

Schedule 12A.1, Appendix C Sch 12A.1, cl 7(2)
Default agreement – Provision of consumption data

AGREEMENT dated 20[]

PARTIES

Distributor: [insert full legal name of the Distributor]	Trader: [insert full legal name of the Trader]
Distributor's Details: Street Address: [insert] Postal Address: [insert] Address for Notices: [insert]	Trader's Details: Street Address: [insert] Postal Address: [insert] Address for Notices: [insert]
Contact Person's Details: Phone: [insert] Fax: [insert] Website: [insert] Email Address: [insert]	Contact Person's Details: Phone: [insert] Fax: [insert] Website: [insert] Email Address: [insert]

COMMENCEMENT DATE

[insert date]

SIGNATURES

[Parties can sign the Agreement using the signature block below, but see clause 7 of Schedule 12A.1 of the Code, which provides for the Agreement to apply as a binding contract in certain circumstances]

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

INTRODUCTION

- A. The Distributor and Trader are parties to a Distributor Agreement, and have agreed to enter into this agreement for additional services relating to the provision of Consumption Data in accordance with a notice given by the [Distributor or Trader] under clause 7 of Schedule 12A.1 of the Code.

TERMS

1 Introduction

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

2 Consumption Data requests

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

- (a) details about the Consumption Data requested;
- (b) the purposes for which the Distributor will use the Consumption Data;
- (c) the persons to whom the Consumption Data will be disclosed by the Distributor;
- (d) for how long the Distributor wishes to use the Consumption Data; and
- (e) whether the request is for ongoing supply of Consumption Data at monthly intervals.

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3 Provision of Consumption Data

(1) Subject to clause (3A), the Trader must:

(a) procure that its Metering Equipment Provider supplies any data requested under clause (2) that is held by the Metering Equipment Provider or authorise the Distributor to procure this data directly from the Metering Equipment Provider; and

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(b) supply to the Distributor all Consumption Data requested by the Distributor that is held by the Trader rather than the Trader's Metering Equipment Provider.

(2) Consumption Data that is supplied must be provided within 10 Working Days of the Distributor's request, and subsequently at monthly intervals if the request is for ongoing supply.

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(3) The Trader must ensure that Consumption Data that is supplied in accordance with subclause (1):

(a) for all time-of-use meters to which the Consumption Data relates, is half hourly data collected from the relevant Metering Equipment in accordance with EIEP3;

(b) for all other meters to which the Consumption Data relates, is non-half hourly data at the frequency for which it was collected;

(c) is in a format requested by the Distributor, if this is achievable using the Trader's reasonable endeavours, or if it is not achievable, is in a structured, commonly used, and machine-readable format;

(d) does not introduce a virus, Trojan horse, malicious code or similar when transmitted; and

(e) is transmitted in an encrypted form that is current best practice and commonly supported.

(4) Despite subclause (2), the Trader is not responsible for any delay in the supply of Consumption Data due to circumstances beyond its control.

3A Restriction on providing Consumption Data

Consumption Data must not be provided in response to a request under clause (2) unless:

- (a) the purposes for which the Distributor will use the Consumption Data are Permitted Purposes, or Other Purposes (in which case clause 4 applies);
- (b) the persons to whom the Consumption Data will be disclosed by the Distributor are persons who are permitted to access the Consumption Data under this Agreement, or a Data Agreement where clause 4 applies; and
- (c) the frequency of access requested by the Distributor is no more than once every month, unless otherwise agreed by the parties in accordance with clause 4.

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4 Provision of Consumption Data on other terms or for Other Purposes

(1) If the purposes for which the Distributor will use the requested Consumption Data include Other Purposes or the Distributor seeks access on terms that are different to the terms in clause 3, the parties may agree to enter into an agreement ("Data Agreement") in the form set out in clause 20, which sets out:

- (a) the Consumption Data to be provided by the Trader's Metering Equipment Provider, or the Trader to the Distributor;
- (b) the Other Purposes for which the Distributor may use the Consumption Data;
- (c) the persons to whom the Consumption Data may be disclosed by the Distributor;
- (d) the frequency at which Consumption Data will be supplied;
- (e) for how long the Distributor may use the Consumption Data; and
- (f) the format in which Consumption Data will be supplied.

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(2) The Trader must:

- (a) procure that its Metering Equipment Provider supplies the Consumption Data that is held by the Metering Equipment Provider or authorise the Distributor to procure this data directly from the Metering Equipment Provider; and
- (b) supply the Consumption Data that is held by the Trader rather than the Trader's Metering Equipment Provider,

in accordance with the Data Agreement and clause 3(3)(d).

(3) Despite subclauses (1) and (2), the Trader may authorise the Distributor to procure that the Trader's Metering Equipment Provider supply to the Distributor the Consumption Data that is held by the Metering Equipment Provider in accordance with subclauses (1) and (2).

(4) The Data Agreement may be amended, with the agreement of both parties, from time to time.

Deleted: <#>If the Trader is required to supply Consumption Data under this clause, the Trader must supply (or procure that its Metering Equipment Provider supplies) the requested Consumption Data within 10 Working Days of the Distributor's request, and at six monthly intervals after that if the Distributor's request is for ongoing access to the Consumption Data.¶
When the Trader supplies Consumption Data in accordance with subclause (2), the Trader must:¶
for all time of use meters to which the Consumption Data relates, supply half hourly data collected from the relevant Metering Equipment or Metering Equipment Provider in accordance with EIEP3;¶
for all other meters to which the Consumption Data relates, supply non-half hourly data at the frequency for which it was collected; and¶
use reasonable endeavours to provide the Consumption Data in a format requested¶
by the Distributor, or if the Trader is not able to provide the Consumption Data in¶

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the format requested by the Distributor, provide the Consumption Data in a structured, commonly used, and machine-readable format; and¶
not do anything that could introduce a virus, Trojan horse, malicious code or similar when transmitting the Consumption Data, and must ensure the Consumption Data is transmitted in an encrypted form that is current best practice and commonly supported.¶
Despite subclause (2), the Trader will not be responsible for any delay in providing Consumption Data to the Distributor due to circumstances beyond its control.¶

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5 Use of Consumption Data

(1) The Trader grants the Distributor a non-exclusive, limited, non-transferrable (except in accordance with this Agreement) licence to use and disclose the Consumption Data supplied in accordance with this Agreement, subject to the following:

- (a) the Distributor may use the Consumption Data only for the Permitted Purposes as defined in this Agreement and any Other Purposes agreed by the parties as set out in a Data Agreement;
- (b) the Consumption Data may not be used for any purposes, other than those referred to in clause 5(1)(a);
- (c) the Consumption Data supplied for Other Purposes may only be used by the Distributor for the permitted time period as defined in the Data Agreement or as otherwise set out in this Agreement;
- (d) the Consumption Data must not be disclosed to any person outside of New Zealand without the prior written agreement of the Trader, but the Distributor may transfer the Consumption Data to a person who is responsible for storing or

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processing the data on behalf of the Distributor outside New Zealand provided the Distributor ensures that any applicable provisions of the Privacy Act 2020 are complied with in respect of the transfer;

(e) the Consumption Data may only be combined with ~~any~~ other data or databases:

(i) for a Permitted Purpose; or

(ii) for any Other Purposes,

in each case in accordance with clause 5A or otherwise with the prior written agreement of the Trader; and

(f) 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 Agreement.

(2) The Distributor agrees that any Consumption Data provided to the Distributor will be:

(a) at the Distributor's cost, as set out in clause 6, so that neither the Trader's Metering Equipment Provider nor the Trader is responsible for any reasonable costs, charges, or other expenses associated with procuring the supply of, or providing the Consumption Data to, the Distributor; and

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

5A Combination of Consumption Data

(1) If the Distributor combines or intends to combine any Consumption Data with any other data or database for a Permitted Purpose or an Other Purpose, the Distributor must ensure the combination, the reasons for the combination and the corresponding Permitted Purpose or Other Purpose are documented in a Data Combination Schedule in the form set out in clause 21A.

(2) Before the Distributor combines any Consumption Data that has been provided to it under clause 3 with any other data or database for a Permitted Purpose or Other Purpose, the Distributor must give the Trader at least 5 Working Days' notice of the combination as documented in the Distributor's Data Combination Schedule, unless:

(a) that combination is within the scope of an existing entry in the Distributor's Data Combination Schedule previously notified by the Distributor to the Trader in accordance with this clause 5A; or

(b) the Distributor reasonably considers it needs to use that combination urgently in order to respond to an event that poses a risk to the supply of electricity, the Network, the Distributor's normal business operations, and/or to human health and safety, in which case the Distributor will give notice to the Trader of the combination as soon as reasonably practicable (and no later than 10 Working Days after making the combination).

(3) The Distributor must make its Data Combination Schedule available to the Trader promptly on the Trader's request at any time during the term of this Agreement.

(4) At any time after the Distributor has notified the Trader of a data combination under subclause (2) (a **Specified Combination**), the Trader may give notice to the Distributor disputing the Distributor's entitlement to use the Specified Combination for a Permitted Purpose or Other Purpose and requesting that the Distributor not use the Specified Combination (**Combination Dispute Notice**). Following the Distributor's receipt of a Combination Dispute Notice, the matter will be referred to dispute resolution in accordance with clause 18(5) and the parties must attempt to resolve the dispute in good faith within 15 Working Days of receipt of the Combination Dispute Notice (**Resolution Period**).

(5) If the Trader has given the Distributor a Combination Dispute Notice and has complied with the suspension requirements in subclause (6), then:

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- (a) if the Distributor has not yet used the Specified Combination, the Distributor must not start using the Specified Combination; and
- (b) if the Distributor is already using the Specified Combination, the Distributor may continue doing so during the Resolution Period, but must cease use of the Specified Combination after upon the expiry of the Resolution Period if the parties' fail to resolve the matter by mutual agreement.
- (6) For the purpose of subclause (5), the suspension requirements are as follows:
 - (a) the Trader has reasonable grounds to believe the Distributor's use of the Specified Combination is not in accordance with any Permitted Purpose or Other Purpose; and
 - (b) the Combination Dispute Notice clearly sets out the reasons why the Trader disputes that the Distributor's use of the Specified Combination is not in accordance with any Permitted Purpose or Other Purpose.
- (7) The Distributor's obligation not to use a Specified Combination under subclause (5):
 - (a) only applies in respect of Consumption Data provided by the Trader who has given the Distributor a Combination Dispute Notice, and does not apply to any other traders' consumption data that is included in the Specified Combination, or to any other data combination which only uses consumption data provided by any other traders); and
 - (b) will last until the dispute is resolved by mutual agreement (including as to costs) or as determined by a court or other dispute resolution forum to which the parties have submitted which, in each case, permits the Distributor's use of the Specified Combination. Where the dispute is determined in one party's favour by a court or other dispute resolution forum, the other party must reimburse that party for its actual, reasonable legal costs arising in connection with the dispute.

6 Payment of Trader's and Metering Equipment Provider's reasonable costs

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

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7 Privacy Act

- (1) Each party acknowledges and agrees that it must comply at all times with the Privacy Act 2020 to the extent it applies in relation to the Consumption Data.
- (2) The Trader must make any disclosures, and obtain any authorisations, needed under the Privacy Act 2020 to enable the Distributor to use the Consumption Data for the Permitted Purposes and Other Purposes.

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8 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 any Consumption Data except as provided for in this Agreement; and
- (b) only use Consumption Data for a Permitted Purpose or for any Other Purpose specified in a Data Agreement.

9 Disclosure of Consumption Data

- (1) Subject to subclause (3), the Distributor may disclose Consumption Data in any of the following circumstances:
 - (a) to its employees and directors to the extent that such Consumption Data is required to be known by such persons in connection with the Permitted Purposes or Other Purposes;
 - (b) to its agents, advisors, or contractors to the extent that such Consumption Data is required to be known by such persons in connection with the Permitted Purposes or Other Purposes, on terms that are no less onerous than those set out in this Agreement (unless otherwise agreed in writing by the Trader) and only on the basis that the Distributor is liable for the acts and omissions of such agents, advisors, or contractors 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) If the Distributor discloses Consumption Data under subclause (1)(c), the Distributor must notify the Trader of the disclosure (unless such notification is prohibited by law).
- (3) The Distributor may not, except as expressly set out in a Data Agreement or with the prior written approval of the Trader, disclose any Consumption Data to any employee, director, agent, advisor, contractor, or related company (as defined in section 2(3) of the Companies Act 1993) of the Distributor who is involved in the offering, provision, marketing, or sale of:
 - (a) electricity generation, retail, or storage goods or services (including batteries, solar, and other products and services sold on a competitive basis) to Customers; or
 - (b) any other products or services not regulated under Part 4 of the Commerce Act to Customers.
- (4) The Distributor must maintain a register of persons who are permitted to access the Consumption Data under this clause ("Data Team").
- (5) The Distributor must:
 - (a) disclose Consumption Data only to members of the Data Team; and
 - (b) ensure that each member of the Data Team:
 - (i) is trained to understand the confidentiality obligations in this Agreement;
 - (ii) complies with the confidentiality obligations in this Agreement;
 - (iii) uses Consumption Data only for a Permitted Purpose or for any Other Purpose set out in a Data Agreement;
 - (iv) does not disclose Consumption Data to any person who is not a member of the Data Team, other than as provided for in this Agreement or a Data Agreement;
 - (v) 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
 - (vi) complies with any requirements imposed on Data Team members by any information security plan developed in accordance with clause 10.
- (6) Despite anything in this Agreement, 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 (3), Consumption Data 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.
- (7) To avoid doubt, nothing in this Agreement prevents the Distributor from using or disclosing information that is derived from aggregated Consumption Data if the information is used or disclosed in such a form that could not reasonably be expected to identify any individual, single ICP, or Trader to which the Consumption Data relates.

10 Information security plan

- (1) The Distributor must maintain an information security plan to ensure that only Data Team members are able to access the Consumption Data.
- (2) The information security plan must:
 - (a) ensure that Consumption Data is physically and electronically quarantined and unable to be accessed by any person other than Data Team members;
 - (b) include provisions for training of Data Team members on the requirements set out in this Agreement and the information security plan;
 - (c) keep the Consumption Data under the Distributor's control, using measures that are at least as secure as those used by the Distributor for its own confidential information;
 - (d) effect and maintain adequate security measures that preserve and secure the confidential nature of the Consumption Data and safeguard the Consumption Data from loss, unauthorised access, use, modification, or disclosure, and other misuse;
 - (e) implement, to the extent practicable, measures to monitor or prevent the transmission of Consumption Data using external electronic storage devices (for example USB flash drives);
 - (f) include measures to protect electronic files containing Consumption Data (for example password protection and data encryption);
 - (g) include provision for the secure storage of any Consumption Data in the form of physical media; and
 - (h) include a process to:
 - (i) inform the Trader, as soon as practicable and in any case no later than 72 hours after discovery, if the Distributor becomes aware of any loss, unauthorised access, use, modification, or disclosure, or other misuse of the Consumption Data; and
 - (ii) at the request of the Trader, provide all such assistance in relation to the mitigation and remediation of such breach as the Trader may require.

11 Steps to address breaches

If the Distributor becomes aware of a breach of an obligation in this Agreement 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 Agreement;
- (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 of an obligation in this Agreement 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 Agreement.
- (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

Agreement, 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 Agreement are cumulative and are in addition to any rights, powers, or remedies provided by law.

13 Audit

- (1) Subject to subclause (4), the Trader may conduct periodic audits to confirm that the Distributor is meeting its obligations in respect of Consumption Data supplied under this Agreement, 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 14 days prior written notice by the Trader;
 - (c) audits must be conducted using an independent external auditor of the Trader's choice;
 - (d) the Distributor must provide the auditor with all reasonable access to all books, accounts, records, documents, and systems reasonably required by the auditor; and
 - (e) the auditor's costs will be borne by the Trader, unless any audit determines that there has been non-compliance with the Distributor's obligations in respect of Consumption Data supplied under this Agreement (in which event, the costs must be met by the Distributor).
- (2) The Trader has the right to publish the results of the audit.
- (3) More than one Trader may collectively conduct an audit under subclause (1) as if the Traders were a single Trader.
- (4) The Trader must not exercise the rights in subclause (1) if the Distributor has, within the previous 12 months, conducted an audit that complies with the following requirements:
 - (a) the audit was conducted using an independent external auditor of the Distributor's choice;
 - (b) the Distributor provided the auditor with all reasonable access to all books, accounts, records, documents, and systems reasonably required by the auditor;
 - (c) the Distributor provided the Trader with confirmation from the auditor of any results that identify any non-compliance by the Distributor with its obligations, or confirmation from the auditor of the Distributor's compliance (as the case may be).
- (5) If the Distributor undertakes an audit in accordance with subclause (4):
 - (a) the audit may consider the Distributor's compliance with its obligations owed to the Trader (and any one or more other traders) in respect of the Consumption Data provided to it by the Trader (and those other traders);
 - (b) the audit will be at the Distributor's own cost; and
 - (c) the Trader must treat any information concerning the audit provided by the Distributor or its auditor as confidential.

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 Working Days of the date of receipt of such notice; or
 - (b) in any other case, within 5 Working Days of the date of receipt of such notice.
- (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 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 Working 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 [clause 18.5](#) no earlier than 1 Working 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) A party may terminate this Agreement as set out below:
- (a) both parties may agree to terminate this Agreement;
 - (b) either party may terminate this Agreement in accordance with subclause (2);
 - (c) 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 any severance clauses in this Agreement it is not practicable for this Agreement to continue.
- (2) 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 14(1) in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:

Deleted: any existing dispute resolution clauses included in this Agreement

- (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.
- (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) Any terms of this Agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

16 Destruction of Consumption Data

- (1) On termination of this Agreement, or once any Consumption Data has been used by the Distributor for the relevant Permitted Purpose or Other Purpose, the Distributor must, unless otherwise agreed by the Trader, promptly destroy or permanently erase, or procure the destruction or erasure of, all copies (whether on paper or in any electronic information storage and retrieval system or in any other storage medium) of any documents held by the Distributor which contain any Consumption Data.
- (2) The Distributor must provide, no later than 5 Working Days after the destruction of all such Consumption Data, a certificate to the Trader in the form set out in clause 21 confirming that all such Consumption Data has been destroyed.
- (3) Subclause (1) does not apply to Consumption Data contained in electronic back-up facilities that are not readily accessible (provided the Consumption Data contained in the electronic back-up facilities is not restored or used).

17 Surviving terms

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

- (a) clause 5;
- (b) clause 7;
- (c) clause 8;
- (d) clause 9;
- (e) clause 12;
- (f) clause 13;
- (g) clause 14;
- (h) clause 16; and
- (i) any other clause intended to survive termination.

18 Other provisions

- (1) An obligation not to do something under this Agreement includes an obligation not to permit, suffer, or cause something to be done.
- (2) Unless otherwise agreed by the parties, the rights and obligations contained in this Agreement may not be transferred or assigned to a different party.
- (3) A provision, or part of a provision, of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions or parts of this Agreement will continue in force.
- (4) The parties agree:

- (a) this Agreement (including any Data Agreement entered into in accordance with this Agreement) 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 Agreement and any previous agreement, understanding, or negotiations in relation to the Consumption Data, this Agreement prevails.
- (5) If there is a dispute in relation to this Agreement, the senior management of the Distributor and Trader will try to resolve the dispute, and may refer the dispute to mediation if they are unable to resolve the dispute within 15 Working Days of it being raised by a party.

19 Notices

- (1) 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 in the Parties section of this Agreement or to such other address as that party may notify from time to time.
- (2) 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, 3 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.
- (3) Any notice given in accordance with subclause (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.

20 Data Agreement

This Data Agreement applies to Consumption Data provided by **[Insert Trader's Name] (Trader)** to **[Insert Distributor's Name] (Distributor)** for *[insert Permitted Purposes or Other Purposes]*.

The Trader and the Distributor agree that the Consumption Data will be supplied to the Distributor by the Trader's Metering Equipment Provider (or the Trader in instances where the Trader rather than the Trader's Metering Equipment Provider holds the Consumption Data), and that such Consumption Data may be used by the Distributor, in accordance with the terms below and the Agreement relating to the provision of Consumption Data between the Trader and Distributor. Capitalised terms used but not defined in this Data Agreement have the meaning given to them in the Agreement relating to the provision of Consumption Data.

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

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

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

Frequency of Access: *[tick appropriate frequency of Consumption Data supply]*
 Single access , or
 Ongoing Access:
 Daily Weekly Monthly Quarterly Annually Other

Permitted Time Period:
 a) Start date: _____ *[insert date]*
 b) End date: _____ *[insert date]*; or until notice of termination

The format in which Consumption Data will be supplied: *[insert details of the format for supplying Consumption Data]*

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

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

21 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, has been destroyed, or erased from the Distributor's systems in accordance with the agreement between [Distributor] and [Trader] relating to the provision of Consumption Data.

Description of Consumption Data: [insert details]

Date Consumption Data received: [insert date]

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

Signature: _____

Name: _____

Title: _____

Date: _____

21A Data Combination Schedule

Data Combination Schedule

Version [insert version #]

This Data Combination Schedule sets out the ways in which the Distributor [**Insert Distributor's Name**] (**Distributor**) may combine Consumption Data with other data or databases for Permitted Purposes or Other Purposes. It is intended to operate as a living document and may be updated from time to time by the Distributor.

The Consumption Data described in the below table has been, or may be, provided by the following Traders: [**Insert Name of Trader(s)**].

The Distributor may combine Consumption Data with the specified data for the reasons indicated in the table below. The corresponding Permitted Purpose or Other Purpose is also indicated:

<u>Specified data</u>	<u>Reason(s) for combination</u>	<u>Corresponding Permitted Purpose or Other Purpose</u>
<u>[Insert a high level description of the relevant data or databases to be combined with Consumption Data e.g., "address data and other common spatial identifiers for ICPs"]</u>	<u>[Insert details of the rationale for combining the data, e.g., "to attribute consumption data to a property/ location, so as to provide a link to network assets used to supply that customer]</u>	<u>[insert one of or both of the following, or Other Purpose, as relevant:</u> <ul style="list-style-type: none"> • <u>Developing distribution prices</u> • <u>Planning and management of the Network in order to provide Distribution Services to traders under</u>

		<i><u>the Distributor's distributor agreements</u></i>
<i><u>[Insert a high level description of the relevant data or databases to be combined with Consumption Data e.g., "address data and other common spatial identifiers for ICPs"]</u></i>	<i><u>[Insert details of the rationale for combining the data, e.g., "to attribute consumption data to a property/ location, so as to provide a link to network assets used to supply that customer]</u></i>	<i><u>[insert one of or both of the following, or Other Purpose, as relevant:</u></i> <ul style="list-style-type: none"> <i><u>• Developing distribution prices</u></i> <i><u>• Planning and management of the Network in order to provide Distribution Services to traders under the Distributor's distributor agreements]</u></i>
<i><u>Version History</u></i>		
<u>Version</u>	<u>Effective date</u>	<u>Changes</u>
<i><u>[Insert details of current / previous version]</u></i>	<i><u>[Insert the date the Schedule (or any update) became effective]</u></i>	<i><u>[Insert high level details of any changes from the previous version]</u></i>
<i><u>[Insert details of current / previous version]</u></i>	<i><u>[Insert the date the Schedule (or any update) became effective]</u></i>	<i><u>[Insert high level details of any changes from the previous version]</u></i>

22 Definitions

In this Agreement:

"**Agreement**" means this agreement relating to the provision of Consumption Data;

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

"**Consumption Data**" means electricity consumption data collected by the Trader's Metering Equipment Provider or the Trader for each ICP the Trader supplies, and which the Trader's Metering Equipment Provider or the Trader 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 Purpose or 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 or Unit Titles Act 2010;

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"Data Agreement" has the meaning set out at clause 4(1);

"Data Combination Schedule" has the meaning set out at clause 5A(1);

"Data Team" means persons who are permitted to access Consumption Data;

"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 service of distribution, as defined in section 5 of the Electricity Industry Act 2010;

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

"Distributor Agreement" means a distributor agreement as defined in the Code;

"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;

"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;

"Insolvency Event" means a party:

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- (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;

"Metering Equipment Provider" means a metering equipment provider as defined in 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 agreed by the parties, [as set out in a Data Agreement](#);

"Permitted Purposes" means:

- (a) developing distribution prices,
- (b) planning and management of the Network in order to provide Distribution Services to traders under the Distributor's distributor agreements;

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

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

"Serious Breach" means:

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

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

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

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

"Unplanned Service Interruption" means any Service Interruption where events or circumstances prevent the timely communication of prior warning or notice to the

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Trader or any affected Customer;

"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.