

Electricity Industry Participation Code 2010

Part 1 Preliminary provisions

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

alternative agreement has the meaning given to it by clause 8(1) and 8(2) of Schedule 12A.2

collateral term means a term in a **default distributor agreement** that is not—

- (a) **a core term; or**
- (b) **an operational term; or**
- (c) **a recorded term; or**
- (d) **a term included in a default distributor agreement in accordance with clause 3(1)(d) of Schedule 12A.4**

core term means a term set out in a **default distributor agreement template** for inclusion in a **default distributor agreement** in accordance with clause 3(1)(a) of Schedule 12A.4

default distributor agreement means an agreement that a **distributor** is required to develop in accordance with clauses 3 to 11 of Schedule 12A.4, and which includes—

- (a) **core terms; and**
- (b) **operational terms; and**
- (c) **recorded terms** (whether or not those terms are included in the **default distributor agreement** published in accordance with clause 6(1) or 12(1) of Schedule 12A.4); and
- (d) **collateral terms** (if any); and
- (e) **any terms included in accordance with clause 3(1)(d) of Schedule 12A.4**

default distributor agreement template means a template agreement set out in an appendix to Schedule 12A.4

distributor agreement means an agreement between a **distributor** and a **participant** trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**

interposed arrangement means an arrangement between a **distributor** and a **trader** under which the **distributor**—

- (a) **conveys electricity to 1 or more consumers on the distributor's network; and**
- (b) **does not have a contract in respect of the conveyance of electricity with that consumer or those consumers**

operational term means a term that is described in a **default distributor agreement template** for inclusion in a **default distributor agreement** in accordance with clause 3(1)(b) of Schedule 12A.4

recorded term means a term that is described in a **default distributor agreement template**, and may be included in a **default distributor agreement** in accordance with clause 3(2) of Schedule 12A.4

serious financial breach—(a) means a failure by a **retailer**—

(i)(a) to pay to a **distributor** an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the **retailer** for the previous month, unless the amount is genuinely disputed by the **retailer**; or

(ii)(b) to comply with the prudential requirements under a **use-of-system agreement distributor agreement** between the **retailer** and a **distributor**; but

(b) ~~does not include a failure by a **retailer** to comply with prudential requirements to the extent that the prudential requirements exceed what is permitted under clauses 12A.4 and 12A.5~~

~~**use-of-system agreement** means an agreement between a **distributor** and a **trader** that allows the **trader** to trade on the **distributor's local network** or **embedded network**~~

Part 11

Registry information management

11.5 Participants may request that distributors create ICP identifiers for ICPs

- (1) A **participant** to whom clause 11.3 applies may request that a **distributor** create an **ICP identifier** for an **ICP** on a **network** for which the **distributor** is responsible.
- (2) A **participant** that is a **trader** may make a request under subclause (1) only if the **participant trader** has,—
 - (a) in the case of a **trader** to whom Schedule 12A.1 or Schedule 12A.3 of Part 12A applies, a **distributor agreement** with the **distributor** an arrangement with the **distributor** for **line function services** in accordance with clause 11.16; or
 - (b) for all other **traders**, and arrangement with the **distributor** for **distribution** services in accordance with clause 11.6.
- (3) A **distributor** to whom a request is made must, within 3 **business days** of receiving the request, create a new **ICP identifier** for each **ICP** to which the request relates in accordance with clause 1 of Schedule 11.1, or advise the **participant** of the **distributor's** reasons for not complying with the request.

11.16 Trader to ensure arrangements for line function services and metering

Before providing the **registry manager** with information in accordance with clause 11.7(2) or clause 11.18(4), a **trader** must have—

- ~~(a) ensure that it, or its **customer**, has made any necessary arrangements for the provision of **line function services** in relation to the **ICP**; and~~
- (a) either,—
 - (i) if the **trader** is a **trader** to whom Schedule 12A.1 or Schedule 12A.3 of Part 12A applies, a **distributor agreement** with the **distributor** on whose **network** the **ICP** is located; or
 - (ii) in all other cases, entered into an arrangement for the provision of **distribution** services in relation to the **ICP** with the **distributor**; and
- (b) ~~have entered into an arrangement with a **metering equipment provider** to be responsible for each **metering installation** for the **ICP**.~~

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)

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 distributor that owns or operates a local network , and has an interposed arrangement with 1 or more traders trading on the local network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor described in column 1 of this row	Schedule 12A.1 Schedule 12A.2 Schedule 12A.4
2	Each distributor that owns or operates an embedded network , and has an interposed arrangement with 1 or more traders trading on the embedded network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor 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 distributor that owns or operates a local network , and has an interposed arrangement with 1 or more traders trading on the local network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor 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 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 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 5th **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) 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 13(1) of Schedule 12A.4.
- (5) 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 13(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 13(1) of Schedule 12A.4; and
 - (d) any terms relating to additional services that either party requires be appended to the **distributor agreement** in accordance with clause 8.
- (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 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	Distributor	Appendix A (Income distribution services)
2	Distributor	Appendix B (Provision of trust and co-operative company information)
3	Distributor or trader	Appendix C (Provision of customer information)

- (3) Subject to subclause (4), if, in relation to a **distributor agreement**, 1 or more parties requires 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.
- (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) 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.

9 Alternative terms for additional services

- (1) A **distributor** and a **participant** may 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").
- (2) If a **distributor** and a **participant** 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; 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 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 5th **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(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 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**.

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:

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 the requested Consumption Data to the Distributor within 5 Business Days.
- (3) The Trader must supply half hourly data collected from the Metering Equipment Provider, and non-half hourly in the cases where half hourly data is not collected.

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 will attach to this Appendix a document ("Data Agreement") in the form set out in clause 19, which sets out:
 - (a) the Consumption Data to be provided by the Trader to the Distributor;
 - (b) any Other Purposes for which the Distributor may use the Consumption Data in addition to the Permitted Purposes;
 - (c) the persons to whom the Consumption Data may be disclosed by the Distributor;
 - (d) the frequency at which Consumption Data will be exchanged;
 - (e) for how long the Distributor may use the Consumption Data ("Permitted Time Period");
 - (f) the format in which Consumption Data will be exchanged.
- (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 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;
 - (c) the Consumption Data may only be used by the Distributor for the Permitted Time Period as defined in the Consumption Data Agreement or as otherwise set out in this Appendix;
 - (d) the Consumption 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

- (e) 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.

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.

5 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 Consumption Data.

6 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 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.

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 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 distributor is liable for the acts and omissions of such agents, advisors or contractors; 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:
 - (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, 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:
 - (i) expressly permitted by the Data Agreement; or
 - (ii) the Distributor has obtained the prior written approval of the Trader.
- (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.
- (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;
- (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) include provisions for training of Data Team members on the requirements set out in this Appendix and the information security plan;

- (c) 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) 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) 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) include measures to protect electronic files containing Consumption Data (for example password protection and data encryption);
- (g) include the provision of locked cupboards for the secure storage of any Consumption 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 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) 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

- (1) 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 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 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.

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.
- (2) 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:
- (a) no less than 5 Business Days after the date of such notice; or
 - (b) immediately if the Trader has ceased to supply electricity to all Customers.
- (3) 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.
- (4) 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.
- (5) 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.

- (6) The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination.
- (7) On the effective date of termination the parties must have returned or certified the destruction of the other party's Confidential Information.
- (8) Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

16 Destruction of Consumption Data

- (1) 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.
- (2) The Distributor must provide, no later than 5 Business Days 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.

17 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;
 - (d) clause 8;
 - (e) clause 9;
 - (f) clauses 12 and 13;
 - (g) clause 14; and
 - (h) 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.

18 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 Consumption Data to the Distributor due to matters beyond its 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) 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) 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.
- (8) All notices given under this Appendix must be delivered to the head Office of the respective parties.

19 Data Agreement

This data agreement applies to Consumption Data provided by **[Insert Trader's Name] (Trader)** to **[Insert Distributor's Name] (Distributor)**.

The Trader and the Distributor agree that the Distributor may use the Consumption Data provided 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 Consumption Data in the Distributor's possession or control, for the Permitted Purposes and the Other Purposes specified below and for the Permitted Time Period outlined below.

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]*

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

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

Single access , or

Ongoing Access:

Daily Weekly Monthly Quarterly Annually Other

Permitted Time Period:

a) Start date: _____ *[insert date]*

b) End date: _____ *[insert date]*; or until notice of termination

The format in which Consumption Data will be 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*

<i>Business and/or General requirements]</i>	
<i>For [insert Distributor's name]</i>	<i>For [insert Trader's name]</i>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

20 Consumption Data destruction certificate

**[Insert Distributor's Name]
Consumption Data Destruction Certificate**

I certify that the Consumption 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 Consumption Data: <i>[insert details]</i>
Date Consumption Data received: <i>[insert date]</i>
Details of copies of the Consumption Data made (if any): <i>[insert details]</i>

Signature: _____

Name: _____

Title: _____

Date: _____

21 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 for each ICP the trader supplies, and which the retailer holds or obtains, but does not include aggregated and anonymised information contained in documents, reports, analyses or other materials that are prepared 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;

"Permitted Purposes" means:

- (a) developing Distribution Prices,
- (b) planning and management of the Network in order to 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.

"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:

- (a) the second of two or more breaches in a twelve-month period, or
- (b) 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

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 distributor that owns or operates a local network , and has an interposed arrangement with 1 or more traders trading on the local network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor described in column 1 of this row
2	Each distributor that owns or operates an embedded network , and has an interposed arrangement with 1 or more traders trading on the embedded network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor 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 distributor that owns or operates an embedded network , and has an interposed arrangement with 1 or more traders trading on the embedded network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor 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 distributor that owns or operates a local network , and has an interposed arrangement with 1 or more traders trading on the local network	Each trader that is a retailer , and is trading or wishes to trade at an ICP on the network of a distributor 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 distributor that owns or operates a local network , and has an interposed arrangement with 1 or more traders trading on the local network	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:

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

- (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 15th **business day** after the date on which the amended **default distributor agreement** was made available under clause 12.

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

Part 14

Registry information management

14.41 Definition of an event of default

Each of the following events constitutes an **event of default**:

...

- (h) termination of a **trader's ~~use-of-system~~ distributor agreement** with a **distributor** because of a **serious financial breach** if—
 - (i) the **trader** continues to have a **customer** or **customers** on the **distributor's local network** or **embedded network**; and
 - (ii) there are no unresolved disputes between the **trader** and the **distributor** in relation to the termination; and
 - (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and
 - (iv) the **distributor** gives notice to the **Authority** that this subclause applies.