

15 October 2019

Submission in response to the Electricity Authority's 2019 DDA proposals: Public Version

Entrust welcomes the opportunity to submit in response to the Electricity Authority's Electricity Industry Participation Code (the Code) amendment proposal: Default Distributor Agreement, 20 August 2019.

Opening comments

One of the challenges the Authority faced in establishing a regulatory framework for network access is the sparse guidance or relevant provisions contained in the Electricity Industry Act. This compares with the Telecommunications Act which specified a full regulatory framework for the Commerce Commission to apply for network access in telecommunications.

The outcome of the recent Court proceedings involving Entrust and the Authority was to make it clear that any interference with contractual rights by the Authority must be lawful. Entrust is engaging with the Authority on a good-faith basis in relation to the Authority's 2019 DDA proposal and particularly in relation to the proposed trust dividend arrangements. However, Entrust expressly reserves its rights as to the lawfulness of the 2019 DDA proposal and nothing said in this submission should be treated as a waiver of its legal rights.

As the 2016 DDA proposal did not include any provisions for trust dividends, this is the first opportunity for Entrust to make submissions in relation to those provisions. Our submission therefore includes specific track change drafting recommendations for these provisions.

We would welcome the opportunity to work through the issues in this submission with the Authority, and the opportunities to improve the specific drafting of the proposals. The Authority may find it helpful to understand our dividend arrangements and process, which includes reliance on a mix of dividend payment mechanisms i.e. payment directly to beneficiaries by cheque or direct credit to their bank account, and indirectly by way of credit to the electricity account with their retailer.

Summary of Entrust's views

- *Entrust's priority is to protect trust dividend arrangements:* The DDA consultation is of particular importance to Entrust as it impacts on the arrangements in place with Vector and retailers for providing dividends to our trust beneficiaries each year as required by our trust deed.
- *The Authority needs to be careful to ensure its DDA proposals don't undermine the ability of Shareholder Trusts to pay dividends to trust beneficiaries:* Entrust needs data from the retailers to ensure we can identify all of our beneficiaries and comply with our trust deed obligations.
- *Entrust supports the changes to the DDA proposals to provide Distributors and retailers greater flexibility in their Use of System Agreements (UoSAs):* Entrust supports the changes the Authority has made to allow Distributors and retailers to retain their existing UoSA arrangements by mutual agreement, and the provision for Distributors and retailers to negotiate alternative trust dividend provisions to the proposed drafts for Appendices A and B in Schedule 12A.1 of the Code.
- *Alternative means for dealing with trust dividend arrangements:* Entrust is of the view that Distributors should be able to prescribe their own default provisions in relation to trust dividend arrangements and the Authority should avoid being overly prescriptive on these matters.
- *The drafting for the trust dividend arrangements in Appendices A and B can be improved:* We have identified opportunities to help improve the workability and specific drafting of the proposals. It would also be beneficial to undertake a final technical consultation on the drafting of the DDA and any Code amendments before the Authority implements its final decisions.

- The changes we are suggesting are straightforward. By way of example:
 - The current drafting of Appendix A would only require Traders to provide Vector with the number of, and not the details of, trust beneficiaries that didn't get their dividend entitlement. This would be insufficient as information is also needed on who didn't receive the dividends and why, so further steps can be taken to ensure the beneficiaries receive their dividend entitlement as required by the Entrust trust deed.
 - Not all trust beneficiaries are able to get their dividends straight away. As a consequence, there are credit to power account (CTPA) payment requests by customers every month. As presently drafted, the proposed Code provisions do not appear to provide for what would happen after there has been an unsuccessful attempt at paying a trust beneficiary their dividend entitlement.
 - Where Dividend Payments are identified on invoices, there should be provision to identify the Shareholder Trust making the payment rather than the Distributor.
 - Under the proposed Code, the Trader must provide a file containing information reasonably requested by the Distributor to enable it to identify qualifying customers and to calculate the distribution payable within 10 Business Days of a request by the Distributor. Entrust considers that this is too long. A shorter time-period is important to minimise the extent to which the file data becomes out-of-date, due to customer churn, changes in address etc. For example, we provide advance notice of the roll date and then require the roll to be provided within 2 Business Days of the roll date.¹
 - The proposal to require the Distributor to return the file to the Trader with information identifying qualifying Customers and the income distribution amounts payable to each qualifying Customer no later than 2 Business Days after receipt of the Trader's file is unworkable. This step requires that the information is checked, data cleansing etc and presently takes Vector and Entrust 35 Business Days.² If this is not amended, it would by itself render the proposed Appendix A unworkable resulting in the same outcomes as if Appendix A was not included at all.
- *Risk of unintended consequences*: There is a need to very carefully consider the risk of unintended consequences. If the Authority gets the Code provisions wrong, or they are overly prescriptive, there is not only a risk of additional transaction costs for Shareholder Trusts, Distributors and retailers but also an increased risk of non-payment to trust beneficiaries which may cause issues in terms of the obligations owing under the trust deed. This impact will be measurable by comparing the numbers of beneficiaries that missed out on their dividend entitlement prior and post the introduction of the DDA regime.

Process steps for making final decisions

Entrust considers that, consistent with regulatory good practice, the DDA review process would benefit from the addition of a final technical consultation on the DDA drafting and any Code amendments before the Authority implements its final decisions. If the Authority makes substantial further changes to its proposals, as it has done between the 2016 and 2019 consultations, it may also be useful to add a 'supplementary' consultation step on its revised proposals.

Entrust's priority is to protect trust dividend arrangements

The DDA consultation is of particular relevance to Entrust as it impacts on well established arrangements in place with Vector and retailers for providing dividends to our trust beneficiaries each year. We agree with PwC that "The process for retailers to assist with the distribution of rebates, discounts and dividends has been in place since the separation of the retail and distribution business activities. The process is established and works well".³

¹ The 2 Business Day notice is currently achievable because we leverage the EIEP4 protocols that are already in place. If, in the future, additional information is needed 2 Business Days may not be workable.

² A more detailed summary of the process steps and timing is provided in the Confidential Appendix to this submission.

³ PwC, Submission to the Electricity Authority on Default agreement for distribution services, April 2016.

We are reliant on information provided by a large number of electricity retailers (26 parent companies, and 32 retail trader brands at last count⁴) in order to pay out dividends to more than 336,000 Aucklanders and businesses in the Entrust district that are connected to Vector’s electricity network in late September each year.⁵

This year we have paid out \$360 for each trust beneficiary, plus an additional \$15 Loss Rental Rebate from Vector. The dividend will contribute more than \$120 million to Auckland’s economy.⁶ Entrust is not only required by its trust deed but is also determined to deliver for our beneficiaries. We know that some in our community really rely on the dividend, and it makes a difference. A good portion of it will be spent in local neighbourhoods, with local businesses, which further benefits local communities.⁷



We would be particularly concerned about any arrangements that introduced potential inefficiencies, increased the transaction costs in relation to the dividend arrangements, or could cause or result in beneficiaries missing out on their dividend entitlement. A key test will be whether the changes the Authority introduces undermine our ability to pay dividends to trust beneficiaries. This is something we will carefully monitor to ensure Entrust can continue to deliver dividends as required by our trust deed.

The Authority has commented about “risk of unintended consequences” in various fora. Entrust considers the risk of unintended consequences to be something the Authority should have at forefront of mind in considering its proposed trust dividend arrangements, particularly given most of the focus in designing the regulatory framework for network access has been in relation to competition issues.

Provision for trust dividend arrangements needs to be accommodated by the regulatory framework for network access

We support the Authority’s comment “We are aware that some consumer information regarding additional services can only be accessed through the retailer”.⁸ Entrust needs data from the retailers to ensure we can identify all of our beneficiaries and comply with our trust deed obligations.

We welcome the Authority’s position that “We do not want to unduly increase the cost of doing business for distributors and shareholding trusts”, and the consequent changes including that the Authority has:

- “now re-introduced some standardised terms for trust rebates into proposed Part 12A of the Code”; and
- provided for both arrangements where dividends are paid through the retailer (draft Appendix A), and where the Trust needs information from the retailer to pay the dividends to beneficiaries directly (draft Appendix B).

⁴ As at 31 August 2019.

⁵ We don’t have the luxury of the TECT arrangements where they only provide dividends to the customers of Trustpower in the TECT district (Tauranga City and Western Bay of Plenty region).

⁶ <https://www.entrustnz.co.nz/news/media-releases/entrust-2019-dividend-336000-beneficiaries-to-receive-360/>

⁷ <https://www.entrustnz.co.nz/entrust-dividend/how-it-helps-the-community/>

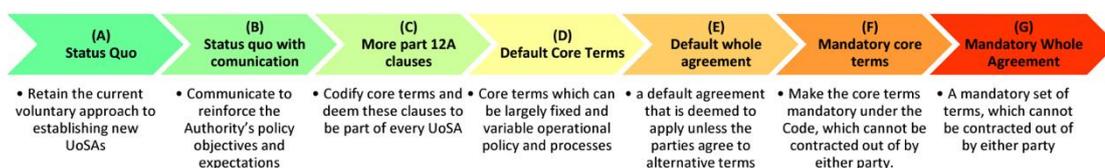
This matter goes well beyond “efficiency” and the “cost of doing business” and is at the core of Entrust being able to continue to identify all of our beneficiaries and comply with our trust deed obligations.

Superior alternative means for dealing with trust dividend arrangements

Entrust considers the proposed treatment of trust dividends as “Additional services” is an area where consideration of alternative options, and how they best fit within the overall regulatory framework the Authority is developing, is warranted.⁹

While the Authority has stated a general preference for option (E) in Figure 10 below¹⁰ to prescribe the default agreement, option (D) does not appear to have been specifically considered in relation to trust dividend arrangements. Even though the Authority considers option (E) should apply for elements of the DDA that could impact competition, this does not impact on the efficacy of option (D) in relation to trust dividend arrangements. The approach Entrust would like the Authority to consider is to treat trust dividend arrangements in a similar manner to operational terms under the DDA.

Figure 10: Alternative means of achieving efficiency and competition benefits



This would address the lack of flexibility offered by the current drafting in Appendix A, which appears to be drafted with only Distributors/Shareholder Trusts that dispense their distributions exclusively through retailers in mind. For Distributors and Shareholder Trusts, such as Vector and Entrust, that may need to facilitate two or more different methods for dispensing distributions, the lack of flexibility risks being inconsistent with obligations under Entrust’s trust deed, as well as unworkable or at least inefficient for all parties.

We note most of the rationale and evidence provided in the consultation paper for the Option (E) approach is competition focussed and not relevant to trust dividend arrangements.

For example, the Authority’s discussion in relation to “Additional services” relates solely to competitive market issues such as where: (i) Distributors “can access and use sensitive information through UoSAs” and “use commercially sensitive information, originally intended for asset and network management purposes, to enter into the related-services market”; and/or (ii) “Distributors can write UoSAs which link the distribution service a retailer wants to supply by the retailer of an additional service the retailer may not want to supply, or a service which is not connected to the distribution service”.

The arrangements that provide for distribution of income to beneficiaries of a Shareholder Trust are distinct from additional services which may give rise to competition concerns or whether there is a level playing field between Distributors and retailers in relation to downstream or related markets. A mandatory default ‘one-size-fits-all’ arrangement is unlikely to be a suitable approach and would have a much higher risk of unintended consequences.

Entrust **recommends** the Authority consider whether Distributors should be able to prescribe their own default provisions in relation to trust dividend arrangements. Consideration of this option could include whether the Distributor’s default provisions would be subject to an approval process (by the Authority or the Rulings Panel) and/or subject to rules which bound or limit the amount of discretion the distributor has.

We note this alternative approach would not impact on the Authority’s assessment, including Cost Benefit Analysis, of the benefits and improved competition from introducing the DDA regime.

Care is needed to ensure the proposed drafting of Appendices A and B can accommodate a range of trust-arrangements and does not result in unintended consequences

⁹ Trust dividend arrangements were expressly excluded under the Authority’s 2016 DDA proposal.

¹⁰ Reproduced from page 50 of the Authority’s 2019 Consultation Paper.

It is essential to provide that Distributors and retail Traders can negotiate alternative trust dividend provisions to the proposed Appendices A and B in Schedule 12A.1 of the Code. While the Authority's proposals provide this flexibility, it is also important to get the drafting of the new appendices in the Code right as they will be used as the default.

One of the challenges, in trying to prescribe trust dividend arrangements in a 'one-size-fits-all' set of arrangements, is that there are a diverse range of trust arrangements e.g.:

- Vector is responsible for providing the beneficiary roll to Entrust, but it is Entrust, not Vector, that is responsible for payment of dividends;
- Entrust needs to use a mix of dividend payment mechanisms i.e. payment directly to beneficiaries by cheque or direct credit to their bank account, and indirectly by credit to the electricity account with their retailer, to ensure the maximum number of trust beneficiaries actually receive the dividends they are entitled to;¹¹ and
- Some of the proposed Code provisions won't be relevant for all trust dividend arrangements e.g. the clauses relating to GST invoicing don't apply to the arrangements Entrust has in place with the Traders and Vector. The provisions to obtain information to establish whether the Shareholder Trust qualifies as a Consumer Trust aren't relevant to Entrust either.

Being overly prescriptive can create risk of unintended consequences. The trust dividend arrangements need to be flexible enough to be future proofed against future needs and requirements e.g. the impact of reducing use and availability of cheques, and potential for IRD arrangements and requirements in relation to dividends to change. In the future, we may need to obtain bank account details from retailers in order to be able to pay trust beneficiaries directly.

Entrust has carefully considered the drafts of Appendices A and B from an operational perspective and what it would mean for our annual dividend payments to Entrust beneficiaries. We consider there is material scope to ensure the Appendices can be used as the default whilst ensuring that obligations under trust deeds can be met, to improve the workability of the proposed arrangements and to reduce the costs the new arrangements could impose, including for Shareholder Trusts, Distributors and Traders.

Entrust **recommends** the Authority adopt the specific track change drafting recommendations we have provided in the track-change version of Appendices A and B.

Payment to Traders in relation to trust dividend arrangements comes with service expectations

Introduction of an arrangement where payment is made to Traders to recover "reasonable costs" in relation to dividend payment arrangements will result in a different set of expectations in relation to those services; particularly in relation to the quality and accuracy of the customer data we receive.

At present, Entrust and Vector commit a considerable amount of resources to checking and 'cleansing' the customer data we receive to ensure trust beneficiaries receive the dividends they are entitled to. We encounter ongoing issues with accuracy in customer name¹² and address details.¹³ In the future if e-mail is relied on this is likely to give rise to similar issues.

¹¹ For example, if you do not have a bank account, or if you are part of a group such as flatmates who do not have a bank account in the group's names, you can return your cheque and have the amount credited to your power account.

¹² e.g. due to inclusion of 'special characters / symbols' such as ~. Naming protocol should be limited to the character set: 0 - 9, A - Z, a - z, space, # : ` _ \ + / - () &.

¹³ Examples of issues we encounter with getting accurate address details in the correct format include, for example:

- Addresses that are incomplete;
- Addresses that contain duplicate or extraneous information;
- Addresses containing a.m or p.m where numerals have been converted into time format in Excel spreadsheet. This is a formatting error that occurs every year with a few retailers where, for example, their file shows the customer address as 11a.m The Street instead of 11/246 The Street. The files have to be returned to the retailer for correction; and
- Addresses that don't conform to NZ Post addressing requirements. This includes where, for example: (i) there is simply no address match in NZ Post records. This will usually be an error in the data provided by retailers; (ii) the provision of PO Box lobby details and correct suburb details; and (iii) we have incorrect addresses for apartment buildings or in bulk developments that were called XXX The Street when the meter went in, but were later amended to ZZZ The Street - those 'corrected'

The following spreadsheet screenshot provides an example of address data, which omits street names, provided by one retailer this year. This issue alone impacted nearly 1,800 customers.

1	ICPID	ICPNur	Parent	Refer	Address1	Address2
123	1-4NGK	059581563LC018			B2/25 PARNELL	AUCKLAND 1052
222	1-979L	0511113275LC6F9			2 FLAT BUSH	AUCKLAND 2016
263	1-BR0M	0143314230LC02F			23 MANGERE	AUCKLAND 2022
424	1-L1F4	0037931776LCE0E			44 FLAT BUSH	AUCKLAND 2016
486	1-NP00	0948238403LC58F			6 EAST TAMAKI	AUCKLAND 2013
557	1-Q6JE	0747879767LC1C0			UNT7/150 FLAT BUSH	AUCKLAND 2016
571	1-Q8V2	0975967591LC821			UNT30/150 FLAT BUSH	AUCKLAND 2016
731	1-W0ZW	0062211834LC1DC			18/37 MOUNT WELLINGTON	AUCKLAND 1060
732	1-W104	0544681357LCF57			19/37 MOUNT WELLINGTON	AUCKLAND 1060
802	1-XD8L	0009339514LC807			4/58 GREY LYNN	AUCKLAND 1021
848	1-YWV6	0514727829LC57C			UNT12/495 EPSOM	AUCKLAND 1023
936	1+25O+5	0116173807LC202			680 MOUNT ALBERT	AUCKLAND 1022
952	1+26C+8	0127196668LCF5E			330 KINGSLAND	AUCKLAND 1021
1033	1+2A4+9	0208475001LC568			506 EPSOM	AUCKLAND 1023
1044	1+2AO+6	0222809159LC835			UNT9/373 EPSOM	AUCKLAND 1023
1130	1+2E8+4	0323789021LCB8E			69 PAPATOETOE	AUCKLAND 2025
1145	1+2ES+1	0333324811LCB87			2/13 MANGERE EAST	AUCKLAND 2024
1204	1+2H8+0	0402097068LC791			182 ONEROA	AUCKLAND 1081
1225	1+2I4+8	0417660995LC796			14 PAKURANGA	AUCKLAND 2010
1419	1-1CS2D	0775621417LC913			18 HOWICK	AUCKLAND 2014
1620	1-1O0M1	0779256298LC5DA			23 PALM BEACH	AUCKLAND 1081
1628	1-1OTT3	0449466153LCE0B			44 FAVONA	AUCKLAND 2024
1632	1-1OY7P	0909534396LCA3B			1E/83 EDEN TERRACE	AUCKLAND 1021
1686	1-1QTWX	0319227075LCE4E			203/88 PARNELL	AUCKLAND 1052
1819	1-1T7FH	0339244512LCCDF			14/7 MANUREWA	AUCKLAND 2102
1836	1-1TCQU	0437550974LC9E7			88 CLENDON PARK	AUCKLAND 2103
1936	1-1WLSM	0003001330LCA62			3/570 EPSOM	AUCKLAND 1023
2016	1-214W4	0667969370LC92D			12 MORNINGSIDE	AUCKLAND 0110
2297	1-2VS2Q	0646144657LC784			UNT47/3 GRAFTON	AUCKLAND 1010
2316	1-2WQ51	0237946791LCB88			17 WEYMOUTH	AUCKLAND 2103
2493	1-3E31S	0511834940LCDF0			15 AUCKLAND CENTRAL	AUCKLAND 1010
2577	1-3LBOC	0323974126LCAEA			28 FLAT BUSH	AUCKLAND 2016
2592	1-3NGM8	0555179766LC14E			36 FREEMANS BAY	AUCKLAND 1011
2601	1-3O326	0183825514LC240			37 FLAT BUSH	AUCKLAND 2016
2695	1-40FT5	0846165903LC538			16/2 MORNINGSIDE	AUCKLAND 0110
2848	1-47JYJ	0550367136LC3EB			504/85 AUCKLAND CENTRAL	AUCKLAND 1010
3038	1-4DJ27	0554484659LC4BA			4/15 EDEN TERRACE	AUCKLAND 1021

These issues lead to poor address data and 37,000 records needing address cleansing before mailing, as well as 3,500 cheques and payment notifications being returned GNA (gone no address) every year. This affects Entrust’s ability to secure the best volume discount from NZ Post which is based on the percentage of mail with accurate address data being provided.

Not all trust beneficiaries are able to get their dividends straight away

While Entrust issues dividend payments to trust beneficiaries once every year, any beneficiary that does not receive their dividend entitlement has a two-year grace period before the entitlement expires.

While the largest credit to power account (CTPA) payment to retailers occurs on dividend day, there can be CTPA payments requested by customers every month. This is illustrated by the table below in relation to the 2017 dividend payment. The CTPA payments made after the dividend day comprised a material proportion of the total dividend payments made by Entrust, accounting for approximately 14% of all dividend payments made.

RETAILER	NUMBER OF CTPA FILES SENT	TOTAL NUMBER OF ICPs	AMOUNT PAID
BOSCO CONNECT	17	479	\$167,650.00
CONTACT ENERGY	36	7441	\$2,604,350.00
ECOTRICITY	3	43	\$15,050.00
ELECTRIC KIWI	5	85	\$29,750.00
ELECTRICA	2	7	\$2,450.00

addresses were determined by Council, not NZ Post. NZ Post will not ‘improve’ the XXX to ZZZ. They suggest we do a search and replace of known incorrect addresses. These include several hundred at Acacia Cove village where every year the address we get from retailers is 124 Wattle Farm Road, but the NZ Post address is 131 Wattle Farm Road. We have around 6,000 beneficiaries in this category.

RETAILER	NUMBER OF CTPA FILES SENT	TOTAL NUMBER OF ICPs	AMOUNT PAID
EMH TRADE	1	10	\$3,500.00
FLICK ENERGY LTD	11	133	\$46,550.00
FUTURE ENERGY	1	1	\$350.00
GENESIS	26	2,743	\$960,050.00
GENESIS - EX ONED	18	795	\$278,250.00
GENESIS TOU	3	23	\$8,050.00
HUNET	11	109	\$38,150.00
MERCURY ENERGY	39	25,306	\$8,857,100.00
MERIDIAN	22	2,010	\$703,500.00
OPUNAKE HYDRO	2	21	\$7,350.00
PIONEER ENERGY	1	2	\$700.00
POWERSHOP NZ	23	896	\$313,600.00
PRIME ENERGY	2	25	\$8,750.00
PROPERTY POWER LTD	7	48	\$16,800.00
PULSE UTILITIES	10	483	\$169,050.00
SIMPLY ENERGY	2	7	\$2,450.00
SWITCH UTILITIES	10	97	\$33,950.00
TODD ENERGY	8	440	\$154,000.00
TRUSTPOWER	24	1,395	\$488,250.00
VECTOR DIRECT BILLED	2	4	\$1,400.00
TOTAL	286	42,603	\$14,911,050.00

A CTPA request is usually made by a customer because a cheque can't be banked, most often because:

- the name provided by the retailer is incorrect (often a spelling problem, but the bank won't accept the cheque)¹⁴; or
- the cheque is made out to all the names of the occupiers, such as flatmates, and they do not have a bank account in those names. In the case of a group, the only way to ensure all eligible consumers benefit is to do a CTPA.

It is important the provisions relating to Trader dividend payments don't inadvertently restrict customer requests to have the dividend put on to their power bill. This would make it more difficult to pay the dividends to the rightful beneficiaries and to do so in a timely manner. As presently drafted, the proposed Code provisions do not appear to provide for what would happen after there has been an unsuccessful attempt at paying a trust beneficiary their dividend entitlement. To address this specific issue, we have proposed an amendment to Appendix A (a new clause 9) that is discussed further below. This highlights the risks with providing overly prescriptive regulation if it doesn't accommodate all potential eventualities.

Some of the proposed timeframes need to be changed

The table below compares, in summary form, the Authority's proposed timeframes as against Vector's current timeframes for Entrust dividend payments made through Traders. The provision requiring the Distributor to return the file containing customer details back to the Traders within 2 Business Days, in particular, is not workable or reasonably practicable.¹⁵

Vector and Entrust presently require 35 Business Days to process customer information for dividend payments (including checking the information is correct, data cleansing etc). If this proposed clause is

¹⁴ Note that the Entrust trust deed requires that we pay the customer as named in Vector's records. Vector's records come from the names on the retailers' accounts and even if we can see it is wrong, that's who we are required to pay.

¹⁵ A more detailed summary of the process steps and timing is provided in the Confidential Appendix to this submission.

not amended, it would, by itself, render the proposed Appendix A unworkable resulting in the same outcomes as if Appendix A was not included at all.

Electricity Authority proposal	Current Vector arrangements
Electricity Authority proposes to require 40 Business Days notification of income distribution.	Vector gives 15 Business Days notification to Traders to provide beneficiary information.
Electricity Authority proposes to provide Traders with 10 Business Days to provide a file to the Distributor containing any information reasonably requested by the Distributor.	Vector notifies Traders of the roll date (at which the file containing beneficiary information must be prepared) when it first provides notification to the Traders of the income distributions (which is typically at least 10 Business Days prior to the roll date). Vector requires Traders to provide the file within 2 Business Days following the roll date. This short time-period following the roll date is important to minimise the extent to which the file data becomes out-of-date, due to customer churn, changes in address etc, in the interim period.
Electricity Authority proposes to require the Distributor to return the file to the Trader with information identifying qualifying Customers and the income distribution amounts payable to each qualifying Customer no later than 2 Business Days after receipt of the Trader’s file.	<p>This step presently takes 35 Business Days and consists of the following steps:¹⁶</p> <ul style="list-style-type: none"> • Vector loads data to Siebel (Vector’s CRM system). Checks for duplications and errors etc. Roll updated. Transferred to Computershare. Time: 12 Business Days. • Computershare completes updating the records on file of payment method requests from the June mailing etc. Time: 9 Business Days. • Computershare moves to registry process. Time: 6 Business Days • Computershare sends printing files to mailhouse (SDL). Time: 10 Business Days • One day prior to dividend day, Computershare sends CTPA files to retailers where customer will be receiving the dividend as a CTPA. Files include ICP, customer name on roll, postal address, install address, and amount to be credited. Time: 1 day (included with SDL timing)

Specific areas where the drafting of Appendices A and B can be improved

We detail below the main elements of the terms and conditions of concern, as well as other opportunities to improve the drafting. The recommendations are reflected in the track change version of Appendices A and B that accompanies this submission:

- **Transitional arrangements for existing distributions (new clause 1(4), Appendix A):** Entrust **recommends** Appendix A includes a grandfathering provision with respect to distributions for which notice has already been given under an existing use-of-system agreement prior to entry into of a distributor agreement that includes Appendix A. In this circumstance, the most practicable option is for the Distributor to be able to elect that the income distribution provisions set out in the existing UoSA continue to apply with respect to that already notified dividend (to the exclusion of any income distribution services provisions included in the distributor agreement).
- **40 business day requirement for promotional material and publicity information (clause 2(1)(f) and (g) and new clause 2(3), Appendix A):** The proposed Appendix A requires the Distributor to provide a draft of any promotional material and copies of any publicity information to the trader with the initial notice (“Request Notice”) that must be sent to Traders at least 40 Business Days before the income distribution.

¹⁶ Note that some of the timings below include crossover days where one supplier is finishing their work and handing on to the next supplier who starts work that same day.

This requirement for at least 8 weeks' notice does not accord with Vector and Entrust's current practice and is in our view impractical and unnecessary. Drafts of such materials are not prepared at that early stage in the process. Vector's practice, as reflected in its UoSA, is to provide drafts of such material as soon as reasonably practicable after the Request Notice has been sent to traders.

The current arrangements work well in practice, and therefore Entrust **recommends** clause 2 of Appendix A be amended to provide for drafts of promotional material and publicity information to be provided "as soon as reasonably practicable" after the Distributor has given notice of the income distribution to the Trader.¹⁷

- **Trader unable to meet any of the Distributor's requirements (clause 2(2), Appendix A):** There is a gap in the proposed clause 2(2) as, beyond requiring the Trader to act reasonably, there is no timeframe set for when "The Trader must ... advise the Distributor if the Trader is unable to meet any of the requirements set out in the notice, and the reasons for that". Any advice from a Trader that they cannot meet the Distributor's notice of income distribution requirements will be critical for ensuring trust beneficiaries receive the dividends they are entitled to. Clause 2(2) of Appendix A must be amended to require the Trader to respond to the Distributor within a certain timeframe after receipt of a notice given by the Distributor under clause 1 ("Request Notice") if it is unable to meet any of the requirements of the Request Notice. Entrust **recommends** that the timeframe inserted for clause 2(2) is 5 business days.
- **Customer Information File (clause 4, Appendix A):** Clause 4 of proposed Appendix A sets out the timing requirements for the preparation of the information file of qualifying customers who will be entitled to receive their income distribution through the Trader on behalf of the Distributor or Shareholder Trust ("Customer Information File"). It provides that the Trader must provide the initial Customer Information File to the Distributor within 10 Business Days of request, after which the Distributor must process and finalise the file within 2 Business Days and return it to the Trader.

These proposed timings differ considerably from Vector's actual Customer Information File preparation timings and would be impossible for Vector to comply with. In Vector's case:

- the Traders only require 2 Business Days following formal request after the roll date to provide the initial Customer Information File to Vector, which is more than sufficient time given that Traders receive at least 40 Business Days' notice of the roll date for the Customer Information File and the information required to be included in it via the Request Notice; and
- Entrust takes approximately 35 Business Days to review, cleanse and prepare the finalised Customer Information File before returning it to the Traders. Entrust receives 30 different information files from Traders that need to be reviewed and cleansed.¹⁸ This process is highly involved and labour intensive, and vital to identifying trust beneficiaries as required by the Entrust trust deed.

The 2019 Consultation Paper states that the standardised terms in Appendix A are intended to "ensure the distributor can continue to dispense dividends to eligible consumers on the local network without interruption".¹⁹ As drafted, the Appendix A terms could not be utilised by Entrust – which is the largest potential user of these provisions in the country.

If Appendix A is to be able to be utilised by Vector, clause 4 of Appendix A would be required to be amended to ensure the Trader provides the Customer Information File to the Distributor within a short timeframe following request. Entrust therefore **recommends** that clause 4 of Appendix A is amended to require the Trader to provide the Customer Information File to the Distributor within 2 Business Days and the Distributor to return the finalised file to the Trader as soon as reasonably practicable after receiving the file. We consider these timeframes are necessary and reasonable to all parties, given that:

- the Distributor will be required to provide at least 40 Business Days' notice of the distribution timetable, including the Customer Information File roll date and delivery date, as part of the

¹⁷ Entrust does not require Traders to pass on any Entrust promotional material to their customers. This information is currently provided to retailers in the notice of the roll date. A set of collateral and FAQs is provided on an FYI basis nearer the time of distribution.

¹⁸ The process and timeframes are detailed in the Confidential Appendix to this submission.

¹⁹ Paragraph 5.73(b) of the 2019 Consultation Paper.

Request Notice – which the Trader then has the opportunity (and requirement) to respond to if it is unable to meet any of those timings; and

- the Distributor and Shareholder Trust are incentivised to complete their review and preparation of the final Customer Information File as soon as possible in order to meet their own distribution timetable and comply with trust deed requirements. Prescribing a fixed timeframe within which this is to be done is simply not reasonable when each Distributor/Shareholder Trust will be working with a different number of Traders and different qualities of raw customer information to be reviewed and cleansed.

As an alternative, and for completeness, we note Entrust would also **support** these Customer Information File timings being categorised as operational terms in Appendix A, which the Distributor and Shareholder Trust could then set based on local practices and processes, and which could also be subject to consultation with Traders and Rulings Panel review.

- **Distributing income (clause 5(1), Appendix A):** Entrust **recommends** the Trader’s obligation to pay the income distribution to qualifying Customers arise following receipt of payment of the income distribution from the Distributor / Shareholder Trust and not following receipt of the Customer Information File.
- **Requirements for Dividend Payments identified on invoices (clause 5(2), Appendix A):** The current Vector UoSA requirements reference the trust dividend as well as Vector, while the proposed Code requirement would reference “[Distributor Name] income distribution only”. Entrust **recommends** the invoice identification in clause 5(2) Appendix A include [Distributor/Name of Shareholder Trust] and/or provision for flexibility in the wording requirements.
- **File with information about income distributions paid on by the Trader (clause 6(b), Appendix A):** The proposed Appendix A introduces new categories of information that must be included in the Request Notice including whether the Distributor, on behalf of the Shareholder Trust, requires confirmation of the number of customers connected to Distributor’s network to whom a distribution is not paid. Confirmation of the number of customers to whom a distribution is not paid is not adequate to allow a Shareholder Trust or Distributor to identify the affected trust beneficiaries and arrange for alternative means of distribution payment.

To allow Appendix A to be able to be used as the default, Entrust **recommends** clause 6(b) of Appendix A be amended such that the Distributor has the right to require the Trader to provide a file to the Distributor setting out, in respect of each customer to whom a distribution is not fully paid: the ICP, amount of the distribution not paid, the customer name and, if available, forwarding address.

- **Confidentiality (clauses 7 and 9, Appendix A):** While Appendix A contains a requirement that the Distributor keep confidential, and be responsible for ensuring that the Shareholder Trust keep confidential, all information provided by the Trader, there is no reciprocal requirement on the Trader to keep confidential information provided to it by the Distributor or Shareholder Trust under Appendix A e.g. proposed publicity material.

Entrust **recommends** clause 7 of Appendix A specifies that: (i) the confidentiality obligations in Appendix A are mutual i.e. a Trader should be required to keep information supplied to it by the Distributor or Shareholder Trust, such as the eligibility date of an income distribution; and (ii) the Distributor is permitted to use the Confidential Customer Information obtained by it under Appendix A for any purpose expressly permitted in Appendix B as well as in Appendix A (to avoid the Distributor having to make a separate information request under Appendix B to achieve the same outcome).

- **Payment and refund of income distribution amounts and GST invoices (clauses 8(1) and 8(4), Appendix A):** The proposed Appendix A provides that the Distributor must pay the total amount of the income distributions into the Trader’s bank account, and the Trader must issue the Distributor with a GST invoice and refund to the Distributor any income distributions that are unable to be paid. None of these provisions, however, are consistent with how Entrust pays dividends to its qualifying customer/beneficiaries through the Traders. In practice, and as required by terms of the Vector UoSA, it is Entrust (as Shareholder Trust) and not Vector (as Distributor) that pays the Traders the income distributions to be paid to qualifying customers, and it is Entrust that is refunded any unpaid distributions.

Similarly, the proposed requirement that the Trader must issue the Distributor with a GST invoice is not applicable for Entrust. In practice, Computershare as agent for Entrust notifies Traders of the ICPs and customer names where a CTPA will be paid and Computershare, on behalf of Entrust, then transfers the funds to the Trader's bank account. No invoice is raised or paid, as no services or goods have been purchased.

Accordingly, Entrust **recommends**: (i) the Distributor be entitled to nominate that the underlying Shareholder Trust of a Distributor will pay the Trader the amount of the income distribution and receive the GST invoice (if any) from the Trader, as well as any refunds in connection with that distribution from the Trader (as is currently the case under the Vector UoSA); and (ii) as not all income distributions (if any) will be subject to GST, that the Trader only issue a GST invoice if required by the Distributor to do so (with the Distributor/Shareholder Trust required to pay the total amount of distributions to the Trader no later than 5 Business Days after the Distributor notifies the Trader of the payer of the income distribution or, if a GST invoice is required, receipt of the GST invoice).

- **Risk of retailer default or insolvency (clause 8(3), Appendix A):** There have been increasing questions about whether more of the small independent retailers could be forced out of the market. While the exits earlier this year were orderly with the exiting retailers' customer books transferred to an alternative retailer, there is the very real risk of retailer insolvency.²⁰ Entrust **recommends** the requirement for Traders to hold trust dividends in an "appropriate bank account" until the dividends are paid out to their customers (clause 8(1)(3), Appendix A) be strengthened "to be held on trust" to protect the trust dividend payments.
- **Credit to power account (CTPA) payments (new clause 9, Appendix A):** As discussed earlier in this submission, it is important Entrust has the ability, after an unsuccessful attempt at paying a trust beneficiary their dividend entitlement, to be able to require the Trader to pay the dividend by crediting the trust beneficiary's electricity account. Entrust **recommends** that, at the request of Entrust, the Distributor have a right to require the Trader to pay an income distribution to a customer if the Distributor or Shareholder Trust has already tried and failed to do so (new clause 9, Appendix A). Such a right would provide an obvious and justifiable benefit to consumers who are unable to receive their dividend entitlement directly from the Distributor or Shareholder Trust (for example because their bank will not accept a cheque), by enabling them to receive their dividend by way of credit to their electricity account.
- **Information required to meet the Shareholder Trust's obligations under its trust deed (clauses 2 and 3 and new clause 4, Appendix B):** We note payment by cheque is becoming less and less common. Kiwibank will not accept cheques after February 2020,²¹ and other banks may follow. In the future, Entrust may need, subject to the customer having authorised the disclosure to (and use by) Entrust, bank account details from Traders to help enable income distributions to Entrust beneficiaries.

To facilitate this, Entrust **recommends** that a new clause 4 be added to Appendix B requiring the Trader, on request by the Distributor, to include in its customer agreements a clause by which the customer authorises the Trader to disclose the customer's personal information to the Distributor, to use and disclose to the Shareholder Trust for the permitted purposes set out in clause 3.

Most Traders already include these authorisations in their customer agreements, however the Distributor requires a mechanism to ensure that all Traders do, so as to enable the Distributor and Shareholder Trust to be able to exercise their rights under Appendix B without breaching privacy laws. Consumers would benefit from this clause as it would allow Distributors to procure the necessary authorisations to obtain and use customer personal information (such as bank account numbers and contact details) to make income distributions direct to qualifying customers.

Concluding remarks

Subject to the opening comments and its reservation of rights, Entrust has identified a material number of drafting changes to the proposed trust dividend arrangement terms and conditions in order to assist

²⁰ <https://www.energynews.co.nz/featured-content/hedge-market/43992/long-read-market-situation-could-force-more-exits-small>

²¹ For future dividends, Kiwibank customers will need to request a direct credit to their bank account when we send out the update forms in June. Or Kiwibank customers will be able to send the cheque back for a credit on their power account.

the Authority in finalising the terms of the DDA. We consider that these changes would improve the workability of the Authority's DDA proposals, and would better ensure compliance with relevant trust deeds (including Entrust's), to the long-term benefit of consumers.

Entrust also considers that Distributors should be able to prescribe their own default terms and conditions for trust dividend arrangements. This is an option that hasn't been specifically considered in the context of trust dividend arrangements but should be.

It would be prudent to carefully consider the risk of unintended consequences. This is a risk the Authority has been mindful of in relation to other projects, such as potential hedge market reform, and has resulted in a cautious approach to regulatory change. In the context of trust dividends, if the Authority gets the regulation wrong, or is overly prescriptive, there is not only risk of additional transaction costs for trusts, distributors and retailers but also an increased risk of non-payment to trust beneficiaries which may cause issues in terms of the obligations owed under the respective trust deeds.

For further information, contact:

Helen Keir, Chief Operating Officer, Entrust

Phone: 09 929 4567

Kind Regards

A handwritten signature in black ink, appearing to read 'wcairns', with a horizontal line underneath it.

William Cairns

Chairman

Schedule 12A.1, Appendix A Income distribution services

Sch 12A.1, cl 7(2)

1 Distributor can require the Trader to pass on income distributions

- (1) The Distributor [has a Shareholder Trust as a shareholder/is a Co-operative] and requires the Trader from time to time to distribute income to [the Shareholder Trust's beneficiaries/its shareholders].
- (2) The Distributor may require that the Trader pay income distributions on behalf of the [Shareholder Trust/Distributor] to each of the Trader's qualifying Customers by crediting each qualifying Customer's electricity account ("Income Distribution Services"), by giving the Trader at least 40 Business Days' notice of the requirement in accordance with clause 2.
- (3) The Distributor may not require the Trader to pay income distributions under subclause (2) any more frequently than necessary to ensure that income distributions are credited to Customers on or by any date that the [Shareholder Trust/Distributor] resolves to distribute income to its [beneficiaries/shareholders].
- (4) If the Distributor has given notice to the Trader to pay income distributions under any use-of-system agreement (or equivalent agreement(s)) entered into prior to the date of this Agreement coming into effect, then the Distributor may, by notice to the Trader within 5 Business Days of this Agreement coming into effect, elect that the income distribution services terms of that use-of-system (or equivalent) agreement, and not this Agreement, will apply with respect to those already notified income distributions.

2 Distributor notice of income distribution requirements

- (1) A notice given by a Distributor under clause 1 must include the following:
 - (a) the time period within which the [Shareholder Trust/Distributor] has set the eligibility date for Customers to be qualifying Customers;
 - (b) a description of the information the [Shareholder Trust/Distributor] requires to identify qualifying Customers, including any exclusions;
 - (c) the ICPs on the Network in respect of which an income distribution is payable;
 - (d) a description of the information the [Shareholder Trust/Distributor] requires to calculate the income distributions payable;
 - (e) the proposed process and timelines for information to be exchanged between the parties to enable efficient implementation;
 - ~~(f) a draft of any promotional material relating to the income distributions that the Distributor wants the Trader to include with the invoice that records the credit given;~~
 - ~~(g) copies of any proposed publicity information relating to the income distributions, including media releases;~~
 - ~~(h)~~(f) contact details of persons who can be contacted in respect of Customer queries that cannot be addressed by the Trader;
 - ~~(i)~~(g) expected frequently asked questions by Customers and the answers to those questions;
 - ~~(j)~~(h) the format in which Customer information is to be exchanged in accordance with clause 6;
 - ~~(k)~~(i) whether the Distributor[, on behalf of the Shareholder Trust,] requires any other information in respect of each qualifying Customer for the purposes set out in clause 9(3); and

- ~~(j)~~ (j) whether the Distributor[, on behalf of the Shareholder Trust,] requires a file containing confirmation of the number of ~~in respect of each qualifying Customers connected to the Distributor's Network~~ to whom an income distribution is not fully paid, the ICP, amount of income distribution not paid, Customer's name and, if available, forwarding address.
- (2) The Trader must, acting reasonably, and no later than 5 Business Days after receipt of the notice, advise the Distributor if the Trader is unable to meet any of the requirements set out in the notice, and the reasons for that.
- (3) The Distributor must, as soon as reasonably practicable after giving notice under clause 1, provide the Trader with:
- (a) a draft of any promotional material relating to the income distributions, that the Distributor wants the Trader to include with the invoice that records the credit given in respect of any income distribution paid; and
- (b) a draft of any proposed publicity information relating to the income distributions, including media releases.

~~(m)~~—

3 Payment for income distribution services

- (1) The Distributor must pay the Trader's reasonable costs incurred in providing any Income Distribution Services that the Distributor requests in a notice given under clause 1.
- (2) If requested by the Distributor, the Trader must give the Distributor a quoteation for providing the Income Distribution Services before the Trader provides those services.
- (3) The Distributor must pay the Trader's GST invoice for the Income Distribution Services no later than the 20th of the month following the invoice date.

4 File with Customer information

- (1) The Distributor may request from the Trader any information that the Distributor reasonably requires to enable it to identify qualifying Customers and to calculate the income distribution payable to each qualifying Customer.
- (2) The Trader must provide a file to the Distributor containing any information reasonably requested by the Distributor under subclause (1) no later than ~~10~~ 2 Business Days after the Distributor's request.
- (3) The Distributor must as soon as reasonably practicable after receiving a file from the Trader under clause 4(2), return the file to the Trader with information identifying qualifying Customers and the income distribution amounts payable to each qualifying Customer, and notify the Trader whether [the Distributor or the Shareholder Trust will pay the total amount of such income distributions to the Trader and whether] a GST invoice is required ~~no later than 2 Business Days after receipt of the Trader's file.~~
- (4) 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 income distribution passed on by the Trader, the parties must test the information exchange process in advance.

5 Distributing income to qualifying Customers

- (1) The Trader must, as soon as reasonably practicable after receiving payment of the total amount of the income distributions from the Distributor [or the Shareholder Trust as notified ~~a file from the Distributor~~ under clause 4(3)]:
- (a) credit the income distribution amount determined by the Distributor and included in the file in accordance with clause 4(3) to each qualifying Customer's account;

and

- (b) provide the Distributor with a file that includes the information set out in clause 6.
- (2) The Trader must, if its billing systems allow it to do so, ensure that the income distribution is separately identified on each qualifying Customer's invoice, with the words “[Distributor Name/Name of Shareholder Trust] income distribution” (or any similar words as advised by the Distributor).
- (3) If applicable, the Trader must provide the Distributor’s promotional material relating to the income distribution to the Customer along with the Trader’s invoice that includes the income distribution.

6 File with information about income distributions paid on by the Trader

The Trader must, as soon as reasonably practicable after paying income distributions in accordance with clause 5, provide the Distributor with a file containing the following information:

- (a) in respect of each qualifying Customer to whom the Trader paid an income distribution:
 - (i) the ICP identifier;
 - (ii) the amount of the income 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 clause 2(1)(~~k~~); and
- (b) if the Distributor has specified under clause 2(1)(~~h~~) that it requires that information, a file containing, in respect of each qualifying Customer confirmation of the number of Customers connected to the Distributor's Network to whom an income distribution was not fully paid, the ICP, amount of income distribution not paid, Customer’s name and, if available, forwarding address.

7 Confidentiality obligations

- (1) Subject to subclause (2), ~~the Distributor~~each party to this Agreement undertakes that, in respect of any information provided to it by the ~~Trader~~other party under clause 2 or clause 4 or clause 6 (“Confidential Customer Information”), ~~the Distributor~~each party will:
 - (a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose the existence of, the Confidential Customer Information except as expressly permitted in this Appendix;
 - (c) only use the Confidential Customer Information for a purpose expressly permitted in this Appendix or Appendix B; and
 - (b) only disclose the Confidential Customer Information for a purpose expressly permitted in this Appendix or Appendix B and on a ‘need to know’ basis.
- (2) For the purposes of this Appendix:
 - (a) ~~the Distributor~~either party may disclose Confidential Customer Information if it is required to disclose the Confidential 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) ~~The Distributor’s~~Each party’s liability for breach of this clause is not limited by any terms in this Agreement or in any other agreement between the parties.
- (4) To avoid doubt, ~~the Distributor~~a party will be ~~is~~ responsible for any unauthorised

disclosure of Confidential Customer Information made by ~~the Distributor's~~that party's employees, contractors, directors, agents, or advisors.

8 Payment of income distribution amounts

- (1) If notice is given under clause 4(3) that a GST invoice is required, ~~T~~he Trader must issue the Distributor [or the Shareholder Trust] with a GST invoice in accordance with that notice for the total amount of income distributions credited, or to be credited, to qualifying Customers under clause 5.
- (2) The Distributor [(unless it nominates the Shareholder Trust in its notice given under clause 4(3), in which case the Shareholder Trust)] must deposit the total amount of such income distributions, without offset, into the Trader's nominated bank account no later than 5 Business Days (or any alternative agreed date) after such notice is given under clause 4(3) or, if a GST invoice is required, the Trader issues its GST invoice.
- (3) Any income distribution payments received by the Trader from the Distributor [or Shareholder Trust] must be held by the Trader in an appropriate bank account as separately identifiable funds, on trust for the benefit of the Customers who are entitled to receive the income distributions.
- (4) If, for any reason, the income distribution payable to a qualifying Customer is unable to be paid by the Trader (by way of example but without limitation, because the person ceases to be a Customer and its account with the Trader has a credit balance after the date of processing of the income distribution), and the Trader has received funds from the Distributor [or the Shareholder Trust] in respect of the income distribution, the Trader must, as soon as practicable:
 - (a) refund to the Distributor [(unless the Trader received funds from the Shareholder Trust in respect of the income distribution, in which case the Trader must refund to the Shareholder Trust)] the income distribution received for the person, or the net credit of the account for the person if that is less than the amount of the income distribution for the person; or
 - (b) refund the person directly the remaining amount by cheque.

9 Payment of additional income distribution amounts

- (1) If, the Distributor [or the Shareholder Trust] has attempted and been unable, for any reason, to pay an income distribution to a qualifying Customer (by way of example but without limitation, because the Customer does not have a bank account in the Customer's name into which a cheque can be deposited), the Distributor may require that the Trader pay the income distribution on behalf of the [Shareholder Trust/Distributor] to that qualifying Customer by crediting that qualifying Customer's electricity account by giving the Trader at least 5 Business Days' notice of the requirement.
- (2) If the Distributor gives notice under subclause (1), clauses 4, 5, 6 and 8 will apply to the payment of the income distribution by the Trader on behalf of the [Shareholder Trust/Distributor] (with all necessary modifications).

910 Permitted additional use and disclosure of Confidential Customer Information

- (1) 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.
- (2) 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.
- (3) [The Distributor may disclose Confidential Customer Information provided by the Trader to the Shareholder Trust, but the Distributor must enter into arrangements with the Shareholder Trust to ensure that the Shareholder Trust only uses the/The Distributor may use] Confidential Customer Information for the purposes of:
- (a) ensuring that income is distributed to [beneficiaries/shareholders] in accordance with the [Shareholder Trust's/Distributor's] requirements;
 - ~~(b)~~ ~~(e)~~ enabling a third party to carry out audits of the Distributor [or the Shareholder Trust]; and
 - ~~(b)~~ (c) any other purpose permitted under Appendix B.
- (4) 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.
- (5) The Trader may use Confidential Customer Information for the purposes of ensuring that income is distributed to [beneficiaries/shareholders] in accordance with the [Shareholder Trust's/Distributor's] requirements.

~~10~~11 **Distributor indemnity**

- (1) The Distributor indemnifies the Trader against any costs, losses, liabilities, claims, charges, demands, expenses or actions incurred by the Trader, or made against the Trader, 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 Trader of its obligations under this Appendix.
- (2) This clause applies despite any other provisions in this Agreement or in any other agreement between the parties.

~~11~~12 **Definitions**

Capitalised terms not otherwise defined in this Appendix have the meaning given to them in the Agreement. [Drafting Note: given this Appendix will form part of the Agreement, we have deleted duplicative definitions below that are already defined in clause 33.2 of the DDA template] In this Appendix:

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

"**Appendix**" means this Appendix A;

"**Appendix B**" means Appendix B to the Agreement (if any);

~~"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 7(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 income 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 provision, maintenance and operation of the Network for the conveyance of electricity to Customers;~~

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

~~"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;~~

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

- ~~(a) — at which electricity predominantly flows out of the Grid; or 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) a Point of Connection between the Network and shared Unmetered Load-~~

"Income Distribution Services" has the meaning set out in clause 1

~~**"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.~~

Schedule 12A.1, Appendix B

Sch 12A.1, cl 7(2)

Provision of trust and co-operative company information

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]; ~~or~~
- (b) for one of the permitted disclosures or uses set out in clause 3; or
- (c) for any other purpose as otherwise agreed 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] income distributions to the [Shareholder Trust's beneficiaries/the Distributor's shareholders];
- (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]; and
- (f) including promotional material relating to the planning and management of the Network or the provision of Distribution Services with any correspondence sent to the [Shareholder Trust's beneficiaries/Distributor's shareholders].

(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 Trader to include provisions in Customer Agreements

If requested by the Distributor, the Trader must, subject to clause 29.1 of the Agreement, include in each of its Customer Agreements a clause or clauses to the effect

that the Customer authorises the Trader to disclose the Customer's personal information to the Distributor to use [and disclose to the Shareholder Trust] for the purposes set out in clause 3.

45 Payment of Trader's 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 quotation 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.

56 Confidentiality obligations

- (1) The Distributor undertakes that, in respect of any information provided to it by the Trader under this Appendix ("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 Appendix;
 - (b) only use the Confidential Customer Information for a purpose expressly permitted in this Appendix;
 - (c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Appendix 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 Appendix; and
 - (ii) only discloses the Confidential Customer Information for a purpose expressly permitted in this Appendix, 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 purpose of this Appendix:
 - (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.
- (4) 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.
- (5) 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.
- (6) 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 Shareholder Trust, the Shareholder Trust, or the Shareholder Trust's

employees, contractors, directors, agents, or advisors.

67 Definitions

Capitalised terms not otherwise defined in this Appendix have the meaning given to them in the Agreement. [Drafting Note: given this Appendix will form part of the Agreement, we have deleted duplicative definitions below that are already defined in clause 33.2 of the DDA template] In this Appendix:

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

"**Appendix**" means this Appendix B;

~~"**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 income 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'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 provision, maintenance and operation of the Network for the conveyance of electricity to Customers;~~

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

~~"**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.~~