

Proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses

Consultation paper

Published on: Tuesday, 3 October 2023

Submissions close: Tuesday, 14 November 2023

Executive Summary

In June 2020, the Electricity Authority (Authority) decided to amend the Electricity Industry Participation Code 2010 (Code) to introduce a default distributor agreement (DDA) template and a template for agreements for the provision of historical electricity consumption data.

The DDA template contains a set of default terms for a distributor agreement between a distributor and a trader who is a retailer wanting to trade on the distributor's network. The consumption data template contains a set of default terms for an agreement between a distributor and a trader for the provision of historical consumption data to the distributor.

By mandating certain default contractual terms, the Authority expected the 2020 Code amendment would promote competition in the retail electricity market and promote the efficient operation of the electricity industry.

At the time the Code was amended, the Authority said we would monitor the terms included in distributor agreements to ensure they continued to align with our statutory objective.

Three years on we consider improvements can be made to the Code to address some issues with the DDA template and the consumption data template which are, in the Authority's view, limiting some of the expected benefit from the 2020 Code amendment. This paper contains a proposed Code amendment which the Authority considers will address these issues.

Key aspects of the proposed Code amendment are:

- to change the status of each of the 'recorded terms' in the DDA template to be either a 'core' term, which is consistent across all DDAs, or an 'operational' term, which reflects the local practices and policies of distributors
- to permit distributors to combine consumption data with other data or databases without requiring the relevant trader's prior agreement, provided the distributor notifies the trader and uses the combined data for a purpose previously agreed with the trader or to develop distribution prices and/or plan and manage the distributor's network in order to provide distribution services.

The Authority considers the proposed Code amendment aligns with our main statutory objective by promoting competition in, the reliable supply by, and the efficient operation of the electricity industry, through:

- reducing costs faced by traders wanting to compete for customers on distributors' networks
- reducing costs distributors face combining historical electricity consumption data with other datasets for the purpose of providing distribution services or developing distribution prices.

The proposed Code amendment generally addresses dealings between industry participants, rather than the dealings of industry participants with domestic consumers and small business consumers (as required to engage the Authority's additional objective). However, the Authority considers the proposed Code amendment is consistent with the protection of such consumers' interests in relation to the supply of electricity to them because it strengthens the incentive on distributors to:

- manage the quality and reliability of consumers' electricity supply
- act in a manner that minimises the disruption to consumers from power outages.

The Authority welcomes feedback from interested parties on the proposed Code amendment.

The Authority is considering, more broadly, how industry participants can better access information needed to unlock the potential of distributed energy resources, as part of our review of distribution network regulatory settings. The Authority considers the proposed amendment to the consumption data template is a quick step towards unlocking this potential.

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1. What you need to know to make a submission

What this consultation is about

- 1.1. The purpose of this paper is to consult with interested parties on a proposed amendment to the Electricity Industry Participation Code 2010 (Code), which would change:
- (a) the status of the 'recorded' terms in the default distributor agreement (DDA) template in Part 12A of the Code to be either 'core' or 'operational' terms
 - (b) the drafting of some of the terms that are currently recorded terms, to incorporate changes to recorded terms made in distributor agreements provided to the Authority that the Authority considers may better promote the efficient operation of the electricity industry
 - (c) Schedule 12A.1 of the Code, to require a party to a distributor agreement to, upon request, provide the Authority with copies of any distributor agreements they have entered into
 - (d) Appendix C of Schedule 12A.1 of the Code (the default agreement for the provision of consumption data), to amend the arrangements for the provision of consumption data to distributors
 - (e) Schedule 12A.4 of the Code:
 - (i) to include provisions that provide for what happens to existing distributor agreements based on the DDA template under the proposed change in the status of the recorded terms in the DDA template in Part 12A
 - (ii) to clarify the requirements for distributors to update and publish their DDAs
 - (iii) to clarify the effect on existing distributor agreements when the Authority amends core terms or operational terms in the DDA template.
- 1.2. Section 39(1)(c) of the Electricity Industry Act 2010 (Act) requires the Authority to consult on any proposed amendment to the Code and the corresponding regulatory statement. Section 39(2) of the Act provides that the regulatory statement must include:
- (a) a statement of the objectives of the proposed Code amendment
 - (b) an evaluation of the costs and benefits of the proposed Code amendment
 - (c) an evaluation of alternative means of achieving the objectives of the proposed Code amendment.
- 1.3. The regulatory statement is set out in part 5 of this paper.

Part 12A of the Code regulates distributor agreements

- 1.4. Part 12A of the Code:
- (a) requires distributors to develop, publish and offer a DDA based on the DDA template in Part 12A, to all traders who are retailers wanting to trade on distributors' networks under an interposed contractual arrangement¹

¹ See Appendix A of Schedule 12A.4 of the Code. Under an interposed contractual arrangement between a distributor and an electricity retailer, the distributor does not have a direct contractual relationship with consumers connected to the distributor's network. Instead, the distributor's relationship with consumers on its network is through the retailers trading on the network. An interposed arrangement is by far the most common contractual arrangement between distributors and electricity retailers in New Zealand.

- (b) contains default terms for some additional services commonly provided alongside distribution services (but which are not themselves part of the distribution services).² These default terms include:
 - (i) allowing a distributor’s shareholder trust to credit beneficiaries’ accounts with annual distributions or to collect beneficiary information in order to send a distribution directly to the consumer³
 - (ii) providing distributors with access to consumption data on reasonable terms via a default data sharing agreement.⁴

An amended Part 12A would better align with the Authority’s objectives

- 1.5. Part 12A could be better aligned with the Authority’s main statutory objective⁵ if a couple of key issues were to be addressed:
 - (a) costs faced by traders wanting to compete for customers on distributors’ networks are higher than they need to be. Reducing these costs would promote competition, which aligns with the Authority’s main objective
 - (b) distributors face higher-than-necessary costs in combining historical electricity consumption data with other datasets for the purpose of providing distribution services or developing distribution prices. Reducing these costs would promote the reliable supply by, and efficient operation of, the electricity industry, which also aligns with the Authority’s main objective.
- 1.6. The proposed Code amendment, if made, would generally address dealings between industry participants, rather than the dealings of industry participants with domestic consumers and small business consumers (as required to engage the Authority’s additional objective). However, the Authority considers the proposed Code amendment is consistent with the protection of such consumers’ interests in relation to the supply of electricity to them. This is because it is expected to strengthen the incentive on distributors to:
 - (a) manage the quality and reliability of consumers’ electricity supply
 - (b) act in a manner that minimises the disruption to consumers from power outages.

How to make a submission

- 1.7. The Authority’s preference is to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix D. Submissions in electronic form should be emailed to DDA@ea.govt.nz with ‘Consultation Paper—Proposed changes to the DDA template, consumption data template, and related Part 12A clauses’ in the subject line.
- 1.8. If you cannot send your submission electronically, please contact the Authority (DDA@ea.govt.nz or 04 460 8860) to discuss alternative arrangements.
- 1.9. Please note the Authority intends to publish all submissions received. If you consider the Authority should not publish any part of your submission, please:
 - (a) indicate which part should not be published

² Part 12A of the Code defines “distribution services” to mean “the service of distribution, as defined in section 5 of the Act”. Section 5 of the Act defines “distribution” to mean “the conveyance of electricity on lines other than lines that are part of the national grid”.

³ See Appendix A of Schedule 12A.1 of the Code.

⁴ See Appendix C of Schedule 12A.1 of the Code.

⁵ The main objective of the Authority is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. See section 15(1) of the Act. The additional objective of the Authority is to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. The additional objective applies only to the Authority’s activities in relation to the dealings of industry participants with domestic consumers and small business consumers. See section 15(2)–(3) of the Act.

- (b) explain why you consider the Authority should not publish that part
 - (c) provide a version of your submission that the Authority can publish (if we agree not to publish your full submission).
- 1.10. If you indicate part of your submission should not be published, the Authority will discuss this with you before deciding whether to not publish that part of your submission.
- 1.11. However, please note that all submissions received by the Authority, including any parts the Authority does not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release material not published unless good reason existed under the Official Information Act to withhold it. The Authority would normally consult with you before releasing any material you requested not be published.

When to make a submission

- 1.12. Please deliver your submission by 5pm on Tuesday 14/11/2023.
- 1.13. Authority staff will acknowledge receipt of all submissions electronically. Please contact the Authority (DDA@ea.govt.nz or 04 460 8860) if you do not receive electronic acknowledgement of your submission within two business days.

2. Issue 1: The use of recorded terms in the DDA template

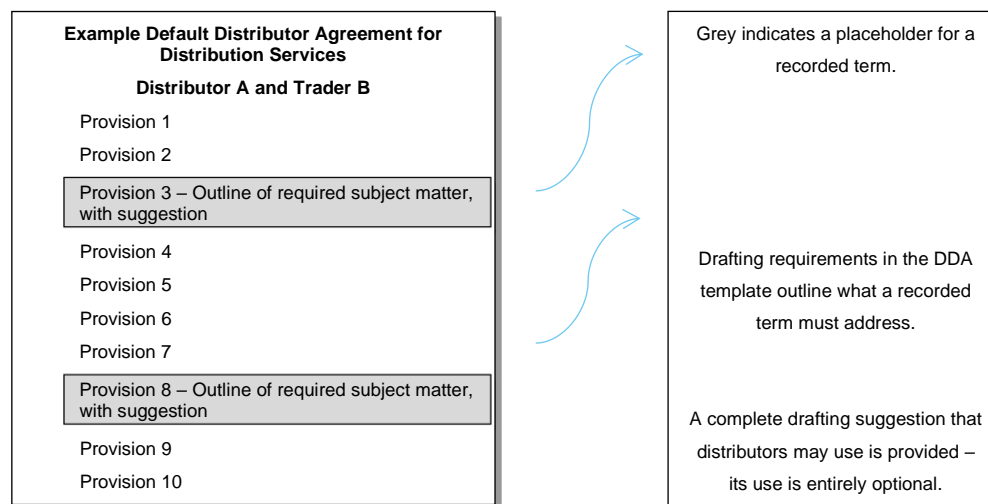
- 2.1. The first issue the Authority wants to address with the proposed Code amendment is the status and drafting of the recorded terms in the DDA template in Part 12A of the Code.
- 2.2. The Authority considers that changing the status of each recorded term in the DDA template to be either a 'core' or 'operational' term, and making some amendments to several of those terms, would align with the Authority's statutory objectives.

The existing arrangements

What are recorded terms?

- 2.3. Recorded terms are placeholders in the DDA template, for recording rights or obligations in a distributor agreement that relate to matters the agreement might be expected to include but which the Commerce Commission may have jurisdiction to regulate.
- 2.4. The DDA template identifies the subject matter that each recorded term must address in a distributor agreement and provides example drafting for such terms.
- 2.5. Figure 1 gives an illustrative example of how recorded terms are included in the DDA template. Note, Figure 1 does not reflect actual recorded terms in the DDA template.

Figure 1: Example of recorded terms



- 2.6. Part 12A of the Code does not require distributors to follow any procedural requirements when developing their recorded terms and does not regulate the substance of any rights or obligations recorded terms might record. For example:
 - (a) distributors do not need to consult on their recorded terms
 - (b) distributors are not required (but may choose) to publish recorded terms in their published DDAs⁶
 - (c) distributors are not required to use the drafting suggestions for recorded terms contained in the DDA template
 - (d) recorded terms do not need to comply with any principles in the Code
 - (e) recorded terms are not subject to the Rulings Panel's jurisdiction
 - (f) distributors have the option of drafting recorded terms that state that no rights or obligations of the type described in the relevant placeholder in the DDA template apply.

⁶ See clause 6(4) of Schedule 12A.4 of the Code.

The DDA template also contains core terms and operational terms

- 2.7. There are two other types of terms contained in the DDA template — ‘core’ terms and ‘operational’ terms.
- 2.8. Core terms are terms in the DDA template that distributors must include in their DDAs.⁷ This means core terms are identical across all distributors’ DDAs and therefore are consistent nationally.
- 2.9. Operational terms are terms distributors must include in their DDAs to reflect a distributor’s local practices and policies. When setting the operational terms in a DDA, the distributor must apply certain principles set out in the Code—namely, that the operational terms must:
 - (a) be consistent with the Authority’s objectives⁸ set out in section 15 of the Act
 - (b) reflect a fair and reasonable balance between the legitimate interests of the distributor and the requirements of the participant trading on, connected to, or using the distributor’s network or equipment connected to the distributor’s network
 - (c) reflect the interests of consumers on the distributor’s network
 - (d) reflect the reasonable requirements of all participants trading on, connected to, or using the distributor’s network or equipment connected to the distributor’s network, and the ability of the distributor to meet those requirements.⁹
- 2.10. In addition, a distributor must not include an operational term in a DDA that is inconsistent with, or modifies the effect of, any core term that the distributor must include in the DDA.¹⁰
- 2.11. Before publishing a DDA, a distributor must consult each participant the distributor considers is likely to be affected by the DDA, on the operational terms the distributor proposes to include in the DDA.¹¹ The Rulings Panel may review a distributor’s operational terms if a submitter that participated in the distributor’s consultation appeals to the Rulings Panel.¹²

Recorded terms were a response to regulatory constraints

- 2.12. As noted in paragraph 2.3, recorded terms are placeholders in the DDA template for recording rights or obligations in a distributor agreement that relate to matters the agreement might be expected to include but which the Commerce Commission may have jurisdiction to regulate.
- 2.13. When the DDA template was inserted in the Code as part of the 2020 DDA Code amendment,¹³ section 32(2) of the Act prohibited the Code from purporting to do or regulate anything the Commerce Commission was authorised or required to do or regulate under Part 4 of the Commerce Act 1986.¹⁴
- 2.14. Recorded terms were incorporated in the DDA template as recorded terms rather than core or operational terms to ensure the Code did not infringe section 32 of the Act as in force at the time. The incorporation of recorded terms followed a legal challenge to an earlier DDA template that was included in a 2016 proposed Code amendment the Authority consulted on. This earlier proposed DDA template contained only core terms and operational terms.¹⁵

⁷ See clause 3(1) of Schedule 12A.4 of the Code.

⁸ The Authority now has an additional objective. This paper considers both the Authority’s objectives.

⁹ See clause 4(2) of Schedule 12A.4 of the Code.

¹⁰ See clause 5(1) of Schedule 12A.4 of the Code.

¹¹ See clause 6(2) of Schedule 12A.4 of the Code.

¹² See clause 7 of Schedule 12A.4 of the Code.

¹³ 20 July 2020. See <https://gazette.govt.nz/notice/pdf/2020-au2491>.

¹⁴ Other than to set quality standards for Transpower and set pricing methodologies (as defined in section 52C of the Commerce Act) for Transpower and distributors.

¹⁵ See the following High Court and Court of Appeal judgments on the legal challenge to the 2016 template:

2.15. At the conclusion of the legal challenge process, the Authority reviewed the 2016 DDA template and changed the status of several core terms and some operational terms to be recorded terms.¹⁶

The Authority has reviewed recorded terms in light of changes to the Act

2.16. Last year section 32 of the Act was amended¹⁷ to make clear that the Code may, amongst other things, set pricing methodologies and quality or information requirements for distributors in relation to access to distribution networks, regardless of whether such a provision would otherwise be prohibited under section 32(2) of the Act.¹⁸ New section 44A(2) of the Act also provides that the Code may prescribe default terms and conditions that are deemed to be included in distribution agreements, including terms and conditions that relate to quality or information requirements.

2.17. A key purpose of amending the Act was to ensure that the Code can regulate distribution access terms and conditions, as it does for transmission.¹⁹

2.18. In light of these changes to the Act and consistent with the Authority's stated intention to monitor the terms included in distributor agreements,²⁰ we have reviewed the recorded terms in distributor agreements provided to us by participants. Our focus has been on those recorded terms that were proposed to be core terms in the 2016 version of the DDA template, prior to the legal challenge to that version of the template.²¹

2.19. The reasons for the Authority's focus on this subset of recorded terms was our concern that, in DDAs and distributor agreements:

- (a) a material amount of variation in these terms had been introduced, thereby undoing the original purpose of national consistency in these terms when they were proposed originally as core terms
- (b) these terms may have been varied in a manner that did not align with the Authority's statutory objectives as well as the drafting suggestion in the DDA template.

2.20. The Authority's review has therefore assessed:

- (a) the extent to which each recorded term has been changed from the equivalent recorded term in the DDA template
- (b) whether any such changes are more aligned with the Authority's statutory objectives.

The issue with the existing arrangements

2.21. Having completed its review of distributor agreements, the Authority considers there is an issue with the use of recorded terms in the DDA template. The issue is that recorded terms:

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- *Vector Limited v Electricity Authority* [2017] NZHC 1774, available at <http://www.nzlii.org/nz/cases/NZHC/2017/1774.html>,
 - *Vector Limited v Electricity Authority* [2018] NZCA 543, available at <http://www.nzlii.org/nz/cases/NZCA/2018/543.html>,
 - *Vector Limited v Electricity Authority* [2019] NZCA 49, available at <http://www.nzlii.org/nz/cases/NZCA/2019/49.html>.

¹⁶ In some instances, with minor changes to the drafting of the term.

¹⁷ By the Electricity Industry Amendment Act 2022.

¹⁸ See section 32(4) of the Act.

¹⁹ See the explanatory note to the Electricity Industry Amendment Bill that was passed to amend the Act.

²⁰ As advised in the Authority's June 2020 decision to insert the DDA template in the Code (at paragraph 1.13).

²¹ The recorded terms that were proposed to be core terms are the following:

- clauses 4.8, 4.11, 4.12, 5.7, 5.8, 7.3, 9.5, 9.10, 14.1, 14.2, 24.5,
- the following definitions: *Default Interest*, *Default Interest Rate*, *Interest Rate*, *Use of Money Adjustment*, and
- clauses S1.1 – S1.5 of Schedule 1 – Service Standards.

- (a) introduce inconsistencies across DDAs and distributor agreements in relation to contractual terms that the Authority has in the past considered should be consistent
- (b) are resulting in DDAs and distributor agreements that are less aligned with the Authority's statutory objectives than the DDA template.

A material amount of variation in terms that were proposed originally to be nationally consistent

2.22. The Authority's review of distributor agreements has confirmed that, for almost every recorded term, the drafting suggestion in the DDA template has been changed in at least some distributor agreements. For those recorded terms that were originally proposed to be core terms, this has reduced the intended benefit from national consistency of terms across DDAs and distributor agreements.

2.23. National consistency of these terms was sought so as to lower the costs faced by traders wanting to compete for customers on distributors' networks. This in turn was expected to improve competitive pressures in the retail electricity market.

Changes that mean the recorded term is less aligned with the Authority's statutory objectives

2.24. In addition, the Authority considers changes made to the recorded terms have, in many instances, worsened the extent to which the recorded term, and thereby the DDA and distributor agreement in which the recorded term is located, aligns with the Authority's statutory objectives. In summary, these changes to recorded terms:

- (a) do not allocate costs and risks to the party best placed to manage them, or
- (b) create ambiguity, duplication, or inconsistency of approach, or
- (c) are unnecessary.

Changes that do not allocate costs and risks to the party best placed to manage them

2.25. Some of these changes to recorded terms in distributor agreements do not allocate costs and risks to the party best placed to manage them. Most often the distributor has allocated cost / risk to the trader. Examples include:

- (a) removing any liability from the distributor if the distributor fails to meet its obligations around planned outages on its network or the restoration of power on its network
- (b) removing any liability from the distributor if the distributor fails to investigate power quality, reliability or safety issues related to a customer's supply.

2.26. The Authority considers that inappropriately allocating costs and risks to traders in this manner does not promote competition, as it lessens the incentive on traders to compete for customers on the distributor's network. These changes also do not promote the efficient operation of the electricity industry in situations where the distributor can manage the risk more cost-effectively than the trader.

2.27. While the Authority's additional statutory objective does not apply outside the dealings of industry participants with domestic and small business consumers, the Authority considers these changes may not be consistent with the interests of such consumers in relation to the supply of electricity to them. This is because the changes lessen the incentive on distributors to:

- (a) manage the quality and reliability of consumers' electricity supply
- (b) act in a manner that minimises the disruption to consumers from power outages.

Changes that create ambiguity, duplication, or inconsistency of approach

2.28. Some changes to recorded terms in distributor agreements create ambiguity, duplication, or inconsistency of approach. An example is stating that a trader may issue a tax invoice or credit note for service guarantee payments that have accrued during the preceding three months. This change creates ambiguity, as it is not entirely clear whether the three months is intended to limit the trader's right to service guarantee payments, or to permit the trader to invoice for up to three months at once.

2.29. The Authority considers such ambiguity does not promote competition and the efficient operation of the electricity industry because it requires interpretation / clarification, which adds to a trader's cost of competing for customers on a distributor's network.

Changes that are unnecessary

2.30. Other changes to recorded terms in distributor agreements are simply unnecessary in the Authority's view. Examples include:

- (a) stating that regulations and the Code are law
- (b) duplicating the provisions in the force majeure clause elsewhere in the distributor agreement.

2.31. Such changes introduce unnecessary transaction costs into the process of negotiating distributor agreements, which does not promote the efficient operation of the electricity industry.

2.32. Appendix B contains the Authority's assessment of changes to recorded term drafting suggestions in the DDA template that have resulted in the recorded term being less aligned with the Authority's statutory objectives.

Q1. Do you agree Issue 1, summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B, is worthy of attention?

Some changes have aligned recorded terms more closely with the Authority's statutory objectives

2.33. Some changes to recorded terms in distributor agreements have, in the Authority's view, improved the recorded term's alignment with the Authority's statutory objectives. Appendix C contains the Authority's assessment of such changes to recorded terms.

2.34. The Authority considers these changes have improved the efficient operation of the electricity industry by reducing transaction costs in the following ways:

- (a) simplifying and/or removing costs from processes set out in the DDA template
- (b) simplifying and/or removing ambiguity and/or improving the understandability of the recorded term drafting suggestion in the DDA template.

2.35. Even though our additional statutory objective does not apply outside the dealings of industry participants with domestic and small business consumers, the Authority considers some of the changes related to service interruptions also align with protecting the interests of such consumers in relation to the supply of electricity to them. An example is applying a good electricity industry practice standard to distributors' scheduling of planned service interruptions.

2.36. Since the Authority considers these changes to be consistent with our statutory objectives, we want to include the changes in the DDA template.

2.37. The Authority notes these changes to recorded terms do not address the issue with the existing arrangements summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B. In addition, the Authority considers the benefit arising from these improvements to recorded terms is small relative to the cost arising from this issue.

2.38. Therefore, the Authority considers these improvements are not a reason for the Authority to decline to address the issue with the existing arrangements summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B.

Q2. Do you have any feedback on the Authority's assessments of changes to recorded terms, as set out in Appendix B and Appendix C?

The Authority has consulted with the Commerce Commission

- 2.39. The Authority anticipates the proposed amendments to the Code to address Issue 1 will, or are likely to, affect the Commerce Commission in performing its functions or exercising its powers regarding electricity lines services under Part 4 of the Commerce Act 1986.
- 2.40. Therefore, prior to this consultation, we have consulted with the Commerce Commission on these proposed amendments in accordance with section 54V of the Commerce Act. We are publishing alongside this consultation paper our letter to the Commerce Commission on this matter and the Commerce Commission's letter in response.

3. Issue 2: Providing distributor agreements to the Authority

- 3.1. The second issue the Authority wants to address with the proposed Code amendment is the compliance cost associated with providing distributor agreements to the Authority. The Authority considers the efficient operation of the electricity industry would be promoted by replacing the existing Code obligation on participants to provide *any* new or varied distributor agreement to the Authority with an obligation on parties to distributor agreements to provide their latest agreements *upon request* from the Authority.

The existing arrangements

Any distributor agreement entered into must be provided to the Authority

- 3.2. Currently, the Code requires a participant who enters into a distributor agreement with a distributor to provide the Authority a copy of:
- (a) any distributor agreement they enter into, and any variation to this agreement
 - (b) any other agreement the participant enters into with the distributor prior to entering into a distributor agreement.²²
- 3.3. The purpose of this Code obligation is to promote transparency in relation to the negotiation of distributor agreements and to enable the Authority to monitor the terms of these agreements.
- 3.4. If the Authority discovers terms that are not aligned with its statutory objectives, it may choose to prescribe or prohibit terms where it is consistent with the Act to do so. The Authority expects to take this approach sparingly.²³

To date the policy has delivered on its purpose

- 3.5. The existing Code obligation in clause 11 of Schedule 12A.1 of the Code has worked well during its first 2–3 years. Since the 2020 DDA Code amendment came into force, the Authority has received a large number of distributor agreements.
- 3.6. To date this process has delivered on the policy's purpose – to enable the Authority to monitor the terms of these agreements. For example, this consultation paper has been usefully informed by a review of the recorded terms in the distributor agreements provided to the Authority.

The issue with the existing arrangements

Going forward the policy's purpose could be delivered at lower cost

- 3.7. The Authority believes now is an appropriate time to review whether this policy's purpose could be delivered at lower cost.
- 3.8. The publication of DDAs and negotiation of distributor agreements have occurred over a relatively short timeframe.²⁴ This has enabled the Authority to monitor the terms of many distributor agreements using a single review process.
- 3.9. Moving forward, in the absence of regulatory impetuses such as this proposed Code amendment, the timing of changes to terms in distributor agreements may become less uniform. The Authority considers it would be more efficient from a process and resourcing standpoint for it to use periodic reviews (eg, every three years) to monitor the terms in distributor agreements, rather than via ad-hoc reviews linked to the receipt of new or varied agreements.

²² See clause 11 of Schedule 12A.1 of the Code.

²³ As advised in the Authority's June 2020 decision to insert the DDA template in the Code (at paragraph 1.13).

²⁴ This has been due to the requirement in clause 6(1) of Schedule 12A.4 of the Code for all distributors to have published their respective DDAs 210 days after the 2020 DDA Code amendment came into force.

- 3.10. Given this, the Authority believes compliance costs can be reduced for participants by replacing the obligation for participants to provide the Authority with *any* new or varied distributor agreement with an obligation to provide their latest agreements upon request by the Authority. For the avoidance of doubt, the Authority would request the latest version of a distributor agreement only if we did not already have it.

Q3. Do you agree Issue 2 is worthy of attention?

Monitoring the uptake of alternative agreements

- 3.11. The Code provides for a distributor and a participant to enter into an agreement on terms that differ from the terms set out in the relevant DDA. This is known as an alternative agreement.
- 3.12. The Authority wishes to monitor the uptake of alternative agreements. This is to assess the extent to which alternative agreements are being entered into because of any actual or perceived shortcomings with the DDA template in Part 12A of the Code.
- 3.13. Therefore, the Authority proposes to require a distributor who enters into an alternative agreement to notify the Authority of having done so. The distributor would not be required to provide the alternative agreement to the Authority unless requested to do so by the Authority.

4. Issue 3: Costs with using the consumption data template

- 4.1. The third issue the Authority wants to address with the proposed Code amendment is the level of transaction costs associated with the default agreement for the sharing of consumption data with distributors.
- 4.2. The Authority considers the reliable supply of electricity and the efficient operation of the electricity industry would be promoted if:
 - (a) distributors were to be allowed to merge consumption data with other datasets for the purpose of providing distribution services or developing distribution prices
 - (b) by signing a consumption data provision contract with a distributor:
 - (i) a trader agreed to the distributor obtaining historical consumption data directly from the trader's metering equipment provider(s) (MEP(s))
 - (ii) a trader could authorise the distributor to procure the trader's MEP(s) to provide the historical consumption data to the distributor, instead of the trader procuring the MEP to provide the data to the distributor
 - (c) distributors were to receive consumption data more frequently than the default agreement currently provides for.

The existing arrangements

The Code contains a default agreement for sharing consumption data

- 4.3. Appendix C of Schedule 12A.1 of the Code contains a default data sharing agreement (data template) for the provision of consumption data, held by a trader or the trader's MEP, to a distributor. The data template applies as a default contract for data exchange if both parties opt to contract on its terms, or if either the distributor or trader requires the data template to apply as a binding contract under clause 7 of Schedule 12A.1 of the Code. The distributor and trader can agree to contract under alternative terms if they want to.
- 4.4. The data template was introduced because of concerns over the exchange of consumption data between traders and distributors for purposes other than the distributor invoicing the trader. Particular concerns were:
 - (a) who should be allowed to access consumers' historical consumption data
 - (b) inaccuracies and errors in consumption data being exchanged.
- 4.5. There was little consensus on what consumption data should be provided, at what level of detail, and within what timeframe.²⁵ This, along with the question of what constituted reasonable terms of access, was causing an impasse to traders and distributors negotiating access to consumption data held by traders or their MEPs.²⁶
- 4.6. The data template has three functions:
 - (a) It gives distributors access to some historical consumption data. Distributors can use this data to develop cost-reflective distribution prices and to plan and manage their networks, particularly their low voltage networks (eg, by analysing consumption patterns).
 - (b) It gives traders assurance that distributors will use the consumption data for the permitted purposes of developing distribution prices and planning management of the network in order to provide distribution services and not for a purpose the trader may disagree with (eg, leveraging the distributor's monopoly position to provide contestable electricity services to the disadvantage of the trader).

²⁵ See the Authority's August 2019 consultation on inserting the DDA template in the Code, pp 57–59.

²⁶ See the Authority's June 2020 decision to insert the DDA template in the Code (at paragraph 2.20).

- (c) It provides more standardisation of the process to be used by traders and distributors for exchanging consumption data, including the format of the data. This has reduced the cost of exchanging and processing consumption data (eg, by reducing the number of file formats used to exchange the data).²⁷

The issue with the existing arrangements

Shortcomings exist with the data template

- 4.7. The Authority has been made aware of several shortcomings with the data template.
- 4.8. The main issue is that the data template in its current form prevents distributors from merging consumption data with any other data or database unless the trader gives prior written agreement.²⁸ Distributors and traders have agreed there is little purpose in distributors receiving consumption data unless it can be combined with other datasets.²⁹ Examples of datasets that could be combined with consumption data to assist distributors with developing distribution pricing and providing distribution services include:
 - (a) weather data – to understand how weather affects consumption across the distribution network
 - (b) data on gas connections – to understand how electricity consumption differs between properties with and without gas
 - (c) census data and other socio-demographic data (eg, University of Auckland deprivation index data) – to understand consumption patterns of different types of consumers / households
 - (d) property valuation and council property data – to understand how property size and age characteristics affect peak electricity demand.
- 4.9. Distributors have advised the Authority they consider it inefficient and unworkable to obtain the consent of each trader with customers on the distributor's network before combining consumption data with one or more other datasets.³⁰ A trader could choose to not negotiate with a distributor. Bilateral negotiations between distributors and traders are an inefficient means of agreeing data combinations, with high transaction costs. Bilateral negotiations could result in distributors having different contracts with different traders on their networks in respect of data combinations.
- 4.10. Other issues that have been raised in relation to the data template include:
 - (a) The costs associated with the provision of consumption data to distributors would be lower if a trader had the option, when signing a contract with a distributor using the data template, to authorise the distributor to procure the trader's MEP(s) to provide the data to the distributor. This would enable a trader to remove itself thereafter from the process of consumption data being provided to the distributor, thereby reducing the number of steps in the data transfer process. Some traders have advised the Authority they do not want to be the middle person in the transfer of consumption data from MEPs to distributors.
 - (b) Changing, from six-monthly to monthly, the default maximum time interval for providing consumption data to distributors would be of greater value to distributors, at little or no additional cost to traders / MEPs. Although currently traders and distributors may agree time intervals that are less than six months, there could be a net benefit from

²⁷ *Ibid* (at paragraph 2.27).

²⁸ Clause 5(1)(e) of Appendix C of Schedule 12A.1 of the Code.

²⁹ Meeting held on 29 October 2020 between distributor and trader representatives, including the Electricity Networks Association and Electricity Retailers Association of New Zealand, to discuss acceptable terms for combining and using consumption data provided under Appendix C of Schedule 12A.1.

³⁰ Letter from Graeme Peters of the Electricity Networks Association to James Stephenson-Wallace of the Electricity Authority, dated 20th August 2020, proposing an urgent amendment to clause 5(1)(e) of Appendix C of Schedule 12A.1 of the Code.

shortening the maximum time interval in the data template. This might arise if contracting costs were to be lowered by more than the marginal cost of providing the data more regularly.

it is timely to address these shortcomings

- 4.11. The Electricity Networks Association (ENA) and Electricity Retailers Association of New Zealand (ERANZ) have worked with interested industry participants on changes to the data template to address the issue described in paragraph 4.8. The Authority is aware several agreements now in place for the exchange of consumption data permit distributors to merge the data with other datasets.
- 4.12. However, the Authority is aware there is some confusion amongst distributors and traders over whether to use the data template as included in the Code or the ENA / ERANZ variation to it.
- 4.13. Distributors prefer the ENA / ERANZ variation over the data template since it enables them to merge consumption data with other datasets. However, traders have advised the Authority that every time the ENA / ERANZ variation is used, they must undertake a legal review and check no further amendments to the data template have been made.
- 4.14. Several distributors have advised the Authority they have not yet engaged with traders to negotiate an agreement for the exchange of consumption data.
- 4.15. Given these points, the Authority considers that amending the data template to incorporate the ENA / ERANZ variation, with some amendments, would reduce the cost of negotiating, and improve the workability of, future agreements for the exchange of consumption data using the data template.
- 4.16. As part of considering such a Code amendment, it makes sense from an operational efficiency standpoint for the Authority to consider a Code amendment that addresses the other issues with the data template listed in paragraph 4.10.

Q4. Do you agree Issue 3 is worthy of attention?

The Authority is considering access to ICP data more generally

- 4.17. As the Authority has noted elsewhere,³¹ it wants industry participants to have access to the information / data they need to make informed decisions that unlock the potential of distributed energy resources (DER) to:
 - (a) support New Zealand transitioning to a low-emissions economy
 - (b) provide long-term benefits to consumers.
- 4.18. The Authority also wants to ensure there is a 'level playing field' for those parties unlocking the potential of DER. To this end the Authority wants to ensure those parties have equal access to information / data.
- 4.19. The proposed Code amendment in this consultation paper is targeted at the distributor arrangements in Part 12A of the Code. The Authority has considered whether to expand the proposal to include the more general provision of installation control point (ICP) data that is beneficial to unlocking the potential of DER. There are two aspects to this more general provision of ICP data:
 - (a) the type of data to be shared (eg, consumption data, power quality data)

³¹ See section 4 of the Authority's December 2022 Issues paper: Updating the Regulatory Settings for Distribution Networks, available at <https://www.ea.govt.nz/documents/1743/Issues-paper-Updating-the-regulatory-settings-for-distribution-networks.pdf>.

(b) who the data is shared with (eg, distributors, flexibility traders³²).

- 4.20. The Authority has decided not to expand the proposal to include the more general provision of ICP data, because this requires further analysis and consideration. A data template may not be the best approach to providing ICP data to parties wanting to unlock the potential of DER. Several submitters on the Authority's December 2022 *Issues paper: updating the regulatory settings for distribution networks*, (December 2022 issues paper) made this point.
- 4.21. The Authority is instead looking at the more general provision of ICP data as part of our review of distribution network regulatory settings. This workstream is looking not only at the data required to unlock the potential of DER but also at how this data is best shared. Many submissions on our December 2022 issues paper supported a reasonably fundamental look at these two aspects of the data access issue.
- 4.22. The Code amendment proposal in this consultation paper is targeted at the distributor arrangements in Part 12A of the Code. The Authority has considered whether to expand the proposal to include the provision of historical consumption data to flexibility traders but has decided not to do so as part of this consultation. This is because a solution to the issue of flexibility trader access to historical consumption data requires further analysis and consideration. As the Authority noted in the December 2022 Issues paper, a data template may not be the best approach to providing consumption data to flexibility traders.³³
- 4.23. Several submitters considered that the data template may not be the appropriate means for distributors to access other ICP data beneficial to unlocking the potential of DER – for example, power quality data. The Authority is looking at this matter as part of its review of distribution network regulatory settings.
- 4.24. In contrast, a solution has been developed to the identified issue with distributor access to consumption data as set out in paragraphs 4.8 to 4.10. Moreover, this solution has involved a collaborative process between distributors and traders, and is readily implementable. The Authority sees no reason to delay realising the benefits of this solution while we consider the more general provision of ICP data to unlock the potential of DER.
- 4.25. The Authority signalled this intention in our December 2022 issues paper, noting we would make a final decision after receiving submissions.³⁴ Having received and reviewed submitters' feedback on this point, the Authority has decided to proceed with consultation on the proposed Code amendment contained in this paper. The Authority considers the proposed amendment is a quick step towards unlocking the potential of DER.

³² A flexibility trader is someone who manages a portfolio of DER, selling the services provided by the DER to their highest value use(s). The term "value stacking" describes the situation where DER provides multiple services, thereby creating multiple revenue / value streams for the DER. Typically this improves the economics of investing in the DER. A flexibility trader may own DER or contract with DER owners for the right to control / use their DER.

The Authority is considering several matters related to flexibility traders. These range from how flexibility traders can operate on a 'level playing field' with competitors, to the potential impact of flexibility traders on the operation of distribution networks.

³⁴ See paragraph 4.9(a) of the Authority's December 2022 *Issues paper: Updating the Regulatory Settings for Distribution Networks*.

5. Regulatory statement for the proposed Code amendment

Objective of the proposed Code amendment

- 5.1. The objective of the proposed Code amendment is to address the following identified matters:
- (a) recorded terms—
 - (i) introduce inconsistencies across DDAs and distributor agreements in relation to contractual terms that the Authority has in the past considered should be consistent
 - (ii) are resulting in DDAs and distributor agreements that are not as aligned with the Authority's statutory objectives as the DDA template
 - (b) some distributor agreements contain changes to the recorded term drafting suggestions in the DDA template that have improved the extent to which the recorded term is aligned with the Authority's main statutory objective
 - (c) transaction costs associated with participants providing copies of distributor agreements to the Authority are higher than necessary
 - (d) the processes surrounding the provision of historical consumption data to distributors—
 - (i) place higher-than-necessary transaction costs on distributors and traders
 - (ii) create an unequal bargaining position between distributors and traders, which hinders the ability of distributors to develop distribution prices and plan and manage their networks.

Q5. Do you agree with the objective of the proposed Code amendment? If not, why not?

The proposed Code amendment

Amendments to the DDA template

- 5.2. The Authority proposes to amend the status of each recorded term in the DDA template:
- (a) to be a core term, in respect of clauses 4.8, 4.11, 4.12, 5.7, 5.8, 7.3, 9.5, 9.10, 14.1, 14.2, 24.5, 33.2, S1.1, S1.2, S1.3, S1.4, and S1.5
 - (b) to be an example operational term, in respect of Table 1 of schedule 1 and all clauses in schedule 5.
- 5.3. In addition to amending the status of recorded terms in the DDA template as explained in paragraph 5.2(a), the Authority proposes to include in several of those terms some changes seen in DDAs and distributor agreements, which the Authority considers promote the efficient operation of the electricity industry.
- 5.4. To provide for the proposed changes to the DDA template and any future changes to the DDA template, the Authority proposes to amend Schedule 12A.4:
- (a) to include provisions that provide for what happens to existing distributor agreements based on the DDA template under the proposed change in the status of the recorded terms in the DDA template in Part 12A
 - (b) to clarify—
 - (i) the requirements for distributors to update and publish their DDAs

- (ii) the effect on existing distributor agreements when the Authority amends core terms or operational terms in the DDA template.

Amendments to Schedule 12A.1

- 5.5. The Authority proposes to amend Schedule 12A.1 of the Code:
- (a) to require parties to distributor agreements to, upon request, provide the Authority with copies of any distributor agreements they have entered into
 - (b) to require distributors to notify of the Authority of any alternative agreements, or variations to alternative agreements, they enter into.

Amendments to the data template

- 5.6. The Authority proposes to amend Appendix C of Schedule 12A.1 of the Code (the default agreement for the provision of consumption data, or data template) to permit distributors to combine consumption data with other data or databases without requiring the trader's prior agreement, provided—
- (a) the distributor documents, in a *Data Combination Schedule*, the combination, the reasons for the combination, and which of the following permitted purposes (or agreed other purposes) the combination corresponds to:
 - (i) developing distribution prices
 - (ii) planning and management of the distributor's network in order to provide distribution services to traders under the distributor's distributor agreements
 - (b) the distributor gives the trader at least 5 working days' notice of the combination, unless:
 - (i) the combination is within the scope of an existing entry in the distributor's Data Combination Schedule, or
 - (ii) the distributor reasonably considers it needs to use the combination urgently to respond to an event that poses a risk to electricity supply, the distributor's network, the distributor's normal business operations, and/or to human health and safety, in which case the distributor must advise the trader within 10 working days after making the combination.
- 5.7. The Authority proposes to also amend Appendix C of Schedule 12A.1 of the Code:
- (a) to enable the trader responsible for an ICP to, by way of signing a consumption data provision contract with a distributor—
 - (i) agree to the distributor obtaining historical consumption data directly from the trader's MEP(s)
 - (ii) authorise the distributor to procure the trader's MEP(s) to provide the historical consumption data to the distributor, instead of the trader procuring the MEP to provide the data
 - (b) to reduce to one month the default maximum time interval for the provision of consumption data to distributors
 - (c) to make some minor incidental amendments to the data template to improve its clarity and workability.
- 5.8. The drafting of the proposed amendments set out above is contained in Appendix A of this consultation paper.

Evaluation of the proposed Code amendment against the status quo

- 5.9. Compared with the status quo, the proposed Code amendment, if made, is expected to promote the efficient operation of the electricity industry, promote competition, promote the reliable supply of electricity, and help protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers.

Promoting the efficient operation of the electricity industry

- 5.10. The proposed Code amendment, if made, is expected to promote the efficient operation of the electricity industry by:
- (a) reducing transaction costs incurred by traders and distributors—primarily in relation to:
 - (i) negotiating distributor agreements and providing these to the Authority
 - (ii) negotiating agreements for the provision of consumption data
 - (b) allocating costs and risks to the party best placed to manage them – in particular, to manage them in the most cost-effective manner
 - (c) reducing barriers to distributors accessing, exchanging, and using consumption data—
 - (i) to develop distribution prices
 - (ii) to develop better insights into their low-voltage networks, and to plan and manage their networks in order to provide distribution services.

Promoting competition in the electricity industry

- 5.11. The proposed Code amendment, if made, is expected to promote competition in the electricity industry by:
- (a) promoting more equal bargaining positions between distributors and traders in relation to DDA terms that currently have the status of recorded terms
 - (b) reducing the costs faced by traders competing, or wanting to compete, on distributors' networks.

Promoting the reliable supply of electricity

- 5.12. The proposed Code amendment, if made, is expected to promote the reliable supply of electricity by reducing barriers to distributors accessing, exchanging, and using consumption data to develop better insights into their low-voltage networks, and to plan and manage their networks in order to provide distribution services.

Protecting the interests of domestic consumers and small business consumers

- 5.13. Under section 15(3) of the Act, the Authority's additional objective applies only in relation to the dealings of industry participants with domestic consumers and small business consumers. Nevertheless, the Authority considers the proposed Code amendment, if made, would likely help protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. It would do this by, in particular, strengthening the incentive on distributors to:
- (a) manage the quality and reliability of consumers' electricity supply
 - (b) act in a manner that minimises the disruption to consumers from power outages.
- 5.14. As noted in Appendix B (paragraphs B.4 to B.11), some distributor agreements have weakened this incentive by changing the DDA template's drafting suggestion for the recorded term.

Assessment of the proposed Code amendment's benefits and costs

- 5.15. The Authority has assessed the economic benefits and costs of the proposed Code amendment and expects it to deliver a net economic benefit if made.
- 5.16. Table 1 summarises the expected economic benefits and costs of the proposed Code amendment that we have quantified. In summary, the present value of the proposed amendment's estimated net quantifiable benefit over 15 years ranges from approximately \$195,000, under a high implementation cost / low benefit scenario, to \$440,000, under a low implementation cost / high benefit scenario.³⁵

Table 1: Summary of the Code amendment's benefits and costs

Benefit / Cost	Present value amount
The ongoing incremental benefit from traders and distributors expending less effort negotiating distributor agreements	\$50,000 Range: \$45,000 – \$55,000
The incremental benefit from traders and distributors periodically providing distributor agreements to the Authority upon request rather than upon the agreement coming into force	\$2,500 Range: \$1,500 – \$3,500
The one-off incremental benefit from traders and distributors expending less effort negotiating agreements for the provision of consumption data	\$300,000 Range: \$200,000 – \$400,000
The ongoing incremental benefit from traders and distributors expending less effort negotiating agreements for the provision of consumption data	\$65,000 Range: \$60,000 – \$70,000
Incremental dynamic efficiency benefits from more vigorous competition amongst electricity retailers	Not quantified, but expected to be material
The incremental cost associated with distributors updating their respective DDAs	\$4,000 Range: \$3,000 – \$5,000
The incremental cost associated with distributors and traders entering into updated distributor agreements	\$90,000 Range: \$80,000 – \$100,000
The incremental cost associated with distributors and traders updating and/or creating new procedures	\$6,000 Range: \$5,000 – \$7,000
Quantified estimated net benefit	\$195,000 to \$440,000

- Notes:
1. Upper end of range uses 4% discount rate, with dollar value rounded to the nearest \$5,000 for amounts over \$50,000.
Lower end of range uses 8% discount rate, with dollar value rounded to the nearest \$5,000 for amounts over \$50,000.

³⁵ At a 6% discount rate.

- 5.17. The Authority anticipates the proposed Code amendment, if made, would lead primarily to productive and dynamic efficiency gains.
- (a) *Productive efficiency* is achieved when products and services desired by consumers are produced at minimum cost to the economy
 - (b) *Dynamic efficiency* is achieved by firms having appropriate incentives to innovate and invest in new products and services over time, thereby increasing their productivity and lowering the relative cost of products and services over time.

Productive efficiency benefits

- 5.18. The Authority has sought to estimate some of the productive efficiency benefits that would result from the proposed Code amendment. Due to information constraints, we have focused on the estimated reduction in transaction costs incurred by traders and distributors—
- (a) negotiating distributor agreements and providing these to the Authority
 - (b) negotiating agreements for the provision of consumption data.
- 5.19. We note several other productive efficiency benefits would be expected under the proposed Code amendment.
- 5.20. First, the allocation of costs and risks to the party best placed to manage them is expected to lead to them being managed in the most cost-effective manner.
- 5.21. Second, the expected improvement in retail competition under the proposed Code amendment would also be expected to deliver a productive efficiency benefit, as traders sought operational efficiency gains.
- 5.22. Third, more distributors accessing historical consumption data is expected to improve reliability of supply. Distributors will be able to develop better insights into the low-voltage parts of their networks, and to better plan and manage their networks in order to provide distribution services.

Negotiating distributor agreements

- 5.23. In its decision to implement the 2020 DDA Code amendment, the Authority estimated that introducing the DDA template would reduce the average cost of each distributor agreement negotiation by \$2,971. This represented a reduction of 17% of the estimated average total cost for each distributor agreement negotiation.³⁶ These savings were estimated from a self-reporting survey sent to distributors and retailers in 2018.³⁷ In today's dollars, this average cost saving would be approximately \$4,000.³⁸
- 5.24. The Authority considers that removing the recorded terms from DDAs would reduce the average cost of negotiating distributor agreements in the future. Primarily this is because traders would not expend as much effort trying to negotiate changes to recorded terms in a distributor's DDA that:

³⁶ \$17,938 was the estimated total cost of negotiating all terms of the use-of-system agreement: including contentious topics such as prudential requirements and access to data. See the Authority's 20 August 2019 consultation paper *Code amendment proposal: Default Distributor Agreement*, p. 31.

³⁷ The Authority asked distributors and retailers how much increase or decrease in entry costs a DDA template would make. These costs could include time, effort, or the sort of people used during negotiations – eg, internal versus external lawyers. After omitting two distributor cost increase estimates of \$100,000 and two retailer cost decrease estimates of \$200,000 and \$500,000 respectively, the results were:

- (a) for 10 distributors, an average predicted cost increase of \$1,900 per agreement,
- (b) for eight distributors, an average predicted cost decrease of \$856 per agreement,
- (c) for 20 retailers, an average predicted cost decrease of \$4,015 per agreement.

³⁸ Using Statistics New Zealand's gross domestic product (GDP) deflator to measure economy-wide inflation.

- (a) allocate costs and risks to the trader which are best placed with the distributor
 - (b) create ambiguity, duplication, or inconsistency of approach.
- 5.25. The Authority estimates an average cost saving of approximately \$500 per distributor agreement. This equates to a saving of 6–7 hours of effort at an average hourly labour cost of \$75 for the trader and distributor personnel involved in the negotiation.³⁹ This estimate recognises that recorded terms comprise only a small percentage of all the terms in a DDA, albeit with some recorded terms being contentious (eg, liability).
- 5.26. In our 2019 proposed DDA Code amendment consultation paper, we estimated 30 new use-of-system agreements (UoSAs) were being formed each year.⁴⁰ For the purposes of this 2023 assessment, the Authority assumes 10 new distributor agreements would, on average, be entered into each year. This is based on the trend in trader numbers since 2019.
- 5.27. This equates to a present value benefit of approximately \$50,000, using a 6% discount rate over a 15-year discount period.

Providing distributor agreements to the Authority

- 5.28. The Authority estimates that, for every distributor agreement submitted to us in accordance with the Code, approximately one hour of effort is required across ourselves and the participant providing the new or amended agreement. The Authority believes the periodic bulk provision of distributor agreements should halve the amount of effort per agreement.
- 5.29. To quantify this benefit, we retain our estimate of 10 new distributor agreements being entered into each year but adjust the hourly labour cost to be \$50 for the participant and Authority personnel involved in the provision of the agreements. This gives a present value benefit of approximately \$2,500, using a 6% discount rate over a 15-year discount period. Accounting for the provision of variations to agreements may increase this figure by \$1,000–\$2,000.

Negotiating agreements for the provision of consumption data

- 5.30. As noted in section 4, distributors have advised the Authority that there are high transaction costs associated with bilateral negotiations between distributors and traders to agree data combinations. As distributors have not provided the Authority with data on how high these transaction costs are, we have assumed they are 25% of the estimated 2018 cost to negotiate a UoSA (in 2023 dollars). The 25% estimate is intended to recognise that an agreement for providing consumption data is much more limited in scope than was a UoSA, while also acknowledging that the sharing of data is a contentious topic. In today's dollars, 25% of \$17,938 is a little over \$5,000.⁴¹
- 5.31. For the purposes of this assessment, the Authority has assumed the proposed Code amendment would deliver the same percentage saving in negotiation costs as the DDA Code amendment. This means a negotiation cost saving of approximately \$1,250 per consumption data agreement. The Authority considers this a reasonable estimate, given that traders have advised they must undertake a legal review every time the ENA / ERANZ variation to the data template is used, to check no further amendments to the data template have been made.
- 5.32. Several consumption data agreements now in place for the exchange of consumption data permit distributors to merge the data with other datasets. However, many more such

³⁹ Equating to an annual labour cost of \$150,000, and 250 working days in a calendar year

⁴⁰ See the Authority's 20 August 2019 consultation paper *Code amendment proposal: Default Distributor Agreement*, p. 30.

⁴¹ \$17,938 in 2018 dollars is approximately \$20,500 in 2023 dollars, using Statistics New Zealand's GDP deflator to measure economy-wide inflation.

agreements would be needed if all distributors wish to do this in respect of consumption data obtained from all of the traders on their networks. There are 29 distributors⁴² and between 9 and 24 parent companies of traders operating on distribution networks, with an average number of 14.75 parent companies of traders per distribution network.⁴³

- 5.33. If all 29 distributors were to enter into a consumption data agreement with the parent companies of all traders on the distributors' networks, 428 agreements would need to be agreed. Under the assumed approximate cost saving of \$1,250 per agreement, the proposed Code amendment would deliver a benefit of over \$500,000. To be conservative, the Authority is assuming for the purposes of this assessment a benefit of \$300,000. This equates to 22 distributors entering into consumption data agreements with an average of 11 parent companies of traders operating on the distributors' networks.
- 5.34. This is a one-off cost saving. The Authority expects some ongoing cost savings from new traders entering distributors' networks over time. As noted above, for the purposes of this 2023 assessment, the Authority is assuming 10 new distributor agreements would be entered into each year on average over the coming years. We then adopt a conservative approach whereby the relationship between the number of distributor agreements and the number of consumption data agreements is less than 1:1. For every 10 new distributor agreements, we assume there would be 7 new consumption data agreements. This equates to a present value benefit of approximately \$65,000, using a 10-year discount period.⁴⁴

Dynamic efficiency benefits

- 5.35. First, improved retail competition from changing the status of recorded terms would encourage retailers to develop more innovative products and services for consumers.⁴⁵ As noted above, this improved retail competition is expected to result from more equal bargaining positions between distributors and traders, and a fall in the costs faced by traders competing, or wanting to compete, on distributors' networks. Such costs include lower transaction costs for traders competing for customers to enter and operate on distribution networks, and the reallocation of risks currently placed on traders but which are more appropriately managed by distributors.
- 5.36. Second, more distributors accessing historical consumption data to develop distribution prices will promote more efficient investment in, and use of, distribution networks and DER. Access to consumption data can help distributors identify actual or potential areas of congestion on the low-voltage parts of their networks. Distributors can then signal congestion or likely future congestion via their distribution prices. This is particularly important given the coming electrification of New Zealand's vehicle fleet and process heat, as part of the country's planned reduction in greenhouse gas emissions.

⁴² Based on the number of electricity distribution businesses regulated by the Commerce Commission under Part 4 of the Commerce Act.

⁴³ See the *Market share snapshot* on the Authority's EMI website (https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?si=v|3).

⁴⁴ The Authority believes a 10-year discount period is more appropriate than a 15-year discount period in respect of this benefit because of the possibility that the solution delivered by this proposed Code amendment may be superseded within that time due to significant innovation in the retail electricity market over the next decade / other Authority workstreams. This innovation would materially affect the assessed benefit.

⁴⁵ These products and services are also likely to be more cost reflective, thereby promoting allocative efficiency. Allocative efficiency is achieved when the marginal value consumers place on a product or service equals the cost of producing that product or service, so that the total of individuals' welfare in the economy is maximised.

5.37. Measuring dynamic efficiency benefits is challenging. The Authority has not identified a robust approach for quantifying these potential benefits. However, we believe they would be material for at least a couple of key reasons.

The costs of the proposed Code amendment

5.38. The Authority considers the proposed Code amendment's main cost would be the updating of distributors' DDAs and the signing of updated distributor agreements.

5.39. There may also be a minor cost associated with:

- (a) distributors and traders updating any procedures they have relating to the provision of distributor agreements to the Authority
- (b) distributors putting in place procedures for the Code obligation to advise the Authority if they enter into, or vary, any alternative agreements.

Negotiating agreements for the provision of consumption data

5.40. Based on our experience, the Authority estimates the updating and publication of each DDA should take no more than two hours of effort. We believe the updating and signing of each distributor agreement should take three hours of effort, since our review of distributor agreements has shown these align with the relevant distributor's DDA.

5.41. On the basis there are 27 DDAs to update and 397 distributor agreements⁴⁶ to update and sign, the Authority estimates the following costs, using an hourly labour cost of \$75 for the trader and distributor personnel involved in the work:

- (a) \$4,000 to update 27 DDAs
- (b) \$90,000 to update and sign 397 distributor agreements.

Updating internal procedures

5.42. Based on our experience, the Authority estimates it should take no more than one hour for a distributor and a trader to:

- (a) in the case of distributors and traders, update their respective internal procedures relating to the provision of distributor agreements to the Authority
- (b) in the case of distributors, put in place procedures for the Code obligation to advise the Authority if they enter into, or vary, any alternative agreements.

5.43. On the basis there are 27 sets of distributor procedures to update and 25 sets of trader procedures to update, the Authority estimates the following costs, using an hourly labour cost of \$75 for the trader and distributor personnel involved in the work:

- (a) \$4,000 to update distributor and trader procedures relating to the provision of distributor agreements to the Authority
- (b) \$2,000 to create new distributor procedures for advising the Authority of alternative agreements.

Q6. Do you agree the benefits of the proposed Code amendment outweigh its costs?

The Authority has considered other options to achieve the objective

5.44. The Authority has considered whether other options would achieve the objective of the proposed Code amendment.

5.45. We have not identified any alternatives to the proposed Code amendment that would achieve the objective in its entirety. Specifically, we have not identified any alternatives

⁴⁶ This number excludes The Lines Company and MainPower, which have respectively 15 and 16 parent companies of traders on their distribution networks.

that achieve the objective in relation to the first two issues we are proposing to address with the proposed Code amendment (the status of recorded terms and the provision of distributor agreements to the Authority). However, we have identified two options that would achieve part of the objective—addressing all or part of the data template issue.

The proposed Code amendment is preferred to these options

5.46. The Authority has evaluated the two alternative options as set out below and prefers the proposed Code amendment.

Distributors get consumption data from MEPs without trader permission

5.47. The Authority has considered whether permitting distributors to contract with MEPs to receive consumption data for ICPs on their networks for permitted purposes, without trader permission, would achieve the part of the objective relating to the data template.

5.48. The Authority has evaluated this alternative option to address the objective of this proposed Code amendment and prefers the proposed Code amendment.

5.49. The option would not be as simple, quick, and low cost to implement as the proposed Code amendment. The option would need further consideration of matters such as:

- (a) ensuring appropriate privacy protections were in place, given that traders are responsible under the Privacy Act 2020 for any personal information, in the form of consumption data, that MEPs have contracted to collect and provide to the trader⁴⁷
- (b) existing contractual arrangements between traders and MEPs
- (c) the ability of traders and other participants (eg, flexibility traders) to dispute whether a distributor's use of consumption data constitutes a permitted purpose.

5.50. Considering and resolving these and other matters that may arise is likely to take a material amount of time (perhaps at least one year – possibly longer). This would delay realising a benefit from addressing the issues with the data template described in part 4 of this paper.

5.51. The Authority believes it would be desirable to instead consider this alternative option when the Authority considers how distributors and flexibility traders can more easily get ICP data, which is broader than consumption data, directly from MEPs.

A centralised metering data repository

5.52. The Authority has also considered whether establishing a centralised metering data repository that holds all electricity consumption data is an alternative that would address part of the objective. Under this alternative option, MEPs and traders (as applicable) would have to submit metering data to the repository. Distributors could then access consumption data for ICPs on their respective networks as and when they needed to.

5.53. This option would address the issues related to from whom, and how often, distributors receive consumption data. It would not address the issue associated with distributors wanting to merge consumption data with other datasets for the purpose of providing distribution services or developing distribution prices.

⁴⁷ Consumption data may be personal information as that term is defined in the Privacy Act 2020. A trader who is a retailer is the regulated 'agency' for the purposes of the Privacy Act in relation to the personal information that the trader has contracted the MEP to collect and provide to the trader. Therefore, the trader needs to understand what the distributor is using the consumption data for, and ensure that the trader has complied with Information Privacy Principle 3.⁴⁷ Under this privacy principle, the trader must make its customer aware of how the customer's personal information will be used, including on what basis it will be disclosed to third parties such as distributors.

- 5.54. The Authority has evaluated this option and concluded that we prefer the proposed Code amendment. This is because of two main drawbacks with the option relative to the proposed Code amendment.
- 5.55. First, the benefit from distributors having improved access to consumption data would take much longer to realise than the proposed Code amendment. It would perhaps take two to three years to put in place service provider arrangements and design, build and commission the metering data repository.
- 5.56. Second, the metering data repository would have a much higher establishment cost, which would exceed the benefit from addressing the issues related to from whom, and how often, distributors receive consumption data. The metering data repository would need to deliver efficiencies in the provision of other electricity market services in order to deliver a net benefit.

Q7. Do you agree the proposed Code amendment is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objectives in section 15 of the Act.

The proposed Code amendment complies with section 32 of the Act

- 5.57. The Authority's main objective under section 15 of the Act is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.
- 5.58. The additional objective of the Authority is to protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers. The additional objective applies only to the Authority's activities in relation to the dealings of industry participants with domestic consumers and small business consumers.
- 5.59. Section 32(1) of the Act says the Code may contain any provisions that are consistent with the Authority's objectives and are necessary or desirable to promote any or all of the following:
- (a) competition in the electricity industry
 - (b) the reliable supply of electricity to consumers
 - (c) the efficient operation of the electricity industry
 - (d) the protection of the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers
 - (e) the performance by the Authority of its functions
 - (f) any other matters specifically referred to in the Act as a matter for inclusion in the Code.
- 5.60. Table 1 contains an assessment of the proposed Code amendment against the requirements of section 32(1) of the Act.

Table 2: How proposal complies with section 32(1) of the Act

Section 32(1) requirement	Assessment
(a) competition in the electricity industry	The proposed Code amendment is expected to promote competition in the electricity industry by: (a) promoting more equal bargaining positions between distributors and traders in relation to DDA terms that currently have the status of recorded terms

	(b) reducing the costs faced by traders competing, or wanting to compete, on distributors' networks.
(b) the reliable supply of electricity to consumers;	The proposed Code amendment is expected to promote the reliable supply of electricity to consumers by reducing barriers to distributors accessing, exchanging, and using consumption data to develop better insights into their low-voltage networks, and to plan and manage their networks in order to provide distribution services.
(c) the efficient operation of the electricity industry;	<p>The proposed Code amendment is expected to promote the efficient operation of the electricity industry by:</p> <ul style="list-style-type: none"> (a) reducing transaction costs incurred by traders and distributors—primarily in relation to: <ul style="list-style-type: none"> (i) negotiating distributor agreements and providing these to the Authority (ii) negotiating agreements for the provision of consumption data (b) allocating costs and risks to the party best placed to manage them – in particular, to manage them in the most cost-effective manner (c) reducing barriers to distributors accessing, exchanging, and using consumption data— <ul style="list-style-type: none"> (i) to develop distribution prices (ii) to develop better insights into their low-voltage networks, and to plan and manage their networks in order to provide distribution services.
(d) the protection of the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers	<p>The proposed Code amendment is expected to help protect the interests of domestic consumers and small business consumers in relation to the supply of electricity to those consumers by, in particular, strengthening the incentive on distributors to:</p> <ul style="list-style-type: none"> (a) manage the quality and reliability of consumers' electricity supply (b) act in a manner that minimises the disruption to consumers from power outages.
(e) the performance by the Authority of its functions;	The proposed amendment would not materially affect the performance of the Authority.
(f) any other matter specifically referred to in the Act as a matter for inclusion in the Code.	The proposed amendment would not materially affect any other matter specifically referred to in the Act for inclusion in the Code.

- 5.61. In relation to the content of the DDA template, section 44A of the Act provides that the Code may prescribe default terms and conditions that are deemed to be included in distribution agreements, including terms and conditions that relate to quality or information requirements. This reflects section 32(4) of the Act, which makes clear the Code may contain provisions that:
- (a) set quality or information requirements for distributors, in relation to access to distribution networks
 - (b) set pricing methodologies for distributors.
- 5.62. The Authority considers the proposed Code amendment implements these provisions of the Act, including in the DDA template default terms and conditions, including as to quality and information requirements.

Q8. Do you agree the proposed Code amendment complies with section 32 of the Act?

The Authority has given regard to the Code amendment principles

- 5.63. When considering amendments to the Code, the Authority is required by its consultation charter to have regard to Code amendment principles, to the extent the Authority considers them applicable. Table 3 describes the Authority's regard to the Code amendment principles in preparing the proposed Code amendment in this paper.
- 5.64. Table 3 addresses Principles 1 – 3. Since the Authority's assessment of costs and benefits shows a positive net benefit relative to the status quo, we have not needed to have regard to Principles 4 – 9.

Table 3: Regard for Code amendment principles

Principle	Comment
1. Lawful	The proposed Code amendment is lawful, and is consistent with the Authority's statutory objectives and with the empowering provisions of the Act (see paragraphs 5.57 to 5.62).
2. Provides clearly identified efficiency gains or addresses market or regulatory failure	The expected efficiency gains of the proposed Code amendment are set out in the evaluation of the costs and benefits (see paragraphs 5.17 to 5.37).
3. Net benefits are quantified	The extent to which the Authority has been able to estimate the efficiency gains of the proposed Code amendment is set out in the evaluation of the costs and benefits (see paragraphs 5.15 to 5.43).

Appendix A Proposed Code amendment

A.1. See:

- (a) the attached document containing proposed amendments to:
 - (i) Part 1, Preliminary provisions
 - (ii) Schedule 12A.1, Requirements for entering into distributor agreements
 - (iii) Schedule 12A.4, Requirements for developing, making available, and amending default distributor agreements
 - (iv) Schedule 12A.4, Appendix A, Default distributor agreement for distributors and traders on local networks (interposed)
- (b) the attached document containing proposed amendments to Schedule 12A.1, Appendix C, Default agreement – Provision of consumption data.

A.2 In the document referred to in paragraph A.1(a), the Authority has highlighted, in yellow, proposed changes to the DDA template that reflect changes to recorded terms in distributor agreements which have, in the Authority's view, improved the extent to which the recorded term is aligned with the Authority's statutory objectives (see paragraphs 2.33 to 2.36 and Appendix C).

Q9. Do you have any comments on the drafting of the proposed Code amendment?

Appendix B Assessment of recorded term changes that are not aligned with the Authority's statutory objectives

- B.1. A number of distributor agreements contain changes to the recorded term drafting suggestions in the DDA template that, in the Authority's view, worsen the extent to which the recorded term is aligned with the Authority's statutory objectives. As noted in part 2 of this paper, these changes are a key part of the reason why the Authority considers the inclusion of recorded terms in the DDA template is a problem that needs to be addressed.
- B.2. This appendix contains the Authority's assessment of these changes. Changes have been grouped as follows:
- (a) do not allocate costs and risks to the party best placed to manage them
 - (b) create ambiguity, duplication, or inconsistency of approach
 - (c) are unnecessary.

Changes to recorded terms that do not allocate costs and risks to the party best placed to manage them

- B.3. The Authority has identified several recorded terms in distributor agreements that have the effect of not allocating costs and risks to the party best placed to manage them.

Clause 4.8

- B.4. In some distributor agreements the DDA template's drafting suggestion for clause 4.8 has been amended to remove any liability from the distributor if the distributor fails to meet its obligations under clause 4.8.
- B.5. As the party responsible for any planned outages on its network, a distributor is best placed to minimise the outage's disruption to consumers. Therefore, there should not be a blanket exclusion on a distributor's liability under clause 4.8. The reasonableness test in the drafting suggestion in the DDA template provides a distributor with appropriate protection from liability under the distributor agreement, arising from the scheduling of a planned outage.

Clauses 4.11 and 4.12

- B.6. In some distributor agreements the DDA template's drafting suggestion for clause 4.11 and clause 4.12 has been amended to remove any liability from the distributor if the distributor fails to meet its obligations under clause 4.11.
- B.7. As the party responsible for the restoration of distribution services on its network following a planned or unplanned service interruption, a distributor is best placed to manage the risk of the interruption extending beyond the original timeframe. Therefore, there should not be a blanket exclusion on a distributor's liability under clause 4.11. The drafting suggestion in the DDA template provides a distributor with appropriate protection from liability under the distributor agreement, arising from the restoration of distribution services, by:
- (a) placing a qualified obligation on the distributor—the use of the words “must *endeavour* (emphasis added)...to restore the Distribution Services”

- (b) by applying a 'good electricity industry practice' (GEIP) threshold
 - (c) by applying a reasonableness test in relation to the restoration of the services as soon as practicable.
- B.8. In respect of *planned* service interruptions, the distributor is the party that determines the timeframe in the notice for the planned service interruptions sent to the customer.
- B.9. In respect of *unplanned* service interruptions, the distributor can manage its risk when completing the service levels in Schedule 1 of the distributor agreement.

Clause 14.2

- B.10. In some distributor agreements the DDA template's drafting suggestion for clause 14.2 has been amended to provide that a distributor's failure to comply with clause 14.2 is not a breach of the agreement and the trader has no remedy in respect of such failure.
- B.11. As the party responsible for the provision of distribution services on its network, the distributor is the appropriate party to investigate any power quality (ie, frequency or voltage), reliability or safety issues related to a customer's supply. It is not in the interests of consumers on a distributor's network for the distributor to lessen its incentive to investigate their concerns, by removing any liability and remedy associated with not undertaking an investigation.

Clause 24.5

- B.12. In some distributor agreements the DDA template's drafting suggestion for clause 24.5 has been amended so that, except as set out in the service standards, the distributor is not liable for any failure that arises:
- (a) in relation to the failure of the distributor's network (or any part of it), or
 - (b) due to the voltage, frequency or harmonics of the electricity supplied.
- B.13. As the party responsible for the provision of distribution services on its network, the distributor is the appropriate party to manage:
- (a) the risk of its network failing
 - (b) the voltage and harmonics of the electricity supplied, since unlike frequency these are best managed at a distribution level.
- B.14. Therefore, there should not be a blanket exclusion on a distributor's liability under clause 24.5. The drafting suggestion in the DDA template provides for the distributor to not be liable for a failure to convey electricity to the extent that the failure arises from any act or omission of the system operator, a generator, or a grid owner. And as noted in paragraphs B.46 to B.49, the force majeure provisions in the DDA template also provide for the distributor to not be liable for a failure to convey electricity due to a force majeure event.

Clause 33.2—Definition of 'Default interest rate'

- B.15. Some distributor agreements have amended the DDA template's drafting suggestion for the definition of 'Default Interest Rate', to say the default interest rate must not be less than 5% per annum.
- B.16. The Authority notes this is inconsistent with the Benchmark Agreement, which forms the basis for the transmission agreement that distributors with a DDA enter into with

Transpower, as transmission network owner. The Benchmark Agreement uses a default interest rate of 5% plus the prevailing BKBM benchmark interest rate.⁴⁸

- B.17. While the default interest rate is intended to be an incentive for invoices to be paid on time, it is also intended to be related to the invoicing party's opportunity cost of capital. Otherwise the invoicing party is effectively shifting cost onto the party being invoiced. Placing a floor on the default interest rate means this second criterion would not be met should the interest rate, as defined in the default DDA, ever turn negative.

Clause 33.2—Definition of 'Use of money adjustment'

- B.18. Some distributor agreements have amended the DDA template's drafting suggestion for the definition of 'Use of money adjustment', to say the adjustment is 0% / zero / nil.
- B.19. The Authority notes this is inconsistent with the interposed model use-of-system agreement template that pre-dated the DDA template for many years.⁴⁹
- B.20. A use of money adjustment of 0% means that under a distributor agreement the BKBM rate is the interest rate to be paid on money owed beyond its due date for payment. This means the party with use of the other party's money beyond the due date is, in effect, borrowing the money at a lower interest rate than what the party would pay if it was borrowing from a trading bank.
- B.21. The BKBM rate is the rate at which New Zealand's five largest trading banks⁵⁰ are willing to borrow from, or lend to, one another for a term of one to six months.⁵¹ This rate is lower than the borrowing rate a party to a distributor agreement would be expected to have access to, due to the creditworthiness of the five trading banks being higher than that of the party.
- B.22. Hence, a positive non-zero use of money adjustment is necessary to avoid an incentive on the parties to a distributor agreement to shift costs onto each other by treating each other as a bank.

Schedule 1: Service standards—Applicability to traders

- B.23. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to say that a trader is subject to the service standards in Schedule 1.
- B.24. These service standards relate to the provision of distribution services. Therefore, only the distributor should be subject to them.

Changes to recorded terms that create ambiguity or inconsistency of approach

- B.25. The Authority has identified several recorded terms in distributor agreements that have the effect of creating ambiguity or inconsistency of approach.

⁴⁸ See clause 1.4 of Schedule 4 of the Benchmark Agreement. The Benchmark Agreement is incorporated by reference in the Code under clause 12.34 of the Code.

⁴⁹ See, for example:

- clause 31.2 of the *Model Use-of-System Agreement (Interposed), Final Draft – September 2012*
- clause 34.2 of the *Model Use of System Agreement – Interposed, 23 September 2003*.

⁵⁰ ANZ Bank New Zealand Ltd, ASB Bank Ltd, Bank of New Zealand, Kiwibank Ltd, Westpac New Zealand Ltd. (See New Zealand Financial Benchmark Facility Limited, October 2022, *Bank Bill Benchmark Rate (BKBM) & BKBM Trading Window – Operating Rules and Principles*, p. 11.)

⁵¹ New Zealand Financial Benchmark Facility Limited, October 2022, *Bank Bill Benchmark Rate (BKBM) & BKBM Trading Window – Operating Rules and Principles*, p. 2.

Clauses 4.12 and 9.10

- B.26. In some distributor agreements the DDA template's drafting suggestion for clause 4.12 and clause 9.10 has been amended to remove any remedy for the trader if:
- (a) the distributor fails to meet the outage timeframes in clause 4.11 and Schedule 1 of the distributor agreement has no service guarantee payment
 - (b) if there is a continuous interruption affecting a customer's point of connection for 24 hours or longer.
- B.27. The first amendment creates ambiguity because the language is open to conflicting interpretations. Specifically, the words "then the Trader shall have no remedy in respect of such failure" appear to conflict with the words "Except as provided in clause 9.10".
- B.28. The Authority notes the second amendment is inconsistent with the interposed model use-of-system agreement template that pre-dated the DDA template for many years.⁵²
- B.29. The second amendment is also inconsistent with the Benchmark Agreement, which as noted earlier, is the default transmission agreement between Transpower and its transmission customers, including distributors with a DDA. Under the Benchmark Agreement, transmission charges are suspended for the hours of any continuous interruption affecting all of a transmission customer's points of service within the same connection location and lasting 24 hours or longer. This suspension of charges applies regardless of the cause of the interruption, including instances when the interruption was caused by a force majeure event.⁵³
- B.30. Generally speaking, it is not for the long-term benefit of a consumer to pay for a service they do not receive, particularly if they do not receive the service for a material amount of time. The choice should reside with the consumer (either directly or via the trader as their agent) to decide whether they want to pay a distributor for distribution services they have not received. A threshold period of 24 hours, which aligns with the period of a distributor's daily charge, is a reasonable minimum timeframe before a refund must be offered. This reflects that any unnecessary payment for distribution services may be small for individual consumers – particularly residential consumers.

Clause 7.3

- B.31. In some distributor agreements the DDA template's drafting suggestion for clause 7.3 has been amended to say that a distributor may, without the trader's agreement, change its distribution prices⁵⁴ more than once in any 12-month period in circumstances beyond the reasonable control of the distributor, such as a natural disaster, strike, lockout, other industrial disturbance, act of public enemy, war, terrorism, blockades, insurrection, riot, epidemic, pandemic, aircraft or civil disturbance, or the partial or entire failure of supply or availability of electricity to the distributor's network.
- B.32. The Authority considers this clarification to be inconsistent with the policy intent of the DDA template, which is that a distributor may, without the trader's agreement, change its

⁵² See, for example:

- clause 11.10 of the Model Use-of-System Agreement (Interposed), Final Draft – September 2012
- clause 23.5 of the Model Use of System Agreement – Interposed (December 2005).

⁵³ See clause 41.4 of the Benchmark Agreement.

⁵⁴ In the DDA template, 'price' means a fixed or variable rate within a price category that determines the distribution services charges that apply to an ICP.

(schedule of) distribution prices more than once in any 12-month period only if the change is due to a material increase to one or more existing prices and results from:

- (a) a change in a pass-through cost or a recoverable cost specified in a Commerce Commission input methodology determination relating to the distributor's services
- (b) the distributor providing new distribution services or materially changing existing distribution services, provided the price change applies only to ICPs affected by the new or changed distribution services, or
- (c) a change in the law.

B.33. The purpose of the policy in paragraph B.32 is to provide consumers with greater price certainty, and traders and distributors with lower transaction costs, than the change described in paragraph B.31. The policy intent in paragraph B.32 also reflects the practicalities associated with changing distribution prices — typically, the process takes months rather than weeks.

Clause 9.5

B.34. In some distributor agreements the DDA template's drafting suggestion for clause 9.5 has been amended to say a trader may issue a tax invoice or credit note for service guarantee payments that have accrued during the preceding three months.

B.35. This change creates ambiguity, as it is not entirely clear whether the three months is intended to limit the trader's right to service guarantee payments, or to permit the trader to invoice for up to three months at once. The Authority sees no reason why the invoicing obligations under clause 9.5 should differ between the distributor and the trader.

Unnecessary changes to recorded terms

B.36. The Authority has identified several recorded terms in distributor agreements that are unnecessary.

Clauses 5.7 and 5.8

B.37. In some distributor agreements the DDA template's drafting suggestion for clause 5.7 and clause 5.8 has been amended to note that the clauses apply until such time as the Code expressly provides for the maintenance of load control equipment and load signalling equipment.

B.38. These amendments are unnecessary because any future Code amendment would address the matter raised in the insertion.

Clause 7.3

B.39. In some distributor agreements the DDA template's drafting suggestion for clause 7.3 has been amended to make clarifications. These include:

- (a) that regulations and the Code are law
- (b) that a distributor may change its prices more than once in any 12-month period as a result of a direction of the Authority or Commerce Commission.

B.40. The Authority considers the first change places an unnecessary emphasis on regulations and the Code. The second change is, strictly speaking, incorrect. Neither the Authority nor the Commerce Commission have the power to "direct" that a change to distribution prices must occur. The Authority can change the Code in accordance with relevant provisions of the Act, which might result in price change, while the Commerce

Commission can make determinations under Part 4 of the Commerce Act, which might result in a change to distribution prices.

Clause 9.5

- B.41. In some distributor agreements the DDA template's drafting suggestion for clause 9.5 has been amended to say:
- (c) a distributor may issue a tax invoice or credit note to a trader for any sums due under the distributor agreement
 - (d) without limiting (a), the distributor may issue a tax invoice or credit note to a trader for other charges or credits set out in the pricing schedule and policy in Schedule 7 of the distributor agreement in the manner advised by the distributor from time to time.
- B.42. The insertion of the distributor right under (b) introduces unnecessary duplication into clause 9.5.

Clause 14.1

- B.43. In some distributor agreements the DDA template's drafting suggestion for clause 14.1 has been amended to say that a trader must include in each of its customer agreements an acknowledgement and agreement by the customer that the customer must take its own steps to protect any sensitive equipment from power surges, sags or spikes.
- B.44. The Authority is not convinced this change is beneficial. The DDA template's drafting suggestion for clause 14.1 requires a trader to advise each of its customers of the steps the customer should take to protect their sensitive equipment from surges or spikes, or inform the customer of where to find information about the steps the customer should take. This wording gives a trader the flexibility to advise customers using a means the trader considers is most likely to be "heard and understood" by the customer. A clause in the trader's customer agreement may not be the best means of achieving this outcome.
- B.45. If the intention of the above amendment to clause 14.1 in some distributor agreements is to limit the distributor's liability, then this is addressed in the liability provisions of the DDA template.⁵⁵

Clause 24.5

- B.46. In a significant number of distributor agreements the DDA template's drafting suggestion for clause 24.5 has been amended so the distributor is not liable for any failure that:
- (a) originates within an embedded network,⁵⁶ within Transpower's network, or within a generator connected to Transpower's network
 - (b) originates with a fault in an embedded generator or distributed generation connected to the distributor's network⁵⁷
 - (c) is due to extreme weather, a geological or seismic event, a fire originating from an external source, or flooding
 - (d) is due to a force majeure event

⁵⁵ See clause 24.5(c) of the DDA template.

⁵⁶ The Authority interprets the intention to be that the distributor has no interest in the ownership and/or operation of the embedded network.

⁵⁷ The Authority interprets the intention to be that the distributor has no interest in the ownership and/or operation of the embedded generator or distributed generation.

(e) is due to vegetation interfering with or impacting the network, other than vegetation under the distributor's control

(f) is due to animals or wildlife contacting or interfering with the network

except to the extent that the failure is caused or contributed to by the distributor not acting in accordance with the distributor agreement.

B.47. This amendment appears unnecessary because the force majeure clause in the DDA template covers largely the same matters. It says a force majeure event will not give rise to any cause of action or liability based on the default of any distributor agreement provision a party has failed to comply with or observe due to a force majeure event.⁵⁸

B.48. A force majeure event occurs if a party fails to comply with or observe any provision of a distributor agreement (other than payment of any amount due), and:

(a) such failure is caused by:

(i) any event or circumstance occasioned by, or in consequence of, any natural disaster, being an event or circumstance:

(A) due to natural causes, directly or indirectly and exclusively without human intervention

(B) that could not have reasonably been foreseen or, if foreseen, could not reasonably have been resisted

(ii) strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, aircraft or civil disturbances

(iii) the binding order or requirement of any court, any government, any local authority, the Rulings Panel, the Electricity Authority, or the system operator, which the party could not reasonably have avoided

(iv) the partial or entire failure of supply or availability of electricity to the distributor's network, or

(v) any other event or circumstance beyond the control of the party invoking this the force majeure clause, and

(b) the failure did not occur because the party invoking this clause failed to act in accordance with GEIP.⁵⁹

B.49. The Authority considers that the force majeure clause specifies the appropriate circumstances in which a party will not be liable for matters outside their control and where the party has acted in accordance with GEIP.

Schedule 1: Service standards—Changes to service standards

B.50. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to say that a distributor may withdraw, amend, or add service standards. The distributor may do this only once in any 12-month period ending on 31 March and must provide 60 working days' notice.

⁵⁸ See clause 21 of the DDA template in the Code.

⁵⁹ See clause 21.1 of the DDA template in the Code.

B.51. This amendment is unnecessary and creates ambiguity. A change to the service standards in Schedule 1 is a change to a DDA's operational terms. Such a change is covered under clauses 12 and 13 of Schedule 12A.4 of the Code.

Schedule 1: Service standards—Billing arrangements and GST status

B.52. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended:

- (a) to say the distributor must make any service guarantee payments to the trader by including a credit within the next available monthly cycle for distribution services charges, or
- (b) to say that all service guarantee amounts are exclusive of GST (if any), and that all service guarantee invoices are to clearly state the amount of GST (if any) payable.

B.53. These amendments are unnecessary and create ambiguity. Clause 9.5 of the DDA template covers the billing of service guarantee payments. The GST status of service guarantee payments is covered by clause 33.1 (Interpretation) of the DDA template.

B.54. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended:

- (a) to specify the maximum period that an ICP and/or streetlight may have its electricity supply controlled by the distributor, or
- (b) to define the distribution network's geographic areas ('town' versus 'country', or 'urban' versus 'rural' versus 'remote rural').

B.55. These amendments are unnecessary because Table 1 of Schedule 1 of the DDA template addresses both of these matters.

Appendix C Assessment of recorded term changes that align with the Authority's statutory objectives

- C.1. A number of distributor agreements contain changes to the recorded term drafting suggestions in the DDA template that the Authority considers better promote the efficient operation of the electricity industry, as compared to the drafting of the recorded terms in their current form in the Code. The changes do this by reducing transaction costs in the following ways:
- (a) simplifying and/or removing costs from processes set out in the DDA template
 - (b) simplifying and/or removing ambiguity and/or improving the understandability of the recorded term drafting suggestion in the DDA template.
- C.2. This appendix contains the Authority's assessment of these changes to explain why the Authority is proposing to include these changes in the proposed Code amendment.

Changes to recorded terms that simplify and/or remove costs from processes

- C.3. The Authority has identified two recorded terms in distributor agreements that simplify and/or remove costs from processes set out in the DDA template.

Clause 33.2—Definition of 'Interest rate'

- C.4. Most distributor agreements have amended the DDA template's suggested definition of 'Interest Rate'. The amended definition refers to the free-to-air BKBM benchmark rate information published by the New Zealand Financial Markets Association (NZFMA) instead of the BKBM information provided by Thomson Reuters.
- C.5. The amended definition avoids the need for participants to incur the cost of subscribing to the Thomson Reuters service for this information.⁶⁰

Schedule 1: Service standards—Distributors can pay customers directly

- C.6. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to provide for the distributor to make a service guarantee payment directly to a customer who has complained directly to the distributor about their ICP being affected by a breach of a service standard.
- C.7. This amendment facilitates a prompt resolution of the matter and avoids the transaction costs associated with the distributor paying the customer via the trader to whom the customer is contracted.

⁶⁰ "BKBM" was the name of the Thomson Reuters page where the bank bill interest rate benchmarks were originally published. A subsidiary of the NZFMA, the New Zealand Financial Benchmark Facility Limited (NZFBF), is the Administrator and Calculation Agent for the BKBM benchmark. NZFBF sets the methodology for calculating the BKBM benchmark, calculates the BKBM benchmark, and distributes the BKBM benchmark. See <https://www.nzfbf.co.nz/files/benchmark-documents/bkbm-operating-rules-and-principles---october-2022.pdf>.

Changes to recorded terms that simplify them / remove ambiguity / improve understandability

- C.8. The Authority has identified a relatively large number of recorded terms in distributor agreements that simplify, and/or remove ambiguity from, and/or improve the understandability of, the recorded term drafting suggestion in the DDA template.

Clause 4.8

- C.9. In some distributor agreements the DDA template's drafting suggestion for clause 4.8 has been amended to apply a GEIP threshold to the scheduling of planned network outages. This removes ambiguity in the DDA template by making clause 4.8 consistent with clause 4.11, which applies to the restoration of distribution services following a service interruption.

Clause 4.11

- C.10. In some distributor agreements the DDA template's drafting suggestion for clause 4.11 has been amended to use wording clearer in its meaning. Under the amended wording, following a service interruption the distributor must endeavour to restore distribution services "within the timeframes" set out in Schedule 1 of the distributor agreement. Currently, the drafting suggestion requires the distributor to restore distribution services "no later than the timeframes set out in Schedule 1" of the agreement.

Clause 9.5

- C.11. In some distributor agreements the DDA template's drafting suggestion for clause 9.5 has been amended to clarify that the distributor may issue a credit note to a trader for any other sums due under the distributor agreement.

Clause 14.2

- C.12. In some distributor agreements the DDA template's drafting suggestion for clause 14.2 has been amended:

- (a) to link it with Schedule 1 of the distributor agreement
- (b) to clarify that the distributor is to advise the party who raised the concern of the results of the investigation.

- C.13. Linking clause 14.2 with Schedule 1 removes potential ambiguity from the distributor agreement and improves understandability, by making it clear that the single location of service standards and processes to investigate breaches of service standards is Schedule 1.

- C.14. Amending clause 14.2 to provide for the distributor to advise the trader of the results of an investigation in situations where the distributor has been dealing with only the trader would remove any ambiguity inherent in the existing requirement for the distributor to always advise the customer of the results of an investigation.

Clause 33.2: Definition of 'Default interest rate'

- C.15. Most distributor agreements have amended the DDA template's suggested definition of 'Default Interest Rate', to clarify that the default interest rate is a rate per annum.

Schedule 1: Service standards—Process around suspected breaches

- C.16. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to say if a customer advises the distributor of a suspected breach of the service standards, as soon as reasonably practicable the distributor must notify the trader of the suspected breach and the reasons why the customer suspects a breach.

- C.17. This amendment usefully sets out a process for *suspected* breaches of service standards notified by customers, which currently is missing from Schedule 1 of the DDA template.
- C.18. The Authority considers the process for suspected breaches of service standards could be clarified further, as follows:
- (a) If a trader raises a concern with the distributor regarding an actual or suspected breach of the service standards, the distributor must investigate and advise the trader of the results of the investigation, including confirming whether a service guarantee payment is to be made.
 - (b) If a customer raises a concern with the distributor regarding an actual or suspected breach of the service standards, the distributor must advise the trader and investigate and advise the customer and trader of the results of the investigation including confirming whether a service guarantee payment is to be made.
- C.19. This further clarification would align the process more closely with the revised process proposed for customer concerns about power quality in clause 14.2 of the DDA template. In relation to customer-initiated investigations as referred to in paragraph C.18(b), the Authority considers it appropriate for the trader to be informed of the investigation and its results because the service guarantee payment is likely to often be made via the trader.

Schedule 1: Service standards—A breach does not breach the distributor agreement

- C.20. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to clarify that a breach of a service standard does not constitute a breach of the distributor agreement and that the Service Guarantee Payment is the sole remedy.

Schedule 1: Service standards and Clause 26—Claims under the Consumer Guarantees Act

- C.21. In some distributor agreements the DDA template's drafting suggestion for Schedule 1 has been amended to set out a process to apply to the treatment of claims under the Consumer Guarantees Act 1993 for claimed breaches of service standards.
- C.22. This amendment represents a useful clarification to the DDA template. However, it should be incorporated in clause 26 of a distributor's DDA, alongside the treatment of Consumer Guarantees Act claims generally. The Authority has incorporated these changes in clause 26 of the DDA template in the proposed Code amendment.

Schedule 5: Service interruption communication requirements—Various clarifications and process improvements

- C.23. In some distributor agreements the DDA template's drafting suggestion for Schedule 5 has been amended to introduce several clarifications and process improvements the Authority considers to be consistent with its statutory objectives. These include:
- (a) that distributors and traders may agree to the distributor providing information about a service interruption other than via EIEP5B, since the Code does not mandate this electricity information exchange protocol
 - (b) that distributors can use e-mail, SMS, and smartphone applications to communicate with consumers about unplanned service interruptions
 - (c) that distributors should not have to meet a trader's costs notifying customers of a planned service interruption where such notification is because the trader failed to notify customers or because of a change to the planned service interruption at the trader's request (but not because of a request from the trader's customers)

- (d) that distributors should endeavour to provide at least 10 working days' notice of a planned service interruption
- (e) that distributors should be able to give traders and consumers less than four working days' notice of a planned service interruption if events or circumstances prevent the distributor from meeting the four day timeframe.

Appendix D Format for Submissions

Submitter	
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Questions	Comment
Q1. Do you agree Issue 1, summarised in paragraph 2.21 and described in paragraphs 2.21 to 2.32 and Appendix B,, is worthy of attention?	
Q2. Do you have any feedback on the Authority’s assessments of changes to recorded terms, as set out in Appendix B and Appendix C?	
Q3. Do you agree Issue 2 is worthy of attention?	
Q4. Do you agree Issue 3 is worthy of attention?	
Q5. Do you agree with the objective of the proposed Code amendment? If not, why not?	
Q6. Do you agree the benefits of the proposed Code amendment outweigh its costs?	
Q7. Do you agree the proposed Code amendment is preferable to other options? If you disagree, please explain your preferred option in terms consistent with the Authority’s statutory objectives in section 15 of the Act.	
Q8. Do you agree the proposed Code amendment complies with section 32 of the Act?	
Q9. Do you have any comments on the drafting of the proposed Code amendment?	

Glossary of abbreviations and terms

Authority	Electricity Authority
Act	Electricity Industry Act 2010
BKBM	bank bill market rate
Code	Electricity Industry Participation Code 2010
DDA	default distributor agreement
DER	distributed energy resources
ENA	Electricity Networks Aotearoa, formerly Electricity Networks Association
ERANZ	Electricity Retailers Association of New Zealand
GDP	gross domestic product
GEIP	good electricity industry practice
ICP	installation control point
MEP	metering equipment provider
NZFBF	New Zealand Financial Benchmark Facility
NZFMA	New Zealand Financial Markets Association
UoSA	use-of-system agreement