

Changes to the default distributor agreement template, consumption data template, and related Part 12A clauses

Decision paper

22 October 2024

Executive summary

The future of an electrified New Zealand requires increased innovation and participation across the power system so consumers reap the benefits of a competitive, reliable, and efficient electricity industry. The Electricity Authority Te Mana Hiko (the Authority) is undertaking work to make sure that this is delivered.

In July 2020, the Authority introduced a default distributor agreement (DDA) template and a default consumption data template to streamline access to distribution networks and consumption data through standardised agreements.

The DDA template contains a set of default terms for a distributor agreement between a distributor and a trader who is a retailer wanting to trade on the distributor's network. The consumption data template contains a set of default terms for an agreement between a distributor and a trader for the provision of electricity consumption data to the distributor. These templates are contained in Part 12A of the Code.

In the interests of ongoing improvements, we proposed amendments in October 2023 to make sure these templates continue to be fit for purpose. We proposed further targeted amendments involving four clauses in July 2024, following analysis of feedback on our initial amendments.

The Authority has now decided to adopt changes to both templates and make our other proposed targeted amendments. These changes have been made with a focus on delivering to consumers and with strong industry input.

We have decided to amend Part 12A of the Electricity Industry Participation Code

Following consultation on our proposed amendments, the Authority has decided to amend Part 12A of the Electricity Industry Participation Code 2010 (Code), including to amend the DDA template and consumption data template. The main elements of the Code amendment are:

- (a) to change the status of each 'recorded term' in the DDA template, and improve certain terms' workability, so that they become either:
 - (i) 'core' terms, which must be consistent across all DDAs published by distributors
 - (ii) 'operational' terms, which reflect the local practices and policies of distributors
- (b) to permit distributors to combine electricity consumption data with other data or databases without requiring the relevant trader's prior agreement, provided the distributor notifies the trader and uses the combined data:
 - (i) for a purpose previously agreed with the trader, or
 - (ii) to develop distribution prices and/or plan and manage the distributor's network to provide distribution services.
- (c) to introduce one new core term to the DDA and one new clause to Part 12A of the Code to ensure certain changes directly benefit consumers.

The Authority is prioritising providing access to data for better performance across the system. The amendment permits better access to information to unlock the potential of distributed energy resources and makes more efficient the processes distributors already have to use consumption data.

The Authority is also considering how industry participants can better access information needed to unlock the potential of distributed energy resources, as part of our updating regulatory settings for distribution networks work programme.¹

The Authority considers the Code amendment benefits consumers

The Authority considers the Code amendment promotes a competitive, reliable, and efficient electricity industry by:

- (a) reducing costs faced by traders wanting to compete for customers on distributors' networks
- (b) strengthening the incentive on distributors to manage the quality and reliability of consumers' electricity supply and to act in a manner that minimises the disruption to consumers from power outages (the Authority considers this is also consistent with the protection of the interests of domestic and small business consumers)
- (c) reducing costs distributors face combining electricity consumption data with other datasets to provide distribution services or develop distribution prices
- (d) strengthening incentives on distributors to manage risks currently placed with traders, in situations where the distributor can manage the risk more cost-effectively
- (e) ensuring consumers are not charged for services they do not receive.

¹ Updating regulatory settings for distribution networks: <https://www.ea.govt.nz/projects/all/updating-regulatory-settings-for-distribution-networks/>.

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1. Introduction

- 1.1. Part 12A of the Electricity Industry Participation Code 2010 (Code) regulates agreements between a distributor and a retailer wanting to trade on the distributor's network. Part 12A requires distributors to develop and publish a default distributor agreement (DDA) based on the DDA template included as Schedule 12A.4 of Part 12A. This template contains a set of default terms for distributor agreements.
- 1.2. A distributor must offer its DDA to all traders who are retailers wanting to trade on the distributor's network(s) under an interposed contractual arrangement.²
- 1.3. Schedule 12A.1 of Part 12A also contains default terms for some additional services commonly provided alongside distribution services (but which are not themselves part of the distribution services).³ These default terms include:
 - (a) allowing a distributor's shareholder trust to credit beneficiaries' accounts with annual distributions or to collect beneficiary information to send a distribution directly to the consumer
 - (b) providing distributors with access to consumption data on reasonable terms via a default data sharing agreement.
- 1.4. The Authority published an initial consultation paper, *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*, on 3 October 2023, and a targeted follow-up consultation paper, *Follow-up consultation – proposed changes to the default distributor agreement*, on four proposals on 2 July 2024.
- 1.5. These papers contained proposed amendments to Part 12A's regulation of distributor agreements. Key aspects of these proposed amendments to the Code were:
 - (a) to change the status of each of the 'recorded terms' in the DDA template to be either '**core**' terms - those required to be consistent across all DDAs - or '**operational**' terms reflecting the local practices and policies of distributors and which may vary across DDAs
 - (b) improve workability of certain terms
 - (c) to permit distributors to combine consumption data with other data or databases without requiring the relevant trader's prior agreement, provided the distributor notifies the trader and uses the combined data for a purpose previously agreed with the trader or to develop distribution prices and/or plan and manage the distributor's network to provide distribution services.
 - (d) to introduce one new core term to the DDA and one new clause to Part 12A of the Code ensuring consumers are not charged for services they do not receive.

² Under an interposed contractual arrangement between a distributor and an electricity retailer, the distributor does not have a direct contractual relationship with consumers connected to the distributor's network. Instead, the distributor's relationship with consumers on its network is through the retailers trading on the network. An interposed arrangement is by far the most common contractual arrangement between distributors and electricity retailers in New Zealand.

³ Part 12A of the Code defines 'distribution services' to mean the service of distribution, as defined in section 5 of the Electricity Industry Act 2010. Section 5 defines 'distribution' to mean the conveyance of electricity on lines other than lines that are part of the national transmission network.

- 1.6. We received 22 submissions on the initial 2023 consultation paper, and 24 submissions on the subsequent 2024 targeted consultation paper.
- 1.7. Appendix A lists the submitters. Submissions for both consultation phases and consultation papers are available on our website at:
<https://www.ea.govt.nz/projects/all/default-distributor-agreements/>.
- 1.8. After carefully considering these submissions, the Authority has decided to amend the Code to incorporate most of the proposed changes we consulted on. This paper therefore sets out:
 - (a) the changes we have decided to make to Part 12A of the Code
 - (b) our assessment of feedback we received on the proposed changes.

2. We have decided to amend Part 12A of the Code

Our decision

- 2.1. The Authority has decided to amend Part 12A of the Code. The main elements of the Code amendment are:
- (a) to change the status of each 'recorded term' in the DDA template, and improve certain terms' workability, so that they become 'core' terms or 'operational' terms
 - (b) to permit distributors to combine electricity consumption data with other data or databases without requiring the relevant trader's prior agreement, *provided* the distributor notifies the trader and uses the combined data:
 - (i) for a purpose previously agreed with the trader, or
 - (ii) to develop distribution prices and/or plan and manage the distributor's network to provide distribution services.
 - (c) to introduce one new core term to the DDA and one new clause to Part 12A of the Code ensuring consumers are not charged for services they do not receive.

Our decision addresses four key issues

- 2.2. We are making improvements to Part 12A to address the following key issues with the DDA template and the consumption data template:
- (a) inconsistency in the way some recorded terms have been implemented, that do not best meet Authority objectives
 - (b) costs faced by traders wanting to compete for customers on distributors' networks are higher than they need to be
 - (c) distributors face higher-than-necessary costs in combining electricity consumption data with other datasets to provide distribution services or developing distribution prices
 - (d) ensuring consumers receive charge reductions for services they do not receive.
- 2.3. We consider there are benefits to be gained from making these changes now. Even if the Authority considers the relevant provisions further as part of a future review, we consider the benefits to consumers achieved in the interim mean the changes should be progressed.

The Code amendment aligns with our statutory objectives

- 2.4. The Code amendment aligns with our main statutory objective by promoting the following for the long-term benefit of consumers:
- (a) promoting competition in the electricity industry by reducing the costs faced by traders competing, or wanting to compete, on distributors' networks
 - (b) promoting the reliable supply of electricity by the electricity industry, by:
 - (i) strengthening the incentive on distributors to manage the quality and reliability of consumers' electricity supply and to act in a manner that minimises the disruption to consumers from power outages

- (ii) reducing costs distributors face accessing, exchanging, and using consumption data to develop better insights into their low-voltage networks, and to plan and manage their networks to provide distribution services
- (c) promoting the efficient operation of the electricity industry, by:
 - (i) reducing transaction costs incurred by traders and distributors – primarily in relation to negotiating agreements for the provision of consumption data, but also in relation to negotiating distributor agreements and providing these to the Authority
 - (ii) allocating costs and risks to the party best placed to manage them – in particular, to manage them in the most cost-effective manner
 - (iii) reducing barriers to distributors accessing, exchanging, and using consumption data to develop distribution prices, to develop better insights into their low-voltage networks, and to otherwise plan and manage their networks to provide distribution services.

- 2.5. The Code amendment generally addresses dealings between industry participants, rather than the dealings of industry participants with domestic consumers and small business consumers (as required to engage the Authority’s additional objective). However, the Authority considers the Code amendment is consistent with the protection of such consumers’ interests in relation to the supply of electricity to them because it strengthens the incentive on distributors to:
- (a) manage the quality and reliability of consumers’ electricity supply
 - (b) act in a manner that minimises the disruption to consumers from power outages.

We expect the Code amendment to deliver a net economic benefit

- 2.6. To help inform our decision, the Authority evaluated the economic benefits and costs of the Code amendment, which we consider will deliver a net economic benefit to consumers and industry.
- 2.7. There are a wide range of benefits to competition, reliability, and efficiency that result from our changes. Some of these benefits can be quantified readily whereas others cannot. We consider these unquantified benefits to be substantial. Where we can quantify benefits and costs, the resulting cost-benefit analysis is positive.
- 2.8. We have revised the costs that we included in our consultation paper based on submitter feedback.

The amendment will provide competition, reliability, and efficiency benefits

- 2.9. The Authority expects there to be substantial competition, reliability, and efficiency benefits arising from the amendment, including:
- (a) more vigorous competition amongst electricity retailers, encouraging retailers to develop more innovative products and services for consumers
 - (b) more efficient investment in, and use of, distribution networks and distributed energy resources
 - (c) stronger incentives on distributors to manage the quality and reliability of consumers’ electricity supply

- (d) reduced time consumers are subject to planned or unplanned outages
 - (e) less potential for transaction costs and contractual uncertainty
 - (f) reduced regulatory costs.
- 2.10. We consider these benefits will arise from both productive and dynamic efficiency gains:
- (a) *Productive efficiency* is achieved when products and services desired by consumers are produced at minimum cost to the economy
 - (b) *Dynamic efficiency* is achieved by firms having appropriate incentives to innovate and invest in new products and services over time. This increases firms' productivity and lowers the relative cost of products and services over time.

Productive efficiency benefits

- 2.11. Due to information constraints, we necessarily focused our estimated quantified productive efficiency benefits (as noted in Table 1), on reduced transaction costs incurred by traders and distributors. However, we expect several other productive efficiency benefits under the proposed Code amendment.
- 2.12. First, allocating costs and risks to the party best placed to manage them should lead to them being managed most cost-effectively. Second, improved retail competition should deliver productive efficiency benefits as traders seek operational efficiency gains.
- 2.13. Third, more distributors accessing historical consumption data should improve reliability of supply. Distributors will gain more insight into the low-voltage parts of their networks, and consequently be able to better plan and manage their networks to provide distribution services.

Dynamic efficiency benefits

- 2.14. We also consider that significant unquantified dynamic efficiency benefits will result. First, we expect improved retail competition from more equal bargaining positions between distributors and traders, and less cost for traders competing on distributors' networks. These costs include lower transaction costs for traders competing for customers to enter and operate on distribution networks, and reallocating risks now placed on traders, but more appropriately managed by distributors.
- 2.15. Second, we expect more distributors accessing historical consumption data to develop distribution prices to promote more efficient investment in, and use of, distribution networks and distributed energy resources (DER).
- 2.16. Access to consumption data can also help distributors identify actual or potential areas of congestion on their low-voltage networks. Distributors can then signal congestion, or likely future congestion, via their distribution prices. This is particularly important given the increasing electrification of New Zealand's vehicle fleet and process heat.
- 2.17. We expect this, in turn, to support growth in the flexibility market through distributors working more with flexibility traders around non-network solutions to address congestion. This should consequently reduce network costs through less need for costly asset upgrades, ultimately reducing costs for consumers. More flexibility

traders operating should also mean more services available to consumers to gain value from their DER investments.

We expect the Code amendment to deliver a modest net quantified benefit

- 2.18. Our revised estimate of the present value of the amendment’s net quantified benefit over 15 years ranges from approximately \$80,000 under a low benefit / high implementation cost scenario, to approximately \$300,000, under a high benefit / low implementation cost scenario.
- 2.19. We have updated this figure since our consultation paper, in response to feedback from submitters. However, the expected net benefits remain material.

Table 1: Summary of the Code amendment’s estimated quantified benefits and costs

Benefit / Cost	Present value amount
The ongoing incremental benefit from traders and distributors expending less effort negotiating distributor agreements	\$19,500 Range: \$17,000 – \$22,000
The incremental benefit from traders and distributors periodically providing distributor agreements to the Authority upon request rather than upon the agreement coming into force	\$2,500 Range: \$1,500 – \$3,500
The one-off incremental benefit from traders and distributors expending less effort negotiating agreements for the provision of consumption data	\$300,000 Range: \$200,000 – \$400,000
The ongoing incremental benefit from traders and distributors expending less effort negotiating agreements for the provision of consumption data	\$65,000 Range: \$60,000 – \$70,000
Incremental dynamic efficiency benefits from more vigorous competition amongst electricity retailers and from the promotion of more efficient investment in, and use of, distribution networks and distributed energy resources	Not quantified, but expected to be material
The incremental cost associated with distributors updating the core terms in their DDAs and publishing their updated DDAs	(\$12,000)
The incremental cost associated with distributors and traders entering into updated distributor agreements	(\$120,000)

The incremental cost associated with distributors and traders updating and/or creating new procedures	(\$60,000)
Quantified estimated net benefit	\$80,000 to \$300,000

Notes: The upper end of the range for benefits uses a 4% discount rate, with the dollar value rounded to the nearest \$5,000 for amounts over \$50,000.

The lower end of the range for benefits uses an 8% discount rate, with the dollar value rounded to the nearest \$5,000 for amounts over \$50,000.

We consider changing the status of recorded terms has a net benefit

- 2.20. In submissions on the proposed Code amendment, some distributors pointed out that the Authority’s quantified analysis suggested changing the status of recorded terms to be either core terms or operational terms had a small cost (approximately \$50,000). The Authority notes our quantified analysis of the Code amendment shows a slightly larger cost of a little over \$100,000. This is due to the implementation costs associated with changing the status of recorded terms to be either core terms or operational terms.
- 2.21. However, this cost is outweighed by other benefits of the amendment, as per Table 1. Further, we note that a quantitative analysis is only one tool the Authority may use and only one factor in our ultimate decision. In making our final decision on the Code amendment, we have also made a qualitative judgment as to whether the Code amendment satisfies the requirements of the Electricity Industry Act 2010 (the Act).
- 2.22. This has included making judgements about several benefits that cannot readily be quantified. After careful consideration we have concluded it is reasonable to expect that changing recorded terms to be either core terms or operational terms will deliver a net benefit once these unquantified competition, reliability, and efficiency benefits are accounted for.
- 2.23. We expect the unquantified competition benefit from changing the status of recorded terms to come from traders being more willing to compete for customers on at least some distributors’ networks. We consider this increased willingness to compete will result from traders facing reduced costs of doing business on distributors’ networks.
- 2.24. We note several traders who submitted on the Code amendment proposal supported our evaluation. For example, Contact Energy said:

The work required to actively engage in consultation with Distributors to develop their new distributor agreements in 2020 was mammoth. In most cases, even after extensive consultation, Traders were forced to accept terms in their Distributor Agreements which did not allocate the cost or risk to the party best placed to manage it.

The cost to make these minor updates to distributor’s (sic) agreements required as a result of this proposed Code amendment will be outweighed by the significant benefits which will be achieved in delivering the benefits that

were intended and expected by the Authority when they introduced Part 12A of the Code.⁴

- 2.25. We expect the unquantified reliability benefits from changing the status of recorded terms to come from reductions in the time consumers face planned or unplanned outages. Examples of how the Code amendment promotes the reliable supply of electricity by the electricity industry include removing the blanket exclusions on:
- (a) liability that some distributors have inserted in their DDAs in relation to planned outages on their networks
 - (b) liability that some distributors have inserted in their DDAs in relation to the restoration of distribution services on their networks following a planned or unplanned service interruption
 - (c) any remedy that some distributors have inserted in their DDAs in relation to not investigating a power quality (ie, frequency or voltage), reliability or safety issue related to a consumer's electricity supply
- 2.26. Another example is requiring distributors, when next amending operational terms in their DDAs, to include tables setting out the service standards that the distributor must meet when providing distribution services. This is by specifying service measures and service levels for supply availability, target levels of power quality, timeframes, and notification requirements around power outages. We note that this benefit will be most significant in the situation where a DDA currently does not include service standards in Schedule 1.
- 2.27. The value of lost load (VOLL) is a measure of the economic value given to an amount of electricity that is prevented from being delivered to consumers due to a planned or unplanned outage of one or more components of the electricity supply chain. The most recent study of VOLL in New Zealand was undertaken by Transpower in 2018. This study found VOLL in New Zealand generally was in the range of \$17–\$40 per kilowatt hour.⁵
- 2.28. With a value of lost load for consumers in this range, just a small reduction in the amount of time consumers are subject to planned or unplanned outages will amount to a considerable benefit for consumers.
- 2.29. An unquantified efficiency benefit the Authority expects may arise from changing the status of recorded terms is reduced potential for contractual uncertainty. This uncertainty can result in additional costs and risks for the contracting parties (which may be operationally related or investment-related).
- 2.30. A further unquantified efficiency benefit we expect from changing the status of recorded terms is a reduction in regulatory costs. Since the recorded terms came into existence, the Authority has received complaints about distributors' use / attempted use of these terms. An example was the alleged breach of clause 3 of Schedule 12A.4 of the Code, which the Authority investigated in 2021–2022.
- 2.31. It was alleged that some distributors' DDAs included certain exclusions of liability terms as recorded terms that circumvented the core terms of the DDA. Another

⁴ See p. 5 of Contact Energy's submission (8 November 2023).

⁵ Transpower New Zealand, November 2018, Value of Lost Load Study.

(earlier) example was a complaint the Authority received about the proposed inclusion in a DDA of consumption data provision requirements as operational terms.

- 2.32. The Authority expects that, by providing for all terms in the DDA template to be either core or operational terms, the Code amendment will reduce the regulatory (and other) costs associated with such complaints, for the Authority and for industry participants who are party to the complaints.
- 2.33. Based on our evaluation of quantified and non-quantified benefits and costs, we expect the changes to the DDA template will have a significant positive net benefit overall, as will the other aspects of the Authority's amendment.

We will advise the Commerce Commission of our decision

- 2.34. The Authority anticipates our decision on the use of recorded terms in the DDA template:
 - (a) is likely to be relevant to the powers or functions of the Commerce Commission in relation to electricity lines services under Part 4 of the Commerce Act 1986
 - (b) may result in increased costs to a supplier of electricity lines services.
- 2.35. Therefore, we will be advising the Commerce Commission of these matters, as soon as practicable, after making the Code amendment, in accordance with section 54V(2) of the Commerce Act 1986.
- 2.36. Prior to undertaking our consultation in October and November 2023, the Authority consulted with the Commerce Commission on the proposed Code amendment. This was in accordance with section 54V(1) of the Commerce Act 1986. We did so because we anticipated the proposed amendments to the DDA template would, or would be likely to, affect the Commerce Commission in performing its functions or exercising its powers regarding electricity lines services under Part 4 of the Commerce Act 1986.

3. We have decided to change the status of recorded terms in the DDA template

3.1. The first issue the Code amendment addresses is the status of ‘recorded’ terms in the DDA template in Part 12A of the Code.⁶

Our decision

- 3.2. The Authority has decided to amend Part 12A of the Code to:
- (a) change the status of each recorded term in the DDA template such that it is either a ‘core’ term or an ‘operational’ term
 - (b) amend some of the terms that are currently recorded terms, to incorporate changes in distributors’ DDAs that the Authority considers promote the efficient operation of the electricity industry
 - (c) include provisions that provide for what happens to existing distributor agreements based on the DDA template under the change in the status of the recorded terms in the DDA template in Part 12A
 - (d) clarify the requirements for distributors to update and publish their DDAs
 - (e) clarify the effect on existing distributor agreements when the Authority amends core terms or operational terms in the DDA template.
- 3.3. The Authority has further decided to incorporate in the Code amendment some submitter feedback on the proposed Code amendment published in our 3 October 2023 consultation paper.
- 3.4. The Authority considers our decision promotes competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The decision does this by reducing costs faced by traders wanting to compete for customers on distributors’ networks as further discussed below.

What we proposed

- 3.5. The Authority proposed to amend the status of each recorded term in the DDA template:
- (a) to be a core term, in respect of clauses 4.8, 4.11, 4.12, 5.7, 5.8, 7.3, 9.5, 9.10, 14.1, 14.2, 24.5, 33.2, S1.1, S1.2, S1.3, S1.4, and S1.5
 - (b) to be an example operational term, in respect of Table 1 of Schedule 1 and all clauses in Schedule 5.
- 3.6. In addition to amending the status of recorded terms in the DDA template as explained in paragraph 3.5(a) the Authority proposed to include in several of those terms some changes seen in DDAs and distributor agreements, which the Authority considered promote the efficient operation of the electricity industry.
- 3.7. To provide for the proposed changes to the DDA template and any future changes to the DDA template, the Authority proposed to amend Schedule 12A.4:

⁶ See section 2 of the Authority’s 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

- (a) to include provisions that provide for what happens to existing distributor agreements based on the DDA template under the proposed change in the status of the recorded terms in the DDA template in Part 12A
- (b) to clarify:
 - (i) the requirements for distributors to update and publish their DDAs
 - (ii) the effect on existing distributor agreements when the Authority amends core terms or operational terms in the DDA template.

Submitters' views and our assessment

- 3.8. In response to its 3 October 2023 consultation paper the Authority received 19 submissions on our proposal to change the status, and in places the drafting, of 'recorded' terms in the DDA template in Part 12A of the Code. There was general support for the proposal from traders. However, distributors disagreed with the proposal.
- 3.9. Traders considered the proposal would provide more consistency across distributor agreements and place responsibilities and risks on distributors where distributors are best placed to manage these. Some traders submitted that, in their experience, distributors have used recorded terms to shift onto the trader costs and risks best managed by the distributor (eg, risk relating to the failure of the distributor's network).
- 3.10. Distributors considered the proposal would impose significant costs on them and the proposed changes to the status of 'recorded' terms did not deliver a net economic benefit. Some distributors argued that the Authority did not have jurisdiction under the Act to change the status of some 'recorded' terms in the DDA template to 'core' terms.
- 3.11. Set out below is the Authority's assessment of submitter feedback on the proposal.

The Authority's role regarding operational terms and the process for changing them

Our decision

- 3.12. Responding to submitter feedback, the Authority has revised clause 12 of Schedule 12A.4 to say:
 - (a) the Authority may amend requirements for operational terms in the DDA template, rather than specifying the terms themselves
 - (b) distributors with published DDAs must amend the operational terms resulting from us amending the requirements for operational terms, no later than the earlier of any date specified in the Code or the date the distributor next amends operational terms in its published DDAs.
- 3.13. For the amendment to the operational terms resulting from the present decision (as set out in this decision paper), we have specified that distributors must amend the operational terms in Schedules 1 and 5 by a date corresponding to three years from the amendment coming into force.
- 3.14. This means distributors with published DDAs must amend the operational terms resulting from this Code amendment by the date they next amend operational terms

in their published DDAs or, at the latest, by three years from the amendment coming into force.

Submitters' views

- 3.15. Contact Energy and Meridian Energy submitted on the proposed default timeframe of 15 business days for distributors to update and publish their DDAs if the Authority amended core or operational terms, or removed recorded terms. The submitters noted this provided little time for distributors to consult with participants on any updates to operational terms, as required under clauses 6(2) and 12(2) of Schedule 12A.4. Contact Energy suggested it may be necessary to extend the proposed default timeframe to 40 business days, to allow distributors to meaningfully consult and consider submitters' responses. Meridian Energy noted that it would be content with distributors being given more than 15 days to update their DDAs and make them available on websites.
- 3.16. In its submission, Electricity Networks Aotearoa (ENA) noted that the proposed changes to Schedule 12A.4 of the Code provided for the Authority to add, remove, or change requirements for a DDA's operational terms. Every time the Authority exercised these powers over operational terms, each distributor would have to amend its DDA to reflect the Authority's amendments and publish the updated DDA on its website within 15 business days. Existing distributor agreements would be deemed to be amended within 15 business days following the updated DDA being made available.
- 3.17. ENA sought to understand the Authority's expectations for consultation on operational terms stemming from the proposed amendment to the DDA template. ENA's view was that the obligation on distributors to consult on changes to operational terms should only apply to changes initiated by distributors – not changes initiated by the Authority.
- 3.18. ENA also expressed concern that the Authority's ability to make changes to core terms, which are then deemed to form part of existing agreements, would likely create confusion and potential disputes between distributors and traders as to which terms were in effect. ENA suggested the Authority be required to notify all traders and distributors of any deemed changes to the DDA template and their effective date.
- 3.19. In their joint submission Northpower, Top Energy and Counties Energy noted the Authority could initiate changes to operational terms under the proposed Code amendment. These submitters questioned the need for distributors to consult with affected participants when this occurred, as the Authority would undertake extensive consultation as part of our Code change process. Northpower, Top Energy and Counties Energy believed distributors should only have to consult with affected participants when distributors initiated a proposed change to an operational term.
- 3.20. Northpower, Top Energy and Counties Energy supported the proposed changes to Schedule 12A.4 because these changes further clarify the processes around handling changes to the DDA template made by the Authority. However, the submitters expressed concern about the practicality of the default 15 business day timeframe for changes to DDAs.
- 3.21. They considered that, if the Authority did not allow a longer period, 15 business days would be insufficient for distributors to make any changes to implement the new

requirements. They suggested that amendments to the DDAs often involve new process/system design, implementation, and testing, which can take from a few months to even a few years depending on the scale of the change.

- 3.22. Orion submitted that it did not agree with the proposed requirement for distributors to consult on new operational terms where the Authority is proposing an amendment. Orion expected that consultation with all traders on these terms would prove time consuming and costly, with there being little point where the distributor is largely making changes required by the Authority.
- 3.23. Orion also submitted that it is extremely unlikely that consultation on operational terms could be completed within 15 business days. Orion considered at least three months should be allowed for this consultation process to be completed. Consultees will need a reasonable opportunity to consider any proposed changes and distributors will need sufficient time to give the consultation responses due consideration.

Our assessment

- 3.24. After considering this submission feedback, the Authority has decided to revise clause 12(1A) of Schedule 12A.4 to provide for the Authority to amend requirements for operational terms in the DDA template,⁷ rather than specifying the terms themselves. The Authority considers that this is appropriate, given that these are terms which are intended to be included in distributors' DDAs to reflect their local practices and policies.
- 3.25. Distributors will be determining the final form of the operational terms in Schedule 1 and Schedule 5 of their respective DDAs that result from this Code amendment. It therefore follows that distributors will need to consult on these operational terms in accordance with clause 6(2) of Schedule 12A.4 of the Code.
- 3.26. The Authority is aware that any consultation on operational terms has the potential to impose costs (potentially material) on distributors and traders. We are also conscious of the feedback from submissions, saying the proposed Code amendment did not provide distributors with sufficient time to consult and amend their DDAs.
- 3.27. Considering these concerns, the Authority has decided to revise clause 12(1A) of Schedule 12A.4 to provide that distributors with published DDAs must implement amendments to operational terms either by the date specified in the Code (if one is so specified) or else as part of the next process the distributor undertakes to amend operational terms in its published DDA.
- 3.28. This approach will, by default, provide distributors with flexibility around when to introduce changes to their operational terms and to combine reviews/consultations related to their DDAs. However, the approach still gives the Authority a residual ability to require operational terms to be brought into effect more quickly.
- 3.29. For this Code amendment we have specified that distributors must amend the operational terms in Schedules 1 and 5 by a date corresponding to three years from the amendment coming into force. We consider this give distributors an ample 'window' to amend operational terms in line with their normal businesses processes relating to sector changes.

⁷ That is, currently as set out in Schedules 1–8 of the DDA template.

- 3.30. We have taken this approach in part because we expect distributors will want to consult with traders on operational terms in the short term (and at the latest within two years) as distributors periodically update these terms in the normal course of business. Operational terms are intended to provide flexibility to account for local conditions and therefore, by their nature, are not 'set and forget' terms.
- 3.31. The Authority expects distributors will be regularly reviewing their operational terms to ensure these best meet their local practices and policies, while also ensuring these terms:
- (a) are consistent with the Authority's objectives set out in section 15 of the Act⁸
 - (b) reflect a fair and reasonable balance between the legitimate interests of the distributor and the requirements of the participant trading on, connected to, or using the distributor's network or equipment connected to the distributor's network
 - (c) reflect the interests of consumers on the distributor's network
 - (d) reflect the reasonable requirements of all participants 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.⁹
- 3.32. The electricity industry is evolving significantly on several fronts including as regards technology, service offerings for consumers, and consumer expectations. Policy and regulatory settings are also evolving.
- 3.33. Distributors are actively involved in this evolution in a myriad of ways. Examples range from investing to facilitate electrification of the economy in the most effective and affordable way for consumers, to initiatives under the Future Networks Forum designed to result in tangible benefits to consumers. So, the impetus for distributors to review their operational terms regularly will continue to build.
- 3.34. We note delaying implementing operational terms risks delaying some of the benefits to consumers from the Code amendment – particularly regarding potential improvements in service standards. However, the Authority considers the key changes will be made immediately via the core terms and that the additional time in this case will help to ensure distributors and traders give proper thought to the new operational terms.
- 3.35. Relating to ENA's submission regarding requiring notification to distributors and traders of any changes and their effective date, the Authority notes that any change to core terms would be by way of a Code amendment. As such, we are already required to consult on, and then publish, such amendments and the date on which they come into effect. Therefore, we consider an amendment along the lines ENA suggests is unnecessary. Rather, the Authority will continue our usual practice of making sure industry participants are kept informed regarding changes, and the dates on which they come into effect, including by way of Market Brief and other channels.

⁸ Since the end of 2022 the Authority has had an additional objective – to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. The additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers. See section 15(2)–(3) of the Act.

⁹ See clause 4(2) of Schedule 12A.4 of the Code. In addition, a distributor must not include an operational term in a DDA that is inconsistent with, or modifies the effect of, any core term that the distributor must include in the DDA – see clause 5(1) of Schedule 12A.4 of the Code.

Commerce Commission jurisdiction boundary

Our decision

- 3.36. The Authority considers clauses 7.3, 9.10, and the definition of Use of Money Adjustment in clause 33.2 of the DDA template fall within the Authority’s jurisdiction to set pricing methodologies for distributors under section 32(4)(b) of the Act.
- 3.37. The Authority has decided to amend clause 7.3 with several minor changes resulting from submitter feedback. The Authority has also decided to amend clause 9.10, and the definition of Use of Money Adjustment in clause 33, with changes to the proposed drafting the Authority has consulted on to improve workability. These changes ensure appropriate interactions with the Commerce Commission’s jurisdiction regarding distributors and/or improve workability.
- 3.38. Clauses 9.10 and the definition of Use of Money Adjustment in clause 33.2 were the subject of a further targeted consultation in July 2024. We provide submitters’ feedback on those clauses to that follow-up consultation, our assessment, and final decisions, later in this paper.

Submitters’ views

- 3.39. Some submitters¹⁰ identified certain clauses in the draft DDA template that they consider address matters the Commerce Commission is authorised or required to regulate under Part 4 of the Commerce Act 1986. They argued that the Authority consequently cannot regulate these under the Code. These clauses are 7.3, 9.10, and the definition of Use of Money Adjustment in clause 33. Submitters argued these clauses affect maximum prices or revenue that distributors can charge and are therefore matters regulated by the Commerce Commission under Part 4 of the Commerce Act 1986.

Our assessment

- 3.40. Clause 7.3 provides for a maximum of one price increase a year, unless the parties agree otherwise, or certain exceptions apply. Clause 9.10 requires distributors to reduce charges for service disruptions of more than 24 hours. The definition of Use of Money Adjustment requires distributors to apply a use of money adjustment on ‘wash ups’.
- 3.41. The Authority disagrees with the submissions noted above. Section 32(2)(b) of the Act provides that the Code may not “purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 4 of the Commerce Act 1986 (other than in accordance with subsection (4))”. Subsection (4) of the Act provides that the Code may contain provisions that do any of the following, regardless of whether such a provision would otherwise be prohibited under subsection (2)(b):
- (a) set quality or information requirements for Transpower or one or more distributors, in relation to access to transmission or distribution networks
 - (b) set pricing methodologies for Transpower or one or more distributors.

¹⁰ See, for example, the submissions of EA Networks, ENA, Firstlight Network, Horizon Networks, Orion, Powerco, Vector, Wellington Electricity, WEL Networks, and the joint submission of Northpower, Top Energy, and Counties Energy (October 2023 consultation).

- 3.42. Therefore, where a provision of the Code falls within either (a) or (b) above, the bar in section 32(2)(b) of the Act does not apply. Consequently the provision may be included within the Code, regardless of any provision in the Commerce Act 1986 permitting the Commerce Commission to regulate price, quality and other matters.
- 3.43. Section 32(6) of the Act and section 52C of the Commerce Act 1986 define pricing methodologies. These are defined to mean methodologies for setting the prices of individual goods or services, or classes of goods or services, and includes methodologies for setting different prices for different customer groups.
- 3.44. To the extent that the clauses noted above do not fall within s 32(4)(a) of the Act (for example, as part of quality requirements around reducing service disruptions), the Authority considers that the clauses identified fall within the Authority's jurisdiction to set pricing methodologies for distributors under section 32(4)(b) of the Act.
- 3.45. Specifically, provisions such as those highlighted mandate the approach to be taken to certain components of pricing in particular circumstances. Therefore, they amount to methodologies for setting prices for individual services. This is the case regardless of the form these provisions take and whether they are included in the DDA template or anywhere else in the Code.

Clause 4.8 (Distributor to schedule planned service interruptions to minimise disruption)

Our decision

- 3.46. Clause 4.8 becomes a core term, with no changes to the proposed drafting the Authority consulted on.

Submitters' views

- 3.47. Contact Energy submitted that the planned service interruption standard in clause 4.8 is a reasonable service standard. Contact Energy said it expects its customers to agree with the standard in their contracts with it. Contact Energy considered a distributor is best placed to minimise the disruption to consumers from a planned outage on the distributor's network, since the distributor is responsible for such planned outages.
- 3.48. ENA and Orion considered the draft clause would add cost to distributors' operations, which would be passed on to consumers. These submitters said distributors should retain discretion over when to schedule planned interruptions, balancing costs with consumer interests.
- 3.49. Horizon Networks considered the draft clause could require distributors, when planning and executing an outage, to have regard to the specific circumstances of individual consumers and the effect an outage may have on each consumer.
- 3.50. Network Tasman considered the draft clause may require updates/modifications to internal policies and processes for how and when planned outages are undertaken.
- 3.51. Northpower, Top Energy and Counties Energy (in their joint submission) considered the draft clause would require distributors to incur additional cost on planning and resources to schedule planned service interruptions. This cost would be on charged to consumers, which would not be for their long-term benefit because there is no issue with how distributors schedule these interruptions currently.

- 3.52. Wellington Electricity submitted that the proposed changes would force quality improvements that may not be efficient and would bypass the quality incentives the Commerce Commission has put in place under Part 4 of the Commerce Act 1986. Wellington Electricity submitted that minimising disruption from planned service interruptions may require a distributor to consider changes like undertaking planned work outside of normal working hours or having multiple smaller outages. This would have cost implications, as would alternatives such as purchasing a mobile generator or installing a bypass to maintain power and minimise disruption. Wellington Electricity noted consumers would not have agreed to these significant cost increases and quality improvements.

Our assessment

- 3.53. In relation to ENA's and Orion's submissions, the proposed amendment to clause 4.8 in the consultation paper sought to improve the original drafting by adding "...and in accordance with Schedule 5 and good electricity industry practice...". We consider that explicitly linking the planned service interruption core term to the distributor's operational terms for planned service interruptions and good electricity industry practice should provide distributors with sufficient flexibility to balance their operational needs with the needs of consumers.
- 3.54. Regarding Horizon Networks' suggestion that the draft clause could require liaison with individual consumers, we note first that the clause refers to minimising disruption to traders' customers, that is, the group of customers affected, rather than specifically requiring engagement with individual consumers. Second, the clause provides that distributors must minimise disruption "as far as is reasonably practicable".
- 3.55. Liaising with individual mass-market residential consumers, beyond a letterbox card drop, and then consideration of their individual positions would usually be impracticable and therefore not required under clause 4.8. Conversely, direct account management of a large industrial consumer is likely already practised by distributors and so, for example, steps to coordinate significant network outages with the consumer's periodic plant outages may be appropriate, in relevant circumstances, to satisfy clause 4.8.
- 3.56. The amendment to refer to Schedule 5 ensures distributors can, when scheduling an outage under clause 4.8, refer to their policies and practices for planning and undertaking planned outages affecting different segments of consumers.
- 3.57. Regarding the points raised by Network Tasman, and Northpower, Top Energy and Counties Energy in their joint submission, the Authority considers the additional costs generated by any policy or process updates, additional planning or resources needed to schedule planned service interruptions are unlikely to be significant. The Authority considers distributors should already be operating in accordance with the requirements of clause 4.8 – namely scheduling planned outages to minimise disruption to consumers where reasonably practicable and in accordance with the distributor's operational requirements (set out in Schedule 5 of the distributor's DDA) and good electricity industry practice.
- 3.58. Regarding Wellington Electricity's submission, we reiterate that the obligation on distributors is not "to minimise disruption" to consumers at the expense of all other considerations. Rather, the obligation is to minimise disruption to consumers as far as *reasonably practicable* and in accordance with the distributor's operational

requirements (set out in Schedule 5 of the distributor's DDA) and good electricity industry practice. We consider a distributor's operational requirements would factor in the quality incentives the Commerce Commission has put in place under Part 4 of the Commerce Act 1986. Consequently, we consider the obligation in clause 4.8 is consistent with the Commerce Commission's regulation of quality.

Clause 4.11 (Distributor to restore distribution services as soon as practicable)

Our decision

3.59. Clause 4.11 becomes a core term, with no changes to the proposed drafting the Authority consulted on.

Submitters' views

3.60. Contact Energy considered this to be a basic service standard and that, as the party responsible for restoring distribution services on its network, the distributor is best placed to manage the risk of an interruption extending beyond the original timeframe. Contact Energy would expect a distributor to be able to comply with an obligation to endeavour to restore distribution services as soon as practicable in accordance with good electricity industry practice.

3.61. ENA supported the proposed amendments to the drafting of clause 4.11.

3.62. Northpower, Top Energy and Counties Energy (in their joint submission) were not opposed in principle to the proposed amended drafting to clarify clause 4.11.

3.63. Orion supported making clause 4.11 a core term.

Our assessment

3.64. We note the support for this proposed change.

Clause 4.12 (Trader's remedy)

Our decision

3.65. Clause 4.12 becomes a core term, with no changes to the proposed drafting the Authority consulted on.

Submitters' views

3.66. Northpower, Top Energy and Counties Energy (in their joint submission) considered linking a trader's remedy under clause 4.12 to a refund of charges under clause 9.10 was a poor solution. They did not agree a process for refunds needed to be mandated, particularly since distributors who currently do not offer refunds would set the quantum at \$0. They considered that these provisions take a simplistic view of different consumer groups and the causes of service interruptions. They noted there are already solutions in primary legislation (eg, the Consumer Guarantees Act 1993) to protect customers who cannot absorb or price their risk commercially.

3.67. Orion did not agree with linking a trader's remedy under clause 4.12 to a refund of charges under clause 9.10.

Our assessment

3.68. These submitters' concern with clause 4.12 arises because of their concern with clause 9.10 which is addressed below at paragraph 3.91 and following.

Clause 5.7 and clause 5.8 (Maintenance of load control equipment and Maintenance of load signalling equipment)

Our decision

3.69. Clauses 5.7 and 5.8 become core terms, with no changes to the proposed drafting the Authority consulted on.

Submitters' views

3.70. ENA and several distributors supported the proposal and the drafting.

3.71. Northpower, Top Energy and Counties Energy (in their joint submission) advised that they were not opposed to the proposed amendment in principle.

3.72. Vector considered these terms risk locking in one type of load management (ie, control of hot water). Vector preferred that such provisions are not made mandatory now, if they may be amended later. Vector proposed that these provisions remain recorded terms (and are left as-is in each distributor's DDA) and that these clauses are then amended as appropriate to align with the outcomes of the Authority's work programme for updating regulatory settings for distribution networks.

3.73. In a supplementary submission, Orion proposed a new clause 5.9 as a core term in the DDA template. The purpose of this new term would be to provide distributors with access to the internal and external ripple control channel programmes at each ICP on their respective networks. Orion believed distributors would be able to design better price categories and price options to shift or shed electricity demand on their networks, if they had such access.

3.74. Orion considered that, overall, this should prove more cost effective for consumers in the long-term, as distributors would be able to better manage demand on their networks. Having access to this information would also support transparency and ensure alignment with ripple receiving programmes. Both traders and distributors would see the same information and be able to better provide new incentives to assist with decarbonisation.

Our assessment

3.75. We note the support from the distributor submitters noted above, individually and via ENA's submission.

3.76. To Vector's submission, we agree that future changes may be required to these provisions but consider making these clauses core terms now will not preclude future changes that match future needs.

3.77. Orion's proposed new clause 5.9 is beyond the scope of this Code amendment. Therefore, the Authority has decided not to include such a clause at this time. However, the Authority expects to consider the matters raised by Orion as part of our review of regulatory settings for distribution networks.

Clause 7.3 (Price changes)

Our decision

- 3.78. Clause 7.3 becomes a core term, with drafting changes to improve the workability of the clause without changing the policy intent. The changes are to refer to a 12-month period ending 31 March and to clarify that there needs to be a material change in a cost that is a pass-through cost or a recoverable cost under the Commerce Act 1986 Part 4 regulatory regime.

Submitters' views

- 3.79. Contact Energy supported making clause 7.3 a core term and noted that traders need to provide price certainty to their consumers and agree cost inputs with commercial and industrial consumers. Contact Energy noted it takes around four months to process a price change.
- 3.80. ENA considered that specifying the way prices can be changed directly infringes on the Commerce Commission's function to specify prices/revenues and is outside the Authority's jurisdiction. Northpower, Top Energy and Counties Energy (in their joint submission) raised a similar concern, as did Orion, Vector, Wellington Electricity and Powerco, with Powerco further considering the change to be unnecessary and that there is already national consistency around price changes.
- 3.81. Additionally, ENA considered that, as currently drafted, this clause would mean that if a price for a specific consumer was changed, it would prevent all other price changes for 12 months from that date. ENA and Vector also separately submitted alternative drafting for clause 7.3 which they consider preferable to the Authority's proposal. Several distributors made essentially the same points as the ENA submission, which was also supported by EA Networks and Electra. Electra also cited Powerco's and Vector's suggested alternative drafting of clause 7.3.
- 3.82. Firstlight Network also supported ENA's submission. Firstlight Network further expressed concern about unintended consequences if clause 7.3 became a core term, as it may limit flexibility in price setting. Firstlight Network considered there are instances where flexibility is essential due to changes in network circumstances, for instance, errors in initial prices or the need to adjust prices for a large consumer facing closure/solvency risk. Another example of where flexibility is needed is during events like COVID-19, where networks may need to temporarily change prices to support struggling communities. Therefore, Firstlight Network considered it important to have the flexibility to adjust prices while still meeting the Commerce Commission's price-quality compliance requirements.
- 3.83. Horizon Networks considered the proposed drafting of this clause would prevent distributors from making an annual price change if the distributor was also required to make an out-of-cycle price change. Also, Horizon Networks considered regulators and consumers would benefit if distributors were permitted to make price-based changes based on the instruction from a regulatory body.

Our assessment

- 3.84. The Authority disagrees with submitters who said the Authority cannot regulate the matters addressed by clause 7.3. As discussed in paragraphs 3.39 to 3.45, the Authority considers that we are able to amend clause 7.3 as proposed. We consider

that it falls within the Authority’s jurisdiction to make the Code, including our ability to set pricing methodologies for distributors under section 32(4)(b) of the Act.

- 3.85. We note annual price changes with effect from 1 April have been the industry norm for many years. Making the recorded term a core term, including adopting ENA’s proposed drafting, provides process certainty and national consistency, while not inhibiting the development and introduction of a new price structure and price categories.
- 3.86. We have incorporated ENA’s suggested drafting changes to improve the workability of the clause without changing the policy intent. We note ENA made its submission with the support of its 27 members.

Clause 9.5 (Other invoices)

Our decision

- 3.87. Clause 9.5 becomes a core term, with no changes to the proposed drafting the Authority consulted on.

Submitters’ views

- 3.88. ENA and Orion supported the proposal as being uncontroversial.
- 3.89. Northpower, Top Energy and Counties Energy (in their joint submission) considered there is no evidence of a current issue. Nevertheless, these submitters were not opposed in principle.

Our assessment

- 3.90. We note the support for this proposed change.

Clause 9.10 (Refund of charges)

Our decision

- 3.91. Clause 9.10 becomes core term, with two minor changes to the proposed drafting in our 2024 consultation paper, to improve workability without changing policy intent. These changes clarify that:
- (a) clause 9.10 overrides clauses 21 and 24, which concern distributor liability
 - (b) distribution services charges for the day an interruption ends are to be reduced as if it was a complete day, irrespective of the number of hours involved.
- 3.92. A consequential amendment is made to Schedule 11.1 clause 19 of the Code to allow distributors to change ICPs’ status to “Inactive” in the registry.

Submitters’ views – first 2023 consultation

- 3.93. We provided a summary of submitters’ views relating to the first 2023 consultation on improvements to the DDA template for clause 9.10, and our assessment of these views, in our paper *Follow-up consultation – proposed changes to the default distributor agreement 2 July 2024*.

- 3.94. This paper is available on our website here:
<https://www.ea.govt.nz/projects/all/default-distributor-agreements/consultation/proposed-changes-to-the-default-distributor-agreement/>.

Submitters' views – follow-up 2024 consultation

- 3.95. All distributors and the ENA remain opposed the clause 9.10 proposal. They questioned whether the proposal was efficient and would deliver long-term consumer benefit. They submitted that the change would deliver small cost reductions to a limited group of consumers, while disproportionately increasing administrative costs, with costs to all consumers increasing.
- 3.96. Several distributors explicitly supported the ENA's submission. The ENA considered the proposal needed to address the following issues:
- (a) It is impractical for distributors to identify interruption length at single ICPs as outage data is only collected at a feeder or zone substation level.
 - (b) Clauses 24 and 25 of the DDA details situations where distributors are not liable for interruptions due to network including failures. The Authority must clarify if the events covered by these clauses are exempt from reductions.
 - (c) Registry functionality is needed to allow distributors to flag when an ICP is "Inactive" due to a network outage.
- 3.97. Marlborough Lines also queried whether changes to Schedule 11.1 clause 19, holding that the trader manages "Inactive" registry status, were needed.
- 3.98. The ENA also considered that reductions should equally apply to all components of retail electricity charges – not just the distribution component.
- 3.99. Should the Authority implement proposed clause 9.10, the ENA recommended the following changes:
- (a) Charge reductions should be triggered by a refund request by the trader, not be automatic.
 - (b) The definition of an extended continuous outage should be three "complete days". Using "complete days" rather than the equivalent hours would better align the operation of the registry and market reconciliation and settlement systems.
- 3.100. Several distributors and the ENA pointed out that the quality incentive regimes under Part 4 of the Commerce Act 1986 and the Consumer Guarantees Act 1993, give distributors far greater incentives or penalties to ensure distribution services are well managed and efficient.
- 3.101. All distributors submitting did not consider that a period longer than 24 hours before charge reductions apply would incentivise supply restoration. This is given the stronger incentives described above, with community, societal, and government pressures.
- 3.102. Most retailer submitters (Contact, Genesis, Meridian, Nova) generally supported the proposal, with some suggesting implementation changes. These submitters considered 24 hours a reasonable period before reductions apply.
- 3.103. Meridian considered the proposal's drafting unnecessarily complex, risking inefficiencies. It noted that to update the registry status, it would need to build new processes into its retail platform involving significant time and cost.

- 3.104. Both Contact and Meridian considered that the method of distributors notifying traders of affected ICPs should be a single standardised process for efficiency. Meridian considered this process should be the distributor advising the trader of affected ICPs by providing a separate notice of credits during the next billing cycle.
- 3.105. Genesis also proposed an alternative service guarantee payment approach rather than reductions, with payments to traders being no less than the daily rate charged by the distributor. It considered this would not require any change to the registry status codes or monthly billing systems and may not require a Code change.
- 3.106. Meridian also considered the drafting of 9.10(b) was ambiguous regarding whether the day an interruption ends was a complete day or not for reduction purposes.
- 3.107. Contact, Genesis, Meridian and Orion raised issues around distributors updating ICP status in the registry. Contact considered updating the registry status to “Inactive” then back to “Active” may lead to unnecessary administrative and system-change related costs. Orion noted a safety risk if an ICP’s registry status had been changed to “Inactive” but the property had not been deenergised.
- 3.108. Other submitters (Axos Systems, Utilities Disputes) supported the proposal’s intent. Axos Systems considered the proposal addressed fairness but there were implementation issues. These included accounting for ICPs contracted for a non-secure connection option and other lower standards of service.
- 3.109. Utilities Disputes and a public submitter did not consider longer periods before reductions applied would incentivise quicker outage restoration, given other stronger incentives/issues. The public submitter raised various technical implementation issues including recommending the proposal needed a new status code in the registry.

Our assessment

- 3.110. The Authority accepts that reductions to individual consumers will be comparatively small. However, the principle remains that consumers should receive charge reductions for electricity supply they do not receive. We see this principle as a fundamental component of a consumer-focussed electricity system and a consumer expectation. We consider reductions will be viewed as meaningful and fair to those who receive, and some administrative cost to the system justified in delivering these.
- 3.111. While any added costs to distributors are recoverable under Part 4 of the Commerce Act, we do not consider these costs will be significant. This is particularly with expected on-going wider automation of billing systems.
- 3.112. Any extra costs ultimately recovered from consumers will be spread across all consumers benefitting from a distributors’ network, and thus likely be inconsequential to individual consumers. However, consumers suffering a sustained interruption will receive a benefit.
- 3.113. We acknowledge the assertion it is impractical for distributors to identify interruption length at ICPs. However, distributors will know what ICPs are connected to a feeder or zone substation, so can infer the outage at the ICP level.
- 3.114. Proposed clause 9.10 is intended to override application of clauses 21 and 24 regarding liability. We have made drafting changes to clarify this.

- 3.115. We have made a consequential amendment to Schedule 11.1 clause 19 to allow distributors (rather than retailers) to update the registry status to “Inactive” to indicate that there has been an interruption in electricity supply affecting an ICP. While this was our intention in the drafting consulted on, this addresses Meridian’s concern by clarifying that distributors, not retailers, are responsible for updating the registry status in this situation.
- 3.116. To ensure the reason for the registry update is clearly identified, we will also update the registry functional specification to require a new reason code specifically related to the clause 9.10 situation, ‘network outage requiring charge reduction (may not be electrically disconnected)’. We consider introducing a new reason code in the registry would be easiest and least disruptive.
- 3.117. The amendment gives distributors the flexibility to update the registry to “Inactive” for any types of electricity supply interruption at an ICP that can be appropriately covered by the new reason code.
- 3.118. We are confident that distributors updating the registry status to “Inactive” does not raise a safety issue. This is because currently Schedule 11.1 clause 19 provides that an ICP’s status can be changed to “Inactive”, but the ICP remains energised.
- 3.119. Clause 19 states the “Inactive” status is used when the ICP is either electrically disconnected (subclause (a)), or submission information related to the ICP is not required by the reconciliation manager to compile reconciliation information (subclause (b)). Although not common, this status and reason code are in use.
- 3.120. We note the existing registry reason code “reconciled elsewhere” is currently used when subclause (b) applies to mean “Inactive” for reconciliation purposes but remains energised. As noted above, the new reason code to be used for clause 9.10 purposes, “network outage requiring charge reduction (may not be electrically disconnected)” will explicitly clarify why the registry status has changed (ie, not because the ICP has been electrically disconnected).
- 3.121. Requiring retailers not to charge fixed charges for network outages is beyond the scope of this Code amendment. We note that retailers are subject to competition, which is likely to drive nuance in charging practices.
- 3.122. Concerning reductions being triggered by a refund request by the trader, this would misalign with the incentive for traders to pass on reductions to consumers created by proposed clause 12A.6. Consumers may receive fewer reductions, which is against our policy objective.
- 3.123. We note the ENA’s point that the definition of an extended continuous outage should be three “complete days”, not the equivalent hours, to better align with registry operation and market reconciliation and settlement systems.
- 3.124. The Code drafting as adopted is clear that interruptions must be for more than 24 hours (not complete days), but refunds relate to days. Misalignment of hours to days is covered by the first day being excluded entirely for reduction, but the last day being included, regardless of the number of hours the interruption continues.
- 3.125. We have made drafting changes to clarify that reductions for the day an interruption ends must be reduced as if it was a complete day. We consider three days is too long a period before reductions flow.

- 3.126. We acknowledge the quality incentive regime under Part 4 of the Commerce Act 1986 gives distributors far stronger financial incentives to manage outages. However, that regime does not lead to direct compensation or recognition for consumers and therefore does not meet our policy objective.
- 3.127. We also note Contact's and Meridian's recommendation that there should be a single method for distributors to notify traders of affected ICPs. We consider this can be negotiated between traders and distributors and do not wish to limit distributors' options.
- 3.128. We note Meridian and Genesis recommended alternative approaches to reductions for distribution services being a separate notice of credits and a service guarantee payment respectively. However, these approaches may not allow distributors to recover lost revenue under Part 4 of the Commerce Act 1986.

Clause 14.1 (Provisions in customer agreements)

Our decision

- 3.129. Clause 14.1(a)(iii) becomes a core term, with no changes to the proposed drafting the Authority consulted on.

Submitters' views

- 3.130. Contact Energy disagreed with the proposal. Contact Energy noted that it is extremely difficult for a trader to ask a customer to agree with surges or spikes not being treated as interruptions. Contact Energy has found this particularly challenging in agreements with its commercial and industrial customers. Customers consider fluctuations and power quality issues to be interruptions. Contact Energy believes that omitting clause 14.1(a)(iii) would be more appropriate and that the key requirements in respect of momentary fluctuations and power quality are captured by clause 14.1(a)(i) and (ii) and clause 14.2.
- 3.131. ENA and Orion supported the proposal as uncontroversial.
- 3.132. Northpower, Top Energy and Counties Energy (in their joint submission) considered there is no evidence of a current issue, but nevertheless were not opposed in principle to the proposal.

Our assessment

- 3.133. In relation to Contact Energy's submission, we appreciate the difficulty faced by retailers in convincing customers that surges or spikes should not be treated as interruptions, but we note there is an important difference between momentary fluctuations and interruptions. For example, the Electricity (Safety) Regulations 2010 specifically allow momentary fluctuations of frequency (regulation 29) and voltage (regulation 28). Interruptions are more enduring events, that is, of a duration in excess of momentary events. Therefore, the Authority considers that the DDA template should recognise the difference between these two types of event.
- 3.134. We note distributors' support for this proposed change.

Clause 14.2 (Customer concerns about power quality)

Our decision

3.135. Clause 14.2 becomes a core term, with drafting changes to improve the workability of the clause without changing the policy intent. The changes say a distributor need not investigate a consumer's or trader's concern if the distributor considers on reasonable grounds that the matter raised is trivial or is materially the same as a matter previously raised by the consumer or trader and there has been no relevant change in circumstances.

Submitters' views

3.136. Contact Energy agreed with the Authority that the distributor is the appropriate party to investigate any power quality, reliability or safety issue related to a consumer's supply. Consequently, it is not in the interests of consumers on a distributor's network to remove any liability or remedy associated with a distributor deciding not to undertake an investigation as this would lessen the incentives on distributors to promptly address concerns.

3.137. ENA considered the proposed clause will remove distributor discretion to decline to investigate any concern raised by traders and their customers. ENA considered distributors should retain discretion to decline to investigate concerns that are trivial, minor, or vexatious, and only be required to investigate suspected breaches of the service standards.

3.138. Network Tasman considered the proposed change would have the potential to result in distributors materially altering how they manage and operate their networks, which would invariably alter their costs.

3.139. Northpower, Top Energy and Counties Energy (in their joint submission) considered the proposed change to clause 14.2 and Schedule 1 would require distributors to take on unreasonable cost and process to investigate any and every concern raised about power quality. They considered the proposed clause does not provide a threshold or discretion for distributors to decline to investigate clearly vexatious or trivial issues, or a sliding scale to reflect that different events would require different levels of investigation.

3.140. Orion considered the proposed draft clause sets the bar too low for consumers (there is no materiality threshold) and too high for distributors (distributors must investigate every concern raised). Given that the clause requires distributors to undertake investigations, Orion considered that the consumer must at least have a reasonable cause for concern, and not simply a "concern", and also provide evidence and/or reasons for their concern(s). Orion submitted that if there is going to be an obligation on distributors to investigate, it must be tempered with a requirement to do so in accordance with good industry practice and not be a strict requirement to investigate.

3.141. Powerco considered that distributors should have the right to decline to investigate power quality concerns that are minor, trivial or vexatious.

3.142. Wellington Electricity expressed similar concerns to other distributors.

3.143. WEL Networks was also concerned about new costs if clause 14.2 was made a core term.

3.144. Vector similarly raised concerns about the lack of a materiality threshold and distributors not having the discretion to investigate only the more substantive power quality concerns.

Our assessment

3.145. The Authority broadly agrees with submitters' points regarding trivial or vexatious requests. We have amended the proposed drafting of clause 14.2 to say a distributor need not investigate a consumer's or trader's concern if the distributor considers on reasonable grounds that the matter raised is trivial or is materially the same as a matter previously raised by the consumer or trader and there has been no relevant change in circumstances. We consider this should largely avoid the additional costs distributors identified as arising under an obligation to investigate all consumer concerns about power quality, safety, or reliability.

3.146. Instead of using the term 'vexatious', we have referred to the issue being materially the same as one raised previously. The Authority considers a comparison with previous complaints to be a more objective test for distributors to apply, provided there has been no relevant change in circumstances.

3.147. Trivial or vexatious requests aside, the Authority considers there are many situations where an investigation of power quality, safety or reliability is warranted. We believe distributors should make available to traders policy level detail about situations related to power quality, safety or reliability that a consumer might expect to encounter. This is particularly considering increasing levels of distributed generation connecting at lower voltages (ie, at or below 11 kilovolts).

3.148. We note initiatives by distributors to add smart monitoring and fault assessment systems (eg, by accessing data from consumer advanced metering infrastructure) to provide greater visibility of low voltage networks. These new technologies have the potential to improve response times and reduce the costs of investigating many power quality, reliability or safety issues related to a consumer's supply.

3.149. Details about how a distributor intends to respond to consumer/trader concerns about power quality, reliability and safety concerns are required to be added to Schedule 1 as operational terms. Basing these terms on good electricity industry practice should avoid any cost impacts foreseen by submitters that are not addressed by our revision to clause 14.2. This is because consumers are less likely to challenge a distributor's practices around investigations where these align with good industry practice.

3.150. The Authority notes a consumer may contact Utility Disputes Limited if the consumer has an issue with a distributor's response (or lack of response) to a request to investigate a power quality, reliability or safety issue related to the consumer's supply.

Clause 24.5 (Distributor not liable)

Our decision

3.151. Clause 24.5(c) becomes a core term as does a new clause 24.5(d), which contains drafting changes to clarify the clause without changing the policy intent. These changes clarify that the exclusion relating to nonconformity with regulated harmonic voltage and current levels applies where this nonconformity is because of the use of fittings and appliances by someone other than the distributor.

Submitters' views

- 3.152. Contact Energy submitted that during distributors' consultation on their draft DDAs, Contact Energy encountered several different drafting suggestions in relation to this recorded term. These drafting suggestions sought to include blanket and expanded exclusions on the distributor's liability, which went far beyond anything analogous to the Authority's example in the DDA template in Part 12A of the Code.
- 3.153. ENA considered making clause 24.5(c) a core term would inappropriately alter risk allocation. ENA listed some network failure mechanisms, the risks of which it considered would be better borne by other participants rather than distributors.
- 3.154. Horizon Networks opposed the introduction of new liability exposure via operational terms or any intention to make operational terms core terms.
- 3.155. Network Tasman submitted that broadening the potential liability of distributors as part of making clause 24.5(c) a core term may result in distributors materially altering how they manage and operate their networks.
- 3.156. Northpower, Top Energy and Counties Energy (in their joint submission) considered the proposed drafting of clause 24.5(c) would perpetuate existing issues and not solve the underlying issue. These submitters supported an appropriate review and overhaul of the drafting of the liability provisions in the DDA template. They also supported engagement with and direction from the Authority as to the meaning of the current drafting. They requested a new subclause be inserted providing for the exclusion of liability for claims a trader could have excluded in contracts with its customers.
- 3.157. Orion submitted that, instead of making clause 24.5(c) a core term, a better approach would be to allow bespoke drafting, which distributors could negotiate with traders. Orion considered the proposed amendment would leave a risk for distributors, particularly in respect of:
- (a) failures due to extreme weather events, fire and flooding, etc
 - (b) failures due to vegetation, wildlife and animals.
- 3.158. Powerco submitted that clause 24.5 should be amended to exclude liability for claims the trader could have excluded in contracts with its customers. Powerco submitted that without such an exclusion, a distributor would be required to bring (lengthy and costly) contract damages claims if the distributor suffered loss from a trader failing to exclude liability in its customer contracts, in breach of clause 29 of the DDA template. Powerco proposed the same new subclause put forward by Northpower, Top Energy and Counties Energy in their joint submission and Vector in its submission.
- 3.159. Powerco considered there would be a heightened risk of disputes (eg, as to whether an event was reasonably foreseeable) if distributors were required to declare force majeure in respect of events such as:
- (a) extreme weather events
 - (b) vegetation and animals
 - (c) a cyber attack.
- 3.160. Powerco considered the variations in the drafting of clause 24.5(c) in distributors' published DDAs are indicative of real confusion about the interpretation of clause 24

as a whole (and, in particular, how clauses 24.5 to 24.8 interact with the indemnities in clause 27, and how clause 24 more generally interacts with the indemnity in clause 29.3). Powerco said it encountered this as an issue when attempting to negotiate alternative agreements with two retailers. Both retailers had different views on the interpretation of the liability and indemnity provisions in the DDA template, and both of their interpretations were materially different to Powerco's.

- 3.161. Powerco recommended a more targeted review of the liability and indemnity provisions in the DDA template. Powerco requested the opportunity to make submissions on clause 24 of the DDA template, including the interactions between the various clauses and indemnity provisions noted above.
- 3.162. Unison Networks and Centralines (in their joint submission) noted increasing distributor liability and financial penalties may have perverse outcomes that do not meet the Authority's policy intent (eg, disincentivising flexibility services, by increasing the challenges around contractual arrangements).
- 3.163. Wellington Electricity submitted that the proposed change created a significant shift of risk. Distributors would be unable to exclude liability from some events outside their control and the changes would require a distributor to rely on the force majeure clause in the DDA template to demonstrate the event was:
- (a) 'natural disaster' that could not reasonably have been foreseen, or resisted
 - (b) an event or circumstance beyond the distributor's control.
- 3.164. Wellington Electricity submitted that courts have traditionally interpreted force majeure clauses narrowly, meaning distributors cannot expect automatic protection under the DDA template's force majeure clause. Wellington Electricity therefore disagreed that distributors would be able to prevent or mitigate risks in the way the Authority had assumed.
- 3.165. Vector submitted that the proposed changes to clause 24.5(c) materially changed the potential risks to which a distributor is subject. Vector requested the same new subclause put forward by Northpower, Top Energy and Counties Energy in their joint submission and Powerco in its submission. This would limit a distributor's liability in a much more specific and narrow way.

Our assessment

- 3.166. The Authority notes Contact Energy's submission point about distributors seeking to include blanket and expanded exclusions on their liability that go far beyond anything analogous to the example in the DDA template.
- 3.167. After carefully considering submitter feedback, the Authority remains of the view that the force majeure provisions in the DDA template appropriately limit distributor liability for certain events. This includes events due to natural causes, arising directly or indirectly and exclusively without human intervention, and which could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted.
- 3.168. Distributor submissions expressed concern about the burden of proof lying with the party calling an event force majeure. We remain of the view that the force majeure clause in the DDA template specifies the appropriate circumstances in which a party will not be liable for matters outside its control and where the party has acted in accordance with good electricity industry practice. The force majeure clause in the

DDA template has been developed over many years, including via workshops involving distributors, traders and consumers, and extensive consultations, initially on an interposed model use of system agreement, and then on the DDA template.

- 3.169. We note the new subclause proposed by Northpower, Top Energy and Counties Energy (in their joint submission), Powerco, and Vector may reduce the likelihood of distributors bringing contract damages claims against traders in instances where the distributor suffers loss from a trader failing to act reasonably in excluding liability in its customer contracts. We consider such claims are not in consumers' interests if they will result in largely unnecessary transaction costs (eg, significant legal fees) largely for the purpose of a wealth transfer between traders and distributors.
- 3.170. However, we also note the proposed new subclause may create disputes where a distributor says its liability should reasonably have been excluded by the trader in a customer contract and the Trader disagrees. We also consider that this proposed subclause seems to be a reasonably material shift in traders' liability, which we believe traders should have the ability to submit on. Therefore, we have decided not to include such a clause at this time. However, we expect to consider this matter as part of our review of regulatory settings for distribution networks.

Clause 26.2 (Claim against trader in relation to breach of service standards by the distributor)

Our decision

- 3.171. Clause 26.2 becomes a core term, with minor changes to the proposed drafting the Authority consulted on, to improve workability. Specifically, we have inserted a 15 working day maximum timeframe in relation to:
- (a) a distributor advising the trader, after being notified of a claim, that the distributor intends to assume the management and defence of the claim
 - (b) a distributor notifying a trader that the distributor intends to assert that its indemnity pursuant to section 46A of the Consumer Guarantees Act 1993 does not apply in respect of a claim the distributor has assumed the management and defence of.

Submitters' views

- 3.172. Contact Energy agreed with the Authority that this proposed amendment represents a useful clarification to the DDA template.
- 3.173. ENA supported the proposed change to clause 26.2 and considered the proposal to be uncontroversial.
- 3.174. Northpower, Top Energy and Counties Energy (in their joint submission) considered there was no current/evident issue that necessitated the amendment but nonetheless were not opposed in principle to the change.
- 3.175. Orion supported the proposed change to clause 26.2.
- 3.176. Wellington Electricity supported the proposed change under clause 26.2. The phrasing preserves the responsibilities of the trader under the Consumer Guarantees Act 1993, as the appropriate legislation for managing customer relationships, and streamlines the process for indemnity claims.

Our assessment

3.177. We note the support for this proposed change.

Clause 33.2 (Definitions of ‘Default Interest’, ‘Default Interest Rate’, and ‘Interest Rate’)

Our decision

3.178. The definitions of ‘Default Interest’, ‘Default Interest Rate’, and ‘Interest Rate’ in clause 33.2 become core terms, with no changes to the proposed drafting the Authority consulted on.

Submitters’ views

3.179. Contact Energy supported the suggested definition of ‘Interest Rate’.

3.180. ENA expressed support for the proposed changes.

3.181. Northpower, Top Energy and Counties Energy (in their joint submission) were, in principle, not opposed to the proposed changes.

Our assessment

3.182. We note the support for this proposed change.

Clause 33.2 (Definition of ‘Use of Money Adjustment’)

Our decision

3.183. The definition of ‘Use of Money Adjustment’ in clause 33.2 becomes a core term with minor changes to the proposed drafting in our 2024 consultation paper, to improve the workability of the clause without changing the policy intent. These changes:

- (a) link the use of money adjustment to the average debt premium, plus debt issuance costs, estimated by the Commerce Commission in its determination of the cost of capital for price-quality paths
- (b) simplify the interest calculation by allowing compounding of interest monthly (at 1/365th of the annual rate), as well as daily (at 1/365th of the annual rate), as originally proposed
- (c) allow parties to agree a threshold monetary figure below which the use of money adjustment does not apply.

3.184. There are also consequential amendments to clauses 9.3(f) and 9.8 to specify the period when the use of money adjustment applies.

3.185. We consider these changes will ultimately reduce costs to consumers by materially reducing potential implementation costs for some distributors, should they need to apply a use of money adjustment.

3.186. Submitters’ views – first 2023 consultation We provided a summary of submitters’ views relating to the first 2023 consultation on improvements to the DDA template for clause 33.2 (Definition of ‘Use of Money Adjustment’), and our assessment of these views, in our paper *Follow-up consultation – proposed changes to the default distributor agreement 2 July 2024*.

3.187. This paper is available on our website here:
<https://www.ea.govt.nz/projects/all/default-distributor-agreements/consultation/proposed-changes-to-the-default-distributor-agreement/>.

Submitters' views – follow-up 2024 consultation

- 3.188. Distributors did not support the clause 33.2 proposal, with many aligning with the ENA's position. Generally, distributors considered the proposal complex, requiring significant changes to billing systems, and that it would be costly, disproportional to consumer benefit. Orion considered the proposal neither practical nor cost-effective.
- 3.189. ENA agreed that there was value in establishing a standard use of money adjustment, that a fixed interest percentage uplift and interest rate is appropriate, and that our revised drafting provides clarity over the compounding rate.
- 3.190. However, ENA noted that under the current DDA distributors and retailers have operationalised the recorded term to balance implementation complexity and the adjustment quantity. This approach allowed greater flexibility.
- 3.191. Other points made by distributors included:
- (a) daily compounding interest was too complex
 - (b) network billing is generally based on consumption data trader estimates and hence traders are in control, with distributors carrying risk
 - (c) it is difficult and unnecessary to determine the right data, and under or over charging and estimates can be managed by multiple 'wash-ups' – the reconciliation process offsets most cashflow differences
 - (d) where use of money adjustments had been set at zero after consultation with traders, there were no concerns
 - (e) a materiality threshold should be included to avoid dealing with low amounts
 - (f) use of money adjustments are not passed through to consumers, so are unlikely to provide net consumer benefit.
- 3.192. Vector noted it already used a use of money adjustment at the Interest Rate plus two percent, compounded monthly. Thus, daily compounding would introduce new costs. It considered traders and distributors should be left to negotiate their own interest rate, providing it was not zero.
- 3.193. Of retailers commenting (Contact, Genesis, Meridian), all were broadly supportive at least in principle. However, Genesis was wary that added transaction costs of additional invoices for every 'wash-up' month may off-set the interest payment.
- 3.194. Genesis proposed having a threshold amount before a use of money adjustment is triggered. It noted only one distributor made use of money credits/debits to Genesis currently.
- 3.195. Other submitters had mixed views. Axos Systems were supportive, but a public submitter considered daily compounding was a significant change and would increase implementation costs.

Our assessment

- 3.196. The Authority acknowledges distributors' points that due to the low value of many invoices, the billing system changes needed may result in costs being above the value of use of money adjustments.
- 3.197. We therefore propose that the use of money adjustment allows traders and distributors to determine a threshold figure below which the use of money adjustment need not apply.
- 3.198. We will also now link the use of money adjustment to the average debt premium, plus debt issuance costs, estimated by the Commerce Commission in its determination of the cost of capital for price-quality paths. We previously noted that over several years this percentage amount has been similar to the trailing average debt premiums estimated by the Commerce Commission used in their annual information disclosure weighted average cost of capital calculations.
- 3.199. The current debt premium plus debt issuance costs is 1.8%, close to the 2% in the current DDA template. The weighted average cost of capital figure will be familiar to distributors. We are using the Commission's five-yearly determination for price-quality paths as we expect this will be straightforward for distributors to implement. We have chosen not to use the yearly information disclosure determination as we consider that would be more difficult for distributors to implement.
- 3.200. We acknowledge several submitters' concerns about the high administrative costs of compounding interest daily. We have therefore also allowed parties discretion to agree to compound interest monthly, which gives flexibility but more consistency than currently.

Schedule 1 (Service standards)

Our decision

- 3.201. The recorded terms in Schedule 1 become core terms, and the requirements for recorded terms in Schedule 1 become requirements for operational terms. The core terms contain changes to promote the efficient operation of the processes surrounding the notification and investigation of actual or suspected breaches of service standards.
- 3.202. We have made changes to the drafting we consulted on to improve the workability of the schedule without changing the policy intent. The changes say a distributor need not investigate a consumer's or trader's concern if the distributor considers on reasonable grounds that the matter raised is trivial or is materially the same as a matter previously raised by the consumer or trader and there has been no relevant change in circumstances. Also, we have amended clause S1.7 to give flexibility to the distributor as to whether to pay service guarantee payments directly to affected consumers, if requested by the consumers.

Submitters' general views on Schedule 1

- 3.203. Contact Energy submitted on Schedule 1 in its entirety. Other submitters commented on specific aspects of Schedule 1.
- 3.204. Contact Energy noted that in its experience, distributors either elected not to include any service standards covering the subject matter examples provided by the Authority

or omitted from their DDAs any meaningful consequences associated with a breach of service standards.

- 3.205. Contact Energy considered that traders need confidence that they contractually have something to benchmark service quality and timing expectations against. Contact Energy's view was that this is lacking at present. Some distributors have stated they would use their asset management plan or implement additional reporting. However, Contact Energy considered these network-level measures do not address the reduced commitment to consumers which, for the most part, already existed in distribution agreements.

Our assessment

- 3.206. The Authority notes the points made by Contact Energy. As noted in the following subsections, we have sought to amend Schedule 1 to provide meaningful detail around service standards so that traders and consumers may understand what levels of service they are paying for.

Submitters' views on distributors paying consumers directly

- 3.207. Horizon Networks considered the proposed new obligation requiring distributors to make service guarantee payments directly to consumers who request them would place a burden on distributors to replicate trader's systems and processes. This would include collecting and handling personal information and bank account details, authenticating the identity of consumers, verifying that a consumer is the trader's customer at the affected ICP, and managing and interfacing with each consumer. Horizon Networks suggested that clause S1.7 should be amended to say "... in the interests of prompt resolution, the Distributor may pay the Service Guarantee Payment directly to the Customer."
- 3.208. Vector suggested revised drafting for the draft core terms in Schedule 1 but suggested no amendment specific to clause S1.7.

Our assessment

- 3.209. Horizon Networks suggested drafting addresses the issue it raised in its submission, allowing flexibility for the distributor to pay service guarantee payments directly to affected consumers, if requested by the consumers.
- 3.210. We have amended clause S1.7 of the DDA template to say the distributor *may* pay the service guarantee payment directly to the consumer if the consumer requests this.

Submitters' views on the process around suspected breaches

- 3.211. Contact Energy supported the Authority's suggested further clarification of the process for suspected breaches of service standards,¹¹ for the reasons set out by the Authority in the 3 October 2023 consultation paper.
- 3.212. EA Networks considered that if the table of service standards in Schedule 1 is to become an operational term, as proposed, then there should be sufficient flexibility to enable the service standards to evolve over time.

¹¹ See p. 39 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

- 3.213. ENA submitted that Schedule 1 should include a materiality threshold so that distributors would only be required to investigate actual breaches or suspected breaches that are non-trivial.
- 3.214. Northpower, Top Energy and Counties Energy (in their joint submission) considered that the proposed requirements for investigating suspected breaches of the service standards would increase costs. These submitters considered they should not be required to investigate trivial or vexatious requests from traders or traders' customers.
- 3.215. Orion considered the proposed operational terms setting out service standards in Schedule 1 require more analysis. Orion would like to see a materiality threshold in proposed clause S1.3, the deletion of S1.4, and with there being no ability for the trader to deduct costs under the proposed clause S1.6.
- 3.216. Powerco considered national consistency via the DDA template is not required or appropriate for service standards. Powerco was also concerned that the requirement for distributors to proactively investigate and advise of breaches, as well as to investigate every actual and suspected breach notified by traders and traders' customers, would take significantly more time and resources, and require costly system upgrades. Powerco considered that, should the proposed changes to Schedule 1 proceed, a materiality threshold should be added to the service standards so that distributors must only investigate material actual or suspected breaches.
- 3.217. Wellington Electricity considered the proposed drafting of the core terms in Schedule 1 would increase resources needed and hence costs.
- 3.218. Vector considered that the investigation of power quality concerns should be left to the distributor's discretion, as is currently the case, to ensure only the more serious instances are investigated. Further, the proposed requirement to report on all service standard breaches in Schedule 1 could encourage some distributors to set longer restoration timeframes than otherwise would be the case.

Our assessment

- 3.219. Distributor submissions highlight the need for a materiality threshold that limits what service events or issues they must investigate. We agree there is a balance to be struck. We consider a materiality threshold that excludes an obligation to investigate trivial or vexatious requests is appropriate and we have amended Schedule 1 accordingly. This change, along with our adoption of Vector's proposed drafting amendments to clauses S1.1 to S1.8 of Schedule 1, should address the issues raised by distributors.
- 3.220. The Authority notes a consumer may contact Utility Disputes Limited if they have an issue with a distributor's investigation (or lack of investigation) of service events or issues.
- 3.221. To other submitters' (eg, EA Networks') comments about the need to evolve service standards over time, we note the service standards in Schedule 1 will become operational terms with our decision. This will provide distributors with the flexibility to evolve pricing options to meet changing circumstances, while following established change processes for operational terms that include a requirement that distributors consult with traders.

Submitters' views on whether a breach of the service standards should constitute a breach of the distributor agreement

- 3.222. ENA considered the draft clause that clarifies a breach of the service standards does not constitute a breach of the DDA, and that a Service Guarantee Payment is a trader's sole remedy, were an improvement on the current DDA template.
- 3.223. Wellington Electricity agreed with the proposal that a breach of a service level should not constitute a breach of the DDA.
- 3.224. Vector included this proposal in its Code drafting suggestions to better balance the core terms in Schedule 1 relevant to service standards.

Our assessment

- 3.225. We note the support for this proposed change.

Schedule 5 (Service interruption communication requirements)

Our decision

- 3.226. The requirements for recorded terms in Schedule 5 become requirements for operational terms, with changes made to the examples of clauses, to promote the efficient operation of communications relating to planned and unplanned outages.

Submitters' views on various clarifications and process improvements

- 3.227. Contact Energy submitted that it found distributors reluctant to be overly prescriptive in this schedule and sign up to onerous notification timeframes. Often, Contact Energy advocated for further detail to be included in distributors' DDAs.
- 3.228. In relation to the proposed clause S5.25, Contact Energy suggested five working days would be more practical. This was because traders would be reliant on feedback from their customers, which may take longer to receive. Contact Energy considered this is particularly a cause for concern given the additional wording now incorporated into clause S5.26, requiring a trader's request for an alternative date and time to be lodged in accordance with the timeframe in clause S5.13. Contact Energy noted this reference may be incorrect, with clause S5.25 the intended clause. Horizon Networks also noted the reference in clause S5.26 to clause S5.13 appeared to be incorrect.
- 3.229. ERANZ considered the two-day response timeframe in clause S5.26 to be too short. ERANZ recommended traders should respond 'as soon as reasonably possible' or have five working days.
- 3.230. Northpower, Top Energy and Counties Energy (in their joint submission) submitted that there was no evident/current issue, without further elaboration.

Our assessment

- 3.231. Schedule 5 of a distributor's DDA contains operational terms and is therefore intended to reflect that distributor's circumstances, policies, processes, and practices.
- 3.232. The clauses drafted in Schedule 5 of the DDA template are examples only.
- 3.233. Distributors will be required to consult with traders on new or amended operational terms. While we have sought to update some of the example clauses, the traders

should engage on a distributor's operational terms during consultation, after the distributor has published proposed new or amended operational terms.

3.234. That said, we:

- (a) note Contact Energy's and ERANZ's concerns with some of the time periods included in the example terms, which will likely be points distributors may wish to pre-empt when drafting their operational terms for Schedule 5
- (b) agree with Contact Energy and Horizon Networks that there was an incorrect reference in clause S5.26 – we have corrected this in the example text in Schedule 5 of the DDA template.

Schedule 6 (Connection Policies)

3.235. Contact Energy submitted that several updates should be made to Schedule 6 of the DDA template – specifically to clauses S6.5, S6.17, S6.23, S6.26. This was to align these clauses with Code obligations, current practice, and the 'continuance of supply' provisions in the Act, and to provide some flexibility where there is an administrative error.

3.236. Amendments to Schedule 6 are beyond the scope of this Code amendment. Therefore, the Authority has decided not to include any such amendments at this time. However, the Authority has added the matters raised by Contact Energy to our Code amendment register for consideration.

Schedule 8 (Load Management)

3.237. Orion submitted that clauses S8.1 and S8.2 should be amended to clarify the party entitled to control load.

3.238. Orion considered it is important that the DDA template recognises distributors' use of hot water control to prevent an emergency on the distribution network in addition to its use by distributors in an emergency on the transmission network.

3.239. Amendments to Schedule 8 are beyond the scope of this Code amendment. Therefore, the Authority has decided not to include any such amendments at this time. However, we expect to consider the matters raised by Orion as part of our review of regulatory settings for distribution networks.

4. We have decided to introduce one new DDA core term and one new Code clause in Part 12A

What we proposed

- 4.1. In our follow-up consultation of June 2024 we proposed two new amendments:
 - (a) adding a new DDA clause 9.11 (Reduction of charges due to state of emergency) to ensure distributors reduce distribution charges in situations where consumers are unable to consume electricity and have sought disconnection, but the ICP cannot be accessed for disconnection
 - (b) adding a new Code clause 12A.6 (retailers must pass-through reduction in distribution charges) to ensure consumers pay reduced distribution charges when electricity supply is disrupted for an extended period.
- 4.2. We introduced new DDA clause 9.11 to address a particular situation during a state of emergency where consumers seek disconnection as they no longer have use for electricity supply, but disconnection is not possible. Clause 9.11 ensures there are still distribution services charge reductions for consumers in this situation.
- 4.3. We introduced new Code clause 12A.6 to ensure that distribution services charges that flow from DDA clause 9.10 (Reduction of charges due to electricity supply interruption) are passed on to consumers by retailers. Clause 12A.6 guarantees consumer benefit.

Clause 9.11 (Reduction of charges due to state of emergency)

Our decision

- 4.4. Clause 9.11 is introduced as a new core term, with one minor change to the proposed drafting to improve workability, without changing its policy intent. The change clarifies that only traders can request disconnection on consumers' behalf.

Submitters' views

- 4.5. Distributors' support for clause 9.11 was mixed. Most distributors and ENA were unsupportive of the clause's approach, while the ENA and some distributors agreed with the underlying policy intent. Powerco supported the clause, subject to ENA's points of clarification. Unison & Centralines also considered the clause reasonable.
- 4.6. Several submitters echoed ENA's points. ENA noted clause 9.11 would apply in very rare cases and was not necessary or best practice. It also raised some implementation issues. WEL Networks considered the proposal suffered from many of the same administration, implementation, and monitoring issues as proposed clause 9.10.
- 4.7. The ENA and several distributors (Vector, Network Waitaki, Horizon) considered only traders, not consumers, should notify distributors that a property is inaccessible for disconnection. This is because distributors do not hold customer data and cannot verify identity.
- 4.8. ENA, WEL Networks, Vector and Marlborough Lines considered that an "Inactive" registry flag to identify premises may lead to safety risks, where the ICP is still

electrically live. The ENA and Vector recommended a new ICP status to indicate where an ICP is electrically live but not being billed because of a state of emergency.

- 4.9. Marlborough Lines noted an issue with ICPs that had been disconnected for several years following natural events. Infrastructure to these ICPs still needed to be maintained but this provided no revenue. It considered new clause 9.11 may exacerbate this. It also suggested a time limit on the disconnected or inactive status of ICPs, after which they can be decommissioned.
- 4.10. Northpower considered the issue may be better addressed in Part 11 of the Code. This is because it is effectively backdating the disconnection to when it was requested, rather than when it is completed.
- 4.11. Northpower, Orion, and Horizon considered these needed to be 'genuine' disconnections, where electricity is no longer required. This is rather than temporary disconnections to avoid lines charges, that risked diverting critical resources.
- 4.12. Horizon further considered this exceptional circumstance could not be managed through the registry status. This is because the ICP will be connected to the network and could still be consuming electricity. Thus, the trader will continue to need to ensure the meter is read and volumes are settled in the wholesale market.
- 4.13. Of the four retailers commenting on this proposal (Contact, Genesis, Meridian, Nova) all were broadly supportive, while Meridian again proposed a separate notice of credits approach as for clause 9.10. Aligned with some distributor comment, Genesis queried whether a new reason code was needed in the registry to show that although a site is "Inactive" for billing, electricity may still be able to flow.
- 4.14. Other submitters' support for the clause was mixed. Axos Systems did not support the clause, considering it would require changes to distributors' invoicing systems to provide the necessary flagging.
- 4.15. Utilities Disputes supported the clause. It added the consumer should be advised of the ramifications of a disconnection and the costs of any later reconnection and other resources available.

Our assessment

- 4.16. Our introduction of DDA clause 9.11 received a level of support across all submitter groups, while not supported in practice by ENA and several distributors. We consider it addresses a unique situation where consumers are entitled to distribution services charge reductions. We therefore intend to introduce the proposal.
- 4.17. However, in line with submitter feedback we have amended the drafting of clause 9.11 so that only the trader can request disconnection on their customers' behalf. This acknowledges distributors may have difficulty verifying customers' identity for disconnection.
- 4.18. We note several distributors considered that an "Inactive" registry flag may be a safety risk where an ICP is still electrically connected. We outlined in our assessment for clause 9.10 why we are confident this matter is addressed.
- 4.19. In addition to our amendment to Schedule 11.1 clause 19 to allow distributors to update the registry status to "Inactive" to indicate supply interruptions, we have also allowed updates for distributors to indicate that the ICP cannot be disconnected following a request for disconnection. We will also revise the registry functional

specification to add a new reason code, 'state of emergency requiring charge reduction (may not be electrically disconnected)' to address the specific situation relating to clause 9.11.

- 4.20. We expect imposition of a state of emergency (or subsequent order) preventing access to particular areas will be widely advertised and well known by organisations that regularly need access, such as distributors. However, where a trader is directly attempting to action a disconnection and this is not possible, we would expect the trader to inform the distributor.
- 4.21. We note Northpower's suggestion that the intent of clause 9.11 may be better addressed in Part 11 (Registry information management) of the Code. However, we consider its inclusion is appropriate here.
- 4.22. We note Marlborough Lines' concern around needing to maintain infrastructure to supply longstanding disconnected ICPs. Given the limited circumstances in which this amendment would apply, we do not consider the approach proposed for clause 9.11 will add a significant number of additional ICPs to this category.
- 4.23. Marlborough Lines' recommendation to place a time limit on the disconnected or inactive status of ICPs, after which they can be decommissioned, is outside the scope of this proposal. However, the Authority expects to consider this matter as part of our review of regulatory settings for distribution networks.
- 4.24. We acknowledge Horizon's point that this exceptional circumstance could not be managed through the registry status. We note that during the Christchurch earthquake meters could not be accessed or read. This was managed through estimation, with unrestrained forecast error being shared by all retailers.
- 4.25. States of emergency where a customer requests disconnection and the retailer cannot access the ICP are likely to continue to be relatively rare. However, this clause upholds the principle of fairness that consumers should not pay for services they do not receive.
- 4.26. We acknowledge some distributors' points that disconnections should be 'genuine' and not for short-term periods merely to avoid charges. Given the circumstances during which new proposed clause 9.11 applies, and the relatively low charge reductions, we do not consider this will be a common problem.

Clause 12A.6 (Retailers must pass-through reduction in distribution charges)

Our decision

- 4.27. Clause 12A.6 is introduced as a new Code obligation with no changes to the proposed drafting the Authority consulted on.

Submitters' views

- 4.28. Distributors were evenly split between supporting and not supporting this clause. The ENA supported the clause with several caveats. Network Waitaki and Powerco both explicitly supported the ENA's submission, while various other distributors echoed ENA points.

- 4.29. The ENA considered that ICP billing and pass through of distribution and transmission charges were a retailer core function¹² and not an extra cost. It considered the reduction must be passed through to consumers in full. Horizon considered these costs should already be factored into the retailer's existing business costs.
- 4.30. Vector did not support of the clause. Its concerns included that it:
- (a) will provide very little benefit to consumers compared to its administrative costs
 - (b) allows retailers to deduct administrative costs, whereas distributors cannot.
- 4.31. Orion preferred that reductions be made directly to consumers case-by-case. Retailers being intermediaries complicated the process and reduced consumer benefit.
- 4.32. Of retailers commenting, most (Contact, Genesis, Meridian) were broadly supportive. Nova considered that it was fair for retailers to withhold administrative costs.
- 4.33. Electric Kiwi did not support the proposal. It considered the DDA was not the appropriate vehicle for imposing pricing methodology on retailers. Its view was that the Authority should not regulate both monopoly distribution and competitive retail pricing.
- 4.34. Genesis supported the proposal in principle, noting it did this already. However, it considered the reductions from distributors should flow from service guarantee payments, with no Code change required.
- 4.35. Meridian was broadly comfortable with the proposal. This was with the proviso that there be a single standardised process for the distributor to advise the retailer of affected ICPs, through separate credit notes. With this approach Meridian would not need to withhold any reductions.
- 4.36. However, Meridian considered different approaches across networks would impose significant administrative costs on retailers. It estimated the reductions would cost it \$2 per transaction under its proposed standardised process.
- 4.37. Other submitters' support for the proposal was mixed. Axos Systems considered the proposal was implementable, but with retailer cost. It also made technical implementation suggestions. Utilities Disputes supported the proposal, welcoming a consistent approach for all consumers.
- 4.38. A public submitter did not support the proposal, considering retailers passing on reductions should be left to retail competition.

Our assessment

- 4.39. We acknowledge distributors' views that passing through distribution charge reductions should be considered a retailer core function, and therefore full reductions should be passed to consumers. However, the clause is drafted so a retailer 'may' withhold an amount reflecting reasonable costs up to a mandated maximum.
- 4.40. In line with competitive practice, retailers will have discretion over whether to pass through full reductions or not. This also addresses concerns raised by Electric Kiwi, and a public submitter. Further, the Authority does not consider it is imposing a

¹² As this clause is a Code rather than DDA obligation, we use the term 'retailer' rather than 'trader'.

pricing methodology on retailers as regards clause 12A.6, merely requiring them to pass-through certain costs.

- 4.41. We acknowledge points around it being unfair for retailers to withhold a portion of administrative costs, without distributors being afforded the same benefit. However, we note that distributors have a mechanism to recover these costs under Part 4 of the Commerce Act.
- 4.42. Conversely, retailers must decide whether to recover the costs through retail pricing. We consider it is fair that retailers can choose, 'up front', whether to offset some of this cost, which may ultimately not be the full administrative cost.
- 4.43. We consider Orion's preference that reductions be made directly to consumers case-by-case would mean inconsistent consumer benefit.
- 4.44. We do not consider the proposal will have material impact on retail price plans, given these situations will represent a small percentage of cases. However, we consider the reductions will, while small, be meaningful and seen as fair to consumers.
- 4.45. Given the amendment is not prescriptive in how retailers should pass on reductions to consumers, and noting one retailer indicated it did this already, we do not consider the proposal will place high administrative costs on retailers. This is also given the relative infrequency these situations.

5. We have decided to change the arrangements for providing distributor agreements to the Authority

- 5.1. The second issue the Authority has decided to address with a Code amendment is the compliance cost associated with providing distributor agreements to the Authority.¹³

Our decision

- 5.2. The Authority has decided to amend Schedule 12A.1 of the Code:
- (a) to require parties to distributor agreements to, upon request, provide the Authority with copies of any distributor agreements they have entered into (as opposed to the current drafting which requires participants to provide a copy without the need for a request from the Authority)
 - (b) to require distributors to notify the Authority of any alternative agreements, or variations to alternative agreements, they enter into.
- 5.3. The Authority considers this decision promotes the efficient operation of the electricity industry for the long-term benefit of consumers. The decision does this by reducing participants' compliance costs by replacing the obligation for participants to provide the Authority with *any* new or varied distributor agreement with an obligation to provide their latest agreements upon request by the Authority. For the avoidance of doubt, the Authority would request the latest version of a distributor agreement only if we did not already have it.

What we proposed

- 5.4. The Authority's decision aligns with the proposal we consulted on.¹⁴

Submitters' views

- 5.5. The Authority received 13 submissions on our proposal to amend Schedule 12A.1 of the Code in this way.
- 5.6. The proposal was supported by a substantial majority of submitters. For example, Contact Energy stated:
- Contact is supportive of the Authority's proposal to remove the administrative burden of having to provide the Authority with any new or varied distributor agreement. We agree that this provision served a purpose at the time to enable the Authority to monitor the provisions of the distributor agreements being entered into, but that it makes sense to remove this obligation going forward. We agree with the proposed obligations to provide the agreements upon request by the Authority.¹⁵
- 5.7. ENA, Firstlight Network and Wellington Electricity submitted that the Code amendment proposal was addressing an immaterial issue, although Wellington

¹³ See section 3 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

¹⁴ See section 5 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

¹⁵ See Contact Energy's submission, p. 5 (8 November 2023).

Electricity noted that it was nevertheless comfortable implementing the proposed change. Counties Energy, Northpower and Top Energy (in their joint submission) supported the change but considered the savings in compliance costs were probably low and immaterial. WEL Networks agreed that providing copies of DDAs to the Authority is a burdensome compliance obligation, but considered the issue did not warrant the level of attention given to it by the Authority.

5.8. Electra did not agree that Issue 2 is worthy of attention, stating:

We are surprised that the Authority has raised what is widely accepted as good practice formally as an Issue. Surely, the Authority has a work plan that would include the periodic review of the DDA every few years as it pertains to the wider priorities of its overall work plan.

The reactive nature of the DDA and its subsequent reviews (including this one) appears to be an organisational issue for the Authority's consideration rather than an issue worthy of consultation.¹⁶

Our assessment

5.9. The Authority agrees the expected net benefit from this aspect of the overall Part 12A Code amendment proposal is small, as we observed in the consultation paper.¹⁷ However, we consider that the amendment is worth making, to lower the compliance cost for industry participants – a point noted by Nova Energy in its submission:

The process of submitting DDA's to the Authority has largely achieved its objective. It is now appropriate to adopt a simpler process of supplying documents on request. Under the alternative, submitting a new round of amended DDAs will generate a lot more compliance activity for little benefit.¹⁸

5.10. In terms of Electra's submission, this issue is not about the Authority reviewing the DDA template in Part 12A of the Code, or for that matter, distributors' published DDAs. Rather, this issue relates to higher-than-necessary transaction costs on retailers and distributors from our approach to monitoring the terms of distributor agreements entered into by distributors and retailers. By adopting periodic reviews of distributor agreements going forward, the Authority can reduce the compliance burden associated with monitoring the terms of distributor agreements.

¹⁶ See Electra's submission, p. 3 (14 November 2023).

¹⁷ See the regulatory statement in section 5 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

¹⁸ See Nova Energy's submission, p. 3 (14 November 2023).

6. We have decided to amend the consumption data template

- 6.1. The third issue the Authority wants to address with a Code amendment is the level of transaction costs associated with the default agreement for sharing consumption data with distributors.¹⁹

Our decision

- 6.2. The Authority has decided to amend Appendix C of Schedule 12A.1 of the Code (the default agreement for the provision of consumption data, or data template) to permit distributors to combine consumption data with other data or databases without requiring the trader's prior agreement, provided:
- (a) the distributor documents, in a Data Combination Schedule, the combination, the reasons for the combination, and which of the following permitted purposes (or agreed other purposes) the combination is intended to meet:
 - (i) developing distribution prices
 - (ii) planning and management of the distributor's network to provide distribution services to traders under the distributor's distributor agreements
 - (b) the distributor gives the trader at least 5 working days' notice of the combination, unless:
 - (i) the combination is within the scope of an existing entry in the distributor's Data Combination Schedule, or
 - (ii) the distributor reasonably considers it needs to use the combination urgently to respond to an event that poses a risk to electricity supply, the distributor's network, the distributor's normal business operations, and/or to human health and safety, in which case the distributor must advise the trader within 10 working days after making the combination.
- 6.3. The Authority has decided to also amend Appendix C of Schedule 12A.1 of the Code:
- (a) to enable the trader responsible for an ICP to, by way of signing a consumption data provision contract with a distributor:
 - (i) agree to the distributor obtaining electricity consumption data directly from the trader's metering equipment provider(s) (MEP(s))
 - (ii) authorise the distributor to procure the trader's MEP(s) to provide the consumption data to the distributor, instead of the trader procuring the MEP to provide the data
 - (b) to make some minor incidental amendments to the data template to improve its clarity and workability, including incorporating some submitter feedback on the proposed Code amendment published in our 3 October 2023 consultation paper.
- 6.4. The Authority considers this decision promotes competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The decision does this by reducing costs distributors face combining electricity

¹⁹ See section 4 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

consumption data with other datasets for the purpose of providing distribution services or developing distribution prices.

What we proposed

- 6.5. The Authority's decision aligns closely with the proposal we consulted on.²⁰ The only changes we have made are:
- (a) removing the proposed reduction (to one month) in the default maximum time interval for the provision of consumption data to distributors
 - (b) minor changes to incorporate some submitter feedback on the proposed Code amendment.

Submitters' views and our assessment

- 6.6. The Authority received 21 submissions on our proposal to amend Appendix C of Schedule 12A.1 of the Code. A substantial majority of submitters supported the proposal.
- 6.7. Set out below is the Authority's assessment of submitter feedback on the proposal.

The scope of the proposal relating to consumption data

Submitters' views

- 6.8. Some submitters considered the scope of the proposed Code changes was too narrow.
- 6.9. In its submission, Electra expressed concern that the Authority considered the proposed Code amendment resolved the issue of access to smart meter data. Electra expressed disappointment that the Authority did not take the opportunity to consider this issue more fully in the consultation paper.
- 6.10. ENA submitted that codifying the amended text in the ENA/ERANZ data template is an improvement to the status quo but is still not the longer-term solution to distributors accessing smart meter data. ENA urged the Authority to ensure that distributors can access smart meter data in a frictionless and cost-effective way. Similarly, while noting the proposed Code amendment was preferable to the status quo, WEL Networks believed more should be done to reduce barriers and lower costs relating to consumption data.
- 6.11. Horizon Networks noted the proposed Code amendment would be an interim step to improving access to metering data, with the Authority's distribution sector reform work programme looking at enabling MEPs to contract directly with distributors to provide ICP-level data. Wellington Electricity also acknowledged that further analysis and consideration is required in relation to the more general provision of ICP data. Wellington Electricity implored the Authority to escalate this as a priority for establishing flexibility services and DER management.
- 6.12. MainPower New Zealand and Marlborough Lines (in their joint submission) disagreed with the Authority's decision not to expand the Code amendment proposal to include the provision of non-consumption related ICP data used for network purposes. In

²⁰ See section 5 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

addition, MainPower New Zealand and Marlborough Lines believed the Authority's decision not to require MEPs to supply data to distributors at the marginal cost of provision runs contrary to the Authority's objective, of reducing costs on distributors, stated in the executive summary of the consultation paper.

- 6.13. Northpower, Top Energy and Counties Energy (in their joint submission) considered the proposed Code changes regarding consumption data did not address the key issue. These submitters said changes to the DDA are needed to clarify that distributors can access all network operational data from MEPs, to enable distributors to effectively plan and manage their network.
- 6.14. Several submitters (Electra, Flick, Genesis Energy, and (jointly) Counties Energy, Northpower and Top Energy) considered a central data repository should be implemented. Reasons given included facilitating quality data flows, managing implications under the Privacy Act 2020 associated with different parties accessing consumer data, improved controls around the use of consumers' data, lower costs to access data, and enabling a smooth transition to timely, cost-effective data being available at ICPs with multiple traders providing services.
- 6.15. Unison Networks and Centralines jointly submitted that MEPs need to be actively regulated to ensure fair pricing, given their market power and the criticality of the information to increasing competition in the electricity industry. On this point, the Authority notes that some of the issues raised would seem to be matters more for the Commerce Commission to consider.
- 6.16. In contrast to the feedback summarised above, Intellihub submitted its support for limiting the scope of the data exchange arrangements covered under the DDA template to the provision of consumption data to distributors, rather than extending it to include general ICP data. Intellihub submitted that the provision of power quality data to industry participants, and consumption data to flexibility traders, would be best supported through continuing to incentivise market-led solutions.

Our assessment

- 6.17. The Authority notes this submitter feedback. We reiterate that we are undertaking further analysis and consideration of the more general provision of ICP data. As we noted in the consultation paper, a data template may not be the best approach to providing ICP data to parties wanting to unlock the potential of DER.²¹ Further information on our work in this area is available on our website.²²

The use of the ENA-ERANZ amended text for Appendix C of Schedule 12A.1

Submitters' views

- 6.18. There was widespread support amongst submitters²³ for the Authority updating Appendix C of Schedule 12A.1 using the amended text for Appendix C of Schedule 12A.1 developed by ENA and ERANZ in liaison with their respective memberships.

²¹ See p. 15 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

²² See [Electricity Authority | Updating regulatory settings for distribution networks](#).

²³ See the submissions of Contact Energy, EA Networks, Electra, ENA, ERANZ, Meridian Energy, Orion, Powerco, WEL Networks and Wellington Electricity (October 2023 consultation).

- 6.19. Contact Energy noted that amending the data template to incorporate the ENA/ERANZ variation, with some amendments, will undoubtedly reduce the cost of negotiating future agreements for the exchange of consumption data. Orion noted it makes sense to include the ENA/ERANZ data template amended text because this has been consulted on and agreed in principle between distributors and retailers.
- 6.20. ERANZ supported incorporating into the Code the amended text developed by ENA and ERANZ, describing this text as industry-agreed and ready to use. However, ERANZ then said the proposed changes to the Code incorporating this amended text meant traders had no time to respond to any data combination notice, since distributors could give notice but immediately undertake the data combination. ERANZ submitted that the dispute resolution process dealing with any disagreement after the fact is likely to be lengthy. ERANZ also submitted that there is an opportunity for the Authority to more tightly define “specified data” types to avoid ambiguity in this space. Genesis Energy raised these same points in its submission.

Our assessment

- 6.21. The Authority notes a distributor giving notice of combining consumption data with any other data or database for a permitted or agreed purpose must, in fact, give the trader at least five working days’ notice of the combination.²⁴ This requirement is per the amended text for Appendix C of Schedule 12A.1 developed by ENA and ERANZ.
- 6.22. A distributor is only permitted to not give notice prior to combining consumption data with any other data or database for a permitted or agreed other purpose, if:
- (a) the combination is within the scope of an existing data combination previously notified to the trader by the distributor, or
 - (b) the distributor reasonably considers it needs to use that combination urgently to respond to an event that poses a risk to electricity supply, the distributor’s network, the distributor’s normal business operations, and/or to human health and safety, in which case the distributor must advise the trader within 10 working days after making the combination.²⁵
- 6.23. The Authority notes this Code provision is also per the amended text for Appendix C of Schedule 12A.1 developed by ENA and ERANZ.
- 6.24. The Authority has decided not to define the term ‘specified data’, which is used as a column header in a distributor’s Data Combination Schedule. The use of this term remains unchanged from the ENA / ERANZ amended text, which as noted above, was prepared by these organisations in liaison with their respective memberships. The Authority understands from the ERANZ and Genesis Energy submissions that the intention behind defining this term would be to provide traders with more assurance that distributors will be using the consumption data for purposes the trader agrees with. We consider this is addressed appropriately through the defined

²⁴ See clause 5A(2) of Appendix C of Schedule 12A.1.

²⁵ *Ibid*

terms 'permitted purposes' and 'other purposes'.²⁶ We note these defined terms are integral to a trader's right to dispute a distributor's use of a data combination.²⁷

- 6.25. On this point, we have incorporated a minor change to clause 5A(7)(a) of Appendix C of Schedule 12A.1, which Intellihub proposed in its submission. This minor amendment clarifies that the suspension of a distributor's right to use consumption data provided by a trader also applies to any data provided by an MEP on behalf of the trader.

Privacy considerations

Submitters' views

- 6.26. ERANZ submitted that it supported the Code explicitly setting confidentiality requirements for using consumption data, to ensure an individual's privacy is not breached.
- 6.27. Intellihub submitted that distributors combining consumption data with other datasets raises privacy risks. Intellihub considered an MEP entering into a direct contractual relationship with a distributor for the provision of consumption data would be inappropriate. This was because neither the MEP nor the distributor would be in a position to obtain consumer consent to share that data with third parties. Intellihub submitted that the retailer holds the contractual relationship with the consumer and is therefore the regulated 'agency' for the purposes of the Privacy Act 2020, with responsibility for managing personal information the retailer has contracted the MEP to collect and provide to the retailer. Accordingly, if a distributor were to obtain consumption data directly from an MEP, that data exchange must:
- (a) only occur pursuant to a contract between the relevant retailer and the MEP
 - (b) be consistent with the retailer's obligations under the Privacy Act 2020.
- 6.28. Intellihub recommended an amendment to clause 7(2) of Appendix C of Schedule 12A.1 to clarify that the trader is responsible for making disclosures and obtaining authorisations under the Privacy Act to allow the uses and disclosures of Consumption Data contemplated by the agreement.
- 6.29. Nova Energy submitted that the Code should require protections to be in place for any use of consumption data, to ensure confidentiality and prevent breaches of individuals' privacy.

Our assessment

- 6.30. The Authority agrees there is benefit in clarifying the Code in relation to the privacy matters raised by submitters. Therefore, we have made Intellihub's recommended amendment to clause 7(2).

²⁶ '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.

'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.

²⁷ See clause 5A of Appendix C of Schedule 12A.1.

Distributors obtaining consumption data directly from MEPs

Submitters' views

- 6.31. Contact Energy submitted it would be comfortable with distributors obtaining consumption data directly from MEPs. This was provided the same controls and assurances traders have in place today are incorporated in any future arrangements or direct data sharing framework. Contact Energy considered it is important to protect customer consumption information. This can be done by ensuring the party receiving the data is utilising it for the agreed purpose, transmits data securely, and has appropriate data retention and destruction policies and procedures in place.
- 6.32. Genesis Energy submitted it did not support the proposal for distributors to obtain consumption data from MEPs without trader permission. Genesis Energy considered this was not appropriate because MEPs do not hold rights over the data, and the provision of some of this data could breach the Privacy Act 2020 and be controversial under the new Consumer Data Rights regime if consumer consent was not given.
- 6.33. Nova Energy also supported MEPs providing data directly to distributors, stating:
- It is more convenient from a retailer's perspective to authorise the MEP to release the data to the distributor. When this is not an option, there is more complexity because Nova's systems are not set up to efficiently extract and deliver the data to distributors, and acting as a commercial intermediary contracting the MEP to provide the data has its own complexities.²⁸

Our assessment

- 6.34. In response to Genesis Energy's submission feedback, the Authority notes the proposal did not include granting distributors the right to obtain consumption data from MEPs without trader permission. The proposal provided for a distributor to procure consumption data directly from an MEP only if the trader authorised the distributor to do so.²⁹

Time interval for providing consumption data to distributors

Submitters' views

- 6.35. Contact Energy, Meridian Energy, and Orion submitted that the proposed amendment to Appendix C of Schedule 12A.1 should not reduce to one month, the default maximum time interval for the provision of consumption data to distributors. Instead, the time interval should be as specified by the distributor. Contact Energy noted only one distributor has requested monthly data from it, with other distributors requesting historical data or ongoing data on a quarterly, six-monthly, or annual basis.

Our assessment

- 6.36. The Authority agrees with these submitters. Appendix C of Schedule 12A.1 provides for any consumption data provided to a distributor to be at the distributor's cost. We consider this should place an appropriate incentive on the distributor to request

²⁸ See Nova Energy's submission, p. 3 (14 November 2023).

²⁹ See the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*, paragraph 5.7.

consumption data be provided at a time interval that is appropriate for the distributor's requirements and not unreasonable for the trader or its MEP. However, we believe the distributor and trader should agree to time intervals that are frequent, rather than this decision being left solely with the distributor. It simply may not be possible for a trader or its MEP to provide consumption data at the time intervals specified in the distributor's request (eg, real-time provision).

6.37. Therefore, we have:

- (a) removed the reference to a default maximum time interval of one month in clauses 2(e) and 3(2) of Appendix C of Schedule 12A.1
- (b) retained the reference to a one-month time interval in clause 3A of Appendix C of Schedule 12A.1.

6.38. This means the trader must agree if the distributor's requested frequency of access to consumption data is more than once every month.

Other suggested drafting changes

6.39. In addition to the changes described above, the Authority has made some other changes to the drafting of the consumption data template in response to submissions.

6.40. The most notable of these are to:

- (a) include the option of the trader providing consumption data that is held by its MEP directly to the distributor, where doing so would be quicker and more cost-effective for the distributor than either the trader procuring its MEP to provide the data, or authorising the distributor to procure the data directly from the MEP.
- (b) state the trader must use reasonable endeavours to ensure:
 - (i) for all time-of-use meters to which the consumption data relates, the data is half-hourly data collected from the relevant metering equipment according to EIEP3
 - (ii) for all other meters to which the consumption data relates, the data is non-half-hourly data at the frequency for which it was collected
 - (iii) the consumption data is in a format requested by the distributor, and if this is achievable using reasonable endeavours or is not achievable, is in a structured, commonly used, and machine-readable format
 - (iv) the data does not introduce a virus, Trojan horse, malicious code or similar when transmitted
 - (v) the data is transmitted in an encrypted form that is current best practice and commonly supported.

Including a reference to 'reasonable endeavours' recognises the trader does not have direct control over ensuring these requirements are met if the distributor is obtaining the consumption data directly from the MEP, while retaining an expectation that the trader would contractually require the MEP to ensure these requirements are met.

- (c) permit the distributor to disclose consumption data to a customer of the trader, if the consumption data relates to that customer, and that customer has requested the consumption data from the distributor.

This is in accordance with the Privacy Act 2020.

Other matters

- 6.41. The Authority expects to consider the following matters, raised by submitters in relation to the consumption data template, as part of our review of regulatory settings for distribution networks:
- (a) Whether to include within the existing participant audit framework an assessment of consumption data recipients' processes, data policies and systems. This would ensure recipients of consumption data are handling this data appropriately. (Contact Energy submission)
 - (b) Access by members of a distributor's data team to data provided under a consumption data agreement. In particular, whether to amend the consumption data agreement to permit members of a distributor's data team to be involved in an activity that is not regulated under Part 4 of the Commerce Act 1986 (clause 3(b) and clause 6). (EA Networks submission)
 - (c) Least-cost metering information. Whether to provide for metering information supplied by MEPs to be least cost, with minimal friction in its supply. (EA Networks submission)
 - (d) Traders prohibiting MEPs sharing data with distributors. Whether to amend the Code to address the issue of traders' agreements with MEPs including clauses that explicitly restrict the sharing of data unless the trader's agreement is given. (Electra submission)
 - (e) Whether to make EIEP3 mandatory, such that it is mandatory for distributors to be provided with half-hour metering data for all ICPs where half-hour data is available. (Electra submission)
 - (f) Alternate data access options. Consider options, other than a metering data repository, to enable access to data (eg, API gateways). (MainPower NZ and Marlborough Lines submission)
 - (g) Whether to introduce a standard form written notice request for data, which addresses all matters in clause 2 of the consumption data template (preferably with clear statements on proposed data combinations) which distributors could complete and send. This could be combined with the form in clause 20 of the consumption data template, so there is a single process for requesting data. (Meridian Energy submission)
 - (h) Whether to introduce a default data agreement to govern the distributor–MEP relationship. A default distributor–MEP data agreement would help enable the more efficient operation of the electricity industry by streamlining the process for distributors seeking data from MEPs directly. (Meridian Energy submission).

7. Our evaluation of the proposed Code amendment's benefits and costs

We considered the proposed Code amendment would have a net benefit

- 7.1. In our October 2023 consultation on the proposed Code amendment, we evaluated the proposed amendment's economic benefits and costs. We concluded that we expected it to deliver a net economic benefit if made.
- 7.2. In summary, the Authority identified significant, while unquantified, competition, reliability, and efficiency benefits that we consider will arise from the amendment. We consider these benefits for consumers and the sector will eventually comprise the most fundamental value of the amendment. We also estimated the present value of the proposed Code amendment's net quantified benefit. Over 15 years, this ranged from approximately \$195,000, under a high implementation cost / low benefit scenario, to \$440,000, under a low implementation cost / high benefit scenario.³⁰

Submitters' views and our assessment

- 7.3. The Authority received 17 submissions to our October 2023 consultation on our evaluation of the proposed Code amendment's benefits and costs.
- 7.4. There was general agreement amongst traders that the benefits of the proposed Code amendment would outweigh its costs. Distributors generally agreed the benefits of the proposed changes to the consumption data template would outweigh the costs. However, distributors considered the costs of the proposed changes to the DDA template would outweigh the benefits.
- 7.5. Set out below is the Authority's assessment of submitter feedback on the proposed Code amendment's benefits and costs. We note the rest of our regulatory statement analysis of the Code amendment remains consistent with that in the October 2023 consultation paper (ie, our assessment of alternatives to the Code amendment and our assessment against our statutory objectives).

The cost of implementation is underestimated

Submitters' views

- 7.6. Several distributor submitters said the Authority's evaluation of the proposed Code amendment's benefits and costs understated the costs to implement the proposal. In particular, the Authority's evaluation:
 - (a) did not allow for the costs associated with distributors consulting with traders over the operational terms in Schedule 1 and Schedule 5 of distributors' DDAs³¹
 - (b) did not allow for distributors to alter how they managed and operated their networks in response to some of the proposed new core terms - this included implementing new systems and/or processes and procedures (specific core

³⁰ At a 6% discount rate. See section 5 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

³¹ See the submissions of EA Networks, Electra, ENA, Firstlight Network, Horizon Networks, Network Tasman, Orion, Vector, and WEL Networks (October 2023 consultation).

terms identified as requiring such an allowance were clauses 4.8, 9.10, 14.2, 24.5, 33.2 (Definition of 'Use of Money Adjustment'), and Schedule 1³²

- (c) materially understated the cost for distributors to update their respective DDAs.³³
- 7.7. By way of an example of the first category of costs, ENA considered distributors and traders would be likely to expend material effort in the legal and operational review of operational terms required by Schedule 1 of the DDA template.
- 7.8. By way of examples of the second category of costs, Northpower, Top Energy and Counties Energy jointly submitted that:
- (a) They would incur costs to set up and enhance their faults and billing system to capture sufficiently detailed and accurate data necessary to issue refunds under the proposed clause 9.10 (refund of charges). They predicted this cost could be material and much higher than the amount of a refund, which could be as low as a few dollars per ICP. These submitters noted their net cost increases would be on-charged to consumers through the distributors' increased operating expenses. Northpower, Top Energy and Counties Energy could not see any evidence that this is for the long-term benefit of consumers or that it improves competition or efficiency.
 - (b) To meet the requirements under the proposed clauses 4.8 and 14.2, and Schedule 1, distributors would need to undertake additional planning and expend resources to schedule planned service interruptions as required and to investigate all concerns raised by traders and customers. The submitters said this cost increase would be on-charged to consumers, which would not be for their long-term benefit particularly when there currently is no issue around scheduling planned outages.
- 7.9. Wellington Electricity submitted that there would be additional costs for distributors to provide a higher level of quality, but noted this improvement in quality was a benefit. Wellington Electricity also noted the Authority's evaluation of the benefits and costs of the proposed Code amendment did not include an estimate of the benefits of this quality improvement.
- 7.10. By way of an example of the third category of costs, ENA submitted that DDAs are foundational legal agreements. Therefore, any amendment would require significant internal oversight and approval including peer review, executive and Board briefings on legal ramifications, and executive sign-off / approval.

Our assessment

- 7.11. As noted in section 2 (paragraph 2.21), a quantitative analysis is only one tool the Authority may use and only one factor in our ultimate decision. In making our final decision on the Code amendment, we have also made a qualitative judgment as to whether the Code amendment satisfies the requirements of the Act. This has included making judgments about several unquantified benefits. We consider that the

³² See the submissions of EA Networks, ENA, Horizon Networks, Network Tasman, Orion, Powerco, Vector, Wellington Electricity, WEL Networks, the joint submission of Northpower, Top Energy, and Counties Energy, and the joint submission of Unison Networks and Centralines (October 2023 consultation).

³³ See the submissions of ENA, Firstlight Network, and Network Tasman (October 2023 consultation).

competition, reliability, and efficiency benefits we expect, while not readily quantified, are significant and will deliver substantial long-term benefit for consumers.

Costs associated with distributors consulting with traders over the operational terms

- 7.12. The evaluation of the proposed Code amendment's benefits and costs in the October 2023 consultation paper assumed distributors would not need to consult with traders on the required updates to their DDAs. Therefore, these costs were not included in the evaluation.
- 7.13. After considering submitters' feedback, the Authority has clarified that our intention is to amend the *requirements* for operational terms in the DDA template in Part 12A of the Code, rather than to amend operational terms per se. We have revised clause 12(1A) of Schedule 12A.4 to reflect this.
- 7.14. The Authority notes this clarification means that distributors must consult on changes to their DDAs required by changes we have made to the requirements for operational terms in Schedule 1 and Schedule 5 of the DDA template. As discussed in section 3 (see paragraph 3.24 to 3.26), the Authority is aware that any consultation on operational terms has the potential to impose costs (possibly material) on distributors and traders.
- 7.15. We are also conscious of the feedback received in submissions, saying the proposed Code amendment did not provide distributors with sufficient time to consult and amend their DDAs.
- 7.16. Considering these concerns, the Authority has decided to revise clause 12(1A) of Schedule 12A.4. This is to provide that distributors with published DDAs must implement amendments to operational terms either by the date specified in the Code (if one is so specified), or else as part of the next process the distributor undertakes to amend operational terms in its published DDA.
- 7.17. The Authority has specified in the Code amendment that distributors must amend the operational terms in Schedules 1 and 5 by a date corresponding to three years from the amendment coming into force. We consider this significant timeframe gives distributors the ability to consult on amending these operational terms over the course of what would be their normal review process for operational term amendments.
- 7.18. Due to this decision, the Authority has excluded such consultation costs from our evaluation of the Code amendment's benefits and costs.

Costs associated with new core terms altering network management and operation

- 7.19. The Authority has made several changes to the proposed Code amendment we consulted on, to address distributor concerns regarding impact on network management and operation. Several of these changes are to remove costs distributors identified as arising under the proposed amendment. We discuss below the specific clauses identified as imposing costs on distributors.

Clause 4.8

- 7.20. The Authority considers distributors should already be operating according to the requirements of clause 4.8. That is, distributors should be scheduling planned outages to minimise disruption to consumers where this is:

- (a) reasonably practicable
- (b) in accordance with the distributor's operational requirements (set out in Schedule 5 of the distributor's DDA)
- (c) in accordance with good electricity industry practice.

7.21. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 4.8 becoming a core term.

Clause 9.10

- 7.1. The Authority has revised proposed clause 9.10 so that responsibility lies with the distributor to advise the retailer of ICPs affected by an electricity supply interruption.
- 7.2. The proposed clause gives distributors' discretion regarding how they want to comply with this requirement. This means distributors could use or adapt established industry processes to process any reductions. The Authority considers this would avoid distributors needing to materially invest in new systems and processes.
- 7.3. The Authority has also revised clause 9.10 so distributors are able to recover lost revenue, from reducing a trader's charges for an outage, under Part 4 of the Commerce Act. Clause 9.10 as originally drafted was potentially unclear on this point. This meant price-quality regulated distributors may have faced financial 'double jeopardy' through potentially incurring another penalty under the Part 4 quality incentive scheme, plus being required to provide a credit.
- 7.4. The revised clause 9.10 better aligns the approach with the equivalent provision in Transpower's Default Transmission Agreement (clause 41.4). This means the reduction requirement would be recognised under Part 4 as an effective reduction in revenues, rather than as operating expenditure (which could arise from using a credit note). Thus, the reduction could be recovered under price-quality path 'wash-up' mechanisms.
- 7.5. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 9.10 becoming a core term.

Clause 9.11

- 7.6. We have revised new proposed clause 9.11 to clarify that only traders can request disconnection on consumers' behalf and not consumers themselves. This recognises that distributors are not able to easily verify consumer identity.
- 7.7. The circumstances in which clause 9.11 will apply, being states of emergency where a customer requests disconnection but an ICP cannot be accessed, are likely to be rare. Charge reductions can also be recovered under price-quality path 'wash-up' mechanisms.
- 7.8. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 9.11 becoming a core term.

Clause 14.2

- 7.9. The Authority has revised the proposed clause 14.2 to clarify that distributors do not need to always investigate a consumer's or trader's concern about power quality,

safety, or reliability. Specifically, a distributor does not need to investigate if the distributor considers on reasonable grounds that the matter raised is trivial or is materially the same as a matter previously raised by the consumer or trader and there has been no relevant change in circumstances. We consider this should largely avoid the additional costs distributors identified as arising under the draft proposed clause.

- 7.10. We consider distributors should be able to mitigate the potential for costs associated with consumers or traders challenging the distributor's decision to not investigate a concern, by including in Schedule 1 operational terms that are based on good electricity industry practice. This is because consumers are less likely to challenge a distributor's practices around investigations where these align with good industry practice.
- 7.11. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 14.2 becoming a core term.

Clause 24.5

- 7.12. The Authority remains of the view that the force majeure clause in the DDA template specifies the appropriate circumstances in which a party will not be liable for matters outside its control and where the party has acted in accordance with good electricity industry practice.
- 7.13. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 24.5 becoming a core term.

Clause 33.2 The definition of Use of Money Adjustment

- 7.14. The Authority has revised proposed clause 33.2 (Definition of 'Use of Money Adjustment') to make several changes. We consider these will materially reduce potential implementation costs for some distributors should they need to apply a use of money adjustment. The changes:
- (a) link the use of money adjustment to the average debt premium, plus debt issuance costs, estimated by the Commerce Commission in its determination of the cost of capital for price-quality paths
 - (b) link the use of money adjustment to the due date of an original invoice and the due date of a revision invoice
 - (c) simplify the interest calculation by compounding interest daily (at 1/365th of the annual rate) or monthly (at 1/365th of the annual rate)
 - (d) allow parties to agree a threshold monetary figure below which the use of money adjustment does not apply.
- 7.15. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with clause 33.2 (Definition of 'Use of Money Adjustment') becoming a core term.

Schedule 1

- 7.16. The Authority has revised the proposed core terms in Schedule 1 to:

- (a) remove the draft proposed clause S1.4 requiring the distributor to notify the trader if the distributor breaches a service level, as this largely duplicated the draft proposed clause S1.5
 - (b) clarify that distributors need only investigate actual or suspected breaches of service standards that are subject to service guarantee payments
 - (c) clarify that distributors do not need to investigate trivial or vexatious actual or suspected breaches of service standards
 - (d) clarify that distributors may make service guarantee payments directly to consumers if requested by a consumer but are not required to do so.
- 7.17. We consider these changes should avoid the additional costs distributors identified as arising under the draft proposed Schedule 1.
- 7.18. Therefore, in our evaluation of the benefits and costs of the Code amendment, we have made no allowance for additional costs associated with the status of recorded terms in Schedule 1 changing to be a combination of core terms and operational terms.

Costs associated with distributors updating their respective DDAs and distributor agreements

- 7.19. The Authority notes the feedback received from some submitters on the need to allow for more governance-related costs associated with updating DDAs and updating and signing distributor agreements. Considering this feedback, we have:
- (a) increased our estimate of incremental effort to update the core terms in a DDA, from two hours to six hours, to allow for incremental governance-related costs associated with the update
 - (b) increased our estimate of incremental effort, from three hours to four hours per distributor agreement - this provides an average additional allowance of over \$1,000 per distributor for incremental governance-related costs associated with the distributor entering into updated distributor agreements.
- 7.20. We have assumed distributor's staff would go to their Board once regarding updating distributor's DDA and distributor agreements.
- 7.21. These revised estimates of incremental costs increase the estimated cost of updating 27 DDAs and updating and signing 397³⁴ distributor agreements to \$120,000.³⁵
- 7.22. We have also increased to 16 hours the allowance for a distributor or a trader to update its internal procedures to reflect the Code amendment. This increases the estimated cost of this activity to approximately \$60,000.

Benefit of improved quality

- 7.23. Wellington Electricity submitted that a higher level of quality of distribution services would be provided through the proposed changes to:
- (a) clause 4.8 – providing planned works outside of normal working hours

³⁴ This number excludes The Lines Company and MainPower, which have respectively 15 and 16 parent companies of traders on their distribution networks.

³⁵ Using an hourly labour cost of \$75 for the trader and distributor personnel involved in the work.

- (b) clause 9.10 – administering a customer bill reimbursement scheme
 - (c) clause 14.2 – investigating every voltage complaint.
- 7.24. The Authority notes the changes we have made to these clauses following submitter feedback means the improvement in the quality of distribution services may not be as great as it was under the proposed Code amendment. However, based on submitter feedback, we believe the costs that consumers would avoid from the changes mean consumers would be better off overall.
- 7.25. We note this is a qualitative judgment on our part, informed by the qualitative information contained in distributors' submissions. The Authority also notes we have not sought to quantify the benefits of improved reliability under the Code amendment that we expect to result from the amendment:
- (a) strengthening the incentive on distributors to manage the quality and reliability of consumers' electricity supply and to act in a manner that minimises the disruption to consumers from power outages
 - (b) reducing costs distributors face combining electricity consumption data with other datasets for the purpose of providing distribution services.
- 7.26. This is because we have not identified a sufficiently robust approach for quantifying these expected benefits.

Each individual issue needs to deliver a clear net positive outcome

Submitters' views

- 7.27. Some distributor submitters considered the evaluation of the proposed Code amendment's benefits and costs should be split into component parts. They considered a component part of the proposed amendment should not proceed if the evaluation of benefits and costs for that part showed a net economic cost. These submitters were concerned that evaluating the benefits and costs of the proposed Code amendment in its entirety would result in the Authority changing the status of recorded terms in the DDA template despite, in their view, this having a net cost.
- 7.28. ENA submitted that each issue needs to deliver a clear net positive outcome.
- 7.29. Horizon Networks said it appreciated that undertaking a cost-benefit analysis for a suite of related Code amendments is complex and that it is not realistic to evaluate each item separately. However, Horizon Networks considered the proposed Code amendment covered two distinct changes that could have separate assessments of benefits and costs – the changes to the DDA template, and the changes to the consumption data template. Horizon Networks recommended any final decision made by the Authority should quantify separately the costs and benefits of the two proposals, to demonstrate how each will provide a net benefit to consumers.
- 7.30. Network Tasman submitted that each of the three issues discussed in the Authority's consultation paper is discrete and that best practice dictates each of these issues be subject to an individual cost-benefit analysis. This would ensure the proposed resolution to each issue provided a net benefit to consumers.
- 7.31. Northpower, Top Energy and Counties Energy (in their joint submission) were concerned that the evaluation of benefits and costs took an aggregated approach rather than focusing on the costs and benefits of each change. These submitters

considered the Authority had adopted a strategy whereby justified consumption data template changes were being “used to prop up unjustified other changes”. Instead, each proposed change needed to stand on its own merit.³⁶

- 7.32. WEL Networks said it was “disingenuous to conflate” the proposed updates to the DDA template and the proposed updates to the consumption data template, as they should be evaluated on their separate merits.³⁷ WEL Networks considered that an objective interpretation of the Authority’s analysis meant:
- (a) the consumption data template changes should be progressed, as this proposal had considerable net benefits
 - (a) the proposed changes to the DDA template should not be progressed because the costs significantly outweighed potential benefits.

Our assessment

- 7.33. Where practicable, we have evaluated the benefits and costs of component parts of the Code amendment.
- 7.34. As set out in section 2 of this decision paper, we consider that not only will the overall Code amendment have a net economic benefit, so too will changing the status of recorded terms to be either core terms or operational terms. Our view is based on our qualitative judgment on expected competition, reliability, and efficiency benefits from changing the status of recorded terms. See our discussion in paragraphs 2.9 to 2.17.

Dynamic efficiency benefits are immaterial

Submitters’ views

- 7.35. ENA and Network Tasman submitted that the dynamic efficiency benefits of the proposed Code amendment either are immaterial or are likely to be immaterial. The five largest distributors in New Zealand account for approximately two-thirds of all ICPs and each of these distributors has at least 22 traders. The incremental competition benefit and dynamic efficiencies that would be gained from an additional trader on these networks is almost certainly immaterial / effectively zero. Network Tasman considered it was implausible that minor administrative savings would materially affect the likelihood of a new trader operating on a distribution network.
- 7.36. ENA and Network Tasman thought there may be competition benefits from additional traders on smaller distribution networks, but these benefits were still likely to be small.
- 7.37. Orion queried the analysis of dynamic efficiency benefits, particularly the Authority’s assessment that improved retail competition from changing the status of recorded terms would encourage retailers to develop more innovative products and services for consumers. Orion was not convinced the proposed Code amendment would lead to more innovative products and services, and considered this was an assumption for which the Authority provided no evidence.
- 7.38. WEL Networks questioned why the Authority expected the proposed changes to the DDA template would lead to material incremental dynamic efficiency benefits from

³⁶ See the joint submission of Northpower, Top Energy and Counties Energy, pp. 5–6 (October 2023 consultation).

³⁷ See pp. 4–5 of WEL Networks’ submission (14 November 2023).

more vigorous competition amongst electricity retailers. WEL Networks noted it currently has two fewer retailers (with more than a single ICP) operating on its network than in April 2021, when all retailers were migrated to WEL Networks' DDA.

- 7.39. WEL Networks considered the DDA neither enhances nor limits retail competition on its network. WEL Networks submitted there are many more impactful areas of the electricity sector that the Authority could focus its limited resources on to improve retail competition, and enhance consumer outcomes, in a meaningful way.

Our assessment

- 7.40. The Authority disagrees with ENA's, Network Tasman's, and WEL Networks' evaluation of the proposed Code amendment's dynamic efficiency benefits. Their assessment is premised on dynamic efficiency benefits arising solely from increased retail competition. In contrast, our evaluation of incremental dynamic efficiency benefits in the consultation paper centred on two things:
- (a) an incremental improvement in retail competition
 - (b) promoting more efficient investment in, and use of, distribution networks and distributed energy resources.
- 7.41. Network Tasman's submission also does not account for the underlying basis for our proposal to change the status of recorded terms. We expect this change to deliver larger benefits than just minor administrative savings.
- 7.42. As we noted in the consultation paper, measuring dynamic efficiency benefits is challenging and we have not identified a sufficiently robust approach for quantifying these potential benefits. However, we believe there will be significant dynamic efficiency benefits from our decision to amend the status of recorded terms, for at least two key reasons.
- 7.43. First, we consider traders will be more willing to compete for customers on at least some distributors' networks. We expect this increased willingness to compete will result from traders facing a drop in the cost of doing business on distributors' networks. This includes through the reallocation of costs and risks currently placed on traders, but which are more appropriately managed by distributors.
- 7.44. Feedback from traders has highlighted as particularly important the reallocation of risks to distributors where these risks are more appropriately managed by distributors. In their submissions, Contact Energy, ERANZ, Genesis Energy, Meridian Energy, and Nova Energy all noted that traders have had to accept terms in their distributor agreements that do not allocate costs and risks to the party best placed to manage them.
- 7.45. Second, more distributors accessing electricity consumption data will promote more efficient investment in, and use of, distribution networks and distributed energy resources. Access to consumption data can help distributors identify actual or potential areas of congestion on the low-voltage parts of their networks.
- 7.46. Distributors can then signal current or likely future congestion via their distribution prices. This is particularly important given the coming electrification of New Zealand's

vehicle fleet and process heat, as part of the country's planned reduction in greenhouse gas emissions.³⁸

- 7.47. Further, this could support work with flexibility traders on cost-effective non-network solutions, also providing more options and services to consumers with DER.

The estimated saving in negotiating distributor agreements is overstated

Submitters' views

- 7.48. In its submission, Contact Energy explained how, when distributors consulted on their DDAs in 2020–2021, the consultation was limited to distributors' operational terms. Distributors did not consult on their recorded terms because there was no requirement to do so under the Code. Contact Energy sought to negotiate alternative agreements with some distributors, but those requests were rejected.
- 7.49. Electra submitted that it negotiated extensively with traders before setting the recorded terms in its DDA. Since reaching an agreement with traders in January 2021, no trader has approached Electra about inconsistencies between the recorded terms in Electra's DDA and other distributors' DDAs. Electra's conclusion is that this lack of concern by traders means the Authority's issue with inconsistent recorded terms is not a real-world concern for traders or distributors.
- 7.50. ERANZ submitted that the inclusion of bespoke variations in DDAs has required traders to undertake a legal analysis of all distributor agreements because the level of alignment or consistency has been low. Replacing recorded terms with core terms will provide more consistency across distributor agreements. Traders have sought to renegotiate the balance of costs and risks in distributor agreements. However, these attempts have been met unfavourably and contracts entered regardless.
- 7.51. Firstlight Network submitted that it negotiated its DDA in good faith with retailers. The recorded terms were not seen as onerous during Firstlight Network's consultation process and were only amended where it was crucial for Firstlight Network to do so and to mirror the existing use-of-systems agreements in place at the time.
- 7.52. In its submission, Genesis Energy noted that recorded terms are determined by the distributor without a Code requirement to consult (or agree) with retailers.
- 7.53. Network Tasman disagreed with an implicit assumption in our estimated reduction in the average cost of negotiating distributor agreements following the removal of recorded terms from DDAs. Network Tasman submitted that implicitly assuming every new distributor agreement is subject to negotiation over recorded terms was unrealistic and did not align with Network Tasman's experience. Since its DDA has come into effect, Network Tasman has entered into five new distributor agreements. On each occasion, the trader sought to trade on Network Tasman's network under Network Tasman's DDA, without attempting to negotiate any alternative terms – recorded terms or otherwise.
- 7.54. Network Tasman considered the Authority should have used our existing record of distributor agreements that have been entered into (default or alternative) to inform our estimate of the number of distributor agreements with negotiated recorded terms.

³⁸ See paragraphs 5.35–5.36 of the Authority's 3 October 2023 consultation paper *Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses*.

- 7.55. Northpower, Top Energy and Counties Energy jointly submitted that, since their DDAs were introduced, they had not experienced lengthy negotiations with traders nor had traders raise concerns with clarity, duplication, or ambiguity in relation to the recorded terms in the DDAs.
- 7.56. Vector disagreed with the Authority's estimated transaction cost associated with a new retailer negotiating a distributor agreement.
- 7.57. WEL Networks noted in its submission that, since April 2021, when all retailers were migrated to WEL Networks' DDA, no retailer has sought to negotiate either WEL Networks' recorded terms or its operational terms.

Our assessment

- 7.58. In our evaluation of the proposed Code amendment's benefits and costs, the Authority considered that removing the recorded terms from DDAs would reduce the average cost of negotiating distributor agreements in the future. We expected that primarily this would be because of traders not expending as much effort trying to negotiate changes to recorded terms in a distributor's DDA that:
 - (a) allocate costs and risks to the trader that are best placed with the distributor
 - (b) create ambiguity, duplication, or inconsistency of approach.
- 7.59. The Authority estimated an average cost saving of approximately \$500 per distributor agreement. This equated to a saving of 6–7 hours of effort at an average hourly labour cost of \$75 for the trader and distributor personnel involved in the negotiation. This estimate recognised that recorded terms comprise only a small percentage of all the terms in a DDA, albeit with some recorded terms being contentious (eg, liability).
- 7.60. The Authority assumed 10 new distributor agreements would, on average, be entered into each year. This assumption was based on the trend in trader numbers since 2019. This equated to a present value benefit of approximately \$50,000, using a 6% discount rate over a 15-year discount period. The Authority notes that this \$50,000 figure was not our estimate of the transaction cost associated with entering into a distributor agreement.
- 7.61. Based on submitter feedback, in our evaluation of benefits and costs the Authority has lowered the estimated benefit from a saving in the effort negotiating distributor agreements. Submissions received from both distributors and traders indicate there is likely to be little, if any, savings in direct negotiation costs. Distributors appear to consider this is because traders have no issue with distributors' DDAs. Traders appear to consider this is because distributors will not (because they do not need to) negotiate around their recorded terms.
- 7.62. We now estimate a saving of 2–3 hours of effort in negotiating distributor agreements under the Code amendment. This represents an allowance for a trader to review and consider terms in a distributor's DDA that currently are recorded terms, but which will become core (and therefore nationally consistent) terms under our decision. This reduces the estimated benefit from \$50,000 to \$19,500.
- 7.63. Lastly, in response to Network Tasman's second submission point above, we note our record of distributor agreements with negotiated recorded terms does not inform us of the amount of effort expended in negotiating these terms. Therefore, it is indeed

necessary for us to make assumptions when estimating the amount of time saved negotiating distributor agreements following the change in status of recorded terms.

The Authority should account for engagement costs

Submitters' views

- 7.64. ENA submitted that the Authority's evaluation of benefits and costs should account for the Authority's project costs and stakeholders' costs of engaging with the project, because these costs would not occur under the status quo. ENA submitted that the Authority cannot assume the costs of consultation are zero. If, after taking account of the above costs the status quo is an (economically) cheaper option, the Authority will not have been acting in the long-term benefit of consumers.
- 7.65. Network Tasman also submitted that the costs of consultation for the Authority and interested stakeholders are real, often significant, and would not be incurred under the status quo. Therefore, these costs should be accounted for in the Authority's evaluation of benefits and costs. Network Tasman considered it is not in consumers' best interests to undertake reforms that rely on zero consultation costs to deliver an evaluation of benefits and costs with a net benefit.
- 7.66. Vector submitted that, in responding to the Authority's consultation paper, Vector had incurred significant costs exploring the true and complete range of consequences, both intended and unintended, of the proposed Code amendment.

Our assessment

- 7.67. The Authority considers the costs referred to by ENA, Network Tasman, and Vector should not be included in our evaluation of a proposed Code amendment's benefits and costs. This is because these costs arise regardless of the Authority's decision on whether to proceed with a proposed Code amendment. That is, the costs are incurred if the Authority decides, after considering submissions, to:
- (a) proceed with the proposed Code amendment or some form of the proposed Code amendment
 - (b) stay with the status quo.

The Authority considers the Code amendment has a net benefit

- 7.68. The Authority has carefully considered submitter feedback on our evaluation of the proposed Code amendment's benefits and costs. We have taken this feedback into account in the design of the final Code amendment.
- 7.69. We are satisfied the final Code amendment has a net economic benefit, and is desirable to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. This predominantly relates to the competition, reliability, and efficiency benefits we consider will result from the amendment. Although unquantified, we consider these will be significant, particularly over time. There are also quantified benefits that further contribute to the net economic benefits resulting from this amendment.

The Authority also considers the Code amendment is consistent with the protection of the interests of domestic consumers and small business consumers regarding the supply of electricity to those consumers.

Appendix A Submissions received

Submitter	Category
Electricity Networks Aotearoa (ENA) Electricity Retailers' Association of New Zealand (ERANZ)	Association
Aurora Buller Electricity EA Networks Electra Firstlight Network Horizon Networks MainPower and Marlborough Lines (joint submission) Marlborough Lines Network Tasman Network Waitaki Northpower Northpower, Top Energy and Counties Energy (joint submission) Orion Powerco Unison and Centralines (joint submissions) WEL Networks Wellington Electricity Vector	Electricity distribution
Contact Energy Electric Kiwi Flick Electric Genesis Energy Meridian Energy Nova Energy	Generator/trader/retailer
Intellihub	Metering equipment provider
A member of the public	N/A

Axos Systems	Software supplier to industry participants
Utilities Disputes	Dispute resolution service

Appendix B Code amendment

Electricity Industry Participation Code Amendment (Distributor Agreement Amendments) 2024

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendment to the Electricity Industry Participation Code 2010.

At Wellington on the 11 day of **October** 2024



Anna Kominik
Chair
Electricity Authority

Certified in order for signature:



Nicholai Mumford
Senior Legal Counsel
Electricity Authority



Rachael Brown
Partner
Bell Gully

30 September 2024

30 September 2024

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4	Clause 1.1 amended (Interpretation)	2
5	Clause 19 of Schedule 11.1 replaced (“Inactive” status)	2
6	New clause 12A.6 inserted (Retailers must pass-through reduction in distribution charges)	2
	12A.6 Retailers must pass-through reduction in distribution charges	3
7	Clause 6 of Schedule 12A.1 amended (When default distributor agreement applies as a binding contract)	3
8	Clause 7 of Schedule 12A.1 amended (Terms relating to additional services)	3
9	Clause 11 of Schedule 12A.1 amended (Participants must provide distributor agreements to Authority)	3
10	New clause 11A of Schedule 12A.1 inserted (Notice of alternative agreement)	3
	11A Notice of alternative agreement	3
11	Clause 3 of Schedule 12A.4 amended (Content of default distributor agreements)	3
12	Clause 6 of Schedule 12A.4 amended (Making default distributor agreements available)	4
13	Cross heading below clause 11 of Schedule 12A.4 amended	4
14	New clause 11A of Schedule 12A.4 inserted (Amending core terms in default distributor agreements)	4

11A	Amending core terms in default distributor agreements	
15	Clause 12 of Schedule 12A.4 amended (Amending operational terms in default distributor agreements)	4
16	New clauses 12A and 12B of Schedule 12A.4 inserted	4
	12A Amending collateral terms in default distributor agreements	4
	12B Removal of recorded terms from default distributor agreements	4
17	Clause 13 of Schedule 12A.4 replaced (Effect of amendment to operational terms on existing agreements)	5
18	Schedule 12A.1, Appendix C replaced	5
19	Schedule 12A.4, Appendix A replaced	5

Schedule 1

Schedule 12A.1, Appendix C replaced

Schedule 2

Schedule 12A.4, Appendix A replaced

Amendment

1 Title

This is the Electricity Industry Participation Code Amendment (Distributor Agreement Amendments) 2024.

2 Commencement

This amendment comes into force on 25 November 2024.

3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

4 Clause 1.1 amended (Interpretation)

- (1) In clause 1.1, definition of **collateral term**, delete paragraph (c).
- (2) In clause 1.1, definition of **default distributor agreement**, delete paragraph (c).
- (3) In clause 1.1, revoke the definition of **recorded term**.

5 Clause 19 of Schedule 11.1 replaced (“Inactive” status)

Replace clause 19 of Schedule 11.1 with:

“19 “Inactive” status

- “(1) Except as provided in subclause (2), the **ICP** status of “Inactive” must be managed by the relevant **trader** and indicates that—
 - (a) the **ICP** is **electrically disconnected**; or
 - (b) **submission information** related to the **ICP** is not required by the **reconciliation manager** for the purpose of compiling **reconciliation information**.
- “(2) The **ICP** status of “Inactive” may be managed by the relevant **distributor** only to indicate that—
 - (a) there has been an interruption in **electricity** supply affecting the **ICP**; or
 - (b) the **ICP** cannot be **electrically disconnected** following a request for **electrical disconnection**.”

6 New clause 12A.6 inserted (Retailers must pass-through reduction in distribution charges)

After clause 12A.3, insert:

“12A.6 Retailers must pass-through reduction in distribution charges

- “(1) A **retailer** whose distribution charges are reduced in accordance with any provision in a **distributor agreement** to account for electricity supply interruptions or declared states of emergency must reduce the charges of those of its customers affected by the electricity supply interruption or declared state of emergency to reflect the reduction in the retailer’s distribution charges.
- “(2) When reducing a customer’s charges under subclause (1), the **retailer** may withhold an amount that reflects the reasonable costs incurred by the **retailer** to process the reduction, provided that amount does not exceed 50% of the reduction to the customer’s charges the customer would otherwise have received for the first day of any interruption. To avoid doubt, the **retailer** may not withhold any amount in respect of second or subsequent days of any interruption.”

7 Clause 6 of Schedule 12A.1 amended (When default distributor agreement applies as a binding contract)

- (1) In clause 6(5)(a) of Schedule 12A.1, replace “**core terms, operational terms, and recorded terms (if any)**” with “**core terms and operational terms**”.
- (2) Revoke clause 6(5)(b) of Schedule 12A.1.

8 Clause 7 of Schedule 12A.1 amended (Terms relating to additional services)

Replace clause 7(5) of Schedule 12A.1 with:

- “(5) To avoid doubt, a **participant** may give notice under subclause (2) at any time after—
- (a) the commencement of the **distributor agreement**; or
 - (b) the commencement of any agreement to alternative terms relating to additional services in accordance with clause 9; or
 - (c) any amendment to the relevant appendix described in subclause (2) comes into force.
- “(6) Any existing agreement that applies in accordance with subclause (3) or (4) is terminated from the date any subsequent agreement addressing the same subject matter applies as a binding contract in accordance with subclause (3) or clause 9.”

9 Clause 11 of Schedule 12A.1 amended (Participants must provide distributor agreements to Authority)

- (1) Replace clause 11(1) of Schedule 12A.1 with:
- “(1) If requested by the **Authority**, a party to a **distributor agreement** must give the **Authority** a copy of—
- (a) the **distributor agreement**; and
 - (b) any variation to the **distributor agreement**; and
 - (c) any other agreement entered into between the parties to the **distributor agreement** during the period from the date notice was given under clause 3(1) and the date the **distributor agreement** was entered into.”
- (2) In clause 11(2) of Schedule 12A.1, replace “**core terms, operational terms, and recorded terms**” with “**core terms and operational terms**” in each place.

10 New clause 11A of Schedule 12A.1 inserted (Notice of alternative agreement)

After clause 11 of Schedule 12A.1, insert:

“11A Notice of alternative agreement

A **distributor** must give notice to the **Authority** that it has entered into or varied an **alternative agreement** within 10 **business days** of doing so.”

11 Clause 3 of Schedule 12A.4 amended (Content of default distributor agreements)

- (1) Revoke clause 3(2) of Schedule 12A.4.

- (2) In clause 3(3)(a) of Schedule 12A.4, replace “**core terms, operational terms, or recorded terms**” with “**core terms or operational terms**”.

12 Clause 6 of Schedule 12A.4 amended (Making default distributor agreements available)

- (1) In clause 6(1) of Schedule 12A.4, replace “Subject to subclause (4), each” with “Each”.
(2) Revoke clause 6(4) of Schedule 12A.4.

13 Cross heading below clause 11 of Schedule 12A.4 amended

In the cross heading below clause 11 of Schedule 12A.4, delete “operational”.

14 New clause 11A of Schedule 12A.4 inserted (Amending core terms in default distributor agreements)

Before clause 12 of Schedule 12A.4, insert:

“11A Amending core terms in default distributor agreements

If the **Authority** amends the **core terms** in the **default distributor agreement template** (including by adding or removing **core terms**) a **distributor** must amend its **default distributor agreement** to reflect the amendment and make the amended **default distributor agreement** available on its website no later than 15 **business days** (or such longer period as the **Authority** may allow) after the date of amendment to the **default distributor agreement template**.”

15 Clause 12 of Schedule 12A.4 amended (Amending operational terms in default distributor agreements)

- (1) After clause 12(1) of Schedule 12A.4, insert:

“(1A) If the **Authority** amends the requirements for **operational terms** in the **default distributor agreement template** (including by adding or removing requirements), a **distributor** must amend the **operational terms** in its **default distributor agreement** to reflect the amendment and make the amended **default distributor agreement** available on its website no later than the earlier of—

- (a) the date that the **distributor** next amends 1 or more **operational terms** in its **default distributor agreement** under subclause (1); or
(b) the date that is 3 years after the amendment to the requirements for **operational terms** comes into force; or
(c) any other date specified in the **Code**.”

- (2) In clause 12(4) of Schedule 12A.4, after “subclause (1)”, insert “or (1A)”.

16 New clauses 12A and 12B of Schedule 12A.4 inserted

After clause 12 of Schedule 12A.4, insert:

“12A Amending collateral terms in default distributor agreements

A **distributor** may amend 1 or more **collateral terms** of a **default distributor agreement** (including by adding or removing **collateral terms**) by making the **default distributor agreement** with the amended **collateral terms** available on its website.

“12B Removal of recorded terms from default distributor agreements

A **distributor** must amend its **default distributor agreement** to remove any **recorded terms** and make the amended **default distributor agreement** available on its website no later than 15 **business days** (or such longer period as the **Authority** may allow) after the date of the corresponding amendment to the **default distributor agreement template**.”

17 Clause 13 of Schedule 12A.4 replaced (Effect of amendment to operational terms on existing agreements)

Replace clause 13 of Schedule 12A.4 with:

“13 Effect of amendment to default terms on existing agreements

- “(1) If the **Authority** amends the **core terms** in the **default distributor agreement template** (including by adding or removing **core terms**) existing agreements are deemed to be amended accordingly with effect from the date of the amendment to the **default distributor agreement template**.
- “(2) If **operational terms** in a **default distributor agreement** are amended in accordance with clause 12, existing agreements are deemed to be amended accordingly with effect from the date the amended **default distributor agreement** is made available on a **distributor’s** website under clause 12.
- “(3) If **collateral terms** in a **default distributor agreement** are amended in accordance with clause 12A, existing agreements are not affected unless a **distributor** obtains agreement to the amendment from the other party.
- “(4) If an existing agreement includes a recorded term, that recorded term is deemed to be removed with effect from the date—
- (a) a **core term** that corresponds to the recorded term (with or without modification) takes effect under subclause (1); or
 - (b) an **operational term** that corresponds to the recorded term (with or without modification) takes effect in accordance with subclause (2).
- “(5) In this clause “existing agreement” means a **distributor agreement** entered into before the **default distributor agreement template** is amended or an amended **default distributor agreement** is made available on a **distributor’s** website (whichever applies).”

18 Schedule 12A.1, Appendix C replaced

Replace Schedule 12A.1, Appendix C, with the Appendix C in Schedule 1 of this amendment.

19 Schedule 12A.4, Appendix A replaced

Replace Schedule 12A.4, Appendix A, with the Appendix A in Schedule 2 of this amendment.

Explanatory Note

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 (the Code) comes into force on 25 November 2024.

The amendment amends the Default agreement – Provision of consumption data in Appendix C of Schedule 12A.1 to permit distributors to combine consumption data with other data or databases without requiring the relevant trader’s prior agreement, subject to certain requirements.

The amendment also amends the Default distributor agreement for distributors and traders on local networks (interposed) in Appendix A of Schedule 12A.4 to change the status of recorded terms to either core terms or operational terms. It also makes some consequential changes to Schedules 12A.1 and 12A.4 and other areas of the Code.

More information about the amendments is available on the Electricity Authority’s website

Schedule 1
Schedule 12A.1, Appendix C
Default agreement – Provision and use of
consumption data

Sch 12A.1, cl 7(2)

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 specified intervals.

3 Provision of Consumption Data

- (1) Subject to clause 3A, the Trader must:
 - (a) procure that its Metering Equipment Provider supplies to the Distributor any Consumption 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
 - (b) supply to the Distributor any Consumption Data requested under clause 2 that is held by the Trader rather than the Trader's Metering Equipment Provider.
- (2) Despite subclause (1)(a) and subject to clause 6(2), the Trader may supply to the Distributor any Consumption Data requested under clause 2 that is held by the Metering Equipment Provider if doing so will be quicker and more cost effective for the Distributor than the Trader complying with the requirements of subclause (1)(a).
- (3) Consumption Data that is supplied must be provided within 10 Working Days of the Distributor's request, and if the request is for ongoing supply subsequently at the intervals specified in the Distributor's notice under clause 2 but subject to agreement by the parties under clause 3A(c) if the frequency of access requested by the Distributor is more than once every month.
- (4) Despite subclause (3) the Trader is not responsible for any delay in the supply of Consumption Data due to circumstances beyond its control.
- (5) The Trader must use reasonable endeavours to 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 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.

3A Restriction on providing Consumption Data

Consumption Data may only be provided in response to a request under clause 2 if:

- (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.

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.
- (2) The Trader must:
 - (a) procure that its Metering Equipment Provider supplies to the Distributor 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 to the Distributor 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(5)(d)-(e).
- (3) Despite subclause (2)(a) and subject to subclause 6(2), the Trader may supply to the Distributor any Consumption Data that is held by the Metering Equipment Provider if doing so will be quicker and more cost effective for the Distributor than the Trader complying with the requirements of subclause (2)(a).
- (4) The Data Agreement may be amended, with the agreement of both parties, from time to time.

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 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 or under a Data Agreement in accordance with clause 4 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:
 - (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 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 to the Distributor by the Trader (including any Consumption Data provided to the Distributor by the Trader's Metering Equipment Provider on behalf of the Trader) who has given the Distributor a Combination Dispute Notice, and does not apply to any consumption data provided to the Distributor by other traders 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 reasonable costs

- (1) The Distributor must pay the Trader's reasonable costs incurred in supplying any information requested under clause 2.
- (2) If requested by the Distributor, the Trader must give the Distributor a quote for any reasonable costs 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.

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 Trader or the Trader's Metering Equipment Provider to provide, and the Distributor to receive and use, the Consumption Data for the

Permitted Purposes and Other Purposes, as contemplated under this Agreement.

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;
 - (c) to a Customer, if the Consumption Data relates to that Customer, and that Customer has requested the Consumption Data from the Distributor; or
 - (d) 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)(d), 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 1986 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:
 - (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 or, subject to clause 6(2), it is quicker and more cost effective for the Distributor for the Trader to supply the Distributor any Consumption Data held by the Trader's Metering Equipment Provider), 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.

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 in accordance with clause 5A of the relevant agreement relating to the provision and use of consumption data between the Distributor and the relevant Trader.

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:

Specified data	Reason(s) for combination	Corresponding Permitted Purpose or Other Purpose
<p>[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”]</p>	<p>[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”]</p>	<p>[insert one of or both of the following, or Other Purpose, as relevant:</p> <ul style="list-style-type: none"> • Developing distribution prices • Planning and management of the Network in order to provide Distribution Services to traders under the Distributor’s distributor agreements]
<p>[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”]</p>	<p>[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”]</p>	<p>[insert one of or both of the following, or Other Purpose, as relevant:</p> <ul style="list-style-type: none"> • Developing distribution prices • Planning and management of the Network in order to provide Distribution Services to traders under the Distributor’s distributor agreements]

Version History

Version	Effective date	Changes
<i>[Insert details of current / previous version]</i>	<i>[Insert the date the Schedule (or any update) became effective]</i>	<i>[Insert high level details of any changes from the previous version]</i>
<i>[Insert details of current / previous version]</i>	<i>[Insert the date the Schedule (or any update) became effective]</i>	<i>[Insert high level details of any changes from the previous version]</i>

22 Definitions

In this Agreement:

"Agreement" means this agreement relating to the provision and use 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;

"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:

- (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 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.

Schedule 2

Schedule 12A.4, Appendix A

Sch 12A.4, cl 3(4)

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

Default Distributor Agreement

Template

Version:

[September 2024]

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

[Parties can sign the Agreement using the signature block below, but see clause 6 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 agrees to provide the Distribution Services to the Trader on the terms and conditions set out in this Agreement.
- B. The Trader agrees to purchase the Distribution Services from the Distributor on the terms and conditions set out in this Agreement.

PART I – AGREEMENT TERM AND SERVICE COMMITMENTS

1. TERM OF AGREEMENT

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

2. SUMMARY OF GENERAL OBLIGATIONS

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

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

3. CONVEYANCE ONLY

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, provided that any existing Customer Agreement between the Trader and the Customer is not a fixed term agreement or the fixed term has not expired.

3.2 **Conveyance Only basis:** If a Customer has, or enters into, a Direct Customer Agreement, the Distributor must:

- (a) 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) 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 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 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 any 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

4.8 **Distributor to schedule Planned Service Interruptions to minimise disruption:** The

Distributor must, as far as is reasonably practicable and in accordance with Schedule 5 and Good Electricity Industry Practice, 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

- 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 within the timeframes set out in Schedule 1; and
 - (b) for Planned Service Interruptions, as soon as reasonably practicable and within the timeframe set out in the notice for Planned Service Interruptions sent to the Customer.
- 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 5.3, 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 if:
- (a) the Distributor provides a Price Category or Price Option that allows 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).
- 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.
- 5.3 **Control of load by Entrant if some load controlled by Incumbent:** If either party (the "**Entrant**") seeks to control part of a Customer's load at a Customer's ICP, but the other party (the "**Incumbent**") has obtained the right to control part of the load at the same ICP in accordance with clause 5.1 or 5.2 (as the case may be), the Entrant may only control the part of the Customer's load that:
- (a) the Customer has agreed the Entrant may control under an agreement with the Entrant; and
 - (b) is separable from, and not already subject to, the Incumbent's right to control part of the Customer's load at the ICP obtained in accordance with clause 5.1 or 5.2 (as

the case may be).

- 5.4 **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.
- 5.5 **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.
- 5.6 **Trader to make controllable load available to Distributor for management of system security:** If the Trader has obtained the right to control part of any Customer's load in accordance with clause 5.2, the Trader must:
- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Trader has obtained the right;
 - (b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice under paragraph (a), develop and agree jointly with the Distributor (such agreement not to be unreasonably withheld by either party), a protocol to be used by the parties to this Agreement that:
 - (i) is consistent with the Distributor's System Emergency Event management policy set out in Schedule 4, and the Code;
 - (ii) is for the purpose of coordinating the Trader's controllable load with other emergency response activities undertaken by the Distributor during a System Emergency Event, such purpose having priority during a System Emergency Event over other purposes for which the load might be controlled;
 - (iii) assists the Distributor to comply with requests and instructions issued by the System Operator when managing System Security in accordance with the Code during a System Emergency Event; and
 - (iv) assists the Distributor to manage Network system security during a System Emergency Event;
 - (c) during a System Emergency Event, operate its controllable load in accordance with the protocol developed in accordance with paragraph (b); and
 - (d) at all times, operate its controllable load as a reasonable and prudent operator in accordance with Good Electricity Industry Practice.
- 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.
- 5.8 **Maintenance of Load Signalling Equipment:** A party providing Load Signalling Equipment must endeavour in accordance with Good Electricity Industry Practice to ensure that the Load Signalling Equipment:
- (a) sends appropriate load control signals that are capable of being reliably received by all associated Load Control Equipment; and
 - (b) is otherwise fit for purpose.

6. LOSSES AND LOSS FACTORS

- 6.1 **Information to enable calculation of Loss Factors:** The Distributor may 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:** The Distributor must calculate Loss Factors in accordance with the requirements of the Code relating to Loss Factors (if any).
- 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:** Schedule 7 sets out information about how the Trader can access information about the Distributor's:

- (a) Pricing Structure;
- (b) Price Categories;
- (c) Price Options (if any); and
- (d) Prices.

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

- (c) its Price Categories and Price Options (if any) at any time, provided that the change does not have the effect of increasing 1 or more Prices.

7.3 **Price changes:** Unless otherwise agreed with the Trader, the Distributor may not change its Prices more than once in any 12 month period ending on 31 March, unless a change:

- (a) results from a material change in 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) relates to 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) results from a change in the law.

Nothing in this clause prevents the Distributor from changing a Price at any time 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 the Code:** comply with any provisions in the Code relating to the pricing of Distribution Services; and
- (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 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 (or such longer period as agreed between the Distributor and the Trader) 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 consistently with clause 8.1), and
 - (ii) 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**”);
- (c) at the same time as it provides an Actual Invoice (under paragraph (a), (d), or (e)), the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Tax Invoice;
- (d) if late, incomplete, or incorrect information is provided and the Tax Invoice is a Pro forma Invoice on the basis of that information, the Distributor must issue an Actual Invoice that replaces 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 paragraph (d) does not apply, the Distributor must, by no later than the same time as the Distributor issues a Tax Invoice under paragraph (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) 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 applying from the due date of the original invoice to the due date of the Revision Invoice (unless the parties agree otherwise);
- (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) 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.

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 and any other sums due to the Trader under this Agreement.
- (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.

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 (or a Revision Invoice, as applicable) 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 disputed 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 (or a Revision Invoice, as applicable) 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 applying for the period commencing on the date of the original payment and ending when re-payment is made, 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.
- 9.10 **Reduction of charges due to electricity supply interruption:** 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:
- (a) advise the Trader of the ICPs that are so affected either as part of the invoicing information for the next monthly billing cycle or separately prior to the next month's billing cycle (for example by updating the registry status to "Inactive", or by sending a separate report); and
 - (b) despite clauses 21 and 24, in the next monthly billing cycle, reduce the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer during which supply of electricity was interrupted for longer than 24 continuous hours, by setting the billed quantities for each day during which the interruption continues and the day the interruption ends, but not the first day during which the interruption began, to zero.
- 9.11 **Reduction of charges due to state of emergency:** If, as a consequence of a declared state of emergency under the Civil Defence Emergency Management Act 2002, the Trader on the Customer's behalf requests disconnection, and the ICP or ICPs cannot be accessed to be disconnected, the Distributor must, in the next monthly billing cycle, reduce the Distribution Services charges paid by the Trader in respect of the ICP or ICPs for that Customer for the number of complete days from the date disconnection was requested, by setting the billed quantities for those days to zero.

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 at all times; or
 - (b) the Trader must provide and maintain at all times 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 or is maintaining an acceptable credit rating as the Distributor or its agent may from time to time reasonably require.

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

10.7 **Distributor may require Additional Security:** The Distributor may, by notice to the Trader, require the Trader to provide Additional Security. The amount of any Additional Security required must be such that the total value of all security required to be provided by the Trader under this Agreement is not more than the 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 security for the purpose of clause 10.2(b); and
- (b) the Trader fails to pay an amount due under this Agreement; and
- (c) the amount is not subject to a genuine dispute.
- 10.23 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 that is owned by the Distributor;
- (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), or (f), such notice is not required); and
- (b) if access is required for a purpose described in clause 11.1(h), the Distributor or Trader gave the Customer 10 Working Days' notice of access being required (unless the period of notice is specified under the relevant law, in which case the notice period specified under the relevant law applies); and
- (c) 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 on the earlier of 6 months after the termination of the Customer Agreement or the date on which a new Customer Agreement is entered into in respect of the relevant ICP, 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 interfere with or damage the Distributor's Equipment or Network (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Distributor (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 12.4 **Costs of making good any damage:** If any of the Distributor's Equipment is damaged by the negligence or wilful act or omission of the Trader or the Trader's employees, agents, or invitees, the Trader must pay the cost of making good the damage to the Distributor.
- 12.5 **Interference or damage to Trader's Equipment or Customer's Installations:** The Distributor must ensure that it and its employees, agents and invitees do not interfere with or damage the Trader's Equipment or the Customer's Installation (including, without limitation, for a period of 6 months after termination of this Agreement) without the prior written consent of the Trader or the Customer (as the case may be) (except to the extent that emergency action has to be taken to protect the health or safety of persons or to prevent damage to property).
- 12.6 **Costs of making good any damage:** If the Trader's Equipment or the Customer's Installation is damaged by the negligence or wilful act or omission of the Distributor or the Distributor's employees, agents, or invitees, the Distributor must pay the cost of making good the damage to the Trader or the Customer (as the case may be). This clause 12.6 is for the benefit of the Customer and may be enforced by the Customer under the Contract and Commercial Law Act 2017. This clause may be varied by agreement between the parties without the consent of any Customer.
- 12.7 **Interference with Network:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements a provision to the effect that the Customer must not:
- (a) inject or attempt to inject any electricity into the Network, unless the Customer is also a Distributed Generator and there is a Connection Contract in place between the Distributed Generator and the Distributor; or
 - (b) without the prior written agreement of the Distributor, convey or receive or attempt to convey or receive any signal or other form of communication or any other thing (other than electricity in accordance with this Agreement and load control signals transmitted by or with the written consent of the Distributor) over the Network or

cause or permit any other person to do so.

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

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

12.9 Changes to GXPs: The following procedure will apply if the Distributor proposes to construct and operate, or agree with a Grid Owner to have constructed and operated, a new GXP, or permanently disconnect the Network from a GXP (a "**Proposal**");

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

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

12.11 Additional Metering Equipment: Either party may, at its own cost, install and maintain additional Metering Equipment (whether owned by that party or by a third party) for metering data verification purposes or other purposes, provided that it complies with Part 10 of the Code and:

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

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

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

Nothing in this clause affects any rights or obligations that a party has under Part 10 of the Code or any other law.

- 12.13 **Safe Housing of Equipment:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements (subject to any written agreement between the Trader and the Distributor) an undertaking by the Customer to provide and maintain, at no cost to the Distributor, suitable space for the safe and secure housing of any of the Distributor's Equipment relating primarily to the connection to the Network of Points of Connection at the Customer's Premises that the Distributor determines is necessary.
- 12.14 **The Network:** The Trader must, subject to clause 29.1, include in each of its Customer Agreements an acknowledgement by the Customer that:
- (a) the Network, including any part of the Network situated on Customer's Premises, is and will remain the sole property of the Distributor; and
 - (b) no provision of the Customer Agreement nor the provision of any services by the Distributor in relation to the Network will confer on the Customer or any other person any right of property or other interest in or to any part of the Network or any Distributor's Equipment that is used to provide any such services.

13. NETWORK CONNECTION STANDARDS

- 13.1 **Access to standards:** The Distributor must advise the Trader how the Trader and Customers can access the current version of the Distributor's Network Connection Standards.
- 13.2 **Provisions in Customer Agreements:** The Trader must:
- (a) subject to clause 29.1, include in each of its Customer Agreements an undertaking that the Customer must ensure that the Customer Installation complies at all times with Network Connection Standards and all relevant legal requirements; and
 - (b) include in each of its Customer Agreements a statement advising how the Customer can access the current version of the Distributor's Network Connection Standards.
- 13.3 **Notification of non-complying Installation:** If the Trader becomes aware that a Customer's Installation does not comply with the Network Connection Standards, the Trader must notify the Distributor of the ICP identifier of the Customer's Installation and the details of the non-compliance as soon as practicable after becoming aware of the non-compliance. The Distributor must promptly investigate the non-compliance and keep the Trader informed of the actions taken to resolve 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
 - (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.
- 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, other than

where it considers on reasonable grounds that the matter raised is trivial or is materially the same as a matter previously raised by the Customer or Trader and there has been no relevant change in circumstances, investigate the concern in accordance with Schedule 1 and advise the Customer, or the Trader on behalf of the Customer (as applicable), 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 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 with 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 Part 4 of the Act.

PART IV – OTHER RIGHTS

18. BREACHES AND EVENTS OF DEFAULT

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

- (a) in the case of a Serious Financial Breach by the Trader, within 2 Working Days of the date of receipt of such notice; or
- (b) in any other case, within 5 Working Days of the date of receipt of such notice.

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

- (a) the value of the acceptable security is less than the amount required to remedy the Serious Financial Breach; or
- (b) the Trader has arranged for a third party to provide acceptable security in accordance with clause 10.2(b)(ii) or (iii), and the Distributor has called on the third party to make payment in accordance with clause 10.23(b), and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.

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

- (a) the breach is an Event of Default for the purposes of this Agreement;
- (b) the other party must use reasonable endeavours to speak with the Chief Executive or another senior executive of the Defaulting Party in relation to the Event of Default, and to notify him or her of the other party's intention to exercise its rights under this clause 18; and
- (c) the Defaulting Party must continue to do all things necessary to remedy the breach as soon as practicable.

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

- (a) a Serious Financial Breach (in the case of the Trader only);
- (b) a material breach of the Defaulting Party's obligations under this Agreement that is not in the process of being remedied to the reasonable satisfaction of the other party; or
- (c) the Defaulting Party has failed on at least 2 previous occasions within the last 12 months to meet an obligation under this Agreement within the time specified and has received notice of such failures from the other party in accordance with clause 18.1 and, whether each individual failure is in itself material or not, if all such failures taken cumulatively materially adversely affect the other party's rights or the other party's ability to carry out its obligations under this Agreement or, if the Defaulting Party is the Trader, the Distributor's ability to carry out its obligations under any agreement with any other electricity trader,

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

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

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

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

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

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

19. TERMINATION OF AGREEMENT

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

- (a) **Termination by agreement:** both parties may agree to terminate this Agreement;
- (b) **Dispute resolution:** either party may terminate this Agreement in accordance with any agreement reached or determination made as a result of the Dispute resolution process set out in clause 23 if the other party has committed a breach that (in the case of the Trader) is not a Serious Financial Breach;
- (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 of any of the types described in clause 18.4(a)-(c), or a party has become subject to an Insolvency Event, the other party may (immediately in the case of an Insolvency Event, and not less than 1 Working Day after the end of the timeframe set out in clause 18.1 in the case of an Event of Default) issue a notice of termination to the defaulting party, effective either:
- (a) no less than 5 Working Days after the date of such notice; or
 - (b) immediately if the Trader has ceased to supply electricity to all Customers.
- 19.3 **Extending effective date of notice of termination:** A party that has given a notice under clause 19.2 may give a notice extending the date on which the notice given under clause 19.2 takes effect.
- 19.4 **Notice of termination lapses:** A notice of termination given under clause 19.2 will lapse if the defaulting party remedies the Event of Default or Insolvency Event (as applicable) prior to the notice of termination becoming effective or the other party withdraws the effective date of its notice.
- 19.5 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of either party, and all rights of that party accrued as at the date of termination.
- 19.6 **Trader remains liable for charges for remaining Customers:** If this Agreement is terminated for any reason, the Trader remains liable to pay any charges for Distribution Services that arise in relation to connected Customers that have not been switched to another trader, or whose ICPs have not been disconnected by the Distributor (unless the Distributor has received notice to disconnect the ICPs and has not done so, in which case the Trader will not be liable to pay any charges for Distribution Services in respect of the ICP from the date that is 2 Working Days after the date the Distributor received the notice to disconnect the ICP). The Distributor may charge for such Distribution Services at the prices that apply at the time of termination.
- 19.7 **Obligations to continue until termination:** The parties must continue to meet their responsibilities under this Agreement up to the effective date of termination.
- 19.8 **Events to occur on and from termination:** If this Agreement is terminated:

- (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 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 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 or exercising its rights under this Agreement (subject to any restrictions on the use of the information set out in this Agreement); and
 - (ii) any other purposes expressly permitted by this Agreement or agreed by the parties.

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:** Each party undertakes and agrees that if it or anyone acting on its behalf receives any information (including consumption data) directly or indirectly from the other party in error, it will:
- (a) promptly notify the other party 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 the information to the other party or destroy the information upon request by the other party.

The parties acknowledge and agree 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 by agreement between the parties 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
 - (v) any other event or circumstance beyond the control of the party invoking this clause 21.1; and
 - (c) the failure did not occur because the party invoking this clause failed to act in accordance with Good Electricity Industry Practice.
- 21.2 **No liability:** A Force Majeure Event will not give rise to any cause of action or liability based on default of the provision that the party has failed to comply with or observe due to the Force Majeure Event.
- 21.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it must:

- (a) notify the other party as soon as practicable that it is invoking this clause;
 - (b) provide the full particulars of the potential or actual Force Majeure Event; and
 - (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 21.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 21.1 must:
- (a) use all reasonable endeavours to avoid or overcome the Force Majeure Event;
 - (b) use all reasonable endeavours to mitigate the effects or the consequences of the Force Majeure Event; and
 - (c) consult with the other party on the performance of the obligations referred to in paragraphs (a) and (b).
- 21.5 **No obligation to settle:** Nothing in clause 21.4(a) is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

22. AMENDMENTS TO AGREEMENT

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

23. DISPUTE RESOLUTION PROCEDURE

- 23.1 **Internal dispute resolution processes:** The parties intend that, if possible, any differences between them concerning this Agreement will be resolved amicably by good faith discussion. When a difference or dispute arises in relation to this Agreement, including any question concerning its existence, validity, interpretation, performance, breach, or termination ("**Dispute**"), the party claiming the existence of a Dispute may provide notice describing such Dispute to the other party. If notice is provided, representatives of the parties must promptly meet to attempt to resolve the Dispute. Where the Dispute is not resolved by discussion between the parties within 15 Working Days of such notice being given, the matter is to be referred to the Chief Executives (or a person nominated by the Chief Executive) of the parties for resolution.
- 23.2 **Right to refer dispute to mediation:** If the Dispute cannot be resolved by the Chief Executives within 15 Working Days of the matter being referred to them, either party may give a notice to the other requiring that the Dispute be referred to mediation.
- 23.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties must attempt to agree on the identity of the mediator and, if they cannot agree within that timeframe, the mediator will be appointed by the President (or their nominee) of the New Zealand chapter of the Resolution Institute.
- 23.4 **Conduct of mediation:** In consultation with the mediator, the parties must determine a location, timetable and procedure for the mediation or, if the parties cannot agree on these matters within 7 Working Days of the appointment of the mediator these matters will be

determined by the mediator.

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

24. LIABILITY

- 24.1 **Payments of charges:** Nothing in this clause 24 will operate to limit the liability of either party to pay all charges and other sums due under this Agreement, or in accordance with any requirements set under Part 4 of the Commerce Act 1986.
- 24.2 **Direct damage:** Except in respect of liability under clauses 20, 24.9, 25, and 27, each party (and its officers, employees, and agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence), or otherwise) to the other party for only direct damage to the physical property of any person ("**Direct Damage**")

that results from a breach of this Agreement, negligence, or failure to exercise Good Electricity Industry Practice.

- 24.3 **Consequential loss excluded:** Except in respect of liability under clauses 20, 24.9, 25, and 27, neither party (nor any of their respective officers, employees, or agents) will be liable under or in connection with this Agreement (whether in contract, tort (including negligence), or otherwise) to the other party for:
- (a) any loss of profit, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;
 - (b) any indirect or consequential loss (including, but not limited to, incidental or special damages);
 - (c) any loss resulting from liability of a party to another person (except any liability for Direct Damage that arises under clause 24.2); or
 - (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.
- 24.4 **No liability in tort, contract etc:** Except as expressly provided in clauses 20, 24, 25, and 27, the Distributor's liability to the Trader and the Trader's liability to the Distributor, whether in tort (including negligence), contract, breach of statutory duty, equity, or otherwise arising from the relationship between them and of any nature whatsoever relating to the subject matter of this Agreement is excluded to the fullest extent permitted by law.
- 24.5 **Distributor not liable:** Except as provided in clause 25, the Distributor will not be liable for:
- (a) any failure to convey electricity to the extent that:
 - (i) such failure arises from any act or omission of any Customer or other person excluding the Distributor and its officers, employees, or agents;
 - (ii) such failure arises from a request by the System Operator or any action taken as a result of a nationally or regionally coordinated response to a shortage of electricity that results in either:
 - (A) a failure to convey or reduction of injection or supply of electricity into the Network; or
 - (B) an interruption in the conveyance of electricity in the Network;
 - (iii) such failure arises from any defect or abnormal conditions in or about any Customer's Premises;
 - (iv) the Distributor was taking any action in accordance with this Agreement including clause 4.4;
 - (v) such failure arises from any act or omission of the System Operator, a Generator, or a Grid Owner, unless and to the extent that the Distributor has obtained a service guarantee from the System Operator or Grid Owner and the System Operator or Grid Owner has paid the Distributor under the relevant service guarantee, in which case the Distributor will be liable to the Trader only to the extent of the Trader's proportionate share of such payment having regard to all other traders and all customers affected by the relevant event, as determined by the Distributor (acting reasonably); or
 - (vi) such failure arises because the Distributor is prevented from making necessary repairs (for example by police at an accident scene), except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this Agreement; or
 - (b) any failure to perform any obligation under this Agreement caused by the Trader's failure to comply with this Agreement, except to the extent that the failure is

caused or contributed to by the Distributor not acting in accordance with this Agreement; or

- (c) any momentary fluctuations in the voltage or frequency of electricity conveyed; or
- (d) nonconformity with regulated harmonic voltage and current levels where this nonconformity is because of the use of Fittings and Appliances by someone other than the Distributor.

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) 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, or \$2,000,000.

24.8 **Exclusion:** Clause 24.7:

- (a) does not limit a party's liability under clauses 20, 24.9, 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.

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

- (a) subject to clause 29.1, the Trader must, to the fullest extent permitted by law and including if the Customer is acquiring or holds itself out as acquiring electricity for the purpose of a business, exclude from each of its Customer Agreements (which includes a contract between the Trader and a purchaser of electricity that is not an end user) all warranties, guarantees, or obligations:
 - (i) imposed on the Distributor by the Consumer Guarantees Act 1993 or any other law concerning the services to be provided by the Distributor under this Agreement ("Distributor Warranties"); and
 - (ii) imposed on the Trader by the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity by the Trader under the Customer Agreement ("Trader Warranties");
- (b) if the Customer on-supplies electricity to an end-user the Trader must, as a condition of any Customer Agreement, require the Customer to include provisions in all agreements between the Customer and an end-user, excluding all Distributor Warranties and Trader Warranties to the fullest extent permitted by law, including if the end-user is acquiring, or holds itself as acquiring, electricity for the purposes of a business;
- (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; and
- (d) for the purposes of paragraph (a), the obligation to exclude warranties, guarantees, or obligations if the Customer is acquiring or holds itself out as acquiring electricity for the purpose of a business only applies if such exclusion is permissible under section 43 of the Consumer Guarantees Act 1993.

24.10 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.

24.11 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. The clauses referred to in this clause may be varied by agreement between the parties without the consent of the beneficiaries described in this clause.

25. INDEMNITY

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

26. CLAIMS UNDER THE DISTRIBUTOR'S INDEMNITY

26.1 Claim against Trader: If a Customer makes a claim against the Trader in relation to which the Trader seeks (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:

- (a) give written notice of the Claim to the Distributor as soon as 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, specifying the nature of the Claim in reasonable detail; and
- (b) make available to the Distributor all information that the Trader holds in relation to the Claim that is reasonably required by the Distributor.

26.2 Claim against Trader in relation to breach of service standards by the Distributor: The Distributor and the Trader acknowledge that a breach of the Service Standards in Schedule 1 of this Agreement by the Distributor may result in a Customer making a claim against the Trader for an alleged breach of the acceptable quality guarantee in section 7A of the Consumer Guarantees Act 1993 (a "Claim"). If the Trader reasonably believes that a Claim may arise, the Trader agrees

not to make any determination, admission, settlement or compromise in respect of the Claim without first consulting with the Distributor in respect of the Claim and complying with the processes set out in this Schedule.

- 26.3 If the Trader becomes aware of or suspects a breach of the Service Standards by the Distributor which may give rise to a Claim, the Trader must give the Distributor written notice of the reasons why it suspects that there has been a breach and all information accessible by the Trader in relation to the matter that is reasonably requested by the Distributor.
- 26.4 If the Distributor is notified of a potential Claim under clause 26.2, the Trader is deemed to have authorised the Distributor to:
- (a) communicate directly with the relevant Customer and the Dispute Resolution Scheme in relation to the Claim; and
 - (b) assume the management and defence of the Claim, provided that the Distributor must advise the Trader as soon as reasonably practicable, and in any event within 15 working days, after being notified of the Claim if it intends to assume the management and defence of the Claim.
- 26.5 If the Distributor elects to assume the management and defence of the Claim under clause 26.4(b):
- (a) the Distributor may determine the conduct of the Claim;
 - (b) the Trader may advise the relevant Customer and the Dispute Resolution Scheme that the Distributor is responsible for the conduct of the Claim;
 - (c) the Distributor must ensure that the Trader is fully informed on a timely basis of any developments in relation to the Claim; and
 - (d) the Distributor must ensure that the Trader is 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.
- 26.6 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, and no later than within 15 working days, notify the Trader accordingly. In that event, the Trader may resume the conduct of the management and defence of the Claim.
- 26.7 If the Distributor elects not to assume the management and defence of the Claim under clause 26.4(b), or the Trader resumes management and defence of the Claim under clause 26.5, the Trader will ensure that:
- (a) the Distributor is kept fully informed on a timely basis of any developments in relation to the Claim; and
 - (b) the Distributor is consulted in a timely manner before the Trader takes any significant steps in relation to the Claim, so that the reputation of the Distributor is not unfairly harmed.
- 26.8 The following payment arrangements apply, subject to the parties' compliance with clauses 26.2 to 26.7:
- (a) The Trader may require the Distributor to pay the Trader the reasonable out of pocket costs incurred by the Trader in managing and defending or settling the Claim, at not less than monthly intervals upon presentation of the documentation supporting the claim for payment, as and when those costs are incurred by the Trader.
 - (b) The Distributor shall promptly pay the Trader any amounts due as a remedy cost under section 46A of the Consumer Guarantees Act 1993, following:
 - (i) the Distributor's liability being agreed by the Distributor with the Trader; or
 - (ii) the Distributor's liability being determined by the Dispute Resolution Scheme; or
 - (iii) the Distributor's liability otherwise being finally determined by a court of competent jurisdiction.
 - (c) The Trader must promptly repay amounts paid by the Distributor to the Trader (including under clause 26.8(a)) in respect of any liability to or on behalf of the Trader under the indemnity in section 46A of the Consumer Guarantees Act 1993 to the extent that:
 - (i) the Claim is or becomes a claim for which the Trader is not entitled to be

- compensated under that indemnity; or
 - (ii) a court of competent jurisdiction determines that the Trader is not entitled to be indemnified by the Distributor for the Claim; or
 - (iii) the Trader receives payment under a contract of insurance in respect of the Claim, or the insurer pays, discharges or satisfies the Claim directly and the Trader is not obliged to refund the payment to the insurer as a result of the payment by the Distributor under the indemnity; or
 - (iv) the Trader receives payment from a person other than the Distributor in respect of the Claim, or that person pays, discharges or satisfies the Claim directly; or
 - (v) the Trader did not perform an obligation referred to in clauses 26.2 to this clause 26.8, and the Distributor's liability is or would have been reduced if the obligation had been performed.
- (d) Where the Distributor is liable to pay the Trader any amount in accordance with this clause 26.8 in respect of property damage which is not related to the property of the Trader, the Trader agrees that it will 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) without deduction or set-off. The Distributor may, with the prior written consent of the Trader (such consent not to be unreasonably withheld or delayed), pay such amount directly to the property owner instead of the Trader. In such circumstances, the Trader will provide the Distributor with such information as required to enable the Distributor to make the payment and the Distributor will provide supporting written evidence of this to the Trader as soon as reasonably practicable after making such payment.

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

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

27. FURTHER INDEMNITY

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

- (a) any claim by any person with whom the Trader has a contractual relationship in relation to the provision of services or the conveyance of electricity on the Network to the extent that the claim arises out of or could not have been made but for:
 - (i) any breach by the Trader of any of its obligations under this Agreement;
 - (ii) the disconnection by the Trader, or disconnection requested by the Trader, of any Customer's Premises in accordance with this Agreement, unless the disconnection is necessary to comply with Good Electricity Industry Practice or if the disconnection is due to this Agreement being terminated for the Distributor's breach or Insolvency Event;
 - (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;
 - (iv) any failure by the Trader to perform any obligation under any agreement

- between the Trader and any Generator or Customer or other third party;
 - (v) any failure by the Trader to comply with its obligations required by law or regulation; or
 - (vi) any action undertaken by the Distributor under or in connection with this Agreement at the request of the Trader; and
 - (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this Agreement.
- 27.2 **Trader will be indemnified:** Subject to clause 28, the Distributor indemnifies and holds harmless the Trader and will keep the Trader indemnified and held harmless from and against any direct loss or damage (including legal costs on a solicitor/own client basis), suffered, or incurred by the Trader arising out of or in connection with:
 - (a) any claim by any person with whom the Distributor or Trader has a contractual relationship in relation to the provision of services or conveyance of electricity to the extent that claim arises out of or could not have been made but for:
 - (i) any breach by the Distributor of its obligations under this Agreement;
 - (ii) the disconnection by the Distributor of any Customer's Premises in accordance with this Agreement, unless the disconnection is necessary to comply with Good Electricity Industry Practice or if the disconnection is due to this Agreement being terminated for the Trader's breach or Insolvency Event;
 - (iii) the termination of this Agreement by the Distributor, except when the termination is the result of a breach by the Trader or the Trader suffering an Insolvency Event;
 - (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 regulation; 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

harm, 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, 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.
- 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 **Customer information:** The Trader will on reasonable written request from the Distributor, and within a reasonable timeframe, provide the Distributor with such Customer information as is reasonably available to the Trader and necessary to enable the Distributor to fulfil its obligations in accordance with this Agreement. The information will be treated by the Distributor as Confidential Information and the Distributor expressly acknowledges and agrees that it is not authorised to, and will not, use such information in any way or form other than as permitted by this clause 31.2.
- 31.3 **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 (the "Records") to the extent that those Records relate to the obligations of the Provider under this Agreement. 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. If the Trader is the Provider and any relevant information is held by 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 (provided that doing so does not impose any additional costs on the Trader).

31.4 **Limitations on the Verifier:** In relation to its review of the Records under clause 31.3, 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 31.4(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.

31.5 **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 31.5 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.

31.6 **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 31.3 or 31.5 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, and prevails over any earlier agreement concerning its subject.

32.3 **No assignment:** Neither party may assign any benefit or burden under or in relation to this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld. For the purposes of this clause 32.3, unless a party

is listed on the New Zealand Stock Exchange, a change in control of a party will be deemed to be an assignment.

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

33. INTERPRETATION

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

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

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

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

"**Actual Invoice**" has the meaning given in clause 9.3;

"**Additional Security**" has the meaning given in clause 10.6;

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

"**Appliance**" means an electrical appliance as defined in section 2(1) of the Electricity Act 1992;

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

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

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

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

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

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

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

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

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

"Controlled Load Option" has the meaning given in clause 5.1(a);

"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" means any document, documents or other material containing supply correction information, as defined in section 19E of 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" means any document, documents or other material containing supply correction information, as defined in section 19E of 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;

"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% per annum;

"Direct Customer Agreement" means an agreement between the Distributor and a Customer for the provision of Distribution Services;

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

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

"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;

"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;

"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;

"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;

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

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

"Incumbent" has the meaning given in clause 5.3;

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

"Insolvency Event" means a party:

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

"Interest Rate" means, on any given day, the 3 month bid rate in the Bank Bill Reference

Rates Report published by the New Zealand Financial Markets Association (NZFMA) and applying at or about 10.30 a.m. on the day of calculation or, if no such rate is displayed or that report is not available, then the 3 month bid rate in the Bank Bill Reference Rates Report when the rate was last displayed or, as the case may be, that report 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;

"Other Load Control Option" has the meaning given in clause 5.1(b);

"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;

"Pro forma Invoice" has the meaning given in clause 9.3;

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

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

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

"Revision Invoice" has the meaning given in clause 9.3;

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

"Serious Financial Breach" means:

- (a) a failure by the Trader to pay an amount due and owing that exceeds the greater 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 failure by the Trader to pay 100% of the actual charges payable by the Trader for the previous two months, unless the amount is genuinely disputed by the Trader in accordance with clause 9.7; or
- (c) 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 any document, documents or other material containing taxable supply information as defined in section 19E 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;

"Use of money adjustment" means an amount payable at the Interest Rate plus, the average debt premium plus debt issuance costs, estimated by the Commerce Commission in its determination of the cost of capital for distributors' price-quality paths, calculated and compounded daily (at 1/365th of the annual rate) or monthly (at 1/12 of the annual rate). The parties may agree an amount beneath which a use of money adjustment does not apply;

"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

Introduction

- S1.1 If the Trader becomes aware of or suspects a breach of a Service Standard that is subject to a Service Guarantee Payment by the Distributor, the Trader must give the Distributor notice of the breach or the reasons why it suspects that there has been a breach.
- S1.2 If the Trader gives the Distributor notice under clause S1.1 regarding an actual or suspected breach of the Service Standards, the Distributor must, unless clause S1.5 applies, investigate and advise the Trader of the results of the investigation including confirming whether a Service Guarantee Payment is to be made in respect of any breach.
- S1.3 If a Customer advises the Distributor of a breach or a suspected breach of a Service Standard that is subject to a Service Guarantee Payment, the Distributor must, unless clause S1.5 applies:
- (a) give notice to the Trader responsible for the Customer as soon as reasonably practicable; and
 - (b) investigate and advise the Customer and the Trader of the results of the investigation including confirming whether a Service Guarantee Payment is to be made in respect of any breach.
- S1.4 If the Distributor breaches a Service Level that is subject to a Service Guarantee Payment, it must, unless clause S1.5 applies, 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).
- S1.5 The Distributor is not required to investigate an actual or suspected breach of the Service Standards where the Distributor considers, on reasonable grounds, the actual or suspected breach to be trivial or to be materially the same as an actual or suspected breach previously raised by the Trader (or Customer) where there has been no relevant change in circumstances. However, the Distributor must advise the Trader (and Customer, if applicable) of its decision.
- S1.6 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.
- S1.7 Despite clauses S1.4 and S1.6, where the Distributor breaches a Service Level that is subject to a Service Guarantee Payment and a Customer whose ICP has been affected makes a request directly to the Distributor for an applicable Service Guarantee Payment to be made to the Customer, in the interests of prompt resolution, the Distributor may pay the Service Guarantee Payment directly to the Customer.
- S1.8 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.
- S1.9 The Distributor's failure to meet any Service Standard or Service Level (or any associated procedural requirements in this Schedule) will not constitute a breach of this Agreement, and the Trader will have no remedy for such failure except to the extent the Trader is expressly entitled to claim a Service Guarantee Payment for the failure in accordance with this Agreement.

Requirements for operational terms:

- 1 *This Schedule 1 must include a table or tables setting out the Service Standards that the Distributor must meet when providing Distribution Services by specifying Service Measures for each of the following:*
 - (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, including 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, which may be 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, which may be categorised by Customer category and Network locality; and*
 - (d) *notifications to the Trader and Customers about Planned Service Interruptions.*
- 2 *For each Service Measure, the table must specify:*
 - (a) *the Service Level that applies to the Service Measure;*
 - (b) *any conditions that apply to the Service Measure; and*
 - (c) *the Service Guarantee Payment for the Service Measure, if any.*
- 3 *An example of a table that may comply with these requirements is shown in Table 1. Revise as appropriate and then delete this dashed box.*

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 the dates and times specified in the relevant EIEP;*
- (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 EIEP1 replacement RM normalised reporting methodology for information in respect of mass market ICPs for which the Distributor has specified time-blocked periods for the application of Prices;]*
- (ii) *[the EIEP1 as-billed reporting methodology for information in respect of half hour ICPs for which the Distributor has specified time-blocked periods for the application of Prices;]*
- (iii) *[summary consumption information as described in EIEP2; and]*
- (iv) *[information in respect of half hour ICPs as described in EIEP3 for which the Distributor has specified half hour metering information for the application of Prices, or where time blocked periods are specified by the Distributor for the application of Prices and the Trader has agreed in writing to the provision of half hour metering information; 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 RM normalised consumption information, the Trader must provide revised consumption information to the Distributor in accordance with EIEP1[, EIEP2][, or EIEP3], as relevant.]

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 quantity 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 – Detailed ICP billing and volume information;
- (b) EIEP2 – Aggregated billing and volume information;
- (c) EIEP3 – Half hour metering information;
- (d) EIEP5A – Planned service interruptions;
- (e) EIEP12 – Tariff rate change information; and
- (f) 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) EIEP5B – Unplanned 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 operational terms:

This section must set out:

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

Examples of clauses that may comply are set out in clauses S5.1 to S5.22. Revise as appropriate and then delete this dashed box.

Option A – Distributor responsible for receiving and managing communications from Customers

S5.1 The Distributor and the Trader agree that the Distributor is responsible for receiving and managing communications from Customers about Unplanned Service Interruptions on the Distributor's network.

S5.2 The Trader must advise the Customers on the Distributor's network for whom the Trader is responsible:

- (a) that the Distributor is responsible for receiving and managing communications from Customers about Unplanned Service Interruptions on the Distributor's network; and*
- (b) of the Distributor's contact details for Customers in relation to Unplanned Service Interruptions.*

S5.3 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.

S5.4 The Distributor must provide information under clause S5.3 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.*

S5.5 The information provided under clause S5.3 must:

- (a) unless otherwise agreed, be provided by electronic file transfer in accordance with EIEP5B; and*
- (b) include, if known, a description of the reason for the interruption, the areas affected, and an expected time for restoration.*

S5.6 Unless otherwise agreed, the Distributor must, within 10 minutes of new information about an Unplanned Service Interruption becoming available to the Distributor and at intervals of no longer than 60 minutes, provide the Trader with an update of the status of the Unplanned Service Interruption, until the Distributor advises the Trader of a firm restoration time.

S5.7 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.

S5.8 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.

S5.9 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, or by any other information exchange method agreed by the parties. The Distributor may at any time advise the Trader to stop logging calls with the Distributor.

S5.10 The Trader may provide the Distributor's contact details to the Customer rather than taking details and logging the call with the Distributor.

S5.11 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.*

S5.12 *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;*
- (b) *status information and updates via short message service (SMS), smartphone application, and e mail; and*
- (c) *status information and updates on the Distributor's:*
 - (i) *automated telephone information service;*
 - (ii) *website; and*
 - (iii) *social media platforms and other digital media channels.*

Option B – Trader responsible for receiving and managing communications from Customers

S5.13 *The Distributor and the Trader agree that the Trader is responsible for receiving and managing communications from Customers about Unplanned Service Interruptions on the Distributor's network.*

S5.14 *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.*

S5.15 *The Distributor must provide information under clause S5.14 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.*

S5.16 *The information provided under clause S5.14 must:*

- (a) *unless otherwise agreed, be provided by electronic file transfer in accordance with EIEP5B; and*
- (b) *include, if known, a description of the reason for the interruption, the areas affected, and an expected time for restoration.*

S5.17 *Unless otherwise agreed, the Distributor must, within 10 minutes of new information about an Unplanned Service Interruption becoming available to the Distributor and at intervals of no longer than 60 minutes, provide the Trader with an update of the status of the Unplanned Service Interruption, until the Distributor advises the Trader of a firm restoration time.*

S5.18 *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.*

S5.19 *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.*

S5.20 *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, or by any other information exchange method agreed by the parties. The Distributor may at any time advise the Trader to stop logging calls with the Distributor.*

S5.21 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.*

S5.22 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;*
- (b) status information and updates via short message service (SMS), smartphone application, and e mail; and*
- (c) status information and updates on the Distributor's:*
 - (i) automated telephone information service;*
 - (ii) website; and*
 - (iii) social media platforms and other digital media channels.*

Planned Service Interruptions

Requirements for operational terms: *This section must set out the parties' obligations and the process that must be followed to notify Customers if the Distributor wishes to undertake a Planned Service Interruption.*

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

- (a) the information the Distributor must provide to the Trader if the Distributor wishes to undertake a Planned Service Interruption, which must include:*
 - (i) the ICP identifiers of the affected ICPs; and*
 - (ii) the information exchange format and procedure with which the parties must comply;*
- (b) the process and timeframes the Trader must comply with when notifying affected Customers for which it is responsible of the Planned Service Interruption;*
- (c) a process for the Trader to request an alternative date and time for the Planned Service Interruption and for the Distributor to consider such requests; and*
- (d) the steps the Distributor must take if it intends to undertake a Planned Service Interruption on an urgent basis; and*

- (e) whether or not the Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions.

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

- (a) the process the Distributor must follow to obtain Customer information held by the Trader that is necessary to enable the Distributor to provide notifications about Planned Service Interruptions;
- (b) the information the Distributor must provide to Customers affected by the Planned Service Interruption; and
- (c) the information the Distributor must provide to the Trader about the Planned Service Interruption, including the:
- (i) affected ICP identifiers;
 - (ii) amount of notice given to Customers; and
 - (iii) the information exchange format and procedure with which the parties must comply.

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

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

S5.23 The Distributor and the Trader agree that for any Planned Service Interruptions on the Distributor's network the Trader is responsible for notifying each Customer on the Distributor's network who the Distributor identifies as being affected by the Planned Service Interruption and for whom the Trader is responsible.

S5.24 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 whom it is responsible of the Planned Service Interruption.

S5.25 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.

S5.26 If the Distributor receives a request from the Trader for an alternative date and/or time for the Planned Service Interruption in accordance with the timeframe in clause S5.25, 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.

S5.27 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 clause S5.24 as soon as reasonably practicable.

S5.28 If a 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 S5.24, S5.26 and S5.27, arrange for public notification through a local newspaper, or other effective method, on behalf of all traders.

S5.29 The Distributor must meet the reasonable costs incurred by the Trader in notifying Customers of Planned Service Interruptions, except where such notification is directly attributable to a failure by the Trader in the first instance to notify Customers or due to a change to the Planned Service Interruption at the Trader's request (but not due to a request from one or more Customers of the Trader).

Option B – Distributor to notify Customers

S5.30 The Distributor and the Trader agree that for any Planned Service Interruptions on the Distributor's network the Distributor is responsible for notifying each Customer on the Distributor's network who the Distributor identifies as being affected by the Planned Service Interruption.

S5.31 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. The Distributor must endeavour to provide the notice at least 10 Working Days before the date on which the Planned Service Interruption is scheduled but, in any event, at least 4 Working Days before the date on which the Planned Service Interruption is scheduled. Such notice will be provided in a manner determined by the Distributor acting reasonably.

Note: the 4 Working Day timeframe in clause S5.31 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 consumers who would be affected by the Planned Service Interruption.

S5.32 If required, and despite the terms of an agreement between the parties on the terms set out in Appendix B or Appendix C of Schedule 12A.1 of the Code [or any other historical agreement between the parties] (if applicable), the Trader must provide Customer contact information to the Distributor on a monthly basis (or such other time period agreed in writing by the parties). 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. The Distributor must reimburse the Trader for any reasonable costs associated with the Trader providing the Customer contact information to the Distributor under this clause.

S5.33 The Distributor must provide the Trader with notice of the Planned Service Interruption in accordance with EIEP5A at least 4 Working Days before the Planned Service Interruption is scheduled to occur.

S5.34 Despite clauses S5.31 and S5.33, it is acknowledged and agreed that events or circumstances may prevent the Distributor from providing at least 4 Working Days' prior notice of a Planned Service Interruption to affected Customers and Traders, in which case the Distributor must provide the affected Customers and Traders with as much prior notice as reasonably practicable.

S5.35 The Distributor must promptly notify affected Customers and the Traders responsible for them of any change to a Planned Service Interruption, where such change includes the timing of, the cancellation of, and the Customers affected by, the Planned Service Interruption.

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.

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; and
- (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.

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, and provide to the other party a copy of a certificate of compliance and record of inspection for the site under the Electricity (Safety) Regulations 2010, where relevant.

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 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 agreed with 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. 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, the Trader and Distributor must first negotiate in good faith 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.*

Notice of the Electricity Industry Participation Code Amendment (Distributor Agreement Amendments) 2024

- 1 Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, the Electricity Authority gives notice of making the Electricity Industry Participation Code Amendment (Distributor Agreement Amendments) 2024 ("amendment").
- 2 The amendment comes into force on **25 November 2024**.
- 3 The amendment amends the Default agreement – Provision of consumption data in Appendix C of Schedule 12A.1 of the Electricity Industry Participation Code ("Code") to permit distributors to combine consumption data with other data or databases without requiring the relevant trader's prior agreement, subject to certain requirements.
- 4 The amendment also amends the Default distributor agreement for distributors and traders on local networks (interposed) in Appendix A of Schedule 12A.4 to change the status of recorded terms to either core terms or operational terms. It also makes some consequential changes to Schedules 12A.1 and 12A.4 and other areas of the Code.
- 5 The amendment is secondary legislation for the purpose of the Legislation Act 2019 and is administered by the Authority.
- 6 A copy of the amendment and the Code is available on the Electricity Authority's website <http://www.ea.govt.nz/code-and-compliance/the-code/>
- 7 A copy of the amendment and the Code may also be inspected free of charge or purchased from the Electricity Authority, Level 7, Aon Centre, 1 Willis Street, Wellington.

Dated at Wellington this 11 day of October 2024.



ANNA KOMINIK, Chair,
Electricity Authority