

Sch 12A.1, cl 7(2)

**Schedule 12A.1, Appendix B**  
**Default agreement – Provision of trust and co-operative company information**

**AGREEMENT** dated 20[ ]

**PARTIES**

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

**COMMENCEMENT DATE**

[insert date]

**SIGNATURES**

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

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

## INTRODUCTION

- A. The Distributor and Trader are parties to a Distributor Agreement, and have agreed to enter into this agreement for additional services relating to the provision of trust and co-operative company information in accordance with a notice given by the Distributor under clause 7 of Schedule 12A.1 of the Code.

## TERMS

### 1 Background

The Distributor [has a Shareholder Trust as a shareholder/is a Co-operative] and requires, from time to time, information from the Trader to enable:

- (a) the [Shareholder Trust/Distributor] to update and maintain an accurate register of its [beneficiaries/shareholders], comply with its obligations to its [beneficiaries/shareholders], and directly communicate with those persons; and
- (b) the Distributor to assess whether it is Consumer-Owned, and comply with any obligations under the Commerce Act 1986 regarding whether the Distributor meets the criteria to be a Consumer-Owned supplier.

### 2 Provision of information

If reasonably requested by the Distributor, the Trader must provide, in a reasonable timeframe, relevant information in its possession required by the [Shareholder Trust/Distributor]:

- (a) to meet the [Shareholder Trust's/Distributor's] obligations under [its trust deed/the Co-operative Companies Act 1996];
- (b) for one of the permitted disclosures or uses set out in clause 3; or
- (c) for any other purpose as otherwise agreed in writing between the parties.

### 3 Permitted [disclosure/use] of information provided

- (1) The Distributor may use [and disclose to the Shareholder Trust] information provided in response to a request under clause 2 for the purposes of:

- (a) [enabling the Shareholder Trust to update and maintain/updating and maintaining] an accurate register of its [beneficiaries/shareholders];
- (b) [enabling the Shareholder Trust to conduct/conducting] elections of [trustees/members of the Distributor's committee of shareholders];
- (c) [enabling the Shareholder Trust or the Distributor to pay/paying] distributions to the [Shareholder Trust's beneficiaries/the Distributor's shareholders or other parties that are entitled to distributions];
- (d) enabling a third party to carry out audits of the Distributor [or the Shareholder Trust]; and
- (e) [enabling the Shareholder Trust to ensure/ensuring] that the [Shareholder Trust/Distributor] complies with any other requirements under its [trust deed/constitution and the Co-operative Companies Act 1996].

- (2) The Distributor may use information provided in response to a request under clause 2 for the purposes of:

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

#### **4 Payment of Trader's reasonable costs**

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

#### **5 Confidentiality obligations**

- (1) Subject to subclause (2), the Distributor undertakes that, in respect of any information provided to it by the Trader under this Agreement ("Confidential Customer Information"), the Distributor will:
  - (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose any Confidential Customer Information except as expressly permitted in this Agreement;
  - (b) only use the Confidential Customer Information for a purpose expressly permitted in this Agreement;
  - (c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Agreement and on a 'need to know' basis; and
  - (d) in the case of Confidential Customer Information disclosed to a Shareholder Trust, enter into arrangements with the Shareholder Trust to ensure that the Shareholder Trust:
    - (i) only uses the Confidential Customer Information for a purpose expressly permitted in this Agreement; and
    - (ii) only discloses the Confidential Customer Information for a purpose expressly permitted in this Agreement, or if the Shareholder Trust is required to disclose the Confidential Customer Information by law, by any statutory or regulatory body or authority, or by any judicial or other arbitration process.
- (2) For the purposes of this Agreement:
  - (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.
- (3) 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.
- (4) 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.
- (5) 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, the Shareholder Trust, or the Shareholder Trust's employees, contractors, directors, agents, or advisors.

## 6 Definitions

In this Agreement:

**"Agreement"** means this agreement for additional services relating to the provision of trust and co-operative company information;

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

**"Confidential Customer Information"** has the meaning set out in clause 5(1);

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

**"Co-operative"** means a co-operative company under the Co-operative Companies Act 1996 in respect of which any of the shareholders to whom distributions are paid comprise persons who are of a class or classes identified by reference to any of:

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network; or
- (e) the person's liability for payment for Distribution Services supplied by the Distributor;

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

**"Customer's Installation"** means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation **"De-energise"** means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

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

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

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

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

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

**"Electrical Installation"** means:

- (a) all Fittings that form part of a system for conveying electricity at any point from the Customer's Point of Connection to any point from which electricity conveyed through that system may be consumed; and

- (b) includes any Fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; but
- (c) does not include any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy;

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

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

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

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

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

- (a) at which electricity predominantly flows out of the Grid; or
- (b) determined as being such in accordance with the Code; **"ICP"** means an installation control point being 1 of the following:
  - (a) a Point of Connection at which a Customer's Installation is connected to the Network;
  - (b) a Point of Connection between the Network and an embedded network;
  - (c) a Point of Connection between the Network and shared Unmetered Load; **"Metering Equipment"** means any apparatus for the purpose of measuring the quantity of electricity transported through an ICP along with associated communication facilities to enable the transfer of metering information;

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

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

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

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

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

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

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

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

- (a) the person's connection to the Network;
- (b) the person's receipt of electricity from the Distributor;
- (c) the person's liability for payment for supply of electricity from the Distributor;
- (d) the person's liability for payment for the connection to the Network;
- (e) the person's liability for payment for Distribution Services supplied by the Distributor; or

- (f) the person's domicile or location or operation within the geographic area or areas of operation of the Distributor;

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

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

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