

Default agreement – Distributions on behalf of distributor

AGREEMENT dated 20[]

PARTIES

Distributor: Waipa Networks Limited	Trader: [insert full legal name of the Trader]
Distributor's Details: Street Address: 240 Harrison Drive, Te Awamutu Postal Address: PO Box 505, Te Awamutu Address for Notices: As above Contact Person's Details: Phone: 07 872 0745 Website: www.waipanetworks.co.nz Email Address: retailservices@waipanetworks.co.nz	Trader's Details: Street Address: [insert] Postal Address: [insert] Address for Notices: [insert] Contact Person's Details: Phone: [insert] Fax: [insert] Website: [insert] Email Address: [insert]

COMMENCEMENT DATE

[insert date]

SIGNATURES

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

INTRODUCTION

The Distributor and Trader are parties to a Distributor Agreement, and have agreed to enter into this agreement for additional services relating to distributions on behalf of the Distributor in accordance with a notice given by the Distributor under clause 7 of Schedule 12A.1 of the Code.

TERMS

1 Distributor can require the Trader to pass on distributions

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

2 Distributor notice of requirements for distributions on behalf of Distributor

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

- 2) The Trader must, acting reasonably and within 5 Working Days of receiving a notice under clause 1, 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 practicable after giving notice under clause 1 and by no later than 10 Working Days before posting or publishing the relevant material, provide the Trader with:
 - (a) a draft of any promotional material relating to the distributions that the Distributor wants the Trader to include with the invoice that records the credit given in respect of any distribution paid; and
 - (b) a draft of any proposed publicity information relating to the distributions, including media releases.

3 Payment of Trader's reasonable costs

- 1) The Distributor must pay the Trader's reasonable costs incurred in providing any Monetary 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 quote for providing the Monetary Distribution Services before the Trader provides those services.
- 3) The Distributor must pay the Trader's GST invoice for the Monetary 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 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 Working Days after the Distributor's request.
- 3) The Distributor must, as soon as practicable after receipt of all Traders' files:
 - a. return the file provided under subclause (2) to the Trader with information identifying qualifying Customers and the distribution amounts payable to each qualifying Customer; and
 - b. notify the Trader whether [the Distributor or the Shareholder Trust will pay the total amount of such distributions to the Trader and whether] a GST invoice is required.
- 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 distribution passed on by the Trader, the parties must test the information exchange process in advance.

5 Distributing payments or credits to qualifying Customers

- 1) The Trader must, as soon as practicable after receiving payment of the total amount of the distributions from the Distributor [or the Shareholder Trust as notified under clause 4(3)]:
 - a. credit the 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 distribution is separately identified on each qualifying Customer's invoice, with the words “[Distributor Name/Name of Shareholder Trust] 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 distribution to the Customer along with the Trader’s invoice that includes the distribution.

6 File with information about distributions paid on by the Trader

The Trader must, as soon as practicable after paying 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 a distribution:
 - i. the ICP identifier;
 - ii. the amount of the distribution paid;
 - iii. the Customer's name;
 - iv. the Customer's physical or residential address (if available); and
 - v. any other information specified by the Distributor under clause 2(1)(i); and
- (b) if the Distributor has specified under clause 2(1)(j) that it requires that information, in respect of each qualifying Customer to whom a distribution was not fully paid:
 - i. the ICP identifier;
 - ii. the amount of the distribution not paid;
 - iii. the Customer's name; and
 - iv. the Customer's physical or residential address (if available).

7 Confidentiality obligations

- 1) Subject to subclause (2), the Distributor undertakes that, in respect of any information provided to it by the Trader under clause 4 or clause 6 (“Confidential Customer Information”), the Distributor will:
 - a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer, or disclose the Confidential Customer Information except as expressly permitted in this Agreement;
 - b) only use the Confidential Customer Information for a purpose expressly permitted in this Agreement; and
 - c) only disclose the Confidential Customer Information for a purpose expressly permitted in this Agreement and on a ‘need to know’ basis.
- 2) For the purposes of this Agreement:
 - a) the Distributor may disclose Confidential Customer Information if it is required to disclose the Confidential Customer Information by:
 - i. law, or by any statutory or regulatory body or authority; or
 - ii. any judicial or other arbitration process; and
 - b) Confidential Customer Information does not include aggregated and anonymised information.
- 3) 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.
- 4) To avoid doubt, the Distributor is responsible for any unauthorised disclosure of Confidential Customer Information made by the Distributor's employees, contractors, directors, agents, or advisors.

8 Payment of distribution amounts

- 1) If notice is given under clause 4(3) that a GST invoice is required, the Trader must issue the Distributor with a GST invoice in accordance with that notice for the total amount of distributions credited, or to be credited, to qualifying Customers under clause 5.
- 2) The Distributor must deposit the total amount of such distributions, without offset, into the Trader's nominated bank account no later than 5 Working Days (or any alternative agreed date) after notice is given under clause 4(3) or, if a GST invoice is required, the Trader issues its GST invoice.
- 3) Any distribution payments received by the Trader from the Distributor this clause 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 distributions.
- 4) If, for any reason, the 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 distribution), and the Trader has received funds from the Distributor in respect of the distribution, the Trader must, as soon as practicable:
 - a) refund to the Distributor the distribution received for the person, or the net credit of the account for the person if that is less than the amount of the distribution for the person; or
 - b) refund the person directly the remaining amount.

9 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) 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.

10 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 Agreement.
- 2) This clause applies despite any other provisions in this Agreement or in any other agreement between the parties.
- 3) In the event of a claim against the Trader in relation to which the Trader wishes (at the time of the claim or later) to be indemnified by the Distributor under subclause (1) (a "promotional material claim"), the Trader must:
 - a) give written notice of the promotional material claim to the Distributor as soon as practicable after the Trader determines that it wishes to be indemnified by the Distributor, specifying the nature of the claim in reasonable detail; and
 - b) make available to the Distributor all information that the Trader holds in relation to the promotional material claim that is reasonably required by the Distributor.

11 Notices

- 1) Any notice given under this Agreement must be in writing and will be deemed to be validly given if personally delivered, posted, or sent by facsimile transmission or email to the address for notice set out in the Parties section of this Agreement or to such other address as that party may notify from time to time.
- 2) Any notice given under this Agreement will be deemed to have been received:
 - a. in the case of personal delivery, when delivered;
 - b. in the case of facsimile transmission, when sent, provided that the sender has a facsimile confirmation receipt recording successful transmission;
 - c. in the case of posting, 3 Working Days following the date of posting; and
 - d. in the case of email, when actually received in readable form by the recipient, provided that a delivery failure notice has not been received by the sender, in which case the notice will be deemed not to have been sent.
- 3) Any notice given in accordance with subclause (2) that is personally delivered or sent by facsimile or email after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

12 Definitions

In this Agreement:

"**Agreement**" means this agreement relating to distributions on behalf of the Distributor;

"**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 distributions are paid comprise persons who are of a class or classes identified by reference to any of:

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

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

"**Customer's Installation**" means an Electrical Installation and includes Distributed Generation, if Distributed Generation is connected to a Customer's Installation;

"**De-energise**" means the operation of any isolator, circuit breaker, or switch or the removal of any fuse or link so that no electricity can flow through a Point of Connection on the Network;

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

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

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

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

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

"**Electrical Installation**" means:

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

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

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

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

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

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

- a) at which electricity predominantly flows out of the Grid; or
- b) determined as being such in accordance with the Code;

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

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

"Monetary 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;

"Working Day" means every day except Saturdays, Sundays, and days that are statutory holidays in the city specified for each party's address for notices identified in the Parties section of this Agreement.