



# Use-of-System Agreement (Conveyance)

between

**MAINPOWER NEW ZEALAND LIMITED**

and

**[RETAILER FULL LEGAL NAME]**

**MainPower Standard Conveyance Use of System Agreement (finalised as at  
19 December 2023, effective 1 March 2024)**

# Contents

PARTIES .....	3
SIGNATURES.....	3
INTRODUCTION.....	4
AGREEMENT.....	5
PART I – SERVICE COMMITMENTS.....	5
1. TERM OF AGREEMENT .....	5
2. GENERAL OBLIGATIONS .....	5
3. EQUAL ACCESS .....	5
4. INFORMATION EXCHANGE.....	5
5. SERVICES .....	7
6. LOAD MANAGEMENT.....	7
7. LOSSES AND LOSS FACTORS.....	9
8. PRICES, PRICE CHANGES AND ALLOCATING PRICE CATEGORIES .....	10
PART II – PAYMENT OBLIGATIONS.....	10
9. BILLING INFORMATION AND PAYMENT.....	10
PART III – OPERATIONAL REQUIREMENTS .....	14
10. GENERAL OPERATIONAL REQUIREMENTS .....	14
11. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPS .....	15
PART IV – OTHER RIGHTS .....	17
12. BREACHES AND EVENTS OF DEFAULT .....	17
13. TERMINATION OF AGREEMENT .....	18
14. CONFIDENTIALITY.....	21
15. FORCE MAJEURE .....	23
16. AMENDMENTS TO AGREEMENT .....	24
17. DISPUTE RESOLUTION PROCEDURE.....	26
18. LIABILITY.....	27
19. NOTICES .....	33
20. MISCELLANEOUS.....	33
21. INTERPRETATION .....	34
SCHEDULE 1 - SERVICE STANDARDS .....	44
SCHEDULE 2 - ELECTRICITY INFORMATION EXCHANGE PROTOCOLS .....	46
SCHEDULE 3 - SERVICE INTERRUPTION COMMUNICATION POLICIES .....	47
SCHEDULE 4 - CONNECTION POLICIES .....	49
SCHEDULE 5 - LOAD MANAGEMENT.....	53
SCHEDULE 6 - BILLING SERVICES.....	56
SCHEDULE 7 - PROVISION OF DATA .....	75
SCHEDULE 8 - FEES.....	76
SCHEDULE 9 - ADDITIONAL SERVICES .....	77
SCHEDULE 9A – DISTRIBUTIONS ON BEHALF OF DISTRIBUTOR.....	78
SCHEDULE 9B - PROVISION OF TRUST INFORMATION .....	84

**PARTIES**

<b>Distributor: MainPower New Zealand Limited</b>	<b>Retailer: [Insert full legal name of Retailer]</b>
<u>Distributor’s Details:</u> Street Address: 172 Fernside Road, Rangiora 7440  Postal Address: PO Box 346, Rangiora 7440  Address for Notices: PO Box 346, Rangiora 7440  <u>Contact Person’s Details:</u> Name: Sarah Barnes  Position: Legal & Regulatory Manager  Phone: 03 311 8553  Email Address: sarah.barnes@mainpower.co.nz	<u>Retailer’s Details:</u> Street Address:   Postal Address:   Address for Notices:   <u>Contact Person’s Details:</u> Name:   Position:   Phone:   Email Address:

**EFFECTIVE DATE: 1 March 2024**

**SIGNATURES:**

\_\_\_\_\_  
Signature  
  
Andy Lester  
\_\_\_\_\_  
Name of authorised person signing for  
Distributor  
  
Chief Executive  
\_\_\_\_\_  
Position  
  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Name of authorised person signing for  
Retailer  
  
\_\_\_\_\_  
Position  
  
\_\_\_\_\_  
Date

## INTRODUCTION

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- A. The Distributor will provide Distribution Services to Customers on the terms and conditions set out in the Connection Agreements.
- B. The Retailer has agreed to sell electricity to Customers on the terms and conditions set out in the Retailer's Customer Agreements.
- C. The Distributor and the Retailer agree that the Distributor will convey electricity through the Network on a conveyance-only basis on the terms of this agreement, to allow the Retailer to supply electricity to Customers.
- D. The Retailer has agreed to bill Distribution Services charges (including pass-through of the MainPower Rebate) to Customers as agent of the Distributor except for those Customers associated with ICPs the Distributor is direct billing Distribution Services charges as recorded on the Registry in the 'Direct Billed Status' field.
- E. For Customers associated with ICPs connected to the Network where the Retailer is billing those Customers for Distribution Services charges as agent of the Distributor, the Distributor authorises the Retailer to act on its behalf to create and effect the contractual relationship for the provision of line function services between the Distributor and those Customers.
- F. In accordance with section 60(1B) of the GST Act, the Distributor and Retailer agree that in relation to the supply of Distribution Services the supply is to be treated as two separate supplies for the purposes of the GST Act, being a supply of Distribution Services from the Distributor to the Retailer, and a supply of Distribution Services from the Retailer to the Customer.
- G. The Distributor and the Retailer agree to exchange information and/or provide Services to one another on the terms and conditions set out in this agreement.
- H. The Distributor and the Retailer acknowledge that in addition to this agreement they are separately bound by the Code.

# AGREEMENT

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## PART I – SERVICE COMMITMENTS

### 1. TERM OF AGREEMENT

- 1.1 Term: This agreement commences on the Effective Date and continues until it is terminated under clause 13 or at law.

### 2. GENERAL OBLIGATIONS

- 2.1 Each party will:

- (a) endeavour in accordance with Good Electricity Industry Practice to fulfil its contractual obligations to Customers;
- (b) use reasonable endeavours, consistent with Good Electricity Industry Practice, to comply with the Service Standards; and
- (c) 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 other party under any Connection Agreement or Customer Agreement.

- 2.2 The Distributor will provide a 24-hour, seven day a week, Unplanned Service Interruption diagnosis, Network repair and information service to Customers in accordance with the terms of the Connection Agreements.

### 3. EQUAL ACCESS

- 3.1 **Equal access:** The Distributor will make available to the Retailer all of the services that the Distributor provides to any other retailer under an agreement in accordance with which the retailer is entitled to have electricity delivered by the Distributor via the Network to its customers, but only if those services cannot be practicably provided by any other party (the “**Sole Provider Services**”).

- 3.2 **Fees:** The fees for each Sole Provider Service (if any) provided:

- (a) are set out in Schedule 8 or are as otherwise agreed by the parties in writing; and
- (b) will be itemised separately from the fees for any other Services on the same Invoice.

- 3.3 **The Distributor will notify the Retailer of alternative services:** Within 20 Working Days after agreeing to provide a new Sole Provider Service to any other retailer, or materially amending an existing Sole Provider Service provided to any other retailer, the Distributor will notify the Retailer of the availability of the new or amended Sole Provider Service and invite the Retailer to take up the new or amended Sole Provider Service as a whole.

### 4. INFORMATION EXCHANGE

- 4.1 **Distributor’s obligations:** The Distributor will supply the Retailer with the following information, within the following timeframes (if any):

- (a) Service Interruption information in accordance with Schedule 3;

- (b) information in relation to new connections and changes in the capacity of existing connections in accordance with Schedule 4;
- (c) notice that the Distributor intends to carry out the Temporary Disconnection of an ICP at which the Retailer is selling electricity in accordance with the policies and procedures for Temporary Disconnections, within the timeframes set out in Schedule 4 and the relevant provisions of the Code;
- (d) notice that the Distributor has carried out a Vacant Site Disconnection or associated reconnection of an ICP at which the Retailer is selling electricity, within 2 Working Days of such action having been taken as set out in Schedule 4;
- (e) the policies developed by the Distributor about the priorities for Load Shedding, restoration of load or similar events;
- (f) notice of proposed changes to the Connection Agreements that the Distributor reasonably believes may affect the Retailer;
- (g) notice of any interference with or damage to the Retailer's equipment discovered by the Distributor, within 2 Working Days after discovery by the Distributor; and
- (h) notice of any evidence of theft of electricity or loss of electricity, within 2 Working Days of the discovery, and, if an assessment of the loss has been made, that assessment.

4.2 **Retailer's obligations:** The Retailer will supply the Distributor with the following information, within the following timeframes (if any):

- (a) Customer information using EIEP4, provided monthly as a snapshot (replacement) file unless otherwise agreed;
- (b) as much prior notice as reasonably practicable that the Retailer intends to carry out the Temporary Disconnection of an ICP for credit reasons (if the Retailer has the capability to provide advance notice or real time information), but in any event no later than 2 Working Days after the Temporary Disconnection is completed unless otherwise agreed, in accordance with the policies and procedures for Temporary Disconnections set out in Schedule 4 and the relevant provisions of the Code;
- (c) notice that the Retailer has carried out a Vacant Site Disconnection and/or associated reconnection by updating the Registry in accordance with the Code;
- (d) notice of proposed changes to its Customer Agreements that the Retailer reasonably believes may affect the Distributor;
- (e) notice of any interference with or damage to the Distributor's Equipment discovered by the Retailer, within 2 Working Days after discovery by the Retailer; and
- (f) notice of any evidence of theft of electricity or loss of electricity, within 2 Working Days of the discovery, and, if an assessment of the loss has been made, that assessment.

4.3 **Protocols for exchanging information:** From time to time the Electricity Authority will publish certain EIEPs, including new or amended EIEPs, which specify regulated or recommended formats for the exchange of information between distributors and retailers.

Unless this agreement or the Code require the parties to comply with one or more EIEPs when exchanging information, the Distributor and Retailer agree that they will use reasonable endeavours to comply with any other relevant EIEPs when exchanging information, provided that the frequency at which and method by which the parties will exchange information is such that compliance with the EIEP is cost-effective for both parties.

## 5. SERVICES

5.1 **Retailer Services:** From the Effective Date the Retailer will provide the following Services to the Distributor:

- (a) Load Management Services (if any) in accordance with clause 6 and Schedule 5;
- (b) Billing Services in accordance with clause 9 and Schedule 6;
- (c) notify Customers of Planned Service Interruptions in accordance with Schedule 3;
- (d) distribution of discounts or dividends on behalf of the Distributor in accordance with Schedule 9A; and
- (e) provision of trust information in accordance with Schedule 9B (only if required in addition to EIEP4).

5.2 **Distributor Services:** From the Effective Date the Distributor will provide the following Services to the Retailer:

- (a) Load Management Services (if any) in accordance with clause 6 and Schedule 5;
- (b) management of Unplanned Service Interruptions and Planned Service Interruptions in accordance with Schedule 3; and
- (c) disconnection and reconnection Services in accordance with Schedule 4.

5.3 **Changes to Services:** During the term of this agreement, either party may request a change in the provision of Services in clauses 5.1 and 5.2 by notice to the other party and the procedure in clause 16.2 shall apply.

## 6. LOAD MANAGEMENT

6.1 **Distributor may control load:** Subject to clause 6.3, the Distributor may control part or all of the Customer's load in accordance with this clause 6 and Schedule 5 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 Customer or Retailer (as the case may be) on the basis of the Controlled Load Option; 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 Retailer from time to time (an "**Other Load Control Option**") with respect to the Customer (who elects to take up the Other Load Control Option); or
- (c) notwithstanding clauses 6.2 and 6.3, the Distributor's Network Connection Standards require load control equipment to be fitted to certain connections that are not on a Controlled Load Option so that the load may be controlled by the Distributor to comply with requests and instructions issued by the System Operator

when managing System Security or Network system security during a System Emergency Event.

- 6.2 **Retailer may control load:** Subject to clause 6.3, if the Retailer offers to a Customer, and the Customer elects to take up, a price option that provides a non-continuous level of service by allowing the Retailer to control part of or all of the Customer's load, the Retailer may control the relevant part of the Customer's load in accordance with this clause 6 and Schedule 5.
- 6.3 **Control of load by an Entrant if some load is controlled by an Incumbent:** If either party (the "**Entrant**") seeks to control part of a Customer's load at the 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 6.1 or 6.2 (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 6.1 or 6.2 (as the case may be).
- 6.4 **No interference with or damage to an Incumbent's Load Control System:** The Entrant will 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.
- 6.5 **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 will, on 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.
- 6.6 **Retailer to make controllable load available to the Distributor for management of System Security:** If the Retailer has obtained the right to control part of any Customer's load in accordance with clause 6.2, the Retailer will:
- (a) within 5 Working Days of having first obtained such a right, notify the Distributor that the Retailer has obtained the right;
  - (b) unless the Distributor agrees otherwise, and within 60 Working Days of providing the notice in 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;
    - (ii) is for the purpose of coordinating the Retailer'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.
- 6.7 **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.
- 6.8 **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.
7. **LOSSES AND LOSS FACTORS**
- 7.1 **Retailer to provide information to enable calculation of Loss Factors by Distributor:** The Distributor may obtain information from the reconciliation manager for the purpose of calculating Loss Factors. The Retailer 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.
- 7.2 **Calculation of Loss Factors:** Subject to clause 7.5, the Distributor will calculate Loss Factors in accordance with the Loss Factor Guidelines and requirements of the Code relating to Loss Factors (if any).
- 7.3 **Change of Loss Factors:** If the Distributor wishes to change one or more Loss Category codes or Loss Factors, the Distributor will give the Retailer at least 40 Working Days' notice of the proposed change (including the reasons for the proposed change).
- 7.4 **Transparent Loss Factors methodology:** A notice provided to the Retailer in accordance with clause 7.3 must include details of the methodology and information used by the Distributor to determine the Loss Factors.
- 7.5 **Complaints about Loss Factors:** If, at any time, the Retailer considers that one or more Loss Factors notified by the Distributor are not appropriate, or that the methodology or information used to calculate those Loss Factors is incorrect, the Retailer 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 Retailer's concerns in accordance with clause 7.3. The Distributor must decide whether to make the change and, if applicable, give notice under clause 7.3, no later than 20 Working Days after receipt of the complaint.

- 7.6 **Disputes about Loss Factors:** If the Distributor does not change its notice after having received a complaint from the Retailer, the Retailer may raise a Dispute with the Distributor for the Loss Factors, to be determined in accordance with the dispute resolution process set out in clause 17. 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 when the change is to apply, which will be no later than 60 Working Days from the date on which the Dispute is finally resolved.

## 8. PRICES, PRICE CHANGES AND ALLOCATING PRICE CATEGORIES

- 8.1 **General:** This clause 8 applies only to ICPs for which the Retailer is billing Distribution Services charges as an agent of the Distributor and does not apply to ICPs which the Distributor is direct billing Distribution Services charges as recorded on the Registry in the 'Direct Billed Status' field.
- 8.2 **Distribution Services Prices and process for changing Prices:** Schedules 6.3.1-6.3.7 set out the Distributor's obligations in relation to pricing information for Distribution Services the Distributor must make available on its website, and the process the Distributor must comply with when proposing or notifying changes to its Prices and Pricing Structure.
- 8.3 **Allocating Price Categories and Price Options to ICPs:** Schedules 6.4.1-6.4.12 set out the parties' obligations in respect of the processes and procedures for allocating Price Categories and Price Options (if any) to ICPs.

## PART II – PAYMENT OBLIGATIONS

### 9. BILLING INFORMATION AND PAYMENT

- 9.1 **Billing and payment obligations:** Subject to the terms of this agreement, the Distributor may invoice, and the Retailer will pay in consideration of the assignment to the Retailer of the Distributor's interest in the amount payable by Customers for the provision of Distribution Services for which the payment applies, the Distribution Services charges (net of the MainPower Rebate) calculated in accordance with this agreement. Each party agrees to comply with its obligations in accordance with this clause 9.1 and Schedule 6. For the avoidance of doubt, there are no other charges payable in respect of Services supplied under this agreement unless expressly stated in this agreement.
- 9.2 **Information required by Distributor to calculate Invoices for Distribution Services charges:** The Retailer must provide information to the Distributor to enable the Distributor to calculate Distribution Services charges (including the MainPower Rebate) and prepare Invoices, in accordance with this clause 9 and Schedule 6.2.
- 9.3 **Late, incomplete, or incorrect information:** If the Retailer does not provide the required information to the Distributor in accordance with Schedule 6.2 by the 5th Working Day after the last day of the month to which the Invoice relates, or any information provided by the Retailer is incomplete, materially incorrect, or does not comply with the relevant EIEP, the

Distributor may estimate the Distribution Services charges in accordance with Good Electricity Industry Practice.

9.4 **Issuing of Invoices:** The Distributor must issue Invoices to the Retailer for an amount equivalent to the Distribution Services charges as follows:

- (a) The Distributor must issue Invoices for an amount equivalent to the Distribution Services charges based on the information provided under clause 9.2 and any estimation permitted under clause 9.3, within 10 Working Days after the last day of the month to which the Invoice relates.
- (b) After issuing the initial Invoice for a month, the Distributor will revise the Distribution Services charges for that month from time to time at the frequency and to the extent set out in Schedule 6, to reflect more complete and accurate billing information provided to the Distributor during the period ending 14 months after that month, and to reflect any Price Category adjustments notified under Schedule 6.4 during that same period.
- (c) Each Invoice for a month will include the Distribution Services charges for the current month and wash-ups for revision months, with the wash-ups reflecting a reversal of the previous charges for the relevant month and replacement with new charges for the same month based on the latest revision file, plus a Use of Money Adjustment (unless the parties agree otherwise).
- (d) Whenever the Distributor issues an Invoice for an amount equivalent to the Distribution Services charges the Distributor must provide to the Retailer, in accordance with the relevant EIEP, sufficiently detailed information to enable the Retailer to verify the accuracy of the Invoice, although such information will not be required for Distribution Services charges estimated in accordance with clause 9.3 of this agreement. The information may also include a summary reconciliation report.
- (e) At the end of the 14 months following the month to which an initial Invoice relates, the Distribution Services charges for that month will cease to be revised any further under this clause 9.4. This does not prevent either party from disputing any Invoice issued within that 14-month period on the basis that the amounts claimed or credited in that Invoice did not properly reflect the billing information provided to the Distributor prior to the Invoice being issued or did not properly reflect any Price Category adjustments notified under Schedule 6.4 prior to the Invoice being issued.

9.5 **Due date for payment:** The due date for payment of each Invoice issued by the Distributor is the 20th day of the month in which the 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:

- (a) If the Distributor fails to send an Invoice to the Retailer within 10 Working Days after the last day of the month to which the Invoice relates, the due date for payment is extended by 1 Working Day for each Working Day that the Invoice is late, provided that the due date will be no earlier than 3 Working Days after the date the Invoice is received by the Retailer.
- (b) If when the Distributor sends the Invoice, the due date for payment is within 3 Working Days (despite being sent by the Distributor within 10 Working Days after the last day of the month to which the Invoice relates), then the due date for

payment is extended to the date 3 Working Days after the date the Invoice is received by the Retailer.

**9.6 Other invoices:**

- (a) Either party may issue the other party with an Invoice or Credit Note for payment for any other sums due under this agreement.
- (b) Any Invoice or Credit Note issued under this clause 9.6 must be issued within 10 Working Days of the end of the month to which the Invoice or Credit Note relates.
- (c) The due date for payment of any Invoice issued under this clause 9.6 is the 20th day of the month in which the 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 Retailer (as the case may be) fails to send an Invoice to the Retailer or the Distributor (as the case may be) within 10 Working Days after the last day of the month to which the Invoice relates, the due date for payment is extended by 1 Working Day for each Working Day that the Invoice is late.
- (d) A party cannot invoice any amount under this clause if more than 15 months have elapsed since that party first became entitled to charge that amount under this agreement.

**9.7 Interest on late payment:** Subject to clause 9.8, the Retailer or the Distributor (as the case may be) must pay any Invoice issued under this clause 9. If any part of an 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 Invoice remains unpaid.

**9.8 Disputed invoices:**

- (a) No later than 18 months after the last day of the month to which an Invoice issued under this agreement relates, the party to which that Invoice was issued ("**Recipient**") may give notice to the other party ("**Issuer**") setting out reasonable details of a dispute (in each case, an "**Invoice Dispute Notice**").
- (b) Where the Recipient issues an Invoice Dispute Notice before the due date for payment and has not paid the disputed Invoice, and the Issuer agrees with the matters set out in the Invoice Dispute Notice, the Issuer must promptly issue a Credit Note for the disputed amount and the Recipient must pay any remaining amount owed within 6 Working Days of receipt of the Credit Note but need not pay prior to the time set out in clause 9.5 or 9.6.
- (c) Where the Issuer disagrees with the matters set out in the Invoice Dispute Notice, either party may raise a Dispute in accordance with clause 17 and if the Recipient has not paid the disputed Invoice it may withhold payment of the disputed portion of the Invoice until the dispute has been resolved, so long as it has given the Invoice Dispute Notice in good faith and pays any undisputed portion of the disputed Invoice by the applicable due date.
- (d) When the correct amount of the disputed Invoice is finally agreed by the parties or determined by an arbitrator, court, or other tribunal of competent jurisdiction ("**Resolution Date**"), except to the extent the parties agree otherwise:

- (i) where the Recipient has withheld payment of an amount that was correctly included in the disputed Invoice, the Recipient will pay the amount within 10 Working Days of the Resolution Date, together with Default Interest applied from the original due date up to but excluding the date of payment;
- (ii) where the Issuer has undercharged the Recipient (in that the amount claimed in the Invoice was less than the amount the Issuer was entitled to invoice at the time of issuing the Invoice), the Issuer may issue a further Invoice for the amount of the undercharge, together with a Use of Money Adjustment applied to that amount from the due date of the original Invoice up to but excluding the date of the new Invoice, and the Recipient will pay that Invoice within 10 Working Days of receipt, so long as that Invoice is accompanied by reasonably detailed supporting information; and
- (iii) where an amount has been incorrectly included in the disputed Invoice (in that the amount claimed in the Invoice was greater than the amount the Issuer was entitled to invoice at the time of issuing the Invoice), the Issuer will promptly issue a corresponding Credit Note to the Recipient, and if the Recipient has already paid some or all of that amount, then within 10 Working Days of the Resolution Date, the Issuer will refund the overpayment to the Recipient, together with:
  - (A) a Use of Money Adjustment, applied from the date of overpayment up to but excluding the date of the refund, or (if earlier) the date 15 Working Days after receipt of the Invoice Dispute Notice; and
  - (B) unless the overpayment is refunded to the Recipient within 15 Working Days after receipt of the Invoice Dispute Notice, Default Interest, applied from the date 15 Working Days after receipt of the Invoice Dispute Notice up to but excluding the date of the refund.

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 9.8 or as may be required by law.

9.10 **Fees:** The fees (if any) payable by the parties to each other are set out in Schedule 8.

9.11 **Review of fees:** Either party may request a review of the fees, provided that no fee will be reviewed more than once in any period of 12 consecutive months. The party seeking the review will propose to the other party a new fee level, with evidence to support that proposal. The second party may, within 2 months of receiving the proposal respond with an alternative proposal, with supporting evidence. If the parties do not agree on the proposed changes at the expiry of 4 months from the date of the initial request, then:

- (a) if there is a specific process for determining the fee, that process will apply; or
- (b) if there is no specific process for determining the fee, the party receiving the service will be entitled to terminate that service by giving 60 Working Days' notice to the other party. If the party receiving the service does not terminate the service within this timeframe, the price proposed by the party providing the service will be

deemed to be accepted and will apply with immediate effect on expiry of the 60 Working Day period.

## PART III – OPERATIONAL REQUIREMENTS

### 10. GENERAL OPERATIONAL REQUIREMENTS

#### 10.1 **Interference with or damage to the Distributor's Equipment or Network by the Retailer:**

The Retailer 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 the 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).

#### 10.2 **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 Retailer or the Retailer's employees, agents, or invitees, then the Retailer must pay the cost of making good the damage to the Distributor.

#### 10.3 **Interference with or damage to the Retailer's Equipment or Customer's Installation by the Distributor:** The Distributor will ensure that it and its employees, agents and invitees do not interfere with or damage the Retailer's Equipment or the Customer's Installation (including, without limitation, for a period of 6 months after the termination of this agreement) without the prior written consent of the Retailer 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).

#### 10.4 **Costs of making good any damage:** If the Retailer'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, then the Distributor must pay the cost of making good the damage to the Retailer or the Customer (as the case may be). This clause 10.4 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.

#### 10.5 **Connection of Distributed Generation:** The Retailer will:

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

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

#### 10.7 **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 the certification or normal operation of, and communication with, any installed 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.

10.8 **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 certification of the other party, the First Party will:

- (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 will 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 10.8 affects any rights or obligations that a party has under Part 10 of the Code or any other law.

10.9 **Changes to Network Supply Points:**

- (a) If the Distributor proposes to permanently alter the Network Supply Point for an ICP or a group of ICPs at which the Retailer supplies electricity the Distributor must give the Retailer notice of such change, including the ICPs and geographical area(s) that will be affected by the proposal, and estimate of the overall costs of the proposal and a description of any benefits of the proposal.
- (b) The Distributor must consult with the Retailer about the proposal for a reasonable period of time and no less than 20 Working Days, and the Retailer may provide comments to the Distributor.
- (c) If after considering the Retailer's comments in good faith, the Distributor decides to proceed with the proposal (including the proposal as changed as a result of the consultation), it must advise the Retailer of its decision and its responses to the Retailer's comments (if any) no later than 20 Working Days before the change takes effect.

## 11. CONNECTIONS, DISCONNECTIONS, AND DECOMMISSIONING ICPS

11.1 **Policies and procedures:** The Distributor and the Retailer must comply with the provisions of this clause and the policies and procedures set out in Schedule 4 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 (including, for clarity, any Temporary Disconnections and associated reconnections which are carried out remotely);
  - (d) Vacant Site Disconnections and associated reconnections (including, for clarity, any Vacant Site Disconnections and associated reconnections which are carried out remotely);
  - (e) Decommissioning ICPs; and
  - (f) connections that incorporate Unmetered Load.
- 11.2 **Warranted Persons:** The Distributor and Retailer must each ensure that any person that it engages to carry out any activity related to Energising, De-energising, or Decommissioning, an ICP that requires work on the Network, or performing any other work on the Network, is a Warranted Person.
- 11.3 **Medically dependent and vulnerable consumers:** The Distributor and the Retailer agree that their practices will be aligned with the Electricity Authority's Consumer care guidelines effective 1 July 2021, or any other equivalent guideline published by the Electricity Authority from time to time.
- 11.4 **Unmetered Load:** If the Network includes 1 or more ICPs across which Unmetered Load is shared for which the Retailer is responsible:
- (a) the Retailer 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 Retailer of those changes in accordance with the Code; and
    - (iii) if the Retailer notifies the Distributor that Unmetered Load is shared between 2 or more ICPs, and if requested by the Retailer, allocate the Unmetered Load to the appropriate ICP and advise the Retailer, and all other affected retailers, of the allocation in accordance with the Code; and
  - (c) the Retailer 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).
- 11.5 **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

### 12. BREACHES AND EVENTS OF DEFAULT

- 12.1 **Breach of agreement:** Subject to clause 12.6, 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 will remedy any breach within the following timeframe:
- (a) in the case of a Serious Financial Breach by the Retailer, within 2 Working Days after the date of receipt of such notice; or
  - (b) in any other case, within 5 Working Days after the date of receipt of such notice.
- 12.2 **Distributor may exercise other remedies for Serious Financial Breaches:** If the Retailer has provided acceptable security in accordance with Schedule 6, and the Retailer 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 Retailer under clause 12.1 and a notification under clause 12.4, 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 Retailer has arranged for a third party to provide acceptable security in accordance with Schedule 6, and the Distributor has called on the third party to make payment in accordance with Schedule 6, and the third party has failed to do so within 2 Working Days after receiving notice from the Distributor to do so.
- 12.3 **Failure to remedy breach is an Event of Default:** If the Defaulting Party fails to remedy the breach within the timeframe set out in clause 12.1:
- (a) the breach is an “**Event of Default**” for the purposes of this agreement; and
  - (b) the other party will 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 12; and
  - (c) the Defaulting Party will continue to do all things necessary to remedy the breach as soon as practicable.
- 12.4 **Options for certain Events of Default:** If the Event of Default is any one of the following:
- (a) a Serious Financial Breach (in the case of the Retailer 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 two 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 12.1 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 Retailer, the Distributor's ability to carry out its obligations under any agreement with any other electricity retailer,

then no earlier than 1 Working Day after the end of the timeframe set out in clause 12.1, the other party may do any one or more of the following:

- (d) issue a notice of termination in accordance with clause 13.2;
- (e) if the Defaulting Party is the Retailer, the Distributor may issue a notice prohibiting the Retailer from trading at any new ICPs on the Distributor's Network at which the Retailer was not already trading or which were switches in progress 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 Retailer, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.

**12.5 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 17 no earlier than 1 Working Day after the end of the timeframe set out in clause 12.1; and
- (b) exercise any other legal rights available to it.

**12.6 Insolvency Event:** Despite clause 12.1, if either party is subject to an Insolvency Event:

- (a) the other party may:
  - (i) immediately issue a notice of termination in accordance with clause 13.2; and
  - (ii) exercise any other legal rights available to it; and
- (b) if the Insolvency Event involves a Serious Financial Breach by the Retailer, the Distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies.

## **13. TERMINATION OF AGREEMENT**

**13.1 Either party may terminate this agreement:** In addition to any other termination right in this agreement:

- (a) **For convenience:**
  - (i) Subject to subparagraph (ii), either party may terminate this agreement by giving at least 40 Working Days' notice to the other party.
  - (ii) The Distributor will not give a termination notice under subparagraph (i) unless it has, in a manner consistent with clause 3.1:
    - (A) first given notice to the Retailer of its intention to replace the Distributor's existing use of system agreements with a new standard use of system agreement ("**Replacement Agreement**"); and

- (B) jointly consulted with the Retailer and all other retailers that are affected by the proposed Replacement Agreement; and
  - (C) provided the Retailer with the terms of the proposed Replacement Agreement, the rationale for proposing a Replacement Agreement, and the date on which the Distributor proposes to publish the finalised Replacement Agreement as its standard use of system agreement; and
  - (D) allowed the Retailer a period of at least 40 Working Days from the date the Retailer is provided with the information described in (C) during which the Retailer may provide written submissions to the Distributor in relation to the terms of the proposed Replacement Agreement; and
  - (E) before finalising the Replacement Agreement, considered in good faith any submissions received from the Retailer and provided to the Retailer: (1) a summary of submissions received along with the Distributor's responses to those submissions and a mark-up of any amendments to the proposed Replacement Agreement; and (2) a further opportunity of 20 Working Days (from the date the materials described in (1) are provided) for the Retailer to provide feedback on the updated proposed Replacement Agreement; and
  - (F) no earlier than the date the 20 Working Days referred to in (E) has elapsed, notified the Retailer of the finalised Replacement Agreement; and
  - (G) at least 20 Working Days have passed since the date of notification of the finalised Replacement Agreement, during which time the finalised Replacement Agreement has remained open for acceptance by the Retailer and the Distributor has made reasonable efforts to be available to discuss the finalised Replacement Agreement with the Retailer.
- (iii) If The Distributor gives a notice of termination in accordance with this clause 13.1(a), and the Retailer continues to use the Network following the effective date of termination, the Retailer will be bound by the terms of the Replacement Agreement.
- (b) **Termination by agreement:** both parties may agree to terminate this agreement by mutual agreement;
  - (c) **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 17 if the other party has committed a breach that (in the case of the Retailer) is not a Serious Financial Breach;

- (d) **Termination by the Retailer if the Retailer is not trading on the Network:** the Retailer may terminate this agreement by giving 5 Working Days' notice to the Distributor if the Retailer is not supplying electricity to any Customer through the Network;
- (e) **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 20.4 it is not practicable for this agreement to continue;
- (f) **Termination by the Distributor if the Retailer is not trading on the 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 Retailer has not supplied any Customers with electricity using the Network or supplied the Distributor with any other Services under this agreement; or
- (g) **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 15.3; 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 15.3 and 15.4.

13.2 **Termination of agreement 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 12.4(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 12.1 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 Retailer has ceased to supply electricity to all Customers.

Such notice for termination will lapse if the Defaulting Party remedies the Event of Default or Insolvency Event (as the case may be) prior to the notice of termination becoming effective or the other party withdraws or extends the effective date of its notice.

13.3 **Termination not to prejudice rights:** Termination of this agreement by either party will be without prejudice to all other rights or remedies of that party, and all rights of that party accrued as at the date of termination.

13.4 **Retailer remains liable for charges for remaining Customers:** If this agreement is terminated for any reason, the Retailer remains liable to pay for the assignment to it of any charges for Distribution Services (less the MainPower Rebate) that arise in relation to

Customers that have not been switched to another retailer, 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 Retailer will not be liable to pay for the assignment to it of any charges for Distribution Services (less the MainPower Rebate) 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.

- 13.5 **Obligations to continue until termination:** The parties will continue to meet their responsibilities under this agreement up to the effective date of termination.
- 13.6 **Events to occur on and from termination:** If this agreement is terminated, then unless this agreement is replaced with another agreement signed by both parties for the provision of Distribution Services on the Network pursuant to clause 13.1(a)(ii):
- (a) on the effective date of termination, the parties will have returned or certified the destruction of the other party's Confidential Information; and
  - (b) from the effective date of termination, the parties must co-operate to transfer the Retailer's Customers to another retailer as soon as possible after the date of termination so that the Retailer ceases to trade on the Network; and
  - (c) the parties will cease to provide the Services to each other.
- 13.7 **Survival of terms:** Any terms of this agreement that by their nature extend beyond its expiration or termination remain in effect until fulfilled.

## 14. CONFIDENTIALITY

- 14.1 **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 except as provided for in clause 14.2; 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 information set out in this agreement); and
    - (ii) any other purposes expressly permitted by this agreement or agreed by the parties.
- 14.2 **Disclosure of Confidential Information:** Either party may disclose Confidential Information in any of the following circumstances:
- (a) **By agreement in writing:** if the Retailer and Distributor agree in writing to the disclosure of 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 (unless it does so as a result of a breach by either party of its obligations under this clause 14 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 (including the Code), or by any statutory or regulatory obligation, body or authority;
    - (ii) any judicial or 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, contractors, agents, or advisors:** if the Confidential Information is disclosed to the employee, director, contractor, 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 are 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) **Released to a 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 Retailer, 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 this agreement; and
  - (g) **To a Customer:** if the Confidential Information relates to a Customer, and the Customer has requested the information.
- 14.3 **Limit for breach:** A party's liability for breach of this clause 14 will not be limited by clause 18.
- 14.4 **Unauthorised disclosure:** To avoid doubt, a party will be responsible for any unauthorised use or disclosure of Confidential Information made by that party's employees, directors, contractors, agents, or advisors and by a bona fide potential purchaser to whom Confidential Information has been disclosed by that party under clause 14.2(f).
- 14.5 **Customer information received in error:** Each party undertakes and agrees that if it or anyone acting on its behalf receives any Customer information (including consumption data) directly or indirectly from the other party in connection with this agreement, and the party knows or reasonably ought to know that the information has been received 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;

- (d) notify the Office of the Privacy Commissioner and the Customer if the information accidentally disclosed is likely to cause serious harm to the Customer; and
- (e) 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 14.5 is for the benefit of all other retailers on the Network and may be enforced by any of those other retailers under the Contract and Commercial Law Act 2017. This clause 14.5 may be varied by agreement between the parties without the consent of any of those other retailers.

## 15. FORCE MAJEURE

15.1 **Force majeure:** 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 act of God 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, pandemic, lockdown, 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 15.1; and
- (c) the failure did not occur because the party invoking this clause failed to act in accordance with Good Electricity Industry Practice.

15.2 **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.

15.3 **Notice:** If a party becomes aware that a Force Majeure Event may occur or has occurred, it will:

- (a) notify the other party as soon as practicable that it is invoking clause 15.1; and
- (b) provide full particulars of the potential or actual Force Majeure Event; and

- (c) provide ongoing updates until the Force Majeure Event is resolved (if applicable).
- 15.4 **Avoidance and mitigation of effect of Force Majeure Event:** The party invoking clause 15.1 will:
- (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).
- 15.5 **No obligation to settle:** Nothing in clause 15.4(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.
- ## 16. AMENDMENTS TO AGREEMENT
- 16.1 **Overview:** A change may be made to this agreement if:
- (a) the change is:
    - (i) required by law, including the Code or any mandatory rules or protocols of any industry association or body to which both the Distributor and the Retailer are members or signatories at the relevant time; or
    - (ii) permitted or required as a result of a determination, decision, or direction of the Commerce Commission,and the change is made in accordance with clause 16.2;
  - (b) the change is a change to a Loss Factor or a Loss Category code, and the change is made in accordance with clause 7;
  - (c) the change is a change to the pricing information referred to in clause 8.2 and is made in accordance with Schedule 6;
  - (d) the change is a change to a fee set out in Schedule 8 and the change is made in accordance with clause 9.11; or
  - (e) the change does not fall into any of the categories set out above, and the change is made in accordance with clause 16.2.
- 16.2 **Procedures for other changes:** The following procedures will apply to changes contemplated by clauses 16.1(a) and 16.1(e):
- (a) **Notice of change:** either the Distributor or the Retailer may suggest a change by notice to the other. The notice will:
    - (i) if the proposed change is contemplated by clause 16.1(a), specify the provisions of the Code, the mandatory rules or protocols, laws, or determination, decision, or direction of the Commerce Commission, that are the basis for the proposed change;
    - (ii) if the proposed change is contemplated by clause 16.1(e), set out the reasons for the proposed change;



- (iii) and, in either case, will set out the change in the form proposed to be incorporated in this agreement;
- (b) **Good faith:** the parties will negotiate the change in good faith;
- (c) **By agreement:** if the Distributor and the Retailer agree to the proposed change, they will promptly sign a written variation to this agreement documenting the change and this agreement will be deemed to have been changed on the date the variation is signed by the Distributor and Retailer or on such other date as specified in the variation; and
- (d) **Procedure for changes required by law, including the Code, determination, decision, or direction of the Commerce Commission, if the parties have not agreed:** If the proposed change is contemplated by clause 16.1(a) and if the parties are unable to agree on the change within 60 Working Days of the date the notice was first given under paragraph (a), the matter must be referred to the decision of an independent, experienced and suitably qualified person agreed between the parties, or failing agreement, appointed by the President for the time being of the New Zealand Law Society. The person appointed will act as an expert and not as an arbitrator and the decision of that person:
  - (i) will be the minimum necessary to effect the mandatory change required by clause 16.1(a);
  - (ii) subject to subparagraph (i), will be binding, absent obvious error; and
  - (iii) will take effect 10 Working Days after the decision is notified to the Retailer and Distributor unless the decision is required to take immediate effect by law (including the Code) or mandatory rules or protocols, or determination, decision, or direction of the Commerce Commission.
- (e) **Procedure for other changes, if the parties have not agreed:** Notwithstanding paragraph (d), if the proposed change is contemplated by clause 16.1(e) and the parties are unable to agree on the change within 40 Working Days of the date the notice was first given under paragraph (a), so long as the change will not constitute a breach of clause 3.1 and provided the change is not opposed by two or more retailers who together supply at least 25% of the ICPs on the Network as at the date the notice was first given under paragraph (a), then such change will be deemed to have been made to this agreement without any further action required by the parties, notwithstanding the failure of the parties to agree to the change. Where a party intends to exercise its rights under this clause 16.2(e) it must notify the other party no less than 5 Working Days prior to expiry of the 40 Working Days' period referred to above. Any change made to this agreement in accordance with the preceding sentence in this clause 16.2(e) will become effective on expiry of the 40 Working Days' period referred to above, provided that such change will not be deemed to be made to this agreement if the Retailer establishes to the Distributor's satisfaction (acting reasonably) that the Retailer will be materially disadvantaged compared to other retailers if the change is made.

16.3 **Exception:** If a change to this agreement has a de minimis effect on the contractual undertakings of the parties, either party may effect the change by notice to the other party

and nothing in clauses 16.1 to 16.2 will apply to the change. If the party receiving such a notice disagrees that the change has a de minimis effect, the party may raise a dispute in accordance with clause 17.

## 17. DISPUTE RESOLUTION PROCEDURE

- 17.1 **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 will promptly meet to attempt to resolve the Dispute. If 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.
- 17.2 **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.
- 17.3 **Appointment of mediator:** Within 10 Working Days of receipt of the notice referring the Dispute to mediation, the parties will agree on the identity of the mediator or, if they cannot agree within that timeframe, the mediator will be appointed in accordance with the Resolution Institute Mediation Rules.
- 17.4 **Conduct of mediation:** In consultation with the mediator, the parties will 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.
- 17.5 **Appointment of representative:** Each party will appoint a representative for the purposes of the mediation who will have authority to reach an agreed solution and effect settlement.
- 17.6 **Conduct during mediation:** In all matters relating to the mediation:
- (a) Act in good faith: the parties and their representatives will 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.

- 17.7 **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 17.1 within 15 Working Days of the matter being referred to them and if neither party referred the Dispute to mediation.
- 17.8 **Arbitration:** A Dispute referred to arbitration under clause 17.7 will be resolved by a sole arbitrator under the Arbitration Act 1996. The arbitrator's decision will be final and binding on the parties.
- 17.9 **Choice of arbitrator:** The sole arbitrator will 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 17.7, the arbitrator will be appointed by the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc. The place of arbitration will be Christchurch and each party must pay the arbitrator's remuneration in equal shares.
- 17.10 **No connection to previous mediator or previous 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 on the matter in Dispute.
- 17.11 **Urgent Relief:** Notwithstanding any other provision of this agreement each party may take steps to seek urgent injunctive or equitable relief before an appropriate court.
- 18. LIABILITY**
- 18.1 **Payment of charges:** Nothing in this clause 18 will operate to limit the liability of either party to pay all charges and other sums due under this agreement.
- 18.2 **Direct damage:** Except in respect of liability under clauses 14, 18.9, 18.11, 18.13, 18.14, each party (and its officers, employees, directors, contractors and agents) will only be liable under or in connection with this agreement (whether in contract, tort (including negligence) or otherwise) to the other party for 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.
- 18.3 **Consequential loss excluded:** Except in respect of liability under clauses 14, 18.9, 18.11, 18.13, 18.14, neither party (nor any of their respective officers, employees, directors, contractors, 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 18.2); or

- (d) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software.

18.4 **No liability in tort, contract etc:** Except as expressly provided in clauses 14 and 18, the Distributor's liability to the Retailer and the Retailer'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.

18.5 **Distributor not liable:** Except as provided for in clause 18.9, the Distributor will not be liable for:

- (a) any momentary fluctuations in the voltage or frequency of electricity conveyed or nonconformity with harmonic voltage and current levels; or
- (b) any failure to convey electricity to an ICP to the extent that such failure arises from:
  - (i) Load Shedding;
  - (ii) Planned Service Interruptions;
  - (iii) Unplanned Service Interruptions due to the partial or entire failure of the Network;
  - (iv) any act or omission of any Customer or other person excluding the Distributor and its officers, employees, directors, contractors, or agents;
  - (v) 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 to the conveyance of electricity in the Network;
  - (vi) any defect or abnormal conditions in or about any Customer's Premises;
  - (vii) action being taken by the Distributor in accordance with this agreement;
  - (viii) any act or omission of the System Operator, a Generator, or the Transmission Provider, unless and to the extent that the Distributor has obtained a service guarantee from the System Operator or Transmission Provider and the System Operator or Transmission Provider has paid the Distributor under the relevant service guarantee, in which case the Distributor will only be liable to the Retailer to the extent of the Retailer's proportionate share of such payment having regard to all other retailers and all customers affected by the relevant event, as determined by the Distributor (acting reasonably); or
  - (ix) any situation in which 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

- (c) any failure to perform any obligation under this agreement caused by the Retailer's failure to comply with this agreement, except to the extent that the failure is caused by or contributed to by the Distributor not acting in accordance with this agreement.

18.6 **Retailer not liable:** The Retailer 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 Retailer not acting in accordance with this agreement.

18.7 **Limitation of liability:** Subject to clauses 18.1 and 18.8 but otherwise notwithstanding 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 Retailer supplied electricity on the day of the event, or \$2,000,000.

18.8 **Exclusion:** Clause 18.7:

- (a) does not limit a party's liability under clauses 14, 18.9, 18.11, 18.13, 18.14; and
- (b) is subject to any contrary requirements of the Dispute Resolution Scheme.

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

18.10 **Claims under the Distributor's Indemnity:**

- (a) If a Customer makes a claim against the Retailer in relation to which the Retailer 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 Retailer must:
  - (i) give written notice of the Claim to the Distributor as soon as reasonably practicable after the Retailer has become aware of the Claim and any facts or circumstances indicating 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
  - (ii) make available to the Distributor all information that the Retailer holds in relation to the Claim that is reasonably required by the Distributor.
- (b) If the Distributor is required to indemnify the Retailer under section 46A of the Consumer Guarantees Act 1993, the Distributor must promptly pay the Retailer the amounts due under that Act.
- (c) Any dispute between the Distributor and the Retailer 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 17.

- (d) Without limiting the foregoing provisions of this clause 18.10, the provisions of paragraphs (b) to (f) of clause 18.16 shall apply to each Claim as if the Retailer was the Indemnified Party, the Distributor was the Indemnifying Party, and the Claim was a Third Party Claim.

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

- (a) subject to clause 18.1, the Retailer will, to the fullest extent permitted by law exclude from all its Customer Agreements (which includes a contract between the Retailer 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 supply of electricity to the Customer by the Distributor under this agreement (“**Distributor Warranties**”); and
  - (ii) imposed on the Retailer by the Consumer Guarantees Act 1993 or any other law concerning the supply of electricity by the Retailer under the Customer Agreement (“**Retailer Warranties**”);
- (b) if the Customer on-supplies electricity to an end-user the Retailer will, 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 Retailer Warranties to the fullest extent permitted by law;
- (c) to avoid doubt, nothing in this clause affects the rights of any Customer under the Consumer Guarantees Act 1993 that cannot be excluded by law, nor does it preclude the Retailer 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.

**18.12 Distributor liabilities and Customer Agreements:** The Retailer will procure in its Customer Agreements clear and unambiguous clauses to the effect that:

- (a) the Customer will 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 Agreements by, the Customer or any of its officers, employees, directors, contractors, agents, or invitees arising out of, or in connection with, the supply of electricity to the Customer; 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.

**18.13 Distributor will be indemnified:** The Retailer 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 Retailer 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 Retailer of any of its obligations under this agreement;
  - (ii) the disconnection by the Retailer, or disconnection requested by the Retailer, 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 Retailer, 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 Retailer to perform any obligation under any agreement between the Retailer and any Generator or Customer or other third party, except to the extent that the failure is caused or contributed to by the Distributor;
  - (v) any failure by the Retailer 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 Retailer; and
- (b) any recovery activity of the Distributor in respect of any unpaid charges or interest payable under this agreement.

18.14 **Retailer will be indemnified:** The Distributor indemnifies and holds harmless the Retailer and will keep the Retailer 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 Retailer arising out of or in connection with:

- (a) any claim by any person with whom the Distributor or Retailer 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, or breach by the Distributor of its obligations under the Connection Agreement to which the Retailer has not contributed, including by way of contributions to any avoidable loss suffered by the Retailer;
  - (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 Retailer'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 Retailer or the Retailer 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 Customer or any other third party, except to the extent that the failure is caused or contributed to by the Retailer;
  - (v) any failure by the Distributor to comply with its obligations required by law or regulation; or
  - (vi) any action undertaken by the Retailer under or in connection with this agreement at the request of the Distributor; and
- (b) any recovery activity of the Retailer in respect of any unpaid charges or interest payable under this agreement.

**18.15 Other rights and remedies not affected:** The indemnities in this clause 18 are in addition to and without prejudice to the rights and remedies of each party under this agreement, the Code or under statute, in law, equity, or otherwise.

**18.16 Conduct of claims under clauses 18.13 and 18.14:**

- (a) This clause applies if a party with a right of indemnity under clause 18.13 or 18.14 (“**Indemnified Party**”) seeks or may seek to be indemnified by the other party (“**Indemnifying Party**”) under clause 18.13 or 18.14 in respect of a claim by any person of the kind described in clause 18.13(a) or 18.14(a) (“**Third Party Claim**”).
- (b) 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.
- (c) The Indemnifying Party may, at its election, in the name of the Indemnified Party, but only after consultation with the Indemnified Party and so that the reputation of the Indemnified Party is not unfairly harmed, conduct all negotiations and defend any proceedings relating to the Third Party Claim. For this purpose, the Indemnified Party must make available to the Indemnifying Party all such information, books, and records, and co-operate (including making available employees as witnesses) as the Indemnifying Party may reasonably require for the purpose.
- (d) If and for so long as the Indemnifying Party does not assume the defence of the Third Party Claim, the Indemnified Party must:
  - (i) keep the Indemnifying Party fully informed of the Indemnified Party’s progress in defending the Indemnified Claim and of any related proceedings; and
  - (ii) 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 proceeding.



- (e) The Indemnified Party must not, without the prior written consent of the Indemnifying Party, settle the Third Party Claim.
- (f) 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.

18.17 **Benefits to extend:** Each party agrees that its obligations under this clause 18 constitute promises conferring benefits on each party's officers, agents, directors, contractors and employees that are intended to create, in respect of the benefit, an obligation enforceable by those officers, agents, directors, contractors and employees and accordingly, the provisions of Part 2 of the Contract and Commercial Law Act 2017 apply to its promises under this clause 18. 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.

## 19. NOTICES

19.1 **Delivery of Notices:** Any notice given to a party under this agreement must be in writing and will be deemed to be validly given if personally delivered, posted, or forwarded by email to the address for notice set out on the execution page at the beginning of this agreement or to such other address as that party may notify from time to time.

19.2 **Deemed receipt:** Any notice given to a party under this agreement will be deemed to have been received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, no later than 3 Working Days following the date of posting; and
- (c) in the case of email, no later than 1 Working Day after leaving the sender's email system, unless during that time the sender's email system receives a delivery failure notification, in which case the notice will be deemed not to have been sent.

19.3 **Deemed receipt after 5pm or on a day that is not a Working Day:** Any notice given in accordance with clause 19.2 that is personally delivered or sent by 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. MISCELLANEOUS

20.1 **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.

20.2 **Entire agreement:** This agreement records the entire agreement and prevails over any earlier agreement concerning its subject.

20.3 **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, unless a party is listed on the New Zealand Stock Exchange, a direct or indirect change in effective control of a party will be deemed to be an assignment.

20.4 **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.

20.5 **Further assurance:** Each party shall execute all documents and do or procure all other acts and things necessary to implement and carry out its obligations under this agreement.

20.6 **Counterparts:** This agreement is deemed to be signed by a party if that party has signed or attached that party's signature to any of the following formats of this agreement:

- (a) an original; or
- (b) a photocopy; or
- (c) a PDF or email image copy,

and if each party has signed or attached that party's signature to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding agreement between the parties.

20.7 **Costs:** Each party shall pay its own costs in respect of entry into and negotiation of this agreement.

20.8 **Governing law:** This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of, or in connection with, this agreement.

## 21. INTERPRETATION AND DEFINITIONS

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

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (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 one 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 anytime;
- (g) all amounts payable under this agreement are in New Zealand dollars and exclude GST, 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 include every other tax and duty 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;
- (k) references to a document or agreement include it as varied, novated or replaced; and
- (l) each Schedule and any other attachment is part of this agreement.

21.2 **Definitions:** In this agreement, unless the context otherwise requires:

**“Act”** means the Electricity Industry Act 2010;

**“Billing Services”** means the Services described in Schedule 6;

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

**“Confidential Customer Information”** has the meaning set out in Schedule 9A.19;

**“Confidential Information”** means all data and other information of a confidential nature provided by one 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, including all information supplied in accordance with clause 4, 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;
- (c) data supplied in accordance with clause 5; and
- (d) the existence and terms of this agreement, except Schedule 8;

**“Connection Agreement”** means the agreement for the provision of Distribution Services between the Distributor and a Customer;

**“Connection Approval”** means an approval granted by the Distributor to a Distributed Generator, or contract entered into between the Distributor and a Distributed Generator, under which Distributed Generation is connected to the Network in accordance with Part 6 of the Code;

**“Consumer-Owned”** has the meaning given to it in section 54D of the Commerce Act 1986;

**“Credit Note”** means a document setting out the ‘supply correction information’ required by the GST Act in relation to the amounts being credited;

**“Customer”** means a person who owns and/or uses an Electrical Installation connected to the Network who is liable for payment of the charges for Distribution Services, whether to the Distributor where the Distributor is direct billing Distribution Services charges or to the

Retailer where the Retailer is billing Distribution Services charges as agent of the Distributor, and who purchases electricity from the Retailer that is delivered via the Network;

**“Customer Agreement”** means an agreement between the Retailer and a Customer that includes the supply of electricity, and if more than one service is provided to a Customer under any such agreement then only the provisions relating to electricity supply shall be relevant for the purposes of this agreement;

**“Customer’s Installation”** means an Electrical Installation owned and/or used by the Customer and includes Distributed Generation if Distributed Generation is connected to the Electrical Installation;

**“Customer’s Premises”** means the land and buildings owned and/or occupied by a Customer, and the land over which there is an easement or right to pass electricity including:

- (a) the land within the boundary where 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 2010;

**“Debit Note”** means a document setting out the ‘supply correction information’ required by the GST Act in relation to the amounts being debited;

**“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 the Point of Connection except for the purpose of maintaining the operational integrity of the isolation device;

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

**“Default Interest Rate”** means the Interest Rate plus 5%;

**“Direct Damage”** has the meaning given to it in clause 18.2;

**“Dispute”** has the meaning given to it in clause 17.1;

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

**"Distribution Services"** means the provision of line function services to Customers as set out in the Connection Agreement;

**"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 a Customer's Premises;

**"Effective Date"** means the date specified as such on the execution page of this agreement;

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

**"Electrical Installation"** means:

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

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

**"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;

**"Event of Default"** has the meaning given to it in clause 12.3(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 set out in clause 15.1;

**“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 the 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 Retailer, the exercise of that degree of skill, diligence, prudence, foresight and economic management that would reasonably be expected from a skilled and experienced electricity retailer engaged in New Zealand in the same type of undertaking under comparable conditions consistent with applicable law, safety and environmental protection;

**“Grid”** means the nationwide system of transmission lines, substations and other works including the HVDC (High Voltage Direct Current) link owned by Transpower New Zealand Limited and used to interconnect all grid injection points and grid exit points to transport electricity throughout New Zealand;

**“GST”** means goods and services tax payable under the GST Act;

**“GST Act”** means the Goods and Services Tax Act 1985;

**“ICP”** means an installation control point being one 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;

**“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 on or about 10:30am on the day of calculation. 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;

**“Invoice”** means an invoice containing ‘taxable supply information’ required under the GST Act in relation to the taxable supply that gave rise to the amounts invoiced;

**“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 a 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 Management Service”** means providing a signal for the purpose of reducing or interrupting delivery of electricity to all or part of a Customer’s Premises, including, as an example, but without limitation, delivery to a water heater, on a basis agreed between the Distributor and the Retailer;

**“Load Signalling Equipment”** means the equipment (which may include, but is not limited to, ripple injection plant) installed 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 one 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 published by the Distributor, which enables retailers 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 7 and applied by the reconciliation manager to volumes of electricity measured or estimated in respect of ICPs on the Distributor’s Network, in order to reflect the impact of the ICP on Losses within the Network;

**“Loss Factor Guidelines”** means the guidelines relating to the calculation and use of Loss Factors for reconciliation purposes issued by the Electricity Authority and updated from time to time;

**“MainPower Rebate”** means the Qualifying Customer rebate and Kaiapoi Electricity discount set out in the Delivery Pricing Schedule, passed through as a discount on monthly invoices to Customers;

**“Metering Equipment”** means any apparatus used for the purpose of measuring and recording the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

**“Metering Equipment Provider”** has the same meaning given to that term in section 5 of the Act;

**“Monetary Distribution Services”** has the meaning set out in Schedule 9A.2;

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

- (a) two 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, published on its website 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 a Point of Connection between:

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

**“Planned Service Interruption”** means a Service Interruption that has been scheduled to occur in accordance with the relevant provisions of Schedule 3;

**“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 along with the relevant chargeable quantities determines the Distribution Services charges that apply to an ICP;

**“Price Category”** means the price category and associated eligibility criteria set out in the Delivery Pricing Schedule that determine the Price(s) that apply to an ICP;

**“Delivery Pricing Schedule”** means the schedule of Prices for Distribution Services including the MainPower Rebate published on the Distributor’s website;

**“Pricing Structure”** means the Distributor’s policies and processes relating to setting Prices for Distribution Services referred to in Appendix C of Schedule 6;

**“Privacy Policy”** means the Distributor’s Privacy Statement on the Distributor’s website ([www.mainpower.co.nz/privacy](http://www.mainpower.co.nz/privacy));

**“Qualifying Customer”** means Customers connected to the Network other than Customers on the builder’s temporary supply pricing option and Customers in the former Kaiapoi Electricity network area;

**“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;

**“Retailer”** means the party identified as such in this agreement;

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

**“Rulings Panel”** means the Rulings Panel constituted by the Act;

**“Serious Financial Breach”** means:

- (a) a failure by the Retailer to pay an amount due and owing, where the overdue amount exceeds the greater of \$100,000 or 20% of the actual charges payable by the Retailer for the previous month, unless the amount is genuinely disputed by the Retailer in accordance with clause 9.8; or
- (b) a failure by the Retailer to pay one or more amounts owing, where the total amount overdue is greater than or equal to 100% of the actual charges payable by the Retailer for the previous two months, unless the amount is genuinely disputed by the Retailer in accordance with clause 9.8; or
- (c) a failure by the Retailer to provide the security required in accordance with Schedule 6;

**“Service Interruption”** means, in relation to the supply of electricity to an ICP the cessation of supply to that ICP for a period exceeding the time allowed for interruptions in the relevant Service Standard, other than in accordance with this agreement;

**“Service Standards”** means the set of standards that the Services will meet that are set out in Schedule 1;

**“Services”** means any services provided by the Distributor to the Retailer or the Retailer to the Distributor in accordance with this agreement;

**“Shareholder Trust”** means a trust in respect of which any of the income beneficiaries comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network;
- (e) the person's liability for payment for Distribution Services supplied by the Distributor; or
- (f) the person's domicile or location or operation is within the geographic area or areas of operation of the Distributor;

**“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; or
- (c) an Unplanned Service Interruption, affecting part or all of the Network, is imminent or has occurred.

**“System Operator”** means the person who is the system operator under the Act;

**“System Security”** means the secure state of the Grid achieved when the System Operator acts in accordance with its principal performance obligations in relation to common quality and dispatch that are set out in Part 7 of the Code;

**“Temporary Disconnection”** means the temporary De-energisation of an ICP at a Customer’s Premises for the reasons outlined in Schedule 4, and where the status of the ICP in the Registry is only required to be changed to inactive if the Temporary Disconnection remains in effect for more than 5 Working Days;

**“Transmission Provider”** means a person who provides the Distributor with services relating to injection or off-take of electricity into or out of a Network Supply Point;

**“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 Schedule 6.6.26;

**“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 Retailer or any affected Customer, as anticipated in Schedule 3 that relate to Unplanned Service Interruptions;

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

**“Vacant Site Disconnection”** means the De-energisation of the ICP at a Customer’s Premises that has become vacant and the Retailer has changed the status in the Registry to **“Inactive”**;

**“Warranted”** means 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 street address on the execution page at the beginning of this agreement.

## SCHEDULE 1 - SERVICE STANDARDS

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- S1.1 The Distributor may set Service Standards in relation to the provision of Services under this agreement. The Service Standards applying at the date of this agreement are set out in this Schedule 1. No more than once in any 12-month period ending on 31 March, and subject to providing 60 Working Days' notice, the Distributor may withdraw, amend, or add Service Standards. Within this notice period, without limiting the Distributor's discretion to determine the Service Standards, the Distributor must consider in good faith any feedback provided by the Retailer.
- S1.2 If either party becomes aware of or suspects a breach of the Service Standards by the other party it must give the other party notice of the breach or reasons why it suspects that there has been a breach. Such notice must be given as soon as reasonably practicable and no later than 10 Working Days after becoming aware of the breach.
- S1.3 Where either party is advised of a breach of the Service Standards in accordance with Schedule 1.2 the party notified of the breach must investigate and respond to the other party in a reasonable period of time including providing the details of the circumstances that led to the breach, or apparent breach, and proposed remedy (if applicable).
- S1.4 A party'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 party will have no remedy for such failure except to the extent set out in the Service Standard.
- S1.5 Under the Connection Agreement the Distributor may, in relation to the provision of line function services, set service standards which will be published on the Distributor's website. If a Customer whose ICP has been affected advises the Distributor of a breach or suspected breach of a service standard for which a service guarantee payment is applicable, and after investigation the Distributor confirms it has breached the service standard for which a service guarantee payment is to be made, the Distributor may:
- (a) in the interests of prompt resolution, process the service guarantee payment directly to the Customer; or
  - (b) provide a Credit Note and details of the breach and service guarantee payment to the Retailer and the Retailer 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.

**Table 1 – Service Standards**

SERVICE MEASURE	SERVICE LEVEL
<b>LOAD MANAGEMENT SERVICES</b>	
Provision of Load Management Services and/or Load Signalling Equipment	The party providing Load Management Services will provide those services and maintain its Load Signalling Equipment in accordance with Schedule 5.
Provision of Load Control Equipment	The party providing Load Control Equipment will maintain its Load Control Equipment in accordance with Schedule 5.

## SCHEDULE 2 - ELECTRICITY INFORMATION EXCHANGE PROTOCOLS

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- S2.1 The Distributor and the Retailer 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 (not required or provided by the Distributor);
  - (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 Retailer are required to comply.
- S2.2 In addition to the EIEPs specified in Schedule 2.1, the Distributor and the Retailer must comply with the following EIEPs when exchanging information to which the relevant EIEP relates:
- (a) EIEP4 – Customer information; and
  - (b) EIEP7 for pre-notification of Temporary Disconnections for credit reasons (if applicable).

## SCHEDULE 3 - SERVICE INTERRUPTION COMMUNICATION POLICIES

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### Unplanned Service Interruptions

- S3.1 The Distributor is responsible for receiving Unplanned Service Interruption calls from Customers and managing further communication with affected Customers until normal service is restored, as necessary. The Retailer shall ensure that references to:
- (a) the Distributor's website [www.mainpower.co.nz](http://www.mainpower.co.nz) (the Distributor's preference if practicable); or otherwise
  - (b) the Distributor's faults phone number 0800 30 90 80,
- are included on all Invoices sent to Customers as being the contact details for Customers in relation to Unplanned Service Interruptions.
- S3.2 The Distributor will, as soon as reasonably practicable after first becoming aware of an Unplanned Service Interruption where that Unplanned Service Interruption is a feeder fault, provide relevant outage information on its website that enables the Retailer to respond in an informed manner to calls from affected Customers. Such information will include, if known, a description of the reason for the interruption, the general area affected, an estimated time for restoration, and updates as appropriate.
- S3.3 While the Distributor is responsible for receiving and managing Unplanned Service Interruption calls from Customers, its preference is for Customers to use its website to obtain relevant outage information rather than calling the Distributor's faults phone number. If the Retailer receives Unplanned Service Interruption calls from Customers it may transfer the call to the Distributor's faults phone number, advise the Customer of the Distributor's faults phone number or where to find outage information on the Distributor's website, or otherwise inform the Customer of relevant outage information sourced from the Distributor's website.
- S3.4 Where the Distributor responds to a no power call from a Customer and the cause is a fault with the Metering Equipment or Load Control Equipment, the Distributor may break the seal and bridge the faulty equipment in order to restore power to the Customer's Installation provided it notifies the Retailer in writing no later than the next Working Day.

### Planned Service Interruptions

- S3.5 Unless the Distributor elects otherwise (in which case Schedules 3.11 to 3.14 will apply), the Retailer will be responsible for notifying Customers of Planned Service Interruptions in accordance with Schedules 3.6 to 3.10.
- S3.6 The Distributor must provide the Retailer with notice of a Planned Service Interruption in accordance with EIEP5A 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. The Retailer must notify affected Customers for whom it is responsible at least 4 Working Days prior to the start date of the Planned Service Interruption.

- S3.7 The Retailer 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.
- S3.8 If the Distributor receives a request from the Retailer for an alternative date and/or time for the Planned Service Interruption, the Distributor must consider in good faith the request and may, in its sole discretion, change the time and/or date of the Planned Service Interruption. If the Distributor makes such a change, the Distributor must provide the Retailer with notice of the new date and/or time at least 7 Working Days before the original date of the Planned Service Interruption.
- S3.9 If a Planned Service Interruption is necessary on a more urgent basis for reasons of emergency repairs, the Distributor must provide the Retailer with a notice of the Planned Service Interruption in accordance with Schedule 3.5 as soon as reasonably practicable. In such situations, the shorter notice period will not constitute a breach of the provisions of this agreement, and the Retailer will not be expected to notify affected Customers.
- S3.10 Except where the Distributor elects to notify Customers in accordance with Schedule 3.11, the Retailer is responsible for any costs associated with notifying Customers of Planned Service Interruptions provided the Distributor has notified the Retailer in accordance with EIEP5A. However, where re-notification of the Planned Service Interruption to Customers is required solely due to an act or omission of the Distributor or its contractors the Distributor will pay the Retailer's out of pocket costs associated with re-notifying the Customers of the Planned Service Interruption.
- S3.11 For all Planned Service Interruptions where the Distributor elects to notify Customers directly, the Distributor must provide each of the Customers it identifies as being affected with a notice specifying the time and date of the Planned Service Interruption and the reason for the interruption at least 4 Working Days before the date on which the Planned Service Interruption is scheduled.
- S3.12 Where Schedule 3.11 applies, the Distributor must provide the Retailer 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.
- S3.13 The Distributor is responsible for any costs associated with notifying Customers of Planned Service Interruptions where the Distributor elects to notify Customers directly.
- S3.14 Where the Distributor receives express permission from affected Customers, the Distributor may carry out a Service Interruption with a shorter notice period than the period specified in Schedule 3.11. In these situations, the shorter notice period will not constitute a breach of the provisions of this agreement or EIEP5A, and the Distributor may elect not to provide advance notice of the Service Interruption to the Retailer but will do so where practicable.
- S3.15 The Distributor will provide planned and current information on its website for all Planned Service Interruptions. Such information will include a description of the reason for the interruption, the general area affected, number of customers affected, the start and end dates and times, and updates as appropriate.



## SCHEDULE 4 - CONNECTION POLICIES

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### Introduction

- S4.1 The Distributor and the Retailer recognise that the process of managing connections and disconnections of ICPs on the Network requires significant co-ordination between them.
- S4.2 This Schedule sets out the processes that the Distributor and Retailer will follow in respect of:
- (a) new connections to the Network;
  - (b) capacity changes to existing connections;
  - (c) Temporary Disconnections and associated reconnections (including, for clarity, any Temporary Disconnections and associated reconnections which are carried out remotely);
  - (d) Vacant Site Disconnections and associated reconnections (including, for clarity, any Vacant Site Disconnections and associated reconnections which are carried out remotely);
  - (e) Decommissioning ICPs; and
  - (f) Unmetered Load.

### Process for new connections or changes in capacity

- S4.3 The Distributor may receive applications from:
- (a) the owner of a premises not currently connected to the Network or the owner's agent (the "**Requesting Party**"), or the Retailer on behalf of the Requesting Party, for a new connection to be created; and
  - (b) a Customer (the "**Requesting Party**"), for an increase or decrease in the capacity of an existing connection.
- S4.4 The Distributor will undertake an impact assessment to determine whether the capacity required for the connection is already available or whether Network expansion is required. If Network expansion is required, or other works are required, the Distributor will advise the Requesting Party of the terms on which the Distributor will undertake the required works. If the application is declined the Distributor will provide the reasons why.
- S4.5 If the Distributor agrees to supply a new connection or change the capacity of an existing connection, and the Requesting Party agrees to the terms offered by the Distributor and advises the Distributor that the Retailer is its retailer (if not already known), the Distributor will advise the Retailer within 2 Working Days of the ICP identifier, the NSP to which the ICP is or will be or is connected, the allocated Price Category and, if the ICP is a new ICP, that the ICP is ready to be electrically connected.
- S4.6 The Customer will arrange for the ICP to be electrically connected (using a Warranted Person from the pool of livening agents approved by the Distributor) once approval has been granted by the Distributor.

S4.7 Both parties will update the status of the ICP in the Registry throughout the process described in Schedules 4.3 to 4.6 in accordance with the Code.

#### **Timeframe for electrically connecting standard new connections**

S4.8 The timeframe for electrically connecting a standard new ICP connection (if all necessary equipment is in place, Network upgrades or extensions are not required, and other necessary requirements are met), is as specified by the livening agent selected by the Customer from the pool of livening agents approved by the Distributor. The timeframe for electrically connecting all other ICP connections will be as agreed between the relevant parties.

#### **Temporary Disconnections and associated reconnections**

S4.9 Disconnection by the Retailer: The Retailer may carry out a Temporary Disconnection in relation to a Customer's ICP in the following circumstances:

- (a) if 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.

S4.10 Disconnection by the Distributor: The Distributor may carry out 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) for credit reasons, if the Distributor directly bills the Customer;
- (c) if requested by the Customer, for safety or other reasons;
- (d) there has been an occurrence, or there are circumstances, that may adversely affect the proper working of the Network or the transmission system;
- (e) if the Customer:
  - (i) interferes with the Distributor's Equipment;
  - (ii) injects or attempts to inject energy into the Network without the Distributor's consent;
  - (iii) conveys or receives or attempts to convey or receive any signal or other form of communication of any other thing (other than energy in accordance with a Customer Agreement and load control signals transmitted by, or with the written permission of, the Distributor) over the Network or causes or permits any other person to do so;
  - (iv) has an Electrical Installation that does not comply with the Distributor's Network Connection Standards; or
  - (v) otherwise breaches the Connection Agreement; or
- (f) on termination of this agreement.

S4.11 **Notice of disconnection:** The party that intends to perform a Temporary Disconnection in accordance with Schedules 4.9 or 4.10 will use its best endeavours to give the other party as

much prior notice as reasonably practicable, but in any event will notify the other party of the Temporary Disconnection no later than 2 Working Days after the Temporary Disconnection unless otherwise agreed. To avoid doubt, the status of the ICP in the Registry is only required to be changed to “inactive” if the Temporary Disconnection remains in effect for more than 5 Working Days.

- S4.12 **Restoration of supply:** If either party has performed a Temporary Disconnection in respect of a Customer’s ICP, the party that performed the Temporary Disconnection will take reasonable steps to arrange restoration of supply to the ICP as soon as reasonably practicable and no longer than 3 Working Days after conditions for reconnection have been satisfied or by any other date agreed with the Customer.
- S4.13 **Electricity Authority Consumer care guidelines:** Notwithstanding any other relevant provision in this agreement, the parties will work together in good faith to ensure that they comply with the Electricity Authority Consumer care guidelines (as amended from time to time), to the fullest extent practicable, when contemplating a Temporary Disconnection in any of the circumstances described in Schedule 4.10.

#### **Vacant Site Disconnections and associated reconnections**

- S4.14 The Retailer may undertake a Vacant Site Disconnection of an ICP if:
- (a) the Retailer is recorded as the retailer for the ICP in the Registry; and
  - (b) the ICP meets the Retailer’s Vacant Site Disconnection criteria.
- S4.15 The Retailer must, acting reasonably and unless otherwise agreed with the Distributor, undertake a Vacant Site Disconnection of an ICP without delay if the above criteria apply and the ICP has been inactive for at least 30 Working Days.
- S4.16 The Retailer may Re-energise an ICP that was 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 Retailer must arrange for safety certification using a person authorised to certify mains work, and the person proposing to Re-energise the ICP must, before doing so, give or sight a certificate issued in accordance with section 3 of AS/NZS 3019:2007 that certifies that the Electrical Installation is suitable for continued use.
- S4.17 The Retailer will 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.
- S4.18 The Retailer may give the Distributor notice that the Distributor is responsible for completing a Vacant Site Disconnection for an ICP if:
- (a) the Retailer 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 Retailer 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).

- S4.19 If the Retailer gives the Distributor notice in accordance with Schedule 4.18:
- (a) the Distributor will use reasonable endeavours in accordance with Good Electricity Industry Practice to complete the Vacant Site Disconnection;
  - (b) the Distributor will investigate provision of an accessible isolation device for the ICP but will not be bound 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 Retailer will continue to use reasonable endeavours to seek to gain access to the ICP meter to meet its obligations under the Code.
- S4.20 If the Retailer performs a Vacant Site Disconnection and/or associated reconnection it must update the Registry in accordance with the Code. If the Distributor performs a Vacant Site Disconnection and/or associated reconnection it must notify the Retailer within 2 Working Days of completion of the work and the Retailer must update the Registry in accordance with the Code.

#### **Decommissioning an ICP**

- S4.21 A Distributor may Decommission an ICP in the following circumstances, provided the requirements of section 105 of the Act and Part 11 of the Code are met:
- (a) the Distributor is advised by an appropriately authorised Customer, landowner or the Retailer that electricity is no longer required at the ICP;
  - (b) it is necessary to Decommission the ICP because public safety is at risk; or
  - (c) the Distributor has not supplied Distribution Services in respect of the ICP for 6 months or more,
- provided that in respect of paragraphs (a) and (c) the Distributor will, unless advised by the Retailer, notify the Retailer before Decommissioning the ICP to enable the Retailer to De-energise the ICP, arrange for removal of the Metering Equipment (if appropriate), and update the Registry.
- S4.22 A Decommissioning will be performed by means of removing all or part of the service line to the ICP, or if a shared service line forms part of the supply, by isolating and removing of the load side cable from the main switch at the meter board. In all circumstances, the property will be left electrically safe.
- S4.23 If an ICP has legitimately been given 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.
- S4.24 Both parties must update the Registry throughout this process in accordance with the Code.

## SCHEDULE 5 - LOAD MANAGEMENT

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### Rights to control load

S5.1 As provided for in clauses 6.1 and 6.2, control of the load at an ICP at which the Retailer supplies electricity may be undertaken by either the Distributor or the Retailer or, feasibly, by both parties. This Schedule sets out additional obligations of the parties in each of these situations.

### Use of controllable load

S5.2 To facilitate the use of a Load Control System to achieve the highest value, the party that has obtained the right to control a load may assign that right to another party (provided that the party obtains the right to make such an assignment from the relevant Customer).

S5.3 The purposes for which load control can be used (provided that the relevant party obtains the right to control the load in accordance with clause 6.1 or 6.2) are as follows, ranked in order of priority:

- (a) **System Security:** managing Grid System Security in accordance with the Code;
- (b) **Network management:** managing Network system security;
- (c) **Market participation:**
  - (i) managing wholesale electricity purchase cost risk (e.g. the time-shifting of consumption); and
  - (ii) providing interruptible load into the reserves market.

S5.4 If both parties have obtained the right to control parts of the Customer's load in accordance with clause 6.1 or 6.2, and both parties want to control load for a purpose specified in Schedule S5.3 at the same time, the parties will cooperate to ensure the party entitled to control load will be the party with the higher priority rank as specified in Schedule S5.3.

### Coordination of split ownership Load Control Systems

S5.5 If the Retailer provides Load Control Equipment that forms part of the Distributor's Load Control System, the following provisions apply:

- (a) The fee for this Service (if any) is set out in Schedule 8 or as otherwise agreed by the parties in writing.
- (b) The Distributor will provide the Retailer 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.
- (c) If the Distributor has obtained a right to control load at an ICP in accordance with clause 6.1, the Retailer will install Load Control Equipment that reliably receives the Distributor's load control signals and controls the relevant load. If required by the Distributor's specific Controlled Load Price Category, but subject to it not giving the Distributor a unilateral right to change the eligibility criteria for Price Categories in a manner that would require a mass change of existing metering arrangements, the

Retailer will install additional Metering Equipment that separately measures and records controlled load electricity consumption.

- (d) If the Distributor seeks to change the operating characteristics (including the signalling frequency or protocol) of its Load Signalling Equipment, it will first seek to negotiate suitable terms with the Retailer for the upgrade of the Retailer's Load Control Equipment. If agreement is not reached, the Distributor may, at its discretion, choose to procure and install, at its own cost, suitable Load Control Equipment.
- (e) 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 it defines. The audit will review the proper functioning of the Load Control Equipment for a randomly selected sample of ICPs to which the Retailer supplies electricity. The sampling technique will be consistent with the methodology outlined in Part 10 of the Code that applies to selecting samples of meters.
- (f) If the sample audit shows that Load Control Equipment for which the Retailer is responsible is not functional in respect of a number that is greater than 5% of the sample, the Distributor and Retailer will, within 40 Working Days of the Distributor notifying the Retailer of the results of the audit, meet and agree a programme including scope and timeframe within which the non-functioning Load Control Equipment will be identified and repaired. The Retailer will pay the reasonable costs of any inspection (including the initial audit) and repair work identified.
- (g) If the audit identifies non-functional Load Control Equipment due to low signal levels or faults on a pilot wire network that are the responsibility of the Distributor, those failures will be excluded from the audit results;
- (h) If the audit shows that Load Control Equipment for which the Retailer is responsible is functional for 95% or more of the Customers sampled, the cost of the audit will be the responsibility of the Distributor, but the Retailer will be required to remedy all defects found in respect of non-functional Load Control Equipment for which the Retailer is responsible.

#### **Either party may obtain Load Management Services from the other**

- S5.6 Either party, having obtained the right to control load at an ICP in accordance with clause 6.1 or 6.2, may provide Load Management Services to the other party as a Service.
- S5.7 If a party requests Load Management Services from the other party, the parties will negotiate the provision of Load Management Services in good faith.

#### **System Emergency Event management policy**

- S5.8 Schedule 5.9 sets 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 includes the Distributor's priorities for:
  - (a) Load Shedding;
  - (b) the use of any controllable load available to the Distributor in accordance with clause 6; and

- (c) the restoration of load.

S5.9 This is the Distributor's System Emergency Event management policy:

- (a) The Distributor will comply with the requirements of Part 8 (Common Quality) and Part 9 (Security of Supply) of the Code, and their associated technical codes.
- (b) The Distributor will provide the System Operator with an Asset Capability Statement describing the amount of load armed to trip in response to an under-frequency event, as required by the Code.
- (c) As soon as practicable after the Distributor becomes aware of a System Emergency Event, the Distributor will assess and set its priorities for Load Shedding, the use of any controllable load available to the Distributor in accordance with clause 6, and the restoration of load, having regard to the nature and extent of that System Emergency Event. For each System Emergency Event, the Distributor will endeavour to prioritise Load Shedding in a System Emergency Event as follows:
  - (i) safety;
  - (ii) Network stability and security;
  - (iii) restoration of power to critical infrastructure such as hospitals; and
  - (iv) high voltage lines and equipment (such as substations) that will restore the most power to as many customers as possible at once.

## SCHEDULE 6 - BILLING SERVICES

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### S6.1 BILLING SERVICES

- S6.1.1 **Scope of Billing Services:** Clause 9 and this Schedule 6 provide the terms on which the Retailer will invoice Customers (excluding Customers as set out in Schedule 6.1.2) for Distribution Services (including pass-through of the MainPower Rebate) as an agent of the Distributor, and the basis for settlement of Distribution Services charges (including the MainPower Rebate) between the Distributor and Retailer.
- S6.1.2 **ICPs excluded from Billing Services:** ICPs in relation to Customers that the Distributor has recorded on the Registry as subject to direct billing of Distribution Services charges (in the 'Direct Billed Status' field) are excluded from Billing Services. The Distributor, on giving 20 Working Days' notice to the Retailer, may add an ICP to, or remove an ICP from, the ICPs subject to direct billing of Distribution Services charges as recorded in the Direct Billed Status on the Registry.
- S6.1.3 **Invoice format:** The parties agree that the Retailer will issue Invoices for each supply of electricity made by the Retailer to the Customers and as agent of the Distributor for Distribution Services made by the Distributor to the Customers. The Retailer is entitled to use an Invoice format that reflects its retail pricing products provided the charges to Customers include, in accordance with Schedules 6A.1 to 6A.4, the charges payable by the Customer for Distribution Services based on the Prices for the relevant Price Category allocated to each ICP by the Distributor.
- S6.1.4 **Prepaid meters:** If any ICP has Metering Equipment installed in respect of which the Customer will pay for electricity and Distribution Services before such services are consumed and the Customer does not receive Invoices in respect of such services then, in respect of that ICP:
- (a) the Retailer will not be required to send an Invoice to the Customer;
  - (b) the total charges for Distribution Services included in the amount received from that Customer will be estimated by the Retailer on receipt of such payment by applying the Price Category in respect of that ICP to the Retailer's estimate of the Customer's fixed and variable charge quantities; and
  - (c) the total charges for Distribution Services estimated in accordance with paragraph (b) will be re-calculated by the Retailer on receipt of a meter reading with any alteration being made to the information provided in accordance with Schedule 6.2.1.

### S6.2 BILLING INFORMATION AND DISTRIBUTOR INVOICES

- S6.2.1 For all ICPs on the Network for which the Retailer is billing Distribution Services charges to Customers as agent of the Distributor, the Retailer must provide consumption information to the Distributor, and the Distributor must calculate the Distribution Services charges payable, in accordance with the following:



- (a) the Retailer must provide to the Distributor all information in accordance with EIEP1 or EIEP3 that the Distributor reasonably requires to enable it to calculate the Distribution Services charges;
- (b) the Retailer must provide the information by the dates and times specified in the relevant EIEP;
- (c) the parties acknowledge that the Distributor's Delivery Pricing Schedule and billing policy is based on the Distributor receiving consumption information from the Retailer using:
  - (i) the EIEP1 replacement RM normalised reporting methodology, as that methodology is defined in EIEP1, for information in respect ICPs for which the Distributor has specified standard or time-blocked pricing for the application of Prices;
  - (ii) EIEP3 in respect of half-hour metered ICPs for which the Distributor has specified half hour metering and/or kVA information for the application of Prices;
- (d) subject to clause 9.3 and the Retailer reporting consumption information for the Distributor's price component codes applicable to the Price Category for each ICP in its EIEP1 files regardless of what it invoices the Customer, the Distributor will calculate the Distribution Services charges based on the Prices that apply to each price component code and chargeable quantity as reported by the Retailer.
- (e) in respect of replacement RM normalised consumption information, the Retailer must provide revised consumption information to the Distributor in accordance with EIEP1. The parties agree, to the extent permitted by EIEP1, that EIEP1 files for month 1 are not required to be provided by the Retailer and the Distributor will not be required to provide a corresponding wash-up Invoice, and that while the Distributor is only required as a minimum to provide wash-up Invoices for revision month 3 it will also provide wash-up Invoices for revision month 14 unless otherwise agreed, and otherwise in accordance with the requirements of EIEP1. The wash-up component of each Invoice will reflect a reversal of the previous charges for the relevant month and replacement with new charges for the same month based on the latest revision file.

**S6.2.2 Storage:** Recognising that the Distributor has obligations to retain records under the Tax Administration Act 1994 and the GST Act, and in order for the Distributor to be able to comply with its obligations in relation to the retention of records under that legislation, the Retailer will ensure that copies of each Invoice sent to Customers under this agreement, together with all information on which such Invoice is based, are retained electronically for itself and on behalf of the Distributor in a secure storage facility for a period of at least 7 years from the last date of the income tax year during which the Invoice was issued.

### **S6.3 DISTRIBUTION SERVICES PRICES AND PROCESS FOR CHANGING PRICES**

**S6.3.1 Distribution Services pricing information:** Appendix C of this Schedule 6 sets out information about how the Retailer can access information about the Distributor's:

- (a) Pricing Structure;

- (b) schedule of Price Categories;
- (c) Price Options (if any); and
- (d) Prices.

The Distributor must ensure that the information it makes available in accordance with Appendix C is available in a standard, downloadable electronic document format in a form that permits electronic search and copy functions.

**S6.3.2 Changes to Pricing Structure, Price Categories, Price Options, and Prices:** The Distributor may change:

- (a) its Prices as set out in Schedules 6.3.3 to 6.3.7; and
- (b) its Pricing Structure as set out in Schedules 6.3.4, 6.3.6, and 6.3.7; and
- (c) its Price Categories and Price Options (if any) at any time,

provided that if any such change would have the effect of increasing the Price that applies at one or more ICPs for which the Retailer is currently responsible, the change must be carried out in accordance with Schedule 6.3.5.

**S6.3.3 Frequency of Price changes:** Unless otherwise agreed with the Retailer, the Distributor may not change its Prices more than once in any period of 12 consecutive months unless a change is a material increase to 1 or more existing Prices and results from a change in:

- (a) a cost that is a pass-through cost or a recoverable cost specified in a determination of an input methodology by the Commerce Commission under Part 4 of the Commerce Act 1986 in respect of the services provided by the Distributor;
- (b) the Distributor providing new Distribution Services or materially changing existing Distribution Services, provided that any proposed Price change must only apply to ICPs affected by the new or changed Distribution Services; or
- (c) the law.

Nothing in this clause prevents the Distributor from decreasing a Price at any time, or from increasing a Price with the agreement of the Retailer.

**S6.3.4 Process to change Pricing Structure:** If the Distributor intends to make a change to its Pricing Structure that will materially affect the Retailer or 1 or more Customers, the Distributor must first consult with the Retailer about the proposed change. If appropriate, the Distributor may consult jointly with the Retailer and all other retailers that are affected by the proposed change. Without limiting anything in Schedule 6.3.3, and unless the parties agree otherwise, the Distributor must:

- (a) **comply with guidelines:** comply with the Distribution Pricing Structure Consultation Guidelines, including by implementing the good consultation practices set out in those guidelines;
- (b) **comply with the Code:** comply with any provisions in the Code relating to the pricing of Distribution Services; and

- (c) **notify Retailer of final Pricing Structure:** provide the Retailer 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.

**S6.3.5 Notice of Price changes:** In addition to any notification requirements in accordance with Schedule 6.3.4, if the Distributor makes or intends to make a Price change, the Distributor must:

- (a) give the Retailer 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 Schedule 6.4, the Distributor must give the Retailer 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 Retailer of the Price change in accordance with EIEP12.

**S6.3.6 Pricing Structure and Price change disputes:** Once a change to a Pricing Structure has been finalised in accordance with Schedule 6.3.4, or a Price change is notified in accordance with Schedule 6.3.5, the Retailer may raise a Dispute under clause 17 in respect of the Pricing Structure or the Price change only if the Retailer considers that the Distributor has not complied with Schedule 6.3.4 or 6.3.5 (as the case may be). If a Dispute is raised, the Retailer must continue to pay the Distributor's Invoices until the Dispute is resolved.

**S6.3.7 Changes containing an error:** If the Retailer identifies an error in the Pricing Structure finalised and notified in accordance with Schedule 6.3.4, or an error in a Price change notified in accordance with Schedule 6.3.5 that arises from an obvious error in applying the Pricing Structure, the Retailer 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 in Schedule 6.3.4 or giving notice in accordance with Schedule 6.3.5(a) (as the case may be), provided that the correction of the error must not have a material effect on the Retailer 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 Schedule 6.3.2.

## **S6.4 ALLOCATING PRICE CATEGORIES AND PRICE OPTIONS TO ICPS, COMMENCEMENT AND CESSATION OF DISTRIBUTION SERVICES CHARGES**

**S6.4.1 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.

S6.4.2 **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.

S6.4.3 **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;
- (b) the attributes of the ICP; and
- (c) if known and relevant:
  - (i) the Retailer'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.

S6.4.4 **Retailer may request allocation of an alternative eligible Price Category:** At any time, the Retailer 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 Retailer within 5 Working Days (or such longer period as agreed between the Distributor and the Retailer) after receipt of notice of the Retailer's request. If the Distributor declines the request, it must provide the reasons for its decision.

S6.4.5 **Retailer 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 Retailer 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.

**S6.4.6 Retailer request for reallocation of Price Category if it considers a Price Category has been Incorrectly Allocated:** Under this Schedule 6.4.6 and Schedules 6.4.7 and 6.4.9, 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 Retailer reasonably considers that a Price Category was Incorrectly Allocated to an ICP, the Retailer must notify the Distributor of the reasons why it considers that the Price Category was Incorrectly Allocated and identify the Price Category that the Retailer 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 Retailer within 10 Working Days after receipt of the Retailer'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 Schedule 6.4.6 does not apply if the Distributor has already provided notice to the Retailer that the relevant Price Category is **Incorrectly Allocated** in accordance with Schedule 6.4.9.

**S6.4.7 Credit following correction:** If the Distributor allocates a Corrected Price Category to an ICP following notice from the Retailer given in accordance with Schedule 6.4.6, the Distributor must:

- (a) commence charging the Retailer in accordance with the Price(s) that applies to the Corrected Price Category with immediate effect; and
- (b) subject to Schedule 6.4.8, and by issuing a Credit Note payable in the next monthly billing cycle, credit the Retailer with an amount (if positive) equivalent to:
  - (i) the charges paid by the Retailer in respect of that ICP in the period from the later of:
    - (A) the Effective 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 Retailer, 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 Schedule 6.4.7 is 15 months, unless otherwise agreed.

**S6.4.8 Limitations on credits for Price Category corrections:** Schedule 6.4.7(b) does not apply in respect of an ICP if:

- (a) Schedule 6.4.9 applies to the ICP; or
- (b) within 20 Working Days of the Switch Event Date recorded for the Retailer, the Retailer 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 Retailer 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.

**S6.4.9 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 Retailer 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 Retailer 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 Schedule 6.4.1); and
  - (ii) may commence charging for Distribution Services in accordance with that Price Category after a further 40 Working Days; and
- (c) the Distributor must provide to the Retailer information relevant to its decision.

**S6.4.10 Application of Schedule 6.4.9:** Schedule 6.4.9 does not apply if the Retailer has already provided notice to the Distributor in accordance with Schedule 6.4.6 that the relevant Price Category has been Incorrectly Allocated.

**S6.4.11 Commencement of charges:** Distribution Services charges apply in respect of an ICP from the 'start date' in the EIEP1 files provided by the Retailer, and for the avoidance of doubt the 'start date' in the EIEP1 files must comply with clauses 38 and 40 of EIEP1.

**S6.4.12 Cessation of charges:** Distribution Services charges apply in respect of an ICP from the 'start date' to the 'end date' in the EIEP1 files provided by the Retailer, and for the avoidance of doubt the 'end date' in the EIEP1 files must comply with clauses 39 and 40 of EIEP1.

## **S6.5 ASSIGNMENT OF DEBT**

**S6.5.1 Assignment:** The Distributor will, on receipt of a payment under clause 9 that has become cleared funds, assign to the Retailer all of the Distributor's interest in the amount payable by Customers for the provision of Distribution Services for which the payment applies.

**S6.5.2 Non-recourse:** From the time that the Distributor's interest in an amount is assigned in accordance with Schedule 6.5.1, the Retailer will have no right of recourse to the Distributor in respect of the non-payment by a Customer of all or part of any amount payable by that Customer for the provision of Distribution Services.

**S6.5.3 GST:**

- (a) In consideration of the Distributor authorising the Retailer to establish the contractual relationship between the Distributor and Customers in respect of ICPs connected to the Network where the Retailer is billing Distribution Services charges as agent of the Distributor, and in accordance with section 60(1B) of the GST Act, the Distributor and Retailer agree that in relation to the supply of Distribution Services the supply is to be treated as two separate supplies for the purposes of the GST Act:
  - (i) a supply of Distribution Services from the Distributor to the Retailer; and
  - (ii) a supply of Distribution Services from the Retailer to the Customer.
- (b) For the supply of Distribution Services from the Retailer to the Customer the Retailer is responsible for returning the output tax on Invoices issued to Customers; and
- (c) For the supply of Distribution Services from the Distributor to the Retailer the Distributor is responsible for returning the output tax on Invoices issued to the Retailer.

**S6.5.4 Distributor warranty:** At the time of each assignment of the amounts referred to in Schedule 6.5.1 the Distributor will be deemed to warrant to the Retailer in respect of each such amount that:

- (a) the Distributor is the legal and beneficial owner of that amount free from any mortgages, pledges, liens, charges or other encumbrances; and
- (b) the Distributor has not granted and will not grant any modification, extension, waiver, or indulgence that would prejudice enforcement of, or would otherwise affect, that amount.

## **S6.6 PRUDENTIAL REQUIREMENTS**

**S6.6.1 Distributor may require Retailer to comply with prudential requirements:** The Distributor may, by giving notice to the Retailer, require the Retailer to comply with prudential requirements, in which case the Retailer must, whether the notice is received before or after the Effective Date of this agreement, comply with prudential requirements as follows:

- (a) if the Retailer is not trading on the Network, the Retailer must comply with prudential requirements before the Retailer starts trading on the Network; and
- (b) if the Retailer is trading on the Network, the Retailer must comply with prudential requirements within 10 Working Days after receipt of the Distributor's notice.

**S6.6.2 Retailer elects prudential requirements:** If the Distributor requires the Retailer to comply with prudential requirements in accordance with Schedule 6.6.1, the Retailer must comply with either of the following prudential requirements:

- (a) the Retailer must maintain an acceptable credit rating at all times; or
- (b) the Retailer must provide and maintain at all times acceptable security by, at the Retailer's election:
  - (i) providing the Distributor with a cash deposit of the value specified in Schedule 6.6.6 ("**Cash Deposit**"), which the Distributor must hold in a trust

account that the Distributor must establish and operate in accordance with Schedule 6.6.26;

- (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 Schedule 6.6.6; or
- (iii) providing a combination of the securities listed in subparagraphs (i) and (ii) to the value specified in Schedule 6.6.6.

**S6.6.3 Acceptable credit rating:** For the purposes of Schedule 6.6.2, an acceptable credit rating means that the Retailer 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 Retailer 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.

**S6.6.4 Change in prudential requirements complied with:** The Retailer 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 Schedule 6.6.18. The change will come into effect on the intended date, provided that the Retailer 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 Schedule 6.6.2.

**S6.6.5 Evidence of acceptable credit rating:** The Retailer 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.

**S6.6.6 Value of security:** The value of security required for the purposes of this Schedule 6.6.6 is the Distributor's reasonable estimate of the Distribution Services charges that the Retailer 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 Retailer. If additional security is required in accordance with Schedule 6.6.7 ("**Additional Security**"), the Distributor's notice provided in accordance with Schedule 6.6.1 must state the amount of the Additional Security.

**S6.6.7 Distributor may require Additional Security:** The Distributor may, by notice to the Retailer, require the Retailer 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 Retailer under this agreement is not more than the Distributor's reasonable estimate of the charges that the Retailer will be required to pay to the Distributor under this agreement in respect of any 2 month period.



**S6.6.8 If Additional Security required:** If the Distributor requires the Retailer to provide Additional Security:

- (a) the Retailer may elect the type of security that it provides in accordance with Schedule 6.6.2(b); and
- (b) the parties must comply with Schedule 6.6.16 and 6.6.18.

**S6.6.9 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 Retailer for each day that the Distributor holds the Additional Security at a per annum rate that is calculated as follows:
  - (i) 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 Retailer 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 Retailer 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 Retailer in accordance with this Schedule 6.6.9 must be paid by the Distributor to the Retailer on a quarterly basis; and
- (f) if the Retailer 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.

**S6.6.10 Estimating the value of security if the Retailer is a new retailer:** If the Retailer has not previously entered into a contract with the Distributor for access to the Network, the Distributor must estimate the value of security required in Schedule 6.6.6 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 Retailer in good faith is necessary for the Distributor to determine the value of security that it requires from the Retailer.

S6.6.11 **Review of the value of security:** The Distributor may review, or the Retailer may require the Distributor to review, the value of security required to be provided by the Retailer at any time.

S6.6.12 **Retailer to notify Distributor of changes affecting security:** Subject to Schedule 6.6.14, the Retailer must immediately notify the Distributor if any of the following occurs:

- (a) the Retailer no longer carries an acceptable credit rating; or
- (b) the Retailer has complied with prudential requirements by arranging for a third party to provide security in accordance with Schedule 6.6.2(b), and the Retailer learns that the third party no longer carries an acceptable credit rating; or
- (c) the Retailer 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.

S6.6.13 **Confidential Information:** Any information provided by the Retailer to the Distributor in accordance with Schedule 6.6.12 will be Confidential Information.

S6.6.14 **Public issuers and listed companies:** For the purpose of Schedule 6.6.12, if the Retailer (or its ultimate parent company) is a "listed issuer" for the purposes of the Financial Markets Conduct Act 2013, the Retailer may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement on terms reasonably satisfactory to the Retailer before giving notice and disclosing information in accordance with Schedule 6.6.12, if and for so long as the Retailer considers such information to be "inside information" as defined in that Act.

S6.6.15 **Distributor may make enquiries:** If the Distributor believes that the Retailer should have given notice in accordance with Schedule 6.6.12 and the Distributor has not received any such notice, the Distributor may enquire of the Retailer 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 Retailer. If notice should have been given, the Retailer must give notice immediately, or if no notice is required, the Retailer must respond to the Distributor in writing within 2 Working Days of receipt of the Distributor's notice under this Schedule 6.6.15. Correspondence sent or received by either party under this clause is Confidential Information.

S6.6.16 **Change to value of security:** If:

- (a) the Distributor requires that the Retailer provide Additional Security in accordance with Schedule 6.6.7; or
- (b) following a review of the Retailer's security in accordance with Schedule 6.6.11; or
- (c) on receipt of information contemplated by Schedule 6.6.12 or 6.6.15; or
- (d) as the result of a failure by the Retailer to respond to a request made in accordance with Schedule 6.6.15 within the timeframe set out in Schedule 6.6.15,

the Distributor or the Retailer 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 Retailer 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 the Retailer to respond to a request made in accordance with Schedule 6.6.15 within the required timeframe constitutes reasonable grounds for a Distributor to change the value of security required to be provided by the Retailer.

**S6.6.17 Failure to maintain acceptable credit rating:** If:

- (a) on receipt of information contemplated by Schedule 6.6.12 or 6.6.15; or
- (b) as the result of a failure by the Retailer to respond to a request made in accordance with Schedule 6.6.15 within the required timeframe,

the Distributor considers, acting reasonably, that the Retailer is no longer able to maintain an acceptable credit rating in accordance with Schedule 6.6.2(a), and the Distributor still requires the Retailer to comply with prudential requirements, the Distributor must notify the Retailer of the value of acceptable security required in accordance with Schedule 6.6.2(b).

**S6.6.18 Distributor or Retailer to effect changes in value or type of security:** The Distributor or the Retailer, 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 in accordance with Schedule 6.6.4, 6.6.16, or 6.6.17. Refunds of Cash Deposits and reductions of the value of third party security required must be made in accordance with Schedule 6.6.19 or 6.6.21.

**S6.6.19 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 Retailer on the Working Day following the day on which the Distributor decided to, or is required to, refund the Cash Deposit.

**S6.6.20 Cash Deposit on Insolvency Event:** If an Insolvency Event occurs in relation to the Retailer:

- (a) the Retailer will not be entitled to a return of the Cash Deposit, other than as set out in Schedule 6.6.26(f); and
- (b) if the Retailer 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 Retailer.

**S6.6.21 Reduction of third party security:** If the Distributor decreases the value of third party security required in accordance with this agreement, the Retailer may arrange for the issuing of new third party security for the lesser value, in satisfaction of Schedule 6.6.2(b)(ii), which will replace the earlier third party security.

**S6.6.22 When Distributor may make a call on security:** The Distributor may make a call on security in accordance with Schedule 6.6.23 if:

- (a) the Retailer has provided security for the purpose of clause S6.6.2(b); and
- (b) the Retailer fails to pay an amount due under this agreement; and

- (c) the amount is not subject to a genuine dispute.

**S6.6.23 Calls on security:** If this clause applies in accordance with Schedule 6.6.22, the Distributor may, on 2 Working Days' notice to the Retailer (or immediately in the case of deemed Cash Deposit under Schedule 6.6.25), call on the security as follows:

- (a) if the Retailer 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 Retailer 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 Retailer that it has called on the security.

**S6.6.24 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 Retailer must within 5 Working Days take all steps necessary to ensure that the Retailer maintains acceptable security of the value specified in Schedule 6.6.6 and the value of any Additional Security required by Schedule 6.6.7 (as such may be reviewed by the Distributor in accordance with Schedule 6.6.11), as required by Schedule 6.6.2(b).

**S6.6.25 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 Retailer in substitution for the third party security and must be dealt with in accordance with Schedule 6.6.26.

**S6.6.26 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 Retailer, 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 Retailer must inform the Distributor of the bank(s) that the Retailer uses for its banking purposes and if the Retailer 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 Retailer 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 Schedule 6.6.9) 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 Retailer) to the Retailer in accordance with clause S6.6.19, provided that the Retailer:
  - (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 Retailer with an annual report in respect of the operation of the Trust Account if requested by the Retailer.

**S6.6.27 Release of third party security:** If this agreement is terminated, the Distributor must release any third party security, provided that the Retailer has met all of the requirements set out in Schedule 6.6.26(f).

## **S6.7 REPRESENTATION LETTER**

**S6.7.1 Representation Letter:** For the purpose of this Schedule, a “**Representation Letter**” means a letter from the Retailer addressed to the Distributor’s auditors that:

- (a) confirms in respect of the relevant period whether so far as the Retailer is aware the Retailer meets the following requirements:
  - (i) the systems, processes and controls operated by the Retailer are adequate to ensure the completeness and accuracy of all billing and other transactional processing functions set out in this agreement insofar as they relate to the Billing Services provided to the Distributor;
  - (ii) the Retailer has reported accurately to the Distributor in accordance with its obligations under Schedule 6.2;
  - (iii) the Retailer has complied with its obligations under Schedule S6.6; and
  - (iv) the Retailer has complied with all tax and other relevant legislation in the performance of its obligations under this agreement; and
- (b) records any material non-compliance by the Retailer with the terms of this agreement of which the Retailer has become aware.

**S6.7.2 Provision of Representation Letter:**

- (a) Prior to the end of the Distributor’s financial year, the Distributor may if the Retailer is providing Billing Services, request in writing that the Retailer deliver to the Distributor a Representation Letter in respect of that financial period.
- (b) The Retailer will provide the Representation Letter to the Distributor within the period specified which will be not less than 10 Working Days from receipt of the request.

## **S6.8 INFORMATION INSPECTION**

**S6.8.1 IRD and regulatory inspection:** At the written request of the other party and subject to any terms and conditions specified by that party, the Retailer or Distributor will facilitate the reasonable inspection of all relevant records and books of account in the possession or control of that party required to be inspected by the Inland Revenue Department or other regulatory organisation (provided the Inland Revenue Department or such regulatory organisation is entitled by law to require such inspection) in relation to the Distributor or Retailer for the periods that the party is providing these Services. The Retailer or Distributor will cooperate with the Inland Revenue Department or such other regulatory organisation to facilitate a timely inspection and will be entitled to seek reasonable costs from the requesting party.

**S6.8.2 Auditing information provided:** To enable either party to this agreement (being the “**Verifier**”) to verify the accuracy of information provided to it by the other party to this agreement (being the “**Provider**”), the Provider will allow the Verifier and its agents reasonable access to the Provider’s books and records (including, if the Retailer is the Provider, metering or consumption data) (collectively 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 provided:

- (a) the Verifier has given the Provider not less than 10 Working Days' prior notice; and
- (b) the Verifier meets the reasonable costs of the Provider in providing the information.

**S6.8.3 Limitations on the Verifier:** In relation to its review of the Records, 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 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.

**S6.8.4 Independent Auditor:** If the Provider is the:

- (a) Distributor and, acting reasonably, gives notice that the Records contain information about other industry participants that cannot reasonably be severed from information relating to the Retailer or that the information is commercially sensitive; or
- (b) Retailer 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 Retailer, 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 Retailer, as appropriate, will not unreasonably object to the Auditor appointed by the other party. In the event that the Distributor or the Retailer, 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 under this clause 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 confidential all information of the Provider received by the Auditor in connection with the audit (including the Records). Where an Auditor is appointed under this Schedule 6.8.4, the requirements of Schedule 6.8.3 will apply to this clause with all necessary modification (with references to the "Verifier" to be read as the Auditor).

- S6.8.5 **Provider and auditing party 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 in accordance with Schedule 6.8.2 and will ensure that the Records are readily accessible and readable.
- S6.8.6 **Parties to comply with Privacy Act:** Each party acknowledges and agrees that it will comply at all times with the Privacy Act 2020 to the extent it applies to its activities under this agreement.

## **S6.9 TERMINATION OF BILLING SERVICES**

- S6.9.1 **By notice:** Either party may by giving a minimum of 12 months' notice terminate the Billing Services.
- S6.9.2 **Retailer in breach:** If the Retailer fails to comply with any of its obligations under this Schedule, or a Representation Letter provided in accordance with Schedule 6.7 indicates that the Retailer is in material breach of any of its obligations under this Schedule 6 and the Retailer has failed to remedy that breach then clauses 12 and 13 will apply, provided that the Distributor may terminate the Billing Services only rather than the whole agreement.
- S6.9.4 **Data:** On termination of the Billing Services, the Retailer will grant access to the Distributor or a third party contracted to provide billing services to the Distributor, or provide to the Distributor, all of the metering data obtained by the Retailer in respect of the ICPs previously billed by the Retailer together with, if held by, or under the control of, the Retailer, the metering data for the previous 12 months in respect of that ICP or those ICPs so as to enable the Distributor or that third party to invoice the relevant Customer or Customers. The Retailer will be entitled to charge the Distributor the actual and reasonable cost for supplying this data. For the avoidance of doubt, this is the direct operational cost of providing the data, and not the cost or value of the data itself. If the parties do not agree to this amount this dispute will be resolved in accordance with the dispute resolution procedure in clause 17 and if the Retailer fails to provide or grant the Distributor or the third party access to metering information, then the Retailer will be liable for all reasonable costs and/or expenses incurred, payable or suffered by the Distributor as a result of such failure.

## **APPENDIX A – CUSTOMER INVOICE FORMAT**

- S6A.1 Although the Retailer is billing Customers for Distribution Services as agent of the Distributor, the Distributor is not requiring the Retailer to comply with a mandated format for the Distribution Services charges (including the MainPower Rebate) on the Retailer's Invoices issued to Customers.
- S6A.2 The Distributor's preference is that delivery pricing signals are passed through transparently and explicitly which can best be achieved if the Prices, chargeable quantities, and charges for Distribution Services (including the MainPower Rebate) are unbundled on the Retailer's Invoices issued to Customers.
- S6A.3 If transparency in accordance with Schedule 6A.2 is not practicable then the Distributor's second preference is that the delivery pricing signals are passed through implicitly on the Retailer's Invoices issued to Customers, bundled with the retail charges.
- S6A.4 If the Retailer chooses to repackage the delivery Prices which it is entitled to do, for example by repackaging peak, shoulder and off peak delivery Prices into Day and Night or Anytime retail prices, it will not affect the basis of settlement of the charges for Distribution Services between the Distributor and Retailer which will still be the relevant Prices and chargeable quantities for the Price Category and price component codes applicable to the ICP.



## **APPENDIX B – ICPs NOT SUBJECT TO BILLING SERVICES**

S6B.1 The ICPs not subject to Billing Services are those recorded by the Distributor on the Registry as subject to direct billing in the 'Direct Billing Status' field.

## **APPENDIX C – DELIVERY PRICING SCHEDULE**

S6C.1 The Retailer can access the following delivery pricing (including the MainPower Rebate) information on the Distributor's website:

- (a) Delivery Pricing Schedule for each geographic area, setting out the Price Categories, Price Structure, and Prices;
- (b) Price component codes; and
- (c) Pricing Methodology (for information only).

## SCHEDULE 7 - PROVISION OF DATA

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- S7.1 The parties may agree to enter into an agreement for the sharing of data.
- S7.2 Unless otherwise agreed, the provisions that will apply to the sharing of consumption data are terms consistent with the “**Default Agreement – Provision of consumption data**” Appendix C of Schedule 12A.1 of the Code, and (if applicable) amended to be consistent with alternative agreements in the industry negotiated under clause 9 of Schedule 12A.1 of the Code (“Agreement for the provision and use of consumption data”) which include insertion of clauses 5A (Combination of Consumption Data) and 21A (Data Combination Schedule) if applicable, and further amended (or deemed to have been amended) to reflect the conveyance arrangement where the Distributor is providing Distribution Services to Customers in accordance with the Connection Agreements (and not to retailers under an interposed arrangement as contemplated in Appendix C).
- S7.3 The Distributor may use EIEP4 Customer information provided by the Retailer to enable the Distributor to fulfil its obligations in accordance with this agreement and for the purposes set out in the Connection Agreements, including communicating with Customers in relation to service interruptions, network complaints and meeting the requirements of the Dispute Resolution Scheme, meeting the requirements of the Shareholder Trust including for distributions and elections, research on the quality and level of line function services (including consulting with Customers about the Distributor’s services and pricing), tree trimming and safety concerns, land access, and any other reason agreed between the Distributor and Retailer. 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 Schedule 7.3. The Distributor may not change the purposes set out in the Connection Agreements for which EIEP4 Customer information may be used unless it first consults with the Retailer and all other retailers affected by the proposed changes (and with Customers if required by the Connection Agreement including obtaining any consents required from Customers under the Privacy Act 2020 for the disclosure and use of EIEP4 Customer information). For the avoidance of doubt, the Retailer may make submissions to the Distributor.
- S7.4 If other data is required by either party the parties may enter into an agreement which must set out the type and extent of data required, purpose for which the party wishes to use the data, the payment of reasonable costs, the timeframe for delivery, and privacy and confidentiality obligations.
- S7.5 Each party will allow the other party (or its representatives) at reasonable times and from time to time, to inspect, review and/or audit its compliance with the provision of data and will give the other party any assistance which it may reasonably require in connection with such inspection and/or audit.

## SCHEDULE 8 - FEES

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S8.1 There are no fees as at the Effective Date of this agreement.

## SCHEDULE 9 - ADDITIONAL SERVICES

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## SCHEDULE 9A – DISTRIBUTIONS ON BEHALF OF DISTRIBUTOR

### **Distributor can require the Retailer to pass on distributions**

- S9A.1 The Distributor has a Shareholder Trust and requires the Retailer from time to time to distribute payments or credits on behalf of the Distributor to the Shareholder Trust's beneficiaries.
- S9A.2 The Distributor may require that the Retailer pay distributions (which means dividend re-distributions or discounts) on behalf of the Shareholder Trust or Distributor to each of the Retailer's qualifying Customers by crediting each qualifying Customer's electricity account ("**Monetary Distribution Services**"), by giving the Retailer at least 40 Working Days' notice of the requirement in accordance with Schedules 9A.5 to 9A.7.
- S9A.3 The Distributor may not require the Retailer to pay distributions in accordance with Schedule 9A.2 any more frequently than necessary to ensure that distributions are credited to Customers on or by any date that the Shareholder Trust or Distributor resolves to distribute payments or credits to beneficiaries.
- S9A.4 If the Distributor has given notice to the Retailer to pay monetary distributions under any use-of-system agreement or equivalent agreement entered into prior to the date of this agreement coming into effect, the Distributor may, by notice to the Retailer within 5 Working Days of this agreement coming into effect, elect that the monetary distribution services terms of the prior agreement apply to the distributions that have already been notified.

### **Distributors notice of requirements for distributions on behalf of Distributor**

- S9A.5 A notice given by a Distributor in accordance with Schedule 9A.2 must include the following:
- (a) the time period within which the Shareholder Trust or Distributor has set the eligibility date for Customers to be qualifying Customers;
  - (b) a description of the information the Shareholder Trust or Distributor requires to identify qualifying Customers, including any exclusions;
  - (c) the ICPs on the Network in respect of which a distribution is payable;
  - (d) a description of the information the Shareholder Trust or Distributor requires to calculate the distributions payable;
  - (e) the proposed process and timelines for information to be exchanged between the parties to enable efficient implementation;
  - (f) contact details of persons who can be contacted in respect of Customer queries that cannot be addressed by the Retailer;
  - (g) expected frequently asked questions by Customers and the answers to those questions;
  - (h) the format in which Customer information is to be exchanged in accordance with Schedule 9A.18;

- (i) whether the Distributor, or Distributor on behalf of the Shareholder Trust, requires any other information in respect of each qualifying Customer for the purposes set out in Schedule 9A.29; and
- (j) whether the Distributor, or Distributor on behalf of the Shareholder Trust, requires information in accordance with Schedule 9A.18(b).

S9A.6 The Retailer must, acting reasonably and within 5 Working Days of receiving a notice under Schedule 9A.2, advise the Distributor if the Retailer is unable to meet any of the requirements set out in the notice, and the reasons for that.

S9A.7 The Distributor must, as soon as practicable after giving notice under Schedule 9A.2 and by no later than 10 Working Days before posting or publishing the relevant material, provide the Retailer with:

- (a) a draft of any promotional material relating to the distributions that the Distributor wants the Retailer to include with the invoice that records the credit given in respect of any distribution paid; and
- (b) a draft of any proposed publicity information relating to the distributions, including media releases.

The Retailer must, within 5 Working Days of receiving a notice in accordance with Schedule 9A.7(a), advise the Distributor whether, or not, it is willing and able to meet the Distributor's requirements for promotional material to be included with the invoice that records the credit given in respect of any distribution paid.

#### **Payment of Retailer's reasonable costs**

S9A.8 The Distributor must pay the Retailer's reasonable costs incurred in providing any Monetary Distribution Services that the Distributor requests in a notice given under Schedule 9A.2.

S9A.9 If requested by the Distributor, the Retailer must give the Distributor a quote for providing the Monetary Distribution Services before the Retailer provides those services.

S9A.10 The Distributor must pay the Retailer's GST invoice for the Monetary Distribution Services no later than the 20th of the month following the invoice date.

#### **File with Customer information**

S9A.11 The Distributor may request from the Retailer any information that the Distributor reasonably requires to enable it to identify qualifying Customers and to calculate the distribution payable to each qualifying Customer.

S9A.12 The Retailer must provide a file to the Distributor containing any information reasonably requested by the Distributor in accordance with Schedule 9A.11 no later than 10 Working Days after the Distributor's request.

S9A.13 The Distributor must, as soon as practicable after receipt of all Retailers' files:

- (a) return the file provided in accordance with Schedule 9A.12 to the Retailer with information identifying qualifying Customers and the distribution amounts payable to each qualifying Customer; and

- (b) notify the Retailer whether the Distributor or Shareholder Trust will pay the total amount of such distributions to the Retailer, and whether a GST invoice is required.

S9A.14 If there are any changes to the type of information to be exchanged, or changes to the eligibility criteria compared with the criteria that applied to the last distribution passed on by the Retailer, the parties must test the information exchange process in advance.

#### **Distributing payments or credits to qualifying Customers**

S9A.15 The Retailer must, as soon as practicable after receiving payment of the total amount of the distributions from the Distributor or the Shareholder Trust as notified in accordance with Schedule 9A.13:

- (a) credit the distribution amount determined by the Distributor and included in the file in accordance with Schedule 9A.13 to each qualifying Customer's account; and
- (b) provide the Distributor with a file that includes the information set out in Schedule 9A.18.

S9A.16 The Retailer must, if its billing systems allow it to do so, ensure that the distribution is separately identified on each qualifying Customer's invoice, with the words "MainPower **discount**" (or any similar words as advised by the Distributor).

S9A.17 If applicable, and subject to Schedule 9A.7, the Retailer must provide the Distributor's promotional material relating to the distribution to the Customer along with the Retailer's invoice that includes the distribution.

#### **File with information about distributions paid by the Retailer**

S9A.18 The Retailer must, as soon as practicable after paying distributions in accordance with Schedule 9A.15, provide the Distributor with a file containing the following information:

- (a) in respect of each qualifying Customer to whom the Retailer paid a distribution:
  - (i) the ICP identifier;
  - (ii) the amount of the distribution paid;
  - (iii) the Customer's name;
  - (iv) the Customer's physical or residential address (if available); and
  - (v) any other information specified by the Distributor under Schedule 9A.5(i); and
- (b) if the Distributor has specified in accordance with Schedule 9A.5(j) that it requires that information, in respect of each qualifying Customer to whom a distribution was not fully paid:
  - (i) the ICP identifier;
  - (ii) the amount of the distribution not paid;
  - (iii) the Customer's name; and
  - (iv) the Customer's physical or residential address (if available).



## **Confidentiality obligations**

S9A.19 Subject to Schedule 9A.20, the Distributor undertakes that, in respect of any information provided to it by the Retailer in accordance with Schedule 9A.11 or Schedule 9A.18 (“**Confidential Customer Information**”), the Distributor will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose the Confidential Customer Information except as expressly permitted in this Schedule 9A;
- (b) only use the Confidential Customer Information for a purpose expressly permitted in this Schedule 9A; and
- (c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Schedule 9A and on a ‘need to know’ basis.

S9A.20 For the purposes of this Schedule 9A:

- (a) the Distributor may disclose Confidential Customer Information if it is required to disclose the Confidential Customer Information by:
  - (i) law, or by any statutory or regulatory body or authority; or
  - (ii) any judicial or other arbitration process; and
- (b) Confidential Customer Information does not include aggregated and anonymised information.

S9A.21 The Distributor’s liability for breach of this clause is not limited by any terms in this agreement or in any other agreement between the parties.

S9A.22 To avoid doubt, the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by the Distributor's employees, contractors, directors, agents, or advisors.

## **Payment of distribution amounts**

S9A.23 If notice is given in accordance with Schedule 9A.13 that a GST invoice is required, the Retailer must issue the Distributor or the Shareholder Trust with a GST invoice in accordance with that notice for the total amount of distributions credited, or to be credited, to qualifying Customers in accordance with Schedule 9A.15.

S9A.24 Subject to Schedule 9A.13(b), the Distributor must deposit the total amount of such distributions, without offset, into the Retailer’s nominated bank account no later than 5 Working Days (or any alternative agreed date) after notice is given in accordance with Schedule 9A.13(b) or, if a GST invoice is required, the Retailer issues its GST invoice.

S9A.25 Any distribution payments received by the Retailer from the Distributor or Shareholder Trust in accordance with this clause must be held by the Retailer in an appropriate bank account as separately identifiable funds, on trust for the benefit of the Customers who are entitled to receive the distributions.

S9A.26 If, for any reason, the distribution payable to a qualifying Customer is unable to be paid by the Retailer (by way of example but without limitation, because the person ceases to be a Customer and its account with the Retailer has a credit balance after the date of processing

of the distribution), and the Retailer has received funds from the Distributor or the Shareholder Trust in respect of the distribution, the Retailer must, as soon as practicable refund to the Distributor (unless the Retailer received funds from the Shareholder Trust in respect of the distribution, in which case the Retailer must refund to the Shareholder Trust) the distribution received for the person, or the net credit of the account for the person if that is less than the amount of the distribution for the person.

#### **Permitted additional use and disclosure of Confidential Customer Information**

S9A.27 The Distributor may use Confidential Customer Information to:

- (a) assess whether the Distributor is Consumer-Owned; and
- (b) comply with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

S9A.28 To avoid doubt, the Distributor may disclose Confidential Customer Information to the Commerce Commission, including in circumstances where the Commerce Commission has not exercised a power under the Commerce Act 1986 to require the Distributor to disclose Confidential Customer Information.

S9A.29 The Distributor may disclose Confidential Customer Information provided by the Retailer to the Shareholder Trust, but the Distributor must enter into arrangements with the Shareholder Trust to ensure that the Shareholder Trust only uses, or the Distributor may use, the Confidential Customer Information for the purposes of:

- (a) ensuring that payments or credits are distributed to beneficiaries in accordance with the Shareholder Trust's or Distributor's requirements; and
- (b) enabling a third party to carry out audits of the Distributor or the Shareholder Trust.

S9A.30 In the case of Confidential Customer Information disclosed to a Shareholder Trust:

- (a) the Distributor may enter into arrangements with the Shareholder Trust that allow the Shareholder Trust to disclose Confidential Customer Information if required by:
  - (i) law, or by any statutory or regulatory body or authority; or
  - (ii) any judicial or other arbitration process; and
- (b) the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by the Shareholder Trust, or by the Shareholder Trust's employees, contractors, directors, agents, or advisors.

#### **Distributor indemnity**

S9A.31 The Distributor indemnifies the Retailer against any costs, losses, liabilities, claims, charges, demands, expenses, or actions incurred by the Retailer, or made against the Retailer, as a result of, or in relation to, any illegal, defamatory, or offensive content in the Distributor's promotional material, except to the extent that such costs, losses, liabilities, claims, charges, demands, expenses, or actions arise as a result of, or in connection with, any breach by the Retailer of its obligations under this Schedule 9A.

S9A.32 This clause applies despite any other provisions in this Schedule 9A or in any other agreement between the parties.

S9A.33 In the event of a claim against the Retailer in relation to which the Retailer wishes (at the time of the claim or later) to be indemnified by the Distributor in accordance with Schedule 9A.31 (a “**promotional material claim**”), the Retailer must:

- (a) give written notice of the promotional material claim to the Distributor as soon as practicable after the Retailer determines that it wishes to be indemnified by the Distributor, specifying the nature of the claim in reasonable detail; and
- (b) make available to the Distributor all information that the Retailer holds in relation to the promotional material claim that is reasonably required by the Distributor.

#### **Notices**

S9A.34 Any notice given under this Schedule 9A must be in writing and will be deemed to be validly given if personally delivered, posted, or sent by 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.

S9A.35 Any notice given under this Schedule 9A will be deemed to have been received:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of posting, no later than 3 Working Days following the date of posting; and
- (c) in the case of email, no later than 1 Working Day after leaving the sender’s email system, unless during that time the sender’s email system receives a delivery failure notification, in which case the notice will be deemed not to have been sent.

S9A.36 Any notice given in accordance with Schedule 9A.35 that is personally delivered or sent by 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.

## SCHEDULE 9B - PROVISION OF TRUST INFORMATION

### Background

- S9B.1 The Distributor has a Shareholder Trust and requires, from time to time, information from the Retailer to enable:
- (a) the Shareholder Trust to update and maintain an accurate register of beneficiaries, comply with its obligations to beneficiaries, and directly communicate with those persons; and
  - (b) the Distributor to assess whether it is Consumer-Owned and comply with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

### Provision of information

- S9B.2 If reasonably requested by the Distributor, the Retailer must provide, in a reasonable timeframe, relevant information in its possession required by the Shareholder Trust:
- (a) to meet the Shareholder Trust's obligations under their trust deeds; or
  - (b) for one of the permitted disclosures or uses set out in Schedule 9B.3; or
  - (c) for any other purpose as otherwise agreed in writing between the parties.

### Permitted use of information provided

- S9B.3 The Distributor may use and disclose to the Shareholder Trust information provided in response to a request under Schedule 9B.2 for the purposes of:
- (a) updating and maintaining an accurate register of beneficiaries;
  - (b) enabling the Shareholder Trust to conduct elections of trustees;
  - (c) enabling the Shareholder Trust to pay distributions to the it's beneficiaries or other parties that are entitled to distributions;
  - (d) enabling a third party to carry out audits of the Distributor the Shareholder Trust; and
  - (e) enabling the Shareholder Trust to ensure that it complies with any other requirements under its trust deed.
- S9B.4 The Distributor may use information provided in response to a request under Schedule 9B.2 for the purposes of:
- (a) assessing whether the Distributor is Consumer-Owned; and
  - (b) complying with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

### Payment of Retailer's reasonable costs

- S9B.5 The Distributor must pay the Retailer's reasonable costs incurred in supplying any information requested under Schedule 9B.2.

S9B.6 If requested by the Distributor, the Retailer must give the Distributor a quote for supplying the information before the Retailer supplies the information.

S9B.7 The Distributor must pay the Retailer's GST invoice for supplying the information no later than the 20th of the month following the invoice date.

### **Confidentiality obligations**

S9B.8 Subject to Schedule 9B.9, the Distributor undertakes that, in respect of any information provided to it by the Retailer under this Schedule 9B ("**Confidential Customer Information**"), the Distributor will:

- (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose the existence of any Confidential Customer Information except as expressly permitted in this Schedule 9B;
- (b) only use the Confidential Customer Information for a purpose expressly permitted in this Schedule 9B;
- (c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Schedule 9B and on a 'need to know' basis; and
- (d) in the case of Confidential Customer Information disclosed to the Shareholder Trust, enter into arrangements with the Shareholder Trust (as the case may be) to ensure that the Shareholder Trust:
  - (i) only use the Confidential Customer Information for a purpose expressly permitted in this Schedule 9B, and
  - (ii) only disclose the Confidential Customer Information for a purpose expressly permitted in this Schedule 9B, or if the Shareholder Trust is required to disclose the Confidential Customer Information by law, by any statutory or regulatory body or authority, or by any judicial or other arbitration process.

S9B.9 For the purposes of this Schedule 9B:

- (a) the Distributor may disclose Confidential Customer Information if it is required to disclose the Confidential Customer Information by:
  - (i) law, or by any statutory or regulatory body or authority, or
  - (ii) any judicial or other arbitration process, and
- (b) Confidential Customer Information does not include aggregated and anonymised information.

S9B.10 To avoid doubt, the Distributor may disclose Confidential Customer Information to the Commerce Commission, including in circumstances where the Commerce Commission has not exercised a power under the Commerce Act 1986 to require the Distributor to disclose Confidential Customer Information.

S9B.11 The Distributor's liability for breach of this clause is not limited by any terms in this agreement or in any other agreement between the parties.

S9B.12 To avoid doubt, the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by:

- (a) the Distributor's employees, contractors, directors, agents, or advisors, and
- (b) in the case of Confidential Customer Information that the Distributor has disclosed to the Shareholder Trust, or the Shareholder Trust's employees, contractors, directors, agents, or advisors.