



SUBMISSION ON THE ELECTRICITY AUTHORITY'S PROPOSED DEFAULT DISTRIBUTOR AGREEMENT



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Introduction

This is Vector Limited's (Vector) submission on the Electricity Authority's (the Authority) consultation paper, *Code amendment proposal: Default Distributor Agreement* (DDA consultation paper), dated 20 August 2019.

We appreciate the Authority's engagement with electricity distributors through a workshop on the Authority's proposal, facilitated by the Electricity Networks Association (ENA), on 17 September 2019 in Wellington.

This submission has four main parts, corresponding to the questions in the consultation paper, and three appendices. Part 1 sets out our views on the Authority's problem definition for this consultation. Part 2 provides our high-level comments on the proposed Part 12A and DDA template. Part 3 provides our comments on the draft Electricity Industry Participation Code 2010 (Code) that would introduce the DDA proposal. Part 4 sets out our views on the Authority's Regulatory Statement for this consultation.

Appendices A and B contain marked-up versions of the proposed Part 12A and DDA template, respectively, reflecting our clause-by-clause comments on these documents. Appendix C contains an excerpt from a Vector presentation to the Electricity Price Review (EPR) Panel that supports our view on the use of data in Part 2 of this submission. The appendices are submitted as separate Word and PDF files as part of Vector's submission pack.

No part of this submission is confidential. We are happy to discuss any aspects of this submission with the Authority and other interested industry participants. Vector's contact person for this submission is:

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Vector supports the submissions of Entrust and the ENA on this consultation.

To enable a more meaningful consultation, and consistent with good regulatory practice, we strongly propose that the Authority hold a second round of consultation on any future/revised version of the DDA template and enabling Code changes following this submission process.



Vector's Network Control Room, Auckland

Executive summary

As a leading technology solutions company with a vision of *creating a new energy future*, Vector sees its engagements with the Authority and industry participants as opportunities to seek better outcomes for consumers.

Through our electricity distribution network in Auckland, we are rising to the challenge of providing new energy solutions that promote energy efficiency and the use of renewable energy. This will benefit all New Zealanders, not just Aucklanders, and move us all towards an affordable low-carbon world.

Vector's customers continue to adopt new technologies in their homes, businesses and leisure activities, and increasingly, with the vehicles that they drive. They tell us that they value energy services that are safe and reliable as well as giving them greater choice and control of how, where and when they use and discharge electricity. Enabling them to continue to do this supports the Authority's objective of promoting innovation and consumer participation in electricity markets.

We do not consider the net benefits of a DDA, as presented in the consultation paper, to be clearly justifiable. We believe there are regulatory levers that can deliver much greater efficiency and consumer benefits without the risk of stifling innovation, including innovation in contracting. These include enabling greater data access and implementing much-needed reforms in the wholesale electricity market as highlighted by the EPR.

However, should a DDA be pursued, we wish to see a DDA regime that enables us to keep working with our customers, to meet the infrastructural requirements associated with growth in Auckland. Such a regime enables us to invest in technologies that future-proof our network, facilitates the efficient and safe connection of distributed energy resources (DER), and promotes consumer choice. It is also paramount that the comments of submitters in this consultation are duly considered, given that the industry would move from a voluntary model use-of-system agreement (UoSA) to a mandated template distributor agreement.

We acknowledge that the Authority's proposed DDA contains improvements on the 2016 DDA. These improvements provide greater flexibility for distributors to deliver innovative and better services that benefit consumers, including provisions that:

- enable distributors to access consumption data directly from retailers;
- allow distributors to contract with retailers on existing UoSA terms with retailer consent; and
- provide for dividends and beneficiary information rights that a distributor can elect to include in its DDA.

However, to maximise the benefits of new technologies to our existing and potential customers, we propose amendments to the provisions on the following, among others:

- ensuring distributors have the ability to offer new technology solutions to customers on an equal footing with other industry participants;
- improving distributors' access to and ability to meaningfully use consumption data in a manner that improves network management and planning, and enables a wider understanding of electricity consumption behaviours - for the benefit of consumers; and
- Good Electricity Industry Practice qualification of Vector's service standards/force majeure event.

In Vector's view, it is of critical importance that regulatory frameworks and industry and commercial arrangements continue to evolve and are allowed to do so by regulators. This will ensure that consumers can maximise the benefits from new technology solutions and meaningfully contribute to *creating a new energy future*.

Part 1. Problem definition

Q1. What are your views on the problem definition? Specifically:

- a. the efficiency problem
- b. the competition in retail markets problem
- c. the competition in related services markets problem.

Efficiency

The value of static efficiency considerations is greatly diminished in a rapidly changing environment.

“It’s tough to make predictions, especially about the future”, so said a renowned baseball commentator.

As the electricity industry transitions into the digital age, it faces great uncertainty but also game-changing possibilities. Those who try to make sense of this transition can only draw scenarios on what the energy sector could look like years from now.

However, there are things that we do know. We know that our customers continue to adopt new technologies in their homes, businesses and leisure activities, and increasingly, with the vehicles that they drive. They tell us that they value energy services that are safe and reliable as well as giving them greater choice and control of how, where and when they use energy.

For Vector, achieving its vision of *creating a new energy future* requires it to innovate and invest smartly now to ensure the future of Auckland and all New Zealanders. Auckland’s population is projected to increase to 1.9 million by 2025. DER will help Vector support this growth in a way that is sustainable and affordable by reducing customers’ reliance on centralised sources of energy. The current regulatory and market arrangements based on existing market segments need to evolve to ensure potential efficiencies and consumer benefits can be realised.

The consumer benefits from imposing a DDA are not clearly justifiable compared to the magnitude of consumer benefits the Authority has cited to support its other proposals. The value of static efficiency is highly diminished in a rapidly evolving energy sector where assumptions can change within short periods of time.

In the rapidly evolving energy sector, any party can conceptually be a producer, consumer, ‘prosumer’, aggregator, trader, or connection agent (a role envisaged under a multiple trading arrangement). The convergence of these roles and services, enabled by new technologies, makes assessment based on existing market segments less compelling.

The most efficient and effective way to generate value in the new energy future is to put consumers at the heart of our decision making. We do this with our Symphony Strategy (as set out in our 2019 Asset Management Plan), whereby we invest in our network, so it proactively facilitates customer engagement and technology uptake leading to low voltage network and customer integration. This strategy seeks to align our operating and investing activities with consumer expectations and technological change.

The costs to consumers of unintentionally stifling innovation through more prescriptive measures such as a DDA can be high. We believe there are far more effective regulatory levers that can unlock consumer benefits without the downside of limiting innovation, including in contracting. These levers include enabling greater access to data and implementing wholesale market reforms, which we discuss below.

Access to and use of metering data is critical to delivering consumer benefits.

There is now widespread agreement amongst industry participants that access to smart meter data, particularly consumption data (i.e. half hourly data), is critical to the electricity industry’s successful transition to a digital future. Indeed, this is a matter that the EPR Panel has identified as requiring urgent attention from the Authority, with the EPR Panel recommending in its final report that the Authority require retailers and metering companies to provide metering data to distributors on reasonable terms if the parties cannot agree terms within three months. The Minister of Energy and Resources went further in the Government’s response to the EPR

Panel's report and indicated that she will urge the Authority to expedite its work to ensure distributors have access to metering data. We fully support the position of the EPR Panel and the Minister on this, and we ask that the Authority provide its support in ensuring this issue is resolved with the urgency it deserves.

Vector is on record as supporting multiple trading relationships (MTR) that enable data to flow from those who possess it to those who require it to provide new and innovative services that benefit consumers. Greater access to smart meter data will enable the provision of services that allow consumers to better understand and control how they consume and use electricity, enabling efficiencies across the electricity market.

We consider the Authority's proposal requiring retailers to provide consumption data to distributors (through proposed Appendix C to Part 12A.1 of the Code) to be a step in the right direction. However, there are a number of limitations in the proposed terms that materially restrict the ability of distributors to use such data in the most effective way for their existing network operations.

Details of, and our comments on, these limitations are found in Part 2 of this submission.

Wholesale market reforms are likely to deliver vastly greater efficiency and competition improvements than a DDA.

While Vector generally supports customer driven efficiency measures, it is our view that we need to address inefficiencies in the wholesale market which have a more profound impact on prices and the existence of a 'two-tier' retail market. It is essential that competition in the wholesale electricity market is functioning effectively.

We therefore support the package of wholesale market reforms proposed by the EPR Panel in its final report, and consider their proposals to be the absolute minimum steps necessary to restore confidence and transparency in the market. We also generally support the Authority's initiatives that address wholesale market issues.

We support tougher rules for the disclosure of wholesale market information in both electricity and gas, such as information on plant outages. The Commerce Commission's (the Commission) reporting rules for distributors could provide some useful guidance in this regard.

Competition in retail markets

There are more retailers in the market than ever before.

There is no longer a clear case for intervention through a DDA based on limited competition in the retail market. There are currently some 35 retailers that are parent companies and several other brands trading across the country, more than ever before.

We have not seen evidence that the current arrangements regarding UoSAs act as a barrier to entry for new retailers. Vector introduced its electricity UoSA in 2013, with 12 existing electricity retailers signing up to that contract over the following two years. Since 2013, 26 additional new-to-market retailers signed up to Vector's UoSA. The UoSA has seen more new-to-market entrants sign up to the agreement than it has incumbent signatories.

The current arrangements around UoSAs may also offer efficiency to small, new-to-market retailers. Under Vector's UoSA, if Vector enters into a new UoSA with another retailer, it is required to offer up this contract to every existing retailer on its network. At the existing retailer's sole discretion, it can elect to sign the new agreement within the following 12 months. Vector is also required to give all retailers equal access to distribution services, so that a small new-to-market retailer stands to gain from the terms negotiated by other larger retailers without needing to negotiate these terms themselves. However, if a retailer wants to negotiate better terms than are offered by existing UoSAs, then they have the option of doing so. New entrants are then able to free ride on this rigorous development process.

Significant barriers for retailers are not driven by the UoSA process.

As indicated above, the requirement for retailers to sign up to a UoSA is not a barrier for new entrant retailers. Small retailers have conveyed to us the challenges they encounter in entering the market. These include compliance with the increasingly complex Code, risks around

exposure to the wholesale market, and satisfying the wholesale market prudential requirements. These challenges do not arise from the UoSA negotiation process.

In our view, the greatest barrier to new entrant retailers is gaining a share of the market, i.e. 'stagnant retail market'. Despite the large number of new entrants, the five large gen-tailers had over 90 percent of the ICPs on Vector's network. Our proposals above on reforming the wholesale market will come a long way in ensuring a level playing field in a two-tier retail market.

It is also in distributors' interest to make their UoSAs as streamlined as possible, which benefit their customers. In Vector's case, the contractual and operational alignment of our Auckland and Northern networks has standardised the service standards, connection processes, outage communications, and mass market pricing across wider Auckland. This was intended to enable more retailers to trade on our network and enable competition and innovation in the Auckland market.

It is in distributors' interest to see robust competition in the retail market.

We support the objective of promoting greater competition in the retail market, but do not think that a DDA would support this outcome. The largest portion of a customer's residential bill is comprised of generation and retail costs (51% of the total bill in 2018) while the percentage attributable to distribution is 25%.

As mentioned above, we have not seen evidence that current UoSA arrangements compromise retailers' entry into the market, particularly when compared with the challenge for new retailers of gaining a share of the market.

We support the EPR Panel's recommendation of prohibiting 'saves and win-backs'. The ability of Tier 1 retailers to easily 'win back' customers who are about to switch to another retailer deepens the two-tier electricity market and compromise energy affordability. If win backs were not allowed, retailers would have an incentive to offer cheaper prices up front. This results in better deals for all customers by default, as well as a more competitive and efficient market.

We support measures that help consumers find better deals and allow bulk switching to reduce costs for consumers who may benefit the most from the savings.

Every distribution network is different.

Imposing a DDA on all distributors currently operating across the country ignores the fact that distributors operate in different contexts and will evolve at different speeds. For example, while most regulated distributors are on a default price-quality path, some are on a customised price-quality path by virtue of their unique circumstances.

In Vector's case, household growth in Auckland has a much greater impact on our network than in the past, creating new expectations on us to deliver on our existing functions and adopt new roles and technology which need to be supported by flexible regulatory tools. In addition, a large portion of our customers live in energy hardship and as a majority customer-owned distributor, our customers' interests are our interests.

A 'one-size-fits-all' approach for distribution agreements will yield the 'lowest common denominator' which will limit future innovation. It also unnecessarily restricts contracting innovation and regulatory innovation, which are particularly important in a dynamic environment such as we are seeing now in the electricity sector.

Diversity in contractual agreements reflect competitive pressures and meaningful commercial negotiations in the market.

Bargaining positions are more nuanced than perceived or assumed.

We do not agree that there is an imbalance in bargaining positions in the negotiation of UoSAs, particularly in the case of large gen-retailers which are some of the biggest companies in New Zealand. As businesses of considerable size, they have the wherewithal to exert bargaining power and negotiate on a 'level playing field' with distributors. As with other sectors, we consider that contracting issues are generally best left for commercial parties to negotiate.

In the case of Tier 2 retailers, Vector's UoSA currently provides for a level playing field though its equal access and even-handedness treatment provisions (as described above). Other

concerns can be most effectively addressed through the above-mentioned reforms in the wholesale market.

The Commission has extensive powers over distributors to address competition risks, including through: 1) information disclosure, 2) price-quality regulation, 3) court proceedings to enforce breaches of the first two requirements, 4) reviews of asset management plans, 5) market studies, and 6) general consumer protection legislation. The Commission's related party rules impose disciplines on procurement of services by the regulated supplier from related parties. The risk of cross-subsidisation only exists where there is scope for the distributor to earn supernormal returns from its regulated network services, or to inefficiently allocate assets that provide competitive services into the Regulatory Asset Base for monopoly services. Vector, along with other regulated distributors, will continue to transparently report its cost allocation methodology.

Distributors are internally accountable to their board and shareholders (who in many cases are also customers) and externally to customers and regulators through the above requirements. As a highly regulated business, we are attuned to the risk of price shocks to consumers and take this issue seriously.

Competition in related services markets

Distributors are facing stronger incentives to connect more DER.

Distributors and their customers currently bear the costs of network investment. As a distributor, we have a clear and unique incentive to support the connection of more DER to more efficiently manage the use of our low voltage network and provide our customers greater control over their energy use.

We are preparing our network to manage bi-directional or multi-directional flows of energy and the increasing uptake of electric vehicles (EVs). Using smart technology can help make our network 'asset light' and avoid costly new network investment or expansion.

Currently, cost savings from the use of DER technology is mostly available to consumers who can afford it. A system level transition to greater DER, supported by distributor investment, rather than relying on consumer investment, would benefit all users of the network.

Diversity and flexibility enable innovation that benefits consumers.

The electricity market is becoming more complex. New business models, enabled by new technologies, are delivering new and innovative services. It is no longer hard to imagine a future of multiple trading relationships, including peer-to-peer trading, which would require innovative tariffs.

We therefore do not support proposals to potentially restrict the ability of distributors to invest in DER. Such proposals carry forward assumptions of the past without considering the challenges and opportunities that are unique to the present and the future. Issues arising from the convergence of services and roles will require solutions to cross-cutting issues.

Innovation has economy wide benefits that cannot be captured by a single firm. Given the high-risk nature of research and development and innovation, this creates incentives for businesses to under-invest. Enabling businesses to overcome this market failure requires a regulatory framework which enables, rather than inhibits, innovation. Distributors providing services 'behind the meter' increases competition in that market.

Should a DDA be adopted, it should be used not only to deliver efficiency improvements but also flexibility and diversity in market arrangements that provide a conducive environment for commercial solutions and partnerships to be developed.

Partnerships are a key element in delivering better consumer outcomes.

DER energy has a critical role to play in supporting network resilience, energy affordability, and the transition to a low emissions economy. There are not many firms in New Zealand that both have the capacity and the incentive to invest in disruptive energy innovation. Allowing distributors to invest in DER in support of these objectives is unlikely to squeeze other players

out, given the competition risk mitigations identified above. What is likely is that disallowing distributors to make investments would severely limit innovation in the market.

Meeting the challenges of the industry's transition to the 'grid of the future' requires a regulatory approach that considers opportunities not only for innovation and competition, but also for coordination. Vector is partnering with other distributors and independent retailers who, as customer owned entities, have a strong drive to put customers at the heart of their operations. We are also partnering with the Electricity Retailers Association of New Zealand (ERANZ) in support of the EnergyMate project to deliver energy efficiency education and support for families in hardship. Our scale and community ownership make us well placed to make the most of these opportunities.

We believe the role of economic regulators is to remove barriers to the above investments and partnerships that benefit consumers and allow the regulatory framework to evolve. This will enable consumer benefits to be optimised and potential benefits to be realised.

Part 2. Part 12A and DDA template

Q2. What are your views on the revised:

- a. Part 12A proposal
- b. DDA template proposal.

Part 12A proposal

We set out in Table 1 below our comments on the key issues identified in the Authority's Part 12A proposal. Capitalised terms used but not defined in this table have the meaning given to them in the proposed Part 12A.

All our comments in Table 1, together with comments of lower significance not identified in Table 1 and Entrust's comments from its submission on this consultation, have been reflected as mark-ups against the proposed Part 12A, which is attached as Appendix A to this submission.

To assist the Authority in navigating between our comments below and the mark-up of Part 12A attached as Appendix A, we have included in each comment below a reference to the specific clauses in the mark-up of Part 12A that we have amended to reflect that comment.

Table 1. Comments on the proposed Part 12A

Clause	Description	Vector's comment
General		
cl. 7 of Sch 12A.4	Grandfathering of existing operational terms	<p>To ensure the new DDA regime can be introduced within the timeframes proposed by the Authority and with minimal disruption, we submit that distributors' existing operational terms are grandfathered into distributors' DDAs by being exempt from any consultation with traders and Rulings Panel review.</p> <p>Under the proposed Part 12A, the first group of distributors are required to prepare, consult on, and publish their DDAs all within 90 days (circa 64 business days) after Part 12A comes into force. They are then required to offer their DDA to existing traders on their networks no later than 10 business days after their DDAs are first made available on their websites. If a trader gives notice wishing to contract on the DDA, the DDA will take effect as a contract between the trader and the relevant distributor 5 business days after that notice is given.</p> <p>Before making their DDA available on their website, a distributor is required to consult with traders on their proposed operational terms. If a trader appeals those terms to the Rulings Panel and the Rulings Panel elects to review those terms – it could be up to 50 business days from the commencement of the distributor's consultation before a decision is received from the Rulings Panel on those terms.</p> <p>If the Rulings Panel has a right to review the operational terms of the DDA first prepared by each distributor upon Part 12A coming into force (the Initial DDAs), even where those operational terms simply reflect the distributors' current operational terms, the above timeframes will be too tight and will be unworkable. In particular, they could lead to distributors' DDAs taking effect as binding contracts before appeals to the Rulings Panel have been determined. This could lead to considerable uncertainty and, if the Rulings Panel elects to amend operational terms, disruption to distributors, traders and</p>

Clause	Description	Vector's comment
		<p>(potentially) customers. There is a risk that distributors may be forced to have different operational terms across their distributor agreements if retailers can elect whether to adopt Rulings Panel determinations – resulting in further costs to consumers as distributors have to operate different operational practices and processes between traders on their network.</p> <p>To address this, we submit that a distributor should be able to incorporate their current operational terms from their existing contracts into their Initial DDA and those terms not be subject to consultation with traders or Rulings Panel review. This approach is consistent with the Authority's own view on the acceptability of distributors' current operational terms, as expressed in the 2019 Consultation Paper: "Distributors need only to transfer the operational terms they have in existing contracts into a DDA. There are no new operational processes required."¹ It would also avoid the timetable issues and the potential for different operational terms across a distributor's contracts identified above, as well as the potential for the Rulings Panel being overwhelmed with review requests upon implementation of the DDA regime.</p> <p>If this proposed grandfathering of current operational terms into Initial DDAs is not acceptable to the Authority, then Vector will require not less than 150 days after Part 12A comes into force to prepare, consult on and publish our Initial DDA – to allow for all Rulings Panel reviews to have been determined first.</p> <p>We have inserted a new clause 7(3) in Schedule 12A.4 to reflect the above.</p>
<p>New cl. 8(7) of Sch 12A.4</p>	<p>Right to appeal Rulings Panel decisions on operational terms</p>	<p>The proposed Part 12A gives traders the right to appeal the inclusion of operational terms in a distributor's DDA to the Rulings Panel, but does not give distributors or indeed traders any right to appeal the decisions of the Ruling Panel, notwithstanding that the decisions of the Rulings Panel – which include the ability to amend operational terms – could have far-reaching commercial and operational consequences for a distributor and the terms upon which it provides distribution services to all traders on its network.</p> <p>This is particularly the case where the Rulings Panel is proposed to be given the power under Part 12A to amend or change an operational term and to choose whether:</p> <ul style="list-style-type: none"> • only a distributor can elect to apply the change; • only a trader can elect to apply the change; or • either party can elect to apply the change. <p>If the Rulings Panel decides to change an operational term and further decides that only traders can elect to apply that change, a distributor could be left with different distributor agreements having different operational terms and with no ability for that distributor to ensure consistency, thus creating significant cost and operational complexity for the distributor.</p>

¹ Paragraph C.131 of the 2019 Consultation Paper. See also paragraph 5.35 of the 2019 Consultation Paper.

Clause	Description	Vector's comment
		<p>Given this, and the fact that any decision of the Rulings Panel could have wide-ranging consequences for all of a distributor's distributor agreements based on that distributor's DDA, we submit that any order or decision of the Rulings Panel in relation to an operational term under proposed Part 12A should be able to be appealed by the affected distributor or trader to the High Court under section 65(1)(f) of the Electricity Industry Act. We have inserted a new clause 8(7) in Schedule 12A.4 to reflect this.</p> <p>This submission is consistent with the view of the EPR Panel on appeal rights for regulatory decisions about distributors' involvement in distributed energy services. In the EPR final report dated 21 May 2019, the EPR Panel noted that such regulatory decisions could have significant implications for commercial freedom and investments by distributors, and therefore appeals on merit should be allowed in the same way that they are allowed against input pricing methodology decisions.² In our view, this reasoning of the EPR Panel applies equally to support appeals against Rulings Panel decisions on operational terms.</p> <p>We also note that if the Rulings Panel is to be given jurisdiction to hear appeals of operational terms under the proposed Part 12A, then a different set of skills and experience to those currently required will be needed of the Panel's members. In particular, members will need to have direct experience of the day-to-day front line operations of distributors and traders, including in the areas of management of service interruptions, connection and disconnection practices, load management and system emergency event management.</p>
<p>New cl. 14 - 16 of Sch 12A.4</p>	<p>Amendment of Collateral and Recorded Terms</p>	<p>The proposed Part 12A only provides a regime to amend operational terms in DDAs and existing distributor agreements, and not to amend recorded or collateral terms. Given the evergreen nature of distributor agreements under the DDA regime, Part 12A needs to provide an equivalent regime to amend recorded and collateral terms in such agreements – otherwise it is unclear whether, once a distributor has published their DDA including recorded or collateral terms, those DDA terms can be amended.</p> <p>Recorded terms address matters that may fall under the Commission's jurisdiction (and not the Authority's). As such, we do not consider it is appropriate for the Authority to prescribe how these terms can be amended – either through the provisions of Part 12A or the core terms of the DDA template that deal with amendments to the DDA – given that the Authority does not have jurisdiction over recorded terms. For the Authority to do so would be contrary to the Court of Appeal's declaratory judgment of 13 March 2019.</p> <p>We submit that a distributor should be able to specify how a recorded term can be amended in the recorded term itself (which could be as simple as a reference to a recorded term amendment process published on the distributor's website) and should be able to amend recorded terms included in their</p>

² Recommendation F1 of the EPR Panel's final report dated 21 May 2019 at page 58.

Clause	Description	Vector's comment
		<p>published DDA at any time by making their DDA with the amended recorded term available on their website. We have inserted a new clause 14 in Schedule 12A.4, a new clause 22.1(c) in the DDA template, and amended the dashed boxes in the DDA template that identify recorded terms, to reflect this.</p> <p>In the case of collateral terms, we consider Part 12A should include a regime to allow for these terms to be amended that is consistent with the existing regime dealing with how such terms can be incorporated into DDAs and distributor agreements. Presently, under Part 12A, a distributor is free to include collateral terms in their published DDA (and must clearly identify those terms as such), and a trader is free to opt out of those terms by objecting to them at any time prior to the DDA applying as a binding contract.</p> <p>We submit that a distributor should be free to amend a collateral term in their published DDA at any time by making their DDA with the amended collateral term available on their website. With respect to existing distributor agreements that include the collateral term that is amended, we submit that distributors should be able to give traders on those agreements 15 business days' notice of an amended collateral term, within which a trader can object to the amended collateral term by notice. If a trader does not object, their existing agreement should be deemed to be amended from the expiry of that 15 business day notice period. We have inserted new clauses 15 and 16 in Schedule 12A.4 to reflect this.</p>
Income Distributions (Appendices A and B to Schedule 12A.1)		
Appendix A, new cl. 1(4)	Grandfathering of existing income distribution services arrangements	<p>Depending on the date that the proposed Part 12A comes into force, the process for payment of an income distribution under a distributor's existing UoSA may already be underway. That is, a distributor may have already notified traders under their existing UoSA of an impending distributor/shareholder trust distribution, with the parties working towards facilitating that distribution under the terms of those existing UoSAs. In that situation, it could be highly disruptive and costly if distributors and traders are expected to shift from the income distribution provisions under their existing UoSAs to the terms of proposed Appendix A to Schedule 12A.1 (Appendix A) immediately upon entry into of a distributor agreement that includes Appendix A.</p> <p>We submit that if, prior to the entry into of a binding distributor agreement between a trader and a distributor under Part 12A, the distributor has already notified the trader under an existing UoSA that the distributor requires the trader to pay an income distribution on behalf of the distributor or its shareholder trust to that trader's qualifying customers, then the distributor may elect (by notice to the trader within 5 business days of the distributor agreement coming into effect) that the income distribution provisions set out in the existing UoSA continue to apply with respect to that already notified dividend (to the exclusion of the income distribution services provisions included in the distributor agreement).</p> <p>We have inserted a new clause 1(4) in Appendix A to reflect the above.</p>

Clause	Description	Vector's comment
<p>Appendix A, cl. 5(1) and 8</p>	<p>Party responsible for and timing of income distribution payments</p>	<p>The proposed Appendix A makes distributors responsible for the payment of income distributions to traders. However, in the case of Vector, Entrust is responsible for such payments. As a listed company, Vector declares and pays dividends annually to its shareholders, including Entrust, and Entrust is responsible for the distribution and payment of its dividends to its trust beneficiaries. This reflects Entrust's legal obligation to distribute its dividends to its beneficiaries under its trust deed.</p> <p>We submit that a distributor be entitled to nominate that its underlying shareholder trust (i.e. Entrust in the case of Vector) will pay the trader the amount of a distribution by that trust. This will be beneficial to consumers, as well as distributors and traders alike, because it will allow existing income distribution arrangements that involve shareholder trust's paying their distributions direct to traders to continue. To protect the position of traders (who would otherwise be obliged to credit the income distribution to qualifying customers before receiving payment under Appendix A as currently drafted), we submit that Appendix A be amended to provide that the trader's obligation to pay the distribution to customers only arise once the trader has received payment for the income distributions.</p> <p>Consistent with the above, if the distributor does nominate its shareholder trust to pay the trader the income distribution, we submit that any refunds from the trader of unpaid distributions should be refunded to the shareholder trust (as opposed to the distributor), which can then attempt to arrange payment to its beneficiaries by other means.</p> <p>We have amended clauses 5(1) and 8 in Appendix A to reflect the above.</p>
<p>Appendix A, cl. 4(3) and 8</p>	<p>GST invoice</p>	<p>The proposed Appendix A provides that the trader must issue the distributor with a GST invoice for the income distributions (to be) credited to qualifying customers.</p> <p>As not all income distributions (such as Entrust's) will be subject to GST, we submit that that the trader only be required to issue a GST invoice if requested to do so by the distributor.</p> <p>We have amended clauses 4(3) and 8 in Appendix A to reflect the above.</p>
<p>Appendix B, new cl. 3(1)(f)</p>	<p>Distributor promotional material</p>	<p>Under the proposed Appendix B to Schedule 12A.1 (Appendix B), the distributor is only able to use beneficiary information provided in response to a distributor/shareholder trust request for one of the permitted uses or disclosures set out in clause 3 of Appendix B.</p> <p>Under Vector's UoSA, Vector is permitted to use that beneficiary information to communicate with Entrust's beneficiaries by including promotional material relating to the planning and management of its network or the provision of distribution services in any correspondence that Entrust sends to its beneficiaries. Vector has exercised this right in the past by including promotional materials containing information about the undergrounding of overhead power lines as well as tree trimming requirements in respect of overhead lines in Entrust mail-outs to its beneficiaries. As a distributor, we consider that</p>

Clause	Description	Vector's comment
		<p>correspondence by a shareholder trust to their beneficiary-customers provides a unique and cost-efficient opportunity to communicate with customers about the function of their distributor (whose business has generated any distribution the customers are receiving) and how the distribution services provided by their distributor may affect them.</p> <p>Accordingly, we submit that distributors should be able to use the beneficiary information obtained under Appendix B to include promotional material relating to (i) the planning and management of their network or (ii) the provision of distribution services, with any correspondence that their shareholder trust sends to its beneficiaries. Such a use of beneficiary information benefits consumers by increasing their awareness of the distributor's role, services and safety around the Network, whilst avoiding duplicative mail-out costs.</p> <p>We have inserted a new clause 3(1)(f) in Appendix B to reflect the above.</p>
Consumption Data (Appendix C to Schedule 12A.1)		
Appendix C, cl. 1, 2 and 21	Consumption data held by Metering Equipment Providers	<p>Consumption data of the nature required by distributors to manage their networks will often be held by a trader's Metering Equipment Provider (MEP) but not necessarily by the trader itself. The proposed Appendix C to Schedule 12A.1 (Appendix C) allows distributors to access consumption data held by a trader but does not oblige a trader to obtain that data from its MEP where it does not hold that data itself, which undermines the efficacy of Appendix C and the value that distributors will be able to deliver to consumers by being able to access this data to manage their networks and therein deliver more efficient distribution charges and better quality of distribution service.</p> <p>In order for Appendix C to operate as intended and provide a distributor with, in the Authority's words, "access to the historical consumption data it needs to fulfil the distribution service"³, we submit that the trader should be required to procure that its MEPs provide the requested consumption data where it is held by the MEP but not the trader.</p> <p>We have amended clauses 1, 2(2) and the definition of "Consumption Data" in clause 21 of Appendix C to reflect this.</p>
Appendix C, cl. 21	Permitted uses of consumption data	<p>Under the proposed Appendix C, distributors can only use consumption data for prescribed 'Permitted Purposes', namely:</p> <ul style="list-style-type: none"> • developing distribution prices; and • planning and management of the distributor's network in order to provide distribution services to traders under the distributor's UoSA or distributor agreements. <p>We submit that the second of these permitted purposes should be amended to allow distributors to use consumption data to plan and manage their networks in order to provide "electricity lines services" (as defined in section 54C of the Commerce Act 1986), to ensure that distributors are not restricted from using</p>

³ Page iii of the 2019 Consultation Paper.

Clause	Description	Vector's comment
		<p>consumption data to perform their regulated activities as prescribed under the Commerce Act.</p> <p>We also submit that distributors should be able to use consumption data – as Vector does now – to prepare and distribute documents, reports and analyses for public interest purposes in relation to electricity consumption on their networks, provided that they contain no consumption data other than on an anonymised and aggregated basis. Recent examples of such usage by Vector include:</p> <ul style="list-style-type: none"> • Vector's electricity Asset Management Plan, which is published or updated annually (as required by the Commission) and provides information on how Vector intends to manage its assets to meet consumer demands in the future;⁴ • analysis of building energy efficiency, which Vector has shared with the Energy Efficiency and Conservation Authority, Treasury and Housing New Zealand and which allows for the comparison of electricity usage across different house types and houses built during different construction periods; and • analysis of representative residential load profiles, which Vector has provided to the EPR Panel and presented to the Auckland Forecasting Forum to illustrate common electricity demand profiles in winter in the Auckland region across both a typical weekday and different socio-economic deciles. <p>Attached as Appendix C to this submission is an excerpt from Vector's presentation to the EPR Panel, which provides an example of the type of anonymised and aggregated consumption data analytics that can be shared with interested stakeholders in order for them to understand the impact of electricity consumption on Vector's network. This includes analysis Vector has completed for the largest home owner on the Auckland network, Housing New Zealand, which enabled it to consider how best to improve energy consumption efficiency for tenants and compare its housing stock.</p> <p>Going forward, we would also expect to prepare and provide such reports and analyses to the Government's consumer advocacy council – to be established as one of the recommendations arising from the EPR.⁵</p> <p>It is important to note that Vector would not have been able to provide these reports and analyses under the proposed Appendix C to Schedule 12A.1 as currently drafted. From a consumer benefit perspective, these reports and analyses allow aggregated and anonymised consumption data to be shared with Government bodies, research organisations, other interested parties and the wider public to facilitate research into the impact that different behaviours and technologies are having on demand, carbon reduction, network investment and energy security in general. The fact that such reports and analyses can only include data on an anonymised and aggregated basis will</p>

⁴ A copy of Vector's 2019 Asset Management Plan can be found at: <https://www.vector.co.nz/about-us/regulatory/disclosures-electricity/asset-management-plan>

⁵ Recommendation A1 of the EPR Panel's final report dated 21 May 2019.

Clause	Description	Vector's comment
		<p>ensure that data included in any such report cannot be used to identify any customer or customers and will ensure compliance by all parties with the Privacy Act 1993.</p> <p>To reflect the above, we have amended the definition of "Permitted Purposes" and introduced a definition of "Public Reports" in clause 21 of Appendix C.</p>
<p>Appendix C, cl. 12</p>	<p>Liability for breach of consumption data obligations</p>	<p>The proposed Appendix C seeks to impose a more onerous liability regime upon the distributor for breach of its obligations with respect to consumption data than would be the case if the distributor breaches its obligations with respect to consumer information under the DDA.</p> <p>Under the DDA, consumer information is considered confidential information and there is no obvious justification for including an additional separate regime for consumption data provided under Appendix C.</p> <p>In any case, as Appendix C will be attached to and form part of the DDA if either party 'opts-in' to its terms, so any consumption data provided will also constitute "Confidential Information" under the DDA and the equivalent remedies shall be available to a retailer for breaches with respect to that consumption data.</p> <p>These comprise:</p> <ul style="list-style-type: none"> (a) a claim for damages for breach of contract that is not subject to the direct damage limitation, the consequential loss exclusion or the monetary cap on liability in clauses 24.2, 24.3 and 24.7 of the DDA; and (b) an indemnity for direct loss from third party claims in clause 27.2 of the DDA, which is subject to the third party claims provisions in clause 28. <p>This is the same position as applies under the Authority's model UoSA – which we consider is an appropriate confidentiality regime for all types of consumer information (including consumption data) provided under the DDA.</p> <p>However, in addition Appendix C also proposes to impose a very broad indemnification obligation on the distributor for any direct or indirect loss or damage suffered by the trader arising from a breach of Appendix C by the distributor. This would apply notwithstanding (i) the availability of a claim for damages for breach of a distributor's obligations under Appendix C and (ii) the partial overlap with the third party claims indemnity in clause 27.2 of the DDA. We are not aware of any compelling reasons advanced by traders or any other party, or indeed any previous breach of confidence by a distributor with respect to consumption data, that justifies a broad indemnity above and beyond the protection already afforded to traders under the provisions of the DDA. We also note that a distributor is not provided with any reciprocal indemnification from a trader should the trader breach its obligation under Appendix C to supply consumption data to the distributor (a breach that could cause the distributor considerable loss and expense if it had to obtain that information through other means).</p> <p>For these reasons, we submit that the liability regime for consumption data under Appendix C should be the same as for</p>

Clause	Description	Vector's comment
		<p>consumer information under the DDA, and that the indemnity in clause 12 of Appendix C should be deleted.</p>
<p>Appendix C, cl. 14 and 15</p>	<p>Breach, event of default and termination</p>	<p>We note that the proposed Appendix C contains its own breach, event of default and termination provisions, that apply in addition to the similar provisions in the DDA. The duplication of these clauses in both the DDA and Appendix C is confusing and unnecessary, particularly given that Appendix C, if 'opted-in', will be attached to and form part of the DDA, and can therefore rely on and enjoy the benefit of those terms in the DDA.</p> <p>We submit that these clauses should sit in the DDA only, with the provisions in the DDA being amended to incorporate the concept of "Serious Breach", which is the only new concept introduced into these provisions in Appendix C. This will result in a consistent approach to breach, event of default and termination under Appendix C as applies under Appendices A and B, which already rely on the equivalent provisions of the DDA.</p> <p>We have deleted clauses 14 and 15 of Appendix C, amended clauses 18 and 19 of the DDA template and added a definition of "Serious Breach" to clause 33.2 of the DDA template, to reflect this.</p>
<p>Appendix C, cl. 3(4)(d)</p>	<p>Restrictions on combination and transfer of consumption data</p>	<p>The proposed Appendix C restricts a distributor from (i) combining consumption data with other forms of data without the trader's consent and (ii) transferring consumption data outside of New Zealand.</p> <p><i>Restriction on Combination of Consumption Data</i></p> <p>We submit this restriction be removed as it would significantly reduce the utility of the consumption data collected from traders. For a distributor to effectively plan and manage its network for the benefit of consumers, it needs to be able to aggregate the consumption data of a retailer with census data, council data, gas usage data and the consumption data of other retailers – as Vector does now – to be able to properly ascertain and analyse people's electricity usage trends and behaviours.</p> <p>By way of a simple example, if a street comprises 10 properties, each serviced by a separate trader, the distributor would not be able to properly ascertain electricity usage habits of that street, to plan and manage the network equipment servicing that street, unless the distributor can aggregate the consumption data for those properties across those 10 traders. Without the ability to aggregate consumption data with other data sets, the proposed Appendix C is essentially of no use to distributors.</p> <p><i>Restriction on transferring Consumption Data outside of New Zealand</i></p> <p>We also submit this restriction be removed, given it would prevent the storage of data on servers located outside of New Zealand, a common practice which has already been adopted by industry participants, including for the storage of consumption data.</p> <p>For example, we are aware of at least one of the MEPs that stores metering data (including consumption data) on cloud computing infrastructure in Australia. Vector too stores its billing</p>

Clause	Description	Vector's comment
		<p>and consumption data on the Australian-based servers of a major cloud computing service provider and we expect that at least one or more traders do the same. This reflects the fact that the main cloud computing service providers (Microsoft Azure, Google Cloud Platform and Amazon Web Services) have their servers located outside of New Zealand, given that New Zealand is not currently large enough to have the diversity or scale required for those providers to locate servers here. Even the Office of the NZ Privacy Commissioner now stores its data on offshore servers in Australia – having satisfied itself that its provider (Microsoft Azure) offers industry-leading data security and that Australian privacy laws afford an equivalent level of protection to New Zealand law⁶.</p> <p>For Vector, any requirement to relocate its data storage to New Zealand would involve considerable cost and inconvenience, for no apparent consumer benefit given MEPs and traders can and already do store that data overseas. If the Authority does wish to impose geographical restrictions on the storage of consumption data (which we think it should not for the reasons above), then for those restrictions to have any effect they must be imposed on all industry participants that hold that data (MEPs, traders and distributors). The proposal in Appendix C fails to do this.</p> <p>To reflect the above submissions, we have deleted clause 3(4)(d) of Appendix C.</p>
<p>Appendix C, cl. 13</p>	<p>Audit rights</p>	<p>Under the proposed Appendix C, a trader has the right to commission an audit of a distributor's compliance with its consumption data obligations once every 12 months. In the case of Vector, this could mean it is subject to more than 30 such audits (one for each trader on its network) every year. This would be highly intrusive and distracting for Vector and impact negatively on our day-to-day operations (by removing resources from day-to-day operations to assist with duplicative audits).</p> <p>To address this, we submit that a distributor should be required, at its cost, to undertake one audit (as opposed to the trader having the right to commission an audit) of the distributor's compliance with its consumption data obligations owed to all traders on its network every 12 months and to make the findings of those audits available to traders.</p> <p>Related to maintaining the confidentiality and security of consumption data, we submit that there should be an obligation on traders to keep confidential all audit information (including any audit reports) except to the extent they are required to be disclosed by the relevant trader to enforce its rights under Appendix C. This is important given that disclosure of information concerning a distributor's information security systems and processes could otherwise result in nefarious individuals using that information to attempt to hack those systems to harvest and misuse consumption data.</p> <p>We have amended clause 13 of Appendix C to reflect the above.</p>

⁶ Refer: <https://www.privacy.org.nz/news-and-publications/statements-media-releases/moving-data-to-external-servers/>

Clause	Description	Vector's comment
<p>Appendix C, cl. 7(2), 8(2) and 17(2)</p>	<p>Permitted users of consumption data</p>	<p>Under the proposed Appendix C, there is an express prohibition (unless approved by the trader) on a distributor disclosing consumption data to any employee, 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 (Excluded Personnel). This express prohibition, however, inadvertently captures individuals involved in those activities as part of a “Permitted Purpose” – such as persons involved in the provision of batteries on a distributor’s network as part of the Permitted Purpose of planning and management of that network.</p> <p>For example, Vector has recently decided, in response to customer and community engagement, to provide and install batteries on its network at Kawakawa Bay, to address recurring electricity supply issues caused by that area’s remoteness on the south-eastern edge of Vector’s rural network. Kawakawa Bay is currently supplied via a very lengthy 11kV overhead line. Providing an alternative backup supply by means of a traditional network solution would be prohibitively expensive. Providing batteries is an economically viable alternative that allows Kawakawa Bay to operate as a self-sufficient microgrid, which can ‘island’ itself during an outage and provide back-up power to the local community – thereby improving resilience for the benefit of consumers in a cost-effective way. The personnel involved in making these network planning and management decisions – who are otherwise caught by the blanket prohibition on disclosure to Excluded Personnel – should be able to have access to and use consumption data for this Permitted Purpose.</p> <p>Accordingly, we submit that Appendix C be amended to make clear that Excluded Personnel do not include any employee, 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 <i>for a Permitted Purpose</i>.</p> <p>We have amended clause 7(2) of Appendix C to reflect this, and we have also amended clauses 8(2) and 17(2) of Appendix C to cross-refer to persons described in clause 7(2) given the similarity in those clauses.</p>
<p>Appendix C, cl. 3(3) and 19</p>	<p>Default Data Agreement</p>	<p>The intention of proposed Appendix C is to provide a standardised set of terms that will apply to permit distributors access to consumers’ historical consumption data if the parties are unable (or elect not) to agree alternative terms. However, Appendix C will be unable to function as intended unless it also includes default terms for the “Data Agreement” to be entered into between the distributor and the trader – as there could be no agreement on such principal terms in the Data Agreement as the frequency of access and the permitted time period within which the distributor can use the data.</p> <p>We submit that Appendix C should contain the terms of a default Data Agreement to apply if the parties are unable to agree on these.</p> <p>To reflect this, we have amended clauses 3(3) and 19 of Appendix C to include default terms for the Data Agreement.</p>

DDA template proposal

We set out in Table 2 below our comments on the key issues identified in the Authority’s DDA template proposal. Capitalised terms used but not defined in this table have the meaning given to them in the proposed DDA template.

All our comments in Table 2, together with comments of lower significance not identified in Table 2, have been reflected as mark-ups against the proposed DDA template, which is attached as Appendix B to this submission.

To assist the Authority in navigating between our comments below and the mark-up of the DDA template attached as Appendix B, we have included in each comment below a reference to the specific clauses in the mark-up of the DDA template that we have amended to reflect that comment.

Table 2. Comments on the proposed DDA template

Clause	Description	Vector’s comment
Operational Issues/General		
cl. 9.3	Billing provisions	<p>The proposed DDA template has a “one size fits all” approach to billing and payment as part of its core terms, which are inconsistent with Vector’s current arrangements.</p> <p>Vector’s existing billing system involves Vector issuing a pro forma invoice to each trader within 5 working days of the start of each month setting out estimated distribution service charges in respect of the previous month; with an actual invoice for that previous month (based on the information received from the trader) being issued before the end of the month in which the pro forma invoice is issued. The actual invoice replaces the pro forma invoice and is issued with a full credit note in relation to the pro forma invoice that it replaces. This two-invoice ‘pro forma/actual’ billing system is inconsistent with the one-invoice ‘actual-only’ billing system currently drafted in the core terms of the DDA template.</p> <p>To comply with the billing provisions as currently drafted in the DDA template may require Vector to develop an entirely new billing system and transition its more than 30 traders from its existing system to that new system. This would involve considerable time and expense, as well as disruption to Vector, its traders and potentially to consumers: with such time, expense and disruption not appearing to have been factored into the Authority’s cost/benefit analysis for implementation of the proposed DDA regime.</p> <p>We submit that the billing provisions of the DDA template be amended so that they are wide enough to accommodate Vector’s current billing practices. This amendment would have significant consumer benefit in that it would avoid the significant cost and disruption from the roll-out of a new system, and the potential for billing errors that may arise from the transition to a new system.</p> <p>We have amended clause 9.3 in the DDA template to reflect the above.</p>
cl. 3 and 33.2	Competition in the provision of new technologies to customers	<p>Vector is supportive of the Authority’s objective of “wanting to ensure that the provision of services relating to new technologies,</p>

Clause	Description	Vector's comment
		<p>such as distributed generation and batteries, is part of a competitive and contestable market.”⁷</p> <p>It is important however, from a customer perspective, that the DDA template not introduce barriers that prevent customers from procuring such services from any industry participants. In the case of distributors, this means that customers need to be free to be able to enter into direct agreements with distributors for the supply of new technology services offerings.</p> <p>Examples of such new technology solutions offerings that could be provided by distributors include:</p> <ul style="list-style-type: none"> • <i>Distributed generation:</i> Distributed generation can involve customers or prosumers⁸ producing their own electricity (e.g. solar and wind), connecting directly (without a retailer) to the distributor’s network and purchasing electricity directly from the clearing manager. To do this, the customer/prosumer needs to be able to enter into an agreement with their distributor for the supply of distribution services related to the conveyance of the electricity to and from the distributor’s network. • <i>Vehicle-to-home technology:</i> Vector has begun its first trial of vehicle-to-home (V2H) technology, aimed at exploring how EVs and V2H systems can ease peak demand on electricity networks and be used as backup electricity sources for customers during short-term outages. The trial is being run at Piha, a remote area on the western edge of Vector’s rural network. The Piha residents on the trial can, by plugging their EV into their home appliances, via the V2H unit, power their appliances using energy stored in the EV battery.⁹ If Vector can enable the use of technology such as V2H, then residents will be able to rely on their own backup electricity supply until power is restored during short-term outages. To be able to utilise this technology, the customer needs to be able to enter into an agreement with Vector for the supply of V2H technology to their home. <p>The DDA template’s current drafting is restrictive on the future potential for this new technology especially in the ability of customers to contract directly with distributors and use of load control (see clause 5.1 and the new 5.9 below).</p> <p>An agreement between a customer and a distributor for the provision of a service relating to such new technology would be a “Direct Customer Agreement” – being an agreement between a customer and a distributor for the provision of distribution services. The consequence of this, however, is that the provisions in clause 3 of the DDA template (which are intended to apply to just conveyance-only arrangements, but which are expressed to apply to all Direct Customer Agreements) would apply to such new technology services offerings.</p> <p>This would mean that a customer could only acquire such new technology services as distributed generation or V2H technology</p>

⁷ Paragraph 3.38 of the 2019 Consultation Paper.

⁸ A prosumer is a person who consumes and produces a product.

⁹ More information on Vector’s V2H technology trial can be found at: <https://www.vector.co.nz/news/trial-of-vehicle-to-home-tech>.

Clause	Description	Vector's comment
		<p>from a distributor if the customer was not already on a fixed term agreement with their retailer and if they were willing to be moved to a conveyance-only basis and direct billed for distribution services. These restrictions will severely limit customers' choice and access to the value these new technologies could bring to the industry, as well as preventing distributors from being able to compete with other industry participants in offering these new technology services on a level playing field.</p> <p>To address this, we submit that amendments are made to clause 3 and the definition of "Direct Customer Agreement" in clause 33.2 of the DDA template to ensure that the conveyance-only provisions of the DDA template are not triggered by the entry into of agreements between a customer and a distributor for new technology services offerings. We have amended those provisions in the DDA template to reflect this.</p> <p><i>Multiple trader relationships:</i> For completeness, while this specific submission focuses on the undue barriers that the DDA template presents to a customer's freedom to contract with a distributor for new technology services, the Authority may also wish to consider whether the DDA template also presents barriers to a customer's freedom to contract with more than one trader (such as in the area of load control, where the DDA template only contemplates the distributor and one retailer having the right to control a customer's load).</p>
<p>cl. 2.2(a), new 21.1(b)(v), and new 24.5(a)(vi)</p>	<p>Service standards / Good Electricity Industry Practice / Force majeure</p>	<p>The Court of Appeal in its judgment of 13 March 2019 confirmed that the Authority may not regulate or mandate quality standards (as that term is used in Part 4 of the Commerce Act 1986), in the DDA template or otherwise.</p> <p>The proposed DDA template seeks to address this by making Schedule 1 (Service Standards) of the DDA template a recorded term. A distributor is entitled to set what, if any, Service Standards to which it will commit to delivering electricity, and what, if any, Service Guarantee Payments will be payable if it fails to do so. In addition, any failure to deliver electricity to a Service Level specified in Schedule 1 will constitute a breach of the DDA and expose the distributor to liability under the DDA's general liability and indemnity provisions (clauses 2.2(a), 24 and 27 of, and Schedule 1 to, the DDA template).</p> <p>In our view, this structure is inflexible and likely to discourage distributors from setting any Service Standards at all – particularly where breach of Service Standards could expose distributors to an uncapped indemnity liability under clause 27 of the DDA. However, if a distributor sets no Service Standards, it is unclear to us just what becomes of the distributor's primary obligation to deliver electricity under clause 2.2(a): is there no obligation at all, or is the obligation an absolute obligation to deliver 24-hour continuous supply? The answer cannot be the latter, as this would be outside the power of the Authority to prescribe a 100% quality standard per the Court of Appeal's judgment.</p> <p>In our view, the better approach to this is to permit distributors at clause 2.2(a) to either set Service Standards and/or adopt a general quality standard to deliver electricity "in accordance with Good Electricity Industry Practice." If a distributor elects the general quality standard to deliver electricity in accordance with Good Electricity Industry Practice, then the force majeure and</p>

Clause	Description	Vector's comment
		<p>liability provisions in the DDA should similarly provide that the distributor will not have liability for any failure to convey electricity or any failure of the Network in circumstances where the distributor has acted in accordance with Good Electricity Industry Practice. If the DDA template was to provide that the distributor had liability in these situations, that would constitute an attempt by the Authority to mandate a quality standard onto the distributor, in breach of the Court of Appeal's judgment.</p> <p>Accordingly, we submit that:</p> <ul style="list-style-type: none"> • distributors be given the right to elect whether to qualify their obligation to deliver electricity by either Service Standards and/or a Good Electricity Industry Practice standard; • if a distributor elects a Good Electricity Industry Practice standard, then: <ul style="list-style-type: none"> ○ no liability should accrue to a distributor under the DDA for failure to convey electricity where it has acted in accordance with Good Electricity Industry Practice; and ○ a distributor should be able to declare a force majeure event where its network fails if the distributor has acted in accordance with Good Electricity Industry Practice. <p>We have amended clause 2.2(a), and inserted new clauses 21.1(b)(v) and 24.5(a)(vi), in the DDA template to reflect the above.</p>
<p>cl. 5.1 and new 5.9</p>	<p>Load Control</p>	<p>Vector submits that controllable load should belong to the customer who can choose to allow the load to be controlled by retailers, distributors or load aggregators as potential competing parties.</p> <p>The proposed DDA template currently only permits a distributor to acquire load control rights where it provides a price category or price option for non-continuous service in respect of a customer's load (clause 5.1). This narrow and restrictive wording will be an impediment to future changes and inhibit distributors moving to new cost reflective pricing or looking to new technology to ensure customers benefit from an energy system working more harmoniously with its users.</p> <p>New pricing structures may not have specific price category options as the only mechanism for a customer to allow a distributor access to their controllable load. For example, Vector's Symphony Strategy (referred to in Part 1 of this submission) seeks to proactively facilitate customer engagement and technology uptake, leading to low voltage network and customer integration. Symphony results in alignment between network requirements that minimise investment and customer investment in non-traditional distributed energy resources.</p> <p>Examples of such new technology load control solutions to help achieve Symphony include:</p> <ul style="list-style-type: none"> • <i>Controllable EV charging</i>: Vector is currently trialling controllable EV charging stations to demonstrate that smart charging can meet customer satisfaction and establish the level of flexibility that customers are willing to accept for network purposes. At its simplest, controllable EV charging allows Vector to reduce the load to EV charging station users

Clause	Description	Vector's comment
		<p>at times of high network demand to better control load across the network. This new technology will provide flexibility to facilitate network integration of a rapidly growing EV fleet. Further details of Vector's EV charging trial, which was recently launched by the Minister of Transport and Mayor of Auckland, are available at https://vimeo.com/364682779¹⁰ (video).</p> <ul style="list-style-type: none"> • <i>New Technology Hot Water Load Control</i>: New technology is being trialled that will provide more granular hot water load control for distributors. This will ensure that distributors can efficiently manage hot water, minimising impact to customers and maximising the network benefits. <p>Our proposed changes will ensure a distributor will be able to compete for the control of customers' load with new technology offerings (as illustrated above). From a customer benefit perspective, this would ensure the DDA does not act as a barrier to customers receiving such new load control services from distributors, especially given those load control services may have the effect of reducing demand during times of system stress, which contributes to maintaining security of electricity supply.</p> <p>We also submit that the DDA template should include an obligation on traders to include a provision in their customer contracts requiring customers to assume certain obligations to the distributor and trader if they enter into a load control agreement with a third party, so as to ensure that the third party is not otherwise subject to lower standards on load control than the trader. This will benefit customers generally by ensuring that third parties with load control rights make their controllable load available to the distributor for management of system security in the same manner and on a similar basis as traders.</p> <p>We have amended clause 5.1, and inserted a new clause 5.9, in the DDA template to reflect the above.</p>
cl. 20.1	Confidentiality	<p>Clause 20.1 of the proposed DDA template limits the use of confidential information to the purposes expressly permitted by the DDA template, but the DDA template itself lacks a provision that explicitly authorises the use of confidential information (unlike clause 3 of Appendix B and clause 6(b) of Appendix C to Schedule 12A.1).</p> <p>We submit that the DDA template needs to include a general provision that authorises each party to use confidential information provided by the other party for the purposes of performing its obligations and exercising its rights under the DDA. In the case of the distributor, the DDA template should make clear that this includes any purpose properly related to the provision of distribution services, to ensure that the distributor can use customer contact information it obtains from a trader to communicate with customers on network-related matters such as tree trimming requirements, lines and equipment safety matters, and customer engagement regarding construction of new assets and network configuration.</p>

¹⁰ More information on Vector's EV charging trial can also be found at: <https://www.vector.co.nz/news/smart-ev-charging>

Clause	Description	Vector's comment
		<p>We have amended clause 20.1 in the DDA template to reflect the above.</p>
<p>New cl. 20.5</p>	<p>Customer information received in error by trader</p>	<p>The proposed DDA template, and the proposed Appendix C to Schedule 12A.1, impose appropriately strict restrictions on a distributor's rights to use customer information and consumption data. However, the DDA template fails to impose any similar obligations on traders to extent they may receive such information/data in error in respect of customers other than their own.</p> <p>In contrast, the Vector UoSA contains a provision that prohibits a trader that receives such information in error from using that information to further its own interests. This provision is expressed to be for the benefit of, and therefore is directly enforceable by, other traders.</p> <p>We submit that a similar provision be included in the DDA template. Such a provision will have a clear benefit to consumers in protecting their information from unauthorised use, as well as protecting traders themselves from their customer information and consumption data being misused by another trader for a windfall gain. In the context of the Vector UoSA, we have found that traders have agreed to this provision without any objection, having recognised its industry-wide benefits for customers, traders and distributors alike.</p> <p>Furthermore, it is important that this provision not be subject to the direct damage limitation, consequential loss exclusion or monetary cap on liability in clauses 24.2, 24.3 and 24.7 of the DDA template, as those clauses would otherwise significantly reduce the scope and effectiveness of the provision by significantly reducing the liability of a trader who receives information in respect of customers other than their own in error and chooses to use it for their own gain.</p> <p>We have inserted a new clause 20.5 in the DDA template to reflect the above.</p>
<p>Liability</p>		
<p>cl. 24.3, 24.8 and 27</p>	<p>Third party claims indemnities</p>	<p>The mutual indemnities for third party claims given by the distributor to the trader (and vice versa) in the proposed DDA template (clause 27) are not subject to any exclusions or monetary caps, other than for a requirement that the loss or damage suffered be "direct".</p> <p>Absent such limitations, a trader could be incentivised to assume liability to its customers for distribution services that it would not otherwise assume but for the indemnity in clause 27. By way of example, a trader could agree in its customer agreements to make liquidated damages payments to customers if distribution services fail to meet the Service Standards that a distributor has included in its DDA-based distributor agreement with that trader. A failure to meet Service Standards constitutes a breach of the DDA template as drafted, which would expose the distributor to liability for those liquidated damages payments made by the trader to the customer under clause 27.2, in addition to any Service Guarantee Payment that the distributor might otherwise be liable to pay under Schedule 1.</p>

Clause	Description	Vector's comment
		<p>This scenario is reinforced by clause 24.9(c) of the DDA template, which provides that nothing in clause 24.9 (which otherwise requires a trader to exclude certain warranties and guarantees from its customer agreements) precludes a trader from offering in its customer agreements its own warranties and guarantees pertaining to distribution services. Read together, clauses 24.9(c) and 27.2 could effectively allow traders to undermine the entire regime at law and under the DDA (being the Consumer Guarantees Act 1993 and Service Guarantee Payments, respectively) by which the distributor is intended to bear direct liability to customers for distribution services.</p> <p>To address this, we submit that the mutual indemnities in clauses 27.1 and 27.2 be subject to the consequential loss exclusion in clause 24.3 and the monetary cap on liability in clause 24.7. This would be an efficient and fair outcome to all parties, as traders would be free to limit their liability in their customer agreements to align with these limitations, distributors would not be exposed to unlimited liabilities that they would have no ability to mitigate and customers would still enjoy the protections afforded at law under the Consumer Guarantees Act 1993 and via the DDA through any Service Guarantee Payments.</p> <p>We have amended clauses 24.3, 24.8 and 27 in the DDA template to reflect the above.</p>
<p>cl. 24.2 and 24.3</p>	<p>Trader liability for failing to include provisions in customer agreements</p>	<p>Clause 24.10 of the proposed DDA template requires the trader to include certain provisions in its customer agreements for the protection of the distributor. Relatedly, clause 29 sets out obligations on the trader to amend its customer agreements to include provisions required to be included therein by the DDA, and to indemnify the distributor should the trader fail to meet those obligations. Each of these provisions is subject to the direct damage limitation in clause 24.2 and the consequential loss exclusion in clause 24.3.</p> <p>In practice, applying the direct damage limitation to clauses 24.10 and clause 29 is likely to remove all liability of the trader should it breach those provisions, as the distributor is unlikely to suffer damage to physical property should those provisions be breached. The distributor could, however, suffer consequential loss, but would be prohibited from recovering that from the trader as the consequential loss exclusion applies.</p> <p>We submit that neither the direct damage limitation nor the consequential loss exclusion should apply to clauses 24.10 and 29, as to apply them would effectively remove any available remedy to the distributor should the trader breach those provisions. From a trader's perspective, the trader should not be concerned by the removal of the direct damage limitation and the consequential loss exclusion here, because compliance with clauses 24.10 and 29 is completely within the trader's control (given compliance involves the trader exercising its rights to amend its customer agreements).</p> <p>We have amended clauses 24.2 and 24.3 in the DDA template to reflect the above.</p>
<p>cl. 24.7</p>	<p>Per ICP liability cap</p>	<p>The proposed DDA template limits each party's aggregate liability to each other on a per event basis in clause 24.7 to "the lesser of</p>

Clause	Description	Vector's comment
		<p>\$10,000 for each ICP on the Network at which the trader traded electricity on the day of the event, or \$2,000,000”.</p> <p>We submit that the \$10,000 per ICP liability cap in this clause should be calculated based on each ICP supplied by the trader <i>affected by the event</i>, rather than all ICPs on the network supplied by the trader, as it is not fair or reasonable to link liability levels to ICPs that are unaffected by the event.</p> <p>We consider this submission is consistent with the Authority’s intent that the per ICP cap operate as a cap based on affected ICPs only: “Also, a cap based on affected ICPs ensures that liability limits per customer do not depend on the size, scale or number of industry participants.”¹¹</p> <p>We have amended clause 24.7 to reflect the above.</p>
cl. 24.7	Aggregate annual liability caps	<p>In addition to the per event liability cap in the proposed DDA template, the Vector UoSA includes an aggregate liability cap for events in any 12 month period, with the amount of this annual cap calculated based on the number of active ICPs supplied by the trader on Vector’s network.</p> <p>We submit that the DDA template should also include an annual liability cap in addition to a per-event liability cap, given it will provide both the distributor and the trader with greater contractual certainty over their maximum liability exposure and, importantly from a consumer benefit perspective, encourage the entry of new traders into the market by capping their potential annual liability exposure. This will have the effect of better promoting competition in the electricity industry, which is one of the Authority’s stated drivers for the introduction of the proposed DDA regime.</p> <p>The annual aggregate liability cap of the trader to the distributor (and vice versa) under the Vector UoSA is proportionate to the percentage of the total number of ICPs connected to the distributor’s network that the trader is supplying as at 1 July each year. The one exception to this is for smaller traders (those that supply 7.5% or less of the total number of ICPs on Vector’s network), whose annual aggregate liability cap will be proportionate to the percentage of the total amount of annual distribution services charges received by Vector that are paid for by that trader, if greater than the amount of their cap calculated as a proportion of ICPs on the network. This is in recognition of the fact that if the trader predominantly supplies electricity to large consumers of electricity, it is more appropriate for the parties’ annual cap to be by reference to the amount of distribution services charges paid rather than ICP numbers supplied by the trader.</p> <p>We submit that the annual liability cap in Vector’s UoSA should be adopted in the DDA template because it more appropriately and reasonably balances the risk faced by both distributors and traders. In the case of traders, it aligns their risk profile and liability level to their level of activity on the network, and from the distributor’s perspective, it implements a structure where its aggregate liability (across all traders on its network) does not increase solely due to the numbers of traders on its network. This</p>

¹¹ Paragraph 4.38 of the 2019 Consultation Paper.

Clause	Description	Vector's comment
		<p>benefits smaller traders in particular (and therein encourages new entrants and greater competition in the market for the benefit of consumers) because their aggregate liability cap is proportionate to, rather than the same as, larger traders.</p> <p>We have amended clause 24.7 in the DDA template to reflect the above.</p>
Other		
cl. 6.2, 7.4(a), 17.4 and 17.5(c)	Authority mandated guidelines	<p>The proposed DDA template includes a number of provisions that require distributors to comply with guidelines issued by the Authority, including:</p> <ul style="list-style-type: none"> • loss factor guidelines (clause 6.2); • distribution pricing structure consultation guidelines (clause 7.4(a)); • medically dependent and vulnerable customer guidelines (clause 17.4); and • Unmetered Load management guidelines (clause 17.5(c)). <p>If compliance with these guidelines is expressed to be mandatory in the DDA, then the Authority will effectively create a quasi-regulation-making power for itself, given it will have the power to amend these guidelines at any time as it sees fit and distributors will be required to comply. If the Authority wishes to make compliance with these guidelines compulsory, then the guidelines should be incorporated into the Code by way of a Code amendment, and any subsequent amendment to the guidelines effected by way of similar Code amendment, to allow distributors the opportunity to be consulted on those guidelines and any subsequent changes to them.</p> <p>Accordingly, we submit that the DDA template should only require distributors to comply with the requirements of the Code (as opposed to Authority guidelines) in respect of the above matters, to ensure that distributors have the opportunity to be consulted on those requirements and any subsequent changes to them.</p> <p>This submission is supported by the EPR Panel's recommendation in its final report that the Government set mandatory minimum standards to protect vulnerable and medically dependent consumers, which the Government in its response to the EPR Panel's report has indicated that it will do as regulations (which will be open to consultation) under section 113 of the Electricity Industry Act 2010.¹²</p> <p>We have amended clauses 6.2, 17.4 and 17.5(c), and deleted clause 7.4(a) (given the requirement to comply with the Code is already covered under clause 7.4(b)), in the DDA template to reflect the above.</p>
cl. 31.2 – 31.5 (new)	Auditing information provided	<p>The provision of accurate consumption information by the trader to the Distributor is critical for the Distributor to be able to accurately levy the trader for distribution services charges under</p>

¹² Recommendation B6 of the EPR Panel's final report dated 21 May 2019 and paragraphs 62 and 63 of the Government's response to that final report published 3 October 2019

Clause	Description	Vector's comment
		<p>the DDA and, more broadly, for the Distributor to be able to operate its network and run its business. It is also important to consumers, because if the trader provides incomplete or incorrect information to the Distributor, that could result in further distribution services charges and a use of money adjustment being levied against the trader later, which will need to be either absorbed by the trader (which could compromise its solvency if it is a small trader) or passed onto customers (who would then assume that burden).</p> <p>Given the importance of accurate information to billing, and more generally to the performance by the parties of their obligations under the DDA, we submit that each party to the DDA should have a right to access the books and records of the other party to allow them (or an independent auditor) to verify the accuracy of information provided by that other party under the DDA. We would not expect such a mutual right to be contentious; indeed we note that such a right is already included in clauses 29.3 to 29.6 of the Authority's model interposed UoSA, and we are supportive of that right being included in the same form in the DDA template.</p> <p>We have inserted new clauses 31.2 to 31.5 in the DDA template (based on clauses 29.3 to 29.6 of the Authority's model interposed UoSA, with minor amendment to deal with information held by a third party metering equipment owner or operator) to reflect the above.</p>

Part 3. Draft Code

Q3. What are your views on the draft Code, appended to this paper, which would introduce the proposal?

Our clause-by-clause comments on the draft Code and the DDA template are set out in marked-up versions of these documents in **Appendix A** and **Appendix B** of Vector's submission pack.

To enable a more meaningful consultation, and consistent with good regulatory practice, we strongly propose that the Authority hold a second round of consultation on any future/revised version of the DDA template and enabling Code changes following this submission process. This is particularly important given the new arrangements being introduced in the proposed DDA template and Part 12A, such as data access, that will have significant implications on industry participants' ability to innovate and deliver better services to consumers.

Part 4. Regulatory Statement

Q4. What are your views on the Regulatory Statement? Specifically:

- a. the efficiency costs and benefits
- b. the costs and benefits in the retail market
- c. the costs and benefits in the related services market.

Efficiency costs and benefits

The consumer benefits from imposing a DDA are not clearly justifiable.

The consumer benefits from imposing a DDA are not clearly justifiable from the Authority's cost-benefit analysis. Compared with the Authority's estimated benefits from its other initiatives, the net benefits from the proposed DDA seem miniscule.

The main basis of the above cost-benefit analysis is self-reported information from selected distributors and retailers (through a survey) on their costs of negotiating and signing UoSAs. The survey respondents could have widely varying perceptions of what constitute the process of contract formation and their respective costs.

A cost-benefit assessment in a highly dynamic market needs to consider the new challenges and opportunities we face today and in the future. It also needs to consider the possibility of chilling innovation as an unintended consequence of adopting a 'one-size-fits-all' approach.

As indicated in our response to Q1, the value of static efficiency is diminished in a rapidly evolving market where participants can have converging or multiple roles, and where market segments are becoming artificial.

Technological change tends to cut across different vertical segments in the electricity market. In considering the costs and benefits to consumers, we believe it is more appropriate to take a broader view on how efficiencies can be realised for consumers.

A DDA does not remove the need for negotiation.

We disagree that having a DDA removes (or diminishes) the need for parties to negotiate. On the contrary, as more service providers enter the market, and as market transactions become more numerous and complex, customers could seek more customised terms that cater to their unique needs - which involve negotiation.

The evolution of the regulatory framework itself could also trigger the need for new negotiations or re-negotiations of contractual terms.

Costs and benefits in the retail market

There are other initiatives that can unlock far greater value to the market and consumers than a DDA.

As indicated in our response to Q1, other initiatives could address inefficiencies with greater traction and minimal unintended consequences, i.e. innovation being stifled. These include enabling greater data access and reforming the wholesale market.

Data analytics has the potential to improve our understanding of consumer preferences and the impact of new technologies on our network by combining insights from multiple sources. The key ingredient of this process is access to consumption data, which the EPR Panel has recently identified in its final report as a matter requiring urgent attention from the Authority.

We note that the issue of data access is being 'tackled on several fronts'. These include the Authority's project on additional access to electricity services (ACCES Project), the Innovation and Participation Advisory Group's Input Services Project, the ENA's Network Transformation Roadmap, and ERANZ's Core Data Values initiative. We look forward to the Authority progressing its ACCES Project and participating in any trial of proposed market arrangements. We will also continue to engage with the above organisations on their respective initiatives.

The other initiative that we consider the Authority should focus on (more than imposing a DDA) is reforming the wholesale market, including increasing transparency between the generation and retail arms of gen-tailers. This can address competition concerns in this market and in the two-tier retail market.

Distributors face strong incentives to enable competition in the retail market.

We disagree that distributors may prefer fewer large retailers than a multitude of retailers on their network, so they face lower coordination risks. As discussed in our response to Q1, distributors face strong incentives to connect more DER to help make their network become 'asset light' and avoid costly traditional 'poles and wires' investment.

DER has a crucial role to play in supporting network resilience (e.g. through demand response programmes) and energy affordability (e.g. by providing consumers greater control on when they use electricity based on near-real time pricing information).

As further discussed in our response to Q1, distributors are already highly regulated, whose returns and behaviours are actively monitored by the Commission, including being subject to the Commission's related party rules.

Costs and benefits in the related services market

A modular, neutral approach is a step in the right direction to future-proof agreements.

We consider the Authority's adoption of a modular, neutral approach for its Part 12A proposal to be appropriate in a dynamic environment.

In the absence of a DDA, it is reasonable to expect that distributors may, over time, find it more cost effective to develop 'modules' of their agreements to facilitate the connection of more DER to their network. A distributor-generated 'modular agreement' that reflects the characteristics of that distributor's network and the unique needs of the retailer avoids the risk of erring on the side of stifling innovation.

Resilience and security of supply considerations are also important in transitioning to, and enabling, the grid of the future.

We disagree that a DDA will have no direct impact on security of supply. We need to take a more holistic view of the energy system when it comes to strengthening security, reliability, and resilience of electricity supply.

The cost of coordination failures is most evident in relation to the introduction of new technology, which tends to cut across the boundaries of artificial market segments. We need to ensure our network is resilient to both traditional challenges (asset age, condition, the weather) and new ones (changing technology and consumer behaviour). There are different ways of achieving resilience, including through collaboration in harnessing the capability of new technologies.

It is therefore important that our contractual arrangements - whether through a UoSA, a DDA or other forms - provide us with greater ability to utilise demand response rapidly to substitute for traditional supply when and where necessary.

Optionality is important for future contractual arrangements.

In the dynamic electricity sector, where more complex arrangements and uncertainties are emerging (e.g. the transition from one-to-many to many-to-many trading relationships, load growth driven by EV uptake), regulatory innovation is both possible and necessary. This involves allowing the best possible regulatory approach to emerge. In some cases, this may require suspending existing rules to facilitate trials such as the "regulatory sandbox" approach being implemented in Australia's National Electricity Market.

An increasing number of transactions in the market will correspondingly require increased options for market participants so they can deliver the best outcomes for their customers.

Should a DDA be adopted, we strongly suggest that it be used as a tool to enable innovation and industry transformation. This implies providing greater flexibility around, for example, the permitted uses of data and market participants' ability to offer new technology solutions that

support network resilience and benefit customers. This will allow the most efficient provider(s) to compete for and provide related services.

We are happy to discuss with the Authority any aspects of this submission and our initiatives to meet the challenges of *creating a new energy future*.

Appendix A. Mark-up of the proposed Part 12A

See separate PDF and Word files labelled “**Vector Submission - Appendix A**” which form part of Vector’s submission pack.

Appendix B. Mark-up of the proposed DDA template

See separate PDF and Word files labelled “**Vector Submission - Appendix B**” which form part of Vector’s submission pack.

Appendix C. Using data analytics for public reports

See separate PDF file labelled “**Vector Submission - Appendix C**” which forms part of Vector’s submission pack.

Electricity Industry Participation Code 2010

Part 1 Preliminary provisions

1.1 Interpretation

(a) 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 **core term**; or
- an **operational term**; or
- a **recorded term**; or
- 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—

- (1) **core terms**; and
- (2) **operational terms**; and
- (3) **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
- (4) **collateral terms** (if any); and
- (5) 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**—

- 1 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

2 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,—
 - 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
 - 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.
- **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—
 - ~~ensure that it, or its **customer**, has made any necessary arrangements for the provision of **line function services** in relation to the **ICP**; and~~
 - (1) either,—
 - (a) 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
 - (b) in all other cases, entered into an arrangement for the provision of **distribution** services in relation to the **ICP** with the **distributor**; and
 - (2) ~~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—

- (b) 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
- (c) 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
- (d) specifies requirements that apply in respect of each **embedded network distributor** that has an **interposed arrangement** with 1 or more **traders**; and
- (e) 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

- (6) 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

- (7) 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 ~~40~~**20 business days** before the person proposes to do so. [Drafting Note: we consider 20 business days' notice to be too short in practice, and propose instead that traders be required to provide 40 business days' notice]
- (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 ~~89~~ 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 20⁵ **business day** after the date on which the notice is given; or [Drafting Note: we consider 5 business days to be too short a period from the contract applying to having to commence trading; and propose 20 business days instead]
 - (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 40~~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 40~~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), 12(1), ~~or 13~~ 14 or 15 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), 12(1), ~~or 13~~ 14 or 15 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), 12(1), ~~or 13~~ 14 or 15 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 7~~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 consumption data)

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

Transitional provisions for parties with existing agreements

12 Transitional provisions for existing agreements

- (1) This clause applies to a **distributor** and a **participant** that entered into an agreement for services that commenced before the date on which the **distributor** made a **default distributor agreement**, that applies in respect of the arrangement between the **distributor** and the **participant**, available on its website under clause 6(1) of Schedule 12A.4 ("being an 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 520th **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 the Trader 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].
- (4) If the Distributor has given notice to the Trader to pay income distributions under any use-of-system agreement (or equivalent agreement(s)) entered into prior to the date of this Agreement coming into effect, then the Distributor may, by notice to the Trader within 5 Business Days of this Agreement coming into effect, elect that the income distribution services terms of that use-of-system (or equivalent) agreement, and not this Agreement, will apply with respect to those already notified income distributions.

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)~~ (f) contact details of persons who can be contacted in respect of Customer queries that cannot be addressed by the Trader;
 - ~~(i)~~ (g) expected frequently asked questions by Customers and the answers to those questions;
 - ~~(j)~~ (h) the format in which Customer information is to be exchanged in accordance with clause 6;
 - ~~(k)~~ (i) 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

- ~~(j)~~ whether the Distributor[, on behalf of the Shareholder Trust,] requires a file containing confirmation of the number of ~~in respect of each qualifying Customers connected to the Distributor's Network~~ to whom an income distribution is not fully paid, the ICP, amount of income distribution not paid, Customer's name and, if available, forwarding address.
- (2) The Trader must, acting reasonably, and no later than 5 Business Days after receipt of the notice, 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) The Distributor must, as soon as reasonably practicable after giving notice under clause 1, provide the Trader with:
- (a) 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 in respect of any income distribution paid; and
- (b) a draft of any proposed publicity information relating to the income distributions, including media releases.

~~(m)~~—

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 quoteation 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~~ 2 Business Days after the Distributor's request.
- (3) The Distributor must as soon as reasonably practicable after receiving a file from the Trader under clause 4(2), return the file to the Trader with information identifying qualifying Customers and the income distribution amounts payable to each qualifying Customer, and notify the Trader whether [the Distributor or the Shareholder Trust will pay the total amount of such income distributions to the Trader and whether] a GST invoice is required ~~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 payment of the total amount of the income distributions from the Distributor [or the Shareholder Trust as notified ~~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/Name of Shareholder Trust] 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)(~~h~~) that it requires that information, a file containing, in respect of each qualifying Customer confirmation of the number of Customers connected to the Distributor's Network to whom an income distribution was not fully paid, the ICP, amount of income distribution not paid, Customer’s name and, if available, forwarding address.

7 Confidentiality obligations

- (1) Subject to subclause (2), ~~the Distributor~~each party to this Agreement undertakes that, in respect of any information provided to it by the ~~Trader~~other party under clause 2 or clause 4 or clause 6 (“Confidential Customer Information”), ~~the Distributor~~each party 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 or Appendix B; and
 - (b) only disclose the Confidential Customer Information for a purpose expressly permitted in this Appendix or Appendix B and on a ‘need to know’ basis.
- (2) For the purposes of this Appendix:
 - (a) ~~the Distributor~~either party 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~~Each party’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~~a party will be ~~is~~ responsible for any unauthorised

disclosure of Confidential Customer Information made by ~~the Distributor's~~that party's employees, contractors, directors, agents, or advisors.

8 Payment of income distribution amounts

- (1) If notice is given under clause 4(3) that a GST invoice is required, ~~T~~he Trader must issue the Distributor [or the Shareholder Trust] with a GST invoice in accordance with that notice for the total amount of income distributions credited, or to be credited, to qualifying Customers under clause 5.
- (2) The Distributor [(unless it nominates the Shareholder Trust in its notice given under clause 4(3), in which case the Shareholder Trust)] 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 such notice is given under clause 4(3) or, if a GST invoice is required, the Trader issues its GST invoice.
- (3) Any income distribution payments received by the Trader from the Distributor [or Shareholder Trust] must be held by the Trader in an appropriate bank account as separately identifiable funds, on trust 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 [or the Shareholder Trust] in respect of the income distribution, the Trader must, as soon as practicable:
 - (a) refund to the Distributor [(unless the Trader received funds from the Shareholder Trust in respect of the income distribution, in which case the Trader must refund to the Shareholder Trust)] 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 Payment of additional income distribution amounts

- (1) If, the Distributor [or the Shareholder Trust] has attempted and been unable, for any reason, to pay an income distribution to a qualifying Customer (by way of example but without limitation, because the Customer does not have a bank account in the Customer's name into which a cheque can be deposited), the Distributor may require that the Trader pay the income distribution on behalf of the [Shareholder Trust/Distributor] to that qualifying Customer by crediting that qualifying Customer's electricity account by giving the Trader at least 5 Business Days' notice of the requirement.
- (2) If the Distributor gives notice under subclause (1), clauses 4, 5, 6 and 8 will apply to the payment of the income distribution by the Trader on behalf of the [Shareholder Trust/Distributor] (with all necessary modifications).

910 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;
- ~~(b)~~ ~~(e)~~ enabling a third party to carry out audits of the Distributor [or the Shareholder Trust]; and
- ~~(b)~~(c) any other purpose permitted under Appendix B.
- (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.
- (5) The Trader may use Confidential Customer Information for the purposes of ensuring that income is distributed to [beneficiaries/shareholders] in accordance with the [Shareholder Trust's/Distributor's] requirements.

~~10~~11 **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~~12 **Definitions**

Capitalised terms not otherwise defined in this Appendix have the meaning given to them in the Agreement. [Drafting Note: given this Appendix will form part of the Agreement, we have deleted duplicative definitions below that are already defined in clause 33.2 of the DDA template] In this Appendix:

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

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

"**Appendix B**" means Appendix B to the Agreement (if any);

~~"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 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) 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.~~

Schedule 12A.1, Appendix B

Sch 12A.1, cl 7(2)

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; or
- (c) for any other purpose as otherwise agreed between the parties.

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]; and
- (f) including promotional material relating to the planning and management of the Network or the provision of Distribution Services with any correspondence sent to the [Shareholder Trust's beneficiaries/Distributor's shareholders].

(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 Trader to include provisions in Customer Agreements

If requested by the Distributor, the Trader must, subject to clause 29.1 of the Agreement, include in each of its Customer Agreements a clause or clauses to the effect

that the Customer authorises the Trader to disclose the Customer's personal information to the Distributor to use [and disclose to the Shareholder Trust] for the purposes set out in clause 3.

45 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 quotation 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.

56 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.

67 Definitions

Capitalised terms not otherwise defined in this Appendix have the meaning given to them in the Agreement. [Drafting Note: given this Appendix will form part of the Agreement, we have deleted duplicative definitions below that are already defined in clause 33.2 of the DDA template] In this Appendix:

"**Agreement**" means this distribution agreement, including each Schedule, ~~this~~ each 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 Distributor~~s~~ and a Trader in relation to requests for Consumption Data held by the Trader or the Trader's Metering Equipment Provider.

2 Consumption Data requests

- (1) The Distributor may request Consumption Data by giving written notice to the Trader, which must set out:
- details about the Consumption Data requested;
 - the purposes for which the Distributor will use the Consumption Data;
 - the persons to whom the Consumption Data will be disclosed by the Distributor; and
 - for how long the Distributor wishes to use the Consumption Data.

(2) The Trader must:

- supply the requested Consumption Data to the Distributor; or
- procure that its Metering Equipment Provider provides the requested Consumption Data to the Distributor,

within 5 Business Days.

(3) The Trader must supply half hourly data collected ~~from~~ by the Metering Equipment Provider, and non-half hourly (in intervals as close as possible to half hourly) in the cases where half hourly data is not collected.

~~(2)~~ —

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~~16, which sets out:

~~(a)~~ ~~the Consumption Data to be provided by the Trader to the Distributor;~~ [Drafting Note: The Consumption Data to be provided will be specified in each request made under clause 2]

~~(b)~~(a) any Other Purposes for which the Distributor may use the Consumption Data in addition to the Permitted Purposes;

~~(c)~~(b) the persons to whom the Consumption Data may be disclosed by the Distributor;

~~(d)~~(c) the frequency at which Consumption Data will be exchanged;

~~(e)~~(d) for how long the Distributor may use the Consumption Data ("**Permitted Time Period**");

~~(f)~~(e) 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. If the parties fail to agree to any term of the Data Agreement, the relevant default term set out in clause 16 will apply.

(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; and
 - ~~(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)~~(d) the Distributor acknowledges that the Distributor has no rights (including copyright) to or in connection with the Consumption Data, including in any database structures and compilations of the Consumption Data, other than the rights expressly set out in this Appendix.
- (5) The Distributor agrees that any Consumption Data provided to the Distributor will be:
- (a) at the Distributor's cost, as set out in clause 4, so that the Trader is not responsible for any costs, charges or other expenses associated with providing the Consumption Data to the Ddistributor; 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 out of pocket~~ expenses incurred in supplying any information requested under clause 2. **Drafting Note: This amendment aligns clause 4(1) with clause 4(2) and ensures Traders cannot charge multiple distributors for the same internal costs.**
- (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

- ~~(1)~~ The Distributor ~~Each party~~ 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.
- ~~(1)~~(2) The Trader must make any disclosures, and obtain any authorisations, needed under the Privacy Act 1993 to enable the Distributor to use the Consumption Data for the Permitted Purposes and Other Purposes. **Drafting Note: This amendment will ensure that each Trader's terms provide authorisation and notice for any relevant uses under the Privacy Act**

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 and contractors to the extent that such Consumption Data is reasonably required to be known by such persons in connection with the Permitted Purposes or Other Purposes;
 - (b) to its agents, and 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 Ddistributor is liable for the acts and omissions of such agents, and advisors ~~or contractors~~ solely in connection with their use of the Consumption Data; or
 - (c) if the Distributor is required to disclose the Consumption Data by:
 - (i) law, or by any statutory or regulatory body or authority; or
 - (ii) any judicial or other arbitration process.
- (2) The Distributor may not, except as expressly set out in the Data Agreement or with the prior written approval of the Trader, disclose any Consumption Data to any employee, director, agent, advisor, or contractor of the Distributor who is involved in the offering, provision, marketing or sale of electricity generation, retail, or storage goods or services (including batteries, solar, and other products and services sold on a competitive basis) to Customers other than for a Permitted Purpose (“Excluded Personnel”).

8 Data Team

- (1) The Distributor must maintain a ~~register~~ record of persons who are permitted to access the Consumption 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~~ Excluded Personnel 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 or an Other Purpose;
- (b) does not disclose Consumption Data to any person who is not a member of the Data Team, other than as provided for in this Data Agreement or this Appendix;
- (c) does not leave Consumption Data, whether in a physical or electronic medium, unsecured in such a way that it might be accessed by a person who is not a member of the Data Team; and
- (d) complies with any requirements imposed on Data Team members by any information security plan developed in accordance with clause 10.

10 Information security plan

(1) The Distributor must maintain an information security plan to ensure that only Data Team members are able to access the Consumption Data.

(2) The information security plan must:

- ~~(a)~~ ~~ensure that Consumption Data is physically and electronically quarantined and unable to be accessed by any person other than Data Team members;~~
- ~~(b)~~(a) include provisions for training of Data Team members on the requirements set out in this Appendix and the information security plan;
- ~~(e)~~(b) keep the Consumption Data under the Distributor's control, using measures that are at least as secure as those used by the Distributor for its own confidential information;
- ~~(d)~~(c) effect and maintain adequate security measures that preserve and secure ~~the confidential nature of the~~ Consumption Data and safeguard the Consumption Data from access by unauthorised persons;
- ~~(e)~~(d) implement, to the extent practicable, measures to monitor or prevent the transmission of Consumption Data using external electronic storage devices (for example USB flash drives); and
- ~~(f)~~(e) 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.~~ [Drafting Note: Provided the Distributor has complied with the general requirement in subclauses (1) and (2)(b) and (c) to put in place an information security plan with appropriate controls consistent with the Distributor's own controls for confidential information, there is in our view no need for the additional requirements. In addition, deleted subclause 2(h) overlaps with clause 11 below.]

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 related to the disclosure and use of the Consumption Data only, 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.~~~~

1312 Audit

- (1) The ~~Trader~~ Distributor ~~may~~ must conduct ~~periodic~~ an audits at least once in any twelve month period 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)~~ (a) audits must be conducted using an independent external auditor of the ~~Trader's~~ Distributor's choice;
 - ~~(d)~~ (b) 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)~~ (c) the auditor's costs will be borne by the ~~Trader~~ Distributor; ~~and~~
 - ~~(f)~~ (d) an audit may consider the Distributor's compliance with its obligations owed to each of one or more traders (including the Trader) in respect of consumption data supplied to it by any of those traders (including the Trader), 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 Distributor must provide the Trader with the results of the audit that identify any non-compliance by the Distributor with its obligations (other than any non-compliance that does not cause the auditor's report to become modified), and any information provided by the Distributor to the Trader under this clause 12 will be Confidential Information ~~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.~~

1613 Destruction of Consumption Data

- (1) Subject to subclause (3), the Distributor must promptly destroy or permanently erase, or procure the destruction or erasure of, any Consumption Data (including all copies, in any media) that is no longer reasonably required by the Distributor for a Permitted Purpose or Other Purpose. [Drafting Note: The amendments to this clause have been made to recognise that the Distributor may have a legitimate need to keep and use Consumption Data after the end of the Agreement for Permitted Purposes and Other Purposes (e.g. the Distributor may need to

continue to use the Consumption Data to plan and manage the Network after the end of the Agreement).

- ~~(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) If the Distributor has destroyed or erased any Consumption Data in accordance with subclause (1), where requested by the Trader, the Distributor must provide, no later than within 5 Business Days after the destruction of all such Consumption Data, of the request a certificate to the Trader in the form set out in clause 1720 confirming that all such Consumption Data has been destroyed.
- (3) The Distributor will not be in breach of its obligations under subclause (1) to the extent it retains any copies of Consumption Data stored in routine electronic backups made by the Distributor or its contractors which cannot easily be destroyed or erased.

1714 Surviving terms

- (1) The following clauses of this Appendix survive the expiry or termination of this Agreement:
 - (a) clause 3;
 - (b) clause 5;
 - (c) clause 6;
 - ~~(e)(d)~~ clause 7;
 - ~~(d)(e)~~ clause 8;
 - ~~(e)(f)~~ clause 9;
 - ~~(f)(g)~~ clauses 12 and 13; and
 - ~~(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~~ Excluded Personnel. For clarity, this clause shall survive termination of this ~~a~~ Agreement.

1815 Other provisions [Drafting Note: given this Appendix will form part of the Agreement, we have deleted duplicative provisions below that are already included in the DDA template]

- (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)~~ (2) The Trader will not be responsible for any delay in providing Consumption Data

to the Distributor due to matters beyond its control.

~~(5)~~(3) 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)~~(4) 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.~~

1916 Data Agreement

This Data Agreement ~~applies to Consumption Data provided by~~ forms part of the distributor agreement between [Insert Trader's Name] (Trader) ~~to~~ and [Insert Distributor's Name] (Distributor) dated [Insert date] (Distributor Agreement). under which the Trader is required to supply Consumption Data to the Distributor. Capitalised terms used but not defined in this Data Agreement have the meaning given to them in the Distributor Agreement.

Without limiting to any other rights or obligations of the parties described in the Distributor Agreement, the parties agree that Consumption Data will be supplied by the Trader in the format and at the frequency, and may be used by the Distributor for the Other Purposes and disclosed by the Distributor to the Other Persons, and for the Permitted Time Period outlined below.

~~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]* [Default term: Nil]

Other Persons to whom the Consumption Data may be disclosed: *[insert details of ~~the~~ any additional person(s) authorised to access the Consumption Data]* [Default term: Those persons to whom Consumption Data is permitted to be disclosed under clause 7 of Appendix C]

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

Single access: , or

Ongoing Access:

Daily Weekly Monthly Quarterly Annually Other

[Default term: Single access]

Permitted Time Period: [tick appropriate time period]

a) Start date: _____ *[insert date]* [Default term: the date of the Distributor's request for the Consumption Data]

b) End date: _____ *[insert date]* ~~;~~ ~~or~~ until notice of termination [for as long as the Distributor has a need for the Consumption Data for a Permitted Purpose or an Other Purpose] [Default term: for so long as the Distributor has a need for the Consumption Data for a Permitted Purpose or an Other Purpose]

The format in which Consumption Data will be ~~exchanged~~ supplied: *[insert details of the format for exchanging Consumption Data between the parties]* [Default term: EIEP-3]

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

For *[insert Distributor's name]*

For *[insert Trader's name]*

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

2017 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's possession or control (other than any copies of Consumption Data stored in routine electronic backups made by the Distributor or its contractors which cannot easily be destroyed or erased), 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: _____

2118 Definitions

Capitalised terms not otherwise defined in this Appendix have the meaning given to them in the Agreement. **Drafting Note: given this Appendix will form part of the**

Agreement, we have deleted duplicative definitions below that are already defined in clause 33.2 of the DDA template 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 Ttrader or the Trader's Metering Equipment Provider for each ICP the Ttrader supplies, and which the ~~retailer~~ Trader or the Trader's Metering Equipment Provider holds ~~or obtains~~, but does not include aggregated and anonymised information contained in documents, reports, analyses or other materials that are prepared for a Permitted Use Purpose or an Other Purpose;

~~"**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;~~

"Excluded Personnel" ~~has the meaning given in clause 7(2).~~

"Metering Equipment Provider" ~~has the meaning given to it in section 5 of the Electricity Industry Act 2010;~~

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

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

"Network Services Personnel" ~~means any person appointed from time to time by the Distributor in relation to Electrical Installations, maintenance of~~

equipment, or other works on network assets or at a Customer's Premises, including contractors (and their subcontractors);

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

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

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

"Permitted Purposes" means:

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

~~(d)(b) preparing, publishing and distributing Public Reports;~~

~~"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;~~

"Public Reports" means any documents, reports, analyses or other material prepared for public interest purposes in relation to electricity consumption on the Network and that contain no Consumption Data other than on an anonymised and aggregated basis that is not capable of being disaggregated or linked in any way to specific Customers or ICPs.

~~"Serious Breach" means:~~

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

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

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

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

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

Schedule 12A.2 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 one 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 reasonable requirements of ~~the participants~~ trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**; and
 - ~~(e) reflect the interests of consumers on the distributor's network; and~~
 - ~~(d)(c) 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. [Drafting Note: We have made this amendment on the basis that the Rulings Panel should have regard to all of the participants with whom the distributor may have a distributor agreement, when setting operational terms that should be appropriate across those agreements.]~~

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**
- (3) 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) Subject to subclause (3), **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.

(2)(3) A **participant** may not appeal to the **Rulings Panel** against the inclusion of 1 or more **operational terms** in the **default distributor agreement** if those **operational terms** (or terms substantially similar to those **operational terms**) were included in an agreement for services between the **participant** and the relevant **distributor** that commenced before the day this Part comes into force.

8 Rulings Panel appeal process

(1) If the **Rulings Panel** receives a notice from a **participant** before the end of the period specified in clause 7(1), the **Rulings Panel** must, no later than 10 **business days** after receiving the notice, advise the **participant** that the **Rulings Panel** will—

- (a) review 1 or more of the **operational terms** to which the notice relates; or
- (b) decline to review 1 or more of any such terms, giving reasons.

(2) In reviewing an **operational term** in a **default distributor agreement**, the **Rulings Panel** must apply the principles set out in clause 4(2).

(3) If the **Rulings Panel** reviews an **operational term**, the **Rulings Panel** must, no later than 20 **business days** after advising the **participant** under subclause (1),—

- (a) confirm the **operational term**; or
- (b) amend the **operational term**, in which case clauses 9 and 10 apply; or
- (c) direct the **distributor** to reconsider, either generally or in respect of any specified matter, the **operational term**, within such time as the **Rulings Panel** must specify, and give the **distributor** any such directions as the **Rulings Panel** thinks fit concerning the reconsideration of the **operational term**, in which case clause 11 applies.

(4) The **Rulings Panel** may only amend an **operational term** under clause 8(3)(b) if it is satisfied that:

- (a) the **operational term** is inconsistent with the principles in clause 4(2); and
- (b) it would be commercially reasonable to require the **distributor** to apply the amended term, having regard to the impact on the **distributor**, including but not limited to:

- (i) the operational impact on the **distributor**; and
- (ii) the cost to the **distributor** of implementing the amended term.

(5) Before it amends an **operational term** under subclause (3), the **Rulings Panel** must consider the impact on the **distributor** of having different operational terms applying across its **distribution agreements** with **participants**. **[Drafting Note: Our suggested amendments here reflect that the Rulings Panel should only make changes to operational terms when these meet a materiality threshold that the Trader can prove, rather than simply because the Trader would prefer different terms. Furthermore, when amending an operational term, the Rulings Panel should have regard to the aim of consistency across all of the distributor's distributor agreements.]**

(6) Nothing in this clause permits the **Rulings Panel** to amend an amount that is charged by the **distributor** to the **participant** party to the **default distributor agreement**.

(7) If the **Rulings Panel** confirms or amends 1 or more **operational terms** of a **default**

istributor agreement in accordance with clause 8(3)(a) or 8(3)(b), the participant that gave notice to the Rulings Panel under clause 7(1) or the distributor may appeal the decision of the Rulings Panel to the High Court under section 65(1)(f) of the Electricity Industry Act 2010. If an appeal is so made to the High Court, clauses 9 and 10 will continue to apply subject to any orders of the Court to the contrary.

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.

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

distributor to ensure consistency of operational terms across all of its distributor agreements if the Rulings Panel chooses to let a participant independently determine whether it wishes to adopt an amended operational term under clause 10(1)(c). Without an ability for the distributor to put all of its traders onto the same operational terms, the distributor would face the prospect of inconsistency across its agreements undermining the benefit of the DDA.]

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.

Amending recorded terms in default distributor agreements

14 Amending recorded terms in default distributor agreements

A distributor may:

- (a) insert 1 or more recorded terms in a default distributor agreement made available on its website; and
- (b) remove or amend 1 or more recorded terms included in a default distributor agreement made available on its website,
by making the default distributor agreement with the inserted and/or amended recorded terms, and/or without the removed recorded terms, available on its website.

Amending collateral terms in default distributor agreements

15 Amending collateral terms in default distributor agreements

A distributor may:

- (a) insert 1 or more collateral terms in a default distributor agreement made available on its website; and
- (b) remove or amend 1 or more collateral terms included in a default distributor agreement made available on its website,
by making the default distributor agreement with the inserted and/or amended collateral terms, and/or without the removed collateral terms, available on its website.

16 Effect of amendment to collateral 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 15 ("existing agreement").
- (2) The distributor must advise each trader that is party to an existing agreement of the amended default distributor agreement and clearly identify the collateral term that has been amended in accordance with clause 15.
- (3) At any time prior to the 15th business day after the date on which the distributor gave notice to the trader under subclause (2), the trader may give notice to the distributor that it does not agree to the inclusion in the existing agreement of the amended collateral term.
- (4) Subject to subclause (5), with effect from the 15th business day after the date on which

the **distributor** gave notice to the trader under subclause (2) the existing agreement is deemed to be amended to include the **collateral term** that is amended in accordance with clause 15.

- (5) An existing agreement does not include any amendment to a **collateral term** to which a notice given under subclause (3) applies.
-

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.

Default Distributor Agreement

Template

Version: 09 July 2019

Distributor:

[insert full legal name of the Distributor]

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AGREEMENT dated 20[]

PARTIES

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

COMMENCEMENT DATE

[insert date]

SIGNATURES

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

INTRODUCTION

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

PART I – AGREEMENT TERM AND SERVICE COMMITMENTS

1. TERM OF AGREEMENT

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

2. SUMMARY OF GENERAL OBLIGATIONS

- 2.1 **Purpose of clause:** This clause is intended to provide an overview of each party's obligations under this Agreement, and does not impose any legal obligations on either party.
- 2.2 **Summary of Distributor's general obligations:** In summary, this Agreement requires the Distributor to provide Distribution Services to the Trader as follows:

Requirements for recorded terms: Insert as clause 2.2(a) a recorded term that specifies whether the Distributor is required to deliver electricity either to Service Levels specified in any Service Standards set out in Schedule 1 and/or in accordance with Good Electricity Industry Practice. An example is provided in clause 2.2(a). Revise as appropriate and then delete this dashed box.

- (a) deliver electricity to Service Levels specified in any Service Standards set out in Schedule 1 and otherwise in accordance with Good Electricity Industry Practice;

- (b) provide service interruption information under clause 4 and Schedule 5;
- (c) carry out Load Shedding under clause 4.4;
- (d) carry out load control as permitted under clause 5, Schedule 1, and Schedule 8;
- (e) calculate Loss Factors in accordance with clause 6;
- (f) allocate Price Categories to ICPs under clause 8;
- (g) consider applications for new connections and changes to capacity for existing connections, implement disconnections and reconnections and decommission ICPs, under clause 17 and Schedule 6; and
- (h) provide information in accordance with EIEPs under clause 31 and Schedule 3.

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

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

3. ~~CONVEYANCE ONLY~~ DIRECT CUSTOMER AGREEMENTS

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

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

- (a) unless otherwise agreed with the Trader, ensure that the Direct Customer Agreement

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

- (b) if the Distributor gives notice under clause 3.7(a), the Distributor may disconnect the ICPs if, within 20 Working Days of giving that notice, the Distributor has not received notice that the Trader (or any other trader) will immediately commence supplying the Customer on an Interposed basis in relation to those ICPs.

4. SERVICE INTERRUPTIONS

General

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

Unplanned Service Interruptions

- 4.5 **Party responsible for Unplanned Service Interruption calls:** The party responsible for receiving Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until normal service is restored, as

necessary, is identified in Schedule 5.

- 4.6 **Notification of Unplanned Service Interruptions:** If an Unplanned Service Interruption occurs, the Distributor and the Trader must comply with the service interruption communication requirements set out in Schedule 5.
- 4.7 **Customer requests for restoration of Distribution Services:** During any Unplanned Service Interruption, unless the Distributor requests otherwise, the Trader must forward to the Distributor any requests it receives from Customers for the restoration of the Distribution Services as soon as practicable, and the Distributor must acknowledge such receipt unless the Trader requests otherwise.

Planned Service Interruptions

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

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

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

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

Restoration of Distribution Services

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

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

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

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

4.12 Trader's remedy: *Except as provided in clause 9.10, the Trader's only remedy if the Distributor fails to meet the timeframes in clause 4.11 is the payment of a Service Guarantee Payment in accordance with Schedule 1.*

5. LOAD MANAGEMENT

5.1 Distributor may control load: Subject to clause ~~5.4~~ 5.3, if:

- (a) ~~the Distributor provides a Price Category or Price Option for a non-continuous level of service in respect of part or all of the Customer's load (a "Controlled Load Option"), and charges the Trader on the basis of the Controlled Load Option in respect of the Customer; or~~
- (b) the Distributor provides any other service in respect of part or all of the Customer's load advised by the Distributor to the Trader from time to time (an "Other Load Control Option") with respect to the Customer (who elects to take up the Other Load Control Option).

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

~~5.1~~ **5.2 Trader may control load:** Subject to clause 5.3, if the Trader offers to a Customer, and the Customer elects to take up, a price option for a non-continuous level of service by allowing the Trader to control part of or all of the Customer's load, the Trader may control part or all of the Customer's load (as the case may be) in accordance with this clause 5 and Schedule 8.

~~5.2~~ **5.3 Control of load by Entrant if some load controlled by Incumbent:** If either party (the "Entrant") seeks to control part of a Customer's load at a Customer's ICP, but the other party (the "Incumbent") has obtained the right to control part of the load at the same ICP in accordance with clause 5.1 or 5.2 (as the case may be), the Entrant may only control the part of the Customer's load that:

- (a) the Customer has agreed the Entrant may control under an agreement with the Entrant or under a price category or price option for a non-continuous level of service; and [Drafting Note: This amendment allows for the Entrant to obtain control over the part of the Customer's load by price category or price option as well as by agreement]
- (b) is separable from, and not already subject to, the Incumbent's right to control part of the Customer's load at the ICP obtained in accordance with clause 5.1 or 5.2 (as the case may be).

~~5.3~~ **5.4 No interference with or damage to Incumbent's Load Control System:** The Entrant must ensure that neither it nor its Load Control System interferes with the proper functioning of, or causes damage to, the Incumbent's Load Control System.

~~5.4~~ **5.5 Remedy if interference or damage:** If the Entrant or any part of the Entrant's Load Control System interferes with, or causes damage to, any part of the Incumbent's

Load Control System, the Entrant must, on receiving notice from the Incumbent or on becoming aware of the situation, promptly and at its own cost remove the source of the interference and make good any damage.

5.5.6 Trader to make controllable load available to Distributor for management of system security: If the Trader has obtained the right to control part of any

Customer's load in accordance with clause 5.2, the Trader must:

- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Trader has obtained the right;
- (b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice under paragraph (a), develop and agree jointly with the Distributor (such agreement not to be unreasonably withheld by either party), a protocol to be used by the parties to this Agreement that:
 - (i) is consistent with the Distributor's System Emergency Event management policy set out in Schedule 4, and the Code;
 - (ii) is for the purpose of coordinating the Trader's controllable load with other emergency response activities undertaken by the Distributor during a System Emergency Event, such purpose having priority during a System Emergency Event over other purposes for which the load might be controlled;
 - (iii) assists the Distributor to comply with requests and instructions issued by the System Operator when managing System Security in accordance with the Code during a System Emergency Event; ~~and~~
 - (iv) assists the Distributor to manage Network system security during a System Emergency Event; and
 - ~~(iv)~~(v) a Trader will not operate its controllable load in a manner that could risk damage to the Distributor's network;
- (c) during a System Emergency Event, operate its controllable load in accordance with the protocol developed in accordance with paragraph (b); and
- (d) at all times, operate its controllable load as a reasonable and prudent operator in accordance with Good Electricity Industry Practice.

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

- 5.6.5.7 Maintenance of Load Control Equipment:** *A party providing Load Control Equipment must endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Control Equipment:*
- (a) receives and responds to the appropriate load control signals;
 - (b) properly controls the appropriate load; and
 - (c) is otherwise fit for purpose.

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

5.75.8 Maintenance of Load Signalling Equipment: *A party providing Load*

Signalling Equipment must endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Signalling Equipment:

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

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

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

6. LOSSES AND LOSS FACTORS

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

- 6.6 **Disputes about Loss Factors:** If the Distributor does not change its notice after having received a complaint from the Trader, the Trader may raise a Dispute with the Distributor for the Loss Factors to be determined in accordance with the Dispute resolution process in clause 23. If the outcome of the Dispute is that the Distributor changes the Loss Factors declared in the Distributor's notice, and the change leads to a change in the level of revenue received by the Distributor, the Distributor may determine the time from which the change is to apply, which must be no later than 60 Working Days from the date on which the Dispute is finally resolved.

PART II – PAYMENT OBLIGATIONS

7. DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES

- 7.1 **Distribution Services pricing information:** Information about how the Trader can access information about the Distributor's Pricing Structure, a schedule of Price Categories, Price Options (if any), and Prices, is set out in Schedule 7. The Distributor must ensure that the information it makes available in accordance with Schedule 7 is available in a standard, downloadable electronic document format in a form that permits electronic search and copy functions.
- 7.2 **Changes to Pricing Structure, Price Categories, Price Options, and Prices:** The Distributor may change:
- (a) its Prices as set out in clauses 7.3 to 7.7; and
 - (b) its Pricing Structure as set out in clauses 7.4, 7.6, and 7.7; and
 - (b) its Price Categories and Price Options (if any) at any time, provided that the change does not have the effect of increasing 1 or more Prices,

Requirements for recorded terms: If any restrictions apply to the Distributor's ability to increase its prices, insert as clause 7.3 a recorded term that sets out those restrictions and any rights the Distributor may have to amend those restrictions. If no restrictions apply, insert the words "not applicable" as clause 7.3. An example is provided in clause 7.3. Revise as appropriate and then delete this dashed box.

- 7.3 **Price changes:** *Unless otherwise agreed with the Trader, the Distributor may not change its Prices more than once in any period of 12 consecutive months, unless a change is a material increase to 1 or more existing Prices and results from a change in:*
- (a) *a cost that is a pass-through cost or a recoverable cost specified in a determination of an input methodology by the Commerce Commission under Part 4 of the Commerce Act 1986 in respect of the services provided by the Distributor;*
 - (b) *the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed Price change must only apply to ICPs affected by the new or changed Distribution Services; or*
 - (c) *the law.*
- Nothing in this clause prevents the Distributor from decreasing a Price at any time, or from increasing a Price with the agreement of the Trader.*

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

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

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

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

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

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

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

7.7 **Changes containing an error:** If the Trader identifies an error in the Pricing Structure finalised and notified in accordance with clause 7.4, or an error in a Price change notified in accordance with clause 7.5 that arises from an obvious error in applying the Pricing Structure, the Trader must bring that error to the Distributor's attention as soon as reasonably practicable after becoming aware of the error. The Distributor may correct an error, including an error that it identifies itself, without following the process under clause 7.4 or giving notice under clause 7.5(a) (as the case may be), provided that the correction of the error must not have a material effect on the Trader or 1 or more Customers. To avoid doubt, the correction of an error in accordance with this clause is not a Price change for the purposes of clause 7.2.

8. ALLOCATING PRICE CATEGORIES AND PRICE OPTIONS TO ICPS

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

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

- 8.2 **Allocation of Price Categories if more than 1 option:** If there are 2 or more Price Categories within the Distributor's Pricing Structure for which an ICP is eligible, the Distributor must allocate 1 of the eligible Price Categories to the ICP.
- 8.3 **Matters to have regard to in allocating Price Category:** In allocating a Price Category to an ICP or changing the Price Category allocated to an ICP, the Distributor must have regard to the following:
- (a) the eligibility criteria for each Price Category referred to in Schedule 7;
 - (b) the attributes of the ICP; and
 - (c) if known and relevant:
 - (i) the Trader's or Customer's preference for a particular Price Category in respect of which the ICP is eligible;
 - (ii) the meter register configuration(s) of the Metering Equipment and any Load Control Equipment installed for the ICP, which may determine the Price Option or Price Options that apply if more than 1 Price Option is defined for the relevant Price Category;
 - (iii) the ICP's historic demand profile;
 - (iv) the Customer's capacity requirements; and
 - (v) any other factors.
- 8.4 **Trader may request allocation of an alternative eligible Price Category:** At any time, the Trader may request that the Distributor allocate an alternative Price Category to an ICP, and must provide any information necessary to support its request. If the Distributor, acting reasonably, agrees that the ICP meets the eligibility criteria for the requested alternative Price Category, the Distributor must apply the change (but not retrospectively, unless it agrees otherwise) and advise its decision to the Trader within 5 Working Days after receipt of notice of the Trader's request. If the Distributor declines the request, it must provide the reasons for its decision.
- 8.5 **Trader to select Price Option to match meter register configuration:** If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("**Price Options**"), the Trader must:
- (a) select the Price Option that corresponds to the configuration of each meter register installed at the relevant ICP;
 - (b) notify the Distributor of that selection in accordance with the relevant EIEP; and
 - (c) if the meter register configuration for the ICP changes, change the Price Option to match the new configuration and notify the Distributor of the change in accordance with the relevant EIEP.
- 8.6 **Trader request for reallocation of Price Category if it considers Price Category has been Incorrectly Allocated:** Under this clause 8.6 and clauses 8.7 and 8.9, a Price Category is "Incorrectly Allocated" to an ICP only if the ICP was ineligible for the Price Category allocated by the Distributor based on the relevant information available to the Distributor at the time it made the allocation. If the Trader reasonably considers that a Price Category was Incorrectly Allocated to an ICP, the Trader must notify the Distributor of the reasons why it considers that the Price Category was Incorrectly Allocated and identify the Price Category that the Trader considers should have been allocated to the ICP, which must be a Price Category for which the ICP is eligible. The Distributor must advise the Trader within 10 Working Days after receipt of the Trader's notice whether it agrees to allocate the requested Price Category (the "**Corrected Price Category**") to the ICP, such agreement not to be unreasonably withheld, and must provide the reasons for its decision. To avoid doubt, this clause 8.6 does not apply if the Distributor has already provided notice to the Trader that the relevant Price Category is Incorrectly Allocated under clause 8.9.

- 8.7 **Credit following correction:** If the Distributor allocates a Corrected Price Category to an ICP following notice from the Trader given under clause 8.6, the Distributor must:
- (a) commence charging the Trader in accordance with the Price(s) that applies to the Corrected Price Category with immediate effect; and
 - (b) subject to clause 8.8, and by issuing a Credit Note payable in the next monthly billing cycle, credit the Trader with an amount (if positive) equivalent to:
 - (i) the charges paid by the Trader in respect of that ICP in the period from the later of:
 - (A) the Commencement Date;
 - (B) the date the Distributor Incorrectly Allocated the Price Category to that ICP; and
 - (C) the Switch Event Date for that ICP recorded for the Trader, up to the date on which the Distributor allocates a Corrected Price Category to that ICP; less
 - (ii) the charges that would have applied if the Corrected Price Category had been allocated to that ICP during the period referred to in subparagraph (i), provided that the maximum period for which credit will be payable under this clause 8.7 is 15 months, unless otherwise agreed.
- 8.8 **Limitations on credits for Price Category corrections:** Clause 8.7(b) does not apply in respect of an ICP if:
- (a) clause 8.9 applies to the ICP; or
 - (b) within 20 Working Days of the Switch Event Date recorded for the Trader, the Trader has not provided the Distributor with correct or complete information about the ICP or the Customer necessary to determine Price Category eligibility (provided that information was not already known by the Distributor);
 - (c) the Price Category correction was necessary because the Trader provided the Distributor with incorrect or incomplete information in relation to the ICP or the Customer or any other factors in respect of that ICP that were relevant to the allocation of a Price Category; or
 - (d) the initial Price Category was allocated on the basis of incorrect information provided by the Customer or the Customer's representative.
- 8.9 **Distributor's right to change Price Category if it considers Price Category has been Incorrectly Allocated:** If at any time the Distributor reasonably considers that a Price Category has been Incorrectly Allocated to an ICP:
- (a) the Distributor must notify the Trader accordingly, including notification of the reasons why it considers that the Price Category has been Incorrectly Allocated, and identify the Price Category or Price Categories it considers the ICP is eligible for;
 - (b) unless the Trader is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Price Category has not been Incorrectly Allocated, the Distributor may:
 - (i) allocate the Price Category that it considers appropriate to that ICP (acting ~~reasonably and, if the Distributor identified more than 1 eligible Price Category in its notice, taking into account the Trader's or the Customer's preferred Price Category as communicated to the Distributor by the Trader~~ consistently with clause 8.1), and [Drafting Note: This amendment ensures that any correction of a mistake is made in the same way as an initial allocation]

- (ii) may commence charging the Trader for Distribution Services in accordance with that Price Category after a further 40 Working Days; and
 - (c) the Distributor must provide to the Trader information relevant to its decision.
- 8.10 **Application of clause 8.9:** Clause 8.9 does not apply if the Trader has already provided notice to the Distributor under clause 8.6 that the relevant Price Category has been Incorrectly Allocated.
- 8.11 **Commencement of charges:** The Trader is liable to pay charges in respect of an ICP from:
- (a) the day the ICP is Energised or Re-energised; or
 - (b) if the Trader is assuming responsibility for the ICP, the later of the Switch Event Date or the date that the ICP is Energised.
- 8.12 **Cessation of charges:** The Trader is not liable to pay charges in respect of an ICP:
- (a) from the day on which an ICP is De-energised (except as a result of a Temporary Disconnection); or
 - (b) from the Switch Event Date, if another trader takes responsibility for the ICP; or
 - (c) from the day which is 2 Working Days after the Distributor receives a notification from the Trader that the Distributor is responsible for completing a Vacant Site Disconnection in respect of the ICP in accordance with Schedule 6.

9. BILLING INFORMATION AND PAYMENT

- 9.1 **Calculating Tax Invoices for Distribution Service charges:** The Trader must provide information to enable the Distributor to calculate Distribution Services charges and prepare Tax Invoices, in accordance with Schedule 2.
- 9.2 **Late, incomplete, or incorrect information:** If the Trader does not provide information to the Distributor in accordance with Schedule 2 by the 5th Working Day after the last day of the month to which the Tax Invoice relates, or any information provided by the Trader is incomplete or materially incorrect, the Distributor may estimate, in accordance with Good Electricity Industry Practice, the Trader’s Tax Invoice for Distribution Services.
- 9.3 **Issuing of Tax Invoices:** The Distributor must issue Tax Invoices for Distribution Services as follows:
- (a) the Distributor must invoice the Trader within 10 Working Days after the last day of the month to which the Tax Invoice relates;
 - (b) a Tax Invoice may either be:
 - (i) calculated based on the information provided by the Trader in accordance with Schedule 2 (an “Actual Invoice”); or
 - (ii) estimated in accordance with Good Electricity Industry Practice, including where clause 9.2 applies (a “Pro forma Invoice”).
 - ~~(b)~~(c) at the same time as it provides an ~~Tax-Actual~~ Invoice (either under sub-clause (a), (d) or (e)), the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Tax Invoice;
 - ~~(e)~~(d) if late, incomplete, or incorrect information is provided and the Tax Invoice is ~~estimated in accordance with clause 9.2~~ a Pro forma Invoice on the basis of that information, the Distributor must issue an Actual Invoice that replaces the Pro forma Invoice as well as a Credit Note ~~or Debit Note~~ in relation to the Pro forma Invoice in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month;
 - (e) if the Tax Invoice is a Pro forma Invoice and sub-clause (d) does not apply, the

Distributor must, by no later than the same time as the Distributor issues a Tax Invoice under sub-clause (a) to the Trader for its Distribution Services charges for the following month, issue an Actual Invoice that replaces the Pro forma Invoice as well as a Credit Note in relation to the Pro forma Invoice;

- ~~(f)~~(f) if the information received by the Distributor in accordance with Schedule 2 includes revised reconciliation information or additional consumption information, the Distributor must provide a separate Credit Note or Debit Note to the Trader in respect of the revised consumption information ("**Revision Invoice**"), and a Use of Money Adjustment;
- ~~(g)~~(g) if a Revision Invoice is required, the Distributor must issue the Revision Invoice in the month after the Distributor receives the revised reconciliation information or additional consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month; and
- ~~(h)~~(h) at the same time it provides a Revision Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Revision Invoice.

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

Requirements for recorded terms: *If the Distributor or the Trader is entitled to issue any other invoices under this Agreement, insert as clause 9.5 a recorded term setting out the process for issuing those invoices (including any relevant timeframes for issuing those invoices and the settlement date for those invoices) and any rights the Distributor may have to amend that process. If neither the Trader nor the Distributor is entitled to issue any other invoices under this Agreement, insert the words "not applicable" as clause 9.5. An example is provided in clause 9.5. Revise as appropriate and then delete this dashed box.*

9.5 **Other invoices:**

- (a) *The Distributor may issue the Trader with:

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

- 9.6 **Interest on late payment:** Subject to clause 9.7, the Trader or the Distributor (as the case may be) must pay any Tax Invoice issued under this clause 9. If any part of a Tax Invoice that is properly due in accordance with this Agreement is not paid by the due date, Default Interest may be charged on the outstanding amount for the period that the Tax Invoice remains unpaid.
- 9.7 **Disputed invoices:** If the Trader or the Distributor disputes a Tax Invoice (which includes a Revision Invoice) issued under this clause 9, the party disputing the invoice ("**Disputing Party**") must notify the other party ("**Non-disputing Party**") in writing and provide details as to the reasons why the Disputing Party disputes that invoice within 18 months of the date of the first Tax Invoice issued in respect of the Distribution Services charges the subject of the dispute Tax Invoice ("**Invoice Dispute**"). On receiving an Invoice Dispute notice, the Non-disputing Party must:
- (a) if the Non-disputing Party agrees with the matters set out in the Invoice Dispute notice and:
 - (i) the Disputing Party has not paid the disputed Tax Invoice, promptly issue a Credit Note for the disputed amount, and any remaining amount owed must be paid by the Disputing Party within 6 Working Days of receipt of the Credit Note, but need not pay prior to the time set out in clause 9.4 or 9.5; or
 - (ii) the Disputing Party has paid the disputed invoice, calculate the amount that the Disputing Party has over paid and promptly issue a Credit Note to the Disputing Party for the amount over paid, which must include a Use of Money Adjustment. Any amount owed must be paid by the Non-disputing Party within 6 Working Days of issuing the Credit Note. A Use of Money Adjustment must apply for the period commencing on the date the original Tax Invoice was paid and ending when re-payment is made, but the amount need not be settled prior to the time set out in clauses 9.4 or 9.5; or
 - (b) if the Non-disputing Party disagrees with the matters set out in the Invoice Dispute notice, either party may raise a Dispute in accordance with clause 23 and if the Disputing Party has not paid the disputed Tax Invoice, it must pay the undisputed amount of the disputed Tax Invoice issued in accordance with clauses 9.4 or 9.5; and
 - (c) on the resolution of a Dispute under clause 23, any amount owed must be paid by the relevant party within 6 Working Days. Default Interest is payable for the period commencing on the date the disputed amount would have been due for payment under this clause 9, and ending when payment is made. To the extent the Tax Invoice is held not to be payable, the Non-disputing Party must issue a Credit Note to the Disputing Party.
- 9.8 **Incorrect invoices:** If it is found that a party has been overcharged or undercharged, and the party has paid the Tax Invoice (which includes a Revision Invoice) containing the overcharge or undercharge, within 20 Working Days after the error has been discovered and the amount has been agreed between the parties, the party that has been overpaid must refund to the other party the amount of any such overcharge or the party that has underpaid must pay to the other party the amount of any such undercharge, in both cases together with a Use of Money Adjustment on the overcharged or undercharged amount, provided that neither party has the right to receive a compensating payment in respect of an overcharge or undercharge if more than 18 months has elapsed since the date of the Tax Invoice containing the overcharge or undercharge.

- 9.9 **No set-off:** Both parties must make the payments required to be made to the other under this Agreement in full without deduction of any nature whether by way of set-off, counterclaim or otherwise except as otherwise set out in clause 9.7 or as may be required by law.

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

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

10. PRUDENTIAL REQUIREMENTS

- 10.1 **Distributor may require Trader to comply with prudential requirements:** The Distributor may, by giving notice to the Trader, require the Trader to comply with prudential requirements, in which case the Trader must, whether the notice is received before or after the commencement of this Agreement, comply with prudential requirements as follows:
- (a) if the Trader is not trading on the Network, the Trader must comply with prudential requirements before the Trader starts trading on the Network; and
 - (b) if the Trader is trading on the Network, the Trader must comply with prudential requirements within 10 Working Days after receipt of the Distributor's notice.
- 10.2 **Trader elects prudential requirements:** If the Distributor requires the Trader to comply with prudential requirements in accordance with clause 10.1, the Trader must comply with either of the following prudential requirements:
- (a) the Trader must maintain an acceptable credit rating; or
 - (b) the Trader must provide and maintain acceptable security by, at the Trader's election:
 - (i) providing the Distributor with a cash deposit of the value specified in clause 10.6 ("**Cash Deposit**"), which the Distributor must hold in a trust account that the Distributor must establish and operate in accordance with clause 10.26;
 - (ii) arranging for a third party with an acceptable credit rating to provide security in a form acceptable to the Distributor, of the value specified in clause 10.6; or
 - (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in clause 10.6.
- 10.3 **Acceptable credit rating:** For the purposes of clause 10.2, an acceptable credit rating means that the Trader or the third party (as the case may be):
- (a) carries a long term credit rating of at least:

- (i) Baa3 (Moody's Investor Services Inc.);
 - (ii) BBB- (Standard & Poor's Rating Group);
 - (iii) B- (AM Best); or
 - (iv) BBB- (Fitch Ratings); and
- (b) if the Trader or the third party (as the case may be) carries a credit rating at the minimum level required by paragraph (a), is not subject to a negative watch or any similar arrangement by the agency that gave it the credit rating.
- 10.4 Change in prudential requirements complied with:** The Trader may elect to change the way in which it complies with prudential requirements by notifying the Distributor of the change at least 2 Working Days before the change occurring, in which case the parties must comply with clause 10.18. The change will come into effect on the intended date, provided that the Trader has complied with all its obligations under this Agreement, and on confirmation, satisfactory to the Distributor, that an alternative suitable form of security has been provided that satisfies the requirements of clause 10.2.
- 10.5 Evidence of acceptable credit rating:** The Trader or third party (as the case may be) must provide such evidence that it has maintained an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.
- 10.6 Value of security:** The value of security required for the purposes of this clause 10 is the Distributor's reasonable estimate of the Distribution Services charges that the Trader will be required to pay to the Distributor in respect of any period of not more than 2 weeks, notified in writing by the Distributor to the Trader. If additional security is required in accordance with clause 10.7 ("**Additional Security**"), the Distributor's notice provided under clause 10.1 must state the amount of the Additional Security.
- 10.7 Distributor may require Additional Security:** The Distributor may, by notice to the Trader, require the Trader to provide Additional Security. The amount of any Additional Security required must be such that the total value of all security required to be provided by the Trader under this Agreement is not more than the Distributor's reasonable estimate of the charges that the Trader will be required to pay to the Distributor under this Agreement in respect of any 2 month period.
- 10.8 If Additional Security required:** If the Distributor requires the Trader to provide Additional Security:
- (a) the Trader may elect the type of security that it provides in accordance with clause 10.2(b); and
 - (b) the parties must comply with clauses 10.16 and 10.18.
- 10.9 Additional security requirements:** The following provisions apply in respect of any Additional Security provided:
- (a) if the Additional Security is in the form of a Cash Deposit, the Distributor must pay a charge to the Trader for each day that the Distributor holds the Additional Security at a per annum rate that is calculated as follows:

the Bank Bill Yield Rate for that day, plus 15 percentage points

(so that, by way of example, if the Bank Bill Yield Rate for the relevant day is 3%, the charge will be 18%)
 - (b) the parties agree that the charge calculated in accordance with paragraph (a) is a genuine and reasonable pre-estimate of the cost to the Trader of providing the Additional Security in the form of a Cash Deposit;
 - (c) the Additional Security must be held as if it were part of the Cash Deposit under this Agreement;

- (d) if the Additional Security is in the form of security from a third party, the Distributor must pay a charge to the Trader for each day that the Distributor holds the Additional Security at a per annum rate of 3% on the amount of Additional Security held on that day;
- (e) any money required to be paid by the Distributor to the Trader in accordance with this clause 10.9 must be paid by the Distributor to the Trader on a quarterly basis; and
- (f) if the Trader provides an amount that is greater than the amount of Additional Security required by the Distributor as Additional Security, the charges set out in paragraph (a) will not be payable by the Distributor in relation to the amount provided in excess of the Additional Security required by the Distributor.

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

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

10.11 Review of the value of security: The Distributor may review, or the Trader may require the Distributor to review, the value of security required to be provided by the Trader at any time.

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

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

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

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

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

by either party under this clause is Confidential Information.

10.16 Change to value of security: If:

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

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

10.17 Failure to maintain acceptable credit rating: If:

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

the Distributor considers, acting reasonably, that the Trader is no longer able to maintain an acceptable credit rating in accordance with clause 10.2(a), and the Distributor still requires the Trader to comply with prudential requirements, the Distributor must notify the Trader of the value of acceptable security required in accordance with clause 10.2(b).

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

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

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

- (a) the Trader will not be entitled to a return of the Cash Deposit, other than as set out in clause 10.26(f); and
- (b) if the Trader fails or has failed to pay an amount owing under this Agreement, full beneficial ownership of that amount (plus Default Interest) of the Cash Deposit (or if the Cash Deposit is less than the amount owing, the full amount of the Cash Deposit) will automatically transfer solely to the Distributor and the Distributor will be entitled to draw down that amount (plus Default Interest), on 2 Working Days' notice to the Trader.

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

10.22 When Distributor may make a call on security: The Distributor may make a call on security in accordance with clause 10.23 if:

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

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

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

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

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

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

- (a) the Cash Deposit must be held in a trust account in the name of the Trader, to be applied or distributed only on the terms of this Agreement, or as otherwise agreed by the parties;
- (b) the Distributor must establish a trust account with a New Zealand registered bank ("**the Bank**") for the purpose of holding the Cash Deposit ("**Trust Account**");
- (c) the Distributor must obtain acknowledgement from the Bank that the Cash Deposit is held on trust in the Trust Account and that the Bank has no right of set-off or right of combination in relation to the Cash Deposit;
- (d) the Trader must inform the Distributor of the bank(s) that the Trader uses for its banking purposes and if the Trader changes banks;
- (e) the Trust Account must bear interest at the best on call rate reasonably available from time to time from the Bank. The Distributor must pay the Trader the interest earned on the Cash Deposit (except for the amount of the Cash Deposit that is Additional Security, in respect of which a charge should be paid in accordance with clause 10.9) on a quarterly basis net of account fees and any amounts required to be withheld by law, unless the parties agree otherwise;

- (f) if this Agreement is terminated, the Distributor must refund any Cash Deposit (less any amount owed to the Distributor plus any interest not yet paid to the Trader) to the Trader in accordance with clause 10.19, provided that the Trader:
 - (i) is not otherwise in default of this Agreement;
 - (ii) has ceased to be bound by this Agreement; and
 - (iii) has discharged all obligations under this Agreement to the Distributor, including payment of all outstanding amounts under this Agreement; and
- (g) the Distributor must provide the Trader with an annual report in respect of the operation of the Trust Account if requested by the Trader.

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

PART III – OPERATIONAL REQUIREMENTS

11. ACCESS TO THE CUSTOMER'S PREMISES

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

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

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

- (a) comply with sections 23A to 23D, 57 and 159 of the Electricity Act 1992 as though these sections relate to the Distributor's access rights as contemplated under clause 11.1, provided that the Distributor must give written notice to a Customer if the Distributor intends to access the Customer's Premises for any reason (except if the Distributor requires access to carry out a routine inspection or operation of the Distributor's Equipment, or in an emergency situation);
- (b) ensure that it has appropriate procedures in place for the secure storage, use, and return of any key to and any security information about the Customer's Premises;

- (c) cause as little disturbance or inconvenience as practicable to the Trader and the Customer (including minimising any direct impact on the Customer's property) and ensure that its personnel:
 - (i) behave in a courteous, considerate and professional manner at all times while on the Customer's Premises;
 - (ii) carry identification that shows they are authorised personnel of the Distributor; and
 - (iii) if practicable, identify themselves to the Customer before entering the Customer's property; and
 - (iv) comply with the Customer's reasonable requirements, practices and procedures as disclosed by the Customer or as generally practised for health and safety, and security requirements.

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

- (a) if access was required for a purpose described in clause 11.1(a), (b), (d) or (g), the Distributor or Trader gave the Customer 10 Working Days' notice of access being required (if access is required for a purpose described in clause 11.1(c), (e), ~~(f)~~ or (h), such notice is not required); and
- (b) if the disconnection is a Temporary Disconnection, the Distributor has complied with the relevant provisions of Schedule 6.

11.4 Costs of disconnection: The Distributor will not be liable for any loss the Trader may suffer or incur as a result of a disconnection carried out because the Customer has not given the Distributor access in accordance with the relevant Customer Agreement. The Trader must reimburse the Distributor for all of the Distributor's reasonable costs incurred in relation to the disconnection and any reconnection.

11.5 Existing agreement will prevail: In the event of a conflict between clause 11 and any provision of any existing agreement between the Customer and Distributor with respect to the Distributor's access rights to the Customer's Premises, the provisions of the existing agreement between the Distributor and Customer will prevail to the extent of such conflict.

12. GENERAL OPERATIONAL REQUIREMENTS

12.1 Interference or damage to Distributor's Equipment by Customers: The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that, during the term of the Customer Agreement and until the end of the period ending 6 months after the termination of the Customer Agreement, the Customer must not interfere with or damage, and must ensure that its agents and invitees do not interfere with or damage, the Distributor's Equipment without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).

12.2 Costs of making good any damage: The Trader must, subject to clause 29.1, include in each of its Customer Agreements a requirement that, if any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Customer or the Customer's agents or invitees, the Customer must pay the cost of making good the damage to the Distributor.

12.3 Interference or damage to Distributor’s Equipment or Network by Trader: The Trader must ensure that it and its employees, agents and invitees do not:

(a) interfere with or damage the Distributor’s Equipment (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property);

or-

(a)(b) interfere with or damage the Network or cause or permit any person, material or device to do so. **[Drafting Note: We consider it appropriate that the Trader’s obligation not to interfere with or damage the Distributor’s Equipment in subclause (a) should extend to the Network also.]**

12.312.4 Costs of making good any damage: If any of the Distributor’s Equipment is damaged by the negligence or wilful act or omission of the Trader or the Trader’s employees, agents or invitees, the Trader must pay the cost of making good the damage to the Distributor.

12.412.5 Interference or damage to Trader’s Equipment or Customer’s Installations: The Distributor must ensure that it and its employees, agents and invitees do not interfere with or damage the Trader’s Equipment or the Customer’s Installation (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Trader or the Customer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).

12.512.6 Costs of making good any damage: If the Trader’s Equipment or the Customer’s Installation is damaged by the negligence or wilful act or omission of the Distributor or the Distributor’s employees, agents or invitees, the Distributor must pay the cost of making good the damage to the Trader or the Customer (as the case may be). This clause 12.6 is for the benefit of the Customer and may be enforced by the Customer under the Contract and Commercial Law Act 2017. This provision may be varied without the consent of any Customer.

12.612.7 Interference with Network: The Trader must, subject to clause 29.1, include in each of its Customer Agreements a provision to the effect that the Customer must not:

- (a) inject or attempt to inject any electricity into the Network, unless the Customer is also a Distributed Generator and there is a Connection Contract in place between the Distributed Generator and the Distributor; or
- (b) without the prior written agreement of the Distributor, convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than electricity in accordance with this Agreement and load control signals transmitted by or with the written consent of the Distributor) over the Network or cause or permit any other person to do so.

12.712.8 Connection of Distributed Generation: The Distributor and the Trader must comply with their obligations under Part 6 of the Code, in respect of connecting Distributed Generation. The Trader must:

- (a) purchase electricity from Distributed Generation connected to the Network only if the Trader has confirmation from the Distributor that there is a Connection Contract in place between the Distributed Generator and the Distributor; and
- (b) notify the Distributor if the Trader has reasonable grounds to suspect that a Distributed Generator does not have a Connection Contract with the Distributor and has connected its Distributed Generation directly or indirectly to the Network.

12.812.9 Changes to GXPs: The following procedure will apply if the Distributor proposes

to construct and operate, or agree with a Grid Owner to have constructed and operated, a new GXP, or permanently disconnect the Network from a GXP (a "**Proposal**");

- (a) the Distributor must give the Trader notice of the following:
 - (i) the ICPs, groups of ICPs or geographical area(s) that will be affected by the Proposal; and
 - (ii) an estimate of the overall costs of the Proposal and a description of any benefits of the Proposal;
- (b) the Distributor must consult with the Trader about the Proposal for a reasonable period of time; and
- (c) if, at the conclusion of the consultation, the Distributor decides to proceed with the Proposal (including the Proposal as changed as a result of the consultation), the Distributor must give the Trader at least 20 Working Days' notice of the date on which the commissioning of a new GXP, or permanent disconnection of the Network from a GXP, is expected to be complete.

~~12.9~~12.10 **Notification of interference, damage or theft:** If the Distributor or Trader discovers any interference or damage to the other party's equipment or the Customer's Installation, or evidence of theft of electricity, loss of electricity or interference with the Network, the discovering party must notify the affected party as soon as it is practicable to do so.

~~12.10~~12.11 **Additional Metering Equipment:** Either party may, at its own cost, install and maintain additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that:

- (a) the additional Metering Equipment does not interfere with any other equipment owned or used by the other party; and
- (b) the party installing the additional Metering Equipment ensures that it is installed and maintained in accordance with Good Electricity Industry Practice.

~~12.11~~12.12 **Responsibility for damages:** If the party installing or maintaining additional Metering Equipment (the "**First Party**") causes damage to the equipment or invalidates the existing Metering Equipment certification of the other party, the First Party must:

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

~~12.12~~12.13 **Safe Housing of Equipment:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements (subject to any written agreement between the Trader and the Distributor) an undertaking by the Customer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Customer's Premises that the Distributor determines is necessary.

~~12.13~~12.14 **The Network:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements an acknowledgement by the Customer that:

- (a) the Network, including any part of the Network situated on Customer's Premises, is and will remain the sole property of the Distributor; and
- (b) no provision of the Customer Agreement nor the provision of any services by the

Distributor in relation to the Network will confer on the Customer or any other person any right of property or other interest in or to any part of the Network or any Distributor’s Equipment that is used to provide any such services.

13. NETWORK CONNECTION STANDARDS

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

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

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

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

14. MOMENTARY FLUCTUATIONS AND POWER QUALITY

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

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

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

(iii) are not treated as interruptions; and

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

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

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

15. CUSTOMER SERVICE LINES

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

16. TREE TRIMMING

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

17. CONNECTIONS, DISCONNECTIONS AND DECOMMISSIONING

- 17.1 **Policies and procedures:** The Distributor and the Trader must comply with the provisions of this clause and the policies and procedures set out in Schedule 6 and the relevant provisions of the Code in respect of carrying out:
- (a) new connections to the Network;
 - (b) capacity changes to existing connections;
 - (c) Temporary Disconnections and associated Reconnections;
 - (d) Vacant Site Disconnections and associated Reconnections;
 - (e) Decommissioning; and
 - (f) connections that incorporate Unmetered Load.
- 17.2 **Information exchange:** When exchanging information related to a Network connection, the Distributor and Trader must comply with the relevant EIEPs set out in Schedule 3.
- 17.3 **Warranted Persons:** The Distributor and Trader must each ensure that any person that it engages to carry out any activity related to Energising, De-energising, and Decommissioning an ICP that requires work on the Network, or performing any other work on the Network, is a Warranted Person.
- 17.4 **Medically dependent and vulnerable Customers:** The Distributor and the Trader must comply with [the requirements of the Code](#) ~~any guidelines issued by the Electricity Authority~~ relating to medically dependent Customers or vulnerable Customers [\(if any\)](#).
- 17.5 **Unmetered Load:** If the Network includes 1 or more ICPs across which Unmetered Load is shared for which the Trader is responsible:
- (a) the Trader must provide information about each such ICP to the Registry in accordance with the requirements specified in the Code; and
 - (b) the Distributor must:
 - (i) maintain a database of all such ICPs that includes all information necessary to support the Registry;
 - (ii) if the Distributor becomes aware of any change to any Unmetered Load, update the database and the Registry and notify the Trader of those changes in accordance with the Code; and
 - (iii) if the Trader notifies the Distributor that Unmetered Load is shared between 2

or more ICPs, and if requested by the Trader, allocate the Unmetered Load to the appropriate ICP and advise the Trader, and all other affected traders, of the allocation in accordance with the Code; and

- (c) the Trader and the Distributor must align their processes and populate the Registry, including in particular the format of Unmetered Load data populated in the Registry, in ~~accordance a manner consistent~~ with ~~any guidelines issued by the Electricity Authority~~ the requirements of the Code relating to unmetered load management (if any).

17.6 **Decommissioning subject to continuance of supply obligations:** The parties acknowledge that the Distributor's right to Decommission an ICP is subject to subpart 3 of the Act.

PART IV – OTHER RIGHTS

18. BREACHES AND EVENTS OF DEFAULT

18.1 **Breach of Agreement:** Subject to clause 18.6, if either party (the "**Defaulting Party**") fails to comply with any of its obligations under this Agreement, the other party may notify the Defaulting Party that it is in breach of this Agreement. The Defaulting Party must remedy a breach within the following timeframe:

(a) in the case of a Serious Financial Breach by the Trader, within 2 Working Days of the date of receipt of such notice;

~~(a)~~(b) in the case of a Serious Breach by the Distributor, within 2 Working Days of the date of receipt of such notice; or

~~(b)~~(c) in any other case, within 5 Working Days of the date of receipt of such notice.

18.2 ~~Distributor may exercise o~~ **Other remedies for Serious Financial Breaches** or Serious Breaches:

(a) If the Trader has provided acceptable security in accordance with clause 10.2(b), and the Trader has committed a Serious Financial Breach of the type described in paragraph (a) of the definition of Serious Financial Breach, the Distributor may give notice to the Trader under clause 18.1 and a notification under clause 18.4, but only if:

(i) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or

(ii) the Trader has arranged for a third party to provide acceptable security in accordance with clause 10.2(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with clause 10.23(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.

(b) If the Distributor has committed a Serious Breach, the Trader may give notice to the Distributor under clause 18.1 and a notification under clause 18.4.

~~18.2~~18.3 **Failure to remedy breach is Event of Default:** If the Defaulting Party fails to remedy the breach within the relevant timeframe set out in clause 18.1:

(a) the breach is an Event of Default for the purposes of this Agreement;

(b) the other party must use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 18; and

(c) the Defaulting Party must continue to do all things necessary to remedy the breach

as soon as reasonably practicable.

~~18.3~~18.4 **Options for certain Events of Default:** If the Event of Default is any of the following:

- (a) a Serious Financial Breach (in the case of the Trader only) or 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 18.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this Agreement or, if the Defaulting Party is the Trader, the Distributor's ability to carry out its obligations under any agreement with any other electricity trader,

then no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1, the other party may do any 1 or more of the following:

- (d) issue a notice of termination in accordance with clause 19.2;
- (e) if the Defaulting Party is the Trader, the Distributor may issue a notice prohibiting the Trader from trading at any ICPs on the Distributor's Network at which the Trader was not already trading on the date of the notice;
- (f) exercise any other legal rights available to it; and
- (g) if the breach is a Serious Financial Breach by the Trader, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.

~~18.4~~18.5 **Breaches that are not Events of Default:** If a breach is not an Event of Default, the non-breaching party may:

- (a) refer the matter to Dispute resolution in accordance with clause 23 no earlier than 1 Working Day after the end of the timeframe set out in clause 18.1; and
- (b) exercise any other legal rights available to it.

~~18.5~~18.6 **Insolvency Event:** Despite clause 18.1, if either party is subject to an Insolvency Event, the other party may:

- (c) immediately issue a notice of termination in accordance with clause 19.2;
- (d) exercise any other legal rights available to it; and
- (e) if the Insolvency Event involves a Serious Financial Breach by the Trader, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.

19. TERMINATION OF AGREEMENT

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

- (a) **Termination by agreement:** both parties may agree to terminate this Agreement;
- (b) **Dispute resolution:** either party may terminate this Agreement in accordance with any agreement reached or determination made as a result of the Dispute resolution process set out in clause 23 if the other party has committed a breach that (in the case of the Trader) is not a Serious Financial Breach or (in the case of

- the Distributor) is not a Serious Breach;
- (c) **Illegality:** either party may terminate this Agreement 1 Working Day after notice is given by either party to the other party terminating this Agreement for the reason that performance of any material provision of this Agreement by either party has to a material extent become illegal and the parties acting reasonably agree that despite the operation of clause 32.4 it is not practicable for this Agreement to continue;
- (d) **Termination by Trader if Trader not supplying electricity on Network:** the Trader may terminate this Agreement by giving 5 Working Days' notice to the Distributor if the Trader is not supplying electricity to any Customer through the Network;
- (e) **Termination by Distributor if Trader not supplying electricity on Network:** the Distributor may terminate this Agreement by giving 5 Working Days' notice following any continuous period of 180 Working Days or more during which the Trader has not supplied any Customers with electricity through the Network; or
- (f) **Force majeure:** either party may terminate this Agreement by giving 10 Working Days' notice to the other party, if:
- (i) notice of a Force Majeure Event is given by either party to the other under clause 21.3; and
 - (ii) the Force Majeure Event is of such magnitude or duration that it is impracticable or unreasonable for the party giving notice of termination to remain bound by its obligations under this agreement, provided that if the party who wishes to terminate this agreement is the party that gave notice of the Force Majeure Event, the party has complied with clauses 21.3 and 21.4.
- 19.2 **Termination for Event of Default or Insolvency Event:** In addition to any other termination right in this Agreement, if a party has breached this Agreement and the breach is an Event of Default, or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 18.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:
- (a) no less than 5 Working Days after the date of such notice; or
 - (b) immediately if the Trader has ceased to supply electricity to all Customers.
- 19.3 **Extending effective date of notice of termination:** A party that has given a notice under clause 19.2 may give a notice extending the date on which the notice given under clause 19.2 takes effect.
- 19.4 **Notice of termination lapses:** A notice of termination given under clause 19.2 will lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws the effective date of its notice.
- 19.5 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.
- 19.6 **Trader remains liable for charges for remaining Customers:** If this Agreement is terminated for any reason, the Trader remains liable to pay any charges for Distribution Services that arise in relation to connected Customers that have not been switched to another trader, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Trader will not be liable to pay any charges for Distribution Services in respect of the

ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP). The Distributor may charge for such Distribution Services at the prices that apply at the time of termination.

- 19.7 **Obligations to continue until termination:** The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination. If the Distributor continues to charge the Trader for Distribution Services after the effective date of termination of this Agreement under clause 19.6, then the Trader will continue to be bound by all of the terms of this Agreement as if the Agreement had not been terminated for so long as the Trader is liable to pay such charges.
- 19.8 **Events to occur on or from termination:** ~~On the effective date of termination:~~
- (a) On the effective date of termination the parties must have returned or certified the destruction of the other party's Confidential Information; ~~and.~~
 - (b) From the effective date of termination both parties must co-operate to transfer the Trader's Customers to another trader as soon as possible after the date of termination so that the Trader ceases to ~~t~~Trade on the Network.
- 19.9 **Survival of terms:** Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

20. CONFIDENTIALITY

- 20.1 **Commitment to preserve confidentiality:** Each party to this Agreement undertakes that it will:
- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information provided to it by the other party except as provided for in clause 20.2; and
 - (b) only use Confidential Information provided to it by the other party for:
 - (i) the purposes of performing its obligations and exercising its rights under this Agreement (which in the case of the Distributor includes any purpose properly related to the provision of Distribution Services); and
 - ~~(i)(ii) the any other~~ purposes expressly permitted by this Agreement.
- 20.2 **Disclosure of Confidential Information:** Either party may disclose Confidential Information in any of the following circumstances:
- (a) **By agreement in writing:** if the Trader and Distributor agree in writing to the disclosure of the information;
 - (b) **Provided in this Agreement:** if disclosure is expressly provided for under the terms of this Agreement;
 - (c) **Public domain:** if at the time of receipt by the party the Confidential Information is in the public domain or if, after the time of receipt by either party, the Confidential Information enters the public domain (except where it does so as a result of a breach by either party of its obligations under this clause 20 or a breach by any other person of that person's obligation of confidence);
 - (d) **Required to disclose:** if either party is required to disclose Confidential Information by:
 - (i) law, or by any statutory or regulatory body or authority; or
 - (ii) any judicial or other arbitration process; or
 - (iii) the regulations of any stock exchange on which the share capital of either party is from time to time listed or dealt in;
 - (e) **To employees, directors, agents or advisors:** if the Confidential Information is disclosed to an employee, director, agent or advisor of the party, provided that:

- (i) the information is disseminated only on a "need to know" basis;
- (ii) recipients of the Confidential Information must be made fully aware of the party's obligations of confidence in relation to the information; and
- (iii) any copies of the information clearly identify it as Confidential Information;
- (f) **To bona fide potential purchaser:** if the Confidential Information is disclosed to a bona fide potential purchaser of the business or any part of the business of the Distributor or the Trader, subject to that bona fide potential purchaser having signed a confidentiality agreement enforceable by the other party in a form that reflects the obligations in the agreement; and
- (g) **To Customer:** if the Confidential Information relates to a Customer, and the Customer has requested the information.

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

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

20.5 **Customer information received in error by Trader:** The Trader undertakes and agrees that if it or anyone acting on its behalf receives any information (including consumption data) relating to customers on the Network directly or indirectly from the Distributor that does not relate to Customers the Trader is supplying at that time, it will:

- (a) promptly notify the Distributor in writing of the receipt of such information;
- (b) keep such information confidential;
- (c) not use that information for any purpose; and
- (d) promptly return or destroy that information upon request by the Distributor.

The Trader acknowledges and agrees that this clause 20.5 is for the benefit of all other traders on the Network and may be enforced by any of those other traders under the Contract and Commercial Law Act 2017. This clause 20.5 may be varied without the consent of any of those other traders.

21. FORCE MAJEURE

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

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

Network; or

Requirements for recorded terms: If the Distributor is entitled to declare a Force Majeure Event in circumstances where its failure to comply with or observe any provision of this Agreement is caused by the failure of the Network or any part of it notwithstanding that it has acted in accordance with Good Electricity Industry Practice, insert as clause 21.1(b)(v) a recorded term setting out that entitlement and any rights the Distributor may have to amend that entitlement. An example is provided in clause 21.1(b)(v). Revise or delete as appropriate and then delete this dashed box.

(v) the failure of the Network or any part of it notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice; or

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

Requirements for recorded terms: If the Distributor is entitled to levy charges notwithstanding the occurrence of a Force Majeure Event, insert as clause 21.6 a recorded term setting out that entitlement and any rights the Distributor may have to amend that entitlement. If the Distributor is not entitled to levy charges in the event of a Force Majeure Event, insert the words "not applicable" as clause 21.6. An example is provided in clause 21.6. Revise as appropriate and then delete this dashed box.

[Drafting Note: The Distributor should be entitled to include provisions that deal with its entitlement to levy charges during a Force Majeure Event given they concern payment arrangements during an interruption in supply and therefore the regulation of quality standards. As such, consistent with the Court of Appeal's March 2019 judgment (and the approach taken in clause 9.10 of the DDA), they fall within the Commerce Commission's jurisdiction and outside of the Authority's.]

21.6 Charges continue: If a Force Majeure Event occurs:

- (a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges in relation to the Distribution Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but
- (b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event,

provided that where access to any Customer's Premises is prevented by law or a regulatory authority, other than due to any action or inaction on the part of the relevant Customer, fixed charges will not be payable for the period during which such access is prevented.

22. AMENDMENTS TO AGREEMENT

22.1 **Changing this Agreement:** A change may be made to this Agreement:

- (a) by the written agreement of the parties;
- (b) by the Distributor, if the change is a change to the information referred to in Schedule 7 and is made in accordance with clause 7;
- ~~(b)~~(c) by the Distributor, if the change is to a Recorded Term and is made in accordance with the terms of that Recorded Term;
- ~~(c)~~(d) by either party if the change is required by law, by the party that considers the change is required giving notice to the other party of the change, the reason for the change, and the date on which the change will take effect. If a party does not agree that a change proposed is required by law, it may raise a dispute in accordance with clause 23; or
- ~~(d)~~(e) by either party if the subject matter of the change is regulated by the Commerce Commission and the change is allowed or required as a result of a determination, decision or direction of the Commerce Commission. [Drafting Note: On matters regulated by the Commerce Commission, the Commerce Commission can permit or require changes by way of decision or direction and not just a determination – hence we have made this amendment.]

23. DISPUTE RESOLUTION PROCEDURE

23.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this Agreement will be resolved amicably by good faith

discussion. When a difference or dispute arises in relation to this Agreement, including any question concerning its existence, validity, interpretation, performance, breach or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties must promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) of the parties for resolution.

- 23.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, either party may give a notice to the other requiring that the Dispute be referred to mediation.
- 23.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties must attempt to agree on the identity of the mediator and, if they cannot agree within that timeframe, the mediator will be appointed by the President (or their nominee) of the New Zealand chapter of the Resolution Institute.
- 23.4 **Conduct of mediation:** In consultation with the mediator, the parties must determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be determined by the mediator.
- 23.5 **Appointment of representative:** Each party must appoint a representative for the purposes of the mediation who must have authority to reach an agreed solution and effect settlement.
- 23.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) **Act in good faith:** the parties and their representatives must act in good faith and use their best endeavours to ensure the expeditious completion of the mediation procedure;
 - (b) **Without prejudice:** all proceedings and disclosures will be conducted and made without prejudice to the rights and positions of the parties in any subsequent arbitration or other legal proceedings;
 - (c) **Mediator's decisions binding only on conduct of the mediation:** any decision or recommendation of the mediator will not be binding on the parties in respect of any matters whatsoever except with regard to the conduct of the mediation;
 - (d) **Costs of mediation borne equally:** the costs of the mediation, other than the parties' legal costs, will be borne equally by the parties, who will be jointly and severally liable to the mediator in respect of the mediator's fees.
- 23.7 **Arbitration to resolve disputes:** Either party may refer the Dispute to arbitration if the Dispute:
- (a) is not resolved through mediation within 40 Working Days (or such longer period agreed by the parties) of the appointment of a mediator; or
 - (b) is not resolved by negotiation of the Chief Executives (or their representatives) in accordance with clause 23.1 within 15 Working Days of the matter being referred to them and neither party referred the Dispute to mediation.
- 23.8 **Arbitration:** A Dispute referred to arbitration under clause 23.7 must be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 23.9 **Choice of arbitrator:** The sole arbitrator must be appointed by the parties. If the parties cannot agree on the identity of the arbitrator within 10 Working Days of the referral in clause 23.7, the arbitrator will be appointed by the President of the New Zealand Law Society.

23.10 **No connection to previous mediator or mediation:** If the Dispute has been referred to mediation, the mediator may not be called by either party as a witness, and no reference may be made to any determination issued by the mediator in respect of the matter in Dispute during any subsequent arbitration or legal action on the matter in Dispute.

23.11 **Urgent relief:** Despite any other provision of this Agreement, each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.

~~23.11~~ 23.12 **Disclosure of arbitrator's decision:** The Distributor may disclose the arbitrator's decision under clause 23.8 to the extent that it relates to the interpretation of this Agreement or provisions of this Agreement. [Drafting Note: This amendment will enable Distributors to share arbitral decisions with other Traders, which will assist all parties in understanding how the DDA should be interpreted.]

24. LIABILITY

24.1 **Payments of charges:** Nothing in this clause 24 will operate to limit the liability of either party to pay all charges and other sums due under this Agreement, or in accordance with any requirements set under Part 4 of the Commerce Act 1986.

24.2 **Direct damage:** Except in respect of liability under clauses 20, 24.9, 24.10, 25, and 27 and 29, each party (and its officers, employees and agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) to the other party for only direct damage to the physical property of any person ("Direct Damage") that results from a breach of this Agreement ~~or, negligence, or failure to exercise Good Electricity Industry Practice.~~ [Drafting Note: The obligation to exercise Good Electricity Industry Practice is specified within particular clauses of the DDA, and therefore failure to exercise it will constitute a breach of the Agreement (which is already covered in this clause). Hence we have deleted this reference here as it is redundant and arguably confusing.]

24.3 **Consequential loss excluded:** Except in respect of liability under clauses 20, 24.9, 24.10, 25 and 29~~27~~, neither party (nor any of their respective officers, employees or agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) to the other party for:

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

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

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

- (a) any failure to convey electricity to the extent that:
 - (i) such failure arises from any act or omission of any Customer or other person excluding the Distributor and its officers, employees or agents;
 - (ii) such failure arises from a request by the System Operator or any action

taken as a result of a nationally or regionally coordinated response to a shortage of electricity that results in either:

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

Requirements for recorded terms: If an exclusion from liability applies for any failure to convey electricity to the extent the failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice, insert as clause 24.5(a)(vi) a recorded term setting out that exclusion and any rights the Distributor may have to amend that exclusion. An example is provided in clause 24.5(a)(vi). Revise or delete as appropriate and then delete this dashed box.

(vi) such failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice; or

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

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

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

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

- (a) any failure to perform any obligation under this Agreement caused by the Distributor’s failure to comply with this Agreement; or
- (b) any failure to perform any obligation under this Agreement arising from any defect or abnormal conditions in the Network,

except to the extent that the failure is caused or contributed to by the Trader not acting in accordance with this Agreement.

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

(a) for any single event or series of connected events will not in any circumstances exceed the lesser of \$10,000 for each ICP on the Network at which the Trader traded electricity on the day of the event and that is adversely affected by the event, ~~or and \$2,000,000;~~ and

(b) for all events that occur during the period from 1 July each year until 30 June the following year (“Year”) under all distributor agreements between the Distributor and the Trader in respect of the Network will not in any circumstances exceed the amount determined in accordance with the following table:

<u>Number of ICPs on the Network at which the Trader traded electricity at the commencement of the Year (expressed as a percentage of the total number of ICPs on the Network, at the commencement of the Year)</u>	<u>Maximum aggregate liability of each party</u>
<u>0 to 2.5%</u>	<u>\$700,000</u>
<u>>2.5% to 5%</u>	<u>\$1,400,000</u>
<u>>5% to 7.5%</u>	<u>\$2,100,000</u>
<u>>7.5% to 10%</u>	<u>\$2,800,000</u>
<u>>10% to 12.5%</u>	<u>\$3,500,000</u>
<u>>12.5% to 15%</u>	<u>\$4,200,000</u>
<u>>15% to 17.5%</u>	<u>\$4,900,000</u>
<u>>17.5% to 20%</u>	<u>\$5,600,000</u>
<u>>20% to 22.5%</u>	<u>\$6,300,000</u>
<u>>22.5% to 25%</u>	<u>\$7,000,000</u>
<u>>25% to 27.5%</u>	<u>\$7,700,000</u>
<u>>27.5% to 30%</u>	<u>\$8,400,000</u>
<u>>30%</u>	<u>\$9,100,000</u>

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

from all traders in respect of the Network in the immediately preceding Year).

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

24.724.8 **Exclusion:** Clause 24.7:

- (a) does not limit a party's liability under clauses 20, 24.9, or 25 ~~or 27~~;
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme;
- (c) does not apply to loss incurred by the Distributor if:
 - (i) the loss was caused by a Customer failing to comply with the Distributor's Network Connection Standards;
 - (ii) the Trader is required by this Agreement to include in each of its Customer Agreements a provision requiring the Customer to comply with those Network Connection Standards; and
 - (iii) the Customer Agreement between the Trader and the Customer did not include such a provision.

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

- (a) subject to clause 29.1, the Trader must, to the fullest extent permitted by law and including if the Customer is acquiring or holds itself out as acquiring electricity for the purpose of a business, exclude from each of its Customer Agreements (which includes a contract between the Trader and a purchaser of electricity that is not an end user) all warranties, guarantees or obligations:
 - (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this Agreement ("**Distributor Warranties**"); and
 - (ii) imposed on the Trader by the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity by the Trader under the Customer Agreement ("**Trader Warranties**"); **[Drafting Note: Amendment made to this sub-paragraph (ii) to align with sub-paragraph (i).]**
- (b) if the Customer on-supplies electricity to an end-user the Trader must, as a condition of any Customer Agreement, require the Customer to include provisions in all agreements between the Customer and an end-user, excluding all Distributor Warranties and Trader Warranties to the fullest extent permitted by law, including if the end-user is acquiring, or holds itself as acquiring, electricity for the purposes of a business; and
- (c) to avoid doubt, nothing in this clause 24.9 affects the rights of any Customer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Trader from offering in its Customer Agreements its own

warranties, guarantees or obligations pertaining to distribution services.

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

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

24.1024.11 **Benefits to extend:** Each party agrees that its obligations under this clause 24 and clauses 25 to 28 (and clause 29.3 in respect of the Trader) constitute promises conferring benefits on each party's officers, employees and agents that are intended to create, in respect of the benefit, an obligation enforceable by those officers, employees and agents and accordingly, the provisions of part 2 of the Contract and Commercial Law Act 2017 apply to its promises under this clause 24. These provisions may be varied without the consent of the beneficiaries described above. [Drafting Note: This amendment is necessary to ensure that section 15 of the Contract and Commercial Law Act 2017 does not inadvertently prevent the parties from varying the Agreement.]

25. INDEMNITY

25.1 **Distributor indemnity:** Despite anything else in this Agreement, the Trader is entitled to be indemnified by the Distributor as set out in section 46A of the Consumer Guarantees Act 1993 in accordance with clause 26~~25~~.

26. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY

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

- (a) give written notice of the Claim to the Distributor as soon as reasonably practicable after the Trader has become aware of the Claim and any facts or circumstances indicating that the underlying failure may be related to an event, circumstance or condition associated with the Network ~~determines that it wishes to be indemnified by the Distributor~~, specifying the nature of the Claim in reasonable detail; and [Drafting Note: If the Trader wishes to be indemnified in respect of a Claim, it should have to give notice to the Distributor as soon as reasonably practicable upon becoming aware of the Claim and before providing any remedy to the Customer, to allow the Distributor the best possible opportunity to mitigate or remedy the Claim or the event giving rise to it. The amendments to this clause reflect this.]
- (b) make available to the Distributor all information that the Trader holds in relation to the Claim that is reasonably required by the Distributor.

Requirements for recorded terms: If the Trader is entitled to assume the management and defence of a Claim, insert as clause 26.2 a recorded term setting out that entitlement and any rights the Distributor may have to amend that entitlement. If the Trader is not entitled to such a right, insert the words "not applicable" as clause 26.2. An example is provided in Clause 26.2. Revise as appropriate and then delete this dashed box.

[Drafting Note: Conduct of CGA claims provisions should be permitted as recorded terms, given such claims relate to the regulation of quality standards and as such, consistent with the Court of Appeal's March 2019 judgment, fall within the Commerce Commission's jurisdiction and outside of the Authority's.]

26.2 Conduct of Claims: If the Distributor is notified of a potential Claim, the following provisions of this clause 26.2 shall apply:

(a) The Distributor may:

(i) communicate directly with the relevant Customer in relation to the Claim; and

(ii) assume management and defence of the Claim.

(b) The Distributor must advise the Trader as soon as practicable after being notified of the Claim whether or not the Distributor intends to assume the management and defence of the Claim.

(c) If the Distributor assumes the management and defence of the Claim:

(i) the Distributor may, subject to the terms of this Agreement, determine the conduct of the Claim;

(ii) the Trader may advise the relevant Customer and the Dispute Resolution Scheme that the Distributor is dealing with the Claim;

(iii) the Distributor must ensure that the Trader is kept informed on a timely basis of any developments in relation to the Claim; and

(iv) the Distributor must ensure that the Trader and its legal counsel (to the extent applicable) are consulted in a timely manner before the Distributor takes any significant steps in relation to the Claim, so that the reputation of the Trader is not unfairly harmed.

(d) If, in respect of any Claim in respect of which the Distributor has assumed the management and defence, the Distributor intends to assert that the Distributor's indemnity pursuant to section 46A of the Consumer Guarantees Act 1993 does not apply, the Distributor must promptly notify the Trader accordingly. In that event, the Trader may resume the conduct of the management and defence of the Claim.

Requirements for recorded terms: If the Distributor has any rights or obligations with respect to its payment obligations under the indemnity in section 46A of the Consumer Guarantees Act 1993, insert as clause 26.3 a recorded term setting out those rights and obligations, as well as any rights the Distributor may have to amend those rights and obligations. If the Distributor has no such rights or obligations, insert the words "not applicable" as clause 26.3. An example is provided in Clause 26.3. Revise as appropriate and then delete this dashed box.

Drafting Note: Provisions relating to payment of CGA claims should be categorised as recorded terms, given CGA claims relate to the regulation of quality standards and as such, consistent with the Court of Appeal's March 2019 judgment, fall within the Commerce Commission's jurisdiction and outside of the Authority's.]

26.3 Payment arrangements:

- (a) If the Distributor is required to indemnify the Trader under section 46A of the Consumer Guarantees Act 1993, the Distributor must promptly pay the Trader the amounts due under that Act.
- (b) Notwithstanding sub-clause (a), if the Distributor is liable to pay the Trader any amount in accordance with this clause in respect of property damage that is not related to the property of the Trader, the Trader must pass through the amount received by it from the Distributor in relation to that property damage to the owner of the affected property (whether or not that person is a Customer). The Distributor may, with the prior written consent of the Trader (such consent not to be unreasonably withheld), pay such amount directly to the property owner instead of the Trader. In such circumstances, the Trader must provide the Distributor with the information required to enable the Distributor to make payment, and the Distributor must inform the Trader as soon as reasonably practicable after making such payment.

~~26.2~~26.4 **Dispute resolution:** Any dispute between the Distributor and the Trader relating to the existence or allocation of liability under section 46A of the Consumer Guarantees Act 1993 must be dealt with by each party in accordance with the Dispute Resolution Scheme or, if the dispute is not accepted by the scheme, the parties must deal with the dispute in accordance with clause 23.

27. FURTHER INDEMNITY

- 27.1 **Distributor will be indemnified:** Subject to clause 28, the Trader indemnifies and holds harmless the Distributor and will keep the Distributor indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis but excluding all loss or damage of the kind described in clause 24.3 whether incurred by the Distributor or claimed by the person described in sub-clause (a) of this clause 27.1) suffered, or incurred by the Distributor arising out of or in connection with:
- (a) any claim by any person with whom the Trader has a contractual relationship in relation to the provision of services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
- (i) any breach by the Trader of any of its obligations under this Agreement;
 - (ii) the disconnection by the Trader, or disconnection requested by the Trader, of any Customer's Premises in accordance with this Agreement, unless the Trader has otherwise acted in compliance with Good Electricity Industry

Practice or if this Agreement has been terminated for the Distributor's breach or Insolvency Event; [Drafting Note: This amendment is required to ensure this indemnity is not triggered where disconnections take place in accordance with the terms of the Agreement or upon termination of the Agreement for cause.]

- (iii) the termination of this Agreement by the Trader, except when the termination is the result of a breach by the Distributor or the Distributor suffering an Insolvency Event; [Drafting Note: The insolvency of the Distributor should not result in liability to the Trader under this clause 27.1.]
 - (iv) any failure by the Trader to perform any obligation under any agreement between the Trader and any Generator or Customer or other third party;
 - (v) any failure by the Trader to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Distributor under or in connection with this Agreement at the request of the Trader; and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this Agreement.

27.2 Trader will be indemnified: Subject to clause 28, the Distributor indemnifies and holds harmless the Trader and will keep the Trader indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis but excluding all loss or damage of the kind described in clause 24.3 whether incurred by the Trader or claimed by the person described in sub-clause (a) of this clause 27.2), suffered, or incurred by the Trader arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Trader has a contractual relationship in relation to the provision of services or conveyance of electricity to the extent that claim arises out of or could not have been made but for:
 - (i) any breach by the Distributor of its obligations under this Agreement;
 - (ii) the disconnection by the Distributor of any Customer's Premises in accordance with this Agreement, unless the Distributor has otherwise acted in compliance with Good Electricity Industry Practice or if this Agreement has been terminated for the Trader's breach or Insolvency Event; [Drafting Note: This amendment is required to ensure this indemnity is not triggered where disconnections take place in accordance with the terms of the Agreement (for example, where the Distributor performs a temporary disconnection in accordance with clause S6.8) or upon termination of the Agreement for cause.]
- (iii) the termination of this Agreement by the Distributor, except when the termination is the result of a breach by the Trader or the Trader suffering an Insolvency Event; [Drafting Note: The insolvency of the Trader should not result in liability to the Distributor under this clause 27.2.]
- (iv) any failure by the Distributor to perform any obligation under any agreement between the Distributor and the System Operator or any other third party;
- (v) any failure by the Distributor to comply with its obligations required by law; or

- (vi) any action undertaken by the Trader under or in connection with this Agreement at the request of the Distributor; and
- (b) any recovery activity of the Trader in respect of any unpaid charges or interest payable under this Agreement.

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

28. CONDUCT OF CLAIMS

28.1 **Third Party Claim:** This clause applies if a party with a right of indemnity under clause 27 ("**Indemnified Party**") seeks or may seek to be indemnified by the other party ("**Indemnifying Party**") under clause 27 in respect of a claim by any person of the kind described in clause 27.1(a) or 27.2(a) ("**Third Party Claim**").

28.2 **Indemnified Party to give Notice of Third Party Claim:** The Indemnified Party must give notice of the Third Party Claim (including reasonable details) to the Indemnifying Party and ensure that the Indemnified Party does not make any payment or admission of liability in respect of the Third Party Claim.

28.3 **Indemnifying Party may act in relation to Third Party Claim:** The Indemnifying Party may, at its election, in the name of the Indemnified Party, but only after consultation with the Indemnified Party and so that the reputation of the Indemnified Party is not unfairly harmed, conduct all negotiations and defend any proceedings relating to the Third Party Claim. For this purpose, the Indemnified Party must make available to the Indemnifying Party all such information, books and records, and co-operate (including making available employees as witnesses) as the Indemnifying Party may reasonably require for the purpose.

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

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

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

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

29. CUSTOMER AGREEMENTS

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

- (a) in respect of each Customer Agreement that has been entered into prior to the Commencement Date:
 - (i) at the next review date, or, if the Trader is able to unilaterally vary the Customer Agreement, within 12 months after the Commencement Date

- (whichever is earlier), the Trader must issue a unilateral variation to the Customer Agreement to include provisions that have substantially the same effect as the provisions required to be included in the Customer Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017; or
- (ii) if the Trader is unable to unilaterally vary 1 or more Customer Agreements as set out in subparagraph (i), the Trader must:
- (A) use all reasonable endeavours to obtain at the next review of each Customer Agreement, or within 12 months, whichever is earlier, the agreement of the Customer to enter into a variation of the Customer Agreement to include the provisions required to be included in the Customer Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor under section 12 of the Contract and Commercial Law Act 2017; and
- (B) promptly provide notice to the Distributor if it is unable to obtain the agreement of the Customer required in subparagraph (A); or
- (b) in respect of each Customer Agreement that has been entered into after the Commencement Date, include the provisions required to be included in the Customer Agreement by this Agreement, and those provisions must be expressed to be for the benefit of the Distributor and enforceable by the Distributor in accordance with section 12 of the Contract and Commercial Law Act 2017.
- 29.2 **Changes to Customer Agreements during term:** If this Agreement is changed in accordance with clause 22.1(a) or clause 22.1(c), and the change requires the Trader to amend its Customer Agreements, the Trader must take such steps as are necessary to amend those agreements.
- 29.3 **Trader to indemnify Distributor:** Subject to clause 24, the Trader indemnifies the Distributor against any direct loss or damage incurred by the Distributor as a result of the Trader's failure to meet its obligations in accordance with clause 29.1.

30. NOTICES

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

Drafting Note: we have amended to 3 Working Days to reflect NZ Post's target delivery times for domestic mail, which is up to 3 Working Days. See

https://support.nzpost.co.nz/app/answers/detail/a_id/263/~/target-delivery-times-for-domestic-mail

30.3 **Deemed receipt after 5pm or day that is not Working Day:** Any notice given in accordance with clause 30.2 that is personally delivered or sent by facsimile or email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

31. ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

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

31.2 Auditing information provided: To enable either party to this Agreement (the “Verifier”) to verify the accuracy of information provided to it by the other party to this Agreement (the “Provider”), the Provider will allow the Verifier and its agents reasonable access to the Provider’s books and records (including, if the Trader is the Provider, of metering or consumption data) (the “Records”) to the extent that those Records relate to the obligations of the Provider under this Agreement. If the Trader is the Provider and any relevant metering or consumption data is held in a third party Metering Equipment owner or operator, the Trader will procure access to the third party Metering Equipment owner or operator’s books and records for the benefit of the Distributor. Access to such Records will be given at all reasonable times providing the Verifier has given the Provider not less than 10 Working Days’ prior notice.

31.3 Limitations on the Verifier: In relation to its review of the Records under clause 31.2, the Verifier will not:

- (a) use the information obtained for any purpose other than verifying the accuracy of information provided by the Provider under this Agreement; and
- (b) engage as its agent any person that is in competition with the Provider, any person who is related to a person in competition with the Provider or any employee, director or agent of such persons. For the purposes of this clause 31.3(b) a person is related to another person if it is a related company (as that term is defined in section 2(3) of the Companies Act 1993) of that other person.

31.4 Independent Auditor: If:

- (a) the Provider is the Distributor and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from the information relating to the Trader or that the information is commercially sensitive; or
- (b) the Provider is the Trader and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from information relating to the Distributor or that the information is commercially sensitive,

then the Distributor or the Trader, as appropriate, will permit an independent auditor (the “Auditor”) appointed by the other party to review the Records and the other party will not itself directly review any of the Records. The Distributor or the Trader, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Trader, as appropriate, reasonably objects to the identity of the Auditor, the parties will request the President of the New Zealand Law Society (or a nominee) to appoint a person to act as the Auditor. The party that is permitted by this clause 31.4 to appoint an Auditor will pay the Auditor’s costs, unless the Auditor discovers a material inaccuracy in the Records in which case the other party will pay the Auditor’s costs. The

terms of appointment of the Auditor will require the Auditor to keep the Records confidential.

31.5 **Provider will co-operate:** The Provider will co-operate with the Verifier or the Auditor (as the case may be) in its review of the Provider's Records under clause 31.2 or 31.4 and will ensure that the Records are readily accessible and readable.

32. MISCELLANEOUS

32.1 **No waiver:** Unless a party has signed an express written waiver of a right under this Agreement, no delay or failure to exercise a right under this Agreement prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and to the occasion specified by it.

32.2 **Entire agreement:** This Agreement records the entire agreement between the parties after the Commencement Date, and prevails over any earlier agreement concerning its subject. The provisions of any earlier agreement in force between the parties immediately prior to the Commencement Date shall continue in full force and effect, but only in relation to the supply of Distribution Services (as that term is defined in any such prior agreement) made up until the Commencement Date and shall be terminated in respect of the supply of Distribution Services (as that term is defined in any such prior agreement) made after the Commencement Date. For the avoidance of doubt (and without limiting the foregoing) the applicable billing and information payment provisions of any agreement in force between the parties immediately prior to the Commencement Date shall apply in respect of the invoicing, payment and wash-up adjustment of charges for Distribution Services (as that term is defined in any such prior agreement) made in respect of the period up until the Commencement Date. **[Drafting Note: Amendment made to clarify that the terms of any use-of-system agreement in force immediately prior to this Agreement continue in full force and effect after the termination of that agreement to the supply of Distribution Services made prior to that agreement's termination.]**

~~32.2~~32.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld. For the purposes of this clause 32.3, unless a party is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.

~~32.3~~32.4 **Severance:** Any unlawful provision in this Agreement will be severed, and the remaining provisions enforceable, but only if the severance does not materially affect the purpose of, or frustrate, this agreement.

33. INTERPRETATION

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

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;
- (c) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (d) if a party comprises more than 1 person, each of those person's liabilities are joint and several;
- (e) references to a party or a person includes any form of entity and their respective

- successors, assigns and representatives;
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
 - (g) all amounts payable under this Agreement are in New Zealand dollars and exclude GST and every other tax and duty, but if GST is payable on any amount it will be added to that amount and will be payable at the time the amount itself is payable, and unless otherwise stated;
 - (h) New Zealand time and dates apply;
 - (i) any word or expression cognate with a definition in this Agreement has a meaning corresponding or construed to the definition;
 - (j) references to sections, clauses, Schedules, Appendices, annexes or other identifiers are to those in this Agreement unless otherwise identified; and
 - (k) references to a document or agreement includes it as varied or replaced.

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

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

"**Additional Security**" has the meaning given in clause 10.67;

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

"Appendix C" means any Appendix C (Provision of consumption data) that is included in and forms part of this Agreement pursuant to Part 12A of the Code;

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

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

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

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

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

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

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

- (a) information known to the recipient prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party;
- (b) information obtained bona fide from another person who is in lawful possession of the information and did not acquire the information directly or indirectly from the first party under an obligation of confidence; and
- (c) the existence and terms of this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

Requirements for recorded terms: *Insert definitions for "Default Interest" and "Default Interest Rate" as recorded terms in clause 33.2 [and any rights the Distributor may have to amend those definitions](#). Examples are provided in the box below. Revise as appropriate*

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

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

"**Direct Customer Agreement**" means an agreement between the Distributor and a Customer for the provision of distribution services ~~and, unless otherwise agreed with the Trader, includes the direct billing of Distribution Services charges to the Customer and responsibility for associated debt;~~

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

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

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

"**Dispute Resolution Scheme**" means Utilities Disputes or such other dispute resolution scheme approved or provided for in accordance with section 95 of the Act;

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

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

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

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

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

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

~~**"Distribution Pricing Structure Consultation Guidelines"** means the guidelines relating to consulting on distributor price structure changes issued by the Electricity Authority and updated from time to time;~~

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

"Electrical Installation" means:

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

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

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

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

"Entrant" has the meaning given in clause 5.3;

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

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

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

"Generator" means any person that owns a machine that generates electricity that is

connected to a network, including a Distributed Generator;

"Good Electricity Industry Practice" means:

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

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

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

~~(a) at which electricity predominantly flows out of the Grid; or~~

~~(b) determined as being such in accordance with the Code;~~

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

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

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

"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;

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

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

"Incumbent" has the meaning given in clause 5.3;

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

"Insolvency Event" means a party:

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

Requirements for recorded terms: Insert a definition of "Interest Rate" as a recorded term in clause 33.2 and any right the Distributor may have to amend that definition. An example is provided in the box below. Revise as appropriate and then delete this dashed box.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a list of all referenced regulations and industry standards relevant to the provision of the Distribution Services; and
- (b) all externally referenced publications, such as website links in those regulations and standards;

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

- (a) the Network and the Grid; or
- (b) the Network and another distribution network; or

(c) the Network and an embedded network; or

(d) the Network and Distributed Generation;

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

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

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

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

"**Price Options**" has the meaning given in clause 8.5;

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

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

"**Recorded Term**" means *[The Distributor must list each recorded term included in this Agreement]*;

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

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

"**Revision Invoice**" has the meaning given in clause 9.3.

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

"**Serious Breach**" means a non-trivial breach of Appendix C, in circumstances where the Distributor has also committed two or more breaches of Appendix C in the preceding 12 months that are attributable to the same underlying cause as the latest breach, and before the occurrence of the latest breach, the Trader had given the Distributor notice of at least two of those prior breaches demanding that the underlying cause be investigated and remedied;

[Drafting Note: This definition has been modelled on the Authority's proposed definition of "Serious Breach" contained in Appendix C to Schedule 12A.1 of the proposed Part 12A. It introduces a requirement that the two or more breaches be non-trivial and attributable to the same underlying cause – i.e. material and related breaches of Appendix C (as opposed to immaterial and unrelated breaches). We have not adopted the second limb of the Authority's proposed definition of "Serious Breach" from Appendix C because it lacked any appropriate materiality threshold.]

"**Serious Financial Breach**" means:

- (a) a failure by the Trader to pay an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the Trader for the previous month, unless the amount is genuinely disputed by the Trader in accordance with clause 9.7; or
- (b) a material breach of clause 10 by the Trader;

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

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

- (a) for breach of the Customer Agreement by the Customer; or
- (b) as a result of a request from the Trader or the relevant Customer for a Temporary Disconnection; or
- (c) as a result of a request from the Trader for a Vacant Site Disconnection; or

- (d) for the purpose of De-energising a Customer Installation that does not comply with the Network Connection Standards; or
- (e) to Decommission the ICP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Trust Account Rules**" means the rules relating to the establishment and operation of a trust account established and operated by the Distributor in accordance with clause 10.26;

"**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;

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

"Use of Money Adjustment" means an amount payable at the Interest Rate plus 2% from the date of payment to the date of repayment (in the case of a Credit Note or other repayment) or from the due date of the original invoice to the date of payment (in the case of a Debit Note or other payment) accruing on a daily basis and compounded at the end of every month;

"**Vacant Site**" means a property that has become vacant;

"Vacant Site Disconnection" means the De-energisation of an ICP that occurs when the property at which the ICP is located has become vacant, and the Trader has changed the status of the ICP in the Registry to "Inactive";

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

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

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

PART V – SCHEDULES

SCHEDULE 1 – SERVICE STANDARDS

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

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

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

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

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

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

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

- S1.1 If the Trader becomes aware of or suspects a breach of the Service Standards by the Distributor, the Trader must give the Distributor notice of the reasons why it suspects that there has been a breach.*
- S1.2 If the Distributor breaches a Service Level, it must notify the Trader as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include:*
- (a) the ICP identifier(s) or the Network locality affected by the breach; and*
 - (b) the reason for the breach.*
- S1.3 If the Distributor breaches a Service Level that is subject to a Service Guarantee Payment, it must notify the Trader as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach. The notification must include:*
- (a) the ICP identifier of each ICP affected and the Service Guarantee Payment owed by ICP and in total (if applicable);*
 - (b) the reason for the breach; and*
 - (c) a Credit Note or order number (if the Trader requires a Tax Invoice from the Distributor for the amount payable in respect of the breach, the Distributor must send the Tax Invoice in the next payment cycle).*
- S1.4 If the Distributor makes a Service Guarantee Payment in respect of an ICP, the Trader must pass that payment on to the relevant Customer or Customers but may deduct an amount that reflects its reasonable cost of administering the payment.*
- S1.5 The parties acknowledge that the Service Guarantee Payments are set at a level to provide reasonable compensation to affected Customers in respect of the Distributor's failure to meet the relevant Service Level, and are not a penalty.*

Table 1 – Service Standards

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

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

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

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

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

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

SCHEDULE 2 – BILLING INFORMATION**Requirements for operational terms:**

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

S2.1 Calculating Tax Invoices for Distribution Service charges:

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

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

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

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

- (i) *[the [as-billed] [incremental normalised] [replacement normalised] [incremental replacement normalised] reporting methodology, as that methodology is defined in EIEP1;]*
- (ii) *[summary consumption information as described in EIEP2; and]*
- (iii) *[information in respect of half-hour metered ICPs as described in EIEP3; and]*
- (d) *the Distributor must calculate the charges based on the Prices that apply to each chargeable quantity to which the Tax Invoice relates.*

Note: include this additional sentence if relevant.

[In respect of [replacement normalised] [incremental replacement normalised] consumption information, the Trader must provide revised consumption information to the Distributor no later than 5 Working Days after the end of the month in which revised submission information was provided by the Trader to the reconciliation manager, and the Distributor must issue a Credit Note or Debit Note to the Trader reflecting the revised consumption information.]

Note: This clause is appropriate for GXP-priced Distribution Services.

[The Trader must provide consumption information to the Distributor, and the Distributor must obtain reconciliation information from the reconciliation manager and calculate Distribution Services charges payable by the Trader, in accordance with the following:

- (a) the Distributor must arrange for the reconciliation manager to provide the Distributor with reconciliation information attributable to the Trader and other relevant information that, subject to paragraph (b), the Distributor reasonably requires to enable it to calculate its Tax Invoice for Distribution Services charges payable by Trader. The Trader must, if necessary, advise the reconciliation manager that the Trader agrees to the Distributor obtaining its reconciliation information;*
- (b) the Trader must provide to the Distributor, no later than 5 Working Days after the end of each month, any information additional to that obtainable by the Distributor from the reconciliation manager that the Distributor reasonably requires to enable it to calculate its Tax Invoice for Distribution Services charges payable by Trader. Such information must be provided in accordance with the relevant EIEP; and*
- (c) the Distributor must calculate the charges based on the Prices that apply to each ICP to which the Tax Invoice relates.]*

SCHEDULE 3 – ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

S3.1 The Distributor and the Trader must comply with the following EIEPs when exchanging information to which the relevant EIEP applies:

- (a) EIEP1 – Detail ICP billing and volume information;
- (b) EIEP2 – Aggregated volume information;
- (c) EIEP3 – Half hour metering information;
- (d) EIEP12 – Tariff rate change information; and
- (e) any other EIEP publicised by the Authority under the Code with which the Distributor and Trader are required to comply.

Requirements for operational terms: *In addition to the EIEPs specified in Clause S3.1, the distributor must set out any other EIEPs with which the Distributor and Trader must comply when exchanging information to which the relevant EIEP applies. An example is provided in clause S3.2. Revise as appropriate and then delete this dashed box.*

S3.2 In addition to the EIEPs specified in clause S3.1, the Distributor and the Trader must comply with the following EIEPs when exchanging information to which the relevant EIEP relates:

- (a) *EIEP4 – Customer information;*
- (b) *EIEP5 – Service interruptions;*
- (c) *EIEP6 – Fault notification and service requests;*
- (d) *EIEP7 – General installation status change;*
- (e) *EIEP8 – Notification of network price category and tariff change;*
- (f) *EIEP9 – Customer location address change notification; and*
- (g) *EIEP11 – New connections information.*

SCHEDULE 4 – SYSTEM EMERGENCY EVENT MANAGEMENT

Requirements for operational terms: This Schedule 4 must set out the Distributor's System Emergency Event management policy, which is a policy for managing load on the Network during a System Emergency Event.

The policy must include the Distributor's priorities, including if relevant, priorities specific to Customer categories and Network localities, for:

- (a) Load Shedding;*
- (b) the use of any controllable load available to the Distributor in accordance with clause 5; and*
- (c) the restoration of load.*

Complete this Schedule and then delete this dashed box.

SCHEDULE 5 – SERVICE INTERRUPTION COMMUNICATION REQUIREMENTS

Unplanned Service Interruptions

Requirements for recorded terms: *If the Distributor must meet any Unplanned Service Interruption Standards when providing Distribution Services, this section must set out:*

- (a) *the information that the Distributor must provide to the Trader if the Distributor becomes aware of 1 or more Unplanned Service Interruptions caused by an area Network fault (being a Network fault that affects a group of customers within an area) or a System Emergency Event, including identifying the affected area or areas and the expected time for restoration of electricity supply in each area;*
- (b) *requirements related to provision by the Distributor of updated information about the status of Unplanned Service Interruptions, including:*
 - (i) *if the Distributor expects that previously advised restoration times will change; and*
 - (ii) *confirmation of areas restored and areas that remain without electricity supply;*
- (c) *whether the Trader or the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until electricity supplies are restored, and the parties' obligations to exchange information; ~~and~~*
- (d) *the situations that would trigger the Distributor's public and media communications processes and the communications channels and methods the Distributor uses when communicating with the public and media; and*
- ~~(d)~~(e) *the rights, if any, the Distributor has to amend any of the clauses to be set out in this section.*

Examples of clauses that may comply are set out in clauses S5.1 to S5.10. Revise as appropriate and then delete this dashed box.

If any timeframes within which the Distributor must take any particular actions are included in this section, those timeframes must be treated as recorded terms (and not operational terms). The relevant clauses will only be treated as recorded terms to the extent that they impose any timeframes on the Distributor.

S5.1 The Distributor must provide the Trader with information about an Unplanned Service Interruption affecting 20 or more Customers that enables the Trader to respond in an informed manner to calls from affected Customers.

S5.2 The Distributor must provide information under clause S5.1 as soon as reasonably practicable after first becoming aware of the Unplanned Service Interruption and:

- (a) for Unplanned Service Interruptions that occur in staffed control room hours, no later than 10 minutes after the Distributor becomes aware of the interruption; and*
- (b) for Unplanned Service Interruptions that occur in on-call control room hours, no later than 40 minutes after the Distributor becomes aware of the interruption.*

S5.3 The information provided under clause S5.1 must:

- (a) be provided by electronic file transfer in accordance with EIEP5; and*
- (b) include, if known, a description of the reason for the interruption, the area affected, and an expected time for restoration.*

S5.4 Unless otherwise agreed, the Distributor must, within 10 minutes of new information about an Unplanned Service Interruption becoming available and at intervals of no longer than 60 minutes, provide the Trader with an update of the status of the Unplanned Service Interruption, until a firm restoration time has been advised by the Distributor to the Trader.

S5.5 If the expected restoration time advised by the Distributor to the Trader is likely to be exceeded, the Distributor must endeavour to inform the Trader of the new expected restoration time at least 10 minutes before the expected restoration time elapses.

S5.6 Unless otherwise agreed, no later than 10 minutes after a full or partial restoration of supply, the Distributor must provide the Trader with details of the areas restored.

S5.7 The Trader must, within 10 minutes of receiving information relating to a possible Unplanned Service Interruption, log the call with the Distributor by electronic file transfer in accordance with EIEP5, or by any other information exchange method agreed by the parties. The Distributor must advise the Trader if the Trader should stop logging calls.

S5.8 The Trader may provide the Distributor's contact details to the Customer rather than taking details and logging the call with the Distributor.

S5.9 The Distributor must implement its public and media communication process in the following situations:

- (a) a significant Unplanned Service Interruption that exceeds, or is expected to exceed, 30 minutes in duration, and that affects (without limitation):*
 - (i) more than 1,000 customers;*
 - (ii) a central business district;*
 - (iii) an industrial area;*
 - (iv) supply to critical facilities such as hospitals, pumping stations, dairy farms;*
or
 - (v) the Network to such an extent that a disaster recovery plan should be triggered by a severe storm or natural disaster;*
- (b) a Civil Defence emergency has been initiated (in such situation communication may be via Civil Defence Headquarters);*
- (c) any other major event that has a material adverse effect on the delivery of Distribution Services; or*
- (d) if the Distributor is contacted by media for comment regarding an Unplanned Service Interruption.*

S5.10 The Distributor notes that it may use any or all of the following means of communication, as the circumstances require:

- (a) media releases and interviews; and*
- (b) status information and updates on the Distributor's:*
 - (i) automated telephone information service;*
 - (ii) website;*
 - (iii) smartphone app;*
 - (iv) Facebook page; and*
 - (v) Twitter account.*

Planned Service Interruptions

Requirements for recorded terms: *If the Distributor must meet any Planned Service Interruption Standards when providing Distribution Services, this section must set out the parties' obligations and the process that must be followed to notify Customers if the*

Distributor wishes to undertake a Planned Service Interruption and any rights the Distributor may have to amend those obligations and that process.

If the Trader is the party that must notify Customers of a Planned Service Interruption, this section must set out:

- (a) *the information the Distributor must provide to the Trader if the Distributor wishes to undertake a Planned Service Interruption, which must include:

 - (i) *the ICP identifiers of the affected ICPs; and*
 - (ii) *the information exchange format and procedure with which the parties must comply;**
- (b) *the process and timeframes the Trader must comply with when notifying affected Customers for which it is responsible of the Planned Service Interruption;*
- (c) *a process for the Trader to request an alternative date and time for the Planned Service Interruption and for the Distributor to consider such requests; ~~and~~*
- (d) *the steps the Distributor must take if it intends to undertake a Planned Service Interruption on an urgent basis; and*
- (e) *whether or not the Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions; and*
- ~~(e)~~(f) *the rights, if any, the Distributor has to amend any of the clauses to be set out in this section.*

If the Distributor is the party that must notify Customers of a Planned Service Interruption, this section must set out:

- (a) *the process the Distributor must follow to obtain Customer information held by the Trader that is necessary to enable the Distributor to provide notifications about Planned Service Interruptions;*
- (b) *the information the Distributor must provide to Customers affected by the Planned Service Interruption; ~~and~~*
- (c) *the information the Distributor must provide to the Trader about the Planned Service Interruption, including the:

 - (i) *affected ICP identifiers;*
 - (ii) *amount of notice given to Customers; and*
 - (iii) *the information exchange format and procedure with which the parties must comply; and**
- (d) *the rights, if any, the Distributor has to amend any of the clauses to be set out in this section.*

Examples of clauses that may comply are set out in clauses S5.11 to S5.19. Revise as appropriate and then delete this dashed box.

If any timeframes within which the Distributor must take any particular actions are included in this section (for example, if the Distributor is required to give the Trader a minimum period of notice for a Planned Service Interruption), those timeframes must be treated as recorded terms (and not operational terms). The relevant clauses will only be treated as recorded terms to the extent that they impose any timeframes on the Distributor.

Note: The 2 options below reflect common arrangements. If a hybrid arrangement operates (eg, Trader notifies normally but Distributor's contractor notifies directly affected customers for small jobs, say < 20 ICPs) suitable additional clauses must be added.

Option A – Trader to notify Customers

- S5.11 The Distributor must provide the Trader with notice of a Planned Service Interruption in accordance with the relevant EIEP at least 10 Working Days prior to the date on which the Planned Service Interruption is scheduled, including the ICP identifiers that the Distributor's information system indicates will be affected by the Planned Service Interruption. On receipt of such notice, the Trader must promptly notify affected Customers for which it is responsible of the Planned Service Interruption.*
- S5.12 The Trader may no later than 2 Working Days after receipt of such notice, notify the Distributor of any Customers who would be adversely affected by the interruption and request an alternative date and/or time for the Planned Service Interruption.*
- S5.13 If the Distributor receives a request from the Trader for an alternative date and/or time for the Planned Service Interruption, the Distributor must consider in good faith the request and may, in its sole discretion, change the time and/or date of the Planned Service Interruption. If the Distributor makes such a change, the Distributor must provide the Trader with notice of the new date and/or time at least 7 Working Days before the original date of the Planned Service Interruption.*
- S5.14 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor must provide the Trader with a notice of the Planned Service Interruption in accordance with clauses S5.11 as soon as reasonably practicable.*
- S5.15 If the Planned Service Interruption will affect all customers supplied from a Network Supply Point, the Distributor may, in addition to providing the notices required in clauses S5.11, S5.13 and S5.14, arrange for public notification through a local newspaper, or other effective method, on behalf of all traders.*
- S5.16 The Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions.*

Option B – Distributor to notify Customers

- S5.17 If required, and despite the terms of Appendix C (if applicable), the Trader must provide Customer contact information to the Distributor on a monthly basis. The information must be provided in accordance with EIEP4. Any information provided by the Trader to the Distributor under this clause will be Confidential Information.*
- S5.18 For all Planned Service Interruptions, the Distributor must provide each of the Customers it identifies as being affected with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 4 Working Days before the date on which the Planned Service Interruption is scheduled.*
-
- Note: One factor that the Distributor may wish to consider is whether the timeframe in clause S5.18 may need to be longer than 4 Working Days if, for example, the Trader elects to provide its own written/telephone notification to medically dependent customers that would be affected by the Planned Service Interruption.*
-
- S5.19 The Distributor must provide the Trader with notice of the Planned Service Interruption in accordance with EIEP5 at least 4 Working Days before the Planned Service Interruption is scheduled to occur.*

SCHEDULE 6 – CONNECTION POLICIES

Requirements for operational terms: *This Schedule 6 must set out the parties' obligations and the processes that must be followed related to the management of Network connections. This Schedule 6 must set out comprehensive processes for facilitating:*

- (a) new connections to the Network;*
- (b) capacity changes to existing connections;*
- (c) Temporary Disconnections and associated Reconnections;*
- (d) Vacant Site Disconnections and associated Reconnections; and*
- (e) Decommissioning.*

Examples of clauses that may comply are set out in clauses S6.1 to S6.27. Revise as appropriate and then delete this dashed box.

If any timeframes by which the Distributor must take particular actions are included in this Schedule 6, those timeframes must be treated as recorded terms (and not operational terms) and this Schedule 6 may include a clause or clauses setting out any rights the Distributor has to amend those timeframes.

Introduction

S6.1 This Schedule sets out the processes that the Distributor and Trader must follow in respect of facilitating:

- (a) new connections to the Network;*
- (b) capacity changes to existing connections;*
- (c) Temporary Disconnections and associated Reconnections;*
- (d) Vacant Site Disconnections and associated Reconnections; and*
- (e) Decommissioning.*

Process for new connections or changes in capacity

S6.2 The Distributor may receive applications from:

- (a) the owner of a premises not currently connected to the Network or the owner's agent that is or intends to be a Customer (the "Requesting Party"), or the Trader on behalf of a Requesting Party, for a new connection to be created; and*
- (b) a Customer (the "Requesting Party"), or the Trader on behalf of a Requesting Party, for an increase or decrease in the capacity of an existing connection.*

S6.3 The Distributor must undertake an impact assessment to determine whether the capacity required for the connection is already available or whether a Network upgrade is required. If, acting reasonably, the Distributor considers that a Network upgrade is required, or that other works are required, the Distributor must advise the Requesting Party of the terms on which the Distributor is prepared to undertake the necessary works. If the application is declined the Distributor must provide the reasons for its decision.

S6.4 If the Distributor and Requesting Party agree on terms under which the Distributor will supply a new connection or change the capacity of an existing connection, the Distributor must advise the Trader of the following no later than 2 Working Days after agreement was reached (provided that the Distributor knows that the Requesting Party is a Customer):

- (a) the ICP identifier for the new connection;*
- (b) the NSP to which the ICP is or will be connected;*
- (c) the allocated Price Category, provided that if the ICP is eligible for more than 1 Price Category, the Trader may advise the Distributor of its preferred Price*

Category in accordance with clause 8.4; and

(e) if the ICP is a new ICP, that the ICP is ready to be electrically connected.

S6.5 The Distributor or the Trader (if authorised by the Distributor) must arrange for the ICP to be electrically connected to the Network by a Warranted Person once approval has been granted by the Distributor. The party that undertakes the electrical connection to the Network must, unless otherwise agreed, notify the other party within 2 Working Days of the ICP being electrically connected.

Timeframe for electrically connecting standard new connections

S6.6 A standard new connection must be electrically connected to the Network within 2 Working Days following a request by the Trader if:

- (a) all necessary equipment is in place;
- (b) Network upgrades or extensions are not required; and
- (c) all other necessary requirements are met.

S6.7 The timeframe for electrically connecting an ICP that does not meet the requirements set out in clause S6.6 must be agreed by the parties.

Temporary Disconnections and associated reconnections

Note: Clauses S6.8 – S6.22 provide that either party may carry out Temporary Disconnections in specified circumstances.

Clause 17.3 provides that only a Warranted Person may undertake connection or disconnection work that requires access to any Distributor's Equipment (such as a pole or pillar fuse or isolation link). This would not prevent a Trader from undertaking a Temporary Disconnection using a method that does not involve access to the Network (eg, using suitable advanced Metering Equipment functionality, removing conductors from meter terminals and resealing the meter, or locking open a suitable isolation device located within the Customer's Premises).

S6.8 The parties agree that Temporary Disconnection of an ICP at which the Trader supplies electricity may be carried out by the Trader in the following circumstances:

- (a) if in an emergency it is necessary to avoid endangering persons or property;
- (b) for credit reasons; or
- (c) if requested by the Customer, for safety or other reasons.

S6.9 The Trader must, subject to clause 29.1, ensure that each of its Customer Agreements provides that the Distributor may perform a Temporary Disconnection in relation to a Customer's ICP in the following circumstances:

- (a) it is necessary to avoid endangering persons or property;
- (b) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or the Grid;
- (c) in the circumstances set out in clause 3.7;
- (d) in accordance with clause 11.3;
- (e) if a Customer does any of the things prohibited under clauses 12.1 or 12.7, or fails to do any of the things required of it as contemplated in clause 13; or
- (f) on termination of this Agreement.

S6.10 Subject to clause 17.4 (which relates to medically dependent and vulnerable Customers), if the Distributor intends to perform a Temporary Disconnection under clause S6.9, the Distributor must give the Trader notice of the Temporary Disconnection as follows:

- (a) the Distributor must give the Trader at least 5 Working Days' notice of

disconnection if the Distributor intends to perform a Temporary Disconnection because:

- (i) the Customer failed to provide the Distributor with access in accordance with its Customer Agreement; or*
- (ii) the Customer damaged or interfered with the Distributor's Equipment or Network; or*
- (b) the Distributor must give the Trader at least 10 Working Days' notice of disconnection if the Distributor intends to perform a Temporary Disconnection because the Customer failed to do any of the things required of it as contemplated in clause 11.*

S6.11 The notice of Temporary Disconnection provided by the Distributor to the Trader under clause S6.10 must specify:

- (a) the ICP identifier of the relevant Customer;*
- (b) the particulars of the Customer breach;*
- (c) the remedy required if disconnection is to be avoided; and*
- (d) the date on which disconnection will occur if the breach is not previously remedied to the Distributor's reasonable satisfaction.*

S6.12 On receipt of a notice under clause S6.10, the Trader must promptly forward a physical notice to the relevant Customer and include mail, email and telephone contact details that the Customer may use to contact the Trader about the matter. The Trader must promptly forward to the Distributor any response received from the Customer and the Distributor must consider in good faith all such responses it receives. The Trader and the Distributor must work together to ensure that communications are co-ordinated and promptly communicated to the relevant party.

S6.13 Subject to clause 17.4 (which relates to medically dependent and vulnerable Customers):

- (a) if the Distributor intends to perform a Temporary Disconnection under clause S6.9(f), the grounds for the Temporary Disconnection are not being reasonably Disputed by the Trader, and the Distributor has taken reasonable steps to avoid the need for a Temporary Disconnection, the Distributor must give each Customer:*
 - (i) at least 9 Working Days' notice of warning of disconnection before any disconnection, such notice to include the reason for the Temporary Disconnection and be sent to each Customer's last address provided to the Distributor by the Trader, or if no address has been provided as the Trader has no Customer at that ICP, the notice must be sent to the Customer's address on the Registry, and the Distributor must provide information about the Temporary Disconnection by way of general advertisement and publication on the Distributor's website;*
 - (ii) a final warning not less than 48 hours nor more than 7 days before the disconnection. The final warning must provide the timeframes for disconnection. This must be a separate notice to the notice provided at least 9 Working Days before disconnection;*
 - (iii) if disconnection is not completed within the timeframes notified, the Distributor must issue another final warning not less than 48 hours nor more than 7 days before disconnection:*

- (b) *if the Distributor intends to perform a Temporary Disconnection as contemplated by clause S6.9(a) or S6.9(b), the Distributor must use its best endeavours to give each Customer as much prior notice as reasonably practicable, but in any event must notify each Customer no later than 2 days after the Temporary Disconnection.*

S6.14 The party that performs a Temporary Disconnection in respect of a Customer must (unless otherwise agreed) notify the other party of that fact no later than 2 Working Days after the Temporary Disconnection. To avoid doubt, the status of the ICP in the Registry must be changed by the party undertaking the Temporary Disconnection to "inactive" only if the Temporary Disconnection remains in effect for more than 5 Working Days.

S6.15 If either party has performed a Temporary Disconnection in respect of a Customer's ICP, the party that performed the Temporary Disconnection must take reasonable steps to arrange restoration of supply to the ICP as soon as reasonably practicable and in any case:

- (a) *no later than 3 Working Days after conditions for reconnection have been satisfied; or*
 (b) *by any other date requested by the Customer.*

Vacant Site Disconnections and associated reconnections

S6.16 The Trader may undertake a Vacant Site Disconnection of an ICP if:

- (a) *the Trader is recorded as the trader for the ICP in the Registry;*
 (b) *the ICP has an "active" status in the Registry; and*
 (c) *in respect of that ICP, no Customer Agreement exists with the Trader.*

S6.17 The Trader must undertake a Vacant Site Disconnection of an ICP without delay if the ICP meets the criteria set out in clause S6.16 and the ICP has been inactive for at least 30 Working Days.

Note: Clause S6.18 assumes that the Distributor has no interest in the energisation status of any ICP. If it does, additional provisions will be needed.

The second sentence of clause S6.18 is written to ensure proof of compliance with the requirements of regulation 74(3) of the Electricity (Safety) Regulations 2010.

S6.18 The Trader may reconnect an ICP that is subject to a Vacant Site Disconnection if it wishes to supply electricity to that ICP. If the ICP has not been electrically connected for more than 6 months, the Trader must either request an inspection from the Distributor (if the Distributor provides this service) or advise the Customer to procure its own safety inspection using a person authorised to certify mains work. A copy of the certificate issued following such an inspection must either be provided to the Distributor, or held by the Trader at the Trader's offices for the later inspection by the Distributor, before the ICP is Re-energised.

S6.19 The Trader must ensure that Vacant Site Disconnections and associated reconnections are carried out in accordance with the Distributor's reasonable operational work practices for managing vacant sites. If a Vacant Site Disconnection or the associated reconnection requires access to any Network equipment or Distributor's Equipment, it must be carried out by a Warranted Person.

S6.20 The Trader may give the Distributor notice that the Distributor is responsible for completing the Vacant Site Disconnection for an ICP if:

- (a) *the Trader wishes to carry out a Vacant Site Disconnection for the ICP;*

- (b) *the Distributor has not provided an exclusive and accessible isolation device for that ICP; and*
- (c) *the Trader has not been able to complete a Vacant Site Disconnection in accordance with Good Electricity Industry Practice for that ICP after 2 separate site visits for that purpose by a Warranted Person, including by seeking to disconnect at the ICP at the meter(s).*

S6.21 If the Trader gives the Distributor notice under clause S6.20:

- (a) *the Distributor must endeavour in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;*
- (b) *the Distributor must investigate provision of an accessible isolation device for the ICP but is not required to install such a device if it considers in its opinion that it would be impractical or unreasonably costly to do so; and*
- (c) *the Trader must continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.*

S6.22 The party performing the disconnection or reconnection must, unless otherwise agreed, notify the other party within 2 Working Days after completion of the work.

Decommissioning an ICP

S6.23 A Distributor may Decommission an ICP in the following circumstances, provided that the requirements of section 105 of the Act and Part 11 of the Code are met:

- (a) *the Distributor is advised by a Customer, landowner or the Trader that electricity is no longer required at the ICP;*
- (b) *it is necessary to Decommission the ICP because public safety is at risk;*
- (c) *the Registry notifies the Distributor that the ICP has the status of "Inactive", with the reason given "De-energised – ready for decommissioning", the ICP has been De-energised and the Trader has attempted to recover any Metering Equipment;*
or
- (d) *if the Distributor has not provided Distribution Services in respect of the ICP for 6 months or more.*

S6.24 If a Distributor intends to Decommission and clauses S6.23(a) or (d) apply, the Distributor must, unless advised by the Trader, notify the Trader before Decommissioning the ICP to enable the Trader to arrange for removal of the Metering Equipment (if appropriate) and update the Registry.

S6.25 A party Decommissioning an ICP must do so by removing all or part of the Customer Service Line to the ICP, or if a shared Customer Service Line forms part of the supply, by isolating and removing the load side cable from the main switch at the meter board and removing any associated Metering Equipment. In all circumstances, the property must be left electrically safe.

S6.26 If an ICP has the status of "Decommissioned" on the Registry, the ICP identifier must not be used again and the process for new connections must be followed if supply is required again at the property.

SCHEDULE 7 – PRICING

Requirements for operational terms: *This Schedule 7 must set out how the Trader can access information that provides comprehensive policy and detail of the Distributor's current:*

- (a) Pricing Structure;*
- (b) Price Categories, and the eligibility criteria for each Price Category;*
- (c) Price Options (if any); and*
- (d) Prices.*

Complete this Schedule and then delete this dashed box.

SCHEDULE 8 – LOAD MANAGEMENT

Use of controllable load

S8.1 A party may use a Load Control System for 1 or more of the following purposes, which are ranked in order of priority, provided that it has obtained the right to control the load in accordance with clause 5.1 or 5.2:

- (a) **Grid Emergency:** As defined in Part 1 of the Electricity Industry Participation Code 2010;
- (b) **Market participation:** Any other right to control load.

S8.2 If both parties have obtained the right to control parts of the consumer's load in accordance with clause 5.1 or 5.2, and both parties want to control load for a purpose specified in clause S8.1 at the same time, the party entitled to control load will be the party with the higher priority rank as specified in clause S8.1.

Requirements for operational terms: *If relevant, this section must set out the rights and obligations of the parties in respect of coordination of split ownership Load Control Systems. An example of a clause that may comply is set out in clause S8.3. Revise as appropriate and then delete this dashed box*

Coordination of split ownership Load Control Systems

Note: Coordination is required if the Load Signalling Equipment and Load Control Equipment in a Load Control System is provided by more than 1 party. For legacy Load Control Systems in New Zealand, this normally involves the Distributor providing the Load Signalling Equipment and the Trader providing the Load Control Equipment.

S8.3 *If the Trader provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:*

- (a) *The Distributor must provide the Trader with details of the technical characteristics of the Load Control Equipment appropriate for use with the Distributor's Load Signalling Equipment in each Network area.*
- (b) *If the Distributor has obtained a load control right in accordance with clause 5.1, the Trader must ensure that Load Control Equipment is installed that reliably receives the Distributor's load control signals and controls the relevant load. If the Distributor's specific Controlled Load Option makes it necessary for the Trader to install additional Metering Equipment that separately measures and records controlled load electricity consumption, the Trader must install the Metering Equipment (provided that the parties acknowledge that such installation does not give the Distributor the right to change the eligibility criteria for Price Categories or Price Options in a manner that would require a mass change to existing metering installations).*
- (c) *If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it must first negotiate in good faith with the Trader to agree suitable terms for the upgrade of the Trader's Load Control Equipment. If agreement is not reached, the Distributor may, at its discretion, elect to procure and install, at its own cost, suitable Load Control Equipment.*
- (d) *The Distributor may periodically, but not more than once in any 12 month period, undertake an audit of Load Control Equipment performance within a Network*

area of its choice. The audit must assess the proper functioning of the Load Control Equipment for a randomly selected sample of ICPs to which the Trader supplies electricity. The sampling technique must be consistent with the methodology outlined in Part 10 of the Code that applies to selecting samples of meters.

- (e) If the audit finds that Load Control Equipment for which the Trader is responsible is not functional in respect of a number that is greater than 5% of the sample, the Distributor and Trader must, within 40 Working Days of the Distributor notifying the Trader of the results of the audit, meet and agree a programme of work including scope and timeframe within which the non-functioning Load Control Equipment must be identified and either replaced or repaired. The Trader must pay the reasonable costs of any inspection (including the initial audit) and repair work identified.*
- (f) If the audit reveals that the proper functioning of Load Control Equipment is caused by low signal levels or faults on a pilot wire network that are the responsibility of the Distributor, such failures must be excluded from the audit results.*
- (g) If the audit finds that Load Control Equipment for which the Trader is responsible is functional for 95% or more of the ICPs sampled, the cost of the audit must be paid by the Distributor, but the Trader must remedy all defects found in respect of non-functional Load Control Equipment for which the Trader is responsible.*