



ORION NEW ZEALAND LIMITED

Direct Delivery Services Terms and Conditions

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DIRECT DELIVERY SERVICES TERMS AND CONDITIONS

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DIRECT DELIVERY SERVICES TERMS AND CONDITIONS

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INTRODUCTION

- A The Distributor owns and operates the Distribution Network and has an agreement with Transpower to receive transmission services via Transpower's Grid.
- B The Customer wishes to purchase or continue to purchase Delivery Services from the Distributor to either:
- operate in conjunction with an energy-only service provided by an Electricity Retailer; or
 - operate as an Embedded Network to provide delivery services to other customers and/or electricity retailers and which is subject to its own energy reconciliation under the Code.
- C The Distributor will provide Delivery Services to the Customer on the terms and conditions set out below.

1 DEFINITIONS AND CONSTRUCTION

1.1 In these Terms and Conditions, unless the context otherwise requires:

"Bank Base Rate" means

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

"Business Day" means every day except Saturdays, Sundays and days which are normally observed as public holidays in Christchurch;

"Charges" means the charges payable under these Terms and Conditions to the Distributor for the Delivery Services. The basis of application is set out in the Distributor's document titled "Pricing Policy" (as updated from time to time by the Distributor), and the relevant prices are set out in separate schedules (as varied in accordance with clause 11);

"Code" means the Electricity Industry Participation Code published and maintained by the Electricity Authority pursuant to the Electricity Industry Act 2010;

"Confidential Information" means all data and other information of a confidential nature, provided by one party to the other under these Terms and Conditions or otherwise, excluding:

- information known to the other party prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party; and
- information obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the first party under an obligation of confidence;

"Connection" means each point of connection listed in Schedule A at which a supply of electricity may flow between the Distribution Network and the Customer's Installation;

“Customer” means the person named in Schedule A who purchases Delivery Services from the Distributor for Delivery to their Connection under these Terms and Conditions;

“Customer’s Installation” means any Fittings owned, used or managed by the Customer (except Distributor’s Equipment) and that form part of a system for conveying electricity from the Connection to where the electricity may be consumed;

“Customer’s Premises” means the land and buildings owned, occupied or managed by the Customer at the location of any Connection, and any land over which the Distributor has an easement or right to pass electricity;

“Delivery” and “Delivery Services” means the provision of line function services (as defined in the Electricity Act 1992), including distribution services via the Distribution Network and transmission services via Transpower’s Grid;

“Disconnection” or “Disconnected” means the removal of a fuse or link or the opening of a switch to prevent further Delivery to the Connection;

“Dispute Resolution Scheme” means Utilities Disputes or such other dispute resolution scheme approved or provided for in accordance with section 95 of the Electricity Industry Act 2010;

“Distributor” means Orion New Zealand Limited and its successors and permitted assignees;

“Distributor Agreement” means an agreement between the Distributor and the Electricity Retailer which allows the Electricity Retailer to sell electricity, delivered over the Distribution Network, to the Customer;

“Distribution Network” means the Distributor’s system for the conveyance of electricity including all Fittings comprising that system and which terminates at the Connections;

“Distributor’s Equipment” means the Fittings belonging to the Distributor or the Distributor’s Agent which is from time to time installed in, over or upon the Customer’s Premises;

“Electricity Retailer” means the person selling or intending to sell electricity to the Customer;

“Embedded Network” means a system of lines, substations and other works used primarily for the conveyance of electricity from the Connection to points of connection for other customers or other embedded networks and where the electricity so conveyed is subject to reconciliation as an embedded network under the Code;

“Fittings” means everything used, or designed or intended for use in, or in connection with the conversion, transformation, conveyance or use of electricity;

“Force Majeure” means any event or circumstance which is beyond the reasonable control of either party and which could not have been prevented by a party complying with Good Industry Practice, and which results in or causes the failure of that party to perform any of its obligations under these Terms and Conditions including, but not limited to acts of god, strike, lock-out or other industrial disturbance, act of a public enemy or declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, governmental restraint, act of parliament, other legislation or bylaw or the failure of any third party, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that party;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced distributor engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time;

“Metering Information” means measured quantities (e.g. kilovolt amperes, kilowatts, kilowatt hours and days) used for the allocation of costs and calculation of the Charges;

“Network Code” means the relevant standards, issued by the Distributor and amended by the Distributor from time to time which set out the standards, in accordance with Good Industry Practice, which must be met by the Customer’s Installation for continuing connection to the Distribution Network, and other related matters;

“Other Customer” means any other person, whether an end use customer or an electricity retailer who purchases or wishes to purchase Delivery Services from the Distributor;

“Reconnection” means the reinstatement of a fuse or link or the closing of a switch to allow further Delivery to the established Connection;

“Single Event” means any event of breach or series of breaches of these Terms and Conditions arising from the same event or circumstances;

“Terms and Conditions” means the terms and conditions set out in this Direct Delivery Services Terms and Conditions document;

“Transpower” means Transpower New Zealand Limited its successors and assignees; and

“Transpower’s Grid” means the electricity transmission system owned and operated by Transpower.

- 1.2 Clause and other headings are for ease of reference only.
- 1.3 Any reference in these Terms and Conditions to any gender includes all genders and a reference to the singular includes the plural and vice versa.
- 1.4 References to Clauses and Schedules are references to clauses of and schedules to these Terms and Conditions.
- 1.5 Any reference in these Terms and Conditions to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- 1.6 Any reference in these Terms and Conditions to the parties includes their respective successors, and where context permits, their assignees, representatives, agents or employees.

2 CONDITIONS PRECEDENT

- 2.1 Prior to the Distributor providing Delivery Services to the Customer under these Terms and Conditions:

- 2.1.1 The Customer shall provide notice to the Distributor that the Customer wishes to receive Delivery Services under these Terms and Conditions. In the event the Customer has not provided this written acknowledgement but receives Delivery Services and pays for the Delivery Services, based on invoices that record the Delivery Services are provided pursuant to these Terms and Conditions, the Customer shall be deemed to have accepted the Delivery Services subject to these Terms and Conditions.

- 2.1.2 For each Connection, the Customer shall either:
- (a) have energy supply arrangements in place with an Electricity Retailer that has an appropriate agreement with the Distributor to sell electricity via the Distribution Network. At the request of the Customer, the Distributor shall provide a list of Electricity Retailers that have appropriate agreements in place, or
 - (b) be registered as a participant to operate the Connection as an Embedded Network under the Code.
- 2.1.3 The Customer, if required by the Distributor, shall have complied with the prudential requirements set out in clause 12.

3 TERM OF THE PROVISION OF DELIVERY SERVICES

- 3.1 If the Customer's relationship with the Distributor is governed by a previous version of these Terms and Conditions immediately prior to 1 July 2021, these Terms and Conditions commence on 1 July 2021 and replace the prior version of these Terms and Conditions. In all other situations these Terms and Conditions commence on the date the Customer first receives Delivery Services and has received notice from the Distributor that these Terms and Conditions apply to such Delivery Services.
- 3.2 Except in the case of termination pursuant to clause 13, these Terms and Conditions shall continue until 5 Business Days after the Customer gives written notice that termination is required. The Customer may not terminate these Terms and Conditions while Delivery Services are being provided to Connections under these Terms and Conditions.

4 REVIEW OF THESE TERMS AND CONDITIONS

- 4.1 The Distributor may, acting reasonably, vary or replace these Terms and Conditions by giving not less than 60 Business Days notice to the Customer of the proposed variation. The Distributor shall consider in good faith any written submissions that the Customer or Other Customers may make subject to the written submissions being received by the Distributor within 40 Business Days of the Customer receiving the notice. The Distributor, after having regard to any written submissions, may make such alterations to the proposed variation as it considers appropriate, in which event the Distributor shall give 20 Business Days written notice of the alterations to the Customer prior to the variation (including any alterations) coming into effect.
- 4.2 The Customer may request changes to these Terms and Conditions at any time and the Distributor will consider such requests in good faith, including with regard to the impact on Other Customers. Any changes will be at the Distributor's sole discretion.
- 4.3 For the avoidance of doubt:
- 4.3.1 the voltage, capacity, security and power requirements for Delivery Services to Connections may be separately varied in accordance with clause 7.3; and
 - 4.3.2 this clause 4 does not apply to the Distributor's Charges which may be varied in accordance with clause 11.

5 DELIVERY SERVICES

- 5.1 The Distributor shall, in accordance with these Terms and Conditions:
- 5.1.1 provide Delivery Services to the Connections specified in Schedule A (at the voltage, capacity, security and power requirements set out in Schedule A) in accordance with Good Industry Practice, subject to clause 5.2; and
 - 5.1.2 use its reasonable endeavours in its negotiations with Transpower to ensure that transmission services are provided cost-effectively.
 - 5.1.3 comply with its obligations as a member of the Dispute Resolution Scheme ; and
 - 5.1.4 comply with all laws and other regulatory requirements including the Code (in so far as any obligations are placed on “Distributors” as defined in the Code) in the context of providing Delivery Services.
- 5.2 The Distributor shall use reasonable endeavours to provide continuous Delivery but does not guarantee that the Distribution Network will provide Delivery which is free from defects or interruptions.
- 5.3 The Distributor shall treat the Customer and all Other Customers equitably with regard to the Delivery Services.
- 5.4 If the Customer requests the Distributor to upgrade its Delivery Service or extend its Distribution Network, the Distributor may require the Customer to enter into a Connection Agreement to record the terms agreed between the Distributor and the Customer in relation to the upgrade and/or extension.

6 INTERRUPTION TO DELIVERY

The Distributor may interrupt or reduce Delivery at any time the Distributor considers it appropriate to do so for planned or unplanned interruptions as follows:

6.1 Planned Interruptions

Planned interruptions occur in situations where the Distributor determines the need for the interruption in accordance with Good Industry Practice, including:

- 6.1.1 To enable the Distributor to inspect, effect alterations, maintenance, repairs or additions to any part of the Distribution Network; or
- 6.1.2 To avoid the risk of danger to persons, damage to property or interference with the regularity or efficiency of Delivery; or
- 6.1.3 To preserve and protect the proper working of the Distribution Network, and meeting the Distributor’s obligations to Transpower or any other network owner through which the Distributor directly or indirectly takes a supply of electricity; or
- 6.1.4 If supply of electricity to a Network Supply Point is or will be reduced, impaired or interrupted; or
- 6.1.5 In the event of an occurrence of Force Majeure; or
- 6.1.6 In the event of an envisaged shortage of electricity; or
- 6.1.7 To allow the Customer to inspect, effect alterations, maintain or repair any Fittings owned by the Customer.

6.2 Unplanned Interruptions

Unplanned interruptions occur in situations where the Distributor does not know of the need for the interruption in advance, such as:

- 6.2.1 Faults on the Distribution Network caused by equipment failure, accident, storm or similar event; or
- 6.2.2 Overloading arising from a capacity shortage in the Distribution Network or Transpower's Grid; or
- 6.2.3 Emergencies; or
- 6.2.4 As a condition of the transmission service from Transpower, for the automatic under frequency or automatic under voltage tripping of specified 11kV feeders in the event that Transpower's Grid integrity is endangered.

- 6.3 Where the Distributor plans to interrupt Delivery pursuant to clause 6.1, the Distributor shall provide appropriate reasonable prior notice to the Customer of its plan to interrupt Delivery and shall use reasonable endeavours to consult with the Customer over the timing of the interruption to minimise inconvenience to the Customer. For routine planned interruptions, appropriate prior notice shall be at least four Business Days, or if the Customer operates an Embedded Network at the Connection, eight Business Days.
- 6.4 Where the Distributor interrupts Delivery pursuant to clause 6.2, then as soon as practicable, the Distributor shall make information available to the Customer regarding the area affected by and reasons for the interruption and its expected duration.
- 6.5 In all situations of interruptions, the Distributor shall use all reasonable endeavours to meet any security requirements set out in schedule A to these Terms and Conditions, and use all reasonable endeavours to minimise the period of interruption.
- 6.6 If there is a capacity shortage in the Distribution Network or Transpower's Grid associated with an interruption which creates a difficulty in Delivery and/or the transmission over Transpower's Grid, the Distributor shall determine the priorities for maintaining and restoring Delivery.
- 6.7 The Customer shall without delay advise the Distributor of any material defect or interruption to the electricity supply or other Distribution Network abnormality known to the Customer, as soon as practicable after receiving such knowledge.
- 6.8 The Distributor shall arrange for the temporary isolation of a Customer's Installation in response to a request from the Customer or the Electricity Retailer. The Distributor shall charge the party requesting the service as detailed in the Distributor's current schedule of charges.
- 6.9 Where an interruption of Delivery is required or occurs which is initiated by the Distributor, the Distributor may, in consultation with the Customer, use its standby generator(s) to minimise the incidence and duration of interruptions. This shall be solely at the Distributor's discretion.
- 6.10 For Connections that operate as an Embedded Network where the Customer provides delivery services to other customers and/or electricity retailers, the Customer shall:

- 6.10.1 ensure that customers connected to the Embedded Network are given appropriate prior notice of planned interruptions that affect them, and
- 6.10.2 take reasonable steps to ensure that customers connected to the Embedded Network do not report Distribution Network faults or Embedded Network faults directly to the Distributor.

7 CONNECTIONS

- 7.1 The Connections to which these Terms and Conditions relate are those nominated by the Customer and accepted by the Distributor (at the Distributor's discretion). The Customer may nominate additional Connections at any time. A Connection ceases to be covered by these Terms and Conditions when either:
 - 7.1.1 it is Disconnected; or
 - 7.1.2 it is accepted by the Distributor under another delivery agreement (subject to the prior consent of the Customer).
- 7.2 The Distributor will provide and maintain Schedule A to these Terms and Conditions setting out the Connections to which these Terms and Conditions relate including the voltage, capacity, security and power requirements for Delivery Services to those Connections.
- 7.3 The Customer may propose changes to Schedule A which the Distributor will consider in good faith but any change will be at the Distributor's sole discretion. The Distributor may adjust voltage, capacity, security and power requirements for Delivery Services to Connections following reasonable consultation with the Customer.
- 7.4 For each established Connection the Customer undertakes to provide and maintain suitable space for the safe and secure housing of all the Distributor's Equipment, deemed necessary by the Distributor, to be housed at the Customer's Premises.
- 7.5 The Distributor shall not agree to connection to the Distribution Network of any new or modified Customer's Installation unless, acting reasonably, it is satisfied that all of the requirements of the Network Code have been complied with.
- 7.6 If there is more than one Connection for a Customer's Installation the Customer shall ensure that no interconnection is made at any time between those Connections without the prior written consent of the Distributor.
- 7.7 The Customer shall comply with all statutory and regulatory requirements, good industry practice, the Network Code and these Terms and Conditions as amended from time to time.
- 7.8 If the Customer becomes aware that the Customer's Installation does not comply with the requirements of these Terms and Conditions, the Customer shall notify the Distributor immediately. If it becomes necessary for the Distributor to disconnect the Customer at the Connection the cost of Disconnection and any Reconnection shall be borne by the Customer.
- 7.9 The Customer shall immediately notify the Distributor if a Connection becomes an Embedded Network, or if a Connection ceases to be an Embedded Network.

8 EQUIPMENT PROTECTION AND ACCESS

- 8.1 The Distributor shall not interfere with the Customer's Equipment without the prior written consent of the Customer, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In the event of such interference the Distributor will as soon as practicable inform the Customer of the occurrence and circumstances involved.
- 8.2 The Customer shall not interfere with the Distributor's Equipment without the prior written consent of the Distributor, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent damage to property. In the event of such interference the Customer will as soon as practicable inform the Distributor of the occurrence and circumstances involved.
- 8.3 The Customer shall protect the Distributor's Equipment against interference and damage. The Customer shall be liable to the Distributor for any damage to the Distributor's Equipment caused by the negligence, wilful act or omission of the Customer, its contractors, agents or invitees.
- 8.4 Should the Distributor or the Customer discover evidence of interference with the Distributor's Equipment, or evidence of theft of electricity, the Party discovering the interference or evidence shall notify the other party within 24 hours. In the event of suspected interference with the Distributor's Equipment at the Customer's Installation the Distributor may itself carry out an investigation and present the findings to the Customer within a reasonable period. The costs of the investigation:
- 8.4.1 will be borne by the Customer where interference by the Customer or its contractors, agents or invitees is discovered to have occurred, or where the interference has been by a third party, and the Customer has failed to provide reasonable protection against interference to the Distributor's Equipment, or
- 8.4.2 will otherwise be met by the Distributor.
- 8.5 Subject to clause 8.6, the Customer shall provide the Distributor, at all reasonable times, with safe and unobstructed access:
- 8.5.1 to any of the Distributor's Equipment for the purpose of installing, testing, inspecting, maintaining, repairing, replacing, operating, reading or removing the same and for any other purpose related to these Terms and Conditions; and
- 8.5.2 to any of the Electricity Retailer's equipment (subject to the prior consent of the Electricity Retailer) for the purpose of verification of Metering Information; and
- 8.5.3 onto the Customer's Premises to ascertain the cause of any interference to the quality of Delivery Services being provided by the Distributor to the Customer or any Other Customer; and
- 8.5.4 onto the Customer's Premises for the purpose of protecting or preventing danger or damage to persons or property; and
- 8.5.5 onto the Customer's Premises for the purposes of Reconnecting or Disconnecting all or any Connection; and

- 8.5.6 onto the Customer's Premises for any other purpose relevant to the Distributor providing Delivery Services to the Customer's Premises in accordance with Good Industry Practice and/or for the purpose of maintaining the integrity of the Distribution Network.
- 8.6 The Distributor shall exercise its right of access by:
- 8.6.1 wherever practicable, giving to the Customer reasonable notice of its intention to and the purpose for which it will exercise its right of access;
- 8.6.2 causing as little inconvenience as practicable to the Customer in carrying out such work;
- 8.6.3 observing Good Industry Practice at all times;
- 8.6.4 observing any reasonable security or site safety requirements that are made known to the Distributor by the Customer.
- 8.7 Notwithstanding clause 8.6, the Distributor shall be at liberty to take all reasonable steps to gain immediate access where it reasonably believes there is immediate danger to persons or property.
- 8.8 The rights of access conferred by these Terms and Conditions are in addition to any right of access the Distributor may have under any statute or regulation.

9 METERING

- 9.1 For Connections that do not operate as an Embedded Network, the Distributor Agreement with the Electricity Retailer provides for access to Metering Information normally required for the purpose of determining quantities needed to calculate Charges. For Connections that operate as an Embedded Network, the Customer is responsible for ensuring that appropriate metering equipment is installed as required under the Code, and that the Distributor has access to the resulting Metering Information.
- 9.2 If, in the Distributor's opinion (acting reasonably), the Metering Information referred to in clause 9.1 is not sufficient to determine chargeable quantities, the Distributor may install (at the Customer's expense) or require the Customer to install additional metering equipment to supplement the Metering Information, provided that such metering equipment does not interfere with the primary metering equipment installed in respect of any Connection.
- 9.3 The Metering Information shall be binding on the Parties for the purpose of determining the Charges, unless either of the Parties disputes the accuracy of the Metering Information in which event the accuracy will be assessed in accordance with the procedures in the Code.
- 9.4 If it is discovered that the Metering Information used in the determination of Charges is not measuring accurately then the quantity of electricity delivered shall be determined in accordance with the procedures in the Code.

10 CALCULATION & PAYMENT OF CHARGES

- 10.1 In consideration for the Distributor providing Delivery Services to the Customer in respect of the Connections, the Customer shall pay the Charges.
- 10.2 The Distributor will use its best endeavours to provide an invoice to the Customer for the Charges payable by the Customer in respect of a month ("*the Invoice*") by the 10th Business Day of the following month. Where the Distributor has not received from the Electricity Retailer or a third party all necessary information to prepare the Invoice, the Distributor may issue the Invoice based on a reasonable estimate of such information.
- 10.3 The Distributor shall make available to the Customer all information reasonably requested by the Customer in connection with the calculation of the Charges in respect of any Invoice.
- 10.4 The Invoice prepared by the Distributor in accordance with clause 10.3 will be based on the information available to the Distributor at the date of preparation of the Invoice regarding the Connections. In addition, the Invoice will state any revisions applying to previous months' Invoices, in the same format, that have arisen from revisions to previous Metering Information since the previous months' Invoices. The Distributor may debit or credit, as appropriate, daily interest on the difference between the previous and revised amounts at the Bank Base Rate and this will accrue from the due date of payment of the Invoice for the previous amount and the date of issue of the Invoice for the revised amount. The Distributor will not make any debit unless it is also applying credits in appropriate circumstances, and vice versa.
- 10.5 The Customer shall pay the Distributor the total amount due on the Invoice by 4pm on the 20th day of the month in which the invoice was issued, provided that, if that day is not a Business Day, payment shall be made on the next Business Day. However, if the Distributor fails to send the Invoice to the Trader within 10 Business Days after the last day of the month to which the Tax Invoice relates, the due date for payment is extended by 1 Business Day for each Business Day that the Tax Invoice is late. All Charges payable by the Customer are stated exclusive of Goods and Services Tax, which shall be payable by the Customer at the same time as payment for the Charges shown in the Invoice.
- 10.6 If the Customer disputes any or all of an amount contained in an Invoice:
- 10.6.1 The Customer will immediately notify the Distributor of the dispute (including any manifest error) and provide reasons for the dispute;
- 10.6.2 The Customer will, apart from instances of manifest error, pay the full amount of the Invoice including the disputed amount by the due date specified in the Invoice; and
- 10.6.3 The Parties will comply with the provisions of clause 16 in order to resolve any dispute. Interest on any amount to be paid by either Party following the resolution of any dispute will accumulate and will be payable at the Bank Base Rate plus three percent from the due date until the date of payment;
- provided that no Invoice may be disputed under this clause 10.6 after 24 months after the date of rendering the Invoice.
- 10.7 If the Customer fails to pay by the due date any amount contained in an Invoice, and has not disputed the Invoice pursuant to clause 10.6, then without prejudice to the Distributor's right to terminate the provision of Delivery Services in accordance with clause 13, the Distributor may charge the Customer and, if so charged, the customer will pay default interest on that amount at the Bank Base Rate plus five percent per annum from the due date until the date of payment.

11 CHARGING VARIATIONS

- 11.1 The Distributor may vary the prices which give rise to the Charges on the following basis:
- 11.1.1 To effect an equitable pass through of any increase or decrease in the prices by Transpower relating to its transmission charges upon giving a minimum of 5 Business Days notice to the Customer; or
 - 11.1.2 To effect an equitable pass through of any new or changed charges, levies, taxes or other such costs imposed by any regulatory authority in relation to the provision of Delivery Services (excluding tax on the general income of the Distributor), upon giving a minimum of 5 Business Days notice to the Customer. Any such variation shall be fairly applied between the Customer and Other Customers as appropriate; or
 - 11.1.3 By the giving of 40 Business Days notice in writing to the Customer with respect to aspects of the Charges excluding those covered under clause 11.1.1 or 11.1.2. The notice shall include details of the new prices, and details of any variations to the methodology. The Customer may make submissions in writing to the Distributor on the proposed new prices which the Distributor agrees to consider in good faith, without in any way limiting the ability of the Distributor to determine the level of prices and the basis for the calculation of the prices for the provision of Delivery Services.
- 11.2 The Distributor in making any variations to the prices or charging methodology under clause 11 shall have regard to the following criteria:
- 11.2.1 The objective to treat the Customer and Other Customers in an economically equivalent manner;
 - 11.2.2 To pass through transmission charges in what the Distributor considers to be a fair and equitable manner (acting reasonably);
 - 11.2.3 What the Distributor considers to be a fair and reasonable return on its assets, having due regard to the industry information published under any disclosure regulations applying from time to time;
 - 11.2.4 Such other matters as the Distributor may reasonably consider appropriate.
 - 11.2.5 In relation to clauses 11.1.1 and 11.1.2 to give as much notice as is reasonably practical of any changes in prices.

12 PRUDENTIAL REQUIREMENTS

- 12.1 In order to purchase Delivery Services from the Distributor, the Customer will comply with one of the following prudential requirements when required by the Distributor:
- 12.1.1 Maintain an acceptable credit rating in accordance with clause 12.2; or
 - 12.1.2 Pay to the Distributor and maintain a cash bond up to the amount required under clause 12.3; or

- 12.1.3 Procure and maintain an unconditional guarantee from a third party (satisfactory to the Distributor, which the Distributor may review from time to time) in favour of the Distributor for all the obligations of the Customer in these Terms and Conditions. The guarantee must be in a form satisfactory to the Distributor (acting reasonably); or
- 12.1.4 Provide a combination of the securities referred to in clauses 12.1.1 to 12.1.3 to the satisfaction of the Distributor (acting reasonably).
- 12.2 For the purpose of clauses 12.1.1 and 12.1.3 an acceptable credit rating means that the Customer, or guarantor, as the case may be, must carry a long term credit rating of at least A3 (Moody's Investor Services Inc), A- (Standard & Poors Rating Group) or B+ (AM Best) as applying at the commencement of these Terms and Conditions or such other equivalent rating as may be satisfactory to the Distributor (acting reasonably).
- 12.3 For the purpose of clause 12.1.2, the amount of the cash bond will be determined by the Distributor as up to the equivalent of the Distributor's reasonable estimate of one month's Charges (inclusive of GST), based on the average monthly charges over a twelve month period, payable by the Customer to the Distributor. At any time (but not more than once in any 6 month period), the Distributor may review, or the Customer may require the Distributor to review, the amount of the bond. The Distributor must complete any review requested by the Customer within 20 Business Days. Where, as the result of a review, the Distributor notifies the Customer of an increase to the amount of the bond, the Customer must implement any resulting change within 20 Business Days of the notification. The cash bond shall be held on the following terms:
- 12.3.1 The cash bond will be held by the Distributor in a separate bank account on trust for the Customer until such time as either the Distributor is entitled to have access to the cash bond under these Terms and Conditions or the cash bond is returned to the Customer under these Terms and Conditions.
- 12.3.2 The separate bank account shall be an interest bearing account, with interest compounding to the account.
- 12.3.3 The cash bond may be transferred to the Distributor in accordance with the terms of these Terms and Conditions to apply against monies owing by the Customer to the Distributor. Where any part of the cash bond is utilised by the Distributor in accordance with this provision the Customer shall within 5 Business Days of receiving notice from the Distributor, pay to the Distributor a further cash bond to meet the prudential requirements of this clause.
- 12.3.4 To secure the Customer's obligations under these Terms and Conditions, the Customer grants to the Distributor a security interest in, and assigns to the Customer by way of security, the cash bond. The Customer shall promptly on request do all things reasonably required by the Distributor to effect registration of the Distributor's security interest on the Personal Property Securities Register and better protect its interest in the cash bond, including without limitation:
- (a) signing any documents and/or providing any information which the Distributor may reasonably require to enable the Distributor to register a financing statement or a financing change statement;

- (b) not registering a financing change statement or a change demand in respect of the security interest without the Distributor's prior written consent; and
- (c) giving the Distributor at least 10 days' written notice of any proposed change in its name.

12.3.5 The Customer irrevocably waives any rights it may have at any time, including under section 148 of the PPSA to receive a copy of any verification statement. The Distributor and the Customer contract out of sections 114(1)(a), 133 and 134 of the PPSA and the Customer's rights set out in sections 120(2) and 121 of the PPSA.

12.3.6 The security interest granted to the Distributor under clause 12.3.4 is intended to be a first ranking security interest in the cash bond. The Customer will provide to the Distributor within 5 Business Days after the payment of the cash bond confirmation from each other party with a prior ranking security interest that it has released its security interest in respect of the cash bond or consents to the Distributor's security interest in the cash bond ranking in priority to that security holder's interest.

12.3.7 On termination of these Terms and Conditions after the Customer has paid all monies owing under these Terms and Conditions to the Distributor, the Distributor shall then repay any cash bond held with respect to the Customer.

12.4 In the event the Customer is not in full compliance with the prudential requirements set out in this clause 12, this shall represent an event of default for the purposes of clause 13.1.2.

13 DEFAULT AND TERMINATION

13.1 For the purposes of this clause 13 an event of default occurs if:

13.1.1 The Customer fails to pay any amount due and owing from the Customer under these Terms and Conditions and the default is unremedied at the expiry of 5 Business Days immediately following the giving of notice by the Distributor to the Customer of such non payment; or

13.1.2 The Customer fails in the reasonable opinion of the Distributor in any material respect to perform or comply with any of its obligations under these Terms and Conditions and (if it is capable of remedy) it is not in the process of being remedied to the reasonable satisfaction of the Distributor within 10 Business Days of receiving a written notice from the Distributor specifying the failure and requiring it to be remedied.

13.2 If the Customer is in default in accordance with clause 13.1.2 and such default remains unremedied at the expiry of the notice period under that clause, then, in addition to any other rights under this agreement, the Distributor, after giving prior notice to the Customer, may Disconnect the Connection to which the default relates until such time as the default is remedied (provided that the Distributor will not be required to reconnect the Connection where this agreement has been terminated in accordance with the remainder of this clause 13 prior to the default being remedied).

13.3 If an event of default has occurred the Distributor may give the Customer a further notice of the default, giving the Customer a further five Business Days to remedy the default. In the event the default remains unremedied at the expiry of the five Business Days then the Distributor may:

- 13.3.1 Apply any cash bond or enforce any other form of security for payment provided under clause 12, to payment of all or part of the Invoice; and/or
- 13.3.2 Terminate the provision of Delivery Services under these Terms and Conditions, without prejudice to any other rights and remedies of the Distributor in which event the Customer shall cease acquiring Delivery Services and the Distributor may at the Customer's cost Disconnect all or any of the Customer's Installations and cease to provide Delivery Services.
- 13.4 Following such termination the Distributor may without further recourse to the Customer access any Metering Installation owned by the Customer or the Electricity Retailer to determine Charges outstanding at the time of termination. In the event that the Metering Information cannot be accessed, the Distributor will estimate the Charges and apply a correction if Metering Information becomes available.
- 13.5 Termination of the provision of Delivery Services in no way negates the rights and obligations of the parties up to the time of termination with respect to services and Charges specified as part of these Terms and Conditions, and clauses 15 and 18 shall survive termination.

14 FORCE MAJEURE

- 14.1 If either party is unable to carry out any of its obligations under these Terms and Conditions because of an event or circumstances of Force Majeure, these Terms and Conditions shall remain in effect but except as otherwise provided, both parties' obligations, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure, shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
 - 14.1.1 The non-performing party gives the other party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
 - 14.1.2 The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - 14.1.3 No obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;
 - 14.1.4 The non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 14.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under these Terms and Conditions, a party may terminate these Terms and Conditions on not less than 10 Business Days prior written notice.

15 LIMITATION OF LIABILITY

- 15.1 Neither Party shall be liable to the other for any breach of these Terms and Conditions which is directly or indirectly caused by a circumstance of Force Majeure.
- 15.2 The Customer shall not be liable to the Distributor for:
- 15.2.1 Any damage caused to the Distributor's Equipment on the Customer's premises, where that damage was caused by unauthorised interference by a person other than the Customer or its agents, employees, representatives or contractors and provided that the premises were appropriately secured prior to the interference.
- 15.2.2 The payment of Charges to a Connection, where the Delivery of electricity to that Connection is interrupted for a continuous period exceeding 24 hours, due to a defect in the Distribution Network. In these circumstances and unless a situation of Force Majeure is declared, the Distributor shall reduce the amount of the Charges for the month by one thirtieth for each completed 24 hours that the Customer remains without supply.
- 15.3 The Distributor shall not be liable to the Customer for any loss which may be sustained by the Customer (including as a result of a claim by the Customer) unless such loss was due to the Distributor's breach of these Terms and Conditions in which case the Distributor's liability shall be limited to making good any physical damage to the property (including products) of the Customer, to the maximum amounts specified in clause 15.5. This provision is subject to the Distributor's obligations under the Dispute Resolution Scheme.
- 15.4 Neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party, whether in contract or in tort or howsoever arising, for:
- 15.4.1 Any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 15.4.2 Any loss resulting from the liability of the other Party to another person; or
- 15.4.3 Any loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.
- 15.5 Any claims for loss arising from either Party's (the claiming Party) breach of its obligations under these Terms and Conditions must be lodged with the other Party within three months of the claiming Party becoming aware of an event's occurrence. The maximum liability of the other Party to the claiming Party in respect of any Single Event shall not exceed \$50,000 (GST exclusive) and, in respect of all events or circumstances, shall not exceed \$200,000 (GST exclusive) during any 12 month period ending on 31 March, excluding any liability the Customer may have to pay the Charges.
- 15.6 To the maximum extent permitted by law, the Consumer Guarantees Act 1993 shall not apply to services provided under these Terms and Conditions because:
- 15.6.1 all parties to these Terms and Conditions are in trade;
- 15.6.1 the Delivery Services are being supplied and acquired in trade; and
- 15.6.1 in the circumstances the parties acknowledge that it is fair and reasonable for the Consumer Guarantees Act not to apply.

- 15.7 The benefit of this clause 15 shall be extended to the officers, employees and agents of the Distributor and the Customer and may be enforced by these persons pursuant to section 12 of the Contract and Commercial Law Act 2017.
- 15.8 All other liability including any liability in tort, is hereby excluded, to the full extent permitted by law.
- 15.9 Where the Customer contracts to provide delivery services to a third party (including where a Connection operates as an Embedded Network), the Customer shall either:
- 15.9.1 include in its contracts exclusions and limits that are equivalent to the exclusions and limits (in aggregate) in clauses 15.1 to 15.9 and are expressed to be for the benefit of and enforceable by the Distributor; or
 - 15.9.2 to the extent the Customer has not complied with clause 15.9.1 indemnify the Distributor for any additional loss, cost or damage that would not have occurred if such exclusions and limits had been included in its contracts. Such indemnity is not subject to the limitation of liability under clause 15.5.

16 DISPUTE RESOLUTION

- 16.1 The Distributor and the Customer shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under these Terms and Conditions.
- 16.2 Any dispute that is not resolved by discussion between the Distributor and the Customer under clause 16.1 within 30 Business Days of such discussions commencing and is not at that time being considered under the Dispute Resolution Scheme (or has not been resolved to the satisfaction of the Customer following a binding decision made under the Dispute Resolution Scheme), may be referred by either party to mediation.
- 16.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.
- 16.4 The matter in dispute (if it is not at that time being considered under the Dispute Resolution Scheme or if it has not been resolved to the satisfaction of the Customer following a binding decision made under the Dispute Resolution Scheme), shall be referred to arbitration if:
- 16.4.1 The parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
 - 16.4.2 Mediation has taken place and no agreement has been reached.
- 16.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Distributor and the Customer agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days an arbitrator will be appointed by the President for the time being of the New Zealand Law Society (or his or her nominee) at the request of either or both of them.

- 16.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- 16.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.
- 16.8 This clause 16 does not apply to the Distributor's Charges which may be set at the discretion of the Distributor in accordance with clause 11.
- 16.9 Where the Distributor is a member of the Dispute Resolution Scheme at the relevant time and the dispute or difference constitutes a "Complaint" for the purposes of the Dispute Resolution Scheme:
- (a) the Distributor is responsible for managing and resolving the Complaint relating to the Delivery Services; and
 - (b) if the Complaint is not resolved by the Distributor, the Customer may refer the dispute to the Dispute Resolution Scheme,

and nothing in this clause 16 in any way limits or negates any rights the Customer may have in respect of the Complaint under the Dispute Resolution Scheme. Any binding decision made under the Dispute Resolution Scheme will be binding on the Distributor and, notwithstanding the other provisions of this clause 16, the Distributor shall not seek further mediation or arbitration (as applicable) in relation to that dispute.

17 INFORMATION REQUESTS

- 17.1 At either party's request, the other party shall, as soon as reasonably practicable, provide any information that the party may reasonably require for the performance of its obligations under this agreement.
- 17.2 Where the Customer becomes aware of a potential material consumption change which could impact on the need for capacity in the Distribution Network, the Customer shall, as soon as reasonably practical, notify the Distributor accordingly.

18 CONFIDENTIALITY AND PRIVACY

- 18.1 Each party undertakes with the other party that it shall preserve the confidentiality of, and shall not directly or indirectly reveal, report, publish, transfer or disclose any Confidential information or the existence of any Confidential Information, except as set out in clause 18.2.
- 18.2 Either party may disclose Confidential Information in the following circumstances:
- 18.2.1 where at the time of receipt by the party the Confidential Information is in the public domain;
 - 18.2.2 where after the time of receipt by either party the Confidential Information enters the public domain except where it does so as a result of a breach by either party of its obligations under clause 18.1 or a breach by any other person of that person's obligation of confidence and the party is aware of such breach;

- 18.2.3 where either party is required to disclose Confidential Information:
- (a) by any statutory or regulatory obligation, body or authority;
 - (b) any judicial or other arbitration process;
 - (c) by the regulations of any stock exchange upon which the share capital of either party or the other party is from time to time listed or dealt in;
- 18.2.4 where the Confidential Information is released to the employees, directors, agents or advisers of the party provided that:
- (a) the information is disseminated only on a “need to know” basis; and
 - (b) recipients of the Confidential Information shall be made fully aware of the party’s obligations of confidence in relation thereto; and
 - (c) any copies of the information clearly identify it as Confidential Information.
- 18.2.5 where the Confidential Information is released to a bona fide potential purchaser of the business of a Party to these Terms and Conditions, subject to that bona fide potential purchaser having signed a confidentiality agreement that is equivalent to the terms in this clause 18 in favour of the other Party to these Terms and Conditions.
- 18.3 Each party will:
- (a) collect, hold, use and disclose any personal information (as that term is defined in the Privacy Act 2020) received from the other party in accordance with the Privacy Act 2020; and
 - (b) ensure that it holds all necessary consents under the Privacy Act 2020 to provide any personal information that it provides to the other party.

19 ASSIGNMENT AND AGENTS

- 19.1 Either Party may assign, or subcontract its rights or obligations under these Terms and Conditions, provided that in the case of the Customer:
- 19.1.1 the assignee has first complied with the prudential requirements in clause 12; and
 - 19.1.2 the Customer has proved to the Distributor’s satisfaction that the proposed assignee is respectable, responsible and has the financial resources to meet the Customer’s obligations under these Terms and Conditions.
- 19.2 Any such assignment or subcontract granted under clause 19.1 shall not relieve the assignor from liability for performance of any obligations, responsibilities or duties so assigned or subcontracted.
- 19.3 In addition a Party shall not unreasonably refuse its consent to a novation of these Terms and Conditions to a third party by the other Party subject to the Party being satisfied (acting reasonably) as to the ability of the third party to meet its obligations under these Terms and Conditions (including being respectable, responsible and having the financial resources to meet its obligations under these Terms and Conditions). The Distributor may reasonably withhold its consent until the third party has first complied with the prudential requirements in clause 12.

19.4 The parties may appoint agents to act on the party's behalf. Any such appointment shall not relieve the parties making the appointment from responsibility for the acts, defaults, neglects or omissions of its agents.

19.5 Either party may assign its benefits and obligations under these Terms and Conditions to a wholly owned subsidiary without the consent of the other party provided that the assignor provides an unconditional guarantee of the obligations assumed by the assignee.

20 NON-WAIVER

20.1 None of the provisions of these Terms and Conditions shall be considered to be waived by either party except when such waiver is given in writing.

20.2 No delay by or omission of either Party in exercising any right, power, privilege or remedy under these Terms and Conditions shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

21 ENTIRE AGREEMENT

21.1 These Terms and Conditions, including the Schedules, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties and each of the Parties acknowledges and confirms that it does not enter into these Terms and Conditions in reliance on any representation or warranty or other undertaking not fully reflected in the terms of these Terms and Conditions.

22 SAVINGS CLAUSE

22.1 If any provision of these Terms and Conditions is or becomes or is declared invalid, unenforceable or illegal by the courts of the jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these Terms and Conditions which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

23 NOTICES

23.1 Any notice, demand, certificate or other communication required to be given or sent under these Terms and Conditions shall be in writing and delivered personally, or by pre-paid post, by courier delivery, or by electronic mail.

23.2 The required addresses and electronic mail addresses of the Parties for the purposes of this clause shall be as last notified by the parties to each other.

23.3 A notice or other form of communication shall be deemed to have been received as follows:

23.3.1 if given or delivered personally or by courier delivery at the time when given or delivered;

23.3.2 if sent by pre-paid post at the expiration of 3 Business Days after the document was delivered into the custody of the postal company;

23.3.3 if sent by electronic mail, on the time and day of sending if the electronic mailing system does not advise that the transmission was unsuccessful.

SCHEDULE A: CUSTOMER, CONNECTIONS AND SERVICE LEVELS

- A1 The Customer: [ABC Limited]
 [Postal Address 1]
 [Postal Address 2]
 [Postal Address 3]
 [Contact name and number]
- A2 Connections covered under this agreement are:

Network connection point (ICP)	[ICP NUMBER 1] With connection point at site [Transformer Site No]
Address	[Physical Address 1] [Physical Address 2] [Physical Address 3] [Physical Address 4]
Start date	[Effective date for provision of described service]
Service levels	Standard service levels set out in the Distributor's published Security of Supply standard as amended from time to time. [plus/or any special security or other requirements]
Capacity	[connection voltage (v)] [maximum capacity (kVA)] [power factor or maximum reactive capacity (kVAr)]
Specific delivery charge components	1 x [standard/secondary] connection Dedicated equipment: - 1 x [equipment description] - 2 x [equipment description]
Other specific terms	[eg totalisation for charging, proximity reductions, minimum chargeable capacity, export credit terms, operates as a reconciled embedded network]

Network connection point (ICP)	[ICP NUMBER 2] With connection point at site [Transformer Site No]
Address	[Physical Address 1] [Physical Address 2] [Physical Address 3] [Physical Address 4]
Start date	[Effective date for provision of described service]
Special provisions	Standard service levels set out in the Distributor's published Security of Supply standard as amended from time to time. [plus/or any special security or other requirements]
Capacity	[connection voltage (v)] [maximum capacity (kVA)] [power factor or maximum reactive capacity (kVAr)]
Specific delivery charge components	1 x [standard/secondary] connection Dedicated equipment: - 1 x [equipment description] - 2 x [equipment description]
Other specific terms	[eg totalisation for charging, proximity reductions, minimum chargeable capacity, export credit terms, operates as a reconciled embedded network]