

# Electricity Industry Participation Code 2010

## Part 12A Distributor agreements and arrangements

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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:

<b>Row</b>	<b>Column 1 – Distributor</b>	<b>Column 2 – Participant</b>	<b>Column 3 – Schedule</b>
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

cl 12A.2(1)

### Requirements for entering into 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

#### 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 20 **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 5, 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 7 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 to contract

The **distributor** must offer to contract with the person that gives notice under clause 2(1) on the 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 5<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 20 **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 20 **business day** period; or
    - (ii) the day on which the person becomes a **participant**; or
  - (b) any other date agreed by the parties.
- (4) For the purposes of this clause, a **distributor agreement** that applies as a binding contract between the parties 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 12(1) of Schedule 12A.4; and
  - (b) all **recorded terms** otherwise notified by the **distributor** to the other party; and
  - (c) any terms relating to additional services that either party requires be included in the **distributor agreement** in accordance with clause 7.

### *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 require that the **distributor agreement** negotiated and agreed between the parties in accordance with this Schedule includes, as an appendix, 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 customer information)

- (3) If, in relation to a **distributor agreement**, 1 or more parties requires the inclusion of an appendix in accordance with subclause (2), those terms are deemed to form part of the **distributor agreement** between the parties.
- (4) A **distributor** and a **participant** may agree to alternative terms relating to additional services in accordance with clause 9.

*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) However, a **distributor** and a **participant** that enter into an alternative agreement must ensure that the terms of the alternative agreement—
  - (a) address only the subject-matter of the terms of the relevant **default distributor agreement**; and
  - (b) relate only to the service or services described in the relevant **default distributor agreement**.
- (3) To avoid doubt, an alternative agreement is a **distributor agreement** for the purposes of this Code.

## **9 Alternative terms for additional services**

- (1) A **distributor** and a **participant** may include, as an appendix to a **distribution agreement**, an appendix that addresses the subject-matter of an appendix described in clause 7(2).
- (2) However, a **distributor** and a **participant** must ensure that the terms of the appendix—
  - (a) address only the subject-matter of the terms of the relevant appendix in clause 7(2); and
  - (b) relate only to the service or services described in the relevant appendix in clause 7(2).

*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.
- (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; and
  - (c) an alternative agreement entered into in accordance with clause 8, including all alternative terms for additional services included in the **distributor agreement** in accordance with clause 9.
- (3) The **Authority** may **publish** any **distributor 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 the **participant** on 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 5<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 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(4) 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) Clauses 8 and 9, which relate to alternative agreements and alternative terms for additional services, apply if the parties wish to replace an existing agreement with an agreement that is not the relevant **default distributor agreement**.

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**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 Working 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 Working 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 Working 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 Working 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 customer information**

Sch 12A.1, cl 7(2)

#### **1 Introduction**

This Appendix:

- (a) provides for the Distributor to request Customer Information held by the Trader ("Data");
- (b) sets out the Distributor's obligations in respect of any Data that the Trader agrees to provide to the Distributor in response to a request.

#### **2 Data requests**

The Distributor may request Data by giving written notice to the Trader, which must sets out:

- (a) details about the Data requested;
- (b) the purposes for which the Distributor will use the Data;
- (c) the persons to whom the data will be disclosed by the Distributor; and
- (d) for how long the Distributor wishes to use the Data.

#### **3 Provision of Data to Distributor**

- (1) This clause, and the subsequent clauses in this Appendix, apply if the Trader agrees to provide some or all of the requested Data to the Distributor.
- (2) The parties will attach to this Appendix a document ("Data Agreement") that sets out:
  - (a) the Data to be provided by the Trader to the Distributor;
  - (b) the purposes for which the Distributor may use the Data ("Permitted Purposes");
  - (c) the persons to whom the Data may be disclosed by the Distributor; and
  - (d) for how long the Distributor may use the Data.
- (3) 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 Data, subject to the following:
  - (a) the Data may only be used by the Distributor for the Permitted Purposes or as otherwise set out in this Appendix;
  - (b) the Distributor may not disclose the Data publicly or to a third party except as set out in the Data Agreement or this Appendix;
  - (c) the Data must not be 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 Data, including in any database structures and compilations of the Data, other than the rights expressly set out in this Appendix.
- (5) The Distributor agrees that any Data provided to the Distributor will be:
  - (a) at the sole cost to the Distributor, so that the Trader is not responsible for any costs, charges or other expenses associated with providing the Data to the distributor;
  - (b) provided in a format determined by the Trader or as otherwise agreed by the Trader and Distributor; and

- (c) at the Distributor's risk, and the Trader makes no express or implied warranties as to the accuracy or completeness of the Data, nor its suitability for any specified purpose.

#### **4 Privacy Act**

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 Data.

#### **5 Confidentiality obligations**

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 Data except as provided for in this Appendix; and
- (b) only use Data for a Permitted Purpose.

#### **6 Disclosure of Data**

- (1) Subject to subclause (2), the Distributor may disclose Data in any of the following circumstances:
  - (a) to its employees and directors to the extent that such Data is required to be known by such persons in connection with the Permitted 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 distributor is liable for the acts and omissions of such agents, advisors or contractors; or
  - (c) if the Distributor is required to disclose the 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 Data to any employee, director, agent, or advisor of the Distributor who is involved in the offering or provision of electricity generation or storage goods or services (including batteries, solar, and other products sold on a competitive basis) to Customers.

#### **7 Third Party Data oversight**

- (1) The Trader may, at any time and at its direction, appoint an independent third party to oversee the storage, use, transmission, and disclosure of the Data while it is in the possession of the Distributor, to ensure that the Data is used in a manner that is consistent with the Data Agreement and this Appendix, and compliant with all applicable laws, codes, and regulations.
- (2) The Trader may require the Distributor to enter into an agreement with the appointed independent third party that sets out the duties and responsibilities of the independent third party.
- (3) The disclosure to, or continued use of any Data by, the Distributor is conditional on the Distributor's compliance with this clause.

#### **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:

- (a) may include employees, directors, agents, advisors or contractors of the Distributor; but
  - (b) 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 of services other than those services described in clause 4(2) of this Appendix, other than IT personnel.
- (3) The Distributor must:
- (a) release 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.
- (4) Despite anything in this Appendix, the Distributor and Data Team members may release, to Network Services Personnel, 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 Data only for a Permitted Use;
- (b) does not disclose 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 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 Data.
- (2) The information security plan must:
- (a) ensure that Data is physically and electronically quarantined and unable to be accessed by any person other than Data Team members;
  - (b) include provisions for training of Data Team members on the requirements set out in this Appendix and the information security plan;
  - (c) keep the 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) effect and maintain adequate security measures that preserve and secure the confidential nature of the Data and safeguard the Data from access by unauthorised persons;
  - (e) implement, to the extent practicable, measures to monitor or prevent the transmission of Data using external electronic storage devices (for example USB flash drives);
  - (f) include measures to protect electronic files containing Data (for example password protection and data encryption);
  - (g) include the provision of locked cupboards for the secure storage of any Data in the form of physical media; and

- (h) include a process to inform the Trader no later than 72 hours after discovery if the Distributor becomes aware of any access to the 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 Data that has been disclosed outside of the Data Team; and
  - (ii) mitigate any use of Data in breach of this Appendix;
- (b) require its Group Manager Internal Audit & Assurance to investigate each breach and to produce a report on the incident together with any recommendations (if considered appropriate) aimed at preventing a reoccurrence of a breach;
- (c) notify the Trader in writing of any breach and provide it with a copy of the incident report; and
- (d) maintain a record of all known breaches.

## **12 Liability and indemnity**

- (1) 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) suffered or incurred by the Trader arising out of or in connection with any breach of the Distributor's obligations under this Appendix.
- (2) 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) 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**

The Trader may conduct periodic audits to confirm that the Distributor is meeting its obligations in respect of Data supplied under this Appendix, as follows:

- (a) audits may be conducted at any time, but no more than twice in any twelve month period;
- (b) audits must be preceded by at least seven days prior written notice by the Trader;
- (c) audits must be conducted using an 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 Data supplied under this Agreement (in which event, the costs must be met by the Distributor).

#### **14 Destruction of Data**

- (1) On termination of this Agreement or, once any 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 Data.
- (2) The Distributor must provide, no later than 5 working days after the destruction of all such Data, a certificate to the Trader in the form set out in clause 16 confirming that all such Data has been destroyed.

#### **15 Termination**

The following clauses of this Appendix survive the expiry or termination of this Agreement:

- (a) clause 3;
- (b) clause 4(2);
- (c) clause 4(3);
- (d) clause 4(4)(b);
- (e) clauses 11 and 12;
- (f) clause 13; and
- (g) any other clause intended to survive termination.

#### **16 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) The 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 Data to the Distributor due to matters beyond its control.
- (5) The parties agree:
  - (a) this Appendix is the entire agreement between the parties regarding the Data and supersedes, in relation to the Data only, any previous agreement, understanding or negotiations about the Data; and
  - (b) in the event of any inconsistency between this Appendix and any previous agreement, understanding, or negotiations in relation to the Data, this Appendix prevails.
- (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 business days of it being raised by a party.
- (7) All notices given under this Appendix must be delivered to the head Office of the respective parties.

## 17 Data destruction certificate

**[Insert Trader's Name]**  
**Data Destruction Certificate**

I certify that the data received by [me] and described below, including all copies (whether on paper or in any electronic information storage and retrieval system or in any other storage medium) of that data in the Distributor possession or control, has been destroyed, or erased from the Distributor's systems.

**Description of Data:** *[insert details]*

**Date Data received:** *[insert date]*

**Details of copies of the Data made (if any):** *[insert details]*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## 18 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

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

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

**Customer Information** means information about a Customer received from the Trader under this Agreement, but does not include aggregated and anonymised information contained in documents, reports, analyses or other materials that are prepared for a Permitted Use;

"**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;

"**Group Manager Internal Audit & Assurance**" means the Distributor's assurance advisor or equivalent role;

"**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 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;

**"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;

**"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

cl 12A.2(1)

### Other provisions applying to distributor and participant arrangements

#### 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.

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## 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 **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.

- (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 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.
- (4) 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) 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 each **default distributor agreement** that it is required to have does not include any terms other than the terms described in subclauses (1) and (2).
- (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:

<b>Row</b>	<b>Column 1 – Distributor</b>	<b>Column 2 – Appendix</b>
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—
  - (a) each **distributor** when it sets the **operational terms** in a **default distributor agreement**; and
  - (b) 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—
  - (a) be consistent with the **Authority's** objective set out in section 15 of the **Act**; and
  - (b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the requirements of the **participant** trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**; and
  - (c) reflect the interests of **consumers** on the **distributor's network**; and
  - (d) 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:

<b>Row</b>	<b>Column 1 – Distributor</b>	<b>Column 2 – Date</b>
1	Each <b>distributor</b> that owns or operates a <b>local network</b> , and has an <b>interposed arrangement</b> with 1 one	For Orion New Zealand Limited, Powerco Limited, Unison Networks Limited, Vector Limited, and Wellington

	<p>more <b>traders</b> trading on the <b>local network</b></p>	<p>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>
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- (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) 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.

## **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.

## **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.

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**Schedule 12A.4, Appendix A** Sch 12A.4, cls 3(4)  
**Default distributor agreement for distributors and traders on local  
networks (interposed)**