribution Services supplied by the Distributor;

**"Customer"** means a person who purchases electricity from the Trader that is delivered via the Network;

**"Customer's Installation"** means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation;

**"De-energise"** means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

**"Distributed Generation"** means generating plant equipment collectively used for generating electricity that is connected, or proposed to be connected, to the Network or a Customer's Installation, but does not include:

- (a) generating plant connected to the Network and operated by the Distributor for the purpose of maintaining or restoring the provision of electricity to part or all of the Network:
  - (i) as a result of a Planned Service Interruption; or
  - (ii) as a result of an Unplanned Service Interruption; or
  - (iii) during a period when the Network capacity would otherwise be exceeded on part or all of the Network; or
- (b) generating plant that is only momentarily synchronised with the Network for the purpose of switching operations to start or stop the generating plant;

**"Distribution Services"** means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers;

**"Distributor"** means the party identified as such in this Agreement;

**"Electrical Installation"** means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Customer's Point of Connection to any point from which electricity conveyed through that system may be consumed; and
- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

**"Fitting"** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance or use of electricity;

**"Grid"** means the system of transmission lines, substations and other works, including the HVDC link used to connect grid injection points and GXPs to convey electricity throughout the North Island and the South Island of New Zealand;

**"GXP"** means any Point of Connection on the Grid:

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such in accordance with the Code;

**"ICP"** means an installation control point being 1 of the following:



- (a) a Point of Connection at which a Customer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared Unmetered Load

**"Income Distribution Services"** has the meaning set out in clause 1

**"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

**"Network"** means the Distributor's lines, substations and associated equipment used to convey electricity between:

- (a) 2 NSPs; or
- (b) an NSP and an ICP;

**"Network Supply Point"** or **"NSP"** means any Point of Connection between:

- (a) the Network and the Grid; or
- (b) the Network and another distribution network; or
- (c) the Network and an embedded network; or
- (d) the Network and Distributed Generation

**"Planned Service Interruption"** means any Service Interruption that has been scheduled to occur in accordance with this Agreement;

**"Point of Connection"** means the point at which electricity may flow into or out of the Network;

**"Service Interruption"** means the cessation of electricity supply to an ICP for a period of 1 minute or longer, other than by reason of De-energisation of that ICP;

**"Shareholder Trust"** means a trust in respect of which any of the income beneficiaries comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network;
- (e) the person's liability for payment for Distribution Services supplied by the Distributor; or
- (f) the person's domicile or location or operation within the geographic area or areas of operation of the Distributor;

**"Trader"** means the party identified as such in this Agreement;

**"Unmetered Load"** means electricity consumed on the Network that is not directly recorded using Metering Equipment, but is calculated or estimated in accordance with the Code;

**"Unplanned Service Interruption"** means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Trader or any affected Customer.

**Provision of trust and co-operative company information****1 Background**

The Distributor [has a Shareholder Trust as a shareholder/is a Co-operative] and requires, from time to time, information from the Trader to enable:

- (a) the [Shareholder Trust/Distributor] to update and maintain an accurate register of its [beneficiaries/shareholders], comply with its obligations to its [beneficiaries/shareholders], and directly communicate with those persons; and
- (b) the Distributor to assess whether it is Consumer-Owned, and comply with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

**2 Provision of information**

If reasonably requested by the Distributor, the Trader must provide, in a reasonable timeframe, relevant information in its possession required by the [Shareholder Trust/Distributor]:

- (a) to meet the [Shareholder Trust's/Distributor's] obligations under [its trust deed/the Co-operative Companies Act 1996]; or
- (b) for one of the permitted disclosures or uses set out in clause 3.

**3 Permitted [disclosure/use] of information provided**

- (1) The Distributor may use [and disclose to the Shareholder Trust] information provided in response to a request under clause 2 for the purposes of:

- (a) [enabling the Shareholder Trust to update and maintain/updating and maintaining] an accurate register of its [beneficiaries/shareholders];
- (b) [enabling the Shareholder Trust to conduct/conducting] elections of [trustees/members of the Distributor's committee of shareholders];
- (c) [enabling the Shareholder Trust or the Distributor to pay/paying] income distributions to the [Shareholder Trust's beneficiaries/the Distributor's shareholders];
- (d) enabling a third party to carry out audits of the Distributor [or the Shareholder Trust]; and
- (e) [enabling the Shareholder Trust to ensure/ensuring] that the [Shareholder Trust/Distributor] complies with any other requirements under its [trust deed/constitution and the Co-operative Companies Act 1996].

- (2) The Distributor may use information provided in response to a request under clause 2 for the purposes of:

- (a) assessing whether the Distributor is Consumer-Owned; and
- (b) complying with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

**4 Payment of Trader's costs**

- (1) The Distributor must pay the Trader's reasonable costs incurred in supplying any information requested under clause 2.
- (2) If requested by the Distributor, the Trader must give the Distributor a quote for supplying the information before the Trader supplies the information.
- (3) The Distributor must pay the Trader's GST invoice for supplying the information no later than the 20th of the month following the invoice date.

## **5 Confidentiality obligations**

- (1) The Distributor undertakes that, in respect of any information provided to it by the Trader under this Appendix ("Confidential Customer Information"), the Distributor will:
  - (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Customer Information except as expressly permitted in this Appendix;
  - (b) only use the Confidential Customer Information for a purpose expressly permitted in this Appendix;
  - (c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Appendix and on a 'need to know' basis; and
  - (d) in the case of Confidential Customer Information disclosed to a Shareholder Trust, enter into arrangements with the Shareholder Trust to ensure that the Shareholder Trust:
    - (i) only uses the Confidential Customer Information for a purpose expressly permitted in this Appendix; and
    - (ii) only discloses the Confidential Customer Information for a purpose expressly permitted in this Appendix, or if the Shareholder Trust is required to disclose the Confidential Customer Information by law, by any statutory or regulatory body or authority, or by any judicial or other arbitration process.
- (2) For the purpose of this Appendix:
  - (a) the Distributor may disclose Confidential Customer Information if it is required to disclose the Confidential Customer Information by:
    - (i) law, or by any statutory or regulatory body or authority; or
    - (ii) any judicial or other arbitration process; and
  - (b) Confidential Customer Information does not include aggregated and anonymised information.
- (4) To avoid doubt, the Distributor may disclose Confidential Customer Information to the Commerce Commission, including in circumstances where the Commerce Commission has not exercised a power under the Commerce Act 1986 to require the Distributor to disclose Confidential Customer Information.
- (5) The Distributor's liability for breach of this clause is not limited by any terms in this Agreement or in any other agreement between the parties.
- (6) To avoid doubt, the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by:
  - (a) the Distributor's employees, contractors, directors, agents, or advisors; and
  - (b) in the case of Confidential Customer Information that the Distributor has disclosed to Shareholder Trust, the Shareholder Trust, or the Shareholder Trust's employees, contractors, directors, agents, or advisors.

## **6 Definitions**

In this Appendix:

**"Agreement"** means this distribution agreement, including each Schedule, this Appendix, and any other attachment or document incorporated by reference into this Agreement;

**"Appendix"** means this Appendix B;

**"Code"** means the Electricity Industry Participation Code 2010 made under the Electricity Industry Act 2010;

**"Confidential Customer Information"** has the meaning set out in clause 5(1);

**"Consumer-Owned"** has the meaning given to it in section 54D of the Commerce Act 1986;

**"Co-operative"** means a co-operative company under the Co-operative Companies Act 1996 in respect of which any of the shareholders to whom income distributions are paid comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network; or
- (e) the person's liability for payment for Distribution Services supplied by the Distributor;

**"Customer's Installation"** means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation

**"De-energise"** means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

**"Distributed Generation"** means generating plant equipment collectively used for generating electricity that is connected, or proposed to be connected, to the Network or a Customer's Installation, but does not include:

- (a) generating plant connected to the Network and operated by the Distributor for the purpose of maintaining or restoring the provision of electricity to part or all of the Network:
  - (i) as a result of a Planned Service Interruption; or
  - (ii) as a result of an Unplanned Service Interruption; or
  - (iii) during a period when the Network capacity would otherwise be exceeded on part or all of the Network; or
- (b) generating plant that is only momentarily synchronised with the Network for the purpose of switching operations to start or stop the generating plant;

**"Distribution Services"** means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers;

**"Distributor"** means the party identified as such in this Agreement;

**"Electrical Installation"** means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Customer's Point of Connection to any point from which electricity conveyed through that system may be consumed; and
- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

**"Fitting"** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance or use of electricity;

**"Grid"** means the system of transmission lines, substations and other works, including the HVDC link used to connect grid injection points and GXPs to convey electricity throughout the North Island and the South Island of New Zealand;

**"GST"** means goods and services tax payable under the GST Act;

**"GST Act"** means the Goods and Services Tax Act 1985;

**"GXP"** means any Point of Connection on the Grid:

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such in accordance with the Code;

**"ICP"** means an installation control point being 1 of the following:

- (a) a Point of Connection at which a Customer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared Unmetered Load;

**"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

**"Network"** means the Distributor's lines, substations and associated equipment used to convey electricity between:

- (a) 2 NSPs; or
- (b) an NSP and an ICP;

**"Network Supply Point" or "NSP"** means any Point of Connection between:

- (a) the Network and the Grid; or
- (b) the Network and another distribution network; or
- (c) the Network and an embedded network; or
- (d) the Network and Distributed Generation;

**"Planned Service Interruption"** means any Service Interruption that has been scheduled to occur in accordance with this Agreement;

**"Point of Connection"** means the point at which electricity may flow into or out of the Network;

**"Service Interruption"** means the cessation of electricity supply to an ICP for a period of 1 minute or longer, other than by reason of De-energisation of that ICP;

**"Shareholder Trust"** means a trust in respect of which any of the income beneficiaries comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network;
- (e) the person's liability for payment for Distribution Services supplied by the Distributor; or
- (f) the person's domicile or location or operation within the geographic area or areas of operation of the Distributor;

**"Trader"** means the party identified as such in this Agreement

**"Unmetered Load"** means electricity consumed on the Network that is not directly recorded using Metering Equipment, but is calculated or estimated in accordance with the Code;

**"Unplanned Service Interruption"** means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Trader or any affected Customer.

## Schedule 12A.1, Appendix C

### Provision of consumption data

Sch 12A.1, cl 7(2)

#### 1 Introduction

This Appendix sets out provisions that apply to a Distributors and a Trader in relation to requests for Consumption Data held by the Trader or the Trader's Metering Equipment Provider.

#### 2 Consumption Data requests

- (1) The Distributor may request Consumption Data by giving written notice to the Trader, which must set out:
  - (a) details about the Consumption Data requested;
  - (b) the purposes for which the Distributor will use the Consumption Data;
  - (c) the persons to whom the Consumption Data will be disclosed by the Distributor; and
  - (d) for how long the Distributor wishes to use the Consumption Data.
- (2) The Trader must supply, or ensure that the Metering Equipment Provider supplies, the requested Consumption Data to the Distributor within 5 Business Days.
- (3) Where the Trader supplies the Distributor Consumption Data in accordance with subclause (2), it will ensure that the Consumption Data includes:
  - (a) must supply for all time of use meters to which the supply of Consumption Data relates, half hourly Consumption Data data collected from the relevant Metering Equipment Provider; and
  - (b) for all other meters to which the Consumption Data relates, Consumption Data for those meter at the most regular frequency for which it is was collected and non-half hourly in the cases where half hourly data is not collected.
- (4) The Trader will make reasonable endeavours to ensure it supplies Consumption Data to the Distributor in any format requested by the Distributor. If the Trader is unable to reasonably supply the Consumption Data in the requested format, the Trader must supply the Consumption Data in a structured, commonly used and machine-readable format.
- (5) The Trader will not do anything that could introduce a virus, Trojan horse, malicious code or similar when transmitting or otherwise providing the Consumption Data, and (unless the parties agree otherwise) will ensure the Consumption Data is transmitted in an encrypted form that is current best practice and commonly supported.

#### 3 Provision of Consumption Data to Distributor

- (1) This clause, and the subsequent clauses in this Appendix, apply when the Trader provides the requested Consumption Data to the Distributor.
- (2) The parties may agree to enter into -will attach to this Appendix- a document ("Data Agreement") in the form set out in clause 19 ("Data Agreement"); which sets (out in addition to any other rights or obligations of a party under this Appendix):
  - ~~(a)~~ (a) the Consumption Data to be provided by the Trader to the Distributor;
  - ~~(b)~~ (a) any Other Purposes for which the Distributor may use the Consumption Data, in addition to the Permitted Purposes;
  - ~~(e)~~ (b) any the persons to whom the Consumption Data may be disclosed by the Distributor, in addition to any persons to whom this Appendix permits the disclosure of Consumption Data;

- (c) ~~without limiting any part of clause 2, the frequency and format in which-at which the parties agree the Trader will supply Consumption Data to the Distributor will be exchanged; and~~
- (d) ~~;~~
- (e) ~~for how long the Distributor may use the Consumption Data for the Other Purposes ("Permitted Time Period");~~
- ~~(f)(d) the format in which Consumption Data will be exchanged.~~
- (3) Once agreed by the parties, the Data Agreement forms part of this Appendix. The Data Agreement may be updated, with the agreement of both parties, from time to time.
- (4) The Trader grants the Distributor a non-exclusive, limited, non-transferrable (except in accordance with this Appendix) licence to use and disclose the Consumption Data, subject to the following:
  - (a) the Distributor may use the Consumption Data only for the Permitted Purposes as defined in this Appendix and any Other Purposes set out in the Data Agreement;
  - ~~(b) the Consumption Data may not be used for any other purposes;~~
  - (b) the Consumption Data may only be used:
    - (i) for a Permitted Purpose, by the Distributor for as long as it is reasonably required by the Distributor for a Permitted Purpose, and
    - ~~(ii) for any Other Purpose, for the Permitted Time Period the Permitted Time-Period as defined in the Consumption Data Agreement or as otherwise set out in this Appendix;~~
  - (c) the Consumption Data must not be disclosed to any person transferred outside of New Zealand ~~or combined with any other data or database,~~ without the prior written agreement of the Trader; and

- (d) the Distributor acknowledges that the Distributor has no rights (including copyright) to or in connection with the Consumption Data, including in any database structures and compilations of the Consumption Data, other than the rights expressly set out in this Appendix.
- (5) The Distributor agrees that any Consumption Data provided to the Distributor will be:
  - (a) at the Distributor's cost, as set out in clause 4, so that the Trader is not responsible for any costs, charges or other expenses associated with providing the Consumption Data to the distributor; and
  - (b) at the Distributor's risk, and the Trader makes no express or implied warranties as to the accuracy or completeness of the Consumption Data, nor its suitability for any specified purpose.
- (6) For the avoidance of doubt, a Distributor will not be treated as disclosing Consumption Data to a person outside of New Zealand to the extent that the person is a contractor of Distributor that holds and uses the Consumption Data solely on behalf of the Distributor.

~~(6)~~ —

#### **4 Payment of Trader's costs**

- (1) The Distributor must pay the Trader's reasonable costs incurred in supplying any information requested under clause 2.
- (2) If requested by the Distributor, the Trader must give the Distributor a quote for any reasonable out of pocket expenses for supplying the information before the Trader supplies the information.
- (3) The Distributor must pay the Trader's GST invoice for supplying the information no later than the 20th of the month following the invoice date.
- ~~(3)~~(4) For the avoidance of doubt, the Trader will not require any payment for the supply of any Consumption Data except as provided in this clause 4.

#### **5 Privacy Act**

- (a) Each party~~The Distributor~~ acknowledges and agrees that it must comply at all times with the Privacy Act 1993 to the extent it applies in relation to the Consumption Data.
- ~~(a)~~(b) The Trader must make any disclosures, and obtain any authorisations, needed under the Privacy Act 1993 to enable the Distributor to use the Consumption Data for the Permitted Purposes and Other Purposes.

#### **6 Confidentiality obligations**

- (1) The Distributor agrees that it will:
  - (a) preserve the confidentiality of, and will not directly or indirectly ~~reveal, report,~~ publish, transfer, or disclose ~~the existence of~~ any Consumption Data except as provided for in this Appendix; and
  - (b) only use Consumption Data for a Permitted Purpose or for any Other Purpose specified in a Data Agreement.
- (2) For the avoidance of doubt, nothing in this Agreement prevents the Distributor from using and/or disclosing information that is derived from aggregated Consumption Data if the information is used or disclosed in such a form that it will not reasonably identify any individual or single ICP [or Trader] ("Aggregated Data").



## **7 Disclosure of Consumption Data**

- (1) Subject to subclause (2), the Distributor may disclose Consumption Data in any of the following circumstances:
  - (a) to its employees and directors to the extent that such Consumption Data is reasonably required to be known by such persons in connection with the Permitted Purposes or Other Purposes;
  - (b) to its agents, advisors, or contractors on terms that are no less onerous than those set out in this Appendix (unless otherwise agreed in writing by the Trader) and only on the basis that the ~~D~~distributor is liable for the acts and omissions of such agents, advisors or contractors solely in connection with their use of the Consumption Data; or
  - (c) if the Distributor is required to disclose the Consumption Data by:
    - (i) law, or by any statutory or regulatory body or authority; or
    - (ii) any judicial or other arbitration process.
- (2) The Distributor may not, except as expressly set out in the Data Agreement or with the prior written approval of the Trader, disclose any Consumption Data to any employee, director, agent, advisor, or contractor of the Distributor who is involved in the offering, provision, marketing or sale of electricity generation, retail, or storage goods or services (including batteries, solar, and other products and services sold on a competitive basis) to Customers.

## **8 Data Team**

- (1) The Distributor must maintain a register of persons who are permitted to access the Data ("Data Team").

~~(2) The Data Team:~~

~~(3) may only include any person to whom disclosure of the Consumption Data is permitted by clause 7-employees, directors, agents, advisors or contractors of the Distributor; but~~

~~must not include any employee, director, agent, advisor, or contractor of the Distributor who is involved in, or has responsibilities in relation to, the provision, marketing or sale of electricity generation, retail, or storage goods or services (including batteries, solar, and other products or services sold on a competitive basis) to Customers unless: expressly permitted by the Data Agreement; or~~

~~(4)(2) the Distributor has obtained the prior written approval of the Trader.~~

~~(5)(3) The Distributor must:~~

- (a) release Consumption Data only to members of the Data Team; and
- (b) ensure that members of the Data Team:
  - (i) are trained to understand the confidentiality obligations in this Appendix; and
  - (ii) comply with the confidentiality obligations in this Appendix.

~~(6)(4)~~ Despite anything in this Appendix, the Distributor and Data Team members may release, to Network Services Personnel other than persons who are described as persons who must not be included in the Data Team in subclause (2)(b), the names and contact details of Customers if necessary to enable Network Services Personnel to carry out surveying, installations, or maintenance of equipment, or otherwise carry out works on Network assets or at a Customer's Premises.

## **9 Confidentiality obligations for Data Team members**

The Distributor must ensure that each Data Team member:

- (a) uses Consumption Data only for a Permitted Purpose or Other Purpose;

- (b) does not disclose Consumption Data to any person who is not a member of the Data Team, other than as provided for in this Data Agreement or this Appendix;
- (c) does not leave Consumption Data, whether in a physical or electronic medium, unsecured in such a way that it might be accessed by a person who is not a member of the Data Team; and
- (d) complies with any requirements imposed on Data Team members by any information security plan developed in accordance with clause 10.

## **10 Information security plan**

- (1) The Distributor must maintain an information security plan to ensure that only Data Team members are able to access the Consumption Data.
- (2) The information security plan must:
  - ~~(a)~~ ~~ensure that Consumption Data is physically and electronically quarantined and unable to be accessed by any person other than Data Team members;~~
  - ~~(b)~~(a) include provisions for training of Data Team members on the requirements set out in this Appendix and the information security plan;
  - ~~(c)~~(b) keep the Consumption Data under the Distributor's control, using measures that are at least as secure as those used by the Distributor for its own confidential information;
  - ~~(d)~~(c) effect and maintain adequate security measures that preserve and secure ~~the confidential nature of~~ the Consumption Data and safeguard the Consumption Data from access by unauthorised persons;
  - ~~(e)~~(d) implement, to the extent practicable, measures to monitor or prevent the transmission of Consumption Data using external electronic storage devices (for example USB flash drives);
  - ~~(f)~~(e) include measures to protect electronic files containing Consumption Data (for example password protection and data encryption);
  - ~~(g)~~(f) include the provision of locked cupboards for the secure storage of any Consumption Data in the form of physical media; and
  - ~~(h)~~(g) include a process to inform the Trader no later than 72 hours after discovery if the Distributor becomes aware of any access to the Consumption Data by any person not authorised to access it and, at the request of the Trader, provide all such assistance in relation to the mitigation and remediation of such unauthorised access as the Trader may require.

## **11 Breaches**

If the Distributor becomes aware of a breach of an obligation in this Appendix or the information security plan, the Distributor must:

- (a) immediately take all reasonable steps to:
  - (i) retrieve any Consumption Data that has been disclosed outside of the Data Team; and
  - (ii) mitigate any use of Consumption Data in breach of this Appendix;
- (b) investigate each breach and produce a report on the incident together with recommendations for preventing a reoccurrence of a breach;
- (c) notify the Trader in writing of any breach and provide it with a copy of the report; and
- (d) maintain a record of all known breaches.

## 12 Liability and indemnity

- (1) Subject to subclauses (2) and (3), ~~t~~The Distributor indemnifies and holds harmless the Trader, and will keep the Trader indemnified and held harmless, from and against any direct or indirect loss or damage (including legal costs on a solicitor/own client basis) that is attributable to suffered or incurred by the Trader's arising out of or in connection with any breach of ~~its the Distributor's~~ obligations under this Appendix.
- (2) In the event of a breach of the Trader's obligations under this Appendix, the Distributor is not obliged to indemnify the Trader under subclause (1) for any loss or damage of a kind that, at the time of entry into the relevant Data Agreement, was not reasonably foreseeable as a kind of loss or damage that might result from such a breach.
- (3) The Distributor is not obliged to indemnify the Trader under subclause (1) in relation to any loss or damage that could have been avoided but for the Trader's failure to take reasonable steps to mitigate the loss or damage, or that is attributable to the Trader's own negligence.
- ~~(2)~~(4) The Distributor's liability for breach of this Agreement will not be limited by this Agreement or any other agreement entered into by the parties.
- ~~(3)~~(5) The Distributor acknowledges and agrees that:
  - (a) in the event of an alleged breach of the Distributor's obligations under this Appendix, damages may not be an adequate remedy and the Trader will be entitled to seek equitable relief, including injunction and specific performance, in addition to all other remedies available to the Trader; and
  - (b) the rights, powers, and remedies provided in this Appendix are cumulative and are in addition to any rights, powers, or remedies provided by law.

## 13 Audit

- (1) Subject to subclause (4), ~~t~~The Trader may conduct periodic audits to confirm that the Distributor is meeting its obligations in respect of Consumption Data supplied under this Appendix, as follows:
  - (a) audits may be conducted at any time, but no more than once in any twelve month period;
  - (b) audits must be preceded by at least ~~seven~~-14 (fourteen) days' prior written notice by the Trader;
  - (c) audits must be conducted using a ~~reputable~~ independent external auditor of the Trader's choice;
  - (d) the Distributor must provide the auditor with all reasonable access to all books, accounts, records, documents, and systems reasonably required by the auditor; and
  - (e) the auditor's costs will be borne by the Trader, unless any audit determines that there has been non-compliance with the Distributor's obligations in respect of Consumption Data supplied under this Agreement (in which event, the costs must be met by the Distributor).
- (2) The Trader has the right to publish the results of the audit.
- (3) More than one Trader may collectively conduct an audit under subclause (1) as if the Traders were a single Trader.
- (4) A Trader cannot exercise the rights in subclause (1) if the Distributor has within the previous 12 months conducted an audit that complies with the following requirements:
  - (a) the audit was conducted using a reputable independent external auditor of the Distributor's choice;

- (b) the Distributor provided the auditor with all reasonable access to all books, accounts, records, documents, and systems reasonably required by the auditor;
- (c) the auditor's costs were borne by the Distributor; and
- (d) the Distributor provided the Trader with any results of the audit that identify any non-compliance by the Distributor with its obligations, or confirmation from the auditor of the Distributor's compliance (as the case may be).
- (5) If a Distributor undertakes an audit as contemplated by subclause (4):
  - (a) the audit may consider the Distributor's compliance with its obligations owed to each of one or more traders (including the Trader) in respect of Consumption Data supplied to it by any of those traders (including the Trader);
  - (b) the audit will at the Distributor's own cost; and
  - (c) the Trader will hold any information concerning the audit provided by the Distributor or its auditor as Confidential Information.

#### **14 Termination of Appendix**

- (1) The Trader may terminate this Appendix immediately by giving notice to the Distributor, if the Distributor:
  - (a) is subject to an Insolvency Event; or
  - (b) is in material breach of its obligations under this Appendix, where the Trader has given notice to the Distributor advising of the breach and demanding that it be remedied, and at least 10 Working Days have passed since that notice and the breach is not in the process of being remedied to the Trader's reasonable satisfaction; or
  - (a) the Distributor commits a non-trivial breach of this Appendix, in circumstances where the Distributor has also committed two or more breaches of this Appendix in the preceding 12 months that are attributable to the same underlying cause as the latest breach, and before the occurrence of the latest breach, the Trader had given the Distributor notice of at least two of those prior breaches demanding that the underlying cause be investigated and remedied.

#### **14—Breaches and events of default**

- (1) ~~Subject to clause 14(6), if either party (the "Defaulting Party") fails to comply with any of its obligations under this agreement, the other party may notify the Defaulting Party that it is in breach of this agreement. The Defaulting Party must remedy a breach within the following timeframe:~~
  - (a) ~~in the case of a Serious Breach by the Distributor, within 2 Business Days of the date of receipt of such notice; or~~
  - (b) ~~in any other case, within 5 Business Days of the date of receipt of such notice.~~
- (2) ~~If the Trader considers the Distributor has committed a Serious Breach, the Trader may give notice to the Distributor under clause 14(1) and a notification under clause 14(4).~~
- (3) ~~If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 14(1):~~
  - (a) ~~the breach is an Event of Default for the purposes of this Agreement;~~
  - (b) ~~the other party must use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to~~

- the Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 14; and
- (c) the Defaulting Party must continue to do all things necessary to remedy the breach as soon as reasonably practicable.
- (4) If the Event of Default is any of the following:
- (a) a Serious Breach (in the case of the Distributor only);
  - (b) a material breach of the Defaulting Party's obligations under this Agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
  - (c) the Defaulting Party has failed on at least 2 previous occasions within the last 12 months to meet an obligation under this Agreement within the time specified and has received notice of such failures from the other party in accordance with clause 14 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this Agreement or, if the Defaulting Party is the Distributor, the Trader's ability to carry out its obligations under any agreement with any other industry participant,
- then no earlier than 1 Business Day after the end of the timeframe set out in clause 14(1), the other party may do 1 or both of the following:
- (d) issue a notice of termination in accordance with clause 15(2);
  - (e) exercise any other legal rights available to it.
- (5) If a breach is not an Event of Default, the non-breaching party may:
- (a) refer the matter to dispute resolution in accordance with any existing dispute resolution clauses included in the distributor agreement no earlier than 1 Business Day after the end of the timeframe set out in clause 14(1); and
  - (b) exercise any other legal rights available to it.
- (6) Despite subclause (1), if either party is subject to an Insolvency Event, the other party may:
- (a) immediately issue a notice of termination in accordance with clause 15(2);
  - (b) exercise any other legal rights available to it.

## **15 Termination of Agreement**

- (1) In addition to any other termination right in the distributor agreement, a party may terminate this appendix as set out below:
- (a) both parties may agree to terminate this Agreement;
  - (b) either party may terminate this Agreement if the other party has committed a breach that (in the case of the Distributor) is not a Serious Breach;
  - (c) either party may terminate this Agreement 1 Business Day after notice is given by either party to the other party terminating this Agreement for the reason that performance of any material provision of this Agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of any severance clauses in the distributor agreement it is not practicable for this Agreement to continue.
  - (d) In addition to any other termination right in this Agreement, if a party has breached this Agreement and the breach is an Event of Default, or a party has

- become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Business Day after the end of the timeframe set out in clause 14(1) in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:
- (e) no less than 5 Business Days after the date of such notice; or
  - (f) immediately if the Trader has ceased to supply electricity to all Customers.
- (2) A party that has given a notice under clause 15(2) may give a notice extending the date on which the notice given under clause 15(2) takes effect.
  - (3) A notice of termination given under clause 15(2) will lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws the effective date of its notice.
  - (4) Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.
  - (5) The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination.
  - (6) On the effective date of termination the parties must have returned or certified the destruction of the other party's Confidential Information.
  - (7) Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

#### **1615 Destruction of Consumption Data**

- (2) Subject to subclause (3), the Distributor must promptly destroy or permanently erase, or procure the destruction or erasure of, of any Consumption Data (including all copies, in any media) that is no longer reasonably required by the Distributor for a Permitted Purpose or Other Purpose.
- (4) If the Distributor has destroyed or erased any Consumption Data in accordance with subclause (1), where requested by the Trader, On termination of this Agreement or, once any Consumption Data has been used by the Distributor for the Permitted Purpose, the Distributor must, unless otherwise agreed by the Trader, promptly destroy or permanently erase, or procure the destruction or erasure of, all copies (whether on paper or in any electronic information storage and retrieval system or in any other storage medium) of any documents held by the Distributor which contain any Consumption Data.
- (3) The Distributor will must provide within, no later than 5 Working Business Days of the request after the destruction of all such Consumption Data, a certificate to the Trader in the form set out in clause 20 confirming that all such Consumption Data has been destroyed.
- (4) The Distributor will not be in breach of its obligations under subclause (1) to the extent it retains any copies of Consumption Data stored in routine electronic backups made by the Distributor or its contractors which cannot easily be destroyed or erased.
- (2) —

#### **1716 Surviving terms**

- (1) The following clauses of this Appendix survive the expiry or termination of this Agreement:
  - (a) clause 3;



- (b) clause 5;
  - (c) clause 6
  - ~~(e)~~(d) clause 7;
  - ~~(d)~~(e) clause 8;
  - ~~(e)~~(f) clause 9;
  - ~~(f)~~(g) clauses 12 and 13;
  - ~~(g)~~(h) clause 154; and
  - ~~(h)~~(i) any other clause intended to survive termination.
- (2) The Distributor may not, except as expressly set out in the Data Agreement or with the prior written approval of the Trader, disclose any Consumption Data to any employee, director, agent, advisors, or contractors of the Distributor who is involved in the offering or provision of electricity generation, retail, or storage goods or services (including batteries, solar, and other products sold on a competitive basis) to Customers. For clarity, this clause shall survive termination of this agreement.

### **1817 Other provisions**

- (1) An obligation not to do something under this Appendix includes an obligation not to permit, suffer or cause something to be done.
- (2) Unless the Agreement provides otherwise, tThe rights and obligations contained in this Appendix may not be transferred or assigned to a different party.
- (3) A provision, or part of a provision, of this Appendix that is illegal or unenforceable may be severed from this Appendix and the remaining provisions or parts of this Appendix will continue in force.
- (4) The Trader will not be responsible for any delay in providing Consumption Data to the Distributor due to matters beyond its reasonable control.
- ~~(5) — The trader will not do anything that could introduce a virus, Trojan horse, malicious code or similar when transmitting the Consumption Data, and will ensure the Consumption Data is transmitted in an encrypted form that is current best practice and commonly supported.~~
- ~~(6)~~(5) The parties agree:
  - (a) this Appendix is the entire agreement between the parties regarding the Consumption Data and supersedes, in relation to the Consumption Data only, any previous agreement, understanding or negotiations about the Consumption Data; and
  - (b) in the event of any inconsistency between this Appendix and any previous agreement, understanding, or negotiations in relation to the Consumption Data, this Appendix prevails.
- ~~(7)~~(6) If there is a dispute in relation to this Appendix, the senior management of the Distributor and Trader will try to resolve the dispute, and may refer the dispute to mediation if they are unable to resolve the dispute within 15 Working business dDays of it being raised by a party.
- ~~(8)~~(7) All notices given under this Appendix must be delivered to the head Office of the respective parties.

### **1918 Data Agreement**

This ~~Data Agreement~~ forms part of the distributor agreement between ~~applies to Consumption Data provided by~~ [Insert Trader's Name] (Trader) ~~and to~~ [Insert Distributor's Name] (Distributor), under which the Trader is required to supply Consumption Data to the Distributor.:-

Without limiting to any other rights or obligations of the parties described in the distributor agreement, the parties agree that Consumption Data will be supplied by the Trader in the format and at the frequency, and may be used by the Distributor for the Other Purposes and

**Description of Consumption Data provided:** ~~[insert details of the Consumption Data that will be provided]~~

**Other Purposes of the Consumption Data:** *[insert details of any other permitted uses of the Consumption Data]*

**Other Persons to whom the Consumption Data may be disclosed:** *[insert details of any additional the person(s) authorised to access the Consumption Data]*

**Frequency of Access:** *[tick appropriate frequency of Consumption Data supply-exchange]*

Single access ☐, or

Ongoing Access:

Daily ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Annually ☐ Other ☐

**Permitted Time Period for Other Purposes:**

a) Start date: \_\_\_\_\_ *[insert date]*

b) End date: \_\_\_\_\_ *[insert date]*; or until notice of termination ☐

**The format in which Consumption Data will be supplied-exchanged:** *[insert details of the format for exchanging Consumption Data between the parties]*

**If required, outline any Business and/or General requirements:** *[insert details of any Business and/or General requirements]*

<i>For [insert Distributor's name]</i>	<i>For [insert Trader's name]</i>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



## **2019 Consumption Data destruction certificate**

### **2120 Definitions**

In this Appendix:

"**Agreement**" means this distribution agreement, including each Schedule, this Appendix, and any other attachment or document incorporated by reference in this Agreement;

"**Appendix**" means this Appendix C

"**Business Day**" means any day of the week except Saturdays, Sundays, **national holidays** and any other day from time to time declared by the **Authority** not to be a **business day** by notice to each **registered participant**.

"**Code**" means the Electricity Industry Participation Code 2010 made under the Electricity Industry Act 2010;

"**Consumption Data**" means electricity consumption data collected by the ~~Trader~~ or the Trader's Metering Equipment Provider for each ICP the ~~Trader~~ supplies, and which the Trader ~~retailer~~ or the Trader's Metering Equipment Provider holds ~~or obtains~~, but does not include ~~aggregated and anonymised~~ information contained in documents, reports, analyses or other materials that are prepared from Consumption Data which is Aggregated Data for the purpose of clause 6(2) for a Permitted Use.

"**Customer**" means a person who purchases electricity from the Trader that is delivered via the Network;

"**Customer's Installation**" means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation; "**Customer's Premises**" means the land and buildings owned or occupied by a Customer, and any land over which the Customer has an easement or right to pass electricity, including:

- (a) the land within the boundary within which the electricity is consumed;
- (b) the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier; and
- (c) the whole of the property that has been subdivided under the Unit Titles Act 1972; "**Data Team**" means persons who are permitted to access Customer Information.

"**De-energise**" means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

"**Distributed Generation**" means generating plant equipment collectively used for generating electricity that is connected, or proposed to be connected, to the Network or a Customer's Installation, but does not include:

- (a) generating plant connected to the Network and operated by the Distributor for the purpose of maintaining or restoring the provision of electricity to part or all of the Network:
  - (i) as a result of a Planned Service Interruption; or
  - (ii) as a result of an Unplanned Service Interruption; or

- (iii) during a period when the Network capacity would otherwise be exceeded on part or all of the Network; or
- (b) generating plant that is only momentarily synchronised with the Network for the purpose of switching operations to start or stop the generating plant;

**"Distribution Services"** means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers;

**"Distributor"** means the party identified as such in this Agreement; **"Electrical Installation"** means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Customer's Point of Connection to any point from which electricity conveyed through that system may be consumed; and
- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

**"Fitting"** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance or use of electricity;

**"Grid"** means the system of transmission lines, substations and other works, including the HVDC link used to connect grid injection points and GXPs to convey electricity throughout the North Island and the South Island of New Zealand;

**"GXP"** means any Point of Connection on the Grid:

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such in accordance with the Code;

**"ICP"** means an installation control point being 1 of the following:

- (a) a Point of Connection at which a Customer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared Unmetered

Load; **"Insolvency Event"** means a party:

- (a) has had a receiver, administrator or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (c) is removed from the register of companies (otherwise than as a consequence of an amalgamation) or an effective resolution is passed for its liquidation;

**"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

**"Network"** means the Distributor's lines, substations and associated equipment used to convey electricity between:

- (a) 2 NSPs; or

(b) an NSP and an ICP;

**"Network Services Personnel"** means any person appointed from time to time by the Distributor in relation to Electrical Installations, maintenance of equipment, or other works on network assets or at a Customer's Premises, including contractors (and their subcontractors);

**"Network Supply Point" or "NSP"** means any Point of Connection between:

- (a) the Network and the Grid; or
- (b) the Network and another distribution network; or
- (c) the Network and an embedded network; or
- (d) the Network and Distributed Generation;

**"Other Purposes"** means the other purposes (in addition to the Permitted Purposes) for which the Distributor may use the Consumption Data, as agreed between the Distributor and Trader and set out in the Data Agreement;

**"Permitted Purposes"** means:

- (a) developing Distribution Prices; and;
- (b) planning and management of the Network in order to:
  - (i) -provide distribution services to traders under the Distributor's use-of-system agreements or distributor agreements under Part 12A of the Code, as the case may be; and
  - (+)(ii) Provide electricity lines services" (as defined in section 54C of the Commerce Act 1986);:-

**"Planned Service Interruption"** means any Service Interruption that has been scheduled to occur in accordance with this Agreement;

**"Point of Connection"** means the point at which electricity may flow into or out of the Network;

~~**"Serious Breach"** means:~~

~~the second of two or more breaches in a twelve-month period, or an event which directly affects 10% or more of the Trader's ICPs simultaneously.~~

**"Service Interruption"** means the cessation of electricity supply to an ICP for a period of 1 minute or longer, other than by reason of De-energisation of that ICP:

**"Trader"** means the party identified as such in this Agreement;

**"Unmetered Load"** means electricity consumed on the Network that is not directly recorded using Metering Equipment, but is calculated or estimated in accordance with the Code;

**"Unplanned Service Interruption"** means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Trader or any affected Customer;

## Schedule 12A.2

### Other provisions applying to distributor and participant arrangements

cl 12A.2(1)

#### 1 Content and application of this Schedule

This Schedule sets out provisions that apply to each **distributor** described in a row in column 1 below, and each **participant** described in column 2 of the row:

Row	Column 1 – Distributor	Column 2 – Participant
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row
2	Each <b>distributor</b> that owns or operates an <b>embedded network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>embedded network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row

#### *Exchange of information*

#### 2 Authority may prescribe EIEPs that must be used

- (1) The **Authority** may prescribe 1 or more **EIEPs** that set out standard formats that the **distributors** and **participants** specified in the **EIEP** must use when exchanging information.
- (2) The **Authority** must **publish** an **EIEP** that it prescribes under subclause (1).
- (3) When prescribing an **EIEP** under subclause (1), the **Authority** must specify the date on which the **EIEP** will come into effect.
- (4) Before the **Authority** prescribes an **EIEP** under subclause (1), or amends an **EIEP** it has prescribed under subclause (1), it must consult with the **participants** that the **Authority** considers are likely to be affected by the **EIEP**.
- (5) The **Authority** need not comply with subclause (4) if it proposes to amend an **EIEP** prescribed under subclause (1) if the **Authority** is satisfied that—
  - (a) the nature of the amendment is technical and non-controversial; or
  - (b) there has been adequate prior consultation so that the **Authority** has considered all relevant views.

#### 3 Distributors and participants to comply with EIEPs

- (1) If the **Authority** prescribes an **EIEP** under clause 2, the **distributor** and each **participant** to which the **EIEP** applies must, when exchanging information to which the **EIEP** relates, comply with the **EIEP** from the date on which the **EIEP** comes into effect.
- (2) However, a **distributor** and a **participant** may, after the **Authority** prescribes an **EIEP**, agree to exchange information other than in accordance with the **EIEP**, by recording the agreement in the **distributor agreement** between the **distributor** and the

**participant.**

- (3) An agreement to exchange information other than in accordance with an **EIEP** is not effective in relieving a **distributor** and a **participant** of the obligation to comply with subclause (1), unless the agreement comes into effect on or after the date on which the relevant **EIEP** comes into effect.
- (4) An agreement under subclause (2) is not affected by the **Authority** prescribing an amendment to the **EIEP**.

#### **4 Transitional provision relating to EIEPs**

Any **EIEP** that a **distributor** or a **participant** was required to comply with immediately before this clause came into force is deemed to be an **EIEP** prescribed under clause 2.

## Schedule 12A.3

cl 12A.2(1)

### Requirements for distributors and traders on embedded networks (interposed)

#### 1 Content and application of this Schedule

- (1) This Schedule sets out provisions that apply to each **distributor** described in a row in column 1 below, and each **participant** described in column 2 of the row:

Row	Column 1 – Distributor	Column 2 – Participant
1	Each <b>distributor</b> that owns or operates an <b>embedded network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>embedded network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row

#### *Distributor agreement*

#### 2 Obligation to enter into distributor agreement

- (1) A **trader** trading on a **distributor's embedded network** must have a **distributor agreement** with the **distributor**.
- (2) A **trader** must ensure that the **distributor agreement** comes into force on or before the day on which the **trader** commences trading on the **embedded network**.
- (3) A **trader** that wishes to trade on a **distributor's embedded network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **embedded network**.

#### *Prudential requirements*

#### 3 Prudential requirements

Clauses 4 to 8 apply in relation to a **distributor agreement** between a **distributor** and a **trader** if—

- (a) the **distributor** has an **interposed arrangement** with 1 or more **traders** trading on the **embedded network**; and
- (b) the **distributor** requires that the **distributor agreement** provide that the **trader**—
  - (i) must comply with prudential requirements; or
  - (ii) must comply with prudential requirements if required to do so by the **distributor**.

#### 4 Election of prudential requirements

- (1) The **distributor** must ensure that the **distributor agreement** provides that the **trader** may elect to comply with the prudential requirements in either of the following ways:
- (a) the **trader** must maintain an acceptable credit rating in accordance with clause 5; or
  - (b) the **trader** must provide and maintain acceptable security by, at the **trader's** election,—
    - (i) providing the **distributor** with a cash deposit; or

- (ii) arranging for a third party with an acceptable credit rating to provide that security in a form acceptable to the **distributor**; or
  - (iii) providing a combination of the securities described in subparagraphs (i) and (ii).
- (2) The **distributor** must ensure that the **distributor agreement** provides that the **trader** may change its election at any time.

## 5 Meaning of acceptable credit rating

For the purpose of clause 4(1)(a) and 4(1)(b)(ii), a **trader** or third party has an acceptable credit rating if it—

- (a) carries a long term credit rating of at least—
  - (i) BBB- (Standard & Poors Rating Group); or
  - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
- (b) is not subject to negative credit watch or any similar arrangement by the agency that gave it the credit rating.

## 6 Meaning of acceptable security

- (1) Subject to clause 7, the value of the acceptable security described in clause 4(1)(b) must be the **distributor's** reasonable estimate of the **distribution** services charges that the **trader** will be required to pay to the **distributor** in respect of any period of not more than 2 weeks.
- (2) The **distributor** must ensure that its **distributor agreement** specifies that, if the **trader** elects to provide acceptable security as described in clause 4(1)(b), the **distributor** must—
  - (a) hold any security provided by the **trader** in the form of a cash deposit in a trust account in the name of the **trader** at an interest rate that is the best on-call rate reasonably available at the time the **trader** provides the cash deposit; and
  - (b) pay interest earned in respect of the cash deposit to the **trader** on a quarterly basis, net of account fees and any amounts that are required to be withheld by law.

## 7 Distributor may require additional security

- (1) A **distributor** may require that its **distributor agreement** provides 1 or both of the following:
  - (a) that if the **trader** elects to provide acceptable security as specified in clause 4(1)(b), the **trader** must provide acceptable security that is additional to the amount provided for in clause 6(1);
  - (b) that the **distributor** may, during the term of the **distributor agreement**, require the **trader** to provide such additional security.
- (2) If a **distributor agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the total value of additional security specified in the **distributor agreement** is such that the total value of all security required to be provided by the **trader** is not more than the greater of:
  - (a) -the **distributor's** reasonable estimate of the **distribution** services charges that the **trader** will be required to pay to the **distributor** in respect of any 2 month period; and
  - (e)(b) the aggregate of all amounts that the trader owes, or disputes is owing, to the distributor. -

~~(2)~~(3) If a **distributor agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the **distributor agreement** provides the following:

- (a) if any additional security provided by the **trader** is in the form of a cash deposit, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security that is not more than the trader's actual daily costs of holding the security on arms-length commercial terms and not exceeding the reasonable market costs that would be incurred by a prudent and reputable trader, at a per annum rate equal to the sum of the bank bill yield rate for that day plus 15% on the amount of additional security held on that day;
- (b) if any additional security provided by the **trader** is in the form of security from a third party, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate of 3% on the amount of additional security held on that day:
- (c) any money required to be paid by the **distributor** to the **trader** as specified in paragraph (a) or (b) must be paid by the **distributor** to the **trader** on a quarterly basis.

~~(3) For the purposes of this clause, the bank bill yield rate is—~~

- ~~(a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on that day as being the daily bank bill yield for bank bills having a tenor of 90 days; or~~
- ~~(b) for any day for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill yield rate determined in accordance with paragraph (a) on the last day that such a rate was available.~~

## 8 Agreement to less onerous terms

Despite clauses 4 to 7, a **distributor** and a **trader** may agree prudential requirements that are less onerous on the **trader** than the requirements described in clauses 4 to 7.

### *Consultation on changes to pricing structures*

## 9 Distributors to consult concerning changes to pricing structures

- (1) A **distributor** must consult with each **trader** trading on the **distributor's embedded network** in respect of the **distributor's** pricing structure for the **consumers** with which the **distributor** does not have a contract in respect of the conveyance of **electricity** before making a change to the pricing structure that materially affects 1 or more **traders** or **consumers**.
- (2) For the purpose of subclause (1), changes to a **distributor's** pricing structure that may materially affect 1 or more **traders** or **consumers** include, but are not limited to, any of the following:
  - (a) a change by the **distributor** to the eligibility criteria for 1 or more of the **distributor's** prices:
  - (b) a change by the **distributor** to the **distributor's** pricing structure by the introduction of a new price:
  - (c) a change by the **distributor** to the **distributor's** pricing structure that means that 1 or more of the **distributor's** prices are no longer available.



- (3) However, the fact that a change is listed in subclause (2) does not mean that a **distributor** is required to consult on the change if the change will not materially affect **traders** or **consumers**.

*Provision of information*

**10 Distributor or trader may require provision of information**

- (1) A **distributor** may, by notice in writing, require a **trader** to provide information to the **distributor**, to enable the **distributor** to invoice and reconcile charges for **distribution** services.
- (2) A **trader** may, by notice in writing, require the **distributor** to provide information to the **trader**, to enable the **trader** to invoice and reconcile charges for **distribution** services.
- (3) A **trader** or **distributor** that receives a notice under subclause (1) or subclause (2) must provide the information no later than 15 **business days** (or such other date as agreed between the parties) after receiving the notice.
- (4) Nothing in this clause prevents the **distributor** and the **trader** agreeing to provide **volume information** to each other for a purpose other than to enable invoicing and reconciling of charges for **distribution** services.

## Schedule 12A.4

cl 12A.2(1)

### Requirements for developing, making available, and amending default distributor agreements

#### 1 Content of this Schedule

This Schedule sets out provisions that apply to each **distributor** described in a row in column 1 below, and each **participant** described in column 2 of the row:

Row	Column 1 – Distributor	Column 2 – Participant
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	Each <b>trader</b> that is a <b>retailer</b> , and is trading or wishes to trade at an <b>ICP</b> on the <b>network</b> of a <b>distributor</b> described in column 1 of this row

#### *Requirement to have default distributor agreements*

#### 2 Distributors must have default distributor agreements

Each **distributor** must have a **default distributor agreement** for each type of arrangement described in clause 1 to which the **distributor** is a party.

#### 3 Content of default distributor agreements

- (1) A **distributor** must ensure that each **default distributor agreement** that it is required to have includes—
  - (a) each **core term** set out in the relevant **default distributor agreement template**; and
  - (b) **operational terms** that meet each of the requirements set out in the relevant **default distributor agreement template**, which are the requirements that are in text boxes and shaded in the **default distributor agreement template**; and
  - (c) **collateral terms** (if any) that the **distributor** proposes to include in each **distributor agreement** that it enters into for the type of arrangement to which the **default distributor agreement** applies; and
  - (d) any terms relating to additional services that the **distributor** intends to require be included in each **distributor agreement** that it enters into with a **participant** in accordance with clause 7 of Schedule 12A.1.
- (2) A **distributor** may, but is not required to, include in its **default distributor agreement** any term that is described in the relevant **default distributor agreement template** as a **recorded term**, which are in text boxes and shaded in the **default distributor agreement template**.
- (3) A **distributor** must ensure that any **collateral terms** it includes in a **default distributor agreement** under subclause (1)(c) —
  - (a) are clearly identified as **collateral terms** and not **core terms**, **operational terms**, or **recorded terms**; and
  - (b) are not inconsistent with, and do not modify the effect of, any of the following terms:
    - (i) **core terms** in the relevant **default distributor agreement** and **default distributor agreement template**; or

- (ii) **operational terms** in the relevant **default distributor agreement**.
- (4) For the purpose of this Part, the **default distributor agreement template** that applies in respect of each **distributor** described in a row in column 1 below is set out in the appendix described in column 2 of the row:

Row	Column 1 – Distributor	Column 2 – Appendix
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	Appendix A

*Principles and requirements for operational terms*

**4 Principles for operational terms in default distributor agreements**

- (1) This clause sets out principles that must be applied by—
- each **distributor** when it sets the **operational terms** in a **default distributor agreement**; and
  - the **Rulings Panel** when it reviews 1 or more **operational terms** under clause 8.
- (2) The principles are that a **distributor's operational terms** must—
- be consistent with the **Authority's** objective set out in section 15 of the **Act**; and
  - reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the reasonable requirements of the participants trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**; and
  - reflect the interests of **consumers** on the **distributor's network**; ~~and~~
  - ~~reflect the reasonable requirements of the participant party trading on, connected to, or using the distributor's network or equipment connected to the distributor's network, and the ability of the distributor to meet those requirements.~~

**5 Requirements for operational terms**

- (1) A **distributor** must not include an **operational term** in a **default distributor agreement** that is inconsistent with, or modifies the effect of, any **core term** that the **distributor** must include in the **default distributor agreement**.
- (2) In setting the **operational terms** in a **default distributor agreement**, a **distributor** must apply the principles set out in clause 4(2).

*Making default distributor agreements available and consultation*

**6 Making default distributor agreements available**

- (1) Subject to subclause (4), each **distributor** described in a row in column 1 below must make the **default distributor agreement** that applies in respect of the

arrangement described in row 1 available on its website from the date specified in column 2:

Row	Column 1 – Distributor	Column 2 – Date
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 or more <b>traders</b> trading on the <b>local network</b>	<p>For Orion New Zealand Limited, Powerco Limited, Unison Networks Limited, Vector Limited, and Wellington Electricity Lines Limited from the day that is 90 days after this Part comes into force</p> <p>For each other <b>distributor</b> that is a <b>distributor</b> on the date that this Part comes into force, from the day that is 150 days after this Part comes into force</p> <p>For each other <b>distributor</b> that became a <b>distributor</b> after the date that this Part comes into force, from the later of the following:</p> <ul style="list-style-type: none"> <li>(i) the day that is 150 days after this Part comes into force; or</li> <li>(ii) 30 <b>business days</b> before the date on which the <b>distributor</b> commences engaging in the business of <b>distribution</b> on the basis described in row 1.</li> </ul>

- (2) A **distributor** must, before making a **default distributor agreement** available on its website, consult each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, on the **operational terms** that the **distributor** proposes to include in its **default distributor agreement**.
- (3) A **distributor** must, no later than 2 **business days** after making a **default distributor agreement** available on its website, advise each **participant** described in subclause (2) that the **default distributor agreement** is available on the **distributor's** website.
- (4) A **distributor** may, but is not required to, include any term that is described as a **recorded term** in a **default distributor agreement** made available on its website.

#### *Appeals against operational terms in default distributor agreements*

### **7 Participants may appeal operational terms in default distributor agreements**

- (1) A **participant** that participated in consultation under clause 6(2) in respect of a **default distributor agreement** may appeal to the **Rulings Panel** against the inclusion of 1 or more **operational terms** in the **default distributor agreement** by giving

notice to the **Rulings Panel** and the relevant **distributor** by the date specified in subclause (2).

- (2) The **participant** must give the notice no later than 20 **business days** after the **distributor** gives notice under clause 6(3) that its **default distributor agreement** is available on its website.

## **8 Rulings Panel appeal process**

- (1) If the **Rulings Panel** receives a notice from a **participant** before the end of the period specified in clause 7(1), the **Rulings Panel** must, no later than 10 **business days** after receiving the notice, advise the **participant** that the **Rulings Panel** will—
  - (a) review 1 or more of the **operational terms** to which the notice relates; or
  - (b) decline to review 1 or more of any such terms, giving reasons.
- (2) In reviewing an **operational term** in a **default distributor agreement**, the **Rulings Panel** must apply the principles set out in clause 4(2).
- (3) If the **Rulings Panel** reviews an **operational term**, the **Rulings Panel** must, no later than 20 **business days** after advising the **participant** under subclause (1),—
  - (a) confirm the **operational term**; or
  - (b) amend the **operational term**, in which case clauses 9 and 10 apply; or
  - (c) direct the **distributor** to reconsider, either generally or in respect of any specified matter, the **operational term**, within such time as the **Rulings Panel** must specify, and give the **distributor** any such directions as the **Rulings Panel** thinks fit concerning the reconsideration of the **operational term**, in which case clause 11 applies.
- (4) The **Rulings Panel** may only amend an **operational term** under clause 8(3)(b) if it is satisfied that:
  - (a) the **operational term** is inconsistent with the principles in clause 4(2); and
  - (b) it would be commercially reasonable to require the **distributor** to apply the amended term, having regard to the impact on the distributor, including but not limited to:
    - (i) the operational impact on the **distributor**; and
    - (ii) the cost to the **distributor** of implementing the amended term.
- (5) Before it amends an **operational term** under subclause (3), the **Rulings Panel** must consider the impact on the **distributor** of having different operational terms applying across its **distribution agreements with participants**.
- (4)(6) Nothing in this clause permits the **Rulings Panel** to amend an amount that is charged by the **distributor** to the **participant** party to the **default distributor agreement**.

## **9 Amendments to operational term by Rulings Panel**

- (1) This clause applies if the **Rulings Panel** amends 1 or more **operational terms** of a **default distributor agreement** in accordance with clause 8(3)(b).
- (2) Each such **operational term** in the **default distributor agreement** is deemed to be amended accordingly.
- (3) The **distributor** must—
  - (a) make an updated version of the **default distributor agreement** that includes each amended **operational term** available on its website no later than 5 **business days** after the date of the **Rulings Panel's** decision; and

(b) advise each **participant** that the **distributor** considers is likely to be affected by the amendment to the **default distributor agreement**, that an updated version of the agreement is available on the **distributor's** website no later than 2 **business days** after making the agreement available on its website.

~~(b)~~(c)

## 10 Effect of Rulings Panel amendments to operational term on existing agreements

(1) If the **Rulings Panel** amends an **operational term** under clause 8(3)(b), the **Rulings Panel** must, at the time that it amends the term, stipulate 1 of the following in respect of each **distributor agreement** that the **distributor** has with a **participant** that includes the **operational term**:

- (a) that the **distributor** or the **participant** may elect to amend their **distributor agreement** to include the amendment by giving notice to the other party;
- (b) that the **distributor** may elect to amend its **distributor agreement** with the **participant** to include the amendment by giving notice to the **participant**;
- (c) that the **participant** may elect to amend its **distributor agreement** with the **distributor** by giving notice to the **distributor**.

(2) The **distributor** or **participant** must give a notice recording its election under subclause (1) no later than 10 **business days** after the date on which the **distributor** advised the **participant** that the updated **default distributor agreement** was available on its website under clause 9(3)(b).

(3) If a notice is given by a **distributor** or a **participant** within the timeframe specified in subclause (2), the **distributor agreement** to which the notice relates is deemed to be amended to include the amended **operational term** from the date on which the notice is received by the **distributor** or **participant**.

(4) Subclauses (1) to (3) do not apply in respect of any **distributor agreement** that the **distributor** has with a **participant** in which the **operational term** has been amended or omitted.

~~(4)~~(5) Despite anything else in this clause 10, if the **Rulings Panel** amends an **operational term** under clause 8(3)(b), the **distributor** may at any time amend each of its **distributor agreements** to include the amendment by giving not less than 10 **business days'** notice to the affected **participant(s)**.

## 11 Amendments to operational term by distributor following appeal

(1) If a **distributor** amends 1 or more **operational terms** of a **default distributor agreement** after being directed to reconsider the term by the **Rulings Panel** under clause 8(3)(c), the **distributor** must—

- (a) make an updated version of its **default distributor agreement** that reflects the amendment available on its website no later than 5 **business days** after making the amendment; and
- (b) advise each **participant** that the **distributor** considers is likely to be affected by the amendment to the **default distributor agreement** that an updated version of the agreement is available on the **distributor's** website, no later than 2 **business days** after making the agreement available.

(2) Clauses 7 and 8 apply (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1).

*Amending operational terms in default distributor agreements*

**12 Amending operational terms in default distributor agreements**

- (1) A **distributor** may amend 1 or more **operational terms** in a **default distributor agreement** by making the **default distributor agreement** with the amended **operational terms** available on its website.
- (2) Before a **distributor** amends a **default distributor agreement**, it must consult each **participant** that the **distributor** considers is likely to be affected by the amendment.
- (3) Clauses 7 and 8 apply (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1) as if the amendment was a **default distributor agreement**.

**13 Effect of amendment to operational terms on existing agreements**

- (1) This clause applies in respect of each **distributor agreement** between a **distributor** and a **participant** that came into force before the day on which the **distributor** made an amended **default distributor agreement** available under clause 12 ("existing agreement").
- (2) If an existing agreement includes an **operational term** that is amended in accordance with clause 12, the existing agreement is deemed to be amended accordingly with effect from the 15<sup>th</sup> **business day** after the date on which the amended **default distributor agreement** was made available under clause 12.

*Review of default distributor agreements and arrangements*

**14 Periodic review by Authority**

- (1) The Authority will review and consult with participants regarding the operation of this Part 12A of the Code, including whether any changes to this Part are necessary or desirable:
  - (a) on the first occasion, no later than three years after the commencement of this Part ("First Review"); and
  - (b) after the First Review, at intervals of no more than five years.

Sch 12A.4, cls 3(4)

**Schedule 12A.4, Appendix A**  
**Default distributor agreement for distributors and traders on local  
networks (interposed)**



## ANNEX: PROPOSED AMENDMENTS TO PART 12A AND THE DDA

Below we explain our proposed amendments to draft Part 12A of the Code and the draft DDA. The descriptions below are organised by the following themes for each of Part 12A and the Code:

1. Contract formation, variation and termination;
2. Risk management;
3. Access to data; and
4. Workability.

The descriptions below are reflected in the mark-ups to the Code and DDA that are enclosed with this submission.

### CONTRACT FORMATION, VARIATION AND TERMINATION

#### Proposed amendments to Part 12A of the Code

CONTRACT FORMATION, VARIATION AND TERMINATION: CODE AMENDMENTS		
Ref.	Description	ENA's comment
Sch 12A.1, cl 5	Distributor requirement to offer to contract	<p>As currently drafted, this clause could be interpreted as an "offer" by the distributor which will immediately become binding once accepted by the trader. This is evidently unintended, as the process for entering into the agreement is specified in clause 6(2). Further, an interpretation that would allow immediate acceptance under clause 5 would undercut the ability of the distributor to suggest a negotiated agreement, as the obligation to "offer" to contract on the standard DDA terms is compulsory.</p> <p>We propose making it clear in clause 5 that the distributor must provide the default distributor agreement terms, rather than requiring the distributor to offer to contract.</p>
Sch 12A.1, cl 6(4)	Exclusion of collateral terms in the DDA	<p>There may be some collateral terms that are intended to function together, and would not function correctly if they were not included with other complementary terms.</p> <p>We propose to make it clear that a trader cannot "pick and choose" and delete components of the collateral terms that are designed to operate as a group.</p>
Sch 12A.1, cl 6(5)	DDA applies as a binding agreement	<p>We have proposed a change to clarify that the "distributor agreement" in this subclause does not include a negotiated "alternative agreement" but only a DDA.</p>
Sch 12A.1, cl 6(5) (d)	Parties using the DDA template can agree to alternative terms under the Appendices	<p>As currently drafted, it is not clear whether parties using the DDA template can agree to alternative terms that differ from the default position under the Appendices in relation to the services provided for in the Appendices. If the parties are permitted to negotiate alternative agreements generally, then it follows they should be permitted to agree alternative terms in relation to the subject matter of the Appendices.</p> <p>We have proposed a change to clarify this.</p>

CONTRACT FORMATION, VARIATION AND TERMINATION: CODE AMENDMENTS		
Ref.	Description	ENA's comment
Sch 12A.1, cl 7(2), 9(1)	Participant that may elect additional services under Appendix C	As currently drafted, either the distributor or the trader can elect that the distributor agreement should include Appendix C. As this appendix is for the benefit of the distributor, it should be at the distributor's option.
Sch 12A.1, cl 7(3)-(5)	Entering into agreements for additional services	As currently drafted, these clauses only permit the parties to enter into agreements for additional services at the time they initially contract. There is no reason why they should not be permitted to enter into such arrangements at a subsequent date, and so we have proposed clarifying these clauses to permit that.
Sch 12A.1, cl 8	Entering into alternative agreements	We have inserted a new clause 8(5) to clarify that if the parties have not negotiated a bespoke arrangement before the timeframes in clause 6 expire, nothing should prevent the parties from forming an alternative agreement at a later time if they agree.
Sch 12A.1, cl 12	Transitional provisions for existing agreements	These amendments are consequential changes reflecting the proposals discussed above.
Sch 12A.1, cl 13	Refreshing existing distributor agreements	<p>As currently drafted, Part 12A does not include a mechanism to periodically refresh existing default distributor agreements, so the agreements will remain evergreen. Evergreen contractual arrangements are extremely unusual, whether in a regulated or unregulated context, because market conditions and the parties' commercial needs inevitably evolve. At a minimum, there should be an opportunity to periodically refresh all existing distributor agreements to update the terms to reflect the distributor's current published DDA.</p> <p>We have therefore proposed inserted a new clause 13 to ensure that a distributor's agreement with a trader is not "locked" in time indefinitely, with no ability for the distributor to update traders onto its most current version of the default distributor agreement.</p> <p>Our proposed wording would permit distributors the option to refresh agreements to their current DDA terms after a period of no less than three years. To ensure that agreements are aligned (which is one of the EA's objectives) the time period runs from the date the first agreement is entered into by the distributor.</p>
Sch 12A.1, cl 14	Exception to the requirement to contract with traders	As currently drafted, distributors are obliged to contract with all traders under all circumstances, regardless of the trader's business practices and even if the distributor has previously terminated a distribution agreement with that trader for the trader's default. For example, a trader terminated for serious financial breach could nonetheless insist on immediately re-contracting on the basis of the DDA and the distributor would have no ability to resist that demand.

CONTRACT FORMATION, VARIATION AND TERMINATION: CODE AMENDMENTS		
Ref.	Description	ENA's comment
		<p>We have inserted a new clause 14 to ensure that distributors are not always required to contract with traders who continually demonstrate an inability to perform their obligations. Rather than providing expressly for circumstances in which a distributor would be entitled to refuse, we have proposed an option to apply to the EA for an exemption from the obligation to offer to contract with the rogue trader.</p> <p>Ultimately, this decision would be in the Authority's discretion, but this provision would at least allow distributors to put the case to the Authority.</p>
Sch12A.4, cl 4(2)	Principles for operational terms	<p>We accept that it is appropriate for the Authority to promulgate principles for operational terms. However, the principles should not undermine the ability of the distributor to determine its commercially reasonable operational requirements. We have suggested some focused changes to ensure the balance is appropriate set.</p> <p>We have proposed amending cl 4(2)(b) to clarify that it is the requirements of participants (plural), rather than any single participant, that are relevant to the determination of operational terms, and that those requirements must be reasonable.</p> <p>We have also proposed deleting cl 4(2)(d) as this is essentially duplicating the test in 4(2)(b).</p>
Sch 12A.4, cl 4	Circumstances where Rulings Panel can amend an operational term	<p>As currently drafted, the Rulings Panel must have regard to the principles in cl 4(2) but is not required to identify any error in the operational terms adopted by the distributor. The result is that the Rulings Panel can amend operational terms if it simply prefers a different approach that it considers is also consistent with the principles. This is an unreasonable and unjustifiable intrusion on the ability of distributors to determine – within reasonable bounds – their operational arrangements. Distributors should be free to adopt operational arrangements as long as those arrangements are consistent with the principles. Such an expansive power to amend would also encourage traders not to participate meaningfully in consultation but instead go to dispute resolution, which would be an inefficient approach to resolving these matters.</p> <p>We have therefore proposed amendments that would:</p> <ul style="list-style-type: none"> <li>• clarify that the Rulings Panel must identify an inconsistency with the cl 4(2) principles before it amends the operational term;</li> <li>• require the Rulings Panel to have regard to the impact on the distributor of adopting the amended term and be satisfied that it is commercially reasonable to do so; and</li> </ul>

CONTRACT FORMATION, VARIATION AND TERMINATION: CODE AMENDMENTS		
Ref.	Description	ENA's comment
		<ul style="list-style-type: none"> <li>consider the impact on the distributor of having different operational terms applying to different traders.</li> </ul>
Sch 12A.4, cl 10	Amending other distributor agreements where the Rulings Panel amends an operational term	<p>We have inserted clause 10(5) to clarify that, if the Rulings Panel amends an operational term under clause 8(3)(b), the distributor may at any time amend each of its distributor agreements to include the amendment. This change is necessary because clause 10(1)(c) allows the Rulings Panel to permit each participant the option to incorporate the amended term or not. This could result in a situation in which different operational terms apply across the various agreements the distributor has with traders. Not only might this be unworkable from an operational perspective, it would also undermine the Authority's aim of achieving greater uniformity.</p> <p>Our proposed amendment would allow distributors a corresponding option to require that the amended term apply across all of its agreements.</p>
Sch 12A.4, cl 14	Periodic review by the Authority	<p>The proposed changes to Part 12A do not provide any built in mechanism for the Authority to review and update default core terms. It is unreasonable to expect that the core terms adopted now will never require revision. Indeed, in the first few years after implementation, it will likely become apparent through experience that further work is required to refine the core terms.</p> <p>To ensure that there is a structured opportunity to revise the core terms, we have proposed inserting new clause 14, which would require the Authority to conduct a periodic review of Part 12A of the Code and the DDA. We have proposed the first review should occur no later than three years as we suspect any issues regarding the DDA process will become readily apparent after the first couple of years, and this will create a process for addressing any necessary changes.</p> <p>Thereafter, the Authority should review the Code and DDA at least every five years, although it is open to the Authority to amend the Code or DDA in the meantime.</p> <p>This approach is analogous to the Commerce Commission's obligation to periodically review the Input Methodologies to ensure they are fit for purpose (s 52Y, Commerce Act 1986).</p>

## Proposed amendments to the DDA

CONTRACT FORMATION, VARIATION AND TERMINATION: DDA AMENDMENTS		
Ref.	Description	ENA's comment
CI 3, 33.2	Direct customer agreements	<p>We have proposed amendments to clarify that the distributor and a customer may agree to contract directly without the need for the customer to make a formal written request. The requirement for a written request creates an unnecessary administrative barrier.</p> <p>The remaining amendments clarify the drafting.</p>
CI 6.2 CI 7.2 CI 17.4 CI 17.5	<p>Requirement to comply with:</p> <ul style="list-style-type: none"> <li>Loss Factor Guidelines</li> <li>Distribution Pricing Structure Consultation Guidelines</li> <li>guidelines relating to medically dependent customers or vulnerable customers</li> <li>guidelines relating to unmetered load management</li> </ul>	<p>These clauses require distributors to comply with various guidelines published by the Authority.</p> <p>These guidelines are not yet defined and can theoretically be changed at any time. This creates a quasi-regulation making power without any of the process safeguards found in the Code. Given the Electricity Industry Act provides for a specific power to make and amend the Code, it is not appropriate for the Authority to arrogate to itself a parallel rule-making power that lacks a proper statutory basis.</p> <p>It also means that new and enforceable contractual obligations may be created through the publication of guidelines rather than a proper rule-making or contractual process.</p> <p>We have proposed deleting references to these guidelines. If the Authority wishes to create binding obligations on distributors, it should do so through the appropriate rule-making powers of the Code.</p>
CI 19.1(b)	Termination of agreement as a result of a dispute resolution process	<p>As currently drafted, clause 19.1 would allow a dispute resolution process to lead to the termination of the agreement – and potentially the ability of the trader to claim damages resulting – for a simple breach of the agreement and without any materiality threshold. Given clause 18.4 already provides options for termination subject to a materiality threshold, it is hard to see the need for this here.</p> <p>Accordingly, we have proposed deleting clause 19.1(b).</p>
CI 19.1(f)	Code change to contract requirements	<p>We have proposed inserting clause 19.1(f) so that if the obligation to enter into a distribution agreement is removed under Part 12A of the Code, the Distributor will be able to end any relevant agreement without these continuing on indefinitely.</p> <p>Without this clause, the binding contracts created by 12A may become “zombie contracts” that live on indefinitely despite their regulatory foundation being repealed.</p>
CI 19.2	Termination for events of default	<p>As currently drafted clause 18.1 and 18.3 would mean that a failure of the distributor to remedy any breach of the agreement within 5 Working Days would be an Event of Default that could lead to termination under this clause.</p>

CONTRACT FORMATION, VARIATION AND TERMINATION: DDA AMENDMENTS		
Ref.	Description	ENA's comment
		We have proposed amending this clause to clarify that clause 19.2 only applies to the events of default described in clause 18.4 – that is, subject to a reasonable materiality standard.

## RISK MANAGEMENT

### Proposed amendments to Part 12A of the Code

RISK MANAGEMENT: CODE AMENDMENTS		
Ref.	Description	ENA's comment
Sch12A.3, cl 7	Requirement to provide additional security	<p>As currently drafted, the provisions relating to additional security do not take into account amounts that the trader owes or that are disputed. The consequence is that the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. Moreover, traders will have a strong incentive to dispute any amounts owing unless disputed amounts are taken into account for the purposes of security that may be called on.</p> <p>We have proposed amendments to recognise this. Without this change, the amount of security held may be inadequate.</p>
Sch12A.3, cl 7	Additional security requirements	<p>A 15% premium on bank bill yield rates substantially overstates most Traders' true cost of posting additional security. This is significantly more than Default Interest under the DDA template.</p> <p>Moreover, the means of providing additional security is at the Trader's election. This creates a real risk that Traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital.</p> <p>It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices.</p> <p>We have proposed changes to ensure that the real cost of security on normal terms is passed through to the Distributor, and the Trader cannot make a windfall by choosing a cash deposit as security.</p>

### Proposed amendments to the DDA

RISK MANAGEMENT: DDA AMENDMENTS		
Ref.	Description	ENA's comment
10.7	Requirement to provide additional security	<p>As currently drafted, the provisions relating to additional security do not take into account amounts that the trader owes or that are disputed. The consequence is that the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. Moreover, traders will have a strong incentive to dispute any amounts owing unless disputed amounts are taken into account for the purposes of security that may be called on.</p> <p>We have proposed amendments to recognise this. Without this change, the amount of security held may be inadequate.</p>
10.9	Additional security requirements	<p>A 15% premium on bank bill yield rates substantially overstates most Traders' true cost of posting additional</p>

RISK MANAGEMENT: DDA AMENDMENTS		
Ref.	Description	ENA's comment
		<p>security. This is significantly more than Default Interest under the DDA template.</p> <p>Moreover, the means of providing additional security is at the Trader's election. This creates a real risk that Traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital.</p> <p>It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices.</p> <p>We have proposed changes to ensure that the real cost of security on normal terms is passed through to the Distributor, and the Trader cannot make a windfall by choosing a cash deposit as security.</p>
10.20	Cash deposit on insolvency event	<p>As currently drafted, the Distributor must give the Trader two working days' notice before drawing down on the cash deposit. However, if the Trader has gone insolvent, there should be no need to provide notice.</p> <p>We have proposed a change to reflect this.</p>
10.22	Situations when a Distributor may make a call on security	<p>The current drafting suggests that the Distributor is unable to call on security if the Trader has failed to maintain acceptable security. We have proposed an amendment to clarify this.</p>
24.2	Liability for direct damage	<p>As currently drafted each party will be liable to the other party for direct damage that results from a breach of the Agreement, negligence, or failure to exercise Good Industry Practice.</p> <p>However where a clause indicates an obligation to exercise Good Electricity Industry Practice, the failure to do so will cause a breach of the Agreement – so this wording is unnecessary to include. Accordingly we have proposed deleting the specific reference to Good Industry Practice.</p>
24.7	Limitation of liability	<p>As currently drafted, the greater the number of traders on a Distributor's network (no matter how small) the higher the cumulative amount of liability for which they could be liable, despite the network itself, and any likely loss arising from events, not changing. There is no justification for liability to scale solely depending on how fragmented the retail market is in relation to that distributor's network.</p> <p>We have therefore proposed changes to ensure that the Distributor's exposure to liability from a Trader is proportionate to their share of the network, measured either in terms of ICPs or, for traders that have a smaller number of large (e.g. industrial) customers, proportionate to their share of distribution services charges.</p>



RISK MANAGEMENT: DDA AMENDMENTS		
Ref.	Description	ENA's comment
Cl 24.11	Reference to the Contract and Commercial Law Act 2017	We have proposed amendments to clause 24.11 to ensure that section 15 of the CCLA does not inadvertently prevent the parties from varying the agreement.
Cl 26.1	Claims against the Distributor's indemnity	<p>As currently drafted this clause suggests that the Trader can turn its mind to whether it "wishes" to be indemnified for any amount to remedy a customer issue after it has already done this and without any consultation with the Distributor.</p> <p>We have proposed amendments to make it clear that the Trader must be aware of any facts or circumstances indicating that the underlying failure may be related to an event, circumstance or condition associated with the Network.</p>
Cl 27.1, 27.2	Circumstances where the Distributor and Trader will be indemnified	<p>As currently drafted, the Distributor will indemnify the Trader in relation to any direct loss or damage arising out of or in connection with the termination of the agreement by the distributor, except when the termination is the result of a breach by the trader.</p> <p>We have proposed clarifying the drafting to make clear that, if the distributor has a contractual right to terminate, it should not be penalised for exercising it. We have also proposed a corresponding change to cl 27.1 for the benefit of traders.</p>
Cl 27.3, 33.2	Exceptions to indemnity	<p>The indemnity for third party claims should cover only the third party's "actual losses", and not liabilities which a Trader has voluntarily assumed by way of liquidated damages or similar payments. Otherwise the indemnity potentially provides a "blank cheque" for Traders to expose Distributors to unlimited liability for breaches of the default Distributor agreement. This would not be an efficient outcome, because it would require the Distributor to bear a type of risk which other parties are better placed to mitigate.</p> <p>Accordingly, we have inserted clause 27.3 to specify circumstances where the distributor will not be liable under the indemnity in clause 27.2.</p> <p>Moreover, as the concept of "direct loss" does not have a single, settled legal meaning, and would otherwise be ambiguous we have referred to loss that is a "direct, natural and probable consequence".</p>
Cl 33.2	Definition of "serious financial breach"	<p>We have amended the definition of "Serious Financial Breach" to include a scenario where the trader has not paid its invoices for two consecutive months.</p> <p>This is to reflect the fact that, for smaller traders, the existing thresholds may provide substantial latitude for a prolonged period of non-compliance with payment obligations.</p>

## DATA ACCESS

### Proposed amendments to Part 12A of the Code

DATA ACCESS: CODE AMENDMENTS		
Ref.	Description	ENA's comment
App C, cl 2(2)-(3)	Provision of Consumption Data	We have proposed several changes to clarify the drafting of these clauses, and to provide that data may be provided by the trader or MEP.
App C, cl 2(4)	Supplying Consumption Data in the requested format	<p>As currently drafted it is unclear how the trader should supply consumption data where the parties are unable to agree the format in which data is provided.</p> <p>We have inserted a new clause 2(4) where the parties are unable to agree the format in which data is provided to mirror the wording in the EU's General Data Protection Regulation as it relates to the right to data portability.</p>
App C, cl 2(5)	Trader's obligation to ensure Consumption Data is free from viruses and transmitted in an encrypted form	We have proposed that this wording is moved up from clause 17 below, given it relates directly to how the Consumption Data is supplied.
App C, cl 3(2), cl 18	Provision of Consumption Data to Distributor	<p>As previously drafted, clause 3(2) and the template in clause 18 suggested that the parties have to reach agreement on a range of matters in the 'Data Agreement' that are provided for in the operative clauses themselves. For example, the template Data Agreement suggested that the parties have to agree on the Consumption Data that is to be provided, whereas the aim of Appendix C is to make clear that the distributor has a right to request this data.</p> <p>We have therefore proposed changes to clarify that:</p> <ul style="list-style-type: none"> <li>• cl 3 sets out the minimum rights the distributor is entitled to insist upon; and</li> <li>• the Data Agreement covers additional matters agreed by the parties which exceed any default rights of the Distributor under cl 3.</li> </ul>
App C, cl 3(4)(c), 3(6)	Transferring Consumption Data outside of New Zealand	<p>Businesses often use third party cloud providers to host most if not all of their business data, often overseas. This is because large and reputable third party providers typically have more secure systems than smaller in-house operations, while providing greater flexibility. Notably, the Privacy Commissioner now stores its data – including highly sensitive complaints data – <a href="#">via a Microsoft datacentre in Australia</a>.</p> <p>We have proposed wording in sub-clauses 3(4) and 3(6) to mirror the approach <a href="#">under the Privacy Bill</a> – which recognises data kept in such circumstances is not a “disclosure”. Given the approach of the Privacy Commissioner and the relatively non-sensitive nature of most Consumption Data we believe this clarification is important for workability.</p>

DATA ACCESS: CODE AMENDMENTS		
Ref.	Description	ENA's comment
App C, cl 3(4)(c)	Combining Consumption Data	<p>We do not understand the rationale for the inability to combine Consumption Data with other data. Absent this right, there is little point in receiving Consumption Data. For example, this would mean a distributor could not use the Consumption Data with other information about its Network for planning purposes, or combine data from multiple retailers to provide a complete picture of consumption in a particular geographic area, which is essential for network planning purposes.</p> <p>Accordingly, we have proposed removing this restriction.</p>
App C, cl 5	Trader's obligations under the Privacy Act	<p>We have proposed changes to reflect that each trader should ensure that its terms provide authorisation and notice for any relevant uses under the Privacy Act.</p>
App C, cl 6(1)	Restriction on disclosing the existence of any Consumption Data	<p>It would be strange to prohibit the Distributor from being able to acknowledge that it has received Consumption Data from the Trader, provided none of the actual content of this Data is made public. The <i>existence</i> of Consumption Data is not plausibly confidential.</p> <p>To address this, we have clarified that the distributor must not disclose the Consumption Data, rather than the existence of such data.</p>
App C, cl 6(2)	Combining Consumption Data	<p>As above in relation to clause 3(4), we see no reason to prohibit use of aggregated, anonymised secondary information which provides insights about the Network and distribution services. This is likewise a public good. Absent this clarification, distributors could be unjustifiably prevented from making use of the results of their network planning analyses where that analysis relies on Consumption Data.</p> <p>To address this, we have inserted a new clause 6(2) to make it clear distributors are not prevented from using/disclosing information that is derived from aggregated Consumption Data in certain circumstances.</p>
App C, cl 8	Data team	<p>As the relevant people who make up the data team are also described in clause 7 we have proposed simplifying clause 8 to avoid repetition.</p>
App C, cl 10	Requirements for information security plan	<p>Provided the Distributor has complied with the general requirement to put in place appropriate controls consistent with the Distributor's own controls for confidential information, there is no need to provide for additional requirements to physically and electronically quarantine the Consumption Data.</p> <p>Further, as described above, to have the benefit the Consumption Data will need to be used with other data, meaning that quarantining is not feasible.</p> <p>Accordingly, we have proposed removing clause 10(2).</p>

DATA ACCESS: CODE AMENDMENTS		
Ref.	Description	ENA's comment
App C, cl 11	Liability and indemnity	<p>The Distributor should only be obliged to indemnify for losses that are actually caused by the Distributor's breach. This was not achieved by the previous wording of "arising... in connection with").</p> <p>The Distributor also should not be liable for losses which were reasonably foreseeable at the time the parties entered the appendix. There should not be an obligation to indemnify for loss that is too remote.</p> <p>We have proposed changes in 11(3) to reflect that the Trader should also be expected to take reasonable steps to mitigate potential loss.</p>
App C, cl 13	Frequency of audits	To avoid larger distributors having the prospect of multiple audits occurring regularly over time, we have proposed that the Distributor have the option of conducting one audit every 12 months, and providing the results to all its traders.
App C, cl 14	Termination of Appendix C	<p>Under the current proposed wording:</p> <ul style="list-style-type: none"> <li>the Trader would have been able to terminate the entire Agreement to which the Appendix belongs, rather than just the Appendix, and</li> <li>the Trader would have been able to terminate for any breach, no matter how minor.</li> </ul> <p>It was not clear to us why the previous clause 13 included so much detail attempting to define the materiality/seriousness of a breach, when the previous clause 14 allowed the Trader to terminate for any breach (no matter how minor) that is not a serious breach (see prev. 14(1)(b)), and also for any breach (no matter how minor) that is not remedied within 5 Working Days (this was the effect of the previous 14(2), when read together with the provisions defining what amounts to an Event of Default – specifically the previous 13(1)(b) and 13(3)).</p> <p>Accordingly, we have made changes here to simplify the circumstances where a Trader can terminate the Appendix.</p>
App C, cl 15	Destruction of Consumption Data	<p>The Distributor may have a legitimate need to keep and use Consumption Data after the end of the agreement for permitted purposes. Moreover, if distributors are exposed to the risk they will have to return data, this will disincentivise them from relying on data for network planning purposes as they may subsequently be deprived of the data on which they have based investment decisions.</p> <p>We have therefore proposed changes to clause 15 to recognise this. The Trader may however request a certificate when the data is erased.</p>

## WORKABILITY

### Proposed amendments to Part 12A of the Code

WORKABILITY: CODE AMENDMENTS		
Ref.	Description	ENA's comment
Sch 12A.1, cl 3, cl 6(3)	Timeframe for negotiation of distribution agreements	<p>20 business days for negotiation of distribution agreements is extremely tight. Many distributors will have difficulty meeting these timeframes, taking account of practical matters such as the need for billing system setup, outage management and other network operations setup, connections, and prudential security set up. This timeframe also undercuts any reasonable ability to enter a negotiated agreement.</p> <p>To address this, we propose amending this timeframe to 40 business days.</p>
Sch 12A.1, cl 6(2)	Timeframe for commencement of trading	<p>Five business days to commence trading is an extremely tight timeframe, taking account practical matters such as the need for billing system setup, outage management and other network operations setup, connections, and prudential security set up.</p> <p>To address this, we propose amending this timeframe to 20 business days.</p>
Sch 12A.1, cl 11(1)(c)	Requirement to provide "any other agreement" to the Authority	<p>The current drafting would mean that any agreement between the parties – whether or not it is related to distribution services – could be published by the Authority if the parties sign up to the agreement within the DDA contracting window.</p> <p>There is no policy rationale for requiring disclosure of entirely unrelated commercial agreements, and so we have proposed deleting this clause to clarify that only agreements that relate to distribution services are included in the disclosure obligation.</p>

### Proposed amendments to the DDA

WORKABILITY: DDA AMENDMENTS		
Ref.	Description	ENA's comment
Cl 5.1, 5.9	Alternative load control arrangements	<p>As currently drafted, clause 5 provides a default rule specifying what part of a customer's load an entrant may control, where the incumbent already controls a portion of the customer's load. On the current wording, because of the DDA mechanism, the entrant and incumbent will be unable to vary this rule except by entering into an alternative agreement.</p> <p>We have proposed amendments to allow for an "Other Load Control Option."</p>

WORKABILITY: DDA AMENDMENTS		
Ref.	Description	ENA's comment
		We have also proposed new clause 5.9 that ensures there is no conflict between load control by the distributor and by third parties.
CI 7.7	Requirement to follow certain process where the error is immaterial	<p>There is little purpose in correcting immaterial errors only, given that this would merely bring the charges into line with the Distributor's regulated pricing. This should not be controversial so long as the errors are obvious.</p> <p>Accordingly we have proposed deleting the requirement that the correction of the error must not have a material effect on the Trader or 1 or more Customers.</p>
CI 8.5	Trader's selection of Price Option	<p>Clause 8.5 currently reads as if meter register configuration is the only relevant detail for selecting a Price Option.</p> <p>Accordingly we have proposed amendments to clarify that the Trader must only select a Price Option where all eligibility criteria, including the meter register configuration, are satisfied. Distributors rely on Traders to maintain correct information about each site as necessary to select the correct Price Option.</p>
CI 8.9	Distributor's right to change Price Category	We have proposed amending this clause so that any correction of a mistake in relation to Price Category is done in the same way as an initial allocation.
CI 9.3	Billing provisions	As currently drafted the proposed DDA template has a "one size fits all" approach to billing and payment as part of its core terms. This is not appropriate for all Distributors. We have proposed amendments to ensure that it will work for all Distributors.
CI 20	Confidentiality	We have proposed an amendment to clarify that each party may use Confidential Information for the purposes of performing their obligations and exercising their rights.

# **Default Distributor Agreement**

## **Template**

**Version: 09 July 2019**

**Distributor:**

**[insert full legal name of the Distributor]**

## TABLE OF CONTENTS

<b>PARTIES</b>	<b>1</b>
<b>COMMENCEMENT DATE</b>	<b>1</b>
<b>SIGNATURES</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>2</b>
<b>PART I – AGREEMENT TERM AND SERVICE COMMITMENTS</b>	<b>2</b>
1. TERM OF AGREEMENT .....	2
2. SUMMARY OF GENERAL OBLIGATIONS .....	2
3. CONVEYANCE ONLY .....	3
4. SERVICE INTERRUPTIONS .....	5
5. LOAD MANAGEMENT .....	6
6. LOSSES AND LOSS FACTORS .....	8
<b>PART II – PAYMENT OBLIGATIONS .....</b>	<b>9</b>
7. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES ..	9
8. ALLOCATING PRICE CATEGORIES AND PRICE OPTIONS TO ICPS .....	10
9. BILLING INFORMATION AND PAYMENT .....	13
10. PRUDENTIAL REQUIREMENTS .....	15
<b>PART III – OPERATIONAL REQUIREMENTS .....</b>	<b>20</b>
11. ACCESS TO THE CUSTOMER'S PREMISES .....	20
12. GENERAL OPERATIONAL REQUIREMENTS .....	22
13. NETWORK CONNECTION STANDARDS .....	24
14. MOMENTARY FLUCTUATIONS AND POWER QUALITY .....	24
15. CUSTOMER SERVICE LINES .....	24
16. TREE TRIMMING .....	25
17. CONNECTIONS, DISCONNECTIONS AND DECOMMISSIONING .....	25
<b>PART IV – OTHER RIGHTS .....</b>	<b>26</b>
18. BREACHES AND EVENTS OF DEFAULT .....	26
19. TERMINATION OF AGREEMENT .....	27
20. CONFIDENTIALITY .....	29
21. FORCE MAJEURE .....	30
22. AMENDMENTS TO AGREEMENT .....	31
23. DISPUTE RESOLUTION PROCEDURE .....	32
24. LIABILITY .....	33
25. INDEMNITY .....	36
26. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY .....	36
27. FURTHER INDEMNITY .....	39
28. CONDUCT OF CLAIMS .....	40
29. CUSTOMER AGREEMENTS .....	41
30. NOTICES .....	41
31. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS .....	42
32. MISCELLANEOUS .....	43
33. INTERPRETATION .....	44
<b>PART V – SCHEDULES .....</b>	<b>52</b>
<b>SCHEDULE 1 – SERVICE STANDARDS .....</b>	<b>53</b>
<b>SCHEDULE 2 – BILLING INFORMATION .....</b>	<b>60</b>
<b>SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS .....</b>	<b>62</b>
<b>SCHEDULE 4 – SYSTEM EMERGENCY EVENT MANAGEMENT .....</b>	<b>63</b>
<b>SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION REQUIREMENTS .....</b>	<b>64</b>
<b>SCHEDULE 6 – CONNECTION POLICIES .....</b>	<b>68</b>
<b>SCHEDULE 7 – PRICING .....</b>	<b>73</b>
<b>SCHEDULE 8 – LOAD MANAGEMENT .....</b>	<b>74</b>



**AGREEMENT** dated 20[ ]

**PARTIES**

<b>Distributor:</b> [insert full legal name of the Distributor and complete the block below]	<b>Trader:</b> [insert full legal name of the Trader and complete the block below]
<b>Distributor's Details:</b> Street Address: [insert] Postal Address: [insert] Address for Notices: [insert] <b>Contact Person's Details:</b> Phone: [insert] Fax: [insert] Website: [insert] Email Address: [insert]	<b>Trader's Details:</b> Street Address: [insert] Postal Address: [insert] Address for Notices: [insert] <b>Contact Person's Details:</b> Phone: [insert] Fax: [insert] Website: [insert] Email Address: [insert]

**COMMENCEMENT DATE**

[insert date]

## SIGNATURES

_____ Signature	_____ Signature
_____ Name of authorised person signing for Distributor	_____ Name of authorised person signing for Trader
_____ Position	_____ Position
_____ Date	_____ Date

## INTRODUCTION

- A. The Distributor agrees to provide the Distribution Services to the Trader on the terms and conditions set out in this Agreement.
- B. The Trader agrees to purchase the Distribution Services from the Distributor on the terms and conditions set out in this Agreement.

## PART I – AGREEMENT TERM AND SERVICE COMMITMENTS

### 1. TERM OF AGREEMENT

- 1.1 **Commencement:** This Agreement commences on the date on which it is deemed to commence under Part 12A of the Code (the "**Commencement Date**").
- 1.2 **Termination:** This Agreement continues until it is terminated under clause 19 or otherwise at law.

### 2. SUMMARY OF GENERAL OBLIGATIONS

- 2.1 **Purpose of clause:** This clause is intended to provide an overview of each party's obligations under this Agreement, and does not impose any legal obligations on either party.
- 2.2 **Summary of Distributor's general obligations:** In summary, this Agreement requires the Distributor to provide Distribution Services to the Trader as follows:
  - (a) deliver electricity to Service Levels specified in any Service Standards set out in Schedule 1;
  - (b) provide service interruption information under clause 4 and Schedule 5;
  - (c) carry out Load Shedding under clause 4.4;
  - (d) carry out load control as permitted under clause 5, Schedule 1, and Schedule 8;
  - (e) calculate Loss Factors in accordance with clause 6;
  - (f) allocate Price Categories to ICPs under clause 8;
  - (g) consider applications for new connections and changes to capacity for existing connections, implement disconnections and reconnections and decommission ICPs,

under clause 17 and Schedule 6; and

- (h) provide information in accordance with EIEPs under clause 31 and Schedule 3.

**2.3 Summary of Trader's general obligations:** In summary, this Agreement requires the Trader to perform obligations as follows:

- (a) pay for Distribution Services and provide billing information under clause 9 and Schedule 2;
- (b) meet prudential requirements under clause 10;
- (c) provide service interruption information under clause 4 and Schedule 5;
- (d) carry out load control as permitted under clause 5, Schedule 1, and Schedule 8;
- (e) provide information to enable the Distributor to calculate Loss Factors under clause 6;
- (f) select Price Options and, if appropriate, request a new Price Category for an ICP under clause 8;
- (g) process applications for new connections or changes to the capacity of existing connections, and provide information about ICPs to be disconnected, reconnected, or decommissioned, under clause 17 and Schedule 6;
- (h) have a Customer Agreement with each Customer for the supply of electricity that contains terms that meet the requirements of clause 29, including procuring from each Customer;
  - (i) access to Customer's Premises for the Distributor under clause 11;
  - (ii) non-interference and damage undertakings under clause 12;
  - (iii) an undertaking that Customer Installations will comply with the Distributor's Network Connection Standards under clause 13;
  - (iv) acknowledgement of the possible effects of momentary fluctuations under clause 14; and
  - (v) acknowledgement that the Customer is responsible for Customer Service Lines under clause 15 and tree trimming under clause 16; and
- (i) provide information in accordance with EIEPs and respond to requests from the Distributor for Customer information under clause 31 and Schedule 3.

**3. ~~CONVEYANCE ONLY~~ DIRECT CUSTOMER AGREEMENTS**

- 3.1 Distributor may enter into Direct Customer Agreement with Customer:** The Distributor may enter into a Direct Customer Agreement with a Customer ~~at the Customer's written request~~ by agreement in writing, provided that a Distributor may not enter into a Direct Customer Agreement for the provision of Distribution Services on a Conveyance Only basis if any existing Customer Agreement between the Trader and the Customer is ~~not~~ a fixed term agreement ~~or~~ and the fixed term has not expired.

- 3.2 Conveyance Only basis:** If a Customer has, or enters into, a Direct Customer Agreement for the provision of Distribution Services on a Conveyance Only basis, the Distributor must:

- (a) unless otherwise agreed with the Trader, ensure that the Direct Customer Agreement includes the direct billing of Distribution Services charges to the Customer and responsibility for associated debt;

- ~~(a)~~ (b) allow electricity to be conveyed through the Network on a Conveyance Only basis on the applicable terms of this Agreement to allow the Trader to supply electricity to that Customer; and

- ~~(b)~~ (c) for each relevant ICP:

- (i) in accordance with the requirements of the Code relating to information

- included in the Registry, update the Registry field that indicates that the Distributor is directly billing the Customer in respect of that ICP; and
- (ii) within 5 Working Days following the commencement of a Direct Customer Agreement, notify the Trader that a Direct Customer Agreement has been entered into in respect of that ICP.
- 3.3 **Valid Direct Customer Agreement:** The Trader must not knowingly supply electricity on a Conveyance Only basis to an ICP unless there is a valid Direct Customer Agreement [for the provision of Distribution Services on a Conveyance Only basis](#) in force in relation to the ICP.
- 3.4 **Acting consistently with Direct Customer Agreement:** The Trader must not knowingly do or omit to do anything, or cause any person to do or omit to do anything, that is inconsistent with the obligations of the Customer or the Distributor under any Direct Customer Agreement. However, the technical requirements in a Direct Customer Agreement may differ from the technical requirements in relation to Distribution Services set out in this Agreement, if the Distributor has given the Trader reasonable notice of those requirements.
- 3.5 **Termination of Direct Customer Agreement:** The Trader acknowledges that the Distributor will be entitled to terminate any Direct Customer Agreement in accordance with its terms.
- 3.6 **Co-operate to resolve issues:** Without limiting either party's rights or remedies in respect of any breach of this Agreement, if either of the following issues arises, the Distributor and the Trader must co-operate with each other to try to resolve the issue in a manner that on balance delivers the best outcome for all affected parties (including the Customer) but that does not adversely impact on the integrity of the Network:
- (a) if, in relation to the supply of electricity to any Customer that is a party to a Direct Customer Agreement, the Distributor notifies the Trader that it considers (acting reasonably) that the Trader has done, or is doing, anything that is inconsistent with the Direct Customer Agreement and that may have an impact on the Network or the provision of [Distribution Services](#) by the Distributor to that or any other Customer; or
  - (b) if either the Trader or the Distributor becomes aware that any provisions of a Direct Customer Agreement and any Electricity Supply Only Agreement would conflict to the extent that a party would be in breach of contract.
- 3.7 **Customer not party to valid Direct Customer Agreement:** If at any time it is found that a Customer is not being supplied on an Interposed basis in relation to 1 or more ICPs and is not a party to a valid Direct Customer Agreement in relation to those ICPs, or if any Direct Customer Agreement in relation to particular ICPs expires or is terminated or is about to expire or be terminated, then, without limiting any other right of the Distributor under this Agreement or otherwise:
- (a) the Distributor may notify the Trader (or any other trader) of the situation and suggest the Trader (or any other trader) take up the opportunity to supply the Customer on an Interposed basis in relation to those ICPs; and
  - (b) if the Distributor gives notice under clause 3.7(a), the Distributor may disconnect the ICPs if, within 20 Working Days of giving that notice, the Distributor has not received notice that the Trader (or any other trader) will immediately commence supplying the Customer on an Interposed basis in relation to those ICPs.

## 4. SERVICE INTERRUPTIONS

### General

- 4.1 **Communication about Service Interruptions:** The parties must comply with the requirements relating to communication about Service Interruptions set out in Schedule 5.
- 4.2 **Distributor may Publish Service Interruption information:** The Distributor may Publish or disclose to the media or any other person any information relating to any Service Interruption.
- 4.3 **Managing load during System Emergency Event:** The Distributor must manage load on the Network during a System Emergency Event in accordance with the Distributor's System Emergency Event management policy set out in Schedule 4, and the Code.
- 4.4 **Load Shedding:** The Distributor may carry out Load Shedding in the following circumstances:
- (a) **Maintenance of Network equipment:** if the Distributor wishes to inspect or effect alterations, maintenance, repairs or additions to any part of the Network, subject to clauses 4.6, 4.8, 4.10, and Schedule 5 as applicable;
  - (b) **Permitted by Service Standards:** as permitted by the Service Standards, if the Customer has elected to receive an interruptible or otherwise non-continuous supply of electricity;
  - (c) **Compliance with instructions from the System Operator:**
    - (i) to comply with a request or instruction received from the System Operator in accordance with the Code; or
    - (ii) if communication with the System Operator has been lost, and the Distributor reasonably believes that, had communication with the System Operator been maintained, the Distributor would have received a request or instruction from the System Operator to shed load in accordance with the Code;
  - (d) **Maintain security and safety:** to maintain the security and safety of the Network in order to:
    - (i) maintain a safe environment, consistent with the Distributor's health and safety policies;
    - (ii) prevent unexpected short term overloading of the Network;
    - (iii) prevent voltage levels rising or falling outside of legal requirements;
    - (iv) manage System Security; and
    - (v) avoid or mitigate damage to the Network or any equipment connected to the Network;
  - (e) **Compliance with the Code:** to comply with the Code or the law; or
  - (f) **Other circumstances:** for any other purpose that, in the Distributor's reasonable opinion, and in accordance with Good Electricity Industry Practice, requires the interruption or reduction of delivery of electricity to any ICP.

#### **Unplanned Service Interruptions**

- 4.5 **Party responsible for Unplanned Service Interruption calls:** The party responsible for receiving Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until normal service is restored, as necessary, is identified in Schedule 5.
- 4.6 **Notification of Unplanned Service Interruptions:** If an Unplanned Service Interruption occurs, the Distributor and the Trader must comply with the service interruption communication requirements set out in Schedule 5.
- 4.7 **Customer requests for restoration of Distribution Services:** During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Trader must forward to the Distributor any requests it receives from Customers for the restoration of the

Distribution Services as soon as practicable, and the Distributor must acknowledge such receipt unless the Trader requests otherwise.

### **Planned Service Interruptions**

**Requirements for recorded terms:** If the Distributor has any obligations relating to how it schedules Planned Service Interruptions and the impact of Planned Service Interruptions on Customers, insert as clause 4.8 a recorded term that sets out those obligations. If no obligations of that type apply, insert the words "not applicable" as clause 4.8. An example is provided in clause 4.8. Revise as appropriate and then delete this dashed box.

**4.8 Distributor to schedule Planned Service Interruptions to minimise disruption:** The Distributor must, as far as is reasonably practicable, schedule Planned Service Interruptions to minimise disruption to Customers.

**4.9 Responsibility for notification of Planned Service Interruptions:** The party responsible for notifying Customers of a Planned Service Interruption is identified in Schedule 5.

**4.10 Parties to comply with notification requirements:** The Distributor and the Trader must comply with any requirements set out in Schedule 5 in relation to the notification of Planned Service Interruptions.

### **Restoration of Distribution Services**

**Requirements for recorded terms:** If the Distributor has any obligations relating to the duration of service interruptions and/or the timely restoration of ~~Distribution services~~ Services following Planned or Unplanned Service Interruptions, insert as clause 4.11 a recorded term that sets out those obligations. If no obligations of that type apply, insert the words "not applicable" as clause 4.11. An example is provided in clause 4.11. Revise as appropriate and then delete this dashed box.

**4.11 Distributor to restore Distribution Services as soon as practicable:** In the case of a Service Interruption, the Distributor must endeavour in accordance with Good Electricity Industry Practice to restore the Distribution Services:

- (a) for Unplanned Service Interruptions, as soon as reasonably practicable and no later than the timeframes set out in Schedule 1; and
- (b) for Planned Service Interruptions, as soon as reasonably practicable and no later than the timeframe set out in the notice for Planned Service Interruptions sent to the Customer.

**Requirements for recorded terms:** If any remedies are available to the Trader in the event that the Distributor fails to meet any obligations set out in clause 4.11, insert as clause 4.12 a recorded term that either sets out those remedies, or refers to another part of this Agreement where those remedies are set out. If no remedies are available to the Trader, or if the Distributor has no relevant obligations, insert the words "not applicable" as clause 4.12. An example is provided in clause 4.12. Revise as appropriate and then delete this dashed box.

**4.12 Trader's remedy:** Except as provided in clause 9.10, the Trader's only remedy if the

## **5. LOAD MANAGEMENT**

**5.1 Distributor may control load:** Subject to clause ~~4.5.3~~, if:

- (a) the Distributor provides a Price Category or Price Option for a non-continuous level of service in respect of part or all of the Customer's load (a "**Controlled Load Option**"), and charges the Trader on the basis of the Controlled Load Option in respect of the Customer; or

(b) the Distributor provides any other service in respect of part or all of the Customer's load advised by the distributor to the Trader from time to time (an "Other Load Control Option") with respect to the Customer (who elects to take up the Other Load Control Option),

the Distributor may control part or all of the Customer's load (as the case may be) in accordance with this clause 5, Schedule 1, and Schedule 8.

5.45.2 **Trader may control load:** Subject to clause 5.3, if the Trader offers to a Customer, and the Customer elects to take up, a price option for a non-continuous level of service by allowing the Trader to control part of or all of the Customer's load, the Trader may control part or all of the Customer's load (as the case may be) in accordance with this clause 5 and Schedule 8.

5.45.3 **Control of load by Entrant if some load controlled by Incumbent:** If either party (the "**Entrant**") seeks to control part of a Customer's load at a Customer's ICP, but the other party (the "**Incumbent**") has obtained the right to control part of the load at the same ICP in accordance with clause 5.1 or 5.2 (as the case may be), the Entrant may only control the part of the Customer's load that:

- (a) the Customer has agreed the Entrant may control under an agreement with the Entrant; and
- (b) is separable from, and not already subject to, the Incumbent's right to control part of the Customer's load at the ICP obtained in accordance with clause 5.1 or 5.2 (as the case may be).

5.45.4 **No interference with or damage to Incumbent's Load Control System:** The Entrant must ensure that neither it nor its Load Control System interferes with the proper functioning of, or causes damage to, the Incumbent's Load Control System.

5.45.5 **Remedy if interference or damage:** If the Entrant or any part of the Entrant's Load Control System interferes with, or causes damage to, any part of the Incumbent's Load Control System, the Entrant must, on receiving notice from the Incumbent or on becoming aware of the situation, promptly and at its own cost remove the source of the interference and make good any damage.

5.45.6 **Trader to make controllable load available to Distributor for management of system security:** If the Trader has obtained the right to control part of any Customer's load in accordance with clause 5.2, the Trader must:

- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Trader has obtained the right;
- (b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice under paragraph (a), develop and agree jointly with the Distributor (such agreement not to be unreasonably withheld by either party), a protocol to be used by the parties to this Agreement that:
  - (i) is consistent with the Distributor's System Emergency Event management policy set out in Schedule 4, and the Code;
  - (ii) is for the purpose of coordinating the Trader's controllable load with other emergency response activities undertaken by the Distributor during a System Emergency Event, such purpose having priority during a System Emergency Event over other purposes for which the load might be controlled;
  - (iii) assists the Distributor to comply with requests and instructions issued by the System Operator when managing System Security in accordance with the Code during a System Emergency Event; and



- (iv) assists the Distributor to manage Network system security during a System Emergency Event;
- (c) during a System Emergency Event, operate its controllable load in accordance with the protocol developed in accordance with paragraph (b); and
- (d) at all times, operate its controllable load as a reasonable and prudent operator in accordance with Good Electricity Industry Practice.

**Requirements for recorded terms:** *If the Distributor and/or the Trader have any obligations to maintain load control equipment, insert as clause 5.7 a recorded term setting out those obligations. If no obligations of that type apply, insert the words "not applicable" as clause 5.7. An example is provided in clause 5.7. Revise as appropriate and then delete this dashed box.*

**5.7 Maintenance of Load Control Equipment:** *A party providing Load Control Equipment must endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Control Equipment:*

- (a) receives and responds to the appropriate load control signals;
- (b) properly controls the appropriate load; and
- (c) is otherwise fit for purpose.

**Requirements for recorded terms:** *If the Distributor and/or the Trader have any obligations to maintain load signalling equipment, insert as clause 5.8 a recorded term setting out those obligations. If no obligations of that type apply, insert the words "not applicable" as clause 5.8. An example is provided in clause 5.8. Revise as appropriate and then delete this dashed box.*

**5.8 Maintenance of Load Signalling Equipment:** *A party providing Load Signalling Equipment must endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Signalling Equipment:*

- (a) sends appropriate load control signals that are capable of being reliably received by all associated Load Control Equipment; and
- (b) is otherwise fit for purpose.

**5.9 Inclusion in Customer Agreements:** The Trader will, subject to clause 29.1, include in each of its Customer Agreements a requirement for the Customer to ensure that, if it enters into any agreement or arrangement with any third party in relation to control of its load:

- (a) the load is not already subject to the Distributor's or the Trader's right of control;
- (b) the third party does not interfere with or damage the Distributor's or the Trader's Load Control Systems;
- (c) if any interference or damage occurs due to the actions of the third party, the Customer will promptly and at its own cost remove the source of the interference and make good the damage;
- (d) the Customer notifies the Distributor within 5 Working Days of entering into the agreement or arrangement with the third party;
- (e) the third party enters into an agreement with the Distributor that sets out the protocols for the use of the load, including the matters to be included in any load control protocol to be agreed between the Distributor and the Trader under clause 5.6, and which requires the third party to operate its controllable load in accordance with that agreement during a System Emergency Event.

## 6. LOSSES AND LOSS FACTORS



- 6.1 **Information to enable calculation of Loss Factors:** The Distributor must obtain information from the reconciliation manager for the purpose of calculating Loss Factors unless that information is provided by the Trader. The Trader must provide the Distributor with any additional information that the Distributor may reasonably require to enable the Distributor to calculate Loss Factors within 15 Working Days of the request from the Distributor.
- 6.2 **Calculation of Loss Factors:** ~~Subject to clause 6.5, the~~ The Distributor must calculate Loss Factors in a manner consistent with the requirements of the Code relating to Loss Factors (if any). ~~loss factor guidelines published by the Electricity Authority.~~
- 6.3 **Change of Loss Factors:** If the Distributor wishes to change 1 or more Loss Category codes or Loss Factors, the Distributor must give the Trader at least 40 Working Days' notice of the proposed change (including the reasons for the proposed change).
- 6.4 **Transparent Loss Factors methodology:** A notice provided to the Trader in accordance with clause 6.3 must include details of the methodology and information used by the Distributor to determine the Loss Factors.
- 6.5 **Complaints about Loss Factors:** If, at any time, the Trader considers that 1 or more Loss Factors notified by the Distributor are not appropriate, or that the methodology or information used to calculate the Loss Factor is incorrect, the Trader may make a written complaint to the Distributor. The Distributor must consider the complaint in good faith, and may change the Loss Factors declared in its notice to reflect the Trader's concerns in accordance with clause 6.3. The Distributor must decide whether to make the change and, if applicable, give notice under clause 6.3, no later than 20 Working Days after receipt of the complaint.
- 6.6 **Disputes about Loss Factors:** If the Distributor does not change its notice after having received a complaint from the Trader, the Trader may raise a Dispute with the Distributor for the Loss Factors to be determined in accordance with the Dispute resolution process in clause 23. If the outcome of the Dispute is that the Distributor changes the Loss Factors declared in the Distributor's notice, and the change leads to a change in the level of revenue received by the Distributor, the Distributor may determine the time from which the change is to apply, which must be no later than 60 Working Days from the date on which the Dispute is finally resolved.

## PART II – PAYMENT OBLIGATIONS

### 7. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 7.1 **Distribution Services pricing information:** Information about how the Trader can access information about the Distributor's Pricing Structure, a schedule of Price Categories, Price Options (if any), and Prices, is set out in Schedule 7. The Distributor must ensure that the information it makes available in accordance with Schedule 7 is available in a standard, downloadable electronic document format in a form that permits electronic search and copy functions.
- 7.2 **Changes to Pricing Structure, Price Categories, Price Options, and Prices:** The Distributor may change:
- (a) its Prices as set out in clauses 7.3 to 7.7; and
  - (b) its Pricing Structure as set out in clauses 7.4, 7.6, and 7.7; and
  - (b) its Price Categories and Price Options (if any) at any time, provided that the

change does not have the effect of increasing 1 or more Prices,

- 7.4 **Process to change Pricing Structure:** If the Distributor intends to make a change to its Pricing Structure that will materially affect the Trader or 1 or more Customers, the Distributor must first consult with the Trader about the proposed change. If appropriate, the Distributor may consult jointly with the Trader and all other traders that are affected by the proposed change. Without limiting anything in clause 7.3, and unless the parties agree otherwise, the Distributor must:

~~(a) — **comply with guidelines:** comply with the Distribution Pricing Structure Consultation Guidelines, including by implementing the good consultation practices set out in those guidelines;~~

~~(b)~~(a) **comply with the Code:** comply with any provisions in the Code relating to the pricing of Distribution Services; and

~~(c)~~(b) **notify Trader of final Pricing Structure:** provide the Trader with information about the final Pricing Structure and the reasons for the Distributor's decision, in a manner that clearly sets out the change made, at least 40 Working Days before the change comes into effect.

- 7.5 **Notice of Price changes:** In addition to any notification requirements under clause 7.4, if the Distributor makes or intends to make a Price change, the Distributor must:

- (a) give the Trader at least 40 Working Days' notice of the Price change, unless the Distributor is required by law to implement the Price change earlier, in which case the Distributor must give as much notice as is reasonably practicable;
- (b) if the Price change will result in an ICP or a group of ICPs being allocated to a different Price Category, without limiting clause 8, the Distributor must give the Trader a mapping table that clearly shows:
  - (i) the new Price Category to which each affected ICP or group of ICPs is to be allocated; and
  - (ii) the Price Category that applied to each affected ICP or group of ICPs before the change was made; and
- (c) if the Price change is in respect of ICPs that have either a category 1 or category 2 metering installation, the Distributor must notify the Trader of the Price change in accordance with EIEP12.

- 7.6 **Pricing Structure and Price change disputes:** Once a change to a Pricing Structure has been finalised in accordance with clause 7.4, or a Price change is notified in accordance with clause 7.5, the Trader may raise a Dispute under clause 23 in respect of the Pricing Structure or the Price change only if the Trader considers that the Distributor has not complied with clause 7.4 or 7.5 (as the case may be). If a Dispute is raised, the Trader must continue to pay the Distributor's Tax Invoices until the Dispute is resolved.

- 7.7 **Changes containing an error:** If the Trader identifies an error in the Pricing Structure finalised and notified in accordance with clause 7.4, and the error is obvious on its face (either from the Pricing Structure itself or by reference to previous versions circulated by the Distributor for the purposes of consultation), or an error in a Price change notified in accordance with clause 7.5 that arises from an obvious error in applying the Pricing Structure, the Trader must bring that error to the Distributor's attention as soon as reasonably practicable after becoming aware of the error. The Distributor may correct an error, including an error that it identifies itself, without following the process under clause 7.4 or giving notice under clause 7.5(a) (as the case may be), ~~provided that the correction of the error must not have a material effect on the Trader or 1 or more Customers.~~ To

avoid doubt, the correction of an error in accordance with this clause is not a Price change for the purposes of clause 7.2.

## **8. ALLOCATING PRICE CATEGORIES AND PRICE OPTIONS TO ICPS**

### **8.1 Distributor allocates Price Category:** The Distributor must:

- (a) allocate a Price Category to each ICP on its Network; and
- (b) change the Price Category allocated to an ICP on its Network if necessary because the attributes of the ICP have changed.

### **8.2 Allocation of Price Categories if more than 1 option:** If there are 2 or more Price Categories within the Distributor's Pricing Structure for which an ICP is eligible, the Distributor must allocate 1 of the eligible Price Categories to the ICP.

### **8.3 Matters to have regard to in allocating Price Category:** In allocating a Price Category to an ICP or changing the Price Category allocated to an ICP, the Distributor must have regard to the following:

- (a) the eligibility criteria for each Price Category referred to in Schedule 7;
- (b) the attributes of the ICP; and
- (c) if known and relevant:
  - (i) the Trader's or Customer's preference for a particular Price Category in respect of which the ICP is eligible;
  - (ii) the meter register configuration(s) of the Metering Equipment and any Load Control Equipment installed for the ICP, which may determine the Price Option or Price Options that apply if more than 1 Price Option is defined for the relevant Price Category;
  - (iii) the ICP's historic demand profile;
  - (iv) the Customer's capacity requirements; and
  - (v) any other factors.

### **8.4 Trader may request allocation of an alternative eligible Price Category:** At any time, the Trader may request that the Distributor allocate an alternative Price Category to an ICP, and must provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor must apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Trader within 5 Working Days after receipt of notice of the Trader's request. If the Distributor declines the request, it must provide the reasons for its decision.

### **8.5 Trader to select Price Option to match meter register configuration:** If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("**Price Options**"), the Trader must:

- (a) select the Price Option that corresponds to the configuration of each meter register installed at the relevant ICP and that is otherwise available for the relevant ICP based on the eligibility criteria for that Pricing Option;
- (b) notify the Distributor of that selection in accordance with the relevant EIEP; and
- (c) if the meter register configuration for the ICP changes, change the Price Option to match the new configuration and notify the Distributor of the change in accordance with the relevant EIEP.

### **8.6 Trader request for reallocation of Price Category if it considers Price Category has been Incorrectly Allocated:** Under this clause 8.6 and clauses 8.7 and 8.9, a Price Category is "**Incorrectly Allocated**" to an ICP only if the ICP was ineligible for the Price Category allocated by the Distributor based on the relevant information available to the

Distributor at the time it made the allocation. If the Trader reasonably considers that a Price Category was Incorrectly Allocated to an ICP, the Trader must notify the Distributor of the reasons why it considers that the Price Category was Incorrectly Allocated and identify the Price Category that the Trader considers should have been allocated to the ICP, which must be a Price Category for which the ICP is eligible. The Distributor must advise the Trader within 10 Working Days after receipt of the Trader's notice whether it agrees to allocate the requested Price Category (the "**Corrected Price Category**") to the ICP, such agreement not to be unreasonably withheld, and must provide the reasons for its decision. To avoid doubt, this clause 8.6 does not apply if the Distributor has already provided notice to the Trader that the relevant Price Category is Incorrectly Allocated under clause 8.9.

8.7 **Credit following correction:** If the Distributor allocates a Corrected Price Category to an ICP following notice from the Trader given under clause 8.6, the Distributor must:

- (a) commence charging the Trader in accordance with the Price(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to clause 8.8, and by issuing a Credit Note payable in the next monthly billing cycle, credit the Trader with an amount (if positive) equivalent to:
  - (i) the charges paid by the Trader in respect of that ICP in the period from the later of:
    - (A) the Commencement Date;
    - (B) the date the Distributor Incorrectly Allocated the Price Category to that ICP; and
    - (C) the Switch Event Date for that ICP recorded for the Trader, up to the date on which the Distributor allocates a Corrected Price Category to that ICP; less
  - (ii) the charges that would have applied if the Corrected Price Category had been allocated to that ICP during the period referred to in subparagraph (i), provided that the maximum period for which credit will be payable under this clause 8.7 is 15 months, unless otherwise agreed.

8.8 **Limitations on credits for Price Category corrections:** Clause 8.7(b) does not apply in respect of an ICP if:

- (a) clause 8.9 applies to the ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Trader, the Trader has not provided the Distributor with correct or complete information about the ICP or the Customer necessary to determine Price Category eligibility (provided that information was not already known by the Distributor);
- (c) the Price Category correction was necessary because the Trader provided the Distributor with incorrect or incomplete information in relation to the ICP or the Customer or any other factors in respect of that ICP that were relevant to the allocation of a Price Category; or
- (d) the initial Price Category was allocated on the basis of incorrect information provided by the Customer or the Customer's representative.

8.9 **Distributor's right to change Price Category if it considers Price Category has been Incorrectly Allocated:** If at any time the Distributor reasonably considers that a Price Category has been Incorrectly Allocated to an ICP:

- (a) the Distributor must notify the Trader accordingly, including notification of the reasons why it considers that the Price Category has been Incorrectly Allocated, and identify the Price Category or Price Categories it considers the ICP is eligible for;
- (b) unless the Trader is able to provide evidence to the Distributor's reasonable

satisfaction within 10 Working Days of the Distributor's notice that the current Price Category has not been Incorrectly Allocated, the Distributor may:

- (i) allocate the Price Category that it considers appropriate to that ICP (acting consistently with clause 8.1) ~~reasonably and, if the Distributor identified more than 1 eligible Price Category in its notice, taking into account the Trader's or the Customer's preferred Price Category as communicated to the Distributor by the Trader~~, and
- (ii) may commence charging the Trader for Distribution Services in accordance with that Price Category after a further 40 Working Days; and
- (c) the Distributor must provide to the Trader information relevant to its decision.

8.10 **Application of clause 8.9:** Clause 8.9 does not apply if the Trader has already provided notice to the Distributor under clause 8.6 that the relevant Price Category has been Incorrectly Allocated.

8.11 **Commencement of charges:** The Trader is liable to pay charges in respect of an ICP from:

- (a) the day the ICP is Energised or Re-energised; or
- (b) if the Trader is assuming responsibility for the ICP, the later of the Switch Event Date or the date that the ICP is Energised.

8.12 **Cessation of charges:** The Trader is not liable to pay charges in respect of an ICP:

- (a) from the day on which an ICP is De-energised (except as a result of a Temporary Disconnection); or
- (b) from the Switch Event Date, if another trader takes responsibility for the ICP; or
- (c) from the day which is 2 Working Days after the Distributor receives a notification from the Trader that the Distributor is responsible for completing a Vacant Site Disconnection in respect of the ICP in accordance with Schedule 6.

## 9. BILLING INFORMATION AND PAYMENT

9.1 **Calculating Tax Invoices for Distribution Service charges:** The Trader must provide information to enable the Distributor to calculate Distribution Services charges and prepare Tax Invoices, in accordance with Schedule 2.

9.2 **Late, incomplete, or incorrect information:** If the Trader does not provide information to the Distributor in accordance with Schedule 2 by the 5<sup>th</sup> Working Day after the last day of the month to which the Tax Invoice relates, or any information provided by the Trader is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Electricity Industry Practice, the Trader's Tax Invoice for Distribution Services.

9.3 **Issuing of Tax Invoices:** The Distributor must issue Tax Invoices for Distribution Services as follows:

- (a) the Distributor must invoice the Trader within 10 Working Days after the last day of the month to which the Tax Invoice relates;
- (b) a Tax Invoice may either be:
  - (i) calculated based on the information provided by the Trader in accordance with Schedule 2 (an "Actual Invoice"); or
  - (ii) estimated in accordance with Good Electricity Industry Practice, including where clause 9.2 applies (a "Pro Forma Invoice").
- ~~(b)~~(c) at the same time as it provides an Tax-Actual Invoice (under either sub-clause (a), (d) or (e)), the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Tax Invoice;

- (d) if late, incomplete, or incorrect information is provided and the Tax Invoice is ~~estimated in accordance with clause 9.2a Pro Forma Invoice~~ on the basis of that information, the Distributor must issue an Actual Invoice that replaces the Pro Forma Invoice as well as a Credit Note or Debit Note in relation to the Pro Forma Invoice in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month;
- ~~(e)~~(e) if the Tax Invoice is a Pro Forma Invoice and sub-clause (d) does not apply, the Distributor must, by no later than the same time as the Distributor issues a Tax Invoice under sub-clause (a) to the Trader for its Distribution Services charges for the following month, issue an Actual Invoice that replaces the Pro Forma Invoice as well as a Credit Note in relation to the Pro Forma Invoice;
- ~~(f)~~(f) if the information received by the Distributor in accordance with Schedule 2 includes revised reconciliation information or additional consumption information, the Distributor must provide a separate Credit Note or Debit Note to the Trader in respect of the revised consumption information ("**Revision Invoice**"), and a Use of Money Adjustment;
- ~~(g)~~(g) if a Revision Invoice is required, the Distributor must issue the Revision Invoice in the month after the Distributor receives the revised reconciliation information or additional consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month; and
- ~~(h)~~(h) at the same time it provides a Revision Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Revision Invoice.

9.4 **Due date for payment:** The settlement date for each Tax Invoice issued by the Distributor must be the 20<sup>th</sup> day of the month in which the Tax Invoice is received, or if the 20<sup>th</sup> day of the month is not a Working Day, the first Working Day after the 20<sup>th</sup> day. However, if the Distributor fails to send a Tax Invoice to the Trader within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment is extended by 1 Working Day for each Working Day that the Tax Invoice is late.

*is entitled to issue any other invoices under this Agreement, insert the words "not applicable" as clause 9.5. An example is provided in clause 9.5. Revise as appropriate and then delete this dashed box.*



**9.5 Other invoices:**

- (a) *The Distributor may issue the Trader with:*
  - (i) *a Tax Invoice for payment for any other sums due to the Distributor under this Agreement; and*
  - (ii) *a Credit Note for payment of Service Guarantee Payments due to the Trader.*
- (b) *The Trader may issue the Distributor with a Tax Invoice for Service Guarantee Payments and any other sums due to the Trader under this Agreement.*
- (c) *Any Tax Invoice or Credit Note issued under clause 9.5(a) or (b) must be issued within 10 Working Days of the end of the month to which the Tax Invoice or Credit Note relates.*
- (d) *The settlement date for any Tax Invoice issued under clause 9.5(a) or (b) is the 20<sup>th</sup> day of the month in which the Tax Invoice is received or, if the 20<sup>th</sup> day of the month is not a Working Day, the first Working Day after the 20<sup>th</sup> day. If the Distributor or the Trader (as the case may be) fails to send a Tax Invoice to the Trader or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment is extended by 1 Working Day for each Working Day that the Tax Invoice is late.*

**9.6 Interest on late payment:** Subject to clause 9.7, the Trader or the Distributor (as the case may be) must pay any Tax Invoice issued under this clause 9. If any part of a Tax Invoice that is properly due in accordance with this Agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the Tax Invoice remains unpaid.

**9.7 Disputed invoices:** If the Trader or the Distributor disputes a Tax Invoice (which includes a Revision Invoice) issued under this clause 9, the party disputing the invoice ("**Disputing Party**") must notify the other party ("**Non-disputing Party**") in writing and provide details as to the reasons why the Disputing Party disputes that invoice within 18 months of the date of the Tax Invoice ("**Invoice Dispute**"). On receiving an Invoice Dispute notice, the Non-disputing Party must:

- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute notice and:
  - (i) the Disputing Party has not paid the disputed Tax Invoice, promptly issue a Credit Note for the disputed amount, and any remaining amount owed must be paid by the Disputing Party within 6 Working Days of receipt of the Credit Note, but need not pay prior to the time set out in clause 9.4 or 9.5; or
  - (ii) the Disputing Party has paid the disputed invoice, calculate the amount that the Disputing Party has over paid and promptly issue a Credit Note to the Disputing Party for the amount over paid, which must include a Use of Money Adjustment. Any amount owed must be paid by the Non-disputing Party within 6 Working Days of issuing the Credit Note. A Use of Money Adjustment must apply for the period commencing on the date the original Tax Invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clauses 9.4 or 9.5; or
- (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute notice, either party may raise a Dispute in accordance with clause 23 and if the Disputing Party has not paid the disputed Tax Invoice, it must pay the undisputed amount of the disputed Tax Invoice issued in accordance with clauses 9.4 or 9.5; and

- (c) on the resolution of a Dispute under clause 23, any amount owed must be paid by the relevant party within 6 Working Days. Default Interest is payable for the period commencing on the date the disputed amount would have been due for payment under this clause 9, and ending when payment is made. To the extent the Tax Invoice is held not to be payable, the Non-disputing Party must issue a Credit Note to the Disputing Party.
- 9.8 **Incorrect invoices:** If it is found that a party has been overcharged or undercharged, and the party has paid the Tax Invoice (which includes a Revision Invoice) containing the overcharge or undercharge, within 20 Working Days after the error has been discovered and the amount has been agreed between the parties, the party that has been overpaid must refund to the other party the amount of any such overcharge or the party that has underpaid must pay to the other party the amount of any such undercharge, in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that neither party has the right to receive a compensating payment in respect of an overcharge or undercharge if more than 18 months has elapsed since the date of the Tax Invoice containing the overcharge or undercharge.
- 9.9 **No set-off:** Both parties must make the payments required to be made to the other under this Agreement in full without deduction of any nature whether by way of set-off, counterclaim or otherwise except as otherwise set out in clause 9.7 or as may be required by law.

**Requirements for recorded terms:** *If the Trader or a Customer is entitled to a refund in the event of a continuous interruption affecting a Customer, insert as clause 9.10 a recorded term setting out that entitlement, including how the refund will be calculated. If the Trader and/or an affected Customer are not entitled to a refund in the event of a continuous interruption, insert the words "not applicable" as clause 9.10. An example is provided in Clause 9.10. Revise as appropriate and then delete this dashed box.*

**9.10 Refund of charges:** *If, as a consequence of a fault on the Network, there is a continuous interruption affecting a Customer's Point of Connection for 24 hours or longer, the Distributor must issue a Credit Note and refund, in the next monthly billing cycle, for the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days during which supply was interrupted, provided that the Trader requests that the Distributor refund such charges no later than 60 days after the interruption.*

## 10. PRUDENTIAL REQUIREMENTS

- 10.1 **Distributor may require Trader to comply with prudential requirements:** The Distributor may, by giving notice to the Trader, require the Trader to comply with prudential requirements, in which case the Trader must, whether the notice is received before or after the commencement of this Agreement, comply with prudential requirements as follows:
- (a) if the Trader is not trading on the Network, the Trader must comply with prudential requirements before the Trader starts trading on the Network; and
  - (b) if the Trader is trading on the Network, the Trader must comply with prudential requirements within 10 Working Days after receipt of the Distributor's notice.
- 10.2 **Trader elects prudential requirements:** If the Distributor requires the Trader to comply with prudential requirements in accordance with clause 10.1, the Trader must comply with either of the following prudential requirements:



- (a) the Trader must maintain an acceptable credit rating; or
- (b) the Trader must provide and maintain acceptable security by at all times, at the Trader's election:
  - (i) ensuring it has provided the Distributor with a cash deposit of the value specified in clause 10.6 ("Cash Deposit"), which the Distributor must hold in a trust account that the Distributor must establish and operate in accordance with clause 10.276;
  - (ii) ensuring that a ~~arranging for a~~ third party with an acceptable credit rating ~~has~~ provided security in a form acceptable to the Distributor, of the value specified in clause 10.6; or
  - (iii) ensuring that a ~~providing a~~ combination of the securities listed in subparagraphs (i) and (ii) have been provided to the Distributor to the value specified in clause 10.6.

10.3 **Acceptable credit rating:** For the purposes of clause 10.2, an acceptable credit rating means that the Trader or the third party (as the case may be):

- (a) at all times carries a long term credit rating of at least:
  - (i) Baa3 (Moody's Investor Services Inc.);
  - (ii) BBB- (Standard & Poor's Rating Group);
  - (iii) B- (AM Best); or
  - (iv) BBB- (Fitch Ratings); and
- (b) if the Trader or the third party (as the case may be) carries a credit rating at the minimum level required by paragraph (a), is not at any time subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.

10.4 **Change in prudential requirements complied with:** The Trader may elect to change the way in which it complies with prudential requirements by notifying the Distributor of the change at least 2 Working Days before the change occurring, in which case the parties must comply with clause 10.18. The change will come into effect on the intended date, provided that the Trader has complied with all its obligations under this Agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of clause 10.2.

10.5 **Evidence of acceptable credit rating:** The Trader or third party (as the case may be) must provide such evidence that it has maintained or is maintaining an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.

10.6 **Value of security:** The value of security required for the purposes of this clause 10 is the Distributor's reasonable estimate of the Distribution Services charges that the Trader will be required to pay to the Distributor in respect of any period of not more than 2 weeks, notified in writing by the Distributor to the Trader. If additional security is required in accordance with clause 10.7 ("**Additional Security**"), the Distributor's notice provided under clause 10.1 must state the amount of the Additional Security.

10.7 **Distributor may require Additional Security:** The Distributor may, by notice to the Trader, require the Trader to provide Additional Security. The amount of any Additional Security required must be such that the total value of all security required to be provided by the Trader under this Agreement is not more than the greater of:

- (a) the Distributor's reasonable estimate of the charges that the Trader will be required to pay to the Distributor under this Agreement in respect of any 2 month period; and;
- ~~(a)~~ (b) the aggregate of all amounts that the Trader owes, or disputes is owing, to the

Distributor.

~~10.7~~10.8 **If Additional Security required:** If the Distributor requires the Trader to provide Additional Security:

- (a) the Trader may elect the type of security that it provides in accordance with clause 10.2(b); and
- (b) the parties must comply with clauses 10.16 and 10.18.

~~10.8~~10.9 **Additional security requirements:** The following provisions apply in respect of any Additional Security provided:

~~(a)~~—if the Additional Security is in the form of a Cash Deposit, the Distributor must pay a charge to the Trader for each day that is not more than the Trader's actual daily costs of holding the security on arms-length commercial terms and in any case not more than the reasonable market cost that would be incurred by a prudent and reputable Trader. ~~the Distributor holds the Additional Security at a per annum rate that is calculated as follows:~~

~~(b)~~—

~~(c)~~—the Bank Bill Yield Rate for that day, plus 15 percentage points

~~(d)~~—

~~(e)~~(a) ~~(so that, by way of example, if the Bank Bill Yield Rate for the relevant day is 3%, the charge will be 18%)~~

~~(f)~~—the parties agree that the charge calculated in accordance with paragraph (a) is a genuine and reasonable pre-estimate of the cost to the Trader of providing the Additional Security in the form of a Cash Deposit;

~~(g)~~(b) the Additional Security must be held as if it were part of the Cash Deposit under this Agreement;

~~(h)~~(c) if the Additional Security is in the form of security from a third party, the Distributor must pay a charge to the Trader for each day that the Distributor holds the Additional Security at a per annum rate of 3% on the amount of Additional Security held on that day;

~~(i)~~(d) any money required to be paid by the Distributor to the Trader in accordance with this clause 10.9 must be paid by the Distributor to the Trader on a quarterly basis; and

~~(j)~~(e) if the Trader provides an amount that is greater than the amount of Additional Security required by the Distributor as Additional Security, the charges set out in paragraph (a) will not be payable by the Distributor in relation to the amount provided in excess of the Additional Security required by the Distributor.

~~10.9~~10.10 **Estimating the value of security if the Trader is a new trader:** If the Trader has not previously entered into a contract with the Distributor for access to the Network, the Distributor must estimate the value of security required under clause 10.6 for the first 6 months of this Agreement, subject to any reassessment of the value under this Agreement, having regard to:

- (a) the Distributor's historical records of the Distribution Service charges in respect of the relevant ICPs; or
- (b) in the absence of such records, a bona fide business plan prepared by the Trader in good faith is necessary for the Distributor to determine the value of security that it requires from the Trader.

~~10.10~~10.11 **Review of the value of security:** The Distributor may review, or the Trader may require the Distributor to review, the value of security which has been ~~required to be~~ provided by the Trader (or a third party on the Trader's behalf) at any time.

~~10.11~~**10.12** **Trader to notify Distributor of changes affecting security:** Subject to clause 10.14, the Trader must immediately notify the Distributor if any of the following occurs:

- (a) the Trader no longer carries an acceptable credit rating; or
- (b) the Trader has complied with prudential requirements by arranging for a third party to provide security in accordance with clause 10.2(b), and the ~~Trader learns that the~~ third party no longer carries an acceptable credit rating; or
- (c) the Trader has reasonable cause to believe that its financial position is likely to be materially adversely impaired such that its ability to pay for Distribution Services will be affected.

~~10.12~~**10.13** **Confidential Information:** Any information provided by the Trader to the Distributor under clause 10.12 will be Confidential Information.

~~10.13~~**10.14** **Public issuers and listed companies:** For the purpose of clause 10.12, if the Trader (or its ultimate parent company) is a "listed issuer" for the purposes of the Financial Markets Conduct Act 2013, the Trader may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement on terms reasonably satisfactory to the Trader before giving notice and disclosing information under clause 10.13, if and for so long as the Trader considers such information to be "inside information" as defined in that Act.

~~10.14~~**10.15** **Distributor may make enquiries:** If the Distributor believes that the Trader should have given notice under clause 10.12 and the Distributor has not received any such notice, the Distributor may enquire of the Trader as to whether it should have given such notice. Any such enquiry must be in writing and be addressed to the Chief Executive of the Trader. If notice should have been given, the Trader must give notice immediately, or if no notice is required, the Trader must respond to the Distributor in writing within 2 Working Days of receipt of the Distributor's notice under this clause

10.15. Correspondence sent or received by either party under this clause is Confidential Information.

~~10.15~~**10.16** **Change to value of security:** If:

- (a) the Distributor requires that the Trader provide Additional Security in accordance with clause 10.7; or
- (b) following a review of the Trader's security in accordance with clause 10.11; or
- (c) on receipt of information contemplated by clause 10.12 or 10.15; or
- (d) as the result of a failure by the Trader to respond to a request made under clause 10.15 within the timeframe set out in clause 10.15;

the Distributor or the Trader considers that the value of security should be increased or decreased, the Distributor must, acting reasonably, make a decision on what the value of security should be, and immediately notify the Trader of its decision and the grounds for that decision and must include in the notification details of the part of the security that constitutes Additional Security. To avoid doubt, failure by a Trader to respond to a request made under clause 10.15 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Trader.

~~10.16~~**10.17** **Failure to maintain acceptable credit rating:** If:

- (a) on receipt of information contemplated by clauses 10.12 or 10.15; or
- (b) as the result of a failure by the Trader to respond to a request made under clause 10.15 within the timeframe set out in clause 10.15,

the Distributor considers, acting reasonably, that the Trader has not maintained, or is no longer able to maintain, an acceptable credit rating in accordance with clause

10.2(a), and the Distributor still requires the Trader to comply with prudential requirements, the Distributor must notify the Trader of the value of acceptable security required in accordance with clause 10.2(b).

~~10.17~~**10.18** **Distributor or Trader to effect changes in value or type of security:** The Distributor or the Trader, as appropriate, must take all actions necessary to satisfy the requirement for the increase or decrease in the value of security or change to the type of security, within 5 Working Days of notification under clause 10.4, 10.16 or 10.17. Refunds of Cash Deposits and reductions of the value of third party security required must be made in accordance with clauses 10.19 or 10.21.

~~10.18~~**10.19** **Refund of Cash Deposit:** If the Distributor refunds all or part of a Cash Deposit, it must refund all or part of the Cash Deposit into a bank account nominated by the Trader on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.

~~10.19~~**10.20** **Cash Deposit on Insolvency Event:** If an Insolvency Event occurs in relation to the Trader:

- (a) the Trader will not be entitled to a return of the Cash Deposit, other than as set out in clause 10.2~~7~~<sup>6</sup>(f); and
- (b) if the Trader fails or has failed to pay an amount owing under this Agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest) immediately, on 2 Working Days' notice to the Trader.

~~10.20~~**10.21** **Reduction of third party security:** If the Distributor decreases the value of third party security required in accordance with this Agreement, the Trader may arrange for the issuing of new third party security for the lesser value, in satisfaction of clause 10.2(b)(ii), which will replace the earlier third party security.

~~10.21~~**10.22** **When Distributor may make a call on security:** The Distributor may make a call on security in accordance with clause 10.2~~4~~<sup>3</sup> if:

- (a) the Trader has provided ~~\_acceptable\_~~ security for the purpose of in accordance with clause 10.2(b); and
- (b) the Trader fails to pay an amount due under this Agreement; and
- (c) the amount is not subject to a genuine dispute.

~~10.22~~**10.23** **Calls on security:** If this clause applies in accordance with clause 10.22, the Distributor may, on 2 Working Days' notice to the Trader (or immediately in the case of deemed Cash Deposit under clause 10.25), call on the security as follows:

- (a) if the Trader provided a Cash Deposit (which includes a deemed Cash Deposit), full beneficial ownership of the amount owing (plus Default Interest) of the Cash Deposit will automatically transfer solely to the Distributor effective from the expiry of the 2 Working Day notice period or immediately (as applicable) and the Distributor may draw down and apply the amount owed (including Default Interest) from the Cash Deposit;
- (b) if the Trader arranged for a third party to provide security, the Distributor may call on the provider of a third party security to pay the amount owed in accordance with the security; and
- (c) in either case, the Distributor must immediately notify the Trader that it has called on the security.

~~10.23~~**10.24** **Requirement to maintain security:** To avoid doubt, if the Distributor draws

down some or all of a Cash Deposit held by the Distributor under this Agreement, or calls on the provider of a third party security, the Trader must within 5 Working Days take all steps necessary to ensure that the Trader maintains acceptable security of the value specified in clause 10.6 and the value of any Additional Security required by clause 10.7 (as such may be reviewed by the Distributor in accordance with clause 10.11), as required by clause 10.2(b).

~~10.24~~10.25 **Third party security may be released:** If the provider of third party security makes a payment to the Distributor in order to be released from its obligations under that security, such payment will be deemed to constitute a Cash Deposit provided by the Trader in substitution for the third party security and must be dealt with in accordance with clause 10.26.

~~10.25~~10.26 **Trust Account Rules:** If the Distributor receives a Cash Deposit:

- (a) the Cash Deposit must be held in a trust account in the name of the Trader, to be applied or distributed only on the terms of this Agreement, or as otherwise agreed by the parties;
- (b) the Distributor must establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding the Cash Deposit ("**Trust Account**");
- (c) the Distributor must obtain acknowledgement from the Bank that the Cash Deposit is held on trust in the Trust Account and that the Bank has no right of set- off or right of combination in relation to the Cash Deposit;
- (d) the Trader must inform the Distributor of the bank(s) that the Trader uses for its banking purposes and if the Trader changes banks;
- (e) the Trust Account must bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor must pay the Trader the interest earned on the Cash Deposit (except for the amount of the Cash Deposit that is Additional Security, in respect of which a charge should be paid in accordance with clause 10.9) on a quarterly basis net of account fees and any amounts required to be withheld by law, unless the parties agree otherwise;
- (f) if this Agreement is terminated, the Distributor must refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Trader) to the Trader in accordance with clause 10.19, provided that the Trader:
  - (i) is not otherwise in default of this Agreement;
  - (ii) has ceased to be bound by this Agreement; and
  - (iii) has discharged all obligations under this Agreement to the Distributor, including payment of all outstanding amounts under this Agreement; and
- (g) the Distributor must provide the Trader with an annual report in respect of the operation of the Trust Account if requested by the Trader.

~~10.26~~10.27 **Release of third party security:** If this Agreement is terminated, the Distributor must release any third party security, provided that the Trader has met all of the requirements set out in clause 10.26(f).

## **PART III – OPERATIONAL REQUIREMENTS**

### **11. ACCESS TO THE CUSTOMER'S PREMISES**

11.1 **Rights of entry onto Customer's Premises:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that the Customer provide the Distributor and its agents with safe and unobstructed access onto the Customer's Premises for all of the following purposes:

- (a) to inspect, maintain, operate or upgrade (provided that the upgrade does not have any

material adverse effect on the relevant Customer or Customer's Premises) the Distributor's Equipment;

- (b) to install, read, maintain or upgrade (provided that the upgrade does not have any material adverse effect on the relevant Customer or Customer's Premises) Metering Equipment;
- (c) to disconnect and reconnect the Customer in accordance with this Agreement;
- (d) to access the Trader's Equipment to verify metering information, including, in the event of termination of this Agreement, to determine any charges outstanding at the time of termination;
- (e) for the safety of persons or property;
- (f) to ensure that the Customer fulfils its obligations in accordance with clause 12.7;
- (g) to enable the Distributor to gain access to and remove any of the Distributor's Equipment following the termination of the Customer Agreement for the period ending 6 months after the date that termination takes effect; and
- (h) to comply with the law in relation to the provision of Distribution Services.

**11.2 Exercise of access rights:** In exercising its access rights under clause 11.1, the Distributor must, except to the extent that the Distributor has any other binding agreement setting out its access rights directly with the Customer:

- (a) comply with sections 23A to 23D, 57 and 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 11.1, provided that the Distributor must give written notice to a Customer if the Distributor intends to access the Customer's Premises for any reason (except if the Distributor requires access to carry out a routine inspection or operation of the Distributor's Equipment, or in an emergency situation);
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Customer's Premises;
- (c) cause as little disturbance or inconvenience as practicable to the Trader and the Customer (including minimising any direct impact on the Customer's property) and ensure that its personnel:
  - (i) behave in a courteous, considerate and professional manner at all times while on the Customer's Premises;
  - (ii) carry identification that shows they are authorised personnel of the Distributor; and
  - (iii) if practicable, identify themselves to the Customer before entering the Customer's property; and
  - (iv) comply with the Customer's reasonable requirements, practices and procedures as disclosed by the Customer or as generally practised for health and safety, and security requirements.

**11.3 Distributor may disconnect:** The Trader must, subject to clause 29.1, include in its Customer Agreement a provision to the effect that if the Customer breaches the provisions of its Customer Agreement that require it to give the Distributor access to the Distributor's Equipment on the Customer's Premises, and the breach is material or persistent, the Distributor may disconnect the Customer's ICP from the Network and access the Customer's Premises to reclaim the Distributor's Equipment, provided that:

- (a) if access was required for a purpose described in clause 11.1(a), (b), (d) or (g), the Distributor or Trader gave the Customer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 11.1(c), (e) or (f), such notice is not required); and



- (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with the relevant provisions of Schedule 6.
- 11.4 **Costs of disconnection:** The Distributor will not be liable for any loss the Trader may suffer or incur as a result of a disconnection carried out because the Customer has not given the Distributor access in accordance with the relevant Customer Agreement. The Trader must reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.
- 11.5 **Existing agreement will prevail:** In the event of a conflict between clause 11 and any provision of any existing agreement between the Customer and Distributor with respect to the Distributor's access rights to the Customer's Premises, the provisions of the existing agreement between the Distributor and Customer will prevail to the extent of such conflict.

## **12. GENERAL OPERATIONAL REQUIREMENTS**

- 12.1 **Interference or damage to Distributor's Equipment by Customers:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that, during the term of the Customer Agreement and until the end of the period ending 6 months after the termination of the Customer Agreement, the Customer must not interfere with or damage, and must ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 12.2 **Costs of making good any damage:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that, if any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Customer or the Customer's agents or invitees, the Customer must pay the cost of making good the damage to the Distributor.
- 12.3 **Interference or damage to Distributor's Equipment by Trader:** The Trader must ensure that it and its employees, agents and invitees do not interfere with or damage the Distributor's Equipment (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 12.4 **Costs of making good any damage:** If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Trader or the Trader's employees, agents or invitees, the Trader must pay the cost of making good the damage to the Distributor.
- 12.5 **Interference or damage to Trader's Equipment or Customer's Installations:** The Distributor must ensure that it and its employees, agents and invitees do not interfere with or damage the Trader's Equipment or the Customer's Installation (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Trader or the Customer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 12.6 **Costs of making good any damage:** If the Trader's Equipment or the Customer's Installation is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents or invitees, the Distributor must pay the cost of making good the damage to the Trader or the Customer (as the case may be). This clause 12.6 is for the benefit of the Customer and may be enforced by the Customer under the Contract and Commercial Law Act 2017.

- 12.7 **Interference with Network:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a provision to the effect that the Customer must not:
- (a) inject or attempt to inject any electricity into the Network, unless the Customer is also a Distributed Generator and there is a Connection Contract in place between the Distributed Generator and the Distributor; or
  - (b) without the prior written agreement of the Distributor, convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than electricity in accordance with this Agreement and load control signals transmitted by or with the written consent of the Distributor) over the Network or cause or permit any other person to do so.
- 12.8 **Connection of Distributed Generation:** The Distributor and the Trader must comply with their obligations under Part 6 of the Code, in respect of connecting Distributed Generation. The Trader must:
- (a) purchase electricity from Distributed Generation connected to the Network only if the Trader has confirmation from the Distributor that there is a Connection Contract in place between the Distributed Generator and the Distributor; and
  - (b) notify the Distributor if the Trader has reasonable grounds to suspect that a Distributed Generator does not have a Connection Contract with the Distributor and has connected its Distributed Generation directly or indirectly to the Network.
- 12.9 **Changes to GXPs:** The following procedure will apply if the Distributor proposes to construct and operate, or agree with a Grid Owner to have constructed and operated, a new GXP, or permanently disconnect the Network from a GXP (a "**Proposal**");
- (a) the Distributor must give the Trader notice of the following:
    - (i) the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal; and
    - (ii) an estimate of the overall costs of the Proposal and a description of any benefits of the Proposal;
  - (b) the Distributor must consult with the Trader about the Proposal for a reasonable period of time; and
  - (c) if, at the conclusion of the consultation, the Distributor decides to proceed with the Proposal (including the Proposal as changed as a result of the consultation), the Distributor must give the Trader at least 20 Working Days' notice of the date on which the commissioning of a new GXP, or permanent disconnection of the Network from a GXP, is expected to be complete.
- 12.10 **Notification of interference, damage or theft:** If the Distributor or Trader discovers any interference or damage to the other party's equipment or the Customer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party must notify the affected party as soon as it is practicable to do so.
- 12.11 **Additional Metering Equipment:** Either party may, at its own cost, install and maintain additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that:
- (a) the additional Metering Equipment does not interfere with any other equipment owned or used by the other party; and
  - (b) the party installing the additional Metering Equipment ensures that it is installed and maintained in accordance with Good Electricity Industry Practice.
- 12.12 **Responsibility for damages:** If the party installing or maintaining additional Metering Equipment (the "**First Party**") causes damage to the equipment or invalidates the existing Metering Equipment certification of the other party, the First Party must:



- (a) meet the cost of making good the damage or recertifying the Metering Equipment (including the cost of any fines or penalties imposed under the Code as a result of the damage or invalidation of certification); and
- (b) if the damage invalidates the existing Metering Equipment certification, and the other party incurs costs because of its use of the Metering Equipment during the period of non-certification, the First Party must reimburse the other party for those costs, except to the extent that the indemnified party knew or ought reasonably to have known that the Metering Equipment was uncertified.

**12.13 Safe Housing of Equipment:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements (subject to any written agreement between the Trader and the Distributor) an undertaking by the Customer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Customer's Premises that the Distributor determines is necessary.

**12.14 The Network:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements an acknowledgement by the Customer that:

- (a) the Network, including any part of the Network situated on Customer's Premises, is and will remain the sole property of the Distributor; and
- (b) no provision of the Customer Agreement nor the provision of any services by the Distributor in relation to the Network will confer on the Customer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Equipment that is used to provide any such services.

### **13. NETWORK CONNECTION STANDARDS**

**13.1 Access to standards:** The Distributor must advise the Trader how the Trader and Customers can access the current version of the Distributor's Network Connection Standards.

**13.2 Provisions in Customer Agreements:** The Trader must:

- (a) subject to clause 29.1, include in each of its Customer Agreements an undertaking that the Customer must ensure that the Customer Installation complies at all times with Network Connection Standards and all relevant legal requirements; and
- (b) include in each of its Customer Agreements a statement advising how the Customer can access the current version of the Distributor's Network Connection Standards.

**13.3 Notification of non-complying Installation:** If the Trader becomes aware that a Customer's Installation does not comply with the Network Connection Standards, the Trader must notify the Distributor of the ICP identifier of the Customer's Installation and the details of the non-compliance as soon as reasonably practicable after becoming aware of the non-compliance.

### **14. MOMENTARY FLUCTUATIONS AND POWER QUALITY**

**14.1 Provisions in Customer Agreements:** Subject to clause 29.1, the Trader must:

- (a) include in each of its Customer Agreements an acknowledgement that the Customer recognises that surges or spikes:
  - (i) are momentary fluctuations in voltage or frequency that can occur at any time;
  - (ii) may cause damage to the Customer's sensitive equipment; and

**Requirements for recorded terms:** Insert as clause 14.1(a)(iii) a recorded term that specifies whether, in the acknowledgements by Customers that the Trader must include in each of its Customer Agreements, surges or spikes are to be treated as interruptions. An example is provided in clause 14.1(a)(iii). Revise as appropriate and then delete this dashed box.

(iii) are not treated as interruptions; and

- (b) advise each of its Customers of the steps the Customer should take to protect their sensitive equipment from such surges or spikes, or inform the Customer of where to find information about the steps the Customer should take.

**Requirements for recorded terms:** If the Distributor has any obligations in the event that a Customer or the Trader, on behalf of a Customer, raises a concern with the Distributor regarding power quality, insert as clause 14.2 a recorded term setting out those obligations. If no such obligations apply, insert the words "not applicable" as clause 14.2. An example is provided in clause 14.2. Revise as appropriate and then delete this dashed box.

**14.2 Customer concerns about power quality:** If a Customer, or the Trader on behalf of a Customer, raises a concern with the Distributor regarding the power quality (i.e. frequency or voltage), reliability or safety of the Customer's supply, the Distributor must investigate the concern and advise the Customer of the results of the investigation.

## **15. CUSTOMER SERVICE LINES**

- 15.1 Responsibility for Customer Service Lines:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a statement to the effect that it is the Customer's responsibility to maintain the Customer Service Lines in a safe condition using a suitably qualified person, except if, and to the extent that, the Distributor:
- (a) is required by law to provide and maintain the Customer Service Lines; or
  - (b) has agreed with the Customer to maintain the Customer Service Lines.

## **16. TREE TRIMMING**

- 16.1 Customer Agreements to provide Customer is responsible for tree trimming:** Subject to any written agreement between a Customer and the Distributor, and any statutory provision, the Trader must ensure that each of its Customer Agreements provides that the Customer must comply with its obligations under the Electricity (Hazards from Trees) Regulations 2003 in respect of any trees that the Customer has an interest in that are near any line that forms part of the Network.
- 16.2 Distributor obligations:** The Distributor must comply with the Electricity (Hazards from Trees) Regulations 2003.

## **17. CONNECTIONS, DISCONNECTIONS AND DECOMMISSIONING**

- 17.1 Policies and procedures:** The Distributor and the Trader must comply with the provisions of this clause and the policies and procedures set out in Schedule 6 and the relevant provisions of the Code in respect of carrying out:
- (a) new connections to the Network;
  - (b) capacity changes to existing connections;
  - (c) Temporary Disconnections and associated Reconnections;
  - (d) Vacant Site Disconnections and associated Reconnections;
  - (e) Decommissioning; and
  - (f) connections that incorporate Unmetered Load.
- 17.2 Information exchange:** When exchanging information related to a Network connection,

- the Distributor and Trader must comply with the relevant EIEPs set out in Schedule 3.
- 17.3 **Warranted Persons:** The Distributor and Trader must each ensure that any person that it engages to carry out any activity related to Energising, De-energising, and Decommissioning an ICP that requires work on the Network, or performing any other work on the Network, is a Warranted Person.
- 17.4 **Medically dependent and vulnerable Customers:** The Distributor and the Trader must comply with ~~the any requirements of the Code guidelines issued by the Electricity Authority~~ relating to medically dependent Customers or vulnerable Customers ~~(if any)~~.
- 17.5 **Unmetered Load:** If the Network includes 1 or more ICPs across which Unmetered Load is shared for which the Trader is responsible:
- (a) the Trader must provide information about each such ICP to the Registry in accordance with the requirements specified in the Code; and
  - (b) the Distributor must:
    - (i) maintain a database of all such ICPs that includes all information necessary to support the Registry;
    - (ii) if the Distributor becomes aware of any change to any Unmetered Load, update the database and the Registry and notify the Trader of those changes in accordance with the Code; and
    - (iii) if the Trader notifies the Distributor that Unmetered Load is shared between 2 or more ICPs, and if requested by the Trader, allocate the Unmetered Load to the appropriate ICP and advise the Trader, and all other affected traders, of the allocation in accordance with the Code ~~;~~ and
  - (c) the Trader and the Distributor must align their processes and populate the Registry, including in particular the format of Unmetered Load data populated in the Registry, in a manner consistent ~~accordance with any the requirements of the Code guidelines issued by the Electricity Authority~~ relating to unmetered load management ~~(if any)~~.
- 17.6 **Decommissioning subject to continuance of supply obligations:** The parties acknowledge that the Distributor's right to Decommission an ICP is subject to subpart 3 of the Act.

## PART IV – OTHER RIGHTS

### 18. BREACHES AND EVENTS OF DEFAULT

- 18.1 **Breach of Agreement:** Subject to clause 18.6, if either party (the "Defaulting Party") fails to comply with any of its obligations under this Agreement, the other party may notify the Defaulting Party that it is in breach of this Agreement. The Defaulting Party must remedy a breach within the following timeframe:
- (a) in the case of a Serious Financial Breach by the Trader, within 2 Working Days of the date of receipt of such notice; or
  - (b) in any other case, within 5 Working Days of the date of receipt of such notice.
- 18.2 **Distributor may exercise other remedies for Serious Financial Breaches:** If the Trader has provided acceptable security in accordance with clause 10.2(b), and the Trader has committed a Serious Financial Breach of the type described in paragraph (a) of the definition of Serious Financial Breach, the Distributor may give notice to the Trader under clause 18.1 and a notification under clause 18.4, but only if:
- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or

- (b) the Trader has arranged for a third party to provide acceptable security in accordance with clause 10.2(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with clause 10.23(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.
- 18.3 Failure to remedy breach is Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 18.1:
- (a) the breach is an Event of Default for the purposes of this Agreement;
  - (b) the other party must use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 18; and
  - (c) the Defaulting Party must continue to do all things necessary to remedy the breach as soon as reasonably practicable.
- 18.4 Options for certain Events of Default:** If the Event of Default is any of the following:
- (a) a Serious Financial Breach (in the case of the Trader only);
  - (b) a material breach of the Defaulting Party's obligations under this Agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
  - (c) the Defaulting Party has failed on at least 2 previous occasions within the last 12 months to meet an obligation under this Agreement within the time specified and has received notice of such failures from the other party in accordance with clause 18.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this Agreement or, if the Defaulting Party is the Trader, the Distributor's ability to carry out its obligations under any agreement with any other electricity trader,
- then no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1, the other party may do any 1 or more of the following:
- (d) issue a notice of termination in accordance with clause 19.2;
  - (e) if the Defaulting Party is the Trader, the Distributor may issue a notice prohibiting the Trader from trading at any ICPs on the Distributor's Network at which the Trader was not already trading on the date of the notice;
  - (f) exercise any other legal rights available to it; and
  - (g) if the breach is a Serious Financial Breach by the Trader, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.
- 18.5 Breaches that are not Events of Default:** If a breach is not an Event of Default, the non-breaching party may:
- (a) refer the matter to Dispute resolution in accordance with clause 23 no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1; and
  - (b) exercise any other legal rights available to it.
- 18.6 Insolvency Event:** Despite clause 18.1, if either party is subject to an Insolvency Event, the other party may:
- (a) immediately issue a notice of termination in accordance with clause 19.2;
  - (b) exercise any other legal rights available to it; and
  - (c) if the Insolvency Event involves a Serious Financial Breach by the Trader, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.

## 19. TERMINATION OF AGREEMENT

19.1 **Termination:** In addition to any other termination right in this Agreement, a party may terminate this Agreement as set out below:

- (a) **Termination by agreement:** both parties may agree to terminate this Agreement;
- ~~(b) **Dispute resolution:** either party may terminate this Agreement in accordance with any agreement reached or determination made as a result of the Dispute resolution process set out in clause 23 if the other party has committed a breach that (in the case of the Trader) is not a Serious Financial Breach;~~
- ~~(e)~~(b) **Illegality:** either party may terminate this Agreement 1 Working Day after notice is given by either party to the other party terminating this Agreement for the reason that performance of any material provision of this Agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 32.4 it is not practicable for this Agreement to continue;
- ~~(d)~~(c) **Termination by Trader if Trader not supplying electricity on Network:** the Trader may terminate this Agreement by giving 5 Working Days' notice to the Distributor if the Trader is not supplying electricity to any Customer through the Network;
- ~~(e)~~(d) **Termination by Distributor if Trader not supplying electricity on Network:** the Distributor may terminate this Agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Trader has not supplied any Customers with electricity through the Network;~~or~~
- ~~(f)~~(e) **Force majeure:** either party may terminate this Agreement by giving 10 Working Days' notice to the other party, if:
  - (i) notice of a Force Majeure Event is given by either party to the other under clause 21.3; and
  - ~~(ii)~~ the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice of termination to remain bound by its obligations under this agreement, provided that if the party who wishes to terminate this agreement is the party that gave notice of the Force Majeure Event, the party has complied with clauses 21.3 and 21.4;  
or-
- ~~(f)~~ **Code change to contract requirements:** A Distributor may terminate this Agreement by giving not less than 180 days' notice if there no longer any obligation under the Code that in substance requires the Distributor to enter into an agreement with a person that wishes to trade on, be connected to, or use the Distributor' Network.

~~(g)~~—

19.2 **Termination for Event of Default or Insolvency Event:** In addition to any other termination right in this Agreement, if a party has breached this Agreement and the breach is an Event of Default of a type described in clause 18.4(a) – (c), or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 18.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:

- (a) no less than 5 Working Days after the date of such notice; or
- (b) immediately if the Trader has ceased to supply electricity to all Customers.

19.3 **Extending effective date of notice of termination:** A party that has given a notice under clause 19.2 may give a notice extending the date on which the notice given under clause 19.2 takes effect.

19.4 **Notice of termination lapses:** A notice of termination given under clause 19.2 will

lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws the effective date of its notice.

19.5 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.

19.6 **Trader remains liable for charges for remaining Customers:** If this Agreement is terminated for any reason, the Trader remains liable to pay any charges for Distribution Services that arise in relation to connected Customers that have not been switched to another trader, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Trader will not be liable to pay any charges for Distribution Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP). The Distributor may charge for such Distribution Services at the prices that apply at the time of termination.

19.7 **Obligations to continue until termination:** The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination.

19.8 **Events to occur on termination:** ~~On the effective date of termination:~~

- (a) ~~On the effective date of termination~~ the parties must have returned or certified the destruction of the other party's Confidential Information; ~~and~~
- (b) ~~From the effective date of termination~~ both parties must co-operate to transfer the Trader's Customers to another trader so that the Trader ceases to ~~T~~trade on the Network.

19.9 **Survival of terms:** Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

## 20. CONFIDENTIALITY

20.1 **Commitment to preserve confidentiality:** Each party to this Agreement undertakes that it will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information provided to it by the other party except as provided for in clause 20.2; and

(b) only use Confidential Information provided to it by the other party for:

- (i) the purposes of performing its obligations and exercising its rights under this Agreement (which in the case of the Distributor includes any purpose properly related to the provision of Distribution Services); and

(ii) the purposes expressly permitted by this Agreement.

20.2 **Disclosure of Confidential Information:** Either party may disclose Confidential Information in any of the following circumstances:

- (a) **By agreement in writing:** if the Trader and Distributor agree in writing to the disclosure of the information;
- (b) **Provided in this Agreement:** if disclosure is expressly provided for under the terms of this Agreement;
- (c) **Public domain:** if at the time of receipt by the party the Confidential Information is in the public domain or if, after the time of receipt by either party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause 20 or a breach by any other person of that

person's obligation of confidence);

- (d) **Required to disclose:** if either party is required to disclose Confidential Information by:
  - (i) law, or by any statutory or regulatory body or authority; or
  - (ii) any judicial or other arbitration process; or
  - (iii) the regulations of any stock exchange on which the share capital of either party is from time to time listed or dealt in;
- (e) **To employees, directors, agents or advisors:** if the Confidential Information is disclosed to an employee, director, agent or advisor of the party, provided that:
  - (i) the information is disseminated only on a "need to know" basis;
  - (ii) recipients of the Confidential Information must be made fully aware of the party's obligations of confidence in relation to the information; and
  - (iii) any copies of the information clearly identify it as Confidential Information;
- (f) **To bona fide potential purchaser:** if the Confidential Information is disclosed to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Trader, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form that reflects the obligations in the agreement; and
- (g) **To Customer:** if the Confidential Information relates to a Customer, and the Customer has requested the information.

20.3 **Limit for breach:** A party's liability for breach of this clause 20 will not be limited by clause 24.

20.4 **Unauthorised disclosure:** To avoid doubt, a party will be responsible for any unauthorised disclosure of Confidential Information made by that party's employees, directors, agents or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 20.2(f).

## 21. FORCE MAJEURE

21.1 **Force Majeure Event:** A Force Majeure Event occurs if:

- (a) a party fails to comply with or observe any provision of this Agreement (other than payment of any amount due);
- (b) such failure is caused by:
  - (i) any event or circumstance occasioned by, or in consequence of, any natural disaster, being an event or circumstance:
    - (A) due to natural causes, directly or indirectly and exclusively without human intervention; and
    - (B) that could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted;
  - (ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, aircraft or civil disturbances;
  - (iii) the binding order or requirement of any court, any government, any local authority, the Rulings Panel, the Electricity Authority, or the System Operator, which the party could not reasonably have avoided;
  - (iv) the partial or entire failure of supply or availability of electricity to the Network; or
  - (v) any other event or circumstance beyond the control of the party invoking this clause 21.1; and

- (c) the failure did not occur because the party invoking this clause failed to act in accordance with Good Electricity Industry Practice.
- 21.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event.
- 21.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it must:
  - (a) notify the other party as soon as reasonably practicable that it is invoking this clause;
  - (b) provide the full particulars of the potential or actual Force Majeure Event; and
  - (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 21.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 21.1 must:
  - (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
  - (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
  - (c) consult with the other party on the performance of the obligations referred to in paragraphs (a) and (b).
- 21.5 **No obligation to settle:** Nothing in clause 21.4(a) is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

## 22. AMENDMENTS TO AGREEMENT

- 22.1 **Changing this Agreement:** A change may be made to this Agreement:
  - (a) by the written agreement of the parties;
  - (b) by the Distributor, if the change is a change to the information referred to in Schedule 7 and is made in accordance with clause 7;
  - (c) by either party if the change is required by law, by the party that considers the change is required giving notice to the other party of the change, the reason for the change, and the date on which the change will take effect. If a party does not agree that a change proposed is required by law, it may raise a dispute in accordance with clause 23; or
  - (d) by either party if the subject matter of the change is regulated by the Commerce Commission and the change is allowed as a result of a determination of the Commerce Commission.

## 23. DISPUTE RESOLUTION PROCEDURE

- 23.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this Agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this Agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties must promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) of the parties for resolution.
- 23.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, either party may



- give a notice to the other requiring that the Dispute be referred to mediation.
- 23.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties must attempt to agree on the identity of the mediator and, if they cannot agree within that timeframe, the mediator will be appointed by the President (or their nominee) of the New Zealand chapter of the Resolution Institute.
- 23.4 **Conduct of mediation:** In consultation with the mediator, the parties must determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.
- 23.5 **Appointment of representative:** Each party must appoint a representative for the purposes of the mediation who must have authority to reach an agreed solution and effect settlement.
- 23.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) **Act in good faith:** the parties and their representatives must act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
  - (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;
  - (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
  - (d) **Costs of mediation borne equally:** the costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 23.7 **Arbitration to resolve disputes:** Either party may refer the Dispute to arbitration if the Dispute:
- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
  - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with clause 23.1 within 15 Working Days of the matter being referred to them and neither party referred the Dispute to mediation.
- 23.8 **Arbitration:** A Dispute referred to arbitration under clause 23.7 must be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 23.9 **Choice of arbitrator:** The sole arbitrator must be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 23.7, the arbitrator will be appointed by the President of the New Zealand Law Society.
- 23.10 **No connection to previous mediator or mediation:** If the Dispute has been referred to mediation, the mediator may not be called by either party as a witness, and no reference may be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent arbitration or legal action on the matter in Dispute.
- 23.11 **Urgent relief:** Despite any other provision of this Agreement, each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.

## 24. LIABILITY

- 24.1 **Payments of charges:** Nothing in this clause 24 will operate to limit the liability of either party to pay all charges and other sums due under this Agreement, or in

accordance with any requirements set under Part 4 of the Commerce Act 1986.

24.2 **Direct damage:** Except in respect of liability under clauses 20, 24.9, 25 and 27, each party (and its officers, employees and agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) to the other party for only direct damage to the physical property of any person ("**Direct Damage**") that results from a breach of this Agreement ~~or, negligence, or failure to exercise Good Electricity Industry Practice.~~

24.3 **Consequential loss excluded:** Except in respect of liability under clauses 20, 24.9, 25 and 27, neither party (nor any of their respective officers, employees or agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) to the other party for:

- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
- (b) any indirect or consequential loss (including, but not limited to, incidental or special damages);
- (c) any loss resulting from liability of a party to another person (except any liability for Direct Damage that arises under clause 24.2); or
- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

24.4 **No liability in tort, contract etc:** Except as expressly provided in clauses 20, 24, 25, and 27 the Distributor's liability to the Trader and the Trader's liability to the Distributor, whether in tort (including negligence), contract, breach of statutory duty, equity, or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this Agreement is excluded to the fullest extent permitted by law.

24.5 **Distributor not liable:** Except as provided in clause 25, the Distributor will not be liable for:

- (a) any failure to convey electricity to the extent that:
  - (i) such failure arises from any act or omission of any Customer or other person excluding the Distributor and its officers, employees or agents;
  - (ii) such failure arises from a request by the System Operator or any action taken as a result of a nationally or regionally coordinated response to a shortage of electricity that results in either:
    - (A) a failure to convey or reduction of injection or supply of electricity into the Network; or
    - (B) an interruption in the conveyance of electricity in the Network;
  - (iii) such failure arises from any defect or abnormal conditions in or about any Customer's Premises;
  - (iv) the Distributor was taking any action in accordance with this Agreement including clause 4.4;
  - (v) such failure arises from any act or omission of the System Operator, a Generator, or a Grid Owner, unless and to the extent that the Distributor has obtained a service guarantee from the System Operator or Grid Owner and the System Operator or Grid Owner has paid the Distributor under the relevant service guarantee, in which case the Distributor will be liable to the Trader only to the extent of the Trader's proportionate share of such payment having regard to all other traders and all customers affected by the relevant event, as determined by the Distributor (acting reasonably); or

- (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene), except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this Agreement; or
- (b) any failure to perform any obligation under this Agreement caused by the Trader's failure to comply with this Agreement, except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this Agreement; or

**Requirements for recorded terms:** *If any additional exclusions from liability not already covered by clause 24.5(a)-(b) apply, insert as clause 24.5(c) a recorded term setting out those exclusions. If no additional exclusions apply, it is not necessary to insert a clause 24.5(c). An example is provided in clause 24.5(c). Revise or delete as appropriate and then delete this dashed box.*

- (c) *any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels*

**24.6 Trader not liable:** The Trader will not be liable for:

- (a) any failure to perform any obligation under this Agreement caused by the Distributor's failure to comply with this Agreement; or
- (b) any failure to perform any obligation under this Agreement arising from any defect or abnormal conditions in the Network, except to the extent that the failure is caused or contributed to by the Trader not acting in accordance with this Agreement.

**24.7 Limitation of liability:** Subject to clauses 24.1 and 24.8, but despite any other provision of this Agreement, the maximum total liability of each party under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise):

- (a) for any single event or series of connected events will not in any circumstances exceed the lesser of: (i) \$10,000 for each ICP on the Network at which the Trader traded electricity on the day of the event and which was adversely affected by the event; and; (ii) ~~or~~ \$2,000,000; and
- (b) for all events that occur during the period from 1 July each year until 30 June the following year ("Year") under all distributor agreements between the Distributor and the Trader in respect of the Network will not in any circumstances exceed the amount determined in accordance with the following table:

<u>Number of ICPs on the Network at which the Trader traded electricity at the commencement of the Year (expressed as a percentage of the total number of ICPs on the Network, at the commencement of the Year)</u>	<u>Maximum aggregate liability of each party</u>
<u>0 to 2.5%</u>	<u>\$700,000</u>
<u>&gt;2.5% to 5%</u>	<u>\$1,400,000</u>
<u>&gt;5% to 7.5%</u>	<u>\$2,100,000</u>
<u>&gt;7.5% to 10%</u>	<u>\$2,800,000</u>
<u>&gt;10% to 12.5%</u>	<u>\$3,500,000</u>
<u>&gt;12.5% to 15%</u>	<u>\$4,200,000</u>
<u>&gt;15% to 17.5%</u>	<u>\$4,900,000</u>

<u>Number of ICPs on the Network at which the Trader traded electricity at the commencement of the Year (expressed as a percentage of the total number of ICPs on the Network, at the commencement of the Year)</u>	<u>Maximum aggregate liability of each party</u>
<u>&gt;17.5% to 20%</u>	<u>\$5,600,000</u>
<u>&gt;20% to 22.5%</u>	<u>\$6,300,000</u>
<u>&gt;22.5% to 25%</u>	<u>\$7,000,000</u>
<u>&gt;25% to 27.5%</u>	<u>\$7,700,000</u>
<u>&gt;27.5% to 30%</u>	<u>\$8,400,000</u>
<u>&gt;30%</u>	<u>\$9,100,000</u>

provided that if the Trader trades electricity at the commencement of the Year to 7.5% or less of the total number of ICPs on the Network, the maximum aggregate liability of each party to the other under this Agreement will be the amount described in the table above or the table below, whichever is the greater. This is in recognition that if the Trader predominantly supplies electricity to larger consumers of electricity, it will be more appropriate for the maximum aggregate liability of each party to the other to be determined by reference to the amount of Distribution Services charges paid by the Trader during the immediately preceding Year (expressed as a percentage of the total amount of Distribution Services charges received by the Distributor from all traders in respect of the Network in the immediately preceding Year).

<u>Distribution Services charges paid by the Trader during the immediately preceding Year (expressed as a percentage of Distribution Services charges received by the Distributor in the immediately preceding Year)</u>	<u>Maximum aggregate liability of each party</u>
<u>0 to 2.5%</u>	<u>\$700,000</u>
<u>&gt;2.5% to 5%</u>	<u>\$1,400,000</u>
<u>&gt;5%</u>	<u>\$2,100,000</u>

**24.724.8 Exclusion:** Clause 24.7:

- (a) does not limit a party's liability under clauses 20, 24.9, or 255 or 27;
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme;
- (c) does not apply to loss incurred by the Distributor if:
  - (i) the loss was caused by a Customer failing to comply with the Distributor's Network Connection Standards;
  - (ii) the Trader is required by this Agreement to include in each of its Customer Agreements a provision requiring the Customer to comply with those Network Connection Standards; and
  - (iii) the Customer Agreement between the Trader and the Customer did not include such a provision.

**24.824.9 Consumer Guarantees Act:** The following provisions apply:

- (a) subject to clause 29.1, the Trader must, to the fullest extent permitted by law and

including if the Customer is acquiring or holds itself out as acquiring electricity for the purpose of a business, exclude from each of its Customer Agreements (which includes a contract between the Trader and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations:

- (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this Agreement ("Distributor Warranties"); and
  - (ii) imposed on the Trader by the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity by the Trader under the Customer Agreement ("Trader Warranties");
- (b) if the Customer on-supplies electricity to an end-user the Trader must, as a condition of any Customer Agreement, require the Customer to include provisions in all agreements between the Customer and an end-user, excluding all Distributor Warranties and Trader Warranties to the fullest extent permitted by law, including if the end-user is acquiring, or holds itself as acquiring, electricity for the purposes of a business; and
- (c) to avoid doubt, nothing in this clause 24.9 affects the rights of any Customer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Trader from offering in its Customer Agreements its own warranties, guarantees or obligations pertaining to distribution services.

**24.924.10 Distributor liabilities and Customer Agreements:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements clear and unambiguous clauses to the effect that:

- (a) the Customer must indemnify the Distributor against any direct loss or damage caused or contributed to by the fraud of, dishonesty of or wilful breach of the Customer Agreement by the Customer or any of its officers, employees, agents or invitees arising out of, or in connection with, the Distribution Services provided under this Agreement; and
- (b) to the extent permitted by law, the Distributor will have no liability to the Customer in contract, tort (including negligence) or otherwise in respect of the supply of electricity to the Customer under the Customer Agreement.

**24.1024.11 Benefits to extend:** Each party agrees that its obligations under this clause 24 and clauses 25 to 28 (and clause 29.3 in respect of the Trader) constitute promises conferring benefits on each party's officers, employees and agents that are intended to create, in respect of the benefit, an obligation enforceable by those officers, employees and agents and accordingly, the provisions of Part 2 of the Contract and Commercial Law Act 2017 apply to its promises under this clause 24. These provisions may be varied without the consent of the beneficiaries described above.

## **25. INDEMNITY**

**25.1 Distributor indemnity:** Despite anything else in this Agreement, the Trader is entitled to be indemnified by the Distributor as set out in section 46A of the Consumer Guarantees Act 1993.

## **26. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY**

**26.1 Claim against Trader:** If a Customer makes a claim against the Trader in relation to which the Trader seeks-wishes (at the time of the claim or later) to be indemnified by the Distributor under section 46A of the Consumer Guarantees Act 1993 (a "Claim"), the Trader must before providing any remedy to the Customer:

- (a) give written notice of the Claim to the Distributor as soon as reasonably practicable after the Trader has become aware of the Claim and any facts or circumstances indicating that the underlying failure may be related to an event, circumstance or condition associated with the Network-determines that it wishes to be indemnified by the Distributor, specifying the nature of the Claim in reasonable detail; and
- (b) make available to the Distributor all information that the Trader holds in relation to the Claim that is reasonably required by the Distributor.

26.2 **Payment arrangements:** If the Distributor is required to indemnify the Trader under section 46A of the Consumer Guarantees Act 1993, the Distributor must promptly pay the Trader the amounts due under that Act.

26.3 **Dispute resolution:** Any dispute between the Distributor and the Trader relating to the existence or allocation of liability under section 46A of the Consumer Guarantees Act 1993 must be dealt with by each party in accordance with the Dispute Resolution Scheme or, if the dispute is not accepted by the scheme, the parties must deal with the dispute in accordance with clause 23.

## 27. FURTHER INDEMNITY

27.1 **Distributor will be indemnified:** Subject to clause 28, the Trader indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis) suffered, or incurred by the Distributor arising out of or in connection with:

- (a) any claim by any person with whom the Trader has a contractual relationship in relation to the provision of services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
  - (i) any breach by the Trader of any of its obligations under this Agreement;
  - (ii) the disconnection by the Trader, or disconnection requested by the Trader, of any Customer's Premises in accordance with this Agreement, unless the Trader has otherwise acted in compliance with Good Electricity Industry Practice;
  - (iii) the termination of this Agreement by the Trader, except when the termination is the result of a breach by the Distributor;
  - (iv) any failure by the Trader to perform any obligation under any agreement between the Trader and any Generator or Customer or other third party;
  - (v) any failure by the Trader to comply with its obligations required by law or regulation; or
  - (vi) any action undertaken by the Distributor under or in connection with this Agreement at the request of the Trader; and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this Agreement.

27.2 **Trader will be indemnified:** Subject to clause 28, the Distributor indemnifies and holds harmless the Trader and will keep the Trader indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis), suffered, or incurred by the Trader arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Trader has a contractual relationship in relation to the provision of services or conveyance of electricity to the extent that claim arises out of or could not have been made but for:
  - (i) any breach by the Distributor of its obligations under this Agreement;



- (ii) the disconnection by the Distributor of any Customer's Premises in accordance with this Agreement, unless the Distributor has otherwise acted in compliance with Good Electricity Industry Practice or if this Agreement has been terminated for the Trader's breach or Insolvency Event;
- ~~(iii) the termination of this Agreement by the Distributor, except when the termination is the result of a breach by the Trader;~~
- ~~(iv)~~(iii) any failure by the Distributor to perform any obligation under any agreement between the Distributor and the System Operator or any other third party;
- ~~(v)~~(iv) any failure by the Distributor to comply with its obligations required by law; or
- ~~(vi)~~(v) any action undertaken by the Trader under or in connection with this Agreement at the request of the Distributor; and
- (b) any recovery activity of the Trader in respect of any unpaid charges or interest payable under this Agreement.

27.3 Exceptions to indemnity: The Distributor will not be liable under the indemnity in clause 27.2:

- (a) for any liability of the Trader to a third party other than for losses actually suffered or incurred by that third party as a direct, natural and probable consequence of the cause listed in clauses 27.2(a)(i) to 27.2(a)(v);
- (b) for any liability of the Trader to a third party for Network Event Losses, to the extent those Network Event Losses consist of:
  - (i) loss of profits, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
  - (ii) any loss that was not a direct, natural and probable consequence of the Network Event;
  - (iii) any loss resulting from the claimant (that is, the person claiming against the Trader) being liable to another person; or
  - ~~(i)~~any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software;

~~27.3~~27.4 **Other rights and remedies not affected:** The indemnities in this clause 27 are in addition to, and without prejudice to, the rights and remedies of each party under this Agreement or under statute or in law, equity or otherwise.

## **28. CONDUCT OF CLAIMS**

- 28.1 **Third Party Claim:** This clause applies if a party with a right of indemnity under clause 27 ("**Indemnified Party**") seeks or may seek to be indemnified by the other party ("**Indemnifying Party**") under clause 27 in respect of a claim by any person of the kind described in clause 27.1(a) or 27.2(a) ("**Third Party Claim**").
- 28.2 **Indemnified Party to give Notice of Third Party Claim:** The Indemnified Party must give notice of the Third Party Claim (including reasonable details) to the Indemnifying Party and ensure that the Indemnified Party does not make any payment or admission of liability in respect of the Third Party Claim.
- 28.3 **Indemnifying Party may act in relation to Third Party Claim:** The Indemnifying Party may, at its election, in the name of the Indemnified Party, but only after consultation with the Indemnified Party and so that the reputation of the Indemnified Party is not unfairly harmed, conduct all negotiations and defend any proceedings relating to the Third Party

Claim. For this purpose, the Indemnified Party must make available to the Indemnifying Party all such information, books and records, and co- operate (including making available employees as witnesses) as the Indemnifying Party may reasonably require for the purpose.

28.4 **Indemnified Party to keep Indemnifying Party informed:** If and for so long as the Indemnifying Party does not assume the defence of the Third Party Claim, the Indemnified Party must:

- (a) keep the Indemnifying Party fully informed of the Indemnified Party's progress in defending the Indemnified Claim and of any related proceedings; and
- (b) at the Indemnifying Party's request, consult with, and take account of the reasonable views of, the Indemnifying Party so far as reasonably practicable in the relevant Indemnified Party's defence of the Third Party Claim and any related proceedings.

28.5 **Third Party Claim not to be settled without consent:** The Indemnified Party must not, without the prior written consent of the Indemnifying Party, settle the Third Party Claim.

28.6 **Indemnifying Party to be reimbursed:** If the Indemnified Party recovers from any third party any amount to which a payment made by the Indemnifying Party to the Indemnified Party under this Agreement relates, the Indemnified Party must procure that the amount so recovered by the Indemnified Party (net of the cost of recovery, but not exceeding the amount paid by the Indemnifying Party) will be reimbursed without delay to the Indemnifying Party.

## 29. CUSTOMER AGREEMENTS

29.1 **Trader to include provisions in Customer Agreements:** The following clauses apply in respect of the Trader's Customer Agreements:

- (a) in respect of each Customer Agreement that has been entered into prior to the Commencement Date:
  - (i) at the next review date, or, if the Trader is able to unilaterally vary the Customer Agreement, within 12 months after the Commencement Date (whichever is earlier), the Trader must issue a unilateral variation to the Customer Agreement to include provisions that have substantially the same effect as the provisions required to be included in the Customer Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017; or
  - (ii) if the Trader is unable to unilaterally vary 1 or more Customer Agreements as set out in subparagraph (i), the Trader must:
    - (A) use all reasonable endeavours to obtain at the next review of each Customer Agreement, or within 12 months, whichever is earlier, the agreement of the Customer to enter into a variation of the Customer Agreement to include the provisions required to be included in the Customer Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 12 of the Contract and Commercial Law Act 2017; and
    - (B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Customer required in subparagraph (A); or
- (b) in respect of each Customer Agreement that has been entered into after the Commencement Date, include the provisions required to be included in the Customer



Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017.

- 29.2 **Changes to Customer Agreements during term:** If this Agreement is changed in accordance with clause 22.1(a) or clause 22.1(c), and the change requires the Trader to amend its Customer Agreements, the Trader must take such steps as are necessary to amend those agreements.
- 29.3 **Trader to indemnify Distributor:** Subject to clause 24, the Trader indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Trader's failure to meet its obligations in accordance with clause 29.1.

### 30. NOTICES

- 30.1 **Delivery of Notices:** Any notice given under this Agreement must be in writing and will be deemed to be validly given if personally delivered, posted or sent by facsimile transmission or email to the address for notice set out on the execution page of this agreement or to such other address as that party may notify from time to time.
- 30.2 **Receipt of Notices:** Any notice given under this Agreement will be deemed to have been received:
- (a) in the case of personal delivery, when delivered;
  - (b) in the case of facsimile transmission, when sent, provided that the sender has a facsimile confirmation receipt recording successful transmission;
  - (c) in the case of posting, [32](#) Working Days following the date of posting; and
  - (d) in the case of email, when actually received in readable form by the recipient, provided that a delivery failure notice has not been received by the sender, in which case the notice will be deemed not to have been sent.
- 30.3 **Deemed receipt after 5pm or day that is not Working Day:** Any notice given in accordance with clause 30.2 that is personally delivered or sent by facsimile or email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

### 31. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

- 31.1 **Protocols for exchanging information:** The Distributor and the Trader must, when exchanging information to which an EIEP listed in Schedule 3 relates, comply with that EIEP.

### 32. MISCELLANEOUS

- 32.1 **No waiver:** Unless a party has signed an express written waiver of a right under this Agreement, no delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.
- 32.2 **Entire agreement:** This Agreement records the entire agreement, and prevails over any earlier agreement concerning its subject.
- 32.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld. For the purposes of this clause 32.3, unless a party is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.
- 32.4 **Severance:** Any unlawful provision in this Agreement will be severed, and the

remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.

### **33. INTERPRETATION**

**33.1 Interpretation:** Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than 1 person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
- (g) all amounts payable under this Agreement are in New Zealand dollars and exclude GST and every other tax and duty, but if GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable, and unless otherwise stated;
- (h) New Zealand time and dates apply;
- (i) any word or expression cognate with a definition in this Agreement has a meaning corresponding or construed to the definition;
- (j) references to sections, clauses, Schedules, annexes or other identifiers are to those in this Agreement unless otherwise identified; and
- (k) references to a document or agreement includes it as varied or replaced.

**33.2 Definitions:** In this Agreement, unless the context otherwise requires:

"**Act**" means the Electricity Industry Act 2010;

"**Additional Security**" has the meaning given in clause 10.7;

"**Agreement**" means this distribution agreement, including each Schedule and any other attachment or document incorporated by reference;

"**Bank Bill Yield Rate**" means:

- (a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on a day as being the daily bank bill yield for bank bills having a tenor of 90 days; or
- (b) for any date for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill yield rate determined in accordance with paragraph (a) on the last day that such a rate was available;

"**Cash Deposit**" has the meaning given in clause 10.2;

"**Chief Executive**" means the chief executive officer of the relevant party to this Agreement;

"**Code**" means the Electricity Industry Participation Code 2010 made under the Act;

"**Commencement Date**" means the date specified in clause 1.1;

"**Confidential Information**" means all data and other information of a confidential nature provided by 1 party to the other under the terms of this Agreement or otherwise that is identified by the party providing the information as being confidential, or should reasonably be expected by the other party to be confidential, but excludes:

- (a) information known to the recipient prior to the date it was provided to it by the

- first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence; and
- (c) the existence and terms of this Agreement;

**"Connection Contract"** means a contract under which Distributed Generation is connected to the Network entered into by the Distributor and a Distributed Generator in accordance with Part 6 of the Code, and, for the purposes of this Agreement, the Distributor and a Distributed Generator are deemed to have entered into a Connection Contract if the regulated terms in Part 6 of the Code apply;

**"Controlled Load Option"** has the meaning given in clause 5.1;

**"Conveyance Only"** means a situation in which the Trader contracts with the Customer for the supply of electricity only in relation to an ICP and the Distributor does not provide Distribution Services to the Trader in respect of that ICP;

**"Credit Note"** has the meaning given in the GST Act;

**"Customer"** means a person who purchases electricity from the Trader that is delivered via the Network;

**"Customer Agreement"** means an agreement between the Trader and the Customer that includes the supply of electricity and distribution services;

**"Customer Service Lines"** means the lines used or intended to be used for the conveyance of electricity between the Customer's Point of Connection and the Customer's Premises;

**"Customer's Installation"** means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation;

**"Customer's Premises"** means the land and buildings owned or occupied by a Customer, and any land over which the Customer has an easement or right to pass electricity, including:

- (a) the land within the boundary within which the electricity is consumed;
- (b) the whole of the property, if the property is occupied wholly or partially by tenants or licensees of the owner or occupier; and
- (c) the whole of the property that has been subdivided under the Unit Titles Act 1972 or the Unit Titles Act 2010;

**"Debit Note"** has the meaning given in the GST Act;

**"Decommission"** means the decommissioning of an ICP in accordance with Part 11 of the Code so that the ICP is permanently disconnected from the Network, and the Registry status has been altered to "decommissioned" (but excludes a Vacant Site Disconnection);

**"De-energise"** means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

**Requirements for recorded terms:** Insert definitions for "Default Interest" and "Default Interest Rate" as recorded terms in clause 33.2. Examples are provided in the box below. Revise as appropriate and then delete this dashed box.

**"Default Interest"** means interest on the amount payable at the Default Interest Rate from the due date for payment until the date of payment of that amount to the relevant party accruing on a daily basis and compounded monthly;

**"Default Interest Rate"** means the Interest Rate plus 5%;

**"Direct Customer Agreement"** means an agreement between the Distributor and a

Customer for the provision of distribution services ~~and, unless otherwise agreed with the Trader, includes the direct billing of Distribution Services charges to the Customer and responsibility for associated debt;~~

"**Direct Damage**" has the meaning given in clause 24.2;

"**Disclosure Requirements**" means the disclosure requirements under any determination issued by the Commerce Commission in accordance with Part 4 of the Commerce Act 1986 relating to electricity distribution;

"**Dispute**" has the meaning given in clause 23.1;

"**Dispute Resolution Scheme**" means Utilities Disputes or such other dispute resolution scheme approved or provided for in accordance with section 95 of the Act; "**Distributed Generation**" means generating plant equipment collectively used for generating electricity that is connected, or proposed to be connected, to the Network or a Customer's Installation, but does not include:

- (a) generating plant connected to the Network and operated by the Distributor for the purpose of maintaining or restoring the provision of electricity to part or all of the Network:
  - (i) as a result of a Planned Service Interruption; or
  - (ii) as a result of an Unplanned Service Interruption; or
  - (iii) during a period when the Network capacity would otherwise be exceeded on part or all of the Network; or
- (b) generating plant that is only momentarily synchronised with the Network for the purpose of switching operations to start or stop the generating plant;

"**Distributed Generator**" means a person who owns or operates Distributed Generation;

"**Distribution Services**" means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers;

"**Distributor**" means the party identified as such in this Agreement;

"**Distributor's Equipment**" means the Fittings and Metering Equipment owned by the Distributor, the Distributor's agent, or any other third party with whom the Distributor has contracted with for the use by the Distributor of the party's Fittings or Metering Equipment that are from time to time installed in, over or on Customer's Premises; "**Distribution Pricing Structure Consultation Guidelines**" means the guidelines relating to consulting on distributor price structure changes issued by the Electricity Authority and updated from time to time;

"**EIEP**" means an electricity information exchange protocol approved by the Electricity Authority and published in accordance with the Code;

"**Electrical Installation**" means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Customer's Point of Connection to any point from which electricity conveyed through that system may be consumed; and
- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

"**Electricity Authority**" has the meaning given in section 5 of the Act;

"**Electricity Only Supply Agreement**" means an agreement between the Trader and a Customer for the supply of electricity only;

**"Energise"** means the operation of an isolator, circuit breaker, or switch, or the placing of a fuse or link, so that electricity can flow through a Point of Connection on the Network;

**"Entrant"** has the meaning given in clause 5.3;

**"Event of Default"** has the meaning given in clause 18.3(a);

**"Fitting"** means everything used, designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance or use of electricity;

**"Force Majeure Event"** has the meaning given in clause 21.1;

**"Generator"** means any person that owns a machine that generates electricity that is connected to a network, including a Distributed Generator;

**"Good Electricity Industry Practice"** means:

- (a) in the case of the Distributor, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced electricity network owner engaged in New Zealand in the distribution of electricity under conditions comparable to those applicable to the Network consistent with applicable law, safety and environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the Network and the applicable law; and
- (b) in the case of the Trader, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced electricity trader engaged in New Zealand in the same type of undertaking under comparable conditions consistent with applicable law, safety and environmental protection;

**"Grid"** means the system of transmission lines, substations and other works, including the HVDC link used to connect grid injection points and GXPs to convey electricity throughout the North Island and the South Island of New Zealand;

**"GXP"** means any Point of Connection on the Grid:

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such in accordance with the Code;

**"Grid Owner"** means a person who owns or operates any part of the Grid;

**"GST"** means goods and services tax payable under the GST Act;

**"GST Act"** means the Goods and Services Tax Act 1985;

**"ICP"** means an installation control point being 1 of the following:

- (a) a Point of Connection at which a Customer's Installation is connected to the Network;
- (b) a Point of Connection between the Network and an embedded network;
- (c) a Point of Connection between the Network and shared Unmetered Load;

**"Incumbent"** has the meaning given in clause 5.3;

**"Industry"** means those parties involved in the generation, transmission, distribution and retailing of electricity in New Zealand;

**"Insolvency Event"** means a party:

- (a) has had a receiver, administrator or statutory manager appointed to or in respect of the whole or any substantial part of its undertaking, property or assets;
- (b) is deemed or presumed (in accordance with law) to be unable to pay its debts as they fall due, becomes or is deemed (in accordance with law) to be insolvent, or is in fact unable to pay its debts as they fall due, or proposes or makes a compromise, or an arrangement or composition with or for the benefit of its creditors or fails to comply with a statutory demand under section 289 of the Companies Act 1993; or
- (c) is removed from the register of companies (otherwise than as a consequence of an

amalgamation) or an effective resolution is passed for its liquidation;

**Requirements for recorded terms:** Insert a definition of "Interest Rate" as a recorded term in clause 33.2. An example is provided in the box below. Revise as appropriate and then delete this dashed box.

*"Interest Rate" means, on any given day, the rate (expressed as a percentage per annum and rounded up to nearest fourth decimal place) displayed on the Reuter's screen page BKBM (or its successor page) at or about 10.45 a.m. on that day, as the bid rate for 3 month bank accepted bills of exchange or, if no such rate is displayed or that page is not available, the average (expressed as a percentage per annum and rounded up to the nearest fourth decimal place) of the bid rates for 3 month bank accepted bills of exchange quoted at or about 10.45 a.m. on that day by each of the entities listed on that Reuter's screen page when the rate was last displayed or, as the case may be, that page was last available;*

**"Interposed"** means in relation to a Customer, that the Distributor provides Distribution Services to the Trader and the Trader contracts with the Customer for the supply of those services;

**"Load Control Equipment"** means the equipment (which may include, but is not limited to, ripple receivers and relays) that is from time to time installed in, over or on Customer's Premises for the purpose of receiving signals sent by Load Signalling Equipment and switching on and off, or otherwise controlling, controllable load;

**"Load Control System"** means a control and communications system for controlling parts of a Customer's load and consisting of Load Signalling Equipment and Load Control Equipment;

**"Load Signalling Equipment"** means the equipment (which may include, but is not limited to, ripple injection plant) for the purpose of sending control signals to Load Control Equipment;

**"Load Shedding"** means the act of reducing or interrupting the delivery of electricity to 1 or more ICPs;

**"Losses"** means, for a particular period, the difference between the sum of all electricity injected into a network and the sum of all electricity measured or estimated as having exited that network;

**"Loss Category"** means the code in the Registry, and in the schedule of Loss Category codes and Loss Factors made available by the Distributor, which enables traders to identify the Loss Factor(s) applicable to an ICP on the Network at any point in time;

**"Loss Factor"** means the scaling factor determined in accordance with clause 6 and applied by the reconciliation manager to volumes of electricity measured or estimated in respect of ICPs on the Network, in order to reflect the impact of the ICP on Losses within the Network;

**"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

**"Network"** means the Distributor's lines, substations and associated equipment used to convey electricity between:

- (a) 2 NSPs; or
- (b) an NSP and an ICP;

**"Network Connection Standards"** means the Distributor's written technical and safety standards for connection of an Electrical Installation to the Network that are issued by the Distributor and updated from time to time, and include:

(a) a list of all referenced regulations and industry standards relevant to the provision of the Distribution Services; and

(b) all externally referenced publications, such as website links in those regulations and standards;

“Network Event” means any surge, spike or under-frequency event on the Network, and any outage or failure to restore supply on the Network, in each case whether or not attributable to any breach or other default by the Distributor;

“Network Event Losses” means any kind of losses, damages, costs, expenses or other compensation incurred or suffered wholly or partly as a result of a Network Event, by a person claiming against the Trader as contemplated in clause 27.2(a);

**“Network Supply Point” or “NSP”** means any Point of Connection between:

(a) the Network and the Grid; or

(b) the Network and another distribution network; or

(c) the Network and an embedded network; or

(d) the Network and Distributed Generation;

**“Planned Service Interruption”** means a Service Interruption that has been scheduled to occur in accordance with Schedule 5;

**“Point of Connection”** means the point at which electricity may flow into or out of the Network;

**“Price”** means a fixed or variable rate within a Price Category that determines the Distribution Services charges that apply to an ICP;

**“Price Category”** means the price category and associated eligibility criteria referred to in Schedule 7 that determine the Price(s) that apply to an ICP;

**“Price Options”** has the meaning given in clause 8.5;

**“Pricing Structure”** means the Distributor’s policies and processes relating to setting Prices for Distribution Services referred to in Schedule 7;

**“Publish”** means to disclose information by making the information freely and publicly available on the Distributor’s website and notifying the Trader that the information has been disclosed on the website;

**“Re-energise”** means to Energise an ICP after it has been De-energised;

**“Registry”** means the central database of ICP information maintained in accordance with the Code to assist switching and reconciliation;

**“Revision Invoice”** has the meaning given in clause 9.3.

**“Rulings Panel”** has the meaning given to it in section 5 of the Act;

**“Serious Financial Breach”** means:

(a) a failure by the Trader to pay an amount due and owing that exceeds the ~~greater~~ lesser of \$100,000 or ~~20% of~~ the actual charges payable by the Trader for the previous ~~two~~ months, unless the amount is genuinely disputed by the Trader in accordance with clause 9.7; or

(b) a material breach of clause 10 by the Trader;

**“Service Guarantee Payment”** means any payment or other benefit that 1 party provides to the other party if it fails to meet a Service Standard for which a guarantee payment is required to be paid if that Service Standard is not met;

**“Service Interruption”** means the cessation of electricity supply to an ICP for a period of 1 minute or longer, other than by reason of De-energisation of that ICP:

(a) for breach of the Customer Agreement by the Customer; or

(b) as a result of a request from the Trader or the relevant Customer for a Temporary Disconnection; or



- (c) as a result of a request from the Trader for a Vacant Site Disconnection; or
- (d) for the purpose of De-energising a Customer Installation that does not comply with the Network Connection Standards; or
- (e) to Decommission the ICP.

"**Service Level**" means the magnitude of a Service Measure;

"**Service Measure**" means the characteristics or features of a Service Standard as set out in Schedule 1;

"**Service Standards**" means the set of Service Measures, Service Levels, conditions and Service Guarantee Payments as set out in Schedule 1;

"**Switch Event Date**" means the date recorded in the Registry as being the date on which a trader assumes responsibility for an ICP;

"**System Emergency Event**" means a grid emergency in accordance with the definition of that term in Part 1 of the Code and, in respect of the Network, any emergency situation in which:

- (a) public safety is at risk;
- (b) there is a risk of significant damage to any part of the Network;
- (c) the Distributor is unable to maintain Network voltage levels within statutory requirements; or
- (d) an Unplanned Service Interruption affecting part or all of the Network is imminent or has occurred.

"**System Operator**" has the meaning given to it in section 5 of the Act;

"**System Operator Services**" means co-ordination services for the control, dispatch and security functions necessary to operate the transmission system;

"**System Security**" means the security and quality objectives set out in Part 8 of the Code;

"**Tax Invoice**" means a valid tax invoice as specified by section 24 of the GST Act;

"**Temporary Disconnection**" means an ICP is De-energised but there is no change to the status of the ICP in the Registry;

"**Trader**" means the party identified as such in this Agreement;

"**Trader's Equipment**" means the Fittings and/or Metering Equipment owned by the Trader, the Trader's agent or any other third party with whom the Trader has contracted with for the use by the Trader of such third party's Fittings or Metering Equipment, which are from time to time installed in, over, or on Customer's Premises;

"**Transmission Interruption**" means a failure of a service provided by a Grid Owner to meet the service standards agreed between the Distributor and that Grid Owner;

"**Trust Account Rules**" means the rules relating to the establishment and operation of a trust account established and operated by the Distributor in accordance with clause 10.276;

"**Unmetered Load**" means electricity consumed on the Network that is not directly recorded using Metering Equipment, but is calculated or estimated in accordance with the Code;

"**Unplanned Service Interruption**" means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the Trader or any affected Customer;

**Requirement Site** recorded as a property that has been vacated for a "Int of Money Adjustment" as a Vacant Site Disconnection means the De-energisation of an ICP that occurs when the property at which the ICP is located has become vacant, and the Trader has changed the status of the ICP in the Registry to "Inactive";



**"Warranted"** means pre-qualified to the Distributor's reasonable standards and authorised by the Distributor to carry out the particular work on or in relation to the Network;

**"Warranted Person"** means a person who is Warranted or who is employed by a person who is Warranted; and

**"Working Day"** means every day except Saturdays, Sundays and days that are statutory holidays in the city specified for each party's address for notices identified in the Parties section of this Agreement.

## **PART V – SCHEDULES**

## SCHEDULE 1 – SERVICE STANDARDS

**Requirements for recorded terms:** *If the Distributor must meet any Service Standards when providing Distribution Services, insert as recorded terms in Schedule 1:*

- (a) *a table or tables setting out:*
  - (i) *the Service Standards that the Distributor must meet;*
  - (ii) *any Service Measure relevant to each of those Service Standards;*
  - (iii) *any Service Levels that apply to each Service Measure; and*
  - (iv) *any conditions that apply to any Service Measure; and*
  - (v) *if the Distributor must make a Service Guarantee Payment in the event that the Distributor fails to meet any of those Service Standards, the value of the Service Guarantee Payment or how the Service Guarantee Payment must be calculated; and*
- (b) *a clause or clauses that set out the consequences, if any, for breaching the Service Standards or a Service Level, and any associated procedural requirements.*

*If the Distributor must meet Service Standards but there are no Service Measures, Service Levels, conditions, and/or Service Guarantee Payments relevant to 1 or more of those Service Standards, insert in the table(s) the words "not applicable" or leave the relevant part of the table blank as appropriate.*

*If the Distributor is not required to meet any Service Standards, insert the words "not applicable" in Schedule 1.*

*Examples of the types of Service Standards that could be recorded in this Schedule include:*

- (a) *for each Price Category and Price Option, the time periods in which electricity supply is normally available to Customers;*
- (b) *target levels of power quality, such as measures related to:*
  - (i) *the voltage and frequency of the electricity supply; and*
  - (ii) *the Distributor's process and target timeframes for investigating Customer complaints related to power quality; and*
  - (iii) *the expected frequency of occurrence of Planned Service Interruptions and Unplanned Service Interruptions, possibly categorised by Customer category (such as residential, non-residential etc) and Network locality (such as urban, rural, remote rural, etc);*
- (c) *timeframes for restoring electricity supply following Unplanned Service Interruptions, possibly categorised by Customer category and Network locality; and*
- (d) *requirements for notifications to the Trader and Customers about Planned Service Interruptions.*

*An example is shown in clauses S1.1 to S1.5 and Table 1 below. Revise as appropriate and then delete this dashed box.*

*S1.1 If the Trader becomes aware of or suspects a breach of the Service Standards by the Distributor, the Trader must give the Distributor notice of the reasons why it suspects that there has been a breach.*

*S1.2 If the Distributor breaches a Service Level, it must notify the Trader as soon as*

*reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include:*

- (a) the ICP identifier(s) or the Network locality affected by the breach; and*
- (b) the reason for the breach.*

*S1.3 If the Distributor breaches a Service Level that is subject to a Service Guarantee Payment, it must notify the Trader as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include:*

- (a) the ICP identifier of each ICP affected and the Service Guarantee Payment owed by ICP and in total (if applicable);*
- (b) the reason for the breach; and*
- (c) a Credit Note or order number (if the Trader requires a Tax Invoice from the Distributor for the amount payable in respect of the breach, the Distributor must send the Tax Invoice in the next payment cycle).*

*S1.4 If the Distributor makes a Service Guarantee Payment in respect of an ICP, the Trader must pass that payment on to the relevant Customer or Customers but may deduct an amount that reflects its reasonable cost of administering the payment.*

*S1.5 The parties acknowledge that the Service Guarantee Payments are set at a level to provide reasonable compensation to affected Customers in respect of the Distributor's failure to meet the relevant Service Level, and are not a penalty.*

**Table 1 – Service Standards**

<b>SERVICE MEASURE</b>	<b>SERVICE LEVEL</b>	<b>CONDITIONS</b>
<b>1. UNCONTROLLED ELECTRICITY SUPPLY CATEGORY</b>		
<b>1.1 24 hour Continuous Supply:</b> Time period when electricity supply is available	Supply must, in normal supply circumstances, be continuously available 24 hours each day.	If a Customer has elected to receive 24 hour Continuous Supply and is charged on the basis of the relevant uncontrolled supply Price Category or Price Option in accordance with Schedule 7, the Distributor must maintain continuous electricity supply in accordance with this Agreement. Eligibility requirements for this category of electricity supply, including Metering Equipment requirements, are specified in Schedule 7.
<b>2. CONTROLLED ELECTRICITY SUPPLY CATEGORIES</b>		
<b>2.1 19 hour Controlled Supply:</b> Time period when electricity supply is available	Supply must, in normal supply circumstances, be available for a minimum of 19 hours each day.	If a Customer has elected to receive 19 hour Controlled Supply and is charged on the basis of the relevant Controlled Supply Price Category or Price Option in accordance with Schedule 7, the Distributor may control the relevant part of the Customer's load for a maximum period of 5 hours on any day. The Customer's controlled appliances must be connected (and remain connected) to a load control relay that operates as specified in Schedule 7. Metering Equipment requirements for this category of supply are specified in Schedule 7.
<b>2.2 Controlled Night Supply with afternoon boost:</b> Time period when electricity supply is available	Supply must, in normal supply circumstances, be available in the following time periods: <ul style="list-style-type: none"> <li>• 11 pm to 7 am</li> <li>• 1 pm to 3 pm.</li> </ul> At other times the supply is De-energised.	If a Customer has elected to receive supply only within the specified time periods and be charged on the basis of the relevant controlled supply Price Category or Price Option in accordance with Schedule 7, the Distributor must provide the appropriate load control signals to switch the supply. The controlled appliances must be connected (and remain connected) to a load control relay that operates in response to the load control signal, as specified in Schedule 7. Metering Equipment requirements for this category of supply are specified in Schedule 7.

<b>SERVICE MEASURE</b>	<b>SERVICE LEVEL</b>	<b>CONDITIONS</b>
<b>2.3 Controlled Supply for Street Lights:</b> Time period when electricity supply is available	Supply to street light circuits must, in normal supply circumstances, be continuously available during the hours of darkness every day.	If the Customer has elected to receive a streetlight controlled supply and is charged on the basis of the relevant controlled supply Price Category or Price Option in accordance with Schedule 7, the Distributor must provide appropriate load control signals to switch the supply. Street lights must be connected (and remain connected) to a load control relay that is programmed to receive load control signals in accordance with the method(s) specified in Schedule 7. The hours of supply must be set and controlled in accordance with the Customer's requirements.

<b>SERVICE MEASURE</b>	<b>SERVICE LEVEL</b>	<b>CONDITIONS</b>	<b>SERVICE GUARANTEE PAYMENT</b>
<b>3. SERVICE INTERRUPTIONS</b>			
<b>3.1 Time period for restoration of supply:</b> Unplanned Service Interruptions	The Distributor must: Urban: restore supply within 3 hours following notification of an Urban Unplanned Service Interruption; Rural: restore supply within 6 hours following notification of a Rural Unplanned Service Interruption; and Remote Rural: restore supply within 12 hours following notification of a Remote Rural Unplanned Service Interruption.	For the purpose of this Service Measure: Urban means [Distributor to define geographically]; Rural means [Distributor to define geographically]; and Remote Rural means [Distributor to define geographically].	\$50 in respect of each ICP up to 60 A per phase directly affected by the Unplanned Service Interruption, plus a further \$50 for each complete 24hr period in excess of the time limit, subject to the general limit of liability. \$150 in respect of each ICP greater than 60 A per phase directly affected by the Unplanned Service

<b>SERVICE MEASURE</b>	<b>SERVICE LEVEL</b>	<b>CONDITIONS</b>	<b>SERVICE GUARANTEE PAYMENT</b>
			<i>Interruption, plus a further \$150 for each complete 24hr period in excess of the time limit, subject to the general limit of liability.</i>
<b>3.2 Frequency of Service Interruptions</b>	<i>Urban: No more than 4 per annum recorded by the Distributor or reported by the Customer; Rural: No more than 10 per annum recorded by the Distributor or reported by the Customer; and Remote Rural: No more than 20 per annum recorded by the Distributor or reported by the Customer.</i>	<i>The Service Measure includes Service Interruptions caused, or contributed to, by Transmission Interruptions.</i>	
<b>4. POWER QUALITY</b>			
<b>4.1 Frequency of voltage sags</b>	<i>Urban: No more than 30 per annum recorded by the Distributor or reported by 1 or more Customers; Rural: No more than 40 per annum recorded by the Distributor or reported by 1 or more Customers; and Remote rural: No more than 50 per annum recorded by the</i>	<i>A voltage sag occurs when the supply voltage falls below 90% of the nominal supply voltage other than in the case of a momentary fluctuation. If no suitable means of measurement of voltage is permanently available (such as by advanced metering functionality), supply voltage must only be measured in response to a Customer complaint. Includes voltage sags caused, or contributed to,</i>	

<b>SERVICE MEASURE</b>	<b>SERVICE LEVEL</b>	<b>CONDITIONS</b>	<b>SERVICE GUARANTEE PAYMENT</b>
	<i>Distributor or reported by 1 or more Customers.</i>	<i>by Transmission Interruptions.</i>	
<b>4.2 Steady state supply voltage range</b>	<i>Maintain voltage within <math>\pm 6\%</math> of nominal voltage at each point of supply.</i>	<i>Excludes momentary fluctuations. If no suitable means of measurement is permanently available (such as by advanced metering functionality), supply voltage must only be measured in response to a Customer complaint. Includes voltage excursions caused, or contributed to, by Transmission Interruptions.</i>	
<b>5. INVESTIGATIONS OF CUSTOMER COMPLAINTS</b>			
<b>5.1 Power quality, reliability and safety investigations</b>	<i>The Distributor must, no later than 5 Working Days after receiving notification from the Trader or a Customer of a complaint about power quality, supply reliability or safety, investigate the complaint and respond to the Trader and/or Customer as appropriate. The response must indicate the Distributor's findings related to the complaint and, if a problem is confirmed, the Distributor's proposed remedy. If the investigation cannot be completed within 5 Working Days, the Distributor must provide within 7</i>	<i>For the purpose of this Service Measure, a power quality problem includes a problem relating to momentary voltage fluctuations, flicker, voltage harmonics, voltage phase imbalance, and voltage sags. However, in any event, the Distributor must complete its investigation and provide information to the Trader so that the Trader can offer a resolution to the Customer within the timelines set out in the Dispute Resolution Scheme. The Distributor must remedy any problems under its control in a timely manner, in accordance with Good Electricity Industry Practice.</i>	<i>\$50 for exceeding any timeframe specified in the Service Level.</i>



<b><i>SERVICE MEASURE</i></b>	<b><i>SERVICE LEVEL</i></b>	<b><i>CONDITIONS</i></b>	<b><i>SERVICE GUARANTEE PAYMENT</i></b>
	<i>Working Days an estimate of the time it will take to complete such an investigation and the reason for requiring extra time.</i>		

## SCHEDULE 2 – BILLING INFORMATION

### **Requirements for operational terms:**

- 1 This Schedule 2 must set out:
  - (a) the information that must be provided by the Trader to the Distributor so that the Distributor can calculate Distribution Services charges and prepare Tax Invoices;
  - (b) the formats, procedures and timeframes for providing the information; and
  - (c) how the Distributor calculates Distribution Services charges.
- 2 The clauses to be included in this Schedule 2 must provide that when exchanging information to which EIEP1, EIEP2, or EIEP3 applies, the Distributor and the Trader will comply with the relevant EIEP.
- 3 Examples of clauses that may comply, and notes explaining the situations in which the clauses could be used, are set out in clause S2.1. Revise as appropriate and then delete this dashed box.

### **S2.1 Calculating Tax Invoices for Distribution Service charges:**

*Note: This clause is appropriate for ICP-priced Distribution Services. This clause assumes that the Distributor will create the Tax Invoice. A different clause is required if a buyer-created invoice is required by the Distributor.*

*The Trader must provide consumption information to the Distributor, and the Distributor must calculate Distribution Services charges payable by the Trader, in accordance with the following:*

- (a) the Trader must provide to the Distributor all information that the Distributor reasonably requires to enable it to calculate the Distribution Services charges payable by the Trader to the Distributor in accordance with EIEP1, EIEP2 and EIEP3;
- (b) the Trader must provide the information by 5:00pm on the 5th Working Day after the last day of each month;
- (c) the parties acknowledge that the Distributor's Pricing Structure is based on the Distributor receiving consumption volume information from the Trader using:

*Note: Select from the following alternative clauses as relevant to the circumstances.*

- (i) *[the [as-billed] [incremental normalised] [replacement normalised] [incremental replacement normalised] reporting methodology, as that methodology is defined in EIEP1;]*
- (ii) *[summary consumption information as described in EIEP2; and]*
- (iii) *[information in respect of half-hour metered ICPs as described in EIEP3; and]*
- (d) *the Distributor must calculate the charges based on the Prices that apply to each chargeable quantity to which the Tax Invoice relates.*

*Note: include this additional sentence if relevant.*

*[In respect of [replacement normalised] [incremental replacement normalised] consumption information, the Trader must provide revised consumption information to the Distributor no later than 5 Working Days after the end of the month in which revised submission information was provided by the Trader to the reconciliation manager, and the Distributor must issue a Credit Note or Debit Note to the Trader reflecting the revised consumption information.]]*

*Note: This clause is appropriate for GXP-priced Distribution Services.*

*[The Trader must provide consumption information to the Distributor, and the Distributor must obtain reconciliation information from the reconciliation manager and calculate Distribution Services charges payable by the Trader, in accordance with the following:*

- (a) the Distributor must arrange for the reconciliation manager to provide the Distributor with reconciliation information attributable to the Trader and other relevant information that, subject to paragraph (b), the Distributor reasonably requires to enable it to calculate its Tax Invoice for Distribution Services charges payable by Trader. The Trader must, if necessary, advise the reconciliation manager that the Trader agrees to the Distributor obtaining its reconciliation information;*
- (b) the Trader must provide to the Distributor, no later than 5 Working Days after the end of each month, any information additional to that obtainable by the Distributor from the reconciliation manager that the Distributor reasonably requires to enable it to calculate its Tax Invoice for Distribution Services charges payable by Trader. Such information must be provided in accordance with the relevant EIEP; and*
- (c) the Distributor must calculate the charges based on the Prices that apply to each ICP to which the Tax Invoice relates.]*

### SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

S3.1 The Distributor and the Trader must comply with the following EIEPs when exchanging information to which the relevant EIEP applies:

- (a) EIEP1 – Detail ICP billing and volume information;
- (b) EIEP2 – Aggregated volume information;
- (c) EIEP3 – Half hour metering information;
- (d) EIEP12 – Tariff rate change information; and
- (e) any other EIEP publicised by the Authority under the Code with which the Distributor and Trader are required to comply.

***Requirements for operational terms:*** In addition to the EIEPs specified in Clause S3.1, the distributor must set out any other EIEPs with which the Distributor and Trader must comply when exchanging information to which the relevant EIEP applies. An example is provided in clause S3.2. Revise as appropriate and then delete this dashed box.

*S3.2 In addition to the EIEPs specified in clause S3.1, the Distributor and the Trader must comply with the following EIEPs when exchanging information to which the relevant EIEP relates:*

- (a) *EIEP4 – Customer information;*
- (b) *EIEP5 – Service interruptions;*
- (c) *EIEP6 – Fault notification and service requests;*
- (d) *EIEP7 – General installation status change;*
- (e) *EIEP8 – Notification of network price category and tariff change;*
- (f) *EIEP9 – Customer location address change notification; and*
- (g) *EIEP11 – New connections information.*

## SCHEDULE 4 – SYSTEM EMERGENCY EVENT MANAGEMENT

**Requirements for operational terms:** *This Schedule 4 must set out the Distributor's System Emergency Event management policy, which is a policy for managing load on the Network during a System Emergency Event.*

*The policy must include the Distributor's priorities, including if relevant, priorities specific to Customer categories and Network localities, for:*

- (a) Load Shedding;*
- (b) the use of any controllable load available to the Distributor in accordance with clause 5; and*
- (c) the restoration of load.*

*Complete this Schedule and then delete this dashed box.*

## SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION REQUIREMENTS

### Unplanned Service Interruptions

**Requirements for recorded terms:** *If the Distributor must meet any Unplanned Service Interruption Standards when providing Distribution Services, this section must set out:*

- (a) *the information that the Distributor must provide to the Trader if the Distributor becomes aware of 1 or more Unplanned Service Interruptions caused by an area Network fault (being a Network fault that affects a group of customers within an area) or a System Emergency Event, including identifying the affected area or areas and the expected time for restoration of electricity supply in each area;*
- (b) *requirements related to provision by the Distributor of updated information about the status of Unplanned Service Interruptions, including:*
  - (i) *if the Distributor expects that previously advised restoration times will change; and*
  - (ii) *confirmation of areas restored and areas that remain without electricity supply;*
- (c) *whether the Trader or the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until electricity supplies are restored, and the parties' obligations to exchange information; and*
- (d) *the situations that would trigger the Distributor's public and media communications processes and the communications channels and methods the Distributor uses when communicating with the public and media.*

*Examples of clauses that may comply are set out in clauses S5.1 to S5.10. Revise as appropriate and then delete this dashed box.*

*If any timeframes within which the Distributor must take any particular actions are included in this section, those timeframes must be treated as recorded terms (and not operational terms). The relevant clauses will only be treated as recorded terms to the extent that they impose any timeframes on the Distributor.*

*S5.1 The Distributor must provide the Trader with information about an Unplanned Service Interruption affecting 20 or more Customers that enables the Trader to respond in an informed manner to calls from affected Customers.*

*S5.2 The Distributor must provide information under clause S5.1 as soon as reasonably practicable after first becoming aware of the Unplanned Service Interruption and:*

- (a) *for Unplanned Service Interruptions that occur in staffed control room hours, no later than 10 minutes after the Distributor becomes aware of the interruption; and*
- (b) *for Unplanned Service Interruptions that occur in on-call control room hours, no later than 40 minutes after the Distributor becomes aware of the interruption.*

*S5.3 The information provided under clause S5.1 must:*

- (a) *be provided by electronic file transfer in accordance with EIEP5; and*
- (b) *include, if known, a description of the reason for the interruption, the area affected, and an expected time for restoration.*

*S5.4 Unless otherwise agreed, the Distributor must, within 10 minutes of new information about an Unplanned Service Interruption becoming available and at intervals of no*

*longer than 60 minutes, provide the Trader with an update of the status of the Unplanned Service Interruption, until a firm restoration time has been advised by the Distributor to the Trader.*

*S5.5 If the expected restoration time advised by the Distributor to the Trader is likely to be exceeded, the Distributor must endeavour to inform the Trader of the new expected restoration time at least 10 minutes before the expected restoration time elapses.*

*S5.6 Unless otherwise agreed, no later than 10 minutes after a full or partial restoration of supply, the Distributor must provide the Trader with details of the areas restored.*

*S5.7 The Trader must, within 10 minutes of receiving information relating to a possible Unplanned Service Interruption, log the call with the Distributor by electronic file transfer in accordance with EIEP5, or by any other information exchange method agreed by the parties. The Distributor must advise the Trader if the Trader should stop logging calls.*

*S5.8 The Trader may provide the Distributor's contact details to the Customer rather than taking details and logging the call with the Distributor.*

*S5.9 The Distributor must implement its public and media communication process in the following situations:*

- (a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 30 minutes in duration, and that affects (without limitation):*
  - (i) more than 1,000 customers;*
  - (ii) a central business district;*
  - (iii) an industrial area;*
  - (iv) supply to critical facilities such as hospitals, pumping stations, dairy farms;*  
*or*
  - (v) the Network to such an extent that a disaster recovery plan should be triggered by a severe storm or natural disaster;*
- (b) a Civil Defence emergency has been initiated (in such situation communication may be via Civil Defence Headquarters);*
- (c) any other major event that has a material adverse effect on the delivery of Distribution Services; or*
- (d) if the Distributor is contacted by media for comment regarding an Unplanned Service Interruption.*

*S5.10 The Distributor notes that it may use any or all of the following means of communication, as the circumstances require:*

- (a) media releases and interviews; and*
- (b) status information and updates on the Distributor's:*
  - (i) automated telephone information service;*
  - (ii) website;*
  - (iii) smartphone app;*
  - (iv) Facebook page; and*
  - (v) Twitter account.*

### ***Planned Service Interruptions***

***Requirements for recorded terms:*** *If the Distributor must meet any Planned Service Interruption Standards when providing Distribution Services, this section must set out the parties' obligations and the process that must be followed to notify Customers if the*

*Distributor wishes to undertake a Planned Service Interruption.*

*If the Trader is the party that must notify Customers of a Planned Service Interruption, this section must set out:*

- (a) the information the Distributor must provide to the Trader if the Distributor wishes to undertake a Planned Service Interruption, which must include:
  - (i) the ICP identifiers of the affected ICPs; and*
  - (ii) the information exchange format and procedure with which the parties must comply;**
- (b) the process and timeframes the Trader must comply with when notifying affected Customers for which it is responsible of the Planned Service Interruption;*
- (c) a process for the Trader to request an alternative date and time for the Planned Service Interruption and for the Distributor to consider such requests; and*
- (d) the steps the Distributor must take if it intends to undertake a Planned Service Interruption on an urgent basis; and*
- (e) whether or not the Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions.*

*If the Distributor is the party that must notify Customers of a Planned Service Interruption, this section must set out:*

- (a) the process the Distributor must follow to obtain Customer information held by the Trader that is necessary to enable the Distributor to provide notifications about Planned Service Interruptions;*
- (b) the information the Distributor must provide to Customers affected by the Planned Service Interruption; and*
- (c) the information the Distributor must provide to the Trader about the Planned Service Interruption, including the:
  - (i) affected ICP identifiers;*
  - (ii) amount of notice given to Customers; and*
  - (iii) the information exchange format and procedure with which the parties must comply.**

*Examples of clauses that may comply are set out in clauses S5.11 to S5.19. Revise as appropriate and then delete this dashed box.*

*If any timeframes within which the Distributor must take any particular actions are included in this section (for example, if the Distributor is required to give the Trader a minimum period of notice for a Planned Service Interruption), those timeframes must be treated as recorded terms (and not operational terms). The relevant clauses will only be treated as recorded terms to the extent that they impose any timeframes on the Distributor.*

*Note: The 2 options below reflect common arrangements. If a hybrid arrangement operates (eg, Trader notifies normally but Distributor's contractor notifies directly affected customers for small jobs, say < 20 ICPs) suitable additional clauses must be added.*



**Option A – Trader to notify Customers**

- S5.11 The Distributor must provide the Trader with notice of a Planned Service Interruption in accordance with the relevant EIEP at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICP identifiers that the Distributor's information system indicates will be affected by the Planned Service Interruption. On receipt of such notice, the Trader must promptly notify affected Customers for which it is responsible of the Planned Service Interruption.*
- S5.12 The Trader may no later than 2 Working Days after receipt of such notice, notify the Distributor of any Customers who would be adversely affected by the interruption and request an alternative date and/or time for the Planned Service Interruption.*
- S5.13 If the Distributor receives a request from the Trader for an alternative date and/or time for the Planned Service Interruption, the Distributor must consider in good faith the request and may, in its sole discretion, change the time and/or date of the Planned Service Interruption. If the Distributor makes such a change, the Distributor must provide the Trader with notice of the new date and/or time at least 7 Working Days before the original date of the Planned Service Interruption.*
- S5.14 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor must provide the Trader with a notice of the Planned Service Interruption in accordance with clauses S5.11 as soon as reasonably practicable.*
- S5.15 If the Planned Service Interruption will affect all customers supplied from a Network Supply Point, the Distributor may, in addition to providing the notices required in clauses S5.11, S5.13 and S5.14, arrange for public notification through a local newspaper, or other effective method, on behalf of all traders.*
- S5.16 The Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions.*

**Option B – Distributor to notify Customers**

- S5.17 If required, and despite the terms of Appendix C (if applicable), the Trader must provide Customer contact information to the Distributor on a monthly basis. The information must be provided in accordance with EIEP4. Any information provided by the Trader to the Distributor under this clause will be Confidential Information.*
- S5.18 For all Planned Service Interruptions, the Distributor must provide each of the Customers it identifies as being affected with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 4 Working Days before the date on which the Planned Service Interruption is scheduled.*

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*Note: One factor that the Distributor may wish to consider is whether the timeframe in clause S5.18 may need to be longer than 4 Working Days if, for example, the Trader elects to provide its own written/telephone notification to medically dependent customers that would be affected by the Planned Service Interruption.*

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- S5.19 The Distributor must provide the Trader with notice of the Planned Service Interruption in accordance with EIEP5 at least 4 Working Days before the Planned Service Interruption is scheduled to occur.*

## SCHEDULE 6 – CONNECTION POLICIES

**Requirements for operational terms:** *This Schedule 6 must set out the parties' obligations and the processes that must be followed related to the management of Network connections. This Schedule 6 must set out comprehensive processes for facilitating:*

- (a) new connections to the Network;*
- (b) capacity changes to existing connections;*
- (c) Temporary Disconnections and associated Reconnections;*
- (d) Vacant Site Disconnections and associated Reconnections; and*
- (e) Decommissioning.*

*Examples of clauses that may comply are set out in clauses S6.1 to S6.27. Revise as appropriate and then delete this dashed box.*

*If any timeframes by which the Distributor must take particular actions are included in this Schedule 6, those timeframes must be treated as recorded terms (and not operational terms).*

### **Introduction**

*S6.1 This Schedule sets out the processes that the Distributor and Trader must follow in respect of facilitating:*

- (a) new connections to the Network;*
- (b) capacity changes to existing connections;*
- (c) Temporary Disconnections and associated Reconnections;*
- (d) Vacant Site Disconnections and associated Reconnections; and*
- (e) Decommissioning.*

### **Process for new connections or changes in capacity**

*S6.2 The Distributor may receive applications from:*

- (a) the owner of a premises not currently connected to the Network or the owner's agent that is or intends to be a Customer (the "Requesting Party"), or the Trader on behalf of a Requesting Party, for a new connection to be created; and*
- (b) a Customer (the "Requesting Party"), or the Trader on behalf of a Requesting Party, for an increase or decrease in the capacity of an existing connection.*

*S6.3 The Distributor must undertake an impact assessment to determine whether the capacity required for the connection is already available or whether a Network upgrade is required. If, acting reasonably, the Distributor considers that a Network upgrade is required, or that other works are required, the Distributor must advise the Requesting Party of the terms on which the Distributor is prepared to undertake the necessary works. If the application is declined the Distributor must provide the reasons for its decision.*

*S6.4 If the Distributor and Requesting Party agree on terms under which the Distributor will supply a new connection or change the capacity of an existing connection, the Distributor must advise the Trader of the following no later than 2 Working Days after agreement was reached (provided that the Distributor knows that the Requesting Party is a Customer):*

- (a) the ICP identifier for the new connection;*
- (b) the NSP to which the ICP is or will be connected;*
- (c) the allocated Price Category, provided that if the ICP is eligible for more than 1 Price Category, the Trader may advise the Distributor of its preferred Price*

*Category in accordance with clause 8.4; and*

*(d) if the ICP is a new ICP, that the ICP is ready to be electrically connected.*

*S6.5 The Distributor or the Trader (if authorised by the Distributor) must arrange for the ICP to be electrically connected to the Network by a Warranted Person once approval has been granted by the Distributor. The party that undertakes the electrical connection to the Network must, unless otherwise agreed, notify the other party within 2 Working Days of the ICP being electrically connected.*

***Timeframe for electrically connecting standard new connections***

*S6.6 A standard new connection must be electrically connected to the Network within 2 Working Days following a request by the Trader if:*

- (a) all necessary equipment is in place;*
- (b) Network upgrades or extensions are not required; and*
- (c) all other necessary requirements are met.*

*S6.7 The timeframe for electrically connecting an ICP that does not meet the requirements set out in clause S6.6 must be agreed by the parties.*

***Temporary Disconnections and associated reconnections***

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*Note: Clauses S6.8 – S6.22 provide that either party may carry out Temporary Disconnections in specified circumstances.*

*Clause 17.3 provides that only a Warranted Person may undertake connection or disconnection work that requires access to any Distributor's Equipment (such as a pole or pillar fuse or isolation link). This would not prevent a Trader from undertaking a Temporary Disconnection using a method that does not involve access to the Network (eg, using suitable advanced Metering Equipment functionality, removing conductors from meter terminals and resealing the meter, or locking open a suitable isolation device located within the Customer's Premises).*

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*S6.8 The parties agree that Temporary Disconnection of an ICP at which the Trader supplies electricity may be carried out by the Trader in the following circumstances:*

- (a) if in an emergency it is necessary to avoid endangering persons or property;*
- (b) for credit reasons; or*
- (c) if requested by the Customer, for safety or other reasons.*

*S6.9 The Trader must, subject to clause 29.1, ensure that each of its Customer Agreements provides that the Distributor may perform a Temporary Disconnection in relation to a Customer's ICP in the following circumstances:*

- (a) it is necessary to avoid endangering persons or property;*
- (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or the Grid;*
- (c) in the circumstances set out in clause 3.7;*
- (d) in accordance with clause 11.3;*
- (e) if a Customer does any of the things prohibited under clauses 12.1 or 12.7, or fails to do any of the things required of it as contemplated in clause 13; or*
- (f) on termination of this Agreement.*

*S6.10 Subject to clause 17.4 (which relates to medically dependent and vulnerable Customers), if the Distributor intends to perform a Temporary Disconnection under clause S6.9, the Distributor must give the Trader notice of the Temporary Disconnection as follows:*

- (a) the Distributor must give the Trader at least 5 Working Days' notice of*

*disconnection if the Distributor intends to perform a Temporary Disconnection because:*

- (i) the Customer failed to provide the Distributor with access in accordance with its Customer Agreement; or*
- (ii) the Customer damaged or interfered with the Distributor's Equipment or Network; or*
- (b) the Distributor must give the Trader at least 10 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because the Customer failed to do any of the things required of it as contemplated in clause 11.*

*S6.11 The notice of Temporary Disconnection provided by the Distributor to the Trader under clause S6.10 must specify:*

- (a) the ICP identifier of the relevant Customer;*
- (b) the particulars of the Customer breach;*
- (c) the remedy required if disconnection is to be avoided; and*
- (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.*

*S6.12 On receipt of a notice under clause S6.10, the Trader must promptly forward a physical notice to the relevant Customer and include mail, email and telephone contact details that the Customer may use to contact the Trader about the matter. The Trader must promptly forward to the Distributor any response received from the Customer and the Distributor must consider in good faith all such responses it receives. The Trader and the Distributor must work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.*

*S6.13 Subject to clause 17.4 (which relates to medically dependent and vulnerable Customers):*

- (a) if the Distributor intends to perform a Temporary Disconnection under clause S6.9(f), the grounds for the Temporary Disconnection are not being reasonably Disputed by the Trader, and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor must give each Customer:*
  - (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such notice to include the reason for the Temporary Disconnection and be sent to each Customer's last address provided to the Distributor by the Trader, or if no address has been provided as the Trader has no Customer at that ICP, the notice must be sent to the Customer's address on the Registry, and the Distributor must provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;*
  - (ii) a final warning not less than 48 hours nor more than 7 days before the disconnection. The final warning must provide the timeframes for disconnection. This must be a separate notice to the notice provided at least 9 Working Days before disconnection;*
  - (iii) if disconnection is not completed within the timeframes notified, the Distributor must issue another final warning not less than 48 hours nor more than 7 days before disconnection:*

- (b) if the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.9(a) or S6.9(b), the Distributor must use its best endeavours to give each Customer as much prior notice as reasonably practicable, but in any event must notify each Customer no later than 2 days after the Temporary Disconnection.

*S6.14 The party that performs a Temporary Disconnection in respect of a Customer must (unless otherwise agreed) notify the other party of that fact no later than 2 Working Days after the Temporary Disconnection. To avoid doubt, the status of the ICP in the Registry must be changed by the party undertaking the Temporary Disconnection to "inactive" only if the Temporary Disconnection remains in effect for more than 5 Working Days.*

*S6.15 If either party has performed a Temporary Disconnection in respect of a Customer's ICP, the party that performed the Temporary Disconnection must take reasonable steps to arrange restoration of supply to the ICP as soon as reasonably practicable and in any case:*

- (a) no later than 3 Working Days after conditions for reconnection have been satisfied; or  
(b) by any other date requested by the Customer.

***Vacant Site Disconnections and associated reconnections***

*S6.16 The Trader may undertake a Vacant Site Disconnection of an ICP if:*

- (a) the Trader is recorded as the trader for the ICP in the Registry;  
(b) the ICP has an "active" status in the Registry; and  
(c) in respect of that ICP, no Customer Agreement exists with the Trader.

*S6.17 The Trader must undertake a Vacant Site Disconnection of an ICP without delay if the ICP meets the criteria set out in clause S6.16 and the ICP has been inactive for at least 30 Working Days.*

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*Note: Clause S6.18 assumes that the Distributor has no interest in the energisation status of any ICP. If it does, additional provisions will be needed.*

*The second sentence of clause S6.18 is written to ensure proof of compliance with the requirements of regulation 74(3) of the Electricity (Safety) Regulations 2010.*

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*S6.18 The Trader may reconnect an ICP that is subject to a Vacant Site Disconnection if it wishes to supply electricity to that ICP. If the ICP has not been electrically connected for more than 6 months, the Trader must either request an inspection from the Distributor (if the Distributor provides this service) or advise the Customer to procure its own safety inspection using a person authorised to certify mains work. A copy of the certificate issued following such an inspection must either be provided to the Distributor, or held by the Trader at the Trader's offices for the later inspection by the Distributor, before the ICP is Re-energised.*

*S6.19 The Trader must ensure that Vacant Site Disconnections and associated reconnections are carried out in accordance with the Distributor's reasonable operational work practices for managing vacant sites. If a Vacant Site Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.*

*S6.20 The Trader may give the Distributor notice that the Distributor is responsible for completing the Vacant Site Disconnection for an ICP if:*

- (a) the Trader wishes to carry out a Vacant Site Disconnection for the ICP;

- (b) *the Distributor has not provided an exclusive and accessible isolation device for that ICP; and*
- (c) *the Trader has not been able to complete a Vacant Site Disconnection in accordance with Good Electricity Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s).*

*S6.21 If the Trader gives the Distributor notice under clause S6.20:*

- (a) *the Distributor must endeavour in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;*
- (b) *the Distributor must investigate provision of an accessible isolation device for the ICP but is not required to install such a device if it considers in its opinion that it would be impractical or unreasonably costly to do so; and*
- (c) *the Trader must continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.*

*S6.22 The party performing the disconnection or reconnection must, unless otherwise agreed, notify the other party within 2 Working Days after completion of the work.*

#### ***Decommissioning an ICP***

*S6.23 A Distributor may Decommission an ICP in the following circumstances, provided that the requirements of section 105 of the Act and Part 11 of the Code are met:*

- (a) *the Distributor is advised by a Customer, landowner or the Trader that electricity is no longer required at the ICP;*
- (b) *it is necessary to Decommission the ICP because public safety is at risk;*
- (c) *the Registry notifies the Distributor that the ICP has the status of "Inactive", with the reason given "De-energised – ready for decommissioning", the ICP has been De-energised and the Trader has attempted to recover any Metering Equipment;*  
*or*
- (d) *if the Distributor has not provided Distribution Services in respect of the ICP for 6 months or more.*

*S6.24 If a Distributor intends to Decommission and clauses S6.23(a) or (d) apply, the Distributor must, unless advised by the Trader, notify the Trader before Decommissioning the ICP to enable the Trader to arrange for removal of the Metering Equipment (if appropriate) and update the Registry.*

*S6.25 A party Decommissioning an ICP must do so by removing all or part of the Customer Service Line to the ICP, or if a shared Customer Service Line forms part of the supply, by isolating and removing the load side cable from the main switch at the meter board and removing any associated Metering Equipment. In all circumstances, the property must be left electrically safe.*

*S6.26 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier must not be used again and the process for new connections must be followed if supply is required again at the property.*

## **SCHEDULE 7 – PRICING**

***Requirements for operational terms:*** This Schedule 7 must set out how the Trader can access information that provides comprehensive policy and detail of the Distributor's current:

- (a) *Pricing Structure;*
- (b) *Price Categories, and the eligibility criteria for each Price Category;*
- (c) *Price Options (if any); and*
- (d) *Prices.*

*Complete this Schedule and then delete this dashed box.*

## SCHEDULE 8 – LOAD MANAGEMENT

### Use of controllable load

S8.1 A party may use a Load Control System for 1 or more of the following purposes, which are ranked in order of priority, provided that it has obtained the right to control the load in accordance with clause 5.1 or 5.2:

- (a) **Grid Emergency:** As defined in Part 1 of the Electricity Industry Participation Code 2010;
- (b) **Market participation:** Any other right to control load.

S8.2 If both parties have obtained the right to control parts of the consumer's load in accordance with clause 5.1 or 5.2, and both parties want to control load for a purpose specified in clause S8.1 at the same time, the party entitled to control load will be the party with the higher priority rank as specified in clause S8.1.

**Requirements for operational terms:** *If relevant, this section must set out the rights and obligations of the parties in respect of coordination of split ownership Load Control Systems. An example of a clause that may comply is set out in clause S8.3. Revise as appropriate and then delete this dashed box*

### **Coordination of split ownership Load Control Systems**

*Note: Coordination is required if the Load Signalling Equipment and Load Control Equipment in a Load Control System is provided by more than 1 party. For legacy Load Control Systems in New Zealand, this normally involves the Distributor providing the Load Signalling Equipment and the Trader providing the Load Control Equipment.*

S8.3 *If the Trader provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:*

- (a) *The Distributor must provide the Trader with details of the technical characteristics of the Load Control Equipment appropriate for use with the Distributor's Load Signalling Equipment in each Network area.*
- (b) *If the Distributor has obtained a load control right in accordance with clause 5.1, the Trader must ensure that Load Control Equipment is installed that reliably receives the Distributor's load control signals and controls the relevant load. If the Distributor's specific Controlled Load Option makes it necessary for the Trader to install additional Metering Equipment that separately measures and records controlled load electricity consumption, the Trader must install the Metering Equipment (provided that the parties acknowledge that such installation does not give the Distributor the right to change the eligibility criteria for Price Categories or Price Options in a manner that would require a mass change to existing metering installations).*
- (c) *If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it must first negotiate in good faith with the Trader to agree suitable terms for the upgrade of the Trader's Load Control Equipment. If agreement is not reached, the Distributor may, at its discretion, elect to procure and install, at its own cost, suitable Load Control Equipment.*
- (d) *The Distributor may periodically, but not more than once in any 12 month period, undertake an audit of Load Control Equipment performance within a Network*



*area of its choice. The audit must assess the proper functioning of the Load Control Equipment for a randomly selected sample of ICPs to which the Trader supplies electricity. The sampling technique must be consistent with the methodology outlined in Part 10 of the Code that applies to selecting samples of meters.*

- (e) If the audit finds that Load Control Equipment for which the Trader is responsible is not functional in respect of a number that is greater than 5% of the sample, the Distributor and Trader must, within 40 Working Days of the Distributor notifying the Trader of the results of the audit, meet and agree a programme of work including scope and timeframe within which the non-functioning Load Control Equipment must be identified and either replaced or repaired. The Trader must pay the reasonable costs of any inspection (including the initial audit) and repair work identified.*
- (f) If the audit reveals that the proper functioning of Load Control Equipment is caused by low signal levels or faults on a pilot wire network that are the responsibility of the Distributor, such failures must be excluded from the audit results.*
- (g) If the audit finds that Load Control Equipment for which the Trader is responsible is functional for 95% or more of the ICPs sampled, the cost of the audit must be paid by the Distributor, but the Trader must remedy all defects found in respect of non-functional Load Control Equipment for which the Trader is responsible.*