



THIS AES (ADVANCED ENERGY SERVICES) AGREEMENT SETS OUT THE TERMS AND CONDITIONS ON WHICH BLUECURRENT ASSETS NZ LIMITED (**BLUECURRENT**) AGREES TO PROVIDE ADVANCED METERING SERVICES TO RETAILERS.

BY USING THE SERVICES PROVIDED BY BLUECURRENT AND CONTEMPLATED BY THIS AES AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AES AGREEMENT, UNDERSTAND THIS AES AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS IN RESPECT OF THE PROVISION OF SERVICES BY BLUECURRENT TO YOU.

THIS AES AGREEMENT WILL NOT APPLY TO YOUR USE OF THE SERVICES TO THE EXTENT THAT THE PROVISION OF THE SERVICES COVERED BY THIS AES AGREEMENT IS ALREADY GOVERNED BY A SEPARATE AGREEMENT BETWEEN YOURSELF AND BLUECURRENT AND/OR AMS.

DEFINITIONS OF TERMS USED, AND PROVISIONS TO ASSIST IN THE INTERPRETATION OF THIS AES AGREEMENT, ARE SET OUT AT THE END OF THIS AES AGREEMENT.

**1. SERVICES**

**1.1 Provision of Services by Bluecurrent**

Bluecurrent will provide the Services to you at an ICP, in accordance with the terms of this AES Agreement if, and on and from the day, the Registry shows (or you provide reasonable evidence to Bluecurrent that the Registry ought to show) that you:

- (a) are the Retailer at that ICP; or
- (b) have taken over as the Retailer at that ICP from another Retailer; or
- (c) are to become the Retailer at a new ICP; and
- (d) Bluecurrent either owns or has the necessary rights to obtain information from the Advanced Meter at that ICP.

The Charges for Services at a specific Serviced ICP will be deemed to apply from the supply commencement date specified by the Registry or, if earlier, from the date on which Bluecurrent commenced the supply of Services to you at that ICP and will continue to apply until the Cessation of Services, as outlined in clause 1.2 (Cessation of Services) below.

**1.2 Cessation of Services**

If the Registry shows that you are no longer the Retailer at an ICP, or the Advanced Meter has been removed at your request, then Bluecurrent will cease providing the Services to you in respect of that ICP, and the accumulation of the Charges in respect of the Services for that ICP will cease, from the supply termination date specified by the Registry, and that ICP will cease to be a Serviced ICP for the purposes of this AES Agreement.

**1.3 Provision of Services**

Bluecurrent will, in providing the Services:

- (a) meet or exceed Good Industry Practice;
- (b) subject to clause 4 (Regulatory Compliance), ensure the relevant Services are provided in accordance with all applicable Laws (including the Code); and
- (c) ensure that its Advanced Metering Infrastructure used for the purposes of this AES Agreement complies with the recommended advanced meter infrastructure system minimum attributes list set out in Appendix A of the "Guidelines on Advanced Metering Infrastructure" published by the Electricity Authority (as those guidelines stand as at the date of commencement of the

Services), to the extent that those minimum attributes represent Good Industry Practice.

**1.4 Bluecurrent is MEP for Advanced Meters**

Bluecurrent (or at Bluecurrent's option, SmartCo) will be the MEP for each Serviced ICP on the terms set out in clause 4 (Regulatory Compliance) of this AES Agreement. Where Bluecurrent is not already the MEP in respect of any Serviced ICP, you will promptly notify the Registry, recording Bluecurrent (or at Bluecurrent's option, SmartCo) as the MEP responsible for each Serviced ICP.

**1.5 Ownership of metering equipment**

- (a) The metering equipment (including Advanced Meters) and any other equipment owned or installed by Bluecurrent at a Customer Premises shall remain the sole and absolute property of Bluecurrent or the Metering Equipment Owner (as applicable).
- (b) You will not encumber any equipment provided for in clause (a) above or any other associated equipment or allow such equipment to become a fixture at a Customer Premises.

**2. EQUIPMENT AND MAINTENANCE**

**2.1 Responsibilities**

Bluecurrent will:

- (a) ensure that the Advanced Meters used for the purposes of this AES Agreement are correctly maintained, supported, and kept in good condition and state of repair;
- (b) subject to clause 2.2 (Interference with Advanced Metering Infrastructure), repair or replace at its own cost faulty or damaged Advanced Metering Infrastructure components which are owned or controlled by Bluecurrent or procure that the third party owner does so.

**2.2 Interference with Advanced Metering Infrastructure**

If any part of the Advanced Metering Infrastructure owned or used by Bluecurrent to provide the Services is damaged (or Interfered with) by:

- (a) you (which includes your employees, contractors, agents or invitees); or
- (b) your Customer,

then you will pay, on Bluecurrent's demand, the actual and reasonable costs incurred by Bluecurrent in replacing or repairing the Advanced Metering Infrastructure and any actual and reasonable related installation, certification and/or removal costs.

**2.3 Systems Changes**

You will keep Bluecurrent reasonably informed of any proposed changes to your systems, software, hardware, infrastructure and equipment used (or to be used) in connection with the Services or any other proposed event or change that may affect your ability to receive the Services or Bluecurrent's ability to provide the Services.

**3. CUSTOMER AND DISTRIBUTOR RELATIONSHIPS**

**3.1 Your acknowledgements**

You acknowledge that:

- (a) Bluecurrent has no contractual relationship with, and does not owe any duty of care to, any Customer or Distributor, by virtue of supply of the Services to you in respect of any Customer Point of Supply or otherwise as a result of this AES Agreement;

- (b) subject to clause **Error! Reference source not found.** (DDA), you retain responsibility for compliance with any Default Distributor Agreement and Bluecurrent has no responsibility whatsoever relating to such compliance; and
- (c) Bluecurrent has given no representation, warranty or assurance whatsoever to you that any of the Services provided by Bluecurrent under this AES Agreement will enable you to comply with, or discharge, any of your obligations under any Default Distributor Agreement.

### 3.2 Customer Agreements

You warrant that:

- (a) you have entered into all necessary arrangements and agreements with each Customer to enable you to supply electricity to that Customer Point of Supply, including entering into a Customer Agreement;
- (b) the terms of any Customer Agreement will include:
  - (i) an obligation on the Customer to grant Bluecurrent or Bluecurrent's agent reasonable access to that Customer's Premises for the purpose of providing the Services and will not prejudice Bluecurrent's ability to comply with privacy legislation in the course of providing the Services; and
  - (ii) an exclusion (to the maximum extent permitted by law) of all liability of Bluecurrent to the Customer arising under or in connection with the Customer Agreement; and
- (c) you will obtain written consent from Customers under the terms of any Customer Agreement to give effect to clause 12.1(b)(ii) of this AES Agreement.

### 3.3 Liability for Customer claims

You will be liable for and indemnify Bluecurrent against all actual amounts incurred by Bluecurrent in respect of all actions, proceedings, claims, demands made by a Customer, or liabilities and payments whatsoever arising out of a claim made by a Customer, against Bluecurrent from or by virtue of any of the arrangements or agreements contemplated by clause 3.2 (Customer Agreements) or as a result of your failure to comply with clause 3.2 (Customer Agreements), except to the extent caused by Bluecurrent's breach of this AES Agreement.

## 4. REGULATORY COMPLIANCE

### 4.1 Code compliance

Subject to you strictly complying with your obligations under clause 4.2 (Dependencies), Bluecurrent will:

- (a) ensure that the Services it performs comply with the Code;
- (b) ensure it meets its MEP obligations under the Code in respect of all Serviced ICPs for which Bluecurrent is the MEP;
- (c) at its own cost, arrange for audits by an Electricity Authority-approved auditor (**Auditor**), of compliance by Bluecurrent of its MEP obligations under the Code at intervals required by the Electricity Authority, and supply you with evidence of compliance upon request; and
- (d) satisfy all conditions and implement recommendations issued as a result of any such audit to the Auditor's satisfaction.

### 4.2 Dependencies

You acknowledge that Bluecurrent's performance of its obligations under clause 4.1 (Code compliance) is dependent on your performance of your obligations under this clause 4.2. You will:

- (a) ensure that Advanced Metering Infrastructure which you own or have rights to use comply with all Laws, including the Code;
- (b) comply at all times with any reasonable request made by Bluecurrent relating to Code compliance and Bluecurrent's performance of its MEP obligations;
- (c) on Bluecurrent's request, promptly provide accurate and complete information to Bluecurrent about any Advanced Metering Infrastructure which you own or have rights to use, including the details of each component, certification status and evidence of testing by an approved test house; and
- (d) immediately notify Bluecurrent of any change or upgrade or maintenance or service work on the Advanced Metering Infrastructure which you own or have rights to use.

### 4.3 Breach of Code

- (a) Subject to clause 4.3(b), you will pay to Bluecurrent, on demand, the cost of any fines or penalties imposed on Bluecurrent as a result of a breach of the Code directly caused or contributed to by a breach of this AES Agreement or your negligence, except to the extent that the failure to comply or the penalty was as a result of or contributed to by a breach of this AES Agreement or negligence by Bluecurrent.
- (b) Bluecurrent will use its reasonable endeavours to mitigate or avoid any such breach or costs referred to in clause 4.3(a).

## 5. CHARGES AND PAYMENT

### 5.1 Charges

- (a) In consideration for Bluecurrent providing the Services in accordance with this AES Agreement, you will pay Bluecurrent the Charges.
- (b) Any amendment made by Bluecurrent to the Charges will be final and binding as between the Parties.

### 5.2 Invoicing

By the 10<sup>th</sup> calendar day of the month Bluecurrent will issue a Tax Invoice to you for Services provided to you in the previous month and any other previously uninvoiced Charges or amounts, unless otherwise provided in the Pricing Schedule or agreed by the Parties from time to time. Each Tax Invoice shall contain sufficient information to enable you to establish the accuracy of the Tax Invoice, including a breakdown of the Charges and a description of the Services to which the invoice relates.

### 5.3 Payment

Subject to clause 5.4 (Disputed invoices), you will pay each Tax Invoice or Debit Note no later than the 20<sup>th</sup> day of the month in which it is received or ten (10) Business Days after it is received, whichever is later.

### 5.4 Disputed invoices

- (a) You may withhold any amount due under a Tax Invoice that you believe on reasonable grounds is not in fact payable to Bluecurrent.
- (b) If you withhold payment under this clause 5.4:

- (i) you will advise Bluecurrent in writing of the amount you believe is not payable, and you must pay the portion of the Tax Invoice which is not in dispute in accordance with clause 5.3 (Payment);
- (ii) the dispute resolution procedure set out in clause 21 (Dispute Resolution) will apply to the disputed amount, unless the Parties agree otherwise in writing; and
- (iii) if such withheld amount is found to be:
  - (aa) payable, then Bluecurrent may charge default interest on the amount unpaid at the rate of four (4) percentage points over and above the Interest Rate for the period between the due date and the date of actual payment; or
  - (bb) not payable, then Bluecurrent will issue a Credit Note for that amount in accordance with clause 5.2 (Invoicing).
- (c) Nothing in this clause 5 will affect any express rights Bluecurrent may have under this AES Agreement to discontinue its Services for non-payment of any amount (other than amounts that are the subject of a genuine dispute under this clause 5.4) or any other right or remedy of Bluecurrent.

**5.5 Incorrect invoices**

If it is agreed or determined (whether as a result of a dispute notified pursuant to clause 5.4 (Disputed invoices) or otherwise pursuant to this AES Agreement) that Bluecurrent has overcharged or undercharged you then, within ten (10) Business Days after such adjustment amount has been agreed between the Parties, or determined under clause 21 (Dispute Resolution), Bluecurrent will issue a Credit Note or Debit Note (as appropriate).

**5.6 Recovery costs**

You will be liable for and indemnify Bluecurrent against all actual amounts incurred by Bluecurrent in endeavouring to recover any unpaid Charges that are correctly invoiced.

**5.7 No set-off**

All payments made by you under this AES Agreement are to be made free of any restriction or condition and, subject to clause 5.4 (Disputed invoices), free and clear of, and without, any deduction or withholding, whether by way of set-off, counterclaim or otherwise. You are responsible for the payment of all Taxes incurred as a result of the execution or performance of this AES Agreement (other than taxes assessed on the basis of the profits or income of Bluecurrent). If you are required to deduct or withhold any Taxes from amounts payable to Bluecurrent under this AES Agreement, you will gross up the remainder so as to ensure that Bluecurrent receives the amount specified in this AES Agreement as being payable to Bluecurrent.

**5.8 GST**

Unless stated otherwise, all monetary amounts in this AES Agreement are stated before the addition of GST. If any GST is payable on those amounts, the Party obliged to pay each amount must add and pay the GST at the same time and in the same manner as it is obliged to pay the amount.

**5.9 No prejudice**

Payment of any of the Charges or other amounts under this AES Agreement will be without prejudice to any other remedy the Party receiving payment of such Charges may have.

**5.10 Adjustment of Charges**

Bluecurrent may increase its Charges without prior notice to you annually on 1 July in each year during the term of this AES Agreement by an amount not to exceed the overall annual percentage increase in the CPI (All Groups) published by Statistics New Zealand or its successor agency at the end of the October-December quarter in the preceding calendar year.

**6. HEALTH AND SAFETY**

**6.1 HSE Policies**

Bluecurrent will maintain a health and safety policy which adequately addresses all health and safety issues relevant to Bluecurrent's performance of its obligations under this AES Agreement and will observe and adhere to that policy during the terms of this AES Agreement (**HSE Policies**).

**6.2 Mutual notification obligations**

A Party (each a **Notifying Party**) will:

- (a) make available to the other Party (**Notified Party**) such information as the Notifying Party may hold concerning Customers or any Customer's Premises that could potentially affect the health and safety of the Notified Party or the Notified Party's personnel or subcontractors while attending a Customer's Premises or working on the repair or replacement of any Advanced Metering Infrastructure at the Customer's Premises;
- (b) report to the Notified Party all notifiable events (as defined in the Health and Safety at Work Act 2015) connected to or associated with any Advanced Metering Infrastructure used for the purposes of this AES Agreement, components or Services, as soon as possible after becoming aware that a notifiable event has occurred;
- (c) immediately notify the Notified Party of any hazards the Notifying Party creates in its performance of the Services and what steps have been taken to eliminate, minimise or isolate the hazard;
- (d) use reasonable endeavours to identify hazards upon arrival at any Customer's Premises; and
- (e) notify the Notified Party of any hazard it identifies at a Customer's Premises that may be a hazard to the Notified Party's representative at the next visit to that Customer's Premises.

**7. BUSINESS CONTINUITY AND IT SECURITY**

**7.1 Business continuity plan**

Bluecurrent will establish and maintain appropriate business continuity (including disaster recovery) processes in relation to its Advanced Energy Services System.

**7.2 IT security**

Bluecurrent will ensure it has, and complies with appropriate security controls and policies (having regard to Good Industry Practice) to ensure the security of the Advanced Energy Services System used to provide the Services, and all other information technology used in Bluecurrent's performance of any Services under this AES Agreement.

**8. COMPLAINTS**

Both Parties will work together to resolve as soon as reasonably practicable, complaints made by your Customers at ICPs where Advanced Meters that are the subject of this AES Agreement are installed, in accordance with your policies and procedures (including those required by the Electricity and Gas Complaints Commission) and all relevant Laws.

**9. REPORTING**

The operational reports, to be provided between the Parties, will be in a format as agreed between the Parties from time to time.

**10. CONFIDENTIALITY**

**10.1 Obligations of Confidentiality**

Each Party (**Recipient Party**) will preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any Confidential Information of the other Party (**Disclosing Party**), except:

- (a) with the prior written consent of the Disclosing Party;
- (b) to a Related Company of the Recipient Party;
- (c) to employees, directors, officers, sub-contractors, agents, consultants, and professional advisers (including bankers and insurers) of the Recipient Party or its Related Companies;
- (d) to any bona fide potential purchaser of, or investor in, the Recipient Party, wishing to conduct due diligence investigations in relation to the Recipient Party, provided such potential purchaser or investor has agreed to be bound by confidentiality obligations no less onerous than set out in this clause 10;
- (e) where required:
  - (i) by any statutory or regulatory obligation, body or authority;
  - (ii) under any judicial or other arbitration process; or
  - (iii) by regulations of any stock exchange upon which the share capital of any Party is from time to time listed or dealt in; and/or
- (f) in respect of Advanced Metering Data, as permitted under clause 12 (Ownership and Use of Data).

**10.2 Internal procedures**

- (a) Each Party will adopt procedures to ensure the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this clause 10, including that the Confidential Information will be disseminated among recipients permitted under clause 15.1(a), (c) and (d) only on a “need to know” basis.
- (b) Prior to disclosing any Confidential Information (including any Customer Data) to any third party in accordance with this AES Agreement, the Recipient Party will, on request from the Disclosing Party, provide a deed of covenant, duly executed by that third party and in a form reasonably satisfactory to the Disclosing Party, under which the third party acknowledges and agrees in respect of the period in which it is receiving Confidential Information (including any Customer Data) to be bound by, this clause 10, clause 11 (Intellectual Property Rights) and clause 12 (Ownership and Use of Data).
- (c) The Recipient Party agrees that it is, and will be, wholly responsible for all acts and omissions of any third party concerning any Confidential Information disclosed to or acquired by those third parties.

**10.3 Use only for permitted purpose**

Neither Party will use Confidential Information obtained for, or in relation to, one purpose for any other purpose, except where required by the circumstances referred to in subclause 10.1(e)(i) to 10.1(e)(iii) or with the prior consent of the providing Party.

**10.4 Public announcements**

Other than as provided in this clause 10, you will not make any public announcement or communicate the existence of this AES Agreement or its terms to any third party without first obtaining Bluecurrent’s prior written approval.

**11. INTELLECTUAL PROPERTY RIGHTS**

**11.1 Separate ownership or pre-existing Intellectual Property Rights**

Subject to clause 11.3 (AES IP Rights), all Intellectual Property Rights belonging to a Party prior to the date of this AES Agreement will remain vested in that Party. Except as expressly set out in this AES Agreement, nothing in this AES Agreement will affect or transfer the ownership of Intellectual Property Rights in any material provided by one Party to any other Party in connection with this AES Agreement.

**11.2 Ownership by Bluecurrent**

Subject to clause 11.3 (AES IP Rights), all of the Intellectual Property Rights in any software, the Advanced Metering System or other materials or information developed or created by or for Bluecurrent in relation to this AES Agreement will vest in and be retained by Bluecurrent or its respective licensors (not being you). You will execute such documents and do such things as Bluecurrent may consider reasonably necessary to give effect to this clause.

**11.3 AES IP Rights**

Bluecurrent grants, and will procure that its respective licensors grant, to you, a royalty-free, non-exclusive, non-transferable (subject to clause 22 (Assignments and Subcontracting)), irrevocable and limited licence to use the Intellectual Property Rights in those elements of the Services that are necessary for you to receive the Services.

**11.4 Liability for breach of AES IP Rights**

You will pay Bluecurrent for any loss or damage it may suffer as a result of your breach of the licence granted under clause 11.3 (AES IP Rights).

**12. OWNERSHIP AND USE OF DATA**

**12.1 IP rights in Advanced Metering Data and Customer Data**

- (a) Subject to clause 11.3 (AES IP Rights), all Intellectual Property Rights in the Advanced Metering Data and any Other Data will upon creation vest in Bluecurrent absolutely. Bluecurrent grants you a non-exclusive, royalty-free, perpetual, irrevocable, fully paid-up and unlimited licence to use, copy, adapt, distribute and sublicense Advanced Metering Data and Other Data.
- (b) All Intellectual Property Rights in Customer Data will remain vested, or upon creation of the same will vest, in you absolutely. You grant to Bluecurrent a non-exclusive, royalty-free, perpetual, irrevocable, fully paid-up and unlimited licence to use, copy and adapt Customer Data only for the purposes of:
  - (i) performing its obligations under this AES Agreement and the Law (including the Code); and
  - (ii) providing to the relevant Customer, Distributor or a Retailer which has taken over your supply of electricity to a customer at an ICP, consumption and usage data, which may include some or all of the Advanced Metering Data, Customer Data, Other Data and/or the equivalent of Historical Data, on an aggregated or individual basis in order to facilitate the better management of electricity usage.



12.2 **No warranty**

Nothing in clause 12.1 (IP rights in Advanced Metering Data and Customer Data) will:

- (a) be construed as a warranty or undertaking by Bluecurrent that you will have or receive good title to the Consumption Data; or
- (b) prevent any Party from using or disclosing any data to the extent reasonably necessary for the purpose of complying with its obligations under Law (including the Code).

13. **WARRANTIES**

13.1 **Warranties excluded**

To the maximum extent permitted by Law, Bluecurrent excludes all other warranties (implied or otherwise) in respect of any Service it has supplied or is required to supply under this AES Agreement, provided that this does not derogate from Bluecurrent's express undertakings and obligations under this AES Agreement.

14. **PERFORMANCE ISSUE**

14.1 **Performance Notice**

Without limiting any right or remedy available to either Party, if at any time a Party (**Non-Breaching Party**) provides to the other Party (**Breaching Party**) reasonable evidence that the Breaching Party has committed a material breach of its obligations under this AES Agreement (other than in the case of Bluecurrent, its obligations to achieve any KPI), which breach is capable of being remedied by the Breaching Party, (each such breach being a **Performance Issue**), then the Non-Breaching Party may give written notice to the Breaching Party specifying the Performance Issue (in each case, a **Performance Notice**).

14.2 **Obligation to take reasonable steps**

If at any time a Performance Issue arises, the Breaching Party will immediately take all reasonable steps to minimise or mitigate the Performance Issue and the Parties will meet as soon as reasonably possible to discuss and resolve the Performance Issue.

14.3 **One Performance Notice per event**

A Non-Breaching Party may only issue one Performance Notice in respect of each single or series of related event(s), act(s), omission(s) or failure(s) giving rise to a Performance Issue.

15. **TERMINATION AND SUSPENSION FOR DEFAULT AND OTHER CAUSES**

15.1 **Termination for cause**

This AES Agreement will terminate for cause on the day that is 10 Business Days after notice from one Party to the other Party terminating this AES Agreement for reason of an Event of Default occurring in relation to the other Party.

For the purposes of this AES Agreement an **Event of Default** occurs if:

- (a) a Party (the **Defaulting Party**), subject to clause 5.4 (Disputed invoices), fails to pay any amount in excess of the lesser of three months Charges or \$50,000 due and owing to the other Party under this AES Agreement;
- (b) the Defaulting Party commits a material breach of its obligations under this AES Agreement and the breach is not remedied, or is not capable of remedy, within 30 Business Days; or

- (c) the Defaulting Party becomes subject to any Insolvency Event.

15.2 **Termination of Services for Convenience at a Serviced ICP by you**

You may terminate the Services in respect of any individual Serviced ICP for convenience by giving Bluecurrent 20 Business Days prior written notice, provided that you pay the relevant Serviced ICP termination fee contemplated by clause 16.2 (Termination of Services at an ICP).

A Customer switching to another Retailer does not constitute a termination for the purposes of this clause 15.2.

The Retailer may terminate this Agreement only in the circumstances set out in clause 15.1 and this clause 15.2.

15.3 **Unlawful provision**

A Party may terminate this AES Agreement immediately by notice in writing if it becomes unlawful for that Party to perform a material provision of this AES Agreement and the Parties agree in writing that it is not possible or appropriate to sever that provision in accordance with clause 23.3 (Severability).

15.4 **Agreement no longer viable**

Bluecurrent may terminate by notice to you the provision of any Service where:

- (a) it is no longer viable for Bluecurrent to provide the Service; or
- (b) Bluecurrent is unable to provide the Service; or
- (c) Bluecurrent is proceeding to withdraw the Service from general availability; or
- (d) any relevant network, equipment or other property involved in the provision of the Service is or becomes unavailable, obsolete or beyond economic use or support, and it is not reasonable for Bluecurrent or the applicable third party (as the case may be) to upgrade or continue to support that network, equipment or other property,

provided always that Bluecurrent provides you with reasonable prior written notice (being not less than six (6) months) of such termination.

15.5 **No other termination rights**

No Party has any right to terminate this AES Agreement other than the express rights of termination set out in this AES Agreement, and each Party hereby waives any other rights of termination which might otherwise arise at law or in equity.

16. **CONSEQUENCES OF TERMINATION**

16.1 **Termination of the AES Agreement**

Upon termination of this AES Agreement in its entirety, but subject to clause 17 (Disengagement):

- (a) you will, subject to clause 16.1(b), cease to use the Services provided to you by Bluecurrent under this AES Agreement and all licensed rights granted under this AES Agreement will terminate, unless otherwise expressly provided for in this AES Agreement or agreed by the Parties in writing;
- (b) where ongoing Services are still being provided by Bluecurrent, you will continue to use those Services and all licensed rights granted under this AES Agreement will continue to the extent required to enable you to receive the benefit of those Services, until such time as all Bluecurrent Advanced Meters are removed or displaced by you (or any third party service provider nominated by you) or another agreement is agreed in



writing between the Parties in respect of any ongoing Services provided by Bluecurrent;

- (c) notwithstanding clause 16.1(a), you will continue to pay the Charges in relation to all Advanced Metering Infrastructure that Bluecurrent owns or has the necessary rights to obtain information from installed at an ICP for which you are the Retailer in accordance with the terms of this Agreement until such time as the Advanced Meter is removed or displaced by you (or any third party service provider nominated by you);
- (d) each Party will return, or dispose of as reasonably requested by the other Party, all property and Confidential Information of the other Party in its possession, power or control;
- (e) you shall promptly pay on demand to Bluecurrent any Charges owing under this AES Agreement; and
- (f) you will at your cost and risk return to Bluecurrent any Advanced Metering Infrastructure and any other equipment owned or installed by Bluecurrent removed or displaced by you (or any third party service provider nominated by you) following termination. You will be liable to Bluecurrent for the costs of all damage to or loss of any such equipment during its removal and return to Bluecurrent.

For clarity, clauses 16.1(b) and 16.1(c) will survive any termination of this AES Agreement.

**16.2 Termination of Services at an ICP**

Upon termination of a Served ICP under clause 15.2 (Termination of Services for Convenience at a Served ICP by you):

- (a) you shall promptly pay on demand to Bluecurrent any Charges owing under this AES Agreement for the terminated Services, for clarity, including any applicable removal charges; and
- (b) you shall pay to Bluecurrent a termination fee, to reimburse Bluecurrent for any costs not recovered by it in relation to the Advanced Meter at that Served ICP, which amount shall be negotiated by the Parties in good faith; and
- (c) at your cost and risk return to Bluecurrent any Advanced Metering Infrastructure and any other equipment owned or installed by Bluecurrent removed or displaced by you (or any third party service provider nominated by you). You will be liable to Bluecurrent for the costs of all damage to or loss of any such equipment during its removal and return to Bluecurrent.

**16.3 Survival**

The provisions of clauses 2.2 (Interference with Advanced Metering Infrastructure), 10 (Confidentiality), 11 (Intellectual Property Rights), 12 (Ownership and Use of Data), 15 (Termination and Suspension for Default and Other Causes), 16 (Consequences of Termination, including, for clarity, all applicable clauses relating to the continuation of payment of fees, including termination fees), 17 (Disengagement), 18 (Limitation of Liability), 20 (Force Majeure), 21 (Dispute Resolution), 23 (General), 24 (Definitions and Construction) and any other clause which by its nature extends beyond its termination, will survive and remain in full legal force and effect following any termination of this AES Agreement insofar as those provisions have application after termination.

**16.4 Breach prior to termination**

The termination of this AES Agreement will not relieve any Party from any liability for antecedent breaches or obligations and will be without prejudice to the rights of the Parties

accrued prior to termination either under this AES Agreement or at Law, except to the extent that this AES Agreement expressly provides otherwise.

**17. DISENGAGEMENT**

**17.1 Disengagement period**

In the event of termination of this AES Agreement for any reason (in part or in its entirety), the Parties may agree a disengagement period of up to 12 months or such further period as the parties may agree (the **Disengagement Period**). During the Disengagement Period (if any), Bluecurrent will:

- (a) continue to provide the Services in accordance with the terms and conditions of this AES Agreement as they stood immediately before the Disengagement Period; and
- (b) comply with your reasonable directions to effect the orderly transition and migration of the Services from Bluecurrent to you (or any third party service provider nominated by you); and

you will:

- (c) continue to pay the Charges, and to otherwise comply with the terms and conditions of this AES Agreement as they stood immediately before the Disengagement Period; and
- (d) provide such co-operation as Bluecurrent may reasonably request for the purpose of disengagement.

**18. LIMITATION OF LIABILITY**

**18.1 No liability for Force Majeure**

Neither Party will be liable to the other Party for any breach of this AES Agreement to the extent it is directly or indirectly caused by an event or circumstance of Force Majeure, which is addressed in clause 20 (Force Majeure).

**18.2 Losses sustained by Related Company**

Subject to this clause 18, any loss or damage suffered or incurred by:

- (a) a Related Company of Bluecurrent as a direct result of a breach of this AES Agreement by you will be deemed to be a loss or damage suffered or incurred by Bluecurrent, and will not otherwise be enforceable by the Related Company of Bluecurrent against you; and
- (b) a Related Company of you as a direct result of a breach of this AES Agreement by Bluecurrent will be deemed to be a loss or damage suffered or incurred by you, and will not otherwise be enforceable by the Related Company of you against Bluecurrent.

**18.3 Prior Default/Indirect loss**

Neither Party nor any of its Related Companies or their respective directors, officers, employees or agents (**Associated Persons**) will under any circumstances be liable in relation to this AES Agreement for:

- (a) any breach of this AES Agreement to the extent that the breach is attributable to the prior default, negligence, misconduct or breach of this AES Agreement by or of the other Party or its Associated Persons;
- (b) any consequential or indirect loss arising out of or in connection with the performance or non-performance of the Agreement; or
- (c) any Excluded Loss (regardless of whether that loss is considered to be direct or indirect) arising out of or in connection with the performance or non-performance of the Agreement.

**18.4 Liability per event**

Subject to this clause 18 but notwithstanding any other provision in this AES Agreement, the respective aggregate liability of Bluecurrent (on the one hand) and of you (on the other) under or in connection with this AES Agreement will not in any circumstances exceed \$50,000 per event or series of related events (as the case may be).

**18.5 Liability per year**

Subject to this clause 18 but notwithstanding any other provision in this AES Agreement, the respective aggregate liability of Bluecurrent (on the one hand) and of you (on the other) under or in connection with this AES Agreement will not in any circumstances exceed \$100,000 from all events occurring during any one 12 month period.

**18.6 DDA**

Bluecurrent will not have any liability to you for your non-compliance with any Default Distributor Agreement unless:

- (a) that non-compliance is caused by a breach of Law or this AES Agreement by Bluecurrent; and
- (b) you notified Bluecurrent in writing of the relevant requirements of the Default Distributor Agreement before that breach occurred.

**18.7 Third Party damage**

Without limiting anything else in this clause 18, Bluecurrent will not be liable for any failure to comply with its obligations under this AES Agreement (**Failure**) if and to the extent that such Failure arises as a direct result of the acts or omissions of Customers, and/or damage to or Interference with Advanced Metering Infrastructure by you, your Associated Persons, a Customer or a third party (other than Bluecurrent's personnel or sub-contractors).

**18.8 Interruptions and spikes, and Interference**

Bluecurrent will have no liability to you for any interruptions, spikes, fluctuations or any interference in the quality of electricity supply caused by Bluecurrent's Advanced Metering Infrastructure provided Bluecurrent has complied with its obligations under this AES Agreement (if any) in the installation and maintenance of Bluecurrent's Advanced Metering Infrastructure.

**18.9 Consumer Guarantees Act and Fair Trading Act do not apply**

- (a) The Consumer Guarantees Act 1993 will not apply to the Services or this AES Agreement. Any supply of the Services is for the purposes of a business (as defined in that Act).
- (b) The Parties agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to this AES Agreement or the transactions contemplated by this AES Agreement and that it is fair and reasonable that such provisions are contracted out of for the purposes of this AES Agreement.

**18.10 Associated Persons**

The benefit of the limitations and exclusions in this clause 18 is intended to each Party's Associated Persons, and to be enforceable by, and for their claims to be limited and excluded by, them pursuant to the Contract and Commercial Law Act 2017. Accordingly, each reference to the liability of a Party will be read as a reference to the combined liability of that Party and its Associated Persons to the other Party and its Associated Persons. Except to the extent prohibited by that Act, the Parties will not be required to obtain the consent of any Associated Persons in order to amend this clause 18 or any other part of this AES Agreement.

**18.11 No breach**

To avoid doubt, wherever this clause 18 excludes liability for an act or omission of a Party (**Relevant Party**), that act or omission will not constitute a breach of this AES Agreement by the Relevant Party, nor a breach of any KPI by the Relevant Party.

**18.12 Limitations apply to all types of claim**

The limitations and exclusions of liability in this clause 18:

- (a) will apply whether a claim is made in contract, tort (including negligence), equity or otherwise, and whether under statute, warranty, indemnity or otherwise;
- (b) will not apply to any obligation to pay:
  - (i) any Charges duly payable under this AES Agreement (including any Charges payable during any Disengagement Period); or
  - (ii) any amount agreed by the parties in writing;
- (c) will apply regardless of whether the liability is to be satisfied by way of a deduction from, or reduction of, the Charges, or as a separate payment or otherwise; and
- (d) will not limit the liability of any Party for:
  - (i) its own fraudulent conduct;
  - (ii) its own wilful default (being a deliberate, material default committed with its knowledge and authority); and/or
  - (iii) any fines or penalties imposed on the other Party under the Code as a result of the first Party's breach of this AES Agreement, so long as that other Party complies with clause 4 (Regulatory Compliance).

**18.13 Bluecurrent not liable**

Without limiting anything else in this clause 18, Bluecurrent will not have any liability for any failure to perform a Service to the extent that:

- (a) you have failed to deliver (or has otherwise not complied with) any item in the "Retailer Dependencies" section for the relevant Service under the Services Schedule;
- (b) Bluecurrent's failure is directly attributable to a Service Request issued by you in accordance with this AES Agreement being incomplete or inaccurate; or
- (c) Bluecurrent's failure is directly attributable to you failing to comply with the Services Schedule or the Pricing Schedule.

**18.14 Notice of proceeding**

In any case where a Party (**Claimant**) may be entitled to recover from the other Party (**Liable Party**) the amount of any fines or penalties which the Claimant is or may be required to pay under the Code:

- (a) the Claimant will notify the Liable Party promptly on receiving notice of any investigation or proceeding relating to those fines or penalties (**Proceedings**);
- (b) the Claimant will allow the Liable Party to conduct the defence and/or settlement of those Proceedings, and will provide any co-operation and assistance reasonably requested by the Liable Party for the purpose of managing, settling and/or defending the Proceedings, in each case unless and until the Claimant releases the Liable Party for all liability relating to those Proceedings; and

- (c) the Liable Party will use reasonable endeavours to conduct proceedings in a way that does not prejudice the Claimant's interests.

**19. INSURANCE**

**19.1 Insurance**

During the term of this AES Agreement, Bluecurrent will, maintain insurance in respect of its potential liability for loss or damage under this AES Agreement, including public liability insurance for a sum of not less than \$1,000,000 for any claim or series of claims arising out of an event, and insurance for claims in respect of material damage to property, bodily injury or death, for a sum of not less than \$1,000,000 for any claim or series of claims arising out of an event.

**19.2 Claims**

You will promptly notify Bluecurrent of any circumstance or event of which it is aware or which comes to its attention, which could reasonably give rise to a claim under any of the insurance policies referred to in this clause 19 (Insurance).

**20. FORCE MAJEURE**

- (a) Non-performance by either Party of any of its obligations under this AES Agreement will be excused, without liability for non-performance, where that non-performance is a direct or indirect result of any event or circumstance of Force Majeure.
- (b) If a Party believes that it may fail to meet any of its obligations under this AES Agreement because of a Force Majeure, it must give written notice to the other Party and take all reasonable steps to mitigate the effects of the Force Majeure.
- (c) If any Party fails to observe or carry out any of its obligations under this AES Agreement because of an event or circumstances of Force Majeure, this AES Agreement will remain in effect but, except as otherwise provided in this AES Agreement, each Party's obligations, other than any obligation as to payment of Charges accrued up to the date of the Force Majeure and any obligations under this AES Agreement concerning Services not affected by the event or circumstance of Force Majeure (except the obligation to pay for Services not performed by reason of the event or circumstance of Force Majeure), will be suspended (and the time for their performance extended) without liability for a period equal to the circumstance of Force Majeure provided that:
  - (i) the non-performing Party gives the other Party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
  - (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
  - (iii) no obligations of any Party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure; and
  - (iv) the non-performing Party uses best endeavours to remedy its inability to perform as quickly as possible.
- (d) Nothing in this clause 20 will be construed to require any Party to settle a strike, lock-out or other industrial

disturbance by acceding against its judgement to demands made to it.

**21. DISPUTE RESOLUTION**

**21.1 Good faith**

You and Bluecurrent will actively and in good faith negotiate with a view to the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this AES Agreement. In this clause 21, a reference to a "dispute" or "difference" includes any dispute over the interpretation or application of this AES Agreement or a question of fact or law arising in connection with this AES Agreement.

**21.2 Escalation to management**

If the Parties' management representatives cannot resolve the dispute or difference within 20 Business Days of notice being given by you to Bluecurrent or vice versa of the existence of that dispute or difference, the matter will be escalated by notice by either of those Parties to the Chief Executive Officers of the Parties (or their equivalents) for resolution.

**21.3 Arbitration**

If the dispute is not resolved within 20 Business Days of the escalation to management either Party may by notice to the other refer the dispute to arbitration in accordance with the following procedure:

- (a) the dispute or difference will be referred to a sole arbitrator for resolution if you and Bluecurrent agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days, an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them;
- (b) the Arbitration will be held in Auckland, New Zealand; and
- (c) the Arbitration Act 1996 will apply to any difference or any dispute referred to an arbitrator in accordance with this clause (excluding clauses 2, 3(1)(a), and 3(1)(b) of the Second Schedule to that Act); and
- (d) the decision of the arbitrator will be final and binding on the Parties there will be no right of appeal on matters of law, and the arbitrator's award may be entered in any court of competent jurisdiction.

**21.4 Obligation to continue**

Notwithstanding the existence of a dispute or difference the Parties will continue to perform their obligations under this AES Agreement pending resolution of that dispute.

**21.5 Urgent relief**

Nothing in this clause 21 will prevent either Party from applying for urgent interim relief from a court of competent jurisdiction.

**22. ASSIGNMENTS AND SUB-CONTRACTING**

**22.1 Assignment by you**

You may not assign, encumber, novate or otherwise dispose of any benefits or obligations under this AES Agreement without the prior written consent of Bluecurrent.

**22.2 Accrued liability**

Any consent granted under clause 22.1 (Assignment by you) will not relieve the assignor from liability for the performance of any obligations, responsibilities or duties so assigned that accrued prior to the assignment.



**22.3 Extended Services**

Without limiting clause 22.5 (Subcontracting and assignment by Bluecurrent), the Parties agree that any Related Company of Bluecurrent may supply all or any part of the Services, as if the Related Company was Bluecurrent.

**22.4 Listed Companies**

You and Bluecurrent acknowledge that, where either or both are listed companies, any change in the effective management or control of Bluecurrent or yourself (through whatever means) does not require the prior consent of the other Party.

**22.5 Subcontracting and assignment by Bluecurrent**

Bluecurrent may assign, novate, subcontract or delegate its benefits and rights, and the performance of any of its obligations under this AES Agreement to Bluecurrent NZ Limited or to any person.

**23. GENERAL**

**23.1 Non-Waiver**

- (a) None of the provisions of this AES Agreement will be considered to be waived by a Party except when such waiver is given in writing.
- (b) No delay by, or omission of, a Party in exercising any right, power, privilege or remedy under this AES Agreement will operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy will not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.
- (c) No waiver in writing by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed to be so in writing between the Parties.

**23.2 Entire Agreement**

This AES Agreement constitutes the entire Agreement between the Parties in respect of its subject matter and supersedes all previous agreements and understandings whether oral or written between the Parties. Each of the Parties acknowledges and confirms that it does not enter into this AES Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this AES Agreement.

**23.3 Severability**

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

**23.4 Relationship Management and Notices**

- (a) You will ensure that at all times during this AES Agreement you have a suitably qualified and experienced relationship manager, who will be responsible for the operational co-ordination and management with Bluecurrent. Your initial relationship manager will be notified in writing to Bluecurrent. Your relationship manager may be changed on prior written notice to Bluecurrent.
- (b) Any notice, demand, consent, certificate or other communication required to be given or sent under this AES Agreement will, unless otherwise expressly

provided, be in writing and delivered personally or by courier delivery or by email.

- (c) The required addresses and contact numbers of the Parties for the purposes of this clause 23.4 are as advised to the other Party in writing from time to time.
- (d) A notice or other form of communication will be deemed to have been served as follows:
  - (i) if given or delivered personally or by courier delivery, at the time when given or delivered; or
  - (ii) if sent by email, on the time and day of sending provided that a bounce back response is not received.
- (e) A notice or other form of communication which, but for the provisions of this clause 23.4 would be deemed to be received after 5.00pm on a Business Day or on a day which is not a Business Day, will be deemed to be received at 8.30am on the following Business Day.

**23.5 Variations**

- (a) Subject to sub-clause (b), no variations or modifications to this AES Agreement will be effective unless made in writing and signed by or on behalf of each Party and expressly stated to be a variation or modification to this AES Agreement.
- (b) Bluecurrent may at any time amend the terms of this AES Agreement by giving notice to you, and such amendment will be effective on Bluecurrent giving notice unless the notice states that the amendment is effective at a later date.

**23.6 Relationship between Parties**

This AES Agreement does not constitute, and nothing contained in this AES Agreement will be deemed or construed to constitute, a Party (except as specifically contemplated by this AES Agreement) as partner, agent or representative of any other Party. This AES Agreement does not give and is not to be construed as giving to any Party any of the liabilities arising from a partnership, agency or representative relationship with any other Party.

**23.7 Contract and Commercial Law Act 2017**

- (a) Except as expressly stated otherwise in this AES Agreement, this AES Agreement will not, and is not intended to, confer any benefit on, or create any obligation enforceable by, any person not a Party to this AES Agreement.
- (b) Any loss or damage suffered by a Related Company of a Party, must be claimed or pursued by a Party as if that Related Company's loss or damage were deemed to be loss or damage suffered by the Party, and subject always to the provisions of this AES Agreement.

**23.8 Governing Law**

This AES Agreement is governed by the laws of New Zealand. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand. This AES Agreement will be governed by and construed in all respects in accordance with the laws of New Zealand. Subject to clause 21.3 (Arbitration), each Party submits to the exclusive jurisdiction of the courts of New Zealand for the purpose of resolving any dispute as to the interpretation or application of this AES Agreement or any related question of fact or law.

**23.9 Remedies**

Except where expressly stated otherwise in this AES Agreement, the rights, powers and remedies provided in this

AES Agreement are cumulative and are in addition to any rights, powers or remedies provided by law.

24. **DEFINITIONS AND CONSTRUCTION**

24.1 **Defined terms**

In this AES Agreement, unless the context requires otherwise:

**Advanced Energy Services System** means the information technology platform employed by Bluecurrent to provide the Services but excludes the Advanced Metering Infrastructure;

**Advanced Meter** means a mass-market meter (whether owned by Bluecurrent or any other person) that records electricity consumption at an ICP electronically in real time, near-real time or at pre-determined intervals, has communication functionality (whether or not connected) and which can be read remotely;

**Advanced Metering Data** means all Consumption Data, Bluecurrent Metering Asset Data and Network Data;

**Advanced Metering Infrastructure** means any Advanced Meter and any other equipment that forms part of, or is ancillary to, any Advanced Meter (which may include ripple relays, external antennae, and current transformers) and the communications system used to remotely read an Advanced Meter, but for the avoidance of doubt does not include any part of the Distribution Network;

**AES Agreement** means the terms set out in this document including the Services Schedule and Pricing Schedule;

**Auditor** has the meaning given to it in clause 4.1(c);

**Bluecurrent Metering Asset Data** means data relating to the Advanced Metering Infrastructure used for the purposes of this AES Agreement and includes photos, GPS co-ordinates, records of the physical address of the Advanced Metering Infrastructure components relating to the installation, performance, maintenance, testing, reconfiguration and removal of Advanced Metering Infrastructure;

**Business Day** means a day other than a Saturday or Sunday excluding public statutory holidays across New Zealand;

**Charges** means the charges for the Services as set out in the Pricing Schedule, as varied from time to time by Bluecurrent and notified to you;

**Code** means the Electricity Industry Participation Code as defined in the Electricity Industry Act 2010;

**Confidential Information** means:

- (a) this AES Agreement;
- (b) all data and other information of whatever nature, in any form, provided by one Party to the other Party (directly or indirectly), under or in relation to this AES Agreement, excluding:
  - (i) information in the public domain through no breach of this AES Agreement;
  - (ii) information known to the receiving Party prior to the date it was provided by the providing Party and not obtained directly or indirectly from the providing Party;
  - (iii) information obtained from another person who is in the lawful possession of the same and did not acquire the same directly or indirectly from the providing Party under an obligation of confidence;
  - (iv) information that the providing Party agrees is not confidential; and

- (c) all Customer Data (which to avoid doubt is confidential information of any of your Customers);

**Consumption Data** means data relating to the consumption of electricity at any specific ICP, which data has been collected at that ICP by an Advanced Meter during any period in which that ICP is a Serviced ICP;

**Credit Note** means a credit note that complies with the GST Act;

**Customer** means, at the relevant time, any customer of yours to which you supply electricity;

**Customer Agreement** means an agreement between you and a Customer for the supply of electricity to that Customer;

**Customer Data** means all personal information about Customers in a form where a Customer is identified or identifiable;

**Customer Point of Supply** means the point at an ICP at which a Customer is deemed to take a supply of electricity as determined by an agreement between you and the relevant Distributor;

**Customer Premises** means any premises (including land and buildings) all or part of which are occupied by a Customer, including land or buildings in, over or upon which the Advanced Meter in respect of a Customer is installed;

**Debit Note** means a debit note that complies with the GST Act;

**Default Distributor Agreement** means any agreement between you and/or between your Customer and a Distributor relating to the use of, and performance of line function services and operation and maintenance of, that Distributor's Distribution Network for the conveyance of electricity to the relevant Customer Point(s) of Supply;

**Disengagement Period** has the meaning given to it in clause 17.1 (Disengagement Period);

**Distribution Network** means the system for conveyance and distribution of electricity from the national grid to Customer Premises, terminating in each case at the Customer Point of Supply, and includes all Fittings comprising part of that system;

**Distributor** means the owner and/or operator of a Distribution Network;

**Electricity Authority** or **EA** means the entity responsible for oversight of the New Zealand electricity market;

**Excluded Loss** means any:

- (a) loss of contract, profit, revenue or savings, or anticipated contract, profit;
- (b) revenue or savings;
- (c) loss of, or damage to, reputation, credit rating or goodwill;
- (d) loss or denial of opportunity;
- (e) loss of use or production;
- (f) loss of access to markets;
- (g) loss arising from business interruption;
- (h) financing costs;
- (i) special, incidental or punitive damages;
- (j) loss or damage arising from special circumstances that are not reasonably foreseeable; and
- (k) claims from any third parties for any of the foregoing,

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

**Force Majeure** means any event or circumstance:

- (a) that is beyond the reasonable control of a Party;
- (b) that results in or causes the failure of that Party to perform or observe any of its obligations under this AES Agreement; and
- (c) that (or, as appropriate, the causes or consequences of which) could not reasonably have been foreseen or prevented by the relevant Party acting in accordance with Good Industry Practice,

including, but not limited to:

- (d) strike, lock-out or other industrial disturbance, act of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution, riot, insurrection, epidemics or disease, civil commotion, civil disturbances, public demonstration, sabotage, act of vandalism, acts of animals, lightning, fire, storm, flood, washout, drought, accidental collisions, landslides, earthquake, accumulation of snow or ice, explosion; and
- (e) governmental restraint or direction or other governmental intervention or request, act of parliament, other legislation or bylaw,

provided that lack of funds will not be interpreted as a cause beyond the reasonable control of that Party;

**FSP** means a third party which has been contracted by Bluecurrent to provide Field Services on the terms of an FSP Contract;

**FSP Contract** means an agreement between Bluecurrent and an FSP for the provision of Field Services;

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

**GST** means goods and services tax imposed under the GST Act;

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

**HSE Policies** has the meaning given to that term in clause 6.1 (HSE Policies);

**ICP** has the meaning given to that term in the Code;

**Insolvency Event** in relation to an entity, means that entity:

- (a) becoming subject to any distress, attachment, execution or other similar legal process levied or enforced against, sued out on or against any material part of its property in any relevant jurisdiction that is not discharged or stayed within ten (10) Business Days;
- (b) having a receiver, voluntary administrator or statutory manager appointed to the whole or any substantial part of its undertaking, property or assets, or being put into liquidation or becoming the subject of an application, order or effective resolution for its liquidation;
- (c) failing to comply with a statutory demand under section 289 of the Companies Act 1993, or any equivalent legislation in any relevant jurisdiction;
- (d) becoming or being deemed to be insolvent, or is in fact unable to pay its debts as they fall due, or being deemed or presumed to be unable to pay its debts within the meaning of the Companies Act 1993 or any equivalent legislation in any relevant jurisdiction;

- (e) proposing or making an assignment, or an arrangement or composition with or for the benefit of its creditors; or
- (f) being removed from the register of companies in any relevant jurisdiction (other than as a result of a bona fide solvent amalgamation or reconstruction);

**Intellectual Property Rights** includes any right to, and any interest in, any patent, design, trade mark, trade name and all goodwill rights associated with such works, copyright, trade secrets and any other proprietary right or form of intellectual property (whether able to be registered or not) in respect of any know-how, technology, concept, idea, data, component, tool, and object codes, specification, formula, drawing, document, programme, design, system, process, logo, mark, style or other thing of similar nature, conceived, used, developed or produced by any person;

**Interest Rate** means, in respect of a particular period (**Specified Period**):

- (a) the bid settlement rate (rounded upwards, if necessary, to the nearest four (4) decimal places) as displayed at or about 10.45 am on the first Business Day of the Specified Period on the Reuters Monitor Screen page BKBM (or its successor page) for 90 day bank bills; or
- (b) if (but only if) Reuters Monitor Screen page BKBM is not available on the first Business Day of the Specified Period, then the mean bid and offer rates of Westpac Banking Corporation for 90 day bank bills at or about that time on that date;

**Interfere** includes any kind of physical damage, alteration, opening, removal, disconnection, reconnection or reconfiguration, and **Interfered** and **Interference** will have a corresponding meaning;

**KPI** means a performance standard designated as a "KPI" in the Services Schedule;

**Law** means any:

- (a) statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a Party is subject;
- (b) any binding court order, judgment or decree;
- (c) applicable industry code, policy or standard enforceable by law; or
- (d) applicable direction, policy, permission, consent, licence, rule or order that is binding on a Party and that is made or given by any government, legal or regulatory body having jurisdiction over a Party;

**Metering Equipment Owner** or **MEO** means any owner of metering equipment other than Bluecurrent;

**Metering Equipment Provider** or **MEP** has the meaning given to that term in the Code;

**Network Data** means information about electricity quality and usage (including information about harmonics, voltage and phase balance), to the extent such information is acquired by Bluecurrent in the course of providing the Services, but does not include any Bluecurrent Metering Asset Data, Consumption Data, Customer Data or Other Data;

**Other Data** means the data or information (but not the material referred to in clauses 11.2 (Ownership by AMS) and 11.3 (AES IP Rights)) created or acquired by Bluecurrent in the course of performing the Services under this AES Agreement, other than Bluecurrent Metering Asset Data, Consumption Data, Customer Data and Network Data;

**Party** means you or Bluecurrent, and **Parties** means both of us;



**Performance Issue** has the meaning set out in clause 14.1 (Performance Notice);

**Performance Notice** has the meaning set out in clause 14.1 (Performance Notice);

**Pricing Schedule** means the schedule of Charges, sent separately, for Services to be provided under this AES Agreement;

**Registry** means the “registry” as defined in the Code, and any replacement system established by the Electricity Authority;

**Regulatory Authority** means any government or any governmental or semi-governmental agency or other administrative, fiscal, judicial or regulatory authority, department, authority, agency or entity and does not include any agency administering relevant industry standards on the basis of voluntary association by industry participants unless otherwise agreed by the Parties;

**Related Company** has the meaning given to that term in the Companies Act 1993, and includes a “subsidiary” and a “holding company” of any Party as those terms are defined in section 5 of the Companies Act 1993, provided that a reference to “company” in that section will refer to any company or body corporate notwithstanding the jurisdiction of incorporation or establishment of the relevant company or body corporate;

**Retailer** means a “retailer” as that term is defined in the Code;

**Serviced ICP** means an ICP in respect of which Bluecurrent is for the time being required to provide one or more of the Services to you in accordance with clause 1.1 (Provision of Services by Bluecurrent);

**Service Request** has the meaning described in section 1.1 of the Services Schedule;

**Services** means the Services described in section 2 of the Services Schedule;

**Services Schedule** means the detailed description of Services to be provided under this AES Agreement;

**SmartCo** means SmartCo Limited (New Zealand company number 2485948);

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, withholding tax or impost or similar charge, which is assessed, levied, imposed or collected by any Regulatory Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above but, except where expressly provided otherwise in this AES Agreement, does not include income tax, capital gains tax and any other taxes in the nature of income tax and capital gains tax;

**Tax Invoice** means an invoice that complies with the tax invoice requirements of the GST Act; and

24.2 **Construction**

In the construction of this AES Agreement, unless the context requires otherwise:

*Business Days:* anything required by this AES Agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

*Defined Terms:* words or phrases appearing in this AES Agreement with capitalised initial letters are defined terms and have the meanings given to them in this AES Agreement;

*Documents:* a reference to any document, including this AES Agreement, includes a reference to that document as amended or replaced from time to time;

*Headings:* headings appear as a matter of convenience and do not affect the construction of this AES Agreement;

*Includes:* a reference to “includes” in this AES Agreement is a reference to “includes without limitation” and “include” and “including” will be construed accordingly;

*Negative Obligations:* a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;

*No contra proferentem rule:* the rule of construction known as the contra proferentem rule does not apply to this AES Agreement;

*Parties:* a reference to a Party to this AES Agreement or any other document includes that Party’s personal representatives/successors and permitted assigns;

*Person:* a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

*Related Terms:* where a word or expression is defined in this AES Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

*Service:* a reference to any service includes that service as varied or changed from time to time in accordance with this AES Agreement;

*Singular, Plural and Gender:* the singular includes the plural and vice versa, and words importing one gender include the other genders;

*Statutes and Regulations:* a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

*Time:* a reference to time is to New Zealand time unless otherwise specified; and

*Writing:* a reference to “written” or “in writing” includes information that is in electronic form if the information is readily accessible so as to be usable for subsequent reference.