

Default agreement for distribution services

Consultation Paper

Submissions close: 5 pm on 4 April 2016

26 January 2016

Executive summary

A use-of-system agreement (UoSA) is a contract between an electricity distributor and an electricity retailer trading on the distributor's network that records the terms on which distribution services are provided by the distributor to the retailer.

UoSAs govern the relationship between distributors and retailers. This makes UoSAs a platform for retail competition and innovation.

The relationship between distributors and retailers is relevant to consumers because consumers are the ultimate recipients of distributors' services. This means that some obligations agreed by retailers in a UoSA, including the amount paid for the delivery of electricity, are ultimately passed on to consumers.

UoSAs influence the consumer experience in two ways:

- **Agreeing UoSAs:** The more difficult or costly it is for a retailer and distributor to negotiate and agree a UoSA, the more it costs for those parties to do business. Those costs are reflected in the costs passed on to a consumer by the consumer's retailer. The costs of agreeing a UoSA may also discourage a retailer from trading on a network. Consumers are affected if there is less retailer choice on a network.
- **The terms and conditions of a UoSA:** There are two aspects to this point. First, if a distributor does not treat retailers wanting to trade on the distributor's network even-handedly, by offering equivalent terms to retailers in similar circumstances, the retailers that have less favourable terms will potentially be put at a competitive disadvantage. Second, if a distributor imposes inefficient terms on all retailers on its network, that could restrict competition and innovation.

This paper contains a comprehensive proposal to introduce a default distributor agreement into the Code

The Electricity Authority (Authority) proposes to amend Part 12A of the Electricity Industry Participation Code 2010 (Code) by replacing Part 12A in its entirety with a new Part 12A. The proposed new Part 12A requires, among other things, that each local network distributor using interposed distribution arrangements must develop its own default distributor agreement (DDA) which prescribes default core terms to be included in each DDA, and specifies requirements for operational terms in each DDA.

This proposed Code amendment furthers the Authority's statutory objective by promoting competition in the retail electricity market and by promoting efficient operation of the electricity industry. It does this by lowering retail market entry and expansion barriers, reducing the cost of doing business, and reducing the potential for UoSAs to stifle competition and innovation in the retail market and in related markets, such as the market for demand response.

A published DDA acts as a benchmark agreement for distribution services

27 of the 29 local network distributors use interposed arrangements for contracting with retailers. Those distributors' networks supply the vast majority of electricity to consumers in New Zealand. The proposed Code amendments would require each such distributor to publish its own DDA. Each distributor's DDA would be a default agreement for distribution services on the distributor's network, in that if the distributor and retailer wishing to trade on the distributor's network do not agree on the terms of an alternative agreement within the timeframe specified in the Code, the distributor's DDA would apply as a binding contract.

A new schedule to Part 12A contains a proposed DDA template. There are a lot of similarities between the DDA template and the interposed model use-of-system agreement (MUoSA) published by the Authority in September 2012. However, the interposed MUoSA provided a starting point only. The Authority reviewed the terms of the MUoSA when developing the DDA to ensure that they were fit-for-purpose and appropriately drafted for inclusion in the Code, and made a number of changes to those terms. Those changes are summarised in this paper.

The proposed Code amendments that require each distributor to have a DDA, which are set out in subpart 1 of the amended Part 12A, do not apply to distributors that use conveyance arrangements, or other parties that provide distribution services such as distributors that are embedded network owners. The Authority proposes not to progress such amendments at this stage for reasons of simplicity and clarity. However, the Authority may re-consider this position in the future.

Distributors must develop operational terms for their DDAs that reflect their processes and policies

The DDA template has two parts:

- a) default core terms, which establish the standard terms for distribution services and must be included in each distributor's DDA
- b) requirements for operational terms included in each distributor's DDA. Operational terms are terms that reflect each distributor's business-to-business arrangements and operating policies (which tend to vary between distributors), such as assigning responsibility for customer fault calls.

The proposed new provisions in Part 12A provide that each distributor must develop operational terms that comply with the requirements specified in the DDA template. Each distributor must then consult on its operational terms with retailers trading on its network and other relevant participants, and publish on its website a DDA that incorporates the default core terms and the operational terms.

The proposed new provisions in Part 12A also provide that a participant that participated in a distributor's consultation process can appeal one or more of the distributor's operational terms to the Rulings Panel. The right of appeal to the Rulings Panel provides a strong

incentive to distributors to develop operational terms that comply with the principles specified in Part 12A. Those principles require that each distributor's operational terms must be consistent with the Authority's statutory objective in section 15 of the Act, reflect a fair and reasonable balance between the interests of the distributor and of retailers trading on the distributor's network, reflect the interests of consumers on the network, and the reasonable requirements of retailers trading on the network.

The Authority is also interested in views on an alternative to asking the Rulings Panel to resolve disputes between a retailer and distributor about a proposed operational term. In particular, the Authority notes the possibility of providing that a distributor and retailer could elect to go to mediation to resolve a dispute about an operational term a distributor wants to include in its DDA.

A distributor may update the operational terms in its published DDA at any time, but must follow the same process used when developing the initial operational terms (including that the distributor must consult on the amended terms).

The Authority expects that the upfront costs required to develop and consult on operational terms and publish a DDA should be modest because:

- a) default core terms are specified in the DDA template and must be included in each distributor's DDA, without amendment
- b) operational terms should reflect existing processes that should be addressed in current UoSAs, particularly those UoSAs that have been based on the published MUoSA
- c) example operational terms are provided in the DDA template.

Distributors and retailers can adopt the published DDA or agree to negotiate an alternative agreement

The proposed new provisions in Part 12A provide that if, after a distributor's DDA is published, a retailer wants to trade on the distributor's network, either the distributor or the retailer can require the other party to contract on the basis of the distributor's DDA, or the parties can negotiate an alternative agreement for distribution services. However, if the distributor and retailer cannot negotiate an alternative agreement within 20 business days after the distributor is given notice that the retailer wants to trade on the distributor's network, the distributor's DDA will apply as a binding contract between the parties.

The opportunity for retailers and distributors to negotiate an alternative agreement is an important feature of the proposed Code amendments, because it gives parties the ability to negotiate innovative terms in an efficient manner. This should incentivise negotiation of mutually acceptable alternative terms where such terms can provide benefits to both parties compared with the DDA terms. In addition, the fact that the published DDA will apply if the parties are unable to negotiate an alternative agreement provides both parties with a more balanced negotiating environment.

The proposed new provisions in Part 12A include transitional provisions that apply if a retailer is already trading on a distributor's network when the distributor publishes a DDA. The proposed Part 12A requires that, in that case, the distributor must offer to contract with the retailer on the terms set out in the distributor's DDA. The proposed Code amendment also provides that the parties may negotiate the terms of a distribution agreement to replace their existing agreement. In practice, this means that the parties could agree to do either of the following:

- a) import each of the terms relating to distribution services from their current UoSA into a new distribution agreement (which is termed an alternative agreement) or
- b) negotiate an alternative agreement from any starting point (eg, the current UoSA or the distributor's published DDA)

Alternatively, either the retailer or the distributor could require the distributor's DDA to apply as the agreement between them for distribution services. This could occur before or during negotiation of an alternative agreement. In addition, if the parties failed to negotiate an agreement within 2 months after the relevant Code provision comes into force, the distributor's DDA would apply as a binding contract between the parties.

The Authority considers the proposed Code amendment delivers a net benefit

The key benefits of the proposed Code amendment can be summarised as follows.

1. Negotiating and agreeing a distribution agreement will be relatively low cost for distributors and retailers compared with the cost of negotiating a UoSA in the current environment. The proposal therefore promotes the efficient operation of the electricity industry.
2. It is more costly for a distributor to develop and maintain its own default UoSA in the current environment compared with the costs to a distributor of developing a DDA. That is because currently distributors are able to set each term of their UoSAs, whereas the proposed Code amendment requires the distributor to incorporate each default core term in its DDA without amendment, and sets specific requirements as to operational terms. The proposal therefore promotes the efficient operation of the electricity industry.
3. If the Code is amended as proposed, entrant retailers seeking to trade on a local network are assured of access to the network's distribution services under a nationally standardised set of default core terms and a set of operational terms that have been tailored to accommodate the local distributor's business processes and policies. The proposal therefore promotes competition.
4. Each distributor's DDA terms are developed through a regulated process, require consultation with affected participants and are published on the distributor's website. The consultation process includes a right of appeal to the Rulings Panel. These provisions encourage equal access by retailers to each distributor's distribution

services. This lowers an entry barrier and provides a significant pro-competition benefit over the status quo, as well as an efficiency benefit.

5. The Authority considers the requirement that a retailer and a distributor that have an existing agreement enter into a new distribution agreement is likely to improve the efficient operation of the electricity industry. It provides an opportunity to replace legacy terms under which distribution services are provided with more standardised pro-competitive terms. The Authority considers this opportunity may not arise if existing UoSAs are allowed to remain in force, particularly in respect of 'evergreen' UoSAs that in some cases may have been entered into up to 15 years ago.
6. The DDA will lessen or remove the ability of distributors to impose practices through their UoSAs that inhibit competition and innovation in the retail market and in related markets, in particular the market for demand response. This will become increasingly important as evolving technologies facilitate development of new services and business models that potentially undermine the traditional distributor and retailer business models.

The Authority considers these benefits are likely to be greater than the proposal's estimated establishment cost of about \$600,000 for all local distributors to develop, consult on, and publish a DDA. The estimated reduction in transaction costs alone from implementing the proposal is approximately \$220,000 to \$3.25 million. The Authority considers there will be dynamic efficiency benefits of the proposal from enhancing retailer competition and innovation.

The Authority has considered other options

In the Authority's April 2014 consultation paper on options for more standardisation of UoSAs, the Authority outlined a range of alternative options that were considered, including the option that has formed the basis of the proposal set out in this consultation paper. In contrast to the alternative options, the Authority considers the DDA proposal achieves the optimal balance of standardisation and certainty on the one hand with flexibility and incentives to mutually agree value-adding service terms on the other.

The DDA proposal has durable precedents

Benchmark agreements underpin durable regulatory arrangements governing the formation of transmission agreements under Part 12 and connection agreements for distributed generation under Part 6.

In common with the DDA proposal, existing Code provisions regulate the formation of agreements in situations in which at least one party is a sole provider of network services.

The proposal complements current UoSA negotiation activity

The Authority acknowledges recent and current efforts by distributors and retailers to update legacy UoSAs with new UoSAs that are based on the September 2012 MUoSA.

For the reasons summarised above and in this paper, if both parties are happy with the terms of an existing UoSA, the proposed Code amendments provide that those terms can be incorporated in a new agreement between the parties.

However, if either party has concerns with one or more of the terms in an existing UoSA, the relevant terms in the published DDA can support efficient negotiation of alternative terms.

The Authority welcomes comment on the proposal

The Authority welcomes submissions on the proposal set out in this paper. In particular, the Authority seeks comment on the proposed Code amendment set out in Appendix B, including the proposed DDA template set out in Appendix C.

The Authority will consider all feedback received and, at this stage, plans to publish a further consultation paper in 2016 setting out finalised proposals for the DDA.

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Code	Electricity Industry Participation Code 2010
DDA	Default distributor agreement
GXP	Grid exit point
ICP	Installation control point
MUoSA	The model use-of-system agreement published by the Authority in September 2012
UoSA	Use-of-system agreement

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1. Introduction and purpose of this paper

1.1 Introduction

- 1.1.1 A use-of-system agreement (UoSA) is an agreement between an electricity distributor and an electricity retailer that records the terms and conditions on which distribution services are provided by the distributor to the retailer. The word 'system' in use-of-system refers to the distributor's network of lines, cables and substations.¹ Retailers 'use' the system to trade electricity with customers connected to the distributor's network.
- 1.1.2 In most cases, retailers contract with distributors for distribution services, and then on-sell those services to consumers, bundled with supply of electricity, as a 'delivered electricity' service.² In this context, consumers are the ultimate recipients of distributors' services and therefore are affected by the quality, price, and the terms on which the services are provided. UoSAs include a range of provisions that address these matters.
- 1.1.3 The way in which UoSAs are negotiated and agreed by distributors and retailers has:
- (a) efficiency implications, because UoSAs are complex legal agreements and a retailer must enter into a separate UoSA with each distributor on whose network the retailer wants to trade (a retailer that operates nationally must enter into a UoSA with each of the 29 local distributors) – and potentially a number of downstream network owners whose networks are connected to the local distributor's network
 - (b) competition implications, because UoSA terms can be a retail entry barrier if a distributor fails to treat retailers even-handedly by not offering retailers in similar circumstances equivalent terms, or inefficiently allocates risk, or the process of negotiating and agreeing a UoSA imposes unnecessarily high transaction costs. Competition in retail and related markets (in particular, the demand response market) can also be affected if UoSAs include terms that restrict innovation in the development of new services, particularly in the face of evolving technologies.

¹ 'System' in this context also incorporates connection of the distribution network to the transmission network (grid) and access to services provided by the grid.

² The contractual arrangements referred to here are termed 'interposed arrangements'. Currently, 27 of the 29 local network distributors adopt interposed arrangements. This is further discussed later in the paper.

The Authority has been reviewing UoSA formation over a number of years

- 1.1.4 Part 12A of the Code regulates a number of matters related to UoSA formation between distributors and retailers, including by specifying requirements relating to a small number of specific terms. Otherwise, the terms included in a UoSA are not regulated under the Code, and so can be any terms agreed by the distributor and retailer (subject to general contract law requirements).
- 1.1.5 Continuing work done by the former Electricity Commission, the Authority has been reviewing UoSA formation over a number of years.³ That work resulted in the Authority publishing model UoSAs (MUoSAs) in September 2012 to guide the way UoSAs are formed, by improving the level of standardisation of common service terms between distributors. The Authority published the MUoSA in 2012 on the basis that it would monitor voluntary uptake of the MUoSA, and would undertake further work if it considered this to be necessary.
- 1.1.6 The Authority published a further consultation paper in April 2014 that discussed evolving issues related to the formation of UoSAs between distributors and retailers.⁴ That paper included a problem definition, the range of options the Authority was considering, and the Authority's preferred option. The Authority considered the submissions it received on the paper and subsequently published:
- (a) a *Summary of submissions paper*, on 18 November 2014
 - (b) a *Response to legal process issues paper*, on 18 November 2014
 - (c) a *Response to submissions paper*, on 24 February 2015.⁵
- 1.1.7 Section 7 of the February 2015 *Response to submissions paper* summarised the Authority's conclusions about issues considered in the 2014/15 consultation process, and outlined the Authority's intended next steps. The submission paper recorded the Authority's decision to consult on:
- (a) a detailed design of the Authority's preferred option, which is to develop a default UoSA
 - (b) a proposed set of default core terms for a default agreement based on the terms of the MUoSA, amended to create fit-for-purpose default core terms
 - (c) a process to establish a set of operational terms for each distributor

³ The Authority initially carried out a project on more standardisation of UoSAs as required by section 42(2)(f) of the Electricity Industry Act 2010.

⁴ See *More standardisation of use-of-system agreements*, 8 April 2014 available at <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c12201>

⁵ Copies of each of these papers are available at the webpage link in footnote 3.

- (d) additional provisions necessary to implement the Authority's preferred option of default UoSA, including processes to transition to the new arrangements.

1.1.8 This consultation paper develops those initiatives, and proposes amending the Code by replacing Part 12A in its entirety with a new Part 12A.⁶

1.2 Purpose of this paper

- 1.2.1 The purpose of this paper is to obtain comment on the proposed introduction of new arrangements for UoSAs (which will be referred to as 'distribution agreements') into Part 12A of the Code.⁷
- 1.2.2 The Authority expects the submissions it receives will help it to develop a refined and final proposal, to be consulted on in 2016.
- 1.2.3 Section 39(1)(c) of the Act requires the Authority to consult on any proposed amendment to the Code and the regulatory statement. Section 39(2) provides that the regulatory statement must include a statement of the objectives of the proposed amendment, an evaluation of the costs and benefits of the proposed amendment, and an evaluation of alternative means of achieving the objectives of the proposed amendment. The regulatory statement is set out in part 4 of this paper.
- 1.2.4 The proposed amendment is attached as Appendix B. The Code amendment includes a default distributor agreement template as a schedule and this is attached as Appendix C.
- 1.2.5 A copy of the default distributor agreement template that shows the changes made to the interposed MUoSA in developing the template, and includes commentary on the reasons for some of those changes (which are referred to in the template as DDA drafting notes), is available to interested parties on the Authority's website at <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c15756>
- 1.2.6 This paper describes a proposal to amend the Code at both conceptual and detailed levels. Accordingly, the Authority invites submissions on all aspects of the proposal, including the regulatory statement and the detailed drafting of the proposed Code amendment.

⁶ The proposal developed in this consultation paper is included in the Authority's 2015/16 work programme under a strategic priority that seeks to improve competition in retail markets, including a number of initiatives aimed at lowering market entry barriers. See Electricity Authority Work Programme, 1 July 2015 – 30 June 2016, available at <http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/our-work-programme/>.

⁷ Part 12A of the Code relates to arrangements for distribution services. It provides obligations on distributors and retailers in respect of UoSA negotiation, mediation, prudential requirements, distributor indemnities, tariff structure consultations and tariff rate changes.

1.3 Submissions

The Authority prefers to receive submissions in electronic format (Microsoft Word) in the format shown in Appendix A. Submissions in electronic form should be emailed to submissions@ea.govt.nz with 'Consultation Paper – Default agreement for distribution services' in the subject line.

- 1.3.1 If you cannot send your submission electronically, post one hard copy of the submission to either of the addresses provided below, or you can fax it to 04 460 8879. You can call 04 460 8860 if you have any questions.

Postal address

Submissions
Electricity Authority
PO Box 10041
Wellington 6143

Physical address

Submissions
Electricity Authority
Level 7, ASB Bank Tower
2 Hunter Street
Wellington

- 1.3.2 Submissions should be received by 5 pm on 6 April 2016. Please note that late submissions may not be considered.
- 1.3.3 The Authority will acknowledge receipt of all submissions electronically. Please contact the Submissions' Administrator if you do not receive electronic acknowledgement of your submission within two business days.
- 1.3.4 Please note the Authority wants to publish all submissions it receives. If you consider that it should not publish any part of your submission, please indicate which part, set out the reasons why you consider the Authority should not publish it, and provide a version of your submission that the Authority can publish (if it agrees not to publish your full submission).
- 1.3.5 If you indicate there is part of your submission that should not be published, the Authority will discuss it with you before deciding whether to not publish that part of your submission.
- 1.3.6 However, please note that all submissions the Authority receives, including any parts that it may not publish, can be requested under the Official Information Act 1982. This means the Authority would be required to release them unless good reason existed under the Official Information Act to withhold them. The Authority would normally consult with you before releasing any material that you said should not be published.

2. Background and problem definition

2.1 Retailers must enter into UoSAs before trading on a local network

- 2.1.1 A local distributor is an entity that owns and/or operates a local electricity distribution network (local network) that transports electricity within a region. Each local distributor is the sole provider of distribution services on its network. An electricity retailer trading, or wanting to trade, electricity with customers in a region must enter into an agreement for distribution services (termed a UoSA) with the local distributor.⁸
- 2.1.2 UoSAs were first negotiated and agreed in the 1990s, following the introduction of retail electricity competition in New Zealand. In the intervening years, distributors and retailers have negotiated a variety of forms of UoSAs.
- 2.1.3 The way that distributors and retailers develop, negotiate and execute UoSAs gives rise to transaction costs for both distributors and retailers.
- 2.1.4 A retailer must negotiate and agree a UoSA with each distributor that owns a local network on which the retailer wishes to trade. A retailer seeking to trade on all 29 local networks must therefore negotiate 29 separate UoSAs. If distributors do not have standardised UoSA terms, that gives rise to high transaction costs.
- 2.1.5 In addition, if UoSA terms inefficiently allocate risk between the parties, or if a distributor does not offer equivalent terms to retailers in similar circumstances (which can give some retailers an advantage over retailers with less favourable terms), that can lessen retail competition. That is because those factors can act to provide a barrier to entry into a local retail electricity market by an entrant retailer, and can act as a barrier to innovation.

2.2 The Authority published MUoSAs in 2012

- 2.2.1 Industry participants recognised these problems in the early 2000s, when industry restructuring separated retail and network functions, and retail competition expanded. At that time, many distributors and retailers considered that developing a model UoSA could reduce transaction costs and enhance retail competition. A model UoSA would contain terms for distribution services that reflected a fair and reasonable balance between the legitimate interests of distributors and retailers.
- 2.2.2 Following a long period of development, including work by the Electricity Commission and the Electricity Authority, the Authority finalised and published

⁸ Trading involves purchasing electricity from suppliers and selling it to customers, including consumers.

new MUoSAs in September 2012. This included development by industry working groups and several rounds of consultation by regulators with interested parties.⁹

- 2.2.3 The Authority also amended the Code in September 2012 to include a new Part 12A. Part 12A requires that participants negotiate UoSAs in good faith, provides for mediation if parties are unable to agree on UoSA terms, and regulates a small number of specific terms for distribution services. Those terms relate to prudential requirements, include a distributor indemnity, and set out requirements relating to changes to tariff structures. Those Code amendments were assessed as delivering efficiency and competition benefits.
- 2.2.4 The Authority expected that distributors and retailers would voluntarily use the new MUoSAs to develop standardised UoSAs, to replace legacy UoSAs and form the basis of UoSAs with new entrant retailers. This outcome was expected to lower transactions costs for the parties developing, negotiating, and agreeing UoSAs. This in turn was expected to provide competition and efficiency net benefits. The Authority also committed to monitoring the uptake of the MUoSAs.

2.3 The Authority identified a potential problem and proposed a range of options

- 2.3.1 After the MUoSAs were published in September 2012, the Authority received feedback that its competition and efficiency objectives were possibly not being met in relation to the formation of UoSAs. The two key reasons were that retailers and distributors were not moving to adopt the MUoSA or, if new UoSAs were being negotiated, many of the terms materially departed from the terms of the MUoSA.
- 2.3.2 In 2013, the Authority assessed the MUoSA initiative and identified some issues. In a consultation paper published in April 2014, the Authority proposed a range of options that sought to address the issues.
- 2.3.3 Having considered the submissions it received on the April 2014 consultation paper, the Authority:
- (a) confirmed its preliminary view that a problem exists in the way that UoSAs are developed, negotiated and agreed by distributors and retailers
 - (b) indicated that its preferred option was to amend the Code to introduce a default UoSA, the terms of which could be varied by agreement by a distributor and retailer.

⁹ Both interposed and conveyance versions of the MUoSAs were published. These are available at the following URL: <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements-and-distribution-tariff-structures/outcome/model-use-of-system-agreements-published/>. The differences between conveyance and interposed agreements are discussed in section 3.

- 2.3.4 The Authority considered that amending the Code to include a default UoSA would establish a robust set of common terms for distribution services but would also allow distributors and retailers to agree alternative terms. The ability to agree alternative terms would allow for future innovation in distribution services.¹⁰
- 2.3.5 The default UoSA would effectively function as a benchmark agreement. Benchmark agreements are already included in the Code, in Part 6 (connection of distributed generation) and Part 12 (transmission).
- 2.3.6 The suite of consultation and response papers referred to in section 1.1 provides a comprehensive background to the issues the Authority has investigated, and the reasons for the Code amendment proposed in this paper.

2.4 The Authority considers there is a problem with the way UoSAs are developed, negotiated, and agreed

- 2.4.1 A retailer trading, or wanting to trade, on a local network must have an agreement for distribution services with the local distributor. The local distributor is the sole provider of distribution services within the area covered by its network.
- 2.4.2 Other than for a small number of specific terms regulated under Part 12A (referred to in paragraph 2.2.3), there is currently no regulatory mechanism in place that requires or incentivises standardisation of UoSA terms. This gives rise to the following problems:
- (a) Competition and innovation are inhibited by terms in UoSAs. Distributors may offer retailers in similar circumstances different terms, meaning that retailers with less favourable terms may be at a competitive disadvantage. A distributor can also impose inefficient terms on all retailers on its network, which can prevent retailers from innovating and providing new services in the face of evolving technologies, and restrict innovation and competition in related markets (in particular, the demand response market).
 - (b) Distributors and retailers face higher than necessary transaction costs from negotiating and administering many different UoSAs. Those costs are passed on to consumers. Higher than necessary transaction costs also undermine retail competition by increasing the cost of doing business – entrant retailers are less likely to expand to trade on new networks.

Competition and innovation are inhibited by terms in UoSAs

- 2.4.3 UoSAs are important in that they support innovation in the retail and distribution sectors. However, distributors can use their market power as monopolies to

¹⁰ See the February 2015 paper *Response to submissions*, section 7.

include terms in UoSAs that may have the effect of inhibiting competition and innovation in the retail market and in related markets.

- 2.4.4 Accordingly, requiring distributors to have UoSAs with standardised terms, and requiring the terms to be made available to all current and potential future retailers competing on a local network, would underpin equal, open access to distribution services. That in turn can assist retail competition. Expanding retail competition is in the long-term interests of consumers.
- 2.4.5 However, some distributors and retailers have not adopted the MUoSA terms, and therefore more standardisation of distribution terms of service has not occurred. Some distributors have developed UoSAs which, to varying extents, have introduced numerous minor and material variations from the MUoSA terms and with the terms of earlier versions of UoSAs. There is therefore significant variation and fragmentation of service terms governing distribution services and little likelihood of improvement under prevailing, largely voluntary, arrangements.
- 2.4.6 Efficiency and competition are inhibited if transaction costs are higher than necessary.
- 2.4.7 The Authority estimates there are 311 UoSAs as at September 2015. Each of these is a bespoke agreement that has been drafted and negotiated by businesses' technical, commercial and legal resources. The Authority considers there is scope for further retail expansion, which means that new UoSAs will need to be negotiated. This provides scope for further fragmentation of the terms governing distribution services.
- 2.4.8 If all distributors had UoSAs with standardised terms, and if those terms were made available to all current and future retailers competing on a local network, that would lower transaction costs. That is because drafting and negotiating such agreements would require fewer technical, commercial and legal resources. This is particularly the case for prospective entrant retailers. Lower transaction costs benefit both retailers and distributors and are therefore in the long-term interests of consumers.

The problems are unlikely to be resolved voluntarily

- 2.4.9 The Authority considers the problems with competition and efficiency outlined above are likely to be unresolvable under the current, largely voluntary, regime. The Authority expects that:
- (a) UoSA terms that support competition and innovation, especially retail innovation, will not occur or will at least be constrained
 - (b) further fragmentation of terms across different local networks will occur, maintaining higher than necessary transaction costs and impeding competition.

2.4.10 The situation is therefore inconsistent with the competition and efficiency limbs of the Authority's statutory objective. The Authority considers that less voluntary measures are necessary to achieve the efficiency and competition objectives expected from introducing the MUoSAs.

Q1. What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.

3. A proposal to introduce default distributor agreement requirements for distribution services

3.1 Introduction

- 3.1.1 The Authority's preferred option is to address the issues identified in section 2 of this paper by replacing Part 12A in its entirety with a new Part 12A.
- 3.1.2 The main features of the proposed new Part 12A are set out in a new subpart 1, and are as follows:
- (a) each distributor that uses interposed arrangements when forming agreements for distribution services with retailers would be required to develop a DDA based on the DDA template included as a schedule to Part 12A. The DDA template includes:
 - (i) default core terms, which establish the standard terms for distribution services and must be included in each distributor's DDA
 - (ii) requirements with which distributors must comply when drafting operational terms
 - (b) each distributor would be required to consult on, and publish, a DDA, and participants in the consultation process would have a right to appeal the distributor's operational terms to the Rulings Panel
 - (c) the rights and obligations of distributors and retailers related to negotiating and agreeing new and replacement distribution agreements would be specified, including transitional provisions that apply to distributors and retailers that already have agreed UoSAs.
- 3.1.3 It is proposed that the Code provisions described above would apply only to local distributors that use interposed arrangements when forming agreements for distribution services. The reasons for this are explained in section 3.3.
- 3.1.4 However, the provisions of the current Part 12A that relate to prudential requirements and consultation on changes to tariff structures would apply to embedded network distributors that use interposed arrangements when forming agreements for distribution services. These are set out in a new subpart 2 of the proposed new Part 12A.
- 3.1.5 In addition, requirements relating to exchanging information in the current Part 12A are mostly retained, and set out in a new subpart 3 of the proposed new Part 12A.

3.2 This paper refers to some new terminology

3.2.1 To help distinguish between current and proposed terms, this consultation paper introduces some new terminology.

‘Distribution agreement’ replaces ‘use-of-system agreement’

3.2.2 Previous consultation papers and the Code have used the term ‘use-of-system agreement’. To differentiate the proposal from the status quo, this paper adopts a new term, ‘distribution agreement’. A distribution agreement is an agreement between a distributor and a retailer that allows the retailer to trade on the distributor’s network. It is proposed that the term ‘use-of-system agreement’ be replaced with the term ‘distribution agreement’ in Part 1, and throughout the Code.

3.2.3 ‘Distribution services’ are the services provided by a distributor that deliver electricity through the distributor’s network. It is not proposed that the term ‘distribution services’ be defined in the Code because that is unnecessary. However, ‘distribution’ is defined in the Code as having the meaning given to it by section 5 of the Act. ‘Distribution’ is defined in section 5 as meaning the conveyance of electricity on lines other than lines that are part of the national grid.

3.2.4 Existing interposed UoSAs mostly relate to distribution services but can include terms that relate to additional services. Existing conveyance UoSAs do not provide for distribution services, as, under conveyance arrangements, the provision of distribution services to a consumer is governed by an agreement between the distributor and the consumer.

3.2.5 This paper refers to a ‘DDA template’. The DDA template is the template agreement set out in Schedule 12A.1 of the proposed new Part 12A, which must be used by each distributor that uses interposed arrangements to draft, consult on and publish a DDA. Each distributor’s published DDA is referred to in this paper, and the Code, as a ‘default distributor agreement’. Each such agreement is a comprehensive agreement for distribution services on the local network.

3.2.6 The Authority expects that adopting the proposed new terminology will:

- (a) clearly signal that the proposed new arrangements represent a material change to the current Part 12A provisions that relate to UoSAs
- (b) avoid confusion between the DDA template and the existing voluntary MUoSAs.

‘Retailer’ and ‘trader’

3.2.7 Previous consultation papers have used the term ‘retailer’ to refer to the electricity retailer party to a UoSA. However, Part 12A uses the defined term ‘trader’, which

is defined in Part 1 to include a 'retailer'. That is because the term 'trader' better reflects that the retailer party contracts with, or wishes to contract with, a distributor in order to trade on the distributor's network.

3.2.8 Accordingly, this paper uses the term 'trader' to refer to the retailer party to a distribution agreement.

3.3 A development roadmap to help understand the proposal

3.3.1 The Authority's objective is to develop a Code amendment that implements the Authority's preferred option identified in the April 2014 consultation paper, referred to in that paper as the 'default whole agreement' option.

3.3.2 Current arrangements for the delivery of electricity on local networks feature:

- (a) a mixture of legacy UoSAs¹¹ and more recent UoSAs, some of which are based on the version of the MUoSA that existed at the time the UoSA was agreed
- (b) a largely voluntary environment in which each distributor has developed and negotiated UoSAs with traders wishing to supply electricity to consumers connected to the distributor's network
- (c) a MUoSA published by the Authority that distributors and traders can use to develop a UoSA, which was published with the intention that doing so would result in more standardised UoSAs
- (d) regulation of a small number of UoSA terms under Part 12A of the Code, including terms relating to prudential requirements, distributor indemnities and processes for changing tariff rates.

3.3.3 The proposed new Part 12A would:

- (a) introduce a new DDA template as a schedule in Part 12A that includes default core terms that must be included in each distributor's DDA, and requirements for operational terms included in each distributor's DDA
- (b) for interposed UoSAs only, replace the current Part 12A provisions with a new subpart 1 that includes the following:
 - (i) a requirement that each local distributor that uses interposed arrangements prepare a DDA that includes the default core terms in the DDA template, and drafts operational terms that comply with requirements specified in the DDA template, consult on its DDA, and then publish a DDA

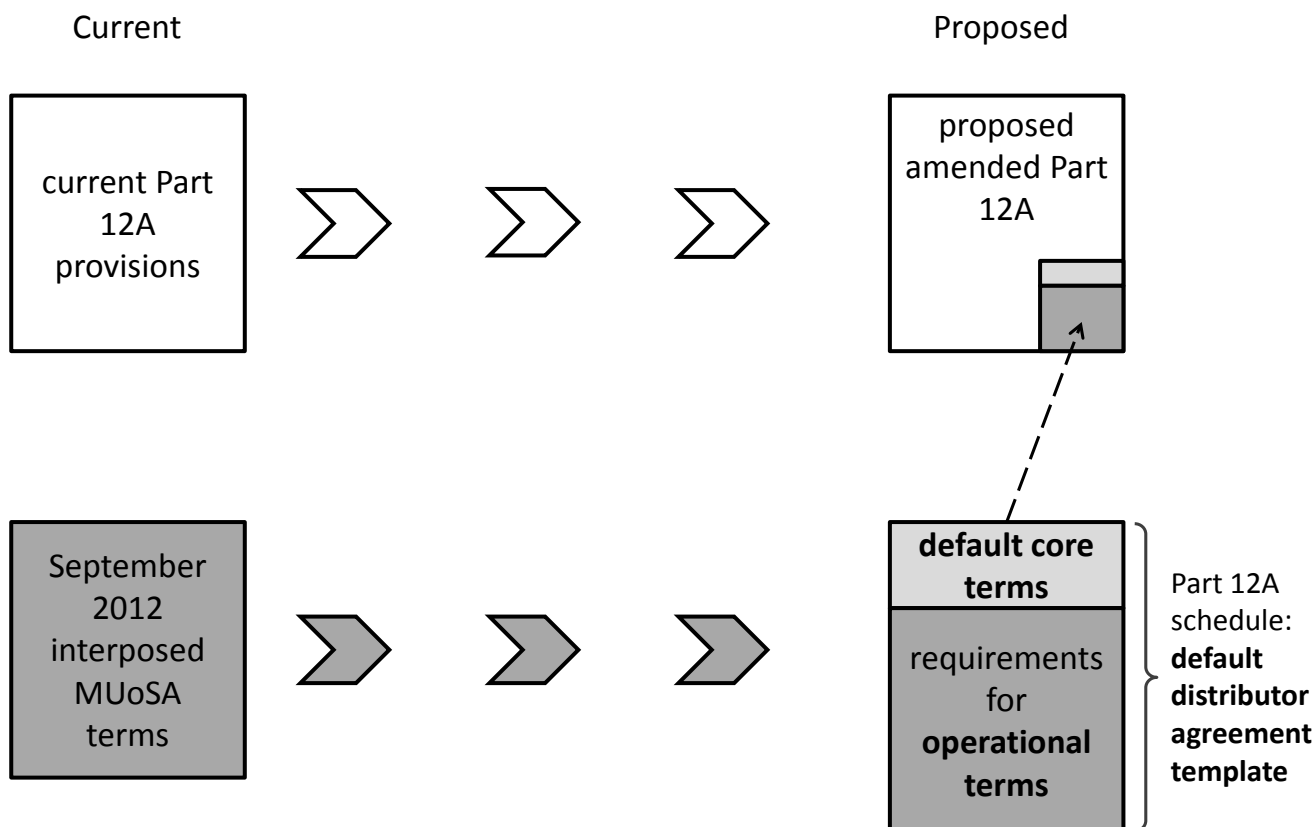
¹¹ Legacy UoSAs date from the late 1990s and were originally developed to provide for business separation of network and retail functions.

- (ii) a time-limited right for a consulted party to appeal any operational term to the Rulings Panel
- (iii) a process governing appeals to the Rulings Panel
- (iv) a process governing formation of new interposed distribution agreements between distributors and traders, including options to adopt the distributor’s DDA or negotiate an alternative agreement
- (v) transitional provisions relating to existing interposed UoSAs, requiring formation of a new distribution agreement but providing a range of options governing the content of such an agreement
- (vi) at the distributor’s discretion, an option to amend of one or more of the operational terms in a distributor’s published DDA.

3.3.4 These are the main components of the proposal and the remainder of this section provides further detail.

3.3.5 Figure 1 shows how the proposal has been developed from current references.

Figure 1 – Proposal development roadmap



3.3.6 Figure 1 illustrates:

- (a) in the top path, that Part 12A of the Code is replaced with a new Part 12A that provides the framework for developing, negotiating, and agreeing interposed distribution agreements for local networks
- (b) in the bottom path, that the MUoSA is used as the starting point for the DDA template that is included in the Code as a schedule in Part 12A.

3.3.7 Appendix B contains the proposed new Part 12A (except for the default distributor agreement template, which is set out in Appendix C). The next two sections of this paper describes:

- (a) the scope of the proposed amendment, which will regulate interposed arrangements on local networks only
- (b) the scope of distribution services regulated under Part 12A.

The proposal relates to interposed arrangements on local networks only

3.3.8 Previous consultation papers about standardisation of UoSAs have discussed the two alternative approaches that distributors adopt for establishing agreements with traders and customers; interposed and conveyance arrangements.¹²

3.3.9 Under interposed arrangements, a consumer contracts with a retailer (trader) for electricity delivered to the consumer's premises. That trader contracts with the local distributor for distribution services. Distribution services deliver electricity to each consumer.

3.3.10 The consumer pays the trader for the electricity delivered to the consumer, and the trader pays the distributor for distribution services (which include transmission, charges for which are paid to Transpower by the distributor). The trader's charges to the consumer recover the trader's costs of both the electricity consumed and delivery of the electricity.

3.3.11 In contrast, under conveyance arrangements, each consumer has two separate contracts, one each with:

- (a) the local distributor, for distribution services
- (b) the consumer's retailer, for electricity consumed.

3.3.12 In that case, the consumer must pay the distributor for delivery of electricity and the trader for the electricity consumed. In practice, one of two payment options is used by the distributor for recovering its delivery charges. Either:

¹² For more detail, see, for example, section 3.4 of the consultation paper *MUoSA consultation, 11 August 2011*, available at: <http://www.ea.govt.nz/dmsdocument/11211>.

- (a) the customer pays the distributor directly for delivery, or
- (b) the trader's invoice to the consumer for electricity consumed includes an additional charge for delivery which, once paid by the consumer, is passed to the distributor.

3.3.13 The proposed new Code provisions set out in the new subpart 1 of Part 12A relate only to the interposed approach. That is reflected in clause 12A.2 (Application of this subpart). Interposed arrangements are significantly more commonly adopted by distributors in New Zealand.¹³

3.3.14 The Authority is not, at this stage, proposing to regulate conveyance arrangements or arrangements relating to distributors that are embedded network owners. Nor is the Authority proposing to regulate arrangements such as when a party like a large consumer has a direct contractual relationship with the distributor.

3.3.15 That is because different issues arise under those arrangements, and so for simplicity and clarity, the Authority has not proposed regulating such arrangements. However, the Authority may re-consider this position in future.

3.3.16 In the meantime, a conveyance MUoSA and drafting guidelines, and example MUoSA terms for embedded networks, are published on the Authority's website and available for use by interested parties.¹⁴

3.3.17 References to distributors in the following sections apply only to a local distributor that adopts interposed arrangements affecting one or more consumers supplied by the distributor's network.

Distribution services deliver electricity to customers connected to a local network

3.3.18 A service agreement needs to include a clear description of the services being provided by the service provider. For distribution services the service provider is the distributor.

3.3.19 The MUoSA describes the components of distribution services in clause 2. The items listed in clause 2.1 of the MUoSA include the following:¹⁵

- (a) maintain and operate the network
- (b) deliver electricity to specified service standards

¹³ Two of the 29 distributors adopt conveyance arrangements for all consumers supplied by their networks. One of these two distributors uses the direct payment option described in paragraph 3.3.12(a); the other uses the single consumer invoice option, billed via the retailer.

¹⁴ See <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements-and-distribution-tariff-structures/outcome/>.

¹⁵ Note that the service components listed here are a summary of clause 2.1, not a direct quote.

- (c) provide for warranted persons to energise and de-energise consumer points of connection
- (d) provide a 24/7 unplanned service interruption diagnosis, repair and information service
- (e) make provision for load management services on the network
- (f) review and determine loss factors and help identify the reasons for abnormal trends in distribution losses
- (g) unless disconnected or decommissioned in accordance with the agreement, allow consumers' installations that comply with the distributor's network connection standards to remain connected
- (h) consider applications for new connections and changes to capacity for existing connections
- (i) if a consumer, or the consumer's retailer on behalf of the consumer, raises concerns with the distributor regarding power quality (which means the frequency or voltage of the electricity supply), or the reliability or safety of a consumer's supply, investigate those concerns and provide the results to the retailer.

- 3.3.20 The items listed in clause 2.1 are a combination of distribution services and service-related obligations. The Authority considers that as part of its proposal to regulate distribution arrangements, including through including a DDA template in the Code, it is necessary to more clearly differentiate between services that are distribution services, and service-related obligations.
- 3.3.21 In essence, distribution services deliver electricity through a local distribution network, to specified quality levels.¹⁶ Responsibility for a quantity of electricity is assigned (reconciled) to a specific trader and consumed by the trader's consumer. A small portion of the electricity injected into the network is lost in delivery (physical line losses) and within the metering and reconciliation processes (commercial or non-physical losses).
- 3.3.22 A 'network' is comprised of lines, substations and points of connection. Electricity flows into and/or out of a network at 'points of connection'. Points of connection connect the network with any of the following:
- (a) the grid (ie, Transpower's transmission network)
 - (b) a consumer's installation, which includes consumer load (ie appliances) and, if installed, distributed generation
 - (c) distributed generation

¹⁶ Part 1 of the Code defines the equivalent term "local network". In the MUoSA, the equivalent defined term is simply the "Network". This consultation paper uses the term "network" to have the same meaning as "local network" and "Network".

(d) an embedded network

(e) another network.

3.3.23 The remaining items in clause 2.1 of the MUoSA summarise the distributor's primary service-related obligations. Similarly, most of the items listed in clause 2.2 summarise the trader's obligations that the trader must comply with when trading on the distributor's network.

3.3.24 UoSAs frequently include terms about additional services that are related to distribution services, but are not in themselves distribution services. An example is terms relating to the annual disbursement of distributor trust dividends by traders to consumers (as the trust beneficiaries). The proposal set out in this paper does not affect additional services; additional services can still be agreed between traders and distributors and existing agreements for additional services are not affected.

3.3.25 In drafting the DDA template, the Authority has incorporated clause 2 of the MUoSA, but has made a number of changes to the clause, including addressing the issue described in this section. These changes are discussed later in this paper.

3.3.26 The next section of this paper explains the main components of the proposed new Part 12A and how they have been developed.

3.4 A default distributor agreement includes default core terms and operational terms

3.4.1 The main aspects of the proposed new Part 12A are the provisions relating to DDAs.

3.4.2 The proposed new Part 12A requires that each distributor develop, consult on and publish a DDA that:

- (a) only includes terms relating to distribution services provided on the distributor's network (clause 12A.4(1)(b))¹⁷
- (b) includes a set of 'default core terms', which are specified in the DDA template in the Code and must be included in each distributor's DDA without amendment (clause 12A.4(1)(a)(i))
- (c) includes a set of 'operational terms', drafted by the distributor, that comply with requirements specified in the DDA template (clause 12.4(1)(a)(ii)).

¹⁷ This is an important scope limitation of the services that the proposed arrangements would apply to. In contrast, the interposed MUoSA provides for other services in addition to distribution services. Under the proposal, additional services could be agreed by the parties at any time but provisions for additional services would not be permitted within a distributor's published DDA – they would need to be included in a separate agreement.

Operational terms reflect the distributor's local processes and operational arrangements.

- 3.4.3 The Authority proposes to amend the Code to include a new schedule in Part 12A that contains a 'DDA template'. The DDA template would have two parts:
- (a) the default core terms
 - (b) the requirements with which each distributor must comply when setting operational terms directly relevant to distribution services.
- 3.4.4 The requirements for operational terms also include 'example operational terms' that provide guidance for distributors when drafting operational terms. These example terms are based on terms that were included in the MUoSA.

Each distributor must develop a default distributor agreement using the DDA template

- 3.4.5 To develop a DDA in accordance with the proposed new Part 12A, each distributor would use the DDA template, which would be made available in Word format on the Authority's website, as a starting point. Each distributor would then:
- (a) complete the company name and contact details in the front section of the DDA template
 - (b) develop operational terms that comply with the requirements specified in the DDA template
 - (c) delete the drafting requirements and example operational terms in the DDA template schedules.
- 3.4.6 The proposed new Part 12A provides that, in setting the operational terms for its DDA, a distributor must:
- (a) comply with the principles for operational terms specified in clause 12A.3 (clause 12A.4(3))
 - (b) comply with the requirements specified in the DDA template
 - (c) not include any other terms, such as terms relating to additional services (clause 12A.4(1)(b))
 - (d) not include an operational term that is inconsistent with, or modifies the effect of, a default core term (clause 12.4(2)).

Each distributor must consult on its operational terms

- 3.4.7 The proposed new Part 12A requires each distributor to consult on its operational terms with:
- (a) each trader that trades on its network

- (b) each participant the distributor considers might be affected by the DDA (clause 12A.4(5)).

3.4.8 An example of a participant that might be affected by the DDA is a trader that is not yet trading on a distributor's network but has commenced discussions with the distributor with a view to establishing trading operations.

3.4.9 The distributor must consider feedback provided by consultation participants, finalise the DDA (including making changes the distributor decides to make as a result of feedback), and publish the DDA on its website (clause 12A.4(4)).

3.4.10 Each distributor would have to consider how best to consult with the consultation participants. Effective consultation with multiple parties is likely to be achieved through an open and transparent process that provides a reasonable opportunity for consulted parties to:

- (a) understand and consider the proposal
- (b) discuss the proposal with the distributor as appropriate
- (c) provide feedback.

3.4.11 To establish and retain focus on finalising and publishing DDAs, the proposed new Part 12A specifies the date by which each distributor must have consulted on its DDA, finalised its DDA, and published its DDA on its website (clause 12A.4(4)) The Authority wants to ensure that all 27 local distributors are not consulting with multiple parties at the same time. That is to avoid a trader trading nationally having 27 sets of operational terms to consider within a short period of time.

3.4.12 To make the initial DDA development process more manageable for participants, the Authority proposes that distributors are assigned to one of two groups:

- (a) Group 1 distributors, who would each have 60 business days after the Code amendment comes into force to develop and consult on their operational terms and then publish a DDA
- (b) Group 2 distributors, who would each have 120 business days after the Code amendment comes into force to develop and consult on their operational terms and then publish a DDA.

3.4.13 The Authority proposes that the Group 1 distributors are:

- (a) Orion
- (b) Powerco
- (c) Unison
- (d) Vector.

3.4.14 The Authority proposes that the Group 2 distributors are the 23 other distributors that adopt interposed arrangements.

- 3.4.15 This grouping of the distributors recognises that Group 2 distributors may be guided by the operational terms developed by each of the Group 1 distributors. The proposed sequencing of operational terms development should also benefit traders, particularly those traders trading on many networks.
- 3.4.16 While a Group 2 distributor can wait for the Group 1 distributors to publish their DDAs, the Code does not prevent a Group 2 distributor from taking early steps to commence development of its operational terms, or from consulting on or publishing its final DDA.
- 3.4.17 A further consideration in support of the Authority's view that the proposed process is workable is that the scope and detail of the operational term requirements is neither new nor expected to be controversial. The Authority considers that distributors will not need to develop operational terms that reflect new operational processes. Rather, each distributor need only record its current practice in its operational terms by following the requirements for operational terms set out in the DDA template. Distributors that have already developed one or more UoSAs based closely on the MUoSA will likely already have suitable, or near-suitable, operational terms.
- 3.4.18 MUoSA 'operational terms' have been in development since the early 2000s and are included in the MUoSA. Relevant MUoSA terms are included in the DDA template as example operational terms. If each distributor adopts the approach of incorporating the example operational terms, amending only as necessary to reflect the distributor's practices, the Authority considers that it should be practical for each distributor to publish a DDA within the timeframes proposed.
- 3.4.19 Another possibility in support of an efficient development process is that distributors could cooperate to refresh model/example operational terms, preferably starting from the MUoSA operational terms and taking account of recently negotiated operational terms. Coordinating effort, possibly via the Electricity Networks Association, may assist. Trader involvement would likely add further value to the outcome.
- 3.4.20 If an updated set of example operational terms resulted from such a review, those terms would be example operational terms only – the proposed Part 12A provisions would still require that each distributor develop and consult on its own operational terms.

Consultation participants can appeal operational terms to the Rulings Panel

- 3.4.21 The Rulings Panel assists with enforcement of the Code by dealing with complaints about breaches of the Code, appeals against certain decisions made under the Code and resolving certain disputes relating to the Code. The Rulings

Panel's current jurisdiction includes resolving disputes arising from the negotiation of transmission agreements.¹⁸

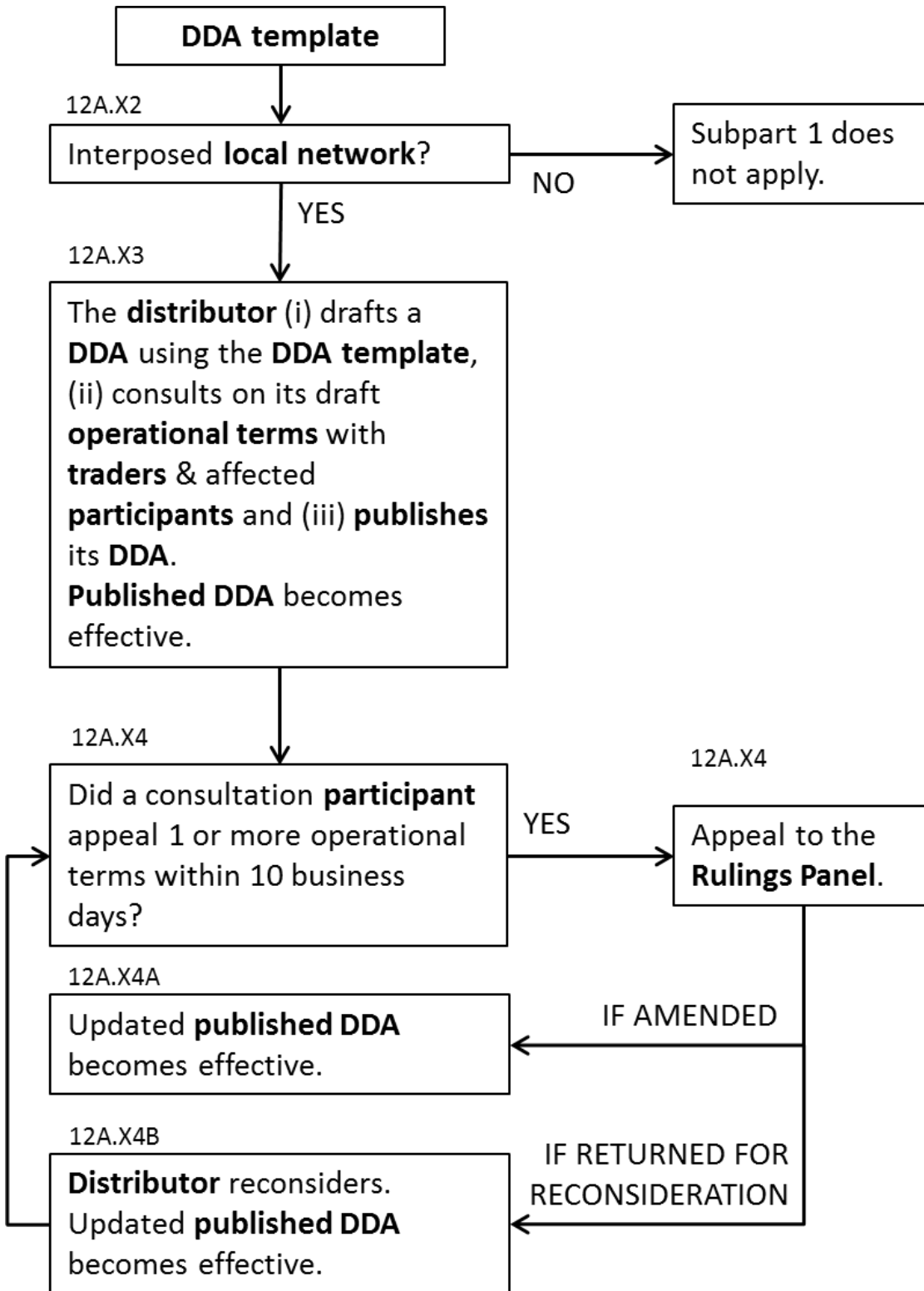
- 3.4.22 The proposed new Part 12A provides that a consultation participant may dispute one or more operational terms in a distributor's published DDA by appeal to the Rulings Panel within a limited period of time after publication (clause 12A.5).
- 3.4.23 The Authority is interested in views on an alternative to asking the Rulings Panel to resolve disputes between a retailer and distribution about a proposed operational term. In particular, the Authority notes the possibility of providing that a distributor and retailer could elect to go to mediation to resolve a dispute about an operational term a distributor wants to include in its DDA.
- 3.4.24 The proposed new Part 12A provides that if a participant appeals one or more operational terms, the Rulings Panel may elect to:
- (a) review one or more of the operational terms to which the notice of appeal relates or
 - (b) decline to review such terms, in which case it must give reasons (clause 12A.5(2)).
- 3.4.25 If the Rulings Panel chooses to review an operational term, it must apply the principles set out in clause 12A.3(2) (clause 12A.5(3)). Having reviewed an operational term, the Rulings Panel must either:
- (a) confirm the operational term or
 - (b) amend the operational term or
 - (c) direct the distributor to reconsider the operational term (clause 12A.5(4)).
- 3.4.26 If the Rulings Panel amends an operational term, the relevant DDA term is deemed to be amended (clause 12A.6(2)). The distributor must publish an updated version of its DDA and advise each trader trading on its network and other relevant participants of that (clause 12A.6(3)).
- 3.4.27 At this point it is possible that one or more distribution agreements will exist that include the operational term that has been amended. For each such term, in giving notice of its decision, the Rulings Panel must stipulate whether the distributor, or the trader, or both parties have a right to give notice to the other party that it wishes to amend its distribution agreement to adopt the amended term (clause 12A.6(4)).
- 3.4.28 If the Rulings Panel directs the distributor to reconsider an operational term, it may give the distributor any direction it thinks fit and must stipulate a time period which

¹⁸ See Rulings Panel Procedures 2011, Part 6, available at <http://www.ea.govt.nz/code-and-compliance/rulings-panel/rulings-panel-procedures-and-objectives/>.

the distributor must adhere to in completing its review. If the distributor subsequently amends the term, it must make an updated version of its DDA available on its website and advise each trader trading on its network and other relevant participant that an updated version is available (clause 12A.7(1)). Consultation participants may appeal a distributor's amended operational term in accordance with the process specified in clause 12A.5 (clause 12A.7(2)).

3.4.29 Figure 2 illustrates the DDA development process described above.

Figure 2 – Process to develop default distributor agreements



- 3.4.30 Each distributor's published DDA, finalised following any Rulings Panel review, would be a comprehensive, executable agreement for distribution services on the distributor's network.
- 3.4.31 While there would be some variation between distributors' DDAs in the detail of the operational terms, the Authority expects the published DDAs to be significantly standardised distribution agreements.

The DDA template and a distributor's operational terms may be amended in future

- 3.4.32 If the Authority wished to amend either the default core terms or the requirements for operational terms in the DDA template, the Authority would do so by following the normal Code amendment process. Whether a change to one or more default core terms, or a requirement for one or more operational terms, should be made to distribution agreements already in place between distributors and traders is something that the Authority would consider as part of the Code amendment process.
- 3.4.33 The proposed new Part 12A includes provisions that enable a distributor to amend its operational terms (clause 12A.11). To do that, the distributor would be required to follow essentially the same process as for initial DDA formation, including consultation and a right of appeal by consultation participants. If a distributor amended its operational terms, that would not affect any distribution agreements in place between the distributor and traders (clause 12A.11(4)).

3.5 A default distributor agreement is a benchmark agreement

Introduction

- 3.5.1 This section:
- (a) sets out the role a published DDA has when distributors and traders are negotiating distribution agreements
 - (b) describes the choices available to:
 - (i) the distributor
 - (ii) a trader already trading on the distributor's network
 - (iii) prospective entrant traders
 - (c) describes the proposed default core terms and requirements for operational terms in more detail.

Which traders would be interested in a distributor's DDA?

- 3.5.2 Section 3.4 explained that each distributor would be required to publish a DDA that includes operational terms that specify requirements relating to the distributor's operational policies and processes relevant to distribution services.
- 3.5.3 At this point, the traders that would be interested in a distributor's DDA include traders that are either:
- (a) already trading on the distributor's network with an existing UoSA in place governing the relationship with the distributor or
 - (b) not trading on the distributor's network but seeking access to the distributor's network to commence supplying electricity to consumers.
- 3.5.4 Accordingly, the proposed new Part 12A provides:
- (a) a transitional process that applies to a distributor and a trader trading on the distributor's network that already have a UoSA at the time the distributor publishes its DDA
 - (b) a process by which distributors and entrant traders must negotiate and agree on a distribution agreement.

A transitional process provides choices for distributors and existing traders

- 3.5.5 For each trader already trading on a distributor's network, the proposed new Part 12A includes transitional provisions that require the parties to enter into a new distribution agreement (clause 12A.12).¹⁹
- 3.5.6 The objectives of the proposed transitional provisions are:
- (a) to ensure each trader currently trading on a local network has a distribution agreement with the local distributor
 - (b) to ensure that all distribution agreements include terms that only relate to distribution services
 - (c) to provide for a trader and a distributor to:
 - (i) carry over the terms from an existing agreement (but only the terms relating to distribution services) into a new distribution agreement, if both parties are satisfied with those terms or

¹⁹ The trader and distributor described here have a relationship in which the distributor provides distribution services to the retailer, whether or not this relationship is governed by a formally executed agreement. The Authority expects that a UoSA will be in place in the vast majority of cases. However, it is possible that some retailers are trading on networks without having first executed a written UoSA. Amongst its other objectives, the proposed transitional path would remedy this situation, if any cases exist.

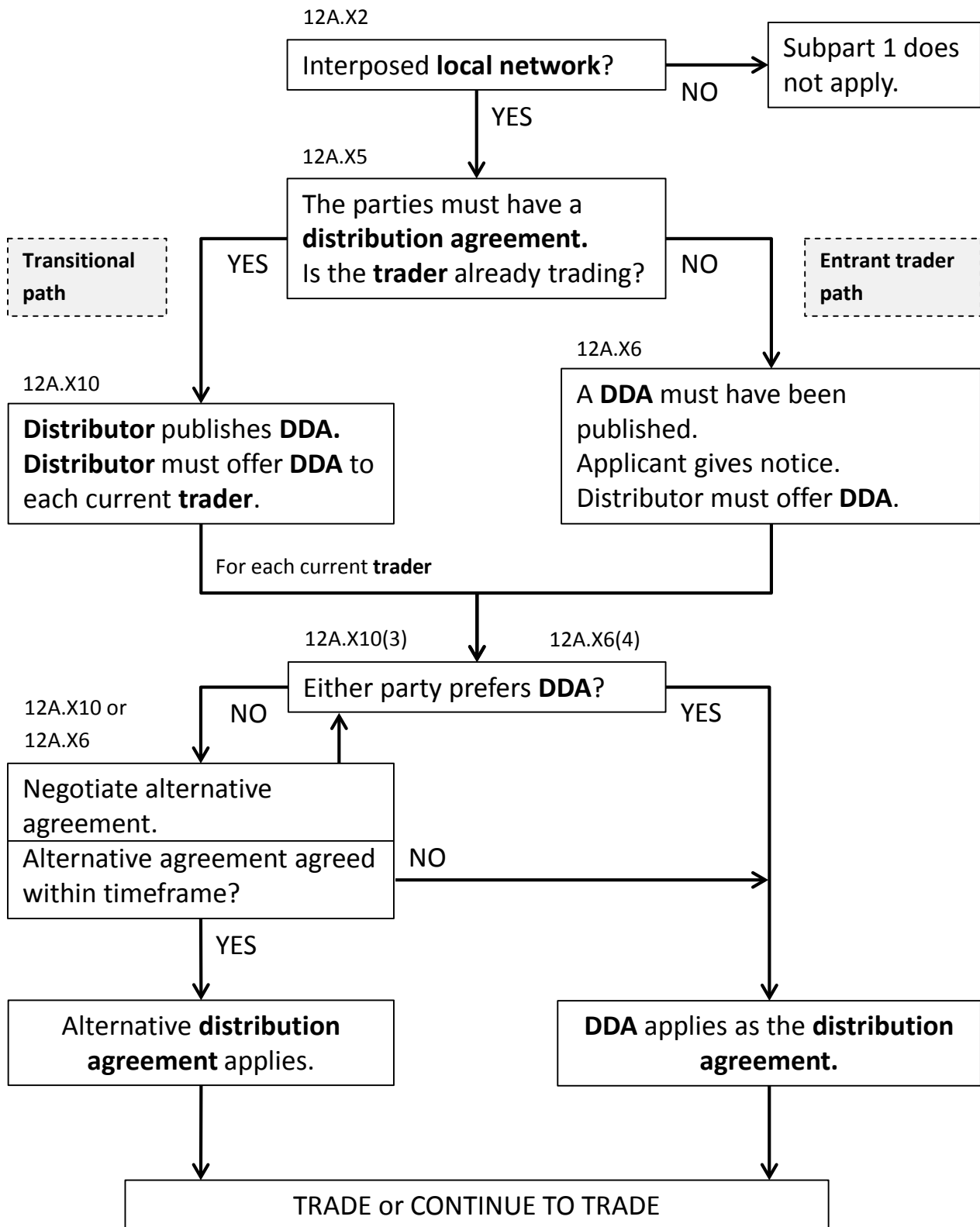
- (ii) negotiate a new distribution agreement (termed an 'alternative agreement'), if either party is not satisfied with one or more of the terms of an existing agreement and the parties agree to negotiate or
- (iii) adopt the distributor's published DDA, if either party prefers this option to any of the other alternatives or if the parties try but fail to negotiate an alternative agreement within 2 months.

- 3.5.7 Several submissions on the April 2014 consultation paper expressed a view that executed UoSAs based on the 2012 MUoSA should not be interfered with. Submitters holding this view considered that significant time and effort had been invested in negotiating those UoSAs and considered that the resulting agreements are MUoSA-based agreements that both parties are satisfied with and want to retain.
- 3.5.8 If both parties are satisfied with an existing UoSA, the proposed Code provisions will allow the parties to enter into a new distribution agreement that carries over the existing terms relating to distribution services.
- 3.5.9 However, terms in current UoSAs that do not relate to distribution services, such as terms for additional services, must not be carried over into a new distribution agreement (clause 12A.10(2) and 12A.12(6)). This provision is proposed so as to provide clarity about the scope of a distribution agreement under Part 12A. Terms in existing UoSAs (or in other agreements) relating to additional services are not affected by the proposed Code amendment. In particular, clause 12A.12(5)(b) provides that if a distributor's DDA applies as a binding contract between a distributor and a trader, the terms of those parties' existing agreement that directly or indirectly relate to distribution services will expire, but all other terms remain in force.
- 3.5.10 The Authority has also considered the possibility that some parties may not be satisfied with one or more aspects of a current UoSA. The proposed transitional process would determine whether genuine bilateral satisfaction exists with each existing UoSA, whether these are recently agreed or legacy UoSAs.
- 3.5.11 The proposal provides a 2 month time period within which a distributor and trader may negotiate an alternative agreement. If an agreement cannot be negotiated in that time, the distributor's DDA will apply as a binding contract.
- 3.5.12 In the context of the transitional process, a distributor's published DDA will serve as a network-specific benchmark agreement against which clause-by-clause amendments can be efficiently proposed and assessed by the parties. If alternative terms can be developed that provide net beneficial outcomes for both parties, alternative agreements are feasible and incentivised.

A new process streamlines network access arrangements for entrant traders

- 3.5.13 For entrant traders, the proposed new Part 12A provides an efficient process to establish a distribution agreement that enables a trader to commence trading on a distributor's network (clause 12A.8 to 12A.10).
- 3.5.14 The objectives of the proposed entrant trader provisions are:
- (a) to ensure that prospective entrant traders that want to trade on a local network can efficiently enter into a distribution agreement with the local distributor
 - (b) to ensure that all distribution agreements include terms that only relate to distribution services
 - (c) to provide options for an entrant trader and a distributor to:
 - (i) negotiate a new distribution agreement (termed an 'alternative agreement'), if both parties agree to this or
 - (ii) adopt the distributor's published DDA, if either party prefers this or if the parties fail to negotiate an alternative agreement within 20 business days.
- 3.5.15 A trader wanting to trade on a distributor's network would have two pathways for establishing a distribution agreement:
- (a) negotiate and agree an alternative agreement with the distributor or
 - (b) adopt the distributor's DDA as a binding distribution agreement between the parties – this would happen if either party preferred this over the option of negotiating an alternative agreement or if the parties failed to execute an alternative agreement within 20 business days of the trader notifying the distributor that the trader wished to trade on the distributor's network.
- 3.5.16 A simplified flowchart for the proposed distribution agreement formation processes is shown in Figure 3. A Code amendment that would implement the proposal is included in Appendix B and Appendix C.

Figure 3 – Proposed Part 12A arrangements for distribution agreements



The proposal provides that alternative terms can be negotiated

- 3.5.17 As described above, under both the transitional and entrant trader paths, the proposed new Part 12A allows the parties to negotiate an alternative agreement.
- 3.5.18 An alternative agreement could be either:
- (a) an agreement that is identical to the distributor's DDA except that the parties have agreed to amend a single term (retaining all other terms) or
 - (b) at the other extreme, an agreement that has terms that are completely different to the terms in the distributor's DDA.
- 3.5.19 The key requirement for alternative agreements is that their terms must relate only to distribution services.
- 3.5.20 This emphasises that a published DDA functions as a benchmark agreement that would apply if the parties are unable, or if either party was unwilling, to negotiate an alternative agreement.^{20 21}
- 3.5.21 A distributor and trader would have an incentive to negotiate an alternative agreement if terms superior to the DDA terms could be agreed. Negotiations may require that the parties accept trade-offs amongst the terms.²² However, with the DDA available as a fall-back (default) option to either party, an alternative agreement is expected to provide net benefits to each party. This outcome should ultimately be in the long-term interests of consumers.

3.6 The proposal provides benefits over the status quo

- 3.6.1 The proposal to amend Part 12A to include DDA provisions reflects the Authority's view that a significant majority of the terms relating to distribution services are relatively mature and non-controversial. However, as compared with the proposal, the current process for forming distribution agreements:
- (a) is not as efficient as it could be
 - (b) is not as supportive of retail competition as it could be.
- 3.6.2 This provides an opportunity to durably lock in significant value by unambiguously standardising the non-controversial terms and to resolve terms that have at times been difficult to agree between the parties.

²⁰ Consequentially, clause 12A.2 of the Code, requiring negotiation of UoSAs in good faith, is unnecessary under the proposal.

²¹ This is conceptually equivalent to the role of the regulated terms for connection of distributed generation under Part 6 of the Code. Clause 6.6 establishes the provisions relating to the regulated terms, which are included in Schedule 6.2. Regulated terms act as a benchmark agreement for connection of distributed generation because they apply if the parties fail to, or choose not to, negotiate an alternative connection contract.

²² That is, accepting a less favourable term in exchange for gaining a more favourable term elsewhere.

- 3.6.3 The proposed new Part 12A will ensure that operational terms included in each distributor's DDA are developed within a transparent, consultative process, coordinated by the distributor. This provides the opportunity to engage all traders trading, or intending to trade, on a distributor's network in a coordinated consultation. Whether traders choose to engage or not, a published DDA will result from the process. The proposed new Part 12A also requires that the distributor apply a regulated set of principles when setting its operational terms, which include the Authority's statutory objective.
- 3.6.4 If amendments to the default core terms are required in future, they would be considered and progressed through the usual Code amendment process. That ensures that proposed amendments to default core terms are transparently assessed against the Authority's statutory objective and that affected participants are consulted.
- 3.6.5 Similarly, if a distributor wishes to amend one or more of its operational terms after its DDA is published, suitable terms can be considered within a coordinated, consultative process, in which affected participants can engage.
- 3.6.6 The proposed new Part 12A also provides that innovative terms that are different from the terms of a distributor's DDA can be included in a distribution agreement if the parties agree. The resulting agreement would be an alternative agreement. If a distributor and retailer cannot agree the terms of an alternative agreement within a set period of time, or if at any time either of them prefers the distributor's DDA over a negotiated alternative agreement, the published DDA would apply as a binding agreement. This significantly improves outcomes compared with the status quo because under the status quo the outcome could be either:
- (a) a UoSA that incorporates the distributor's preferred terms, which can be inefficient, can inhibit competition and innovation, and result in a lack of standardisation of distribution arrangements or
 - (b) no agreement, resulting in a trader not trading on a network.
- 3.6.7 The efficiency benefits expected from the proposal should benefit distributors, traders, and consumers.
- 3.6.8 The competition benefits expected from adopting the proposal are particularly relevant to entrant traders and to consumers. Compared with the current largely voluntary arrangements for MUoSAs, prospective entrant traders should benefit from Code provisions that specify requirements for developing, negotiating, and agreeing distribution agreements, including by requiring that each distributor have a DDA. The Code also allows parties to develop and agree alternative terms, which can be assessed against the terms included in the distributor's DDA.

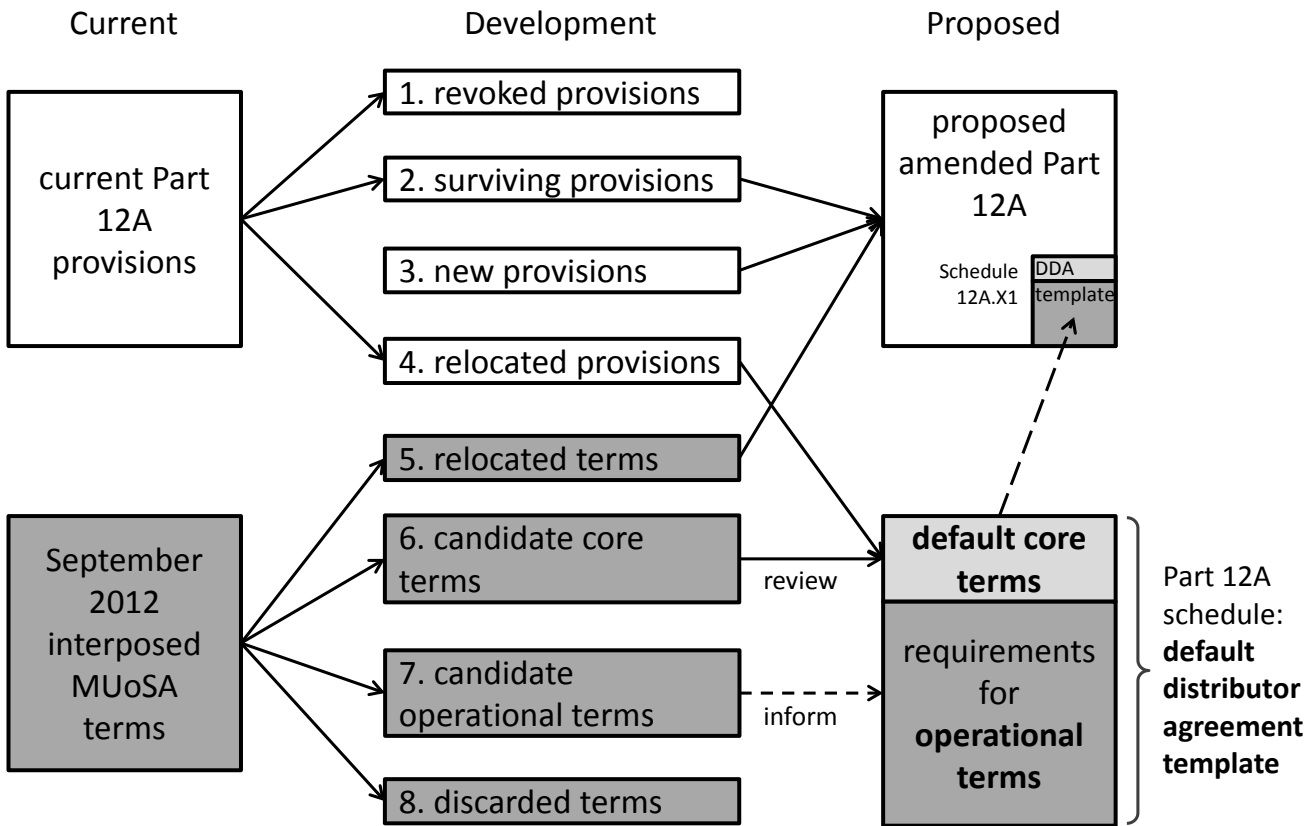
- 3.6.9 That means that the key benefits to participants and consumers lie in:
- (a) the regulatory certainty provided by the provisions in the Code that govern the development, negotiation, and agreement of distribution agreements
 - (b) the efficiency and competition benefits inherent in each distributor having a published DDA that includes default core terms and operational terms that meet specified requirements
 - (c) the flexibility to innovate and negotiate alternative terms.
- 3.6.10 A further benefit of the proposed new Part 12A compared with the status quo, is that a default agreement can efficiently underpin and support relevant Authority guiding regulatory principles and guidelines. Examples of these include:
- (a) the demand response principles, which have particular relevance to the load management provisions of a distribution agreement²³
 - (b) the distribution pricing principles
 - (c) minimum terms and conditions for retail agreements with consumers, with which a distribution agreement should maintain consistency
 - (d) coordinated processes for dealing with medically dependent and vulnerable consumers
 - (e) relevant guidelines published by the Authority, for example guidelines relating to losses and loss factors.
- 3.6.11 In summary, the Authority considers that the proposed new Part 12A supports its statutory objective, particularly in respect of the competition and efficiency limbs, when assessed against the status quo.
- 3.6.12 Costs and benefits are further assessed in the regulatory statement in section 4.

More detailed design of the proposed Code provisions

- 3.6.13 Figure 4 illustrates in more detail how the Authority has developed the proposed arrangements.
- 3.6.14 The following sections will step through the numbered items in the ‘Development’ column in Figure 4 and explain how the current arrangements on the left (ie, the 2012 interposed MUoSA and the current Part 12A provisions) have been incorporated into the proposed amended Code on the right.

²³ The demand response principles were being consulted on at the time this paper was in development.

Figure 4 – Development detail for the proposal



3.6.15 Sections 3.4 and 3.5 have addressed item 3 in Figure 4. The following sections will address:

- (a) revoked provisions
- (b) relocated provisions
- (c) surviving provisions
- (d) relocated terms.

Some current Part 12A provisions are revoked or relocated into default core terms

3.6.16 In addition to the amendments included in Part 12A described above, it is also necessary to amend Part 12A to revoke some current Code requirements that become unnecessary or not appropriate under the proposed arrangements.

3.6.17 The original purpose of Part 12A was to introduce specific requirements for distributors and traders relating to the negotiation and content of UoSAs. The requirements sought to moderate the conduct of UoSA negotiations and standardise a number of specific UoSA terms so as to promote competition and efficiency.

- 3.6.18 The current Part 12A provisions:
- (a) require distributors and traders to negotiate UoSAs in good faith
 - (b) provide for mediation if agreement is not reached
 - (c) specify limits on prudential requirements, including requirements if distributors require additional security
 - (d) provide a distributor indemnity
 - (e) require consultation for proposed changes to tariff structures
 - (f) specify mandatory information exchange protocols.
- 3.6.19 For local distributors that use interposed arrangements, the above provisions are either:
- (a) not appropriate or unnecessary in the context of the proposal, or
 - (b) appropriately relocated into the DDA template as default core terms.
- 3.6.20 The items in 3.6.18(a) and (b) relate to the conduct of UoSA negotiations. The Authority considers these provisions are not appropriate or necessary in light of the requirements specified in subpart 1 of the proposed new Part 12A. Subpart 1 gives each party the option to contract with the other party on the basis of the distributor's published DDA, and provides that the DDA applies as a binding contract if the parties cannot agree on an alternative agreement. It is therefore unnecessary for the Code to require that the parties negotiate in good faith or to provide a regulated mediation process if the parties are unable to reach agreement. Accordingly, it is proposed that existing clauses 12A.2 and 12A.3 are revoked. This addresses item 1 in Figure 4.
- 3.6.21 The remaining Part 12A provisions (items (c) to (f) in paragraph 3.6.18) regulate specific terms within UoSAs. These provisions, as they relate to interposed local networks only, are appropriately relocated into the DDA template as default core terms.²⁴
- 3.6.22 Existing clause 12A.15 provides that the Authority may publicise voluntary EIEPs that distributors and traders may, but are not required to, use when exchanging information. It is proposed that this clause not be included in the new Part 12A. That is because the clause does not impose any legal obligations on any participant or the Authority, and so is unnecessary.
- 3.6.23 This addresses item 4 in Figure 4.

²⁴ The 2012 MUoSA terms are already drafted to be consistent with these Part 12A provisions and have been carried into the DDA template included in this paper. Therefore, the term 'relocate' in practice means simply revoking these provisions from Part 12A. Because either party can choose the published DDA as an alternative to a negotiated agreement, the relocated terms will act as default terms that the parties can negotiate away from if they are able to agree an alternative.

Some current Part 12A provisions survive for conveyance and embedded networks

- 3.6.24 The current Part 12A sets out requirements that apply in respect of distributors that use both interposed and conveyance arrangements, on both local and embedded networks.
- 3.6.25 The proposed new subpart 1 in Part 12A applies only to local network distributors that use interposed arrangements, and traders wishing to trade on those distributors networks.
- 3.6.26 The purpose of subpart 2 and subpart 3 of the proposed new Part 12A is to provide for certain provisions in the current Part 12A to continue to apply in respect of embedded network distributors that use interposed arrangements. Those provisions are set out in subpart 2 of the proposed new Part 12A, and include provisions relating to prudential requirements and changes to tariff pricing structures.
- 3.6.27 Subpart 2 also includes some new provisions that clarify participant obligations. In particular:
- (a) the proposed new clause 12A.13 sets out the participants to whom subpart 2 applies
 - (b) the proposed new clause 12A.14 sets out that a trader wishing to trade on the network of a distributor to which subpart 2 applies must have a distribution agreement with the distributor.
- 3.6.28 Subpart 3 provides for the provisions in the current Part 12A that relate to information exchange to continue. Those provisions impose requirements on distributors, traders, and the Authority.
- 3.6.29 This addresses item 2 in Figure 4.

Some current MUoSA terms are reflected in the proposed Code amendment

- 3.6.30 Clause 3 of the September 2012 MUoSA provides for equal access to distribution services for retailers and for even-handed treatment of retailers. The clause has frequently been controversial between distributors and retailers throughout the period of development of the MUoSA.
- 3.6.31 The need for this clause arose as a consequence of the relatively light-handed regulatory environment that applied in the early 2000s. At that time, there were no electricity governance rules that applied to agreement formation between distributors and retailers equivalent to the current Part 12A.

- 3.6.32 In the context of the proposed amendment to Part 12A, the Authority considers that equal access to sole-provider services and even-handed treatment of competing traders is more appropriately addressed in the Code.
- 3.6.33 Providing traders with equal access to distribution services on standardised, equitable terms is a primary objective of the proposed new Part 12A. As this paper has discussed, each distributor's published DDA would serve as a benchmark agreement against which the distributor and traders may negotiate alternative terms.
- 3.6.34 A completely level playing field for distribution services would significantly benefit from complete transparency of distribution agreements, both current UoSAs and future distribution agreements. Information disclosure requirements for distributors are addressed in Part 4 of the Commerce Act. The Authority considers that it is not able to require information disclosure of the type described in clause 3 within the Code. That is because section 32(2)(b) of the Electricity Industry Act 2010 provides that the Code may not purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Parts 3 or 4 of the Commerce Act 1986, which regulate information disclosure requirements.
- 3.6.35 The Authority intends to further discuss information disclosure relating to distribution agreements with the Commerce Commission.
- 3.6.36 This addresses item 5 in Figure 4.

3.7 More detailed design of the default distributor agreement template

Introduction

- 3.7.1 At this point, the paper has introduced the main components of the proposed new Part 12A. This section provides further detail about the DDA template and covers development of the proposed:
- (a) default core terms (item 6 in Figure 4)
 - (b) drafting requirements for operational terms (item 7 in Figure 4)
 - (c) discarded terms (item 8 in Figure 4).

Most default core terms are revised MUoSA terms

- 3.7.2 Default core terms are a standardised set of terms for distribution services on local networks.

- 3.7.3 The approach introduced in the April 2014 consultation paper, and developed in this paper, is to draft a set of fit-for-purpose default core terms using the terms of the MUoSA as a starting point. The April 2014 consultation paper set out the Authority's initial view as to how the MUoSA terms could be separated into default core and operational terms.²⁵
- 3.7.4 Submissions received on the April 2014 consultation paper identified a number of MUoSA clauses that submitters considered would require further review and possible amendment to make them fit-for-purpose as default core terms or operational terms. The clauses and issues identified in submissions are summarised below (with reference to MUoSA clauses, if relevant):
- (a) load management (clause 6 and schedule 8) – when a distributor may control load, coordination if both parties have controllable load, third party aggregators
 - (b) liability (clause 26) – what liability caps should be, and what losses should be excluded
 - (c) billing information (clause 11) – does not reflect well-established practices and system requirements
 - (d) load shedding protocols (clause 5.3) – distributors should only be required to provide these on request
 - (e) force majeure (clause 23) – restricted list of events and relates to 'good electricity industry practice' without appropriately using that defined term
 - (f) indemnities and Consumer Guarantees Act claims processes (clause 26) – new CGA requirements are slightly different to the Code, process issues regarding claims
 - (g) audit errors (clause 29) – needs a clause to require an error discovered in audit to be rectified
 - (h) changing technology and network management practices – no provisions
 - (i) provisions for 'white label' retailers
 - (j) distributor access to consumption information – no provisions
 - (k) clauses related to equal access to services and even-handed treatment of traders – appropriateness
 - (l) confidentiality – general topic heading only, specifics are unknown
 - (m) embedded networks – no provisions.

²⁵ See April 2014 consultation paper, section 6.2 and Appendix B - Assessment of core terms.

- 3.7.5 In the course of developing the proposal described in this consultation paper, the Authority has reviewed each of the issues summarised in paragraph 3.7.4. Discussion and review of each of these issues is included in Appendix D.
- 3.7.6 The review can be considered to be preliminary only at this stage, as some of the issues raised in submissions were identified as issue headings only with little or no further elaboration provided by submitters.
- 3.7.7 The Authority acknowledges that it may not fully understand all of the clause-level concerns that participants have raised. Participants are invited to provide further submissions, including further elaboration on issues of concern, in response to this consultation paper.
- 3.7.8 Notwithstanding this, the Authority considers its preliminary review of DDA template drafting issues significantly advances the proposal presented in the April 2014 consultation paper. This is because it includes terms that are more fit-for-purpose as default core terms as compared with the MUoSA terms.
- 3.7.9 This addresses item 6 in Figure 4.

Drafting requirements for operational terms are derived from the equivalent MUoSA terms

- 3.7.10 The MUoSA terms that provide for network-specific policy, process and operational detail have informed the proposed scope of the operational terms.²⁶ Terms that could be operational terms have been identified from a review of the MUoSA schedules.
- 3.7.11 After reviewing the structure and content of the MUoSA schedules, the Authority has restructured the schedules proposed for the DDA template, as follows:
- (a) MUoSA Schedule 2, relating to additional services, has been omitted from the DDA template, since the scope of a DDA is limited to distribution services only.²⁷ Additional services can be agreed between the parties at any time but terms relating to additional services must not be included in a distribution agreement. Existing additional services agreements are not impacted by the proposed new Part 12A.
 - (b) MUoSA Schedule 4, which summarises the provisions that the retailer must include in each of its customer agreements, has not been included in the DDA template. The original purpose of the schedule was to assist distributors

²⁶ A first cut at dividing the 2012 interposed MUoSA into core and operational terms was included in the April 2014 consultation paper, section 6.2 and Appendix B - Assessment of core terms.

²⁷ Some examples of additional services are listed in the practice note included in Schedule 2 of the 2012 MUoSA and model terms are provided for (a) passing trust rebates to consumers and (b) providing trust-related information to consumers.

and traders by summarising all such provisions in one place. However, the Authority considers that the schedule is unnecessary as it replicates traders' obligations that are clearly set out throughout the DDA template. Also, paraphrasing such terms in a schedule runs a risk of creating conflicts or ambiguity.

- (c) MUoSA Schedules 7 and 9, relating to distribution pricing, have been combined into a single Schedule 7 in the DDA template.
- (d) A new schedule setting out billing information detail has been included in the DDA in the now-vacant Schedule 2 position. Terms relating to billing information require significant optionality to reflect a distributor's local information and exchange protocol requirements. Accordingly, the Authority considers this detail is more appropriately included in a DDA as an operational term.
- (e) A new schedule, relating to the distributor's emergency event management policy, has been included in the now-vacant Schedule 4 position.

3.7.12 With the scope of the schedules resolved as described above, a set of drafting requirements for the operational terms has been developed and included in the DDA template included in Appendix C. The drafting requirements for operational terms are distinguished from core terms in the DDA template by:

- (a) including the heading 'Operational Terms' at the top of each section of drafting requirements
- (b) use of an *italicised font* for the drafting requirements (clause 12A.4(1)(a)(ii)).

3.7.13 The Authority also considers that some parts of the schedules are more appropriate as default core terms. These are drafted in the DDA template in a non-italicised font, and must be included in each distributor's DDA without amendment.

3.7.14 In addition to specifying requirements for operational terms, example operational terms are included for most of the operational terms in the schedules. The example operational terms largely adopt the equivalent terms from the MUoSA and are included in the DDA template:

- (a) as a guide for distributors and traders and as a starting point for drafting operational terms
- (b) to provide continuity and retain the value inherent in the MUoSA
- (c) to facilitate more standardisation of terms in distribution agreements wherever possible.

Some MUoSA terms are discarded

3.7.15 A small number of 2012 MUoSA terms remain that do not fit within the scope of the proposed DDA template and are proposed for deletion.

3.7.16 These terms, shown as item 8 in Figure 4, include:

- (a) any terms throughout the MUoSA relating to additional services, including Schedule 2 and some terms relating to payment of accounts.
- (b) some terms relating to agreement termination
- (c) some unused definitions in the interpretation clause (clause 31)
- (d) Schedule 4, which summarised retailer obligations relating to matters that must be included in a retailer's customer agreements.

3.7.17 A copy of the DDA template that shows the changes made to the interposed MUoSA in developing the DDA template, and includes commentary on the reasons for some of those changes (which are referred to in the template as DDA drafting notes), is available to interested parties on the Authority's website at <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c15756>

Q2. What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?

4. Regulatory Statement

4.1 Problem definition

4.1.1 The problem definition is set out in section 2.4 of this paper.

4.1.2 In summary, the Authority considers there is a problem with the way that distributors and traders develop, negotiate, and agree agreements for distribution services. The current arrangements are based on a largely voluntary regime that gives rise to problems in relation to the competition and efficiency limbs of the Authority's statutory objective.

4.2 Authority's proposal

4.2.1 The Authority proposes to include a new Part 12A in the Code that requires each distributor to develop and publish a DDA, prescribes default core terms that must be included in each DDA, and specifies requirements for operational terms included in each DDA.

4.2.2 The relevant Code provisions, which are set out in subpart 1 of the proposed new Part 12A, apply only to distributors with local networks that use interposed arrangements for distribution services. The provisions do not apply to distributors that use conveyance arrangements for distribution services or to embedded network distributors.

4.2.3 The proposed new Part 12A includes new provisions that regulate the way distribution agreements are negotiated and agreed by distributors and traders. Those provisions are explained in section 3 of this paper.

4.2.4 As a result of the proposed new Part 12A, consequential amendments are required to Parts 1, 11, 12A and 14 of the Code. Those proposed amendments are set out in Appendix B and Appendix C and include:

- (a) amending clause 12A.1 (Contents of this Part) to describe the content of the proposed new Part 12A, and omitting the existing clause 12A.1
- (b) inserting definitions for words and phrases that are used in the new Part 12A, including 'default core term', 'default distributor agreement', 'default distributor agreement template', 'distribution', and 'operational term'
- (c) replacing each reference in the Code to 'use-of-system agreement' with 'distribution agreement'
- (d) amending clause 11.5 and 11.16 of the Code to remove reference to 'line function services', and to instead require a trader to either have a distribution agreement with the relevant distributor (if the trader is a trader to whom

subpart 1 or 2 of the proposed new Part 12A applies), or to have arrangements for distribution services with the distributor

- (e) other minor amendments, including drafting improvements.

4.2.5 The proposed Code amendment:

- (a) adds a new subpart 1 in Part 12A that implements the proposal described in this consultation paper and is relevant only to local distributors that use interposed arrangements in forming agreements for distribution services with traders
- (b) includes, in a new subpart 2 and 3 of Part 12A, a number of current provisions in Part 12A
- (c) revokes a number of the current provisions in Part 12A that are no longer applicable or necessary
- (d) adds a new Schedule 12A.1 (included in Appendix C) that contains a DDA template
- (e) makes consequential changes to Parts 1, 11, and 14.

4.3 Statement of the objectives of the proposed amendment

4.3.1 The objectives of the proposed amendment are:

- (a) to improve efficiency in the long term interests of consumers by reducing the transaction costs faced by distributors and traders when developing, negotiating, agreeing, and maintaining distribution agreements
- (b) to improve competition in retail electricity markets in the long term interests of consumers by lowering barriers to entry to the retail market and by reducing the costs of doing business for traders
- (c) to improve competition in retail electricity markets (and, potentially, related markets such as the demand response market) in the long term interests of consumers by facilitating innovation and development of services and business models in response to evolving technologies.

4.3.2 The proposal is not expected to affect the reliability of supply of electricity.

4.4 Evaluation of the costs and benefits of the proposed amendment

4.4.1 The anticipated demand for new UoSAs is a key factor in considering the costs and benefits of the proposed new Part 12A. Accordingly, the first step estimates the likely demand for new UoSAs.

There are a large number of UoSAs and many more are anticipated

- 4.4.2 As at 24 September 2015, there were 29 local distributors, 27 of which use interposed arrangements when forming agreements for distribution services. At the same date, there were 25 traders (that are retailers) identified in the registry with responsibility for at least 1 installation control point (ICP) on at least 1 of the 27 local networks on which the local distributor uses interposed arrangements.²⁸
- 4.4.3 Analysis of the registry data on the number of traders trading on the 27 local networks indicates that there should be 311 UoSAs in place, representing an average of 11.52 traders trading on each interposed network in September 2015. This is a large number of complex agreements.
- 4.4.4 The Authority has used two methods to estimate the number of new UoSAs that might be required in future years:
- (a) method 1 looks at the recent trend in new UoSAs, as traders have expanded to trade in new local distribution network areas
 - (b) method 2 estimates the potential maximum number of UoSAs, based on the current number of traders trading remaining unchanged.

Analysing recent trends reveals 27 new UoSAs a year since mid-2013

- 4.4.5 The Authority has carried out the above analysis of registry data as at May 2013. At that time, the data shows that 247 UoSAs should have been in place, representing an average of 9.15 traders trading on each interposed network.
- 4.4.6 Therefore, in the 28 months between the two data snapshots in May 2013 and September 2015, 64 new UoSAs should have been agreed, representing a growth rate slightly in excess of 27 new UoSAs per year (which equals 1 new UoSA per interposed distributor per year).

There is an assessed potential for 175 new UoSAs

- 4.4.7 The purpose of this estimate is to assess the number of new UoSAs that would be required in future years based on the stated assumptions.
- 4.4.8 As noted in paragraph 4.4.2, in September 2015 there were 25 traders actively trading across the 27 interposed networks. However, 7 of these traders traded on 1 network only and could be considered as being 'niche' traders only. Such traders have not (yet) indicated a desire to expand to other networks. If the niche traders

²⁸ Registry data is from the Authority's Electricity Market Information website, which can be accessed at <http://www.emi.ea.govt.nz/>.

are removed from the analysis, the total number of traders for the purposes of this estimate reduces to 18.²⁹

4.4.9 If all active traders (but ignoring niche traders) sought to expand operations to trade on all 27 local distribution networks, this analysis shows an additional 175 UoSAs would be needed.³⁰

4.4.10 Each of those agreements would be a new agreement between a distributor and a smaller but established trader actively trading on more than 1 local network.

There is reason to anticipate demand for many new and replacement UoSAs

4.4.11 In summary:

(a) recent trend analysis reveals 27 new UoSAs are required annually (or 1 per interposed distributor per year)

(b) it is estimated that 175 new UoSAs may be required in the future.

4.4.12 These estimates do not include the replacement of existing UoSAs. Information shared with the Authority recently, resulting from surveys of distributors undertaken by the Electricity Networks Association, has not revealed the number of legacy UoSAs that have been replaced since publication of the MUoSAs in September 2012.

4.4.13 As noted in paragraph 4.4.5, as at May 2013, 247 UoSAs should have been in place. At that date, there would likely have been very few legacy UoSAs recently replaced with MUoSA-based agreements. If, in the time since May 2013, distributors had replaced 50% of the legacy UoSAs in place, that would still leave a further 124 UoSAs to renegotiate.

4.4.14 Under the current arrangements, significant effort and resource would likely be needed for new and replacement UoSAs. That reflects a significant effort in agreement formation, including incremental development (assuming distributors evolve their default UoSAs from well-established agreement templates), commercial and legal advice, negotiation, possible redrafting and contract execution.

Q3. What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.

²⁹ Note that 5 of the 7 niche retailers traded only on Vector's network.

³⁰ That is, 27 interposed distributors multiplied by (18 – 11.52) retailers.

Static efficiency effects

- 4.4.15 Static economic efficiency is achieved when:
- (a) goods and services desired by consumers are produced at minimum cost to the economy (productive efficiency)
 - (b) the marginal value consumers place on a good or service equals the cost of producing that good or service, so that the total of individuals' welfare in the economy is maximised (allocative efficiency).

Productive efficiency net benefits

Reduced transaction costs

- 4.4.16 Under the proposal described in this paper (the proposed new Part 12A), transaction costs are lower than under the status quo. Transaction costs include the costs of drafting, reviewing, negotiating, amending, approving and maintaining a distribution agreement. These costs include time spent by business analysts, technical and commercial experts, managers, lawyers and Board members.
- 4.4.17 Transaction costs are lower under the proposal than under the status quo because the proposed new Part 12A specifies default terms that must be included in each distributor's DDA, and requirements with which distributors must comply when drafting operational terms – as well as providing example operational terms. In addition, each distributor's DDA acts as a benchmark agreement, which provides a consistent starting point for distributor-trader negotiation over one or more terms.
- 4.4.18 This may facilitate some dynamic efficiency benefits over time, as distributors and traders will likely be more willing to make amendments to their distribution agreements for reasons of service innovation and product development, knowing that the cost of doing so is materially less than at present.
- 4.4.19 An example of this is the impact that new technology will likely have on the way distribution services are defined and provided. Distributed generation (particularly solar photovoltaic technology), battery storage, electric vehicles and smart grid technologies are already affecting the way stakeholders think about networks and distribution services. The scope and nature of distribution services may need to evolve quite rapidly. The change coordination benefits inherent in the proposal are expected to provide more efficient outcomes compared with the largely voluntary arrangements under the status quo.
- 4.4.20 'Change coordination' is used here to mean coordinating distribution agreement changes that impact all distributors in the same way. The proposal has the ability to respond in a coordinated way to address future change, including by amending the Code to change default core terms and/or the scope and detail of drafting requirements for operational terms. Such amendments could:

- (a) efficiently evolve the DDA while preserving the ability of distribution agreement counterparties to agree additional changes at the margin, through alternative agreements
 - (b) ensure that changes are considered in accordance with the Authority's statutory objective.
- 4.4.21 The Authority estimates the proposal would reduce the cost of negotiating a distribution agreement by between:
- (a) (lower bound): \$5,000 per agreement
 - (b) (upper bound): \$50,000 per agreement.
- 4.4.22 This is based on the feedback the Authority received on its April 2014 consultation paper on a proposal to achieve more standardisation of UoSAs. It reflects that costs accrue to both the distributor and the trader from the following, all of which requires commercial and legal input and advice:
- (a) developing and updating default agreements
 - (b) negotiating agreements
 - (c) executing and maintaining agreements.
- 4.4.23 Cost reductions resulting from the proposed new Part 12A reflect that:
- (a) the agreement templates that some distributors currently use as default or 'standard' agreements, and in some cases publish on their website, are unnecessary because they are replaced by DDAs (the costs of which are reflected later in this assessment)
 - (b) each DDA is significantly more standardised compared with the status quo, requiring less commercial and legal resources both to develop and to understand (eg, entrant traders need only review DDA default core terms once, whereas under the status quo there is no guarantee of standardisation of core terms between distributors, requiring repeated commercial and legal review effort for each network an entrant trader wishes to trade on)
 - (c) if either a distributor or trader elects to contract with the other on the basis of the distributor's DDA, all contract formation costs are eliminated.
- 4.4.24 Based on electricity retail market activity in recent years and an assessment of the potential for active traders to expand into more networks, the Authority estimates lower and upper bounds for the level of market entry as follows:³¹
- (a) (lower bound): 6 traders each seek to enter at least 10 networks over the next 10 years

³¹ The lower and upper bounds estimated here are based on the analysis described in paragraphs 4.4.2 to 4.4.10. The Authority considers that 60 – 90 new UoSAs over 10 years represents a conservative range.

(b) (upper bound): 9 traders each seek to enter at least 10 networks over the next 10 years.

4.4.25 Based on this information, and applying a real discount rate of 8%, the Authority estimates that the proposal would reduce transaction costs by between:³²

(a) (lower bound): \$217,500 – if 6 traders each seek to enter at least 10 distribution networks over the next 10 years, and there is a \$5,000 cost reduction per agreement

(b) (upper bound): \$3,261,000 – if 9 traders each seek to enter at least 10 distribution networks over the next 10 years and there is a \$50,000 cost reduction per agreement.

4.4.26 This analysis shows that the productive economic efficiency net benefits under the proposal are likely to be higher than under the status quo.

Allocative efficiency net benefits

4.4.27 Based on feedback from interested parties during the various consultations undertaken by the Authority on developing MUoSAs, as well as the Authority's understanding of existing UoSAs, electricity consumers will likely receive a greater level of satisfaction from the distribution services they receive if distribution agreements are developed, negotiated and agreed under the proposed new Part 12A, than under existing UoSAs. In economic terms, the consumer surplus under the proposal would be greater than under the suite of existing UoSAs.³³

4.4.28 The creation of Part 12A of the Code has addressed those aspects of UoSAs that result in larger consumer surplus benefits (eg, liability/indemnity and prudential security requirements).

4.4.29 However, further gains can be made in areas such as:

(a) establishing clear definitions of services received by consumers, defining measures against which to gauge distributors' service performance, and specifying target service levels

(b) providing further clarification in respect of various activities where distributors interact with consumers (for example, entering a consumer's premises, responding to a request for disconnection)

³² When assessing the benefits and costs of Code amendment proposals, the Authority typically uses a real discount rate of 6% with sensitivities of plus or minus 2%. For this consultation the Authority has used a point estimate of the discount rate, for ease of analysis. To minimise the risk of overstating the net benefit of the proposal, the Authority has used a real discount rate of 8%. The range of benefits estimated in this paragraph reflect the lower bound

³³ Consumer surplus is the economic term for the benefit a consumer receives from buying a good or service. It is the difference between the price a consumer of a good or service pays and the maximum price that consumer would be prepared to pay for the good or service.

- (c) having a default dispute resolution body (the Rulings Panel) that has industry expertise, is relatively cost-effective,³⁴ and provides for consistent decision-making over time.

4.4.30 Overall, these and other improvements introduced by the proposed new Part 12A are not expected to result in material additional ongoing costs to distributors, which would, in the absence of an ability to increase their distribution prices under the default/customised price-quality regulatory regime, reduce their producer surplus.³⁵

4.4.31 Hence, the net benefit from improved allocative efficiency under the counterfactual is estimated to be approximately equal to the additional consumer surplus arising from implementing the counterfactual.

4.4.32 In summary, allocative economic efficiency net benefits under the proposed new Part 12A are expected to be higher than under the status quo.

Establishment costs

4.4.33 Implementing the Authority's preferred option will result in the Authority and industry participants incurring costs associated with moving from the status quo. The Authority's costs will relate primarily to the cost of developing a DDA template and making the necessary amendments to the Code (including consultation with interested parties).

4.4.34 Participants' costs will relate primarily to:

- (a) responding to further consultation documents released by the Authority
- (b) distributors developing operational terms that comply with the requirements in the DDA template and apply the principles for operational terms
- (c) distributors consulting with traders and other parties about their DDAs
- (d) each distributor publishing a DDA
- (e) any costs resulting from an operational term being reviewed by the Rulings Panel
- (f) distributors and traders making any necessary changes to their internal policies and procedures to accommodate the new approach.

4.4.35 The Authority's estimate of its incremental regulatory costs (vis-a-vis the status quo) to implement the proposal is approximately \$100,000. The Authority's

³⁴ Including lowering the search costs faced by distributors and retailers in finding a legal body with necessary industry expertise.

³⁵ Producer surplus is the economic term for the benefit a producer receives for selling a good or service. It is the difference between the price a producer of a good or service is paid and the minimum price that producer would accept for the good or service.

estimate of participants' incremental costs to implement the proposal is approximately \$505,000. This is estimated as follows:

- (a) consultation consideration and response – \$100,000³⁶
- (b) 27 distributors developing a DDA – \$135,000³⁷
- (c) consulting with traders – \$270,000³⁸
- (d) publishing 27 DDAs – negligible.³⁹

4.4.36 Negotiating new alternative agreements is not a cost of the proposal, but rather a business-as-usual cost.

Dynamic efficiency effects

4.4.37 Dynamic economic 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 goods and services over time.

4.4.38 In summary, the dynamic efficiency benefits from the proposed new Part 12A are considered to be materially larger than any potential dampening of dynamic efficiency from adopting such an arrangement.

Uniform standards are beneficial in some circumstances

4.4.39 When there is a monopoly provider of a service or product that has a high degree of homogeneity across the consumers of that service or product, uniform standards can be an efficient means by which to reflect the preferences of those consumers. This in turn provides an opportunity for third parties to provide value-added services or products based on the underlying product or service.

4.4.40 The provision of distribution services is a reasonably good example of this situation. Distributors provide a relatively homogenous service related to electricity delivery, which enables connected consumers to purchase electricity from traders offering relatively heterogeneous products or services.

4.4.41 In this situation, the greatest dynamic efficiency gains arise from strong competition between the traders on the local network, as they seek to innovate and offer new and/or more cost-effective products or services to consumers over time. In this way dynamic efficiency is enhanced by uniform standards.

³⁶ This is estimated by assuming that 10 submitters will incur costs of \$10,000 each in providing submissions.

³⁷ Most distributors already have a "default" UoSA that they offer to retailers that seek to trade on their networks. The Authority expects that DDA operational terms will closely reflect terms that already exist in current agreements.

³⁸ This is assessed at an average of \$10,000 per distributor.

³⁹ Publishing information on a distributor's website requires adding a document and a suitable explanation to an existing website.

- 4.4.42 In other markets, uniform standards have the potential to reduce service and product innovation, as well as to delay improvements to customer service standards (including the cost-effectiveness and efficiency of customer services).
- 4.4.43 An important caveat on the use of standards in the provision of distribution services is that the standards must be capable of evolving over time if that assists product or service innovation, on the part of distributors as well as traders. The evolution of the standards will enhance dynamic efficiency.
- 4.4.44 As the Authority's information set evolves over time, so too will the default core terms and requirements for operational terms in the DDA template. However, acknowledging that many individual economic agents will collectively have superior information to a central regulator, the Authority's proposed approach is to:
- (a) prescribe default core terms and requirements related to operational terms that will result in more standardised DDAs that are published by local distributors and available to traders
 - (b) allow distributors and traders to agree alternative agreements.
- 4.4.45 This reduces the possibility that a DDA will dampen innovation and therefore dynamic efficiency.
- 4.4.46 Therefore, the Authority considers it is unlikely there will be significant adverse impacts on dynamic efficiency from the proposed new Part 12A. The Authority does however consider that there are potentially quite significant dynamic efficiency benefits from the proposed new Part 12A, through the lowering of barriers to entry for entrant traders on local networks and by reducing the cost of doing business for traders.

Promoting retail competition is consistent with the Authority's objective

- 4.4.47 Enhanced retail competition, including the threat of entrant traders on local networks, increases competitive pressure on electricity prices and encourages efficient investment in capital goods and innovation. It provides consumers with greater confidence that the price of electricity more closely reflects the efficient cost of producing, transporting and retailing electricity, and that price movements are driven by underlying supply and demand movements.
- 4.4.48 This is consistent with the Authority's interpretation of the competition limb of its statutory objective, which is that the Authority will *[exercise] its functions in ways that facilitate or encourage increased competition in the markets for electricity and electricity-related services, taking into account long-term opportunities and incentives for efficient entry, exit, investment and innovation in those markets.*

A DDA will help promote competition on smaller networks

- 4.4.49 The Authority is observing a positive trend towards increased competition in the retail electricity market.⁴⁰ The development of a DDA template with default core terms should facilitate this trend, by reducing the transaction costs associated with traders entering local distribution networks. It is expected to increase the number of traders competing in regions with relatively fewer consumers and traders. More competition on smaller networks will be encouraged if the per-customer cost of negotiating UoSAs on such networks moves closer to that for larger local networks.
- 4.4.50 This in turn will lead to increased competitive pressure on electricity prices in these smaller networks vis-a-vis the status quo, and will encourage increased levels of efficient investment and innovation by traders in particular, compared to the status quo.

Overall net benefit

- 4.4.51 Having undertaken the assessment of benefits and costs set out above, the Authority considers that, on balance, amending the Code to include the proposed new Part 12A is likely to deliver a net benefit and is preferable to the status quo. Static efficiency benefits alone could equal or outweigh the cost of implementing the proposal. When the dynamic efficiency benefits (which are unquantified, but expected to be significant) are added, the net benefit of the proposal is likely to be positive.

4.5 Evaluation of alternative means of achieving the objectives of the proposed amendment

- 4.5.1 In the April 2014 consultation paper, the Authority considered a range of alternatives to the proposal, including retention of the status quo.
- 4.5.2 The alternatives can be considered in three groups:
- (a) options that retain the largely voluntary nature of the status quo arrangements
 - (b) an option similar to the proposed option set out in this paper, that regulated only a set of default core terms and allowed distributors to determine the scope and detail of operational terms at their discretion
 - (c) options that would require distributors and traders to adopt core terms specified in the Code, or to adopt both core and operational terms specified

⁴⁰ Electricity Authority, 2015, Electricity Market Performance: 2014 year in review.

in the Code. Those options could prohibit distributors and traders from agreeing alternative terms to those specified in the Code.

4.5.3 The Authority considers that the preferred option proposed in this paper and reflected in the new Part 12A is superior to each of the alternatives because:

- (a) Any regime based on voluntary compliance provides insufficient incentive on distributors to offer standardised terms. In addition, these options have relatively high transaction costs as compared with the proposal.
- (b) Compared with the option of regulating default core terms only, options that omit to include a process that specifies requirements as to the scope and content of operational terms are inferior to the proposal, which specifies such requirements. Providing requirements for operational terms, as well as a process for establishing a default distributor agreement, maximises regulatory certainty and minimises the transaction costs associated with developing distributor-specific operational terms.
- (c) Compared with the options that would require mandatory adoption of core terms or a whole distribution agreement, the proposal is significantly more flexible in that it:
 - (i) allows parties to negotiate and agree on any terms that they may wish (provided such terms relate to distribution services)
 - (ii) accommodates legitimate differences in the way local networks provide their distribution services and possible future innovative terms of service.

4.5.4 In summary, the Authority considers that in contrast to the alternatives it has considered, the proposed new Part 12A balances standardisation and certainty with flexibility and incentives to mutually agree value-adding terms of service.

4.5.5 Benchmark agreements that are conceptually similar to the proposal currently underpin durable regulatory arrangements for forming agreements for connection of distributed generation under Part 6 and for transmission agreements under Part 12.

4.6 Assessment under section 32(1)

4.6.1 Section 32(1) of the Act provides that Code provisions must be consistent with the Authority's objective and be 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 performance by the Authority of its functions;
- (e) any other matters specifically referred to in this Act as a matter for inclusion in the Code.

4.6.2 The following table sets out an assessment of the proposed amendment against the requirements of section 32(1) of the Act.

Table 1 - Assessment under section 32(1) of the Act

Section 32(1) requirements:	Response
The proposed amendment is consistent with the Authority’s objective under section 15 of the Act, which is as follows:	
(a) to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers	<p>The proposal is expected to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers. The reasons for this are summarised below.</p> <p>The proposal is not expected to have an effect on the reliable supply of electricity to consumers.</p>
The proposed amendment is necessary or desirable to promote any or all of the following:	
(b) competition in the electricity industry;	<p>The proposal is expected to promote competition in the electricity industry by:</p> <ul style="list-style-type: none"> (a) promoting even-handed treatment of traders and providing equal access to distribution services (b) reducing the transaction costs associated with traders entering local distribution networks.
(c) the reliable supply of electricity to consumers;	The proposal is not expected to materially affect the reliable supply of electricity to consumers.
(d) the efficient operation of the electricity industry;	The proposal is expected to promote the efficient operation of the electricity industry by reducing the transaction costs associated with traders and distributors developing, negotiating, agreeing and maintaining distribution agreements.
(e) the performance by the Authority of its functions;	The proposal will not materially affect the Authority’s performance of its statutory functions.

(f) any other matter specifically referred to in this Act as a matter for inclusion in the Code.	The proposal will not materially affect any other matter specifically referred to in the Act for inclusion in the Code.
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4.7 Assessment against the code amendment principles

4.7.1 When considering amendments to the Code, the Authority is required by its Consultation Charter to have regard to the following Code amendment principles, to the extent that the Authority considers that they are applicable.

4.7.2 *Principle 1 – Lawfulness:* The Authority and its advisory groups will only consider amendments to the Code that are lawful and that are consistent with the Act (and therefore consistent with the Authority’s statutory objective and its obligations under the Act).

4.7.3 The Authority considers that the proposal is lawful.

4.7.4 *Principle 2 – Clearly Identified Efficiency Gain or Market or Regulatory Failure:* Within the legal framework specified in Principle 1, the Authority and its advisory groups will only consider using the Code to regulate market activity when:

- (a) it can be demonstrated that amendments to the Code will improve the efficiency of the electricity⁴¹ industry for the long-term benefit of consumers
- (b) market failure is clearly identified, such as may arise from market power, externalities, asymmetric information and prohibitive transaction costs
- (c) a problem is created by the existing Code, which either requires an amendment to the Code, or an amendment to the way in which the Code is applied.

4.7.5 If all distributors have distribution agreements with standardised terms, and if those terms are made available to all current and potential future traders competing on a local network, that underpins equal, open access to distribution services. That in turn can assist retail competition. Expanding retail competition is in the long-term interests of consumers.

4.7.6 The extent to which the MUoSA terms have been adopted varies among the 27 local distributors that currently use interposed arrangements. In some cases, particularly for legacy UoSAs, there is little voluntary transparency of the terms included in the UoSAs. However, widespread voluntary adoption of the MUoSA terms has not occurred.

⁴¹ Where efficiency refers to allocative, productive and dynamic efficiency, and improvements to efficiency include, for example, a reduction in transaction costs or a reduction in the scope for disputes between industry participants.

- 4.7.7 If all distributors had distribution agreements with standardised terms, and if those terms were made available to all current and potential future traders competing on a local network, that would lower transaction costs. That is because drafting and negotiating such agreements would require fewer technical, commercial and legal resources. This is particularly the case for prospective entrant traders. Lower transaction costs benefit both traders and distributors and are therefore in the long-term interests of consumers.
- 4.7.8 Each of the estimated 311 UoSAs in place as at September 2015 is a bespoke agreement that has been drafted and negotiated using technical, commercial and legal resources. The Authority considers there is scope for further retail expansion, which means that new UoSAs will need to be negotiated.
- 4.7.9 Neither the voluntary MUoSA, nor any of the UoSAs negotiated since publication of the MUoSA, have provided a durable ‘benchmark’ UoSA. The Authority considers that largely voluntary arrangements provide considerable scope for ongoing fragmentation of the terms of distribution services.
- 4.7.10 The Authority considers that amending the Code to require each distributor that adopts interposed arrangements to publish a DDA, which includes prescribed default core terms and operational terms that meet requirements specified in the Code, will durably resolve these problems, thereby providing efficiency and competition gains in accordance with the Authority’s statutory objective.
- 4.7.11 *Principle 3 – Quantitative Assessment:* When considering possible amendments to the Code, the Authority and its advisory groups will ensure disclosure of key assumptions and sensitivities, and use quantitative cost-benefit analysis to assess long-term net benefits for consumers, although the Authority recognises that quantitative analysis will not always be possible. This approach means that competition and reliability are assessed solely in regard to their economic efficiency effects. Particular care will be taken to include dynamic efficiency effects in the assessment, and the assessment will include sensitivity analysis when there is uncertainty about key parameters.
- 4.7.12 The Authority considers that, on balance, the proposal’s estimated benefit would be larger than its estimated cost. This is based on the results of the qualitative and quantitative cost-benefit analysis set out earlier in this section 4.

- Q4. What are your views on the regulatory statement set out in section 4?**
- Q5. What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?**

Appendix A Format for submissions

A.1 Please provide your responses to the questions in the paper using a copy of the following table.

Question No.	General comments in regards to the:	Your response
1	What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
2	What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	
3	What feedback do you have on the detail provided in section 3, which describes the Authority's proposal to introduce a DDA into Part 12A of the Code along with supporting processes that are designed to allow distributors' DDAs to act as tailored benchmark agreements?	
4	What are your views on the regulatory statement set out in section 4?	
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	

A.2 Please provide your comments on the detailed drafting of the Code amendment using a copy of the following table.

Clause	General comments in regards to the:	Your response
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A.3 Please provide your comments on the detailed drafting of the DDA template using a copy of the following table.

Clause	General comments in regards to the:	Your response

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Appendix B Proposed Code amendment

B.1 The proposed Code amendment follows. Please note that both a clean version and a tracked change version are included.

Clean version

Electricity Industry Participation Code 2010

Part 12A

Distribution agreements and arrangements

Contents

12A.1	Contents of this Part
	Subpart 1—Distribution agreements in respect of local networks
	<i>Default distributor agreement template and default distributor agreements</i>
12A.2	Application of this subpart
12A.3	Principles for operational terms in default distributor agreements
12A.4	Default distributor agreements
12A.5	Appeal against operational terms in default distributor agreements
12A.6	Amendment to operational term by Rulings Panel following appeal
12A.7	Amendment to operational term by distributor following appeal
	<i>Entering into distribution agreements</i>
12A.8	Obligation to enter into distribution agreement
12A.9	Negotiating distribution agreements
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	<i>Amending default distributor agreements</i>
12A.11	Amending operational terms in default distributor agreements
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	Subpart 2—Distribution agreements in respect of embedded networks
12A.13	Application of this subpart
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12A.15	Prudential requirements
12A.16	Election of prudential requirements
12A.17	Requirements if distributors require additional security
12A.18	Agreement to less onerous terms
	<i>Other requirements</i>
12A.19	Distributors to consult concerning changes to pricing structures
12A.20	Distributor or trader may require provision of information
	Subpart 3—Exchange of information

- 12A.21 Application of this subpart
- 12A.22 Authority may publicise EIEPs that must be used
- 12A.23 Distributors and traders to comply with EIEPs
- 12A.24 Transitional provision relating to EIEPs

Schedule 12A.1
Default distributor agreement template

12A.1 Contents of this Part

This Part—

- (a) requires each specified **distributor** to have a **default distributor agreement** based on the **default distributor agreement template** in Schedule 12A.1; and
- (b) specifies requirements with which each **distributor** and **trader** must comply when entering into a **distribution agreement**; and
- (c) specifies requirements that apply in respect of each specified **embedded network distributor**; and
- (d) specifies requirements relating to the exchange and provision of information, including requirements relating to **EIEPs**.

Subpart 1
Distribution agreements in respect of local networks

Default distributor agreement template and default distributor agreements

12A.2 Application of this subpart

This subpart applies to—

- (a) each **distributor** that—
 - (i) conveys **electricity** to 1 or more **consumers** on the **distributor's local network**; and
 - (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and
- (b) each **trader** that—
 - (i) is a **retailer**; and
 - (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a).

12A.3 Principles for operational terms in default distributor agreements

- (1) This clause sets out principles that must be applied by—
 - (a) each **distributor** when it sets **operational terms** in its **default distributor agreement**; and
 - (b) the **Rulings Panel** when it reviews 1 or more **operational terms** under clause 12A.5(3).
- (2) The principles are that a **distributor's operational terms** must—
 - (a) be consistent with the **Authority's** objective set out in section 15 of the **Act**; and

- (b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the requirements of **traders** trading on the **distributor's network**; and
- (c) reflect the interests of **consumers** on the **distributor's network**; and
- (d) reflect the reasonable requirements of **traders** trading on the **distributor's network** and the ability of the **distributor** to meet those requirements.

12A.4 Default distributor agreements

- (1) Each **distributor** must have a **default distributor agreement** that—
 - (a) includes—
 - (i) each **default core term** set out in the **default distributor agreement template**; and
 - (ii) **operational terms** that meet each of the requirements set out in the **default distributor agreement template** for **operational terms** that are italicised and in text boxes in the **default distributor agreement template**; and
 - (b) does not include any other terms.
- (2) A **distributor** must not include an **operational term** in its **default distributor agreement** that is inconsistent with, or modifies the effect of, any **default core term**.
- (3) In setting the **operational terms** in its **default distributor agreement**, a **distributor** must apply the principles set out in clause 12A.3(2).
- (4) A **distributor** must make its **default distributor agreement** available prominently on its website from the following date:
 - (a) for Orion New Zealand Limited, Powerco Limited, Unison Networks Limited, and Vector Limited, 60 **business days** after the date on which this clause comes into force;
 - (b) for each **distributor** that is a **distributor** on the date on which this clause comes into force and is not named in paragraph (a), 120 **business days** after the date on which this clause comes into force;
 - (c) for each other **distributor**, from the later of the following:
 - (i) 120 **business days** after the date on which this clause comes into force;
 - (ii) 30 **business days** before the date on which the **distributor** commences engaging in the business of **distribution** on the basis described in clause 12A.2(a).
- (5) A **distributor** must—
 - (a) before making its **default distributor agreement** available on its website, consult each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, on the **operational terms** that the **distributor** proposes to include in its **default distributor agreement**; and
 - (b) no later than 2 **business days after** making the agreement available, advise each such **trader** and **participant** that the **default distributor agreement** is available on the **distributor's** website.

12A.5 Appeal against operational terms in default distributor agreements

- (1) No later than 10 **business days** after a **distributor** makes its **default distributor agreement** available on its website under clause 12A.4(4), a **participant** that

participated in the consultation under clause 12A.4(5) may appeal to the **Rulings Panel** against the inclusion of 1 or more **operational terms** in the **default distributor agreement** by giving notice to the **Rulings Panel** and the **distributor**.

- (2) If the **Rulings Panel** receives a notice from a **participant** by the day specified in subclause (1), the **Rulings Panel** must, no later than 10 **business days** after receiving the notice, advise the **participant** that the **Rulings Panel** will—
 - (a) review 1 or more of the **operational terms** to which the notice relates; or
 - (b) decline to review 1 or more of any such terms, giving reasons.
- (3) In reviewing an **operational term** in a **default distributor agreement**, the **Rulings Panel** must apply the principles set out in clause 12A.3(2).
- (4) If the **Rulings Panel** reviews an **operational term**, the **Rulings Panel** must, no later than 20 **business days** after advising the **participant** under subclause (2),—
 - (a) confirm the **operational term**; or
 - (b) amend the **operational term**, in which case clause 12A.6 applies; or
 - (c) direct the **distributor** to reconsider, either generally or in respect of any specified matter, the **operational term**, within such time as the **Rulings Panel** must specify, and give the **distributor** any such directions as the **Rulings Panel** thinks fit concerning the reconsideration of the **operational term**, in which case clause 12A.7 applies.

12A.6 Amendment to operational term by Rulings Panel following appeal

- (1) This clause applies if the **Rulings Panel** amends 1 or more **operational terms** of a **default distributor agreement** under clause 12A.5(4)(b).
- (2) Each such **operational term** in the **default distributor agreement** is deemed to be amended accordingly.
- (3) The **distributor** must—
 - (a) make an updated version of its **default distributor agreement** that includes each amended **operational term** available prominently on its website no later than 5 **business days** after the date of the **Rulings Panel's** decision; and
 - (b) advise each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, that an updated version of the agreement is available on the **distributor's** website no later than 2 **business days after** making the agreement available on its website.
- (4) For each **operational term** that the **Rulings Panel** amends, the **Rulings Panel** must stipulate 1 of the following in respect of each **distribution agreement** that the **distributor** has with a **trader** that includes the **operational term**:
 - (a) that the **distributor** or the **trader** may elect to amend the **distribution agreement** to include the amendment by giving notice to the other party;
 - (b) that the **distributor** may elect to amend the **distribution agreement** to include the amendment by giving notice to the **trader**;
 - (c) that the **trader** may elect to amend the **distributor agreement** with the **distributor** by giving notice to the **distributor**.
- (5) A notice given under subclause (4)(a), (b), or (c) must be given no later than 10 **business days** after the date on which the **distributor** gives notice under subclause (3)(b).

- (6) If a notice is given under subclause (4), each **distribution agreement** to which the notice relates is deemed to be amended accordingly from the date of the notice.
- (7) Subclauses (4) to (6) do not apply in respect of a **distribution agreement** in which the **operational term** has been amended or omitted.

12A.7 Amendment to operational term by distributor following appeal

- (1) If a **distributor** amends 1 or more **operational terms** of its **default distributor agreement** after being directed to reconsider the term by the **Rulings Panel** under clause 12A.5(4)(c), the **distributor** must—
 - (a) make an updated version of its **default distributor agreement** that reflects the amendment available prominently on its website no later than 5 **business days** after making the amendment; and
 - (b) no later than 2 **business days after** making the agreement available, advise each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, that an updated version of the agreement is available on the **distributor's** website.
- (2) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1).

Entering into distribution agreements

12A.8 Obligation to enter into distribution agreement

- (1) A **trader** trading on the **distributor's network** must have a **distribution agreement** with the **distributor**.
- (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network**.

12A.9 Negotiating distribution agreements

- (1) A **trader** that wishes to trade on a **distributor's network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **distributor's network**.
- (2) If, after a **distributor** has made its **default distributor agreement** available on its website under clause 12A.4(4), a **distributor** receives a notice that a person wishes to trade as a **trader** on the **distributor's network**, the **distributor** must, no later than 5 **business days** after receiving the notice, offer to contract with the person on the terms set out in the **default distributor agreement**.
- (3) A person that has given a notice under subclause (2) may withdraw the notice at any time before it enters into, or is deemed to have entered into, a binding contract with the **distributor**, by giving notice of the withdrawal of the notice to the **distributor**.
- (4) At any time before the **default distributor agreement** applies as a binding contract between the **distributor** and the person under subclause (6), either the **distributor** or the person may give the other party notice that the **distributor** or the person wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (5) If either party gives a notice under subclause (4), the **default distributor agreement** applies as a binding contract between the parties with effect from—

- (a) the later of—
 - (i) the 5th **business day** after the date on which the notice is given; or
 - (ii) the day on which the person that wishes to trade as a **trader** on the **distributor's network** becomes a **participant**; or
 - (b) any other date agreed by the parties.
- (6) If, at the expiry of 20 **business days** after a notice is received by a **distributor** under subclause (1), the **distributor** and the person have not agreed on the terms of a **distribution agreement** and neither party has given a notice under subclause (4), the **default distributor agreement** applies as a binding contract between the **distributor** and the person with effect from—
- (a) the later of—
 - (i) the expiry of the period; or
 - (ii) the day on which the person that wishes to trade as a **trader** on the **distributor's network** becomes a **participant**; or
 - (b) any other date agreed by the parties.

12A.10 Alternative agreements

- (1) A **distributor** and a **trader** may enter into a **distribution agreement** on terms that differ from the terms set out in the **distributor's default distributor agreement** (an "alternative agreement").
- (2) However, a **distributor** and a **trader** that enter into an alternative agreement must ensure that the terms of the alternative agreement —
 - (a) address only the subject matter of the terms of the **default distributor agreement**; and
 - (b) relate only to **distribution** services.

Amending default distributor agreements

12A.11 Amending operational terms in default distributor agreements

- (1) A **distributor** may amend 1 or more of the **operational terms** in its **default distributor agreement** by making its **default distributor agreement** with the amended **operational terms** available prominently on its website.
- (2) Before a **distributor** amends its **default distributor agreement**, it must consult each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the amendment.
- (3) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1).
- (4) The amending of a **default distributor agreement** under subclause (1) does not affect a **distribution agreement** between a **distributor** and **trader** that came into force before the day on which the **default distributor agreement** was made available under subclause (1).

Transitional provisions for existing agreements

12A.12 Transitional provisions for existing agreements

- (1) This clause applies to a **distributor** and a **trader** that have an agreement for **distribution** services that was entered into before the date on which the **distributor** made its **default distributor agreement** available on its website under clause 12A.4(4) ("existing agreement").
- (2) The **distributor** must, no later than 10 **business days** after the date on which the **distributor** makes its **default distributor agreement** available on its website, offer to contract with the **trader** on the terms set out in the **default distributor agreement**.
- (3) At any time before the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** under subclause (5), either the **trader** or the **distributor** may give the other party notice that the **trader** or **distributor** wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (4) If either party gives a notice under subclause (3), the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** with effect from the 5th **business day** after the date on which the notice is given, or any other date agreed by the parties.
- (5) Subject to subclause (4), if the **distributor** and the **trader** cannot agree on the terms of a **distribution agreement** to replace the existing agreement at the expiry of 2 months after the date on which this clause came into force—
 - (a) the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** with effect from the expiry of that period; and
 - (b) the provisions of the existing agreement that directly or indirectly relate to **distribution** services are deemed to have been terminated with effect from that date.
- (6) Clause 12A.10 applies in respect of any **distribution agreement** that the parties agree to replace an existing agreement that is not the **default distributor agreement**.

Subpart 2

Distribution agreements in respect of embedded networks

12A.13 Application of this subpart

This subpart applies to—

- (a) each **distributor** that—
 - (i) conveys **electricity** to 1 or more **consumers** on the **distributor's embedded network**; and
 - (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and
- (b) each **trader** that—
 - (i) is a **retailer**; and
 - (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a).

Distribution agreement

12A.14 Obligation to enter into distribution agreement

- (1) A **trader** trading on the **distributor's network** must have a **distribution agreement** with the **distributor**.
- (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network**.
- (3) A **trader** that wishes to trade on a **distributor's network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **distributor's network**.

Prudential requirements

12A.15 Prudential requirements

Clauses 12A.16 to 12A.18 apply in relation to a **distribution agreement** between a **distributor** and a **trader** if—

- (a) the **distributor** does not have a contract in respect of the conveyance of **electricity** with 1 or more of the **consumers** on the **distributor's network**; and
- (b) the **distributor** requires that the **distribution agreement** provides that the **trader**—
 - (i) must comply with prudential requirements; or
 - (ii) must comply with prudential requirements if required to do so by the **distributor**.

12A.16 Election of prudential requirements

- (1) Subject to clause 12A.18, the **distributor** must ensure that the **distribution agreement** provides that the **trader** may elect to comply with the prudential requirements in either of the following ways:
 - (a) the **trader** must maintain an acceptable credit rating in accordance with subclause (3); or
 - (b) the **trader** must provide and maintain acceptable security by, at the **trader's** election,—
 - (i) providing the **distributor** with a cash deposit; or
 - (ii) arranging for a third party with an acceptable credit rating to provide that security in a form acceptable to the **distributor**; or
 - (iii) providing a combination of the securities described in subparagraphs (i) and (ii).
- (2) The **distributor** must ensure that the **distribution agreement** provides that the **trader** may change its election at any time.
- (3) For the purposes of this clause, a **trader** or third party has an acceptable credit rating if it—
 - (a) carries a long term credit rating of at least—
 - (i) BBB- (Standard & Poors Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
 - (b) is not subject to negative credit watch or any similar arrangement by the agency that gave it the credit rating.

- (4) Subject to clause 12A.17, the value of the acceptable security described in subclause (1)(b) must be the **distributor's** reasonable estimate of the **distribution** services charges that the **trader** will be required to pay to the **distributor** in respect of any period of not more than 2 weeks.
- (5) The **distributor** must ensure that a **distribution agreement** specifies that, if the **trader** elects to provide acceptable security as described in subclause (1)(b), the **distributor** must—
 - (a) hold any security provided by the **trader** in the form of a cash deposit in a trust account in the name of the **trader** at an interest rate that is the best on-call rate reasonably available at the time the **trader** provides the cash deposit; and
 - (b) pay interest earned in respect of the cash deposit to the **trader** on a quarterly basis, net of account fees and any amounts that are required to be withheld by law.

12A.17 Requirements if distributors require additional security

- (1) A **distributor** may require that its **distribution agreement** provides 1 or both of the following:
 - (a) that if the **trader** elects to provide acceptable security as specified in clause 12A.16(1)(b), the **trader** must provide acceptable security that is additional to the amount provided for in clause 12A.16(4);
 - (b) that the **distributor** may, during the term of the **distribution agreement**, require the **trader** to provide such additional security.
- (2) If a **distribution agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the total value of additional security specified in the **distribution agreement** must be such that the total value of all security required to be provided by the **trader** must not be more than the **distributor's** reasonable estimate of the **distribution** services charges that the **trader** will be required to pay to the **distributor** in respect of any 2 month period.
- (3) If a **distribution agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the **distribution agreement** provides the following:
 - (a) if any additional security provided by the **trader** is in the form of a cash deposit, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate equal to the sum of the bank bill yield rate for that day plus 15% on the amount of additional security held on that day;
 - (b) if any additional security provided by the **trader** is in the form of security from a third party, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate of 3% on the amount of additional security held on that day;
 - (c) any money required to be paid by the **distributor** to the **trader** as specified in paragraph (a) or (b) must be paid by the **distributor** to the **trader** on a quarterly basis.
- (4) For the purposes of this clause, the bank bill yield rate is—
 - (a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on that day as being the daily bank bill yield for bank bills having a tenor of 90 days; or

- (b) for any day for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill yield rate determined in accordance with paragraph (a) on the last day that such a rate was available.

12A.18 Agreement to less onerous terms

Despite clause 12A.16, a **distributor** and a **trader** may agree prudential requirements that are less onerous on the **trader** than the requirements described in clauses 12A.16 and 12A.17.

Other requirements

12A.19 Distributors to consult concerning changes to pricing structures

- (1) A **distributor** must consult with each **trader** trading on the **distributor's network** in respect of the **distributor's** pricing structure for the **consumers** with whom the **distributor** does not have a contract in respect of the conveyance of **electricity** before making a change to the pricing structure that materially affects 1 or more **traders** or **consumers**.
- (2) For the purpose of subclause (1), changes to a **distributor's** pricing structure that may materially affect 1 or more **traders** or **consumers** include, but are not limited to, any of the following:
 - (a) a change by the **distributor** to the eligibility criteria for 1 or more of the **distributor's** prices:
 - (b) a change by the **distributor** to the **distributor's** pricing structure by the introduction of a new price:
 - (c) a change by the **distributor** to the **distributor's** pricing structure that means that 1 or more of the **distributor's** prices are no longer available.
- (3) However, the fact that a change is listed in subclause (2) does not mean that a **distributor** is required to consult on the change if the change will not materially affect **traders** or **consumers**.

12A.20 Distributor or trader may require provision of information

- (1) The **distributor** may, by notice in writing, require the **trader** to provide information to the **distributor**, to enable the **distributor** to invoice and reconcile charges for **distribution** services.
- (2) The **trader** may, by notice in writing, require the **distributor** to provide information to the **trader**, to enable the **trader** to invoice and reconcile charges for **distribution** services.
- (3) A **trader** or **distributor** that receives a notice under subclause (1) or subclause (2) must provide the information no later than 15 **business days** (or such other date as agreed between the parties) after receiving the notice.
- (4) Nothing in this clause prevents the **distributor** and the **trader** agreeing to provide **volume information** to each other for a purpose other than to enable invoicing and reconciling of charges for **distribution** services.

Subpart 3 Exchange of information

12A.21 Application of this subpart

This subpart applies to —

- (a) each **distributor** that—
 - (i) conveys **electricity** to 1 or more **consumers** on the **distributor's local network** or **embedded network**; and
 - (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and
- (b) each **trader** that—
 - (i) is a **retailer**; and
 - (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a).

12A.22 Authority may publicise EIEPs that must be used

- (1) The **Authority** may **publicise** 1 or more **EIEPs** that set out standard formats that **distributors** and **traders** must use when exchanging information.
- (2) When **publicising** an **EIEP** under subclause (1), the **Authority** must specify the date on which the **EIEP** will come into effect.
- (3) The information to which an **EIEP publicised** under subclause (1) may relate includes, but is not limited to, the following information:
 - (a) **ICP** level billing information:
 - (b) summary level billing information:
 - (c) **half hourly** billing information:
 - (d) **distributor** tariff rate change information.
- (4) Before the **Authority** **publicises** an **EIEP** under subclause (1), or amends an **EIEP** it has **publicised** under subclause (1), it must consult with the **participants** that the **Authority** considers are likely to be affected by the **EIEP**.
- (5) The **Authority** need not comply with subclause (4) if it proposes to amend an **EIEP publicised** under subclause (1) if the **Authority** is satisfied that—
 - (a) the nature of the amendment is technical and non-controversial; or
 - (b) there has been adequate prior consultation so that the **Authority** has considered all relevant views.

12A.23 Distributors and traders to comply with EIEPs

- (1) If the **Authority** **publicises** an **EIEP** under clause 12A.22, the **distributor** and the **trader** must, when exchanging information to which the **EIEP** relates, comply with the **EIEP** from the date on which the **EIEP** comes into effect.
- (2) However, a **distributor** and a **trader** may, after an **EIEP** has been **publicised**, agree to exchange information other than in accordance with the **EIEP**, by recording the agreement in the **distribution agreement** between the **distributor** and **trader**.
- (3) An agreement to exchange information other than in accordance with an **EIEP** is not effective in relieving a **distributor** and a **trader** of the obligation to comply with subclause (1), unless the agreement comes into effect on or after the date on which the relevant **EIEP** comes into effect.
- (4) An agreement under subclause (2) is not affected by the **Authority** **publicising** an amendment to the **EIEP**.

12A.24 Transitional provision relating to EIEPs

- (1) This clause applies to any **EIEP** that a **distributor** or **trader** was required to comply with immediately before this clause came into force.
- (2) An **EIEP** to which this clause applies—
 - (a) is deemed to be an **EIEP publicised** under clause 12A.22(1); and
 - (b) despite clause 12A.22(2), comes into effect on the date on which this clause comes into force.
- (3) The **Authority** need not comply with clause 12A.22(4) in respect of an **EIEP** to which this clause applies, unless the **Authority** proposes to amend the **EIEP**.

Schedule 12A.1
Default distributor agreement template

cl 12A.4

[See Appendix C of this consultation paper]

Part 1

Preliminary provisions

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

default core term means a term set out in the **default distributor agreement template** for inclusion in **default distributor agreements** in accordance with clause 12A.4(1)(a)(i)

default distributor agreement means a **distribution agreement** made available by a **distributor** under clause 12A.4(4), 12A.6(3)(a), 12A.7(1)(a), or 12A.11(1)

default distributor agreement template means the template agreement set out in Schedule 12A.1

distribution agreement means an agreement between a **distributor** and a **trader** that allows the **trader** to trade on the **distributor's local network** or **embedded network**

line function services [*Revoked*]

operational term means a term that is included in a **default distributor agreement** in accordance with clause 12A.4(1)(a)(ii)

serious financial breach—

- (a) means a failure by a **retailer**—
 - (i) to pay to a **distributor** an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the **retailer** for the previous month, unless the amount is genuinely disputed by the **retailer**; or
 - (ii) to comply with the prudential requirements under a **distribution agreement** between the **retailer** and a **distributor**
- (b) does not include a failure by a **retailer** to comply with prudential requirements to the extent that the prudential requirements exceed,—
 - (i) in the case of a **retailer** to whom subpart 1 of Part 12A applies, the prudential requirements specified in the **default distributor agreement template**; and
 - (ii) in the case of a **retailer** to whom subpart 2 of Part 12A applies, the prudential requirements specified in clauses 12A.15 to 12A.17.

Part 11

Registry information management

11.5 Participants may request that distributors create ICP identifiers for ICPs

- (1) A **participant** to whom clause 11.3 applies may request that a **distributor** create an **ICP identifier** for an **ICP** on a **network** for which the **distributor** is responsible.
- (2) A **participant** that is a **trader** may make a request under subclause (1) only if the **trader** has,—
 - (a) in the case of a **trader** to whom subpart 1 or subpart 2 of Part 12A applies, a **distribution agreement** with the **distributor** in accordance with clause 11.16; or
 - (b) for all other **traders**, an arrangement with the **distributor** for **distribution** services in accordance with clause 11.16.
- (3) A **distributor** to whom a request is made must, within 3 **business days** of receiving the request, create a new **ICP identifier** for each **ICP** to which the request relates in accordance with clause 1 of Schedule 11.1, or advise the **participant** of the **distributor's** reasons for not complying with the request.

11.16 Traders to have distribution agreements or other distribution service arrangements and metering arrangements

Before providing the **registry** with information about an **ICP** in accordance with clause 11.7(2) or clause 11.18(4), a **trader** must have—

- (a) either,—
 - (i) if the **trader** is a **trader** to whom subpart 1 or subpart 2 of Part 12A applies, a **distribution agreement** with the **distributor** on whose **network** the **ICP** is located; or
 - (ii) in all other cases, entered into an arrangement for the provision of **distribution** services in relation to the **ICP** with the **distributor**; and
- (b) entered into an arrangement with a **metering equipment provider** to be responsible for each **metering installation** for the **ICP**.

Part 14

Registry information management

14.41 Definition of an event of default

Each of the following events constitutes an **event of default**:

...

- (h) termination of a **trader's distribution agreement** with a **distributor** because of a **serious financial breach** if—
 - (i) the **trader** continues to have a **customer** or **customers** on the **distributor's network**; and
 - (ii) there are no unresolved disputes between the **trader** and the **distributor** in relation to the termination; and
 - (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and
 - (iv) the **distributor** gives notice to the **Authority** that this clause applies.

Tracked changes version

Electricity Industry Participation Code 2010

Part 12A

Distribution~~or use of system~~ agreements and ~~distributor~~ ~~tariffs~~arrangements

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- ~~12A.8~~ ~~Changes to tariff rates [Revoked]~~
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12A.20 Distributor or trader may require provision of information

Subpart 3—Exchange of information

- ~~12A.21~~~~11~~ Application of this subpart ~~clauses 12A.12 to 12A.14~~
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~~12A.24~~~~16~~ Transitional provision relating to EIEPs

Schedule 12A.1

Default distributor agreement template

~~Distributor indemnity in use-of-system agreements~~

12A.1 Contents of this Part

This Part—

- (a) requires each specified **distributor** to have a **default distributor agreement** based on the **default distributor agreement template** in Schedule 12A.1; and
(b) specifies requirements with which each **distributor** and **trader** must comply when entering into a **distribution agreement**; and
(c) specifies requirements that apply in respect of each specified **embedded network distributor**; and
(d) specifies requirements relating to the exchange and provision of information, including requirements relating to **EIEPs**.

~~12A.1 Contents of this Part~~

~~This Part—~~

- ~~(a) specifies requirements that must be complied with in negotiating **use-of-system agreements**; and~~
~~(b) specifies requirements that must be complied with if prudential requirements are included in **use-of-system agreements**; and~~
~~(c) [Revoked]~~
~~(d) requires that **distributors** who do not send accounts to **consumers** directly consult with **traders** about changes to the **distributor's** tariff structure; and~~
~~(e) [Revoked]~~
~~(f) [Revoked]~~
~~(g) provides that the **Authority** may **publicise EIEPs** that **distributors** and **traders** must comply with when exchanging information.~~

Subpart 1

Distribution agreements in respect of local networks

Default distributor agreement template and default distributor agreements

12A.2 Application of this subpart

This subpart applies to—

- (a) each **distributor** that—
 - (i) conveys **electricity** to 1 or more **consumers** on the **distributor's local network**; and
 - (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and
- (b) each **trader** that—
 - (j) is a **retailer**; and
 - (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a).

12A.3 Principles for operational terms in default distributor agreements

- (1) This clause sets out principles that must be applied by—
 - (a) each **distributor** when it sets **operational terms** in its **default distributor agreement**; and
 - (b) the **Rulings Panel** when it reviews 1 or more **operational terms** under clause 12A.5(3).
- (2) The principles are that a **distributor's operational terms** must—
 - (a) be consistent with the **Authority's** objective set out in section 15 of the **Act**; and
 - (b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the requirements of **traders** trading on the **distributor's network**; and
 - (c) reflect the interests of **consumers** on the **distributor's network**; and
 - (d) reflect the reasonable requirements of **traders** trading on the **distributor's network** and the ability of the **distributor** to meet those requirements.

12A.4 Default distributor agreements

- (1) Each **distributor** must have a **default distributor agreement** that—
 - (a) includes—
 - (i) each **default core term** set out in the **default distributor agreement template**; and
 - (ii) **operational terms** that meet each of the requirements set out in the **default distributor agreement template** for **operational terms** that are italicised and in text boxes in the **default distributor agreement template**; and
 - (b) does not include any other terms.
- (2) A **distributor** must not include an **operational term** in its **default distributor agreement** that is inconsistent with, or modifies the effect of, any **default core term**.
- (3) In setting the **operational terms** in its **default distributor agreement**, a **distributor** must apply the principles set out in clause 12A.3(2).

- (4) A distributor must make its default distributor agreement available prominently on its website from the following date:
- (a) for Orion New Zealand Limited, Powerco Limited, Unison Networks Limited, and Vector Limited, 60 business days after the date on which this clause comes into force;
 - (b) for each distributor that is a distributor on the date on which this clause comes into force and is not named in paragraph (a), 120 business days after the date on which this clause comes into force;
 - (c) for each other distributor, from the later of the following:
 - (i) 120 business days after the date on which this clause comes into force;
 - (ii) 30 business days before the date on which the distributor commences engaging in the business of distribution on the basis described in clause 12A.2(a).
- (5) A distributor must—
- (a) before making its default distributor agreement available on its website, consult each trader trading on the distributor's network, and each participant that the distributor considers is likely to be affected by the default distributor agreement, on the operational terms that the distributor proposes to include in its default distributor agreement; and
 - (b) no later than 2 business days after making the agreement available, advise each such trader and participant that the default distributor agreement is available on the distributor's website.

12A.5 Appeal against operational terms in default distributor agreements

- (1) No later than 10 business days after a distributor makes its default distributor agreement available on its website under clause 12A.4(4), a participant that participated in the consultation under clause 12A.4(5) may appeal to the Rulings Panel against the inclusion of 1 or more operational terms in the default distributor agreement by giving notice to the Rulings Panel and the distributor.
- (2) If the Rulings Panel receives a notice from a participant by the day specified in subclause (1), the Rulings Panel must, no later than 10 business days after receiving the notice, advise the participant that the Rulings Panel will—
- (a) review 1 or more of the operational terms to which the notice relates; or
 - (b) decline to review 1 or more of any such terms, giving reasons.
- (3) In reviewing an operational term in a default distributor agreement, the Rulings Panel must apply the principles set out in clause 12A.3(2).
- (4) If the Rulings Panel reviews an operational term, the Rulings Panel must, no later than 20 business days after advising the participant under subclause (2),—
- (a) confirm the operational term; or
 - (b) amend the operational term, in which case clause 12A.6 applies; or
 - (c) direct the distributor to reconsider, either generally or in respect of any specified matter, the operational term, within such time as the Rulings Panel must specify, and give the distributor any such directions as the Rulings Panel thinks fit concerning the reconsideration of the operational term, in which case clause 12A.7 applies.

12A.6 Amendment to operational term by Rulings Panel following appeal

- (1) This clause applies if the **Rulings Panel** amends 1 or more **operational terms** of a **default distributor agreement** under clause 12A.5(4)(b).
- (2) Each such **operational term** in the **default distributor agreement** is deemed to be amended accordingly.
- (3) The **distributor** must—
 - (a) make an updated version of its **default distributor agreement** that includes each amended **operational term** available prominently on its website no later than 5 **business days** after the date of the **Rulings Panel's** decision; and
 - (b) advise each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, that an updated version of the agreement is available on the **distributor's** website no later than 2 **business days** after making the agreement available on its website.
- (4) For each **operational term** that the **Rulings Panel** amends, the **Rulings Panel** must stipulate 1 of the following in respect of each **distribution agreement** that the **distributor** has with a **trader** that includes the **operational term**:
 - (a) that the **distributor** or the **trader** may elect to amend the **distribution agreement** to include the amendment by giving notice to the other party;
 - (b) that the **distributor** may elect to amend the **distribution agreement** to include the amendment by giving notice to the **trader**;
 - (c) that the **trader** may elect to amend the **distributor agreement** with the **distributor** by giving notice to the **distributor**.
- (5) A notice given under subclause (4)(a), (b), or (c) must be given no later than 10 **business days** after the date on which the **distributor** gives notice under subclause (3)(b).
- (6) If a notice is given under subclause (4), each **distribution agreement** to which the notice relates is deemed to be amended accordingly from the date of the notice.
- (7) Subclauses (4) to (6) do not apply in respect of a **distribution agreement** in which the **operational term** has been amended or omitted.

12A.7 Amendment to operational term by distributor following appeal

- (1) If a **distributor** amends 1 or more **operational terms** of its **default distributor agreement** after being directed to reconsider the term by the **Rulings Panel** under clause 12A.5(4)(c), the **distributor** must—
 - (a) make an updated version of its **default distributor agreement** that reflects the amendment available prominently on its website no later than 5 **business days** after making the amendment; and
 - (b) no later than 2 **business days** after making the agreement available, advise each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the **default distributor agreement**, that an updated version of the agreement is available on the **distributor's** website.
- (2) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1).

Entering into distribution agreements

12A.8 Obligation to enter into distribution agreement

- (1) A **trader** trading on the **distributor's network** must have a **distribution agreement with the distributor.**
- (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network.**

12A.9 Negotiating distribution agreements

- (1) A **trader** that wishes to trade on a **distributor's network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **distributor's network.**
- (2) If, after a **distributor** has made its **default distributor agreement** available on its website under clause 12A.4(4), a **distributor** receives a notice that a person wishes to trade as a **trader** on the **distributor's network**, the **distributor** must, no later than 5 **business days** after receiving the notice, offer to contract with the person on the terms set out in the **default distributor agreement.**
- (3) A person that has given a notice under subclause (2) may withdraw the notice at any time before it enters into, or is deemed to have entered into, a binding contract with the **distributor**, by giving notice of the withdrawal of the notice to the **distributor.**
- (4) At any time before the **default distributor agreement** applies as a binding contract between the **distributor** and the person under subclause (6), either the **distributor** or the person may give the other party notice that the **distributor** or the person wishes to contract with the other party on the terms set out in the **default distributor agreement.**
- (5) If either party gives a notice under subclause (4), the **default distributor agreement** applies as a binding contract between the parties with effect from—
 - (a) the later of—
 - (i) the 5th **business day** after the date on which the notice is given; or
 - (ii) the day on which the person that wishes to trade as a **trader** on the **distributor's network** becomes a **participant; or**
 - (b) any other date agreed by the parties.
- (6) If, at the expiry of 20 **business days** after a notice is received by a **distributor** under subclause (1), the **distributor** and the person have not agreed on the terms of a **distribution agreement** and neither party has given a notice under subclause (4), the **default distributor agreement** applies as a binding contract between the **distributor** and the person with effect from—
 - (a) the later of—
 - (i) the expiry of the period; or
 - (ii) the day on which the person that wishes to trade as a **trader** on the **distributor's network** becomes a **participant; or**
 - (b) any other date agreed by the parties.

12A.10 Alternative agreements

- (1) A **distributor** and a **trader** may enter into a **distribution agreement** on terms that differ from the terms set out in the **distributor's default distributor agreement** (an "alternative agreement").

- (2) However, a **distributor** and a **trader** that enter into an alternative agreement must ensure that the terms of the alternative agreement —
- (a) address only the subject matter of the terms of the **default distributor agreement**; and
 - (b) relate only to **distribution** services.

Amending default distributor agreements

12A.11 Amending operational terms in default distributor agreements

- (1) A **distributor** may amend 1 or more of the **operational terms** in its **default distributor agreement** by making its **default distributor agreement** with the amended **operational terms** available prominently on its website.
- (2) Before a **distributor** amends its **default distributor agreement**, it must consult each **trader** trading on the **distributor's network**, and each **participant** that the **distributor** considers is likely to be affected by the amendment.
- (3) Clause 12A.5 applies (with all necessary modifications) in respect of an amendment to a **default distributor agreement** made under subclause (1).
- (4) The amending of a **default distributor agreement** under subclause (1) does not affect a **distribution agreement** between a **distributor** and **trader** that came into force before the day on which the **default distributor agreement** was made available under subclause (1).

Transitional provisions for existing agreements

12A.12 Transitional provisions for existing agreements

- (1) This clause applies to a **distributor** and a **trader** that have an agreement for **distribution** services that was entered into before the date on which the **distributor** made its **default distributor agreement** available on its website under clause 12A.4(4) ("existing agreement").
- (2) The **distributor** must, no later than 10 **business days** after the date on which the **distributor** makes its **default distributor agreement** available on its website, offer to contract with the **trader** on the terms set out in the **default distributor agreement**.
- (3) At any time before the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** under subclause (5), either the **trader** or the **distributor** may give the other party notice that the **trader** or **distributor** wishes to contract with the other party on the terms set out in the **default distributor agreement**.
- (4) If either party gives a notice under subclause (3), the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** with effect from the 5th **business day** after the date on which the notice is given, or any other date agreed by the parties.
- (5) Subject to subclause (4), if the **distributor** and the **trader** cannot agree on the terms of a **distribution agreement** to replace the existing agreement at the expiry of 2 months after the date on which this clause came into force—
- (a) the **default distributor agreement** applies as a binding contract between the **distributor** and the **trader** with effect from the expiry of that period; and

- (b) the provisions of the existing agreement that directly or indirectly relate to **distribution** services are deemed to have been terminated with effect from that date.
- (6) Clause 12A.10 applies in respect of any **distribution agreement** that the parties agree to replace an existing agreement that is not the **default distributor agreement**.

Use-of-system agreements

12A.2 Negotiating use-of-system agreements

- (1) ~~A **distributor** and a **trader** must negotiate the terms of a **use-of-system agreement** (including any amendment to a **use-of-system agreement**) in good faith.~~
- (2) ~~[Revoked]~~

12A.3 Mediation

- (1) ~~If a **distributor** or a **trader** considers that it is unlikely that it will agree the terms of a **use-of-system agreement** with the other party, the **distributor** or the **trader** may give written notice to the other party of that fact.~~
- (2) ~~The notice given under subclause (1) must—~~
- (a) ~~state that it is a notice given under subclause (1); and~~
 - (b) ~~include a copy of subclause (1); and~~
 - (c) ~~state that at the close of the 20th **business day** after the date of the notice, the **distributor** or **trader** (as the case may be) may require the other party to enter into mediation.~~
- (3) ~~No earlier than the close of the 20th **business day** after the date on which the notice referred to in subclause (2) is given, the **distributor** or the **trader** may, by written notice to the other party, require the other party to undertake mediation with the party who gave notice under this subclause.~~
- (4) ~~The notice given under subclause (3) must—~~
- (a) ~~state that it is a notice given under subclause (3); and~~
 - (b) ~~include a copy of subclause (3).~~
- (5) ~~On receipt of a notice given under subclause (3), the **distributor** and the **trader** must attempt in good faith to agree on the following matters:~~
- (a) ~~the mediator;~~
 - (b) ~~the date or dates for the mediation;~~
 - (c) ~~the location of the mediation;~~
 - (d) ~~the scope of the mediation;~~
 - (e) ~~the allocation of the costs of the mediation.~~
- (6) ~~If, at the close of the 15th **business day** after receipt of the notice given under subclause (3), the **distributor** and the **trader** are in dispute regarding 1 or more of the matters specified in subclause (5), either party may refer the dispute to the **Rulings Panel** for determination.~~
- (7) ~~The **Rulings Panel** may make such determination as it thinks fit.~~
- (8) ~~The **distributor** and the **trader** must carry out the mediation in accordance with any agreement reached under subclause (5) and any determination made under subclause (7).~~
- (9) ~~[Revoked]~~

Subpart 2

Distribution agreements in respect of embedded networks

12A.13 Application of this subpart

This subpart applies to—

- (a) each **distributor** that—
 - (i) conveys **electricity** to 1 or more **consumers** on the **distributor's embedded network**; and
 - (ii) does not have a contract in respect of the conveyance of **electricity** with 1 or more of those **consumers**; and
- (b) each **trader** that—
 - (j) is a **retailer**; and
 - (ii) wishes to trade or is trading at an **ICP** on the **network** of a **distributor** described in paragraph (a).

Distribution agreement

12A.14 Obligation to enter into distribution agreement

- (1) A **trader** trading on the **distributor's network** must have a **distribution agreement** with the **distributor**.
- (2) A **trader** must ensure that a **distribution agreement** comes into force on or before the day on which the **trader** commences trading on the **distributor's network**.
- (3) A **trader** that wishes to trade on a **distributor's network** must give notice to the **distributor** of that fact at least 20 **business days** before the **trader** proposes to commence trading on the **distributor's network**.

Prudential requirements

12A.154 Prudential requirements

Clauses 12A.164A to 12A.185A apply in relation to a **use-of-system-distribution agreement** between a **distributor** and a **trader** if—

- ~~(a) the **distributor** party to the **use-of-system-distribution agreement** has 1 or more **consumers connected** to its **network** to whom the **distributor** does not send accounts for **line function services** directly; and~~
- ~~(b) the **distributor** does not have a contract in respect of the conveyance of **electricity** with 1 or more of the **consumers** on the **distributor's network's** charges for **line function services** are collected from **consumers** or paid by the **trader** party to the **use-of-system agreement** in accordance with the **use-of-system agreement**; and~~
- (eb) the **distributor** requires that the **use-of-system-distribution agreement** provides that the **trader**—
 - (i) must comply with prudential requirements; or
 - (ii) must comply with prudential requirements if required to do so by the **distributor**.

12A.164A Election of prudential requirements

- (1) Subject to clause 12A.185A, ~~the distributor must ensure that if a use-of-system agreement provides that the trader party to the use-of-system agreement must comply with prudential requirements, including if required to do so by the distributor, the use-of-system distribution agreement must~~ provides that the **trader** may elect to comply with the prudential requirements in either of the following ways:
 - (a) the **trader** must maintain an acceptable credit rating in accordance with subclause (3); or
 - (b) the **trader** must provide and maintain acceptable security by, at the **trader's** election,—
 - (i) providing the **distributor** with a cash deposit; or
 - (ii) arranging for a third party with an acceptable credit rating to provide that security in a form acceptable to the **distributor**; or
 - (iii) providing a combination of the securities described in subparagraphs (i) and (ii).
- (2) The ~~distributor must ensure that the use-of-system distribution agreement must~~ provides that the **trader** may change its election at any time.
- (3) For the purposes of this clause, a **trader** or third party has an acceptable credit rating if it—
 - (a) carries a long term credit rating of at least—
 - (i) BBB- (Standard & Poors Rating Group); or
 - (ii) a rating that is equivalent to the rating specified in subparagraph (i) from a rating agency that is an approved rating agency for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989; and
 - (b) is not subject to negative credit watch or any similar arrangement by the agency that gave it the credit rating.
- (4) Subject to clause 12A.175, the value of the acceptable security described in subclause (1)(b) must be the **distributor's** reasonable estimate of the ~~line function services distribution services~~ charges that the **trader** will be required to pay to the **distributor** in respect of any period of not more than 2 weeks.
- (5) ~~The distributor must ensure that a use-of-system distribution agreement must~~ specifies that, if the **trader** elects to provide acceptable security as described in subclause (1)(b), the **distributor** must—
 - (a) hold any security provided by the **trader** in the form of a cash deposit in a trust account in the name of the **trader** at an interest rate that is the best on-call rate reasonably available at the time the **trader** provides the cash deposit; and
 - (b) pay interest earned in respect of the cash deposit to the **trader** on a quarterly basis, net of account fees and any amounts that are required to be withheld by law.

12A.175 Requirements if distributors require additional security

- (1) A **distributor** may require that its ~~use-of-system distribution agreement~~ provides 1 or both of the following:
 - (a) that if the **trader** elects to provide acceptable security as specified in clause 12A.164A(1)(b), the **trader** must provide acceptable security that is additional to the amount provided for in clause 12A.164A(4):

- (b) that the **distributor** may, during the term of the **use-of-system-distribution agreement**, require the **trader** to provide such additional security.
- (2) If a **use-of-system-distribution agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the total value of additional security specified in the **use-of-system-distribution agreement** must be such that the total value of all security required to be provided by the **trader** must not be more than the **distributor's** reasonable estimate of the **line-function-services-distribution-services** charges that the **trader** will be required to pay to the **distributor** in respect of any 2 month period.
- (3) If a **use-of-system-distribution agreement** has a provision provided for in subclause (1), the **distributor** must ensure that the **use-of-system-distribution agreement** provides the following:
 - (a) if any additional security provided by the **trader** is in the form of a cash deposit, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate equal to the sum of the bank bill yield rate for that day plus 15% on the amount of additional security held on that day:
 - (b) if any additional security provided by the **trader** is in the form of security from a third party, the **distributor** must pay a charge to the **trader** for each day that the **distributor** holds the additional security at a per annum rate of 3% on the amount of additional security held on that day:
 - (c) any money required to be paid by the **distributor** to the **trader** as specified in paragraph (a) or (b) must be paid by the **distributor** to the **trader** on a quarterly basis.
- (4) For the purposes of this clause, the bank bill yield rate is—
 - (a) the daily bank bill yield rate (rounded upwards to 2 decimal places) published on the wholesale interest rates page of the website of the Reserve Bank of New Zealand (or its successor or equivalent page) on that day as being the daily bank bill yield for bank bills having a tenor of 90 days; or
 - (b) for any day for which such a rate is not available, the bank bill yield rate is deemed to be the bank bill yield rate determined in accordance with paragraph (a) on the last day that such a rate was available.

12A.185A Agreement to less onerous terms

Despite clause 12A.164A, a **distributor** and a **trader** may agree prudential requirements that are less onerous on the **trader** than the requirements described in clauses 12A.164 and ~~to~~ 12A.175.

~~12A.6 Distributor indemnity [Revoked]~~

Changes to tariff structure

Other requirements

12A.197 Distributors **must to** consult concerning changes to **tariffpricing** structures

- (1) ~~This clause applies to each **distributor** who has 1 or more **consumers connected** to its **network** to whom the **distributor** does not send accounts for **line function services** directly.~~

- (21) ~~The A distributor~~ must consult with each **trader** trading on the **distributor's network** in respect of the **distributor's tariff-pricing** structure for the **consumers with whom the distributor does not have a contract in respect of the conveyance of electricity referred to in subclause (1)** before making a change to the **tariff-pricing** structure that materially affects 1 or more **traders** or **consumers**.
- (32) For the purpose of subclause (21), changes to a **distributor's tariff-pricing** structure that may materially affect 1 or more **traders** or **consumers** include, but are not limited to, any of the following:
- (a) a change by the **distributor** to the eligibility criteria for 1 or more of the **distributor's tariff-rates-prices**:
 - (b) a change by the **distributor** to the **distributor's tariff-pricing** structure by the introduction of a new **tariff-rate-price**:
 - (c) a change by the **distributor** to the **distributor's tariff-pricing** structure that means that 1 or more of the **distributor's tariff-rates-prices** are no longer available.
- (43) However, the fact that a change is listed in subclause (32) does not mean that a **distributor** is required to consult on the change if the change will not materially affect **traders** or **consumers**.
- ~~(5) — [Revoked]~~

~~[Revoked]~~

~~12A.8 Changes to tariff rates [Revoked]~~

~~12A.9 Requirement to comply with EIEP12 [Revoked]~~

~~12A.10 Requirement to use standard tariff codes [Revoked]~~

12A.20 Distributor or trader may require provision of information

- (1) The **distributor** may, by notice in writing, require the **trader** to provide information to the **distributor**, to enable the **distributor** to invoice and reconcile charges for **distribution services**.
- (2) The **trader** may, by notice in writing, require the **distributor** to provide information to the **trader**, to enable the **trader** to invoice and reconcile charges for **distribution services**.
- (3) A **trader** or **distributor** that receives a notice under subclause (1) or subclause (2) must provide the information no later than 15 **business days** (or such other date as agreed between the parties) after receiving the notice.
- (4) Nothing in this clause prevents the **distributor** and the **trader** agreeing to provide **volume information** to each other for a purpose other than to enable invoicing and reconciling of charges for **distribution services**.

Subpart 3 Exchange of information

Exchange of information

12A.2111 Application of ~~clauses 12A.12 to 12A.14~~ this subpart

~~Clauses 12A.12 to 12A.14 apply.~~ This subpart applies to —

- (a) each a distributor who that—
 - (i) conveys electricity to 1 or more consumers on the distributor's local network or embedded network; and
 - (ii) does not have a contract in respect of the conveyance of electricity with- has 1 or more of those consumers connected to its network to whom the distributor does not send accounts for line function services directly;
and
- (b) each a trader that—
 - (i) is a retailer; and
 - (ii) wishes to trade or is trading at an ICP on the network of a the distributor described in paragraph (a).

12A.12 ~~Distributor or trader may require provision of information~~

- (1) ~~The distributor may, by notice in writing, require the trader to provide information to the distributor, to enable the distributor to invoice and reconcile charges for line function services.~~
- (2) ~~The trader may, by notice in writing, require the distributor to provide information to the trader, to enable the trader to invoice and reconcile charges for line function services.~~
- (3) ~~A trader or distributor that receives a notice under subclause (1) or subclause (2) must provide the information within 15 business days (or such other date as agreed between the parties) after receiving the notice.~~
- (4) ~~Nothing in this clause prevents the distributor and trader agreeing to provide volume information to each other for a purpose other than to enable invoicing and reconciling of charges for line function services.~~

12A.2213 Authority may publicise EIEPs that must be used

- (1) The Authority may publicise 1 or more EIEPs that set out standard formats that distributors and traders must use when exchanging information.
- (2) When publicising an EIEP under subclause (1), the Authority must specify the date on which the EIEP will come into effect.
- (3) The information to which an EIEP publicised under subclause (1) may relate includes, but is not limited to, the following information:
 - (a) ICP level billing information:
 - (b) summary level billing information:
 - (c) half hourly billing information:
 - (d) distributor tariff rate change information.

- (4) Before the **Authority publicises** an **EIEP** under subclause (1), or amends an **EIEP** it has **publicised** under subclause (1), it must consult with the **participants** that the **Authority** considers are likely to be affected by the **EIEP**.
- (5) The **Authority** need not comply with subclause (4) if it proposes to amend an **EIEP publicised** under subclause (1) if the **Authority** is satisfied that—
 - (a) the nature of the amendment is technical and non-controversial; or
 - (b) there has been adequate prior consultation so that the **Authority** has considered all relevant views.

~~(6) — [Revoked]~~

12A.2314 Distributors and traders must to comply with EIEPs

- (1) If the **Authority publicises** an **EIEP** under clause 12A.2213, the **distributor** and the **trader** must, when exchanging information to which the **EIEP** relates, comply with the **EIEP** from the date on which the **EIEP** comes into effect.
- (2) ~~[Revoked]~~
- ~~(3) —~~ However, a **distributor** and a **trader** may, after an **EIEP** has been **publicised**, agree to exchange information other than in accordance with the **EIEP**, by recording the agreement in ~~each use of system~~ the distribution agreement between the **distributor** and **trader**.
- ~~(3)~~4) An agreement to exchange information other than in accordance with an **EIEP** is not effective in relieving a **distributor** and a **trader** of the obligation to comply with subclause (1), unless the agreement comes into effect on or after the date on which the relevant **EIEP** comes into effect.
- ~~(4)~~5) An agreement under subclause ~~(2)~~3) is not affected by the **Authority publicising** an amendment to the **EIEP**.
- ~~(6) —~~ Subclause (1) does not apply to an **EIEP publicised** under clause 12A.15.

~~12A.15 Authority may publicise voluntary EIEPs~~

~~The Authority may publicise 1 or more EIEPs that set out standard formats that distributors and traders may, but are not required to, use when exchanging information.~~

12A.2416 Transitional provision relating to EIEPs

- (1) This clause applies to any **EIEP** that a **distributor** or **trader** was required to comply with immediately before this clause came into force.
- (2) An **EIEP** to which this clause applies—
 - (a) is deemed to be an **EIEP publicised** under clause 12A.2213(1); and
 - (b) despite clause 12A.2213(2), comes into effect on the date on which this clause comes into force.
- (3) The **Authority** need not comply with clause 12A.2213(4) in respect of an **EIEP** to which this clause applies, unless the **Authority** proposes to amend the **EIEP**.
- ~~(4) — [Revoked]~~

~~Schedule 12A.1~~

~~cl 12A.7~~

~~Distributor indemnity in use-of-system agreements *[Revoked]*~~

Schedule 12A.1

cl 12A.4

Default distributor agreement template

[See Appendix C of this consultation paper]

Part 1

Preliminary provisions

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

default core term means a term set out in the **default distributor agreement template** for inclusion in **default distributor agreements** in accordance with clause 12A.4(1)(a)(i)

default distributor agreement means a **distribution agreement** made available by a **distributor** under clause 12A.4(4), 12A.6(3)(a), 12A.7(1)(a), or 12A.11(1)

default distributor agreement template means the template agreement set out in Schedule 12A.1

~~**use-of-system distribution agreement**~~ means an agreement between a **distributor** and a **trader** that allows the **trader** to trade on the **distributor's local network** or **embedded network**

~~**line function services** has the meaning given to it by section 5 of the Act~~

operational term means a term that is included in a **default distributor agreement** in accordance with clause 12A.4(1)(a)(ii)

serious financial breach—

- (a) means a failure by a **retailer**—
 - (i) to pay to a **distributor** an amount due and owing that exceeds the greater of \$100,000 or 20% of the actual charges payable by the **retailer** for the previous month, unless the amount is genuinely disputed by the **retailer**; or
 - (ii) to comply with the prudential requirements under a ~~**use-of-system agreement**~~ **distribution agreement** between the **retailer** and a **distributor**; ~~but~~
- (b) does not include a failure by a **retailer** to comply with prudential requirements to the extent that the prudential requirements exceed,—
 - (i) in the case of a **retailer** to whom subpart 1 of Part 12A applies, the prudential requirements specified in the **default distributor agreement template** ~~what is permitted under clauses 12A.4 and 12A.5;~~ and
 - (ii) in the case of a **retailer** to whom subpart 2 of Part 12A applies, the prudential requirements specified in clauses 12A.15 to 12A.17.

Part 11

Registry information management

11.5 Participants may request that distributors create ICP identifiers for ICPs

- (1) A **participant** to whom clause 11.3 applies may request that a **distributor** create an **ICP identifier** for an **ICP** on a **network** for which the **distributor** is responsible.
- (2) A **participant** that is a trader may make a request under subclause (1) only if the ~~participant~~ **trader** has,—
 - (a) in the case of a trader to whom subpart 1 or subpart 2 of Part 12A applies, an arrangement distribution agreement with the **distributor** ~~for line function services~~ in accordance with clause 11.16; or
 - (b) for all other traders, an arrangement with the distributor for distribution services in accordance with clause 11.16.
- (3) A **distributor** to whom a request is made must, within 3 **business days** of receiving the request, create a new **ICP identifier** for each **ICP** to which the request relates in accordance with clause 1 of Schedule 11.1, or advise the **participant** of the **distributor's** reasons for not complying with the request.

11.16 Traders to have distribution agreements or other distribution service arrangements and ensure metering arrangements ~~for line function services and metering~~

Before providing the **registry** with information about an ICP in accordance with clause 11.7(2) or clause 11.18(4), a **trader** must have—

- (a) either,—
 - (i) if the trader is a trader to whom subpart 1 or subpart 2 of Part 12A applies, a distribution agreement with the distributor on whose network the ICP is located;
or
 - (ii) in all other cases, entered into an ~~ensure that it, or its customer, has made any necessary~~ arrangements for the provision of ~~line function services~~ distribution services in relation to the **ICP** with the distributor; and
- (b) ~~have~~ entered into an arrangement with a **metering equipment provider** to be responsible for each **metering installation** for the **ICP**.

Part 14

Registry information management

14.41 Definition of an event of default

Each of the following events constitutes an **event of default**:

...

- (h) termination of a **trader's ~~use-of-system~~distribution** agreement with a **distributor** because of a **serious financial breach** if—
 - (i) the **trader** continues to have a **customer** or **customers** on the **distributor's local network**; and
 - (ii) there are no unresolved disputes between the **trader** and the **distributor** in relation to the termination; and
 - (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and
 - (iv) the **distributor** gives notice to the **Authority** that this clause applies.

Appendix C Proposed default distributor agreement template

C.1 This Appendix C contains the proposed DDA template.

Appendix C is provided as a separate document at <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c15756>

Appendix D Review of MUoSA terms

D.1 The following review topics were identified in paragraph 3.7.4:

- (a) Load management
- (b) Liability
- (c) Billing information
- (d) Load shedding protocols
- (e) Force Majeure
- (f) Indemnities and Consumer Guarantees Act claims processes
- (g) Audit errors
- (h) Changing technology and network management practices
- (i) Provisions for 'white label' retailers
- (j) Distributor access to consumption information
- (k) Clauses relating to equal access and even handed treatment of retailers
- (l) Confidentiality
- (m) Embedded networks

D.2 This appendix discusses the Authority's current views on each of those topics.

D.3 References to submissions in this appendix are references to submissions on the April 2014 consultation paper.

Load management

D.4 Clause 6 and schedule 8 of the MUoSA include a number of provisions relating to load management. Some submitters considered that Vector has negotiated improved provisions in respect of load management in its recent UoSA versions.

Background

D.5 Load management provisions in the September 2012 MUoSA:

- (a) anticipate that the distributor offers price options to incentivise a consumer to make some of its load controllable (ie switchable) by the distributor – most commonly this is the consumer's storage water heating load because this load is quite large and consumers generally experience little or no loss of amenity (ie hot water when the consumer wants it) if power is interrupted to the storage cylinder heater for short periods
- (b) provide similar rights for retailers to procure controllable load from consumers

- (c) provide for operational coordination during system emergency events if both parties have procured controllable load resources from consumers connected to the distributor's network
- (d) require that neither party interfere with or damage the other party's load management equipment and provide a remedy if that should occur
- (e) require the parties to maintain their respective load management equipment so that it operates effectively.

D.6 The Authority drafted clause 6 of the MUoSA so as to prohibit simultaneous control of load (ie specific appliances) by both the distributor and the retailer. For example, if the distributor has already obtained a right to control a consumer's storage water heating load, the retailer cannot then also procure a control right in respect of the same load.

Load management by third party aggregators

D.7 The 2012 MUoSA intentionally did not provide for a third party (such as a load aggregator) to control part of a consumer's load. Relevant needs and requirements for third party load management were unclear at that time.

D.8 The Vector UoSA includes provisions that impose requirements on the retailer's consumer contracts.⁴² These requirements relate to any agreement a consumer might enter into with a third party for control of the consumer's load. Clause 6.11 of Vector's UoSA seeks to apply similar limitations on any potential third party as those that apply to the retailer under clause 6 of the MUoSA.

D.9 In finalising clause 6 of the 2012 MUoSA, the Authority considered that there was at that time no evidence of a market emerging in third party load aggregation in respect of mass market consumers.

D.10 If such a market did eventuate and this gave rise to issues with respect to coordination of consumer load control by multiple parties, the Authority would likely consider the issues in a broad context – ie broader than the issues related to distribution services alone. Regulatory solutions, if any, would likely be considered in the context of the Code in accordance with the Authority's statutory objective. This may or may not require additional provisions in the DDA template

D.11 Protections related to possible interference with, or damage to, distributor equipment by consumers, including consumers' agents and invitees, are already addressed in clauses 12.1 and 12.2 of the proposed DDA template.

D.12 Accordingly, the DDA template does not include provisions relating to third party load management at this time.

⁴² Vector UoSA, version 1.6, clause 6.11, available on Vector's website.

Distributor right to control consumer load

- D.13 Clause 6.1 of the MUoSA describes the conditions under which the distributor may control part of a consumer's load. One of the conditions required that the consumer must elect to take up the retailer's "corresponding price option that incorporates the [distributor's] Controlled Load Option".
- D.14 Vector's equivalent condition requires that the retailer is charged by the distributor "on the basis of the Controlled Load Option with respect to the Consumer".
- D.15 Having reviewed the alternatives, the Authority agrees that Vector's conditions, as drafted in clause 6.1(a) of its version 1.6 UoSA, represent an improvement on the MUoSA drafting. This is because the Vector drafting does not require reference to a consumer's election among price options that may or may not readily relate to a distributor's Controlled Load Option. From the distributor's perspective, the price option on which it assesses line charges for a particular ICP is definitive. From the trader's and consumer's perspective, if there is a question relating to qualification criteria for the consumer's ICP or the consumer's election amongst price options for which it is eligible, these should be resolvable under clause 8.
- D.16 The DDA template has accordingly been drafted to reflect this improvement.
- D.17 However, the same conclusion cannot be drawn in respect of Vector's clause 6.1(b). Clause 6.1(b) relates to the distributor providing services directly to the consumer. While this might be feasible, it is not clear that 'any other service' qualifies as a distribution service and accordingly does not fit within the scope of the DDA template.

Retailer right to control consumer load and coordination of controllable load during system emergency events

- D.18 Clause 6.2 of the MUoSA was designed to provide the trader with reciprocal rights to the distributor's clause 6.1 rights to control consumer load. This supports the Authority's guiding regulatory principles relating to competition in demand response markets.⁴³
- D.19 Clause 6.6 of the MUoSA contains terms related to coordination of controllable load during system emergency events, if the trader procures controllable load from its consumers.
- D.20 Vector's clause 6.2 expands the equivalent MUoSA clause with provisions that are alternatively addressed in the MUoSA in clause 6.6. Vector's drafting appears to be derived from an earlier draft of the MUoSA that was ultimately replaced in favour of the 2012 MUoSA drafting.

⁴³ See the Authority's consultation paper *Demand response guiding regulatory principles*, published in August 2015 and available at <http://www.ea.govt.nz/development/work-programme/wholesale/demand-response/development/demand-response-guiding-regulatory-principles/>.

- D.21 Whether or not this is the case, the Authority considers that clause 6.6 of the MUoSA is more clearly drafted and includes superior provisions, such as, for example:
- (a) an obligation that the distributor to publish its emergency load management policy for the benefit of the traders and consumers such a policy would affect
 - (b) avoiding any prejudgement as to how the parties might subsequently agree to share costs.⁴⁴
- D.22 The proposed DDA template has accordingly retained the MUoSA drafting, which is reflected in clause 5.2 and 5.6.

Assumption of pre-existing load control

- D.23 Clause 6.3 of the MUoSA was drafted to provide reciprocal rights to the parties in the situation where one of the parties had already obtained a right to control a consumer's load. The MUoSA clause did not presume which party would have first obtained such a right.
- D.24 The Vector UoSA clause does not provide for the situation where the retailer first obtains the load control right. While this may reflect current circumstances on Vector's network, the MUoSA clause is more generalised and future proofed and is therefore preferred.
- D.25 The proposed DDA template accordingly retains the MUoSA drafting in respect of clauses 5.3 and 5.4.

Limitations on distributor control of retailer controllable load

- D.26 The MUoSA has no directly equivalent clause to Vector's clause 6.7, which provides for matters that are addressable within MUoSA clause 6.6.
- D.27 The DDA template accordingly retains the MUoSA drafting.

Liability

- D.28 Large liability caps can be market entry barriers for small entrant retailers. Distributors and retailers range in size from large to very small entities. This makes it difficult to draft a 'one size fits all' liability cap clause. Several approaches have been considered over the years of MUoSA development without any single approach gaining widespread acceptance.
- D.29 Except in a small number of defined circumstances (eg confidentiality and the Consumer Guarantees Act), liability is limited to only direct damage to the physical property of any person that results from a breach of the agreement, negligence, or failure to exercise Good Electricity Industry Practice.

⁴⁴ Under Vector's drafting, a retailer might be forced to absorb significant costs in making its controllable load available to the distributor.

- D.30 The MUoSA approach to setting a dollar cap per claim is relatively straightforward and limits the liability of each party to the other at an amount that is the lesser of \$10,000 for each ICP on the network at which the trader supplied electricity on the day of the event, or \$2,000,000. This means that a trader only has to trade on 20 ICPs to reach the \$2,000,000 per event cap.
- D.31 The MUoSA has no cap on the aggregate amount of claims that might be payable within a year. The Authority considered this during consultation in 2014 and concluded that it would be inequitable for a claimant making a claim later on in the year after the annually capped limit has been exhausted from earlier claims. The Authority also considered that excluding an annual aggregate cap would provide appropriate incentives to manage risk.
- D.32 The Authority has reviewed Vector's most recent approach to drafting liability cap provisions. Vector's approach is quite complex and may not suit a smaller distributor. It also adds a further cap that applies to the aggregate of all claims that might occur within a year. At this stage, the Authority is not persuaded that Vector's approach is significantly better than the MUoSA approach but remains open to feedback on this important part of the DDA template.

Billing information

Background

- D.33 Distributors that have adopted interposed arrangements for distribution services price their distribution services to retailers either:
- (a) as a service priced with reference to reconciled electricity quantities at the grid exit point (GXP), referred to as 'GXP pricing' or
 - (b) as a service priced with reference to metered electricity quantities at each ICP, referred to as 'ICP pricing'.
- D.34 A combination of both approaches is also feasible, with ICP pricing applied to some consumers (eg large consumers) and GXP pricing applied to others (eg mass market consumers).
- D.35 Under either approach, each distributor requires electricity quantity information to calculate variable charges for distribution services. Distribution service invoices and payments are usually processed on a monthly basis.
- D.36 Electricity quantity information usually includes information relating to:
- (a) electricity consumption – measured in kilowatt-hours (kWh)
 - (b) electricity demand averaged over a defined time period (eg coincident with the time of a consumer's peak demand within a time period) – measured in kilowatts (kW).

- D.37 Except in the case of unmetered load, electricity quantity information is measured by metering systems located at either the GXP or the ICP, as relevant to the pricing approach adopted by the distributor.
- D.38 For GXP-derived electricity quantities, measured quantities are subject to the wholesale electricity market reconciliation process, which allocates each trader a portion of the total quantity of electricity measured at the GXP, within each half hour trading period.
- D.39 For ICP-derived electricity quantities, measured quantities flow into the relevant trader's billing process and consumer invoices are prepared based on the price option applicable to the consumer.
- D.40 UoSAs have been tailored to meet network-specific billing information requirements.
- D.41 MUoSA development between 2001 and 2012 sought to incorporate optional model terms within the body of the agreement that address the most common approaches adopted by distributors and retailers.

New billing information and process schedule

- D.42 Submissions received from some participants likely reflect that some distributors use a billing information transfer format and/or process that doesn't fit well with any of the options included in the MUoSA.
- D.43 While greater standardisation of billing information formats and processes is desirable, the Authority considers that terms related to provision of billing information are operational terms and fit the DDA template structure better in a new schedule. The DDA template has been drafted accordingly.

Load shedding protocols

- D.44 Emergency load management protocols are protocols developed by distributors for use in responding to system emergency events, where the system operator or the distributor requires the temporary curtailment of consumer demand to maintain network integrity. Invoking these protocols can significantly disrupt distribution services.
- D.45 The Authority considers that retailers and consumers ought to have access to these protocols. However, some submissions on the April 2014 consultation paper considered that emergency load management protocols should only be provided to a trader if the trader requests them.
- D.46 The issue appears to be more related to the method of publicising the protocols rather than rights of access to protocols.
- D.47 The Authority supports transparency of service terms to all interested parties and considers website publication is a widely accepted method of cost-effectively disseminating important information related to distribution services.

D.48 Accordingly, the Authority has retained the 2012 MUoSA provision that requires the distributor to publish its system emergency events management policy.

Force Majeure

D.49 A force majeure clause is a reasonably standard contractual mechanism that provides that a party is not in breach of a contractual obligation if it is prevented from complying with that obligation by an act of God or other events outside of the party's control.

D.50 The 2012 MUoSA force majeure clause has resulted from a MUoSA development process that has benefitted from significant input from distributors and traders over a lengthy period.

D.51 The Authority understands the current criticism of the 2012 MUoSA clause is that the clause:

- (a) can be invoked by a party seeking relief only on the occurrence of an event specifically listed in the contract
- (b) relates to Good Electricity Industry Practice (GEIP) without using that defined term.

D.52 Clause 21.1 of the DDA template defines when a Force Majeure Event occurs. It has three parts, each of which must be met to qualify an event as a Force Majeure Event:

- (a) clause 21.1(a) requires that a party has failed to comply with or observe any provision of the agreement, other than payment of any amount due
- (b) clause 21.1(b) is a list of the potential causes of a Force Majeure Event that includes, as 21.1(b)(v), any other event or circumstance beyond the control of the party invoking clause 21.1
- (c) clause 21.1(c) requires that the party could not have prevented the failure by the exercise of the degree of skill, diligence, prudence, control and foresight that would reasonably and ordinarily be expected from a skilled and experienced distributor or retailer engaged in the same type of undertaking under the same or similar circumstances in New Zealand at the time, acting in accordance with Good Electricity Industry Practice.

D.53 The criticism that force majeure relief can be invoked by the party seeking relief on only a restricted list of events does not appear to hold up, since clause 21.1(b)(v) allows any other event or circumstance beyond the control of the party to qualify as a Force Majeure Event.

D.54 The criticism that clause 21.1 relates to GEIP without using that defined term also does not appear to hold up as GEIP is referenced in clause 23.1(c). However, the clause is amended in the DDA template so that it only refers to GEIP, and does not also refer to the party "... having exercised skill, diligence, prudence, control

and foresight that would reasonably and ordinarily be expected from a skilled and experienced distributor or retailer...”. Those words are unnecessary given the reference to GEIP.

Indemnities and Consumer Guarantees Act claims processes

- D.55 The indemnity provisions at issue are understood to relate to the distributor indemnity provided in clause 26.8 of the MUoSA.
- D.56 The 2012 MUoSA was finalised and published before the Consumer Guarantees Act 1993 was amended to include a distributor indemnity in favour of retailers (section 46A).
- D.57 The Authority addressed this issue as part of its 2015 Code Review Programme. That is, the Authority has amended the Code to remove the distributor indemnity from Part 12A by revoking clause 12A.6 (Distributor indemnity) and Schedule 12A.1 (Distributor indemnity in use-of-system agreements). Those amendments come into force on 1 February 2016.
- D.58 The second issue relates to the procedural obligations that apply if a retailer wishes to make a claim under the distributor indemnity in the Consumer Guarantees Act.
- D.59 Under the MUoSA, the default position in respect of any claims or proceedings to which the indemnities under clauses 26.8, 26.11 and 26.12 apply is that the indemnified party will retain control over the applicable claim or proceedings and there is no obligation for the indemnified party to hand over control of any such claims or proceedings to the party providing the indemnity.
- D.60 However, the practice note included in the MUoSA stated that the parties might agree a different process in respect of the conduct of claims or proceedings to which clauses 26.8, 26.11 and 26.12 apply.
- D.61 Clause 26.11 of Vector’s agreement provides an example of a recently negotiated clause relating to the conduct of claims. It appears to provide clarity and certainty around the parties’ obligations if a trader wishes to make a claim under the distributor indemnity in the Consumer Guarantees Act. Vector’s drafting is reflected in a new clause 26 of the DDA template.

Audit errors

- D.62 Clauses 29.3 to 29.6 of the MUoSA provide an audit right for a party that has received information provided by the other party. The MUoSA does not contain a provision that would require a party to rectify errors discovered by an audit.
- D.63 Vector’s clause 29.8 provides an example of a recently negotiated clause that requires correction of inaccurate information discovered during audit. Vector’s

clause provides clarity and certainty relating to correction of uncovered information errors.

- D.64 The Authority considers that Vector's clause improves on the MUoSA and has incorporated it within the DDA template as clause 31.7.

Changing technology and network management practices

- D.65 A view was expressed in submissions that there is insufficient flexibility in the MUoSA to provide for changing technology and network management practices.
- D.66 The Authority acknowledges the well-developed industry interest relating to new technologies and considers it has the potential to have far-reaching impacts across the industry. Its likely impact on distribution services is a primary focus.
- D.67 The DDA template is neutral to technology or business model insofar as this is possible. Nevertheless, it is currently not possible or desirable to try to completely future-proof a DDA template. It may be that future regulation is more appropriately incorporated within guidelines of Code amendments.
- D.68 The Authority is keeping an open mind at this stage but welcomes views on how technology change might need to be taken into account in the formation of distribution agreements.

Provisions for 'white label' retailers

- D.69 A view was expressed in submissions that there is insufficient flexibility in the 2012 MUoSA to allow 'white label' retailers, such as Simply Energy, to trade electricity.
- D.70 The Authority would like to better understand the issue and welcomes feedback on this topic.

Distributor access to consumption information

- D.71 The MUoSA has no directly equivalent clause to Vector's clause 6.10, which provides a right for the distributor to request consumer electricity consumption information from the retailer "... to assist the Distributor in managing and planning the Network".
- D.72 The distributor can specify the format in which the information is provided and the retailer must comply with the request as soon as practicable subject to the retailer's Privacy Act 1993 obligations. The distributor must pay the retailer's "out of pocket" costs for complying with the request.
- D.73 The Authority understands the type of information sought is information available if advanced metering infrastructure has been installed at an ICP.
- D.74 The Authority is aware that access to such information by distributors has been contentious. Privacy Act obligations may also pose an issue. It is also unclear why

Vector has included this provision in clause 6 (load management) rather than in clause 29.2, which deals specifically with distributor access to consumer information.

- D.75 Clause 29.2 provides for access to consumer information by the distributor that is "... necessary to enable the Distributor to fulfil its obligations in accordance with the agreement". The inclusion of Vector's clause 6.10 where the information sought would "... assist the Distributor in managing and planning the Network" would seem to imply that managing and planning the network using consumer demand and energy information is not clearly necessary to enable the distributor to fulfil its obligations under the agreement.
- D.76 The Authority is interested in retailer and distributor feedback on the rights included in Vector's clause 6.10. Given the questions outlined above, the DDA template does not include Vector's clause 6.10.

Confidentiality

- D.77 Some submissions expressed a view that there is an issue with confidentiality in the 2012 MUoSA but did not provide further elaboration.
- D.78 The Authority would like to better understand the issue and so welcomes further submissions.

Embedded networks

- D.79 Some submissions on the April 2014 consultation paper noted that there are no provisions in the MUoSA relating to embedded networks.
- D.80 Vector's UoSA includes provisions related to embedded networks. These require the retailer to procure via its embedded network consumer agreements a number of undertakings from consumers connected to embedded networks. These provisions mostly relate to excluding the distributor's liability for failures related to the embedded network.
- D.81 While these provisions might reflect reasonable distributor concerns, it is not clear at this stage that they fit within the scope of the DDA template. For example, such concerns could be more directly addressed within a distributor's terms for connection of embedded networks, if distributors require such agreements.
- D.82 The Authority has not included embedded network provisions in the DDA template at this stage and seeks feedback from distributors, retailers, embedded network owners and relevant consumers on these matters.

Minor drafting matters

- D.83 In using the MUoSA as the basis for the DDA template, the Authority has made a number of relatively minor drafting changes, including in relation to terminology and definitions.

- D.84 An example of this is clause 9.5, regarding the use of standard tariff codes. Reflecting that clause 12A.10 of the Code was amended in 2013 to revoke the requirement to use standard tariff codes, clause 9.5 has been redrafted to:
- (a) remove the explicit Code reference, but
 - (b) retain a general requirement to use good electricity industry practice in assigning tariff codes.