

The Default Distributor Agreement

Decisions Paper

16 June 2020



Executive summary

We have decided to introduce the DDA Template and the Data Template

The Authority has decided to amend Part 12A of the Code to introduce the Default Distributor Agreement (DDA) Template and the Data Template.

Key elements of the Code amendment include:

- (a) changing how distributors and traders negotiate and enter into contracts for distribution services by introducing a DDA Template. The DDA Template contains more standardised default terms for distributors and traders on distribution networks using an interposed arrangement¹
- (b) requiring distributors to develop, publish and offer a DDA based on the DDA Template written by the Authority to all traders seeking to trade on their distribution network
- (c) introducing separate default terms for some additional services commonly provided alongside the distribution service (but are not themselves part of the distribution service). These default terms include:
 - (i) providing distributors access to consumer consumption data on reasonable terms (Data Template), and,²
 - (ii) allowing a distributor's shareholder trust to credit beneficiaries accounts with annual dividend distributions or collect beneficiary information in order to send a dividend direct to the consumer (for example, through cheque).

Promoting competition and efficiency through default terms

The DDA Template will provide traders access to local distribution networks on more standardised terms and conditions. We expect introducing the DDA Template will:

- (a) reduce transaction costs and effort required to negotiate contracts between traders and distributors
- (b) promote more equal bargaining positions between distributors and traders, and between traders in similar circumstances
- (c) promote competition in emerging markets by unbundling distribution services from contestable services.

The Data Template will give distributors access to some historical consumption data on reasonable terms. We expect introducing the Data Template will better allow distributors to:

- (a) develop more cost-reflective distribution prices,
- (b) expand their networks more efficiently by analysing consumption patterns to improve their investment plans,
- (c) plan maintenance more easily, and

¹ Proposed Schedule 12A.4 Appendix A of the Code

² Proposed Schedule 12A.1 Appendix C of the Code

- (d) respond more effectively to electrification and new technologies, like electric vehicles (EVs).

The Code change promotes the long-term benefit of consumers

We consider that the revised Part 12A of the Code, the DDA Template and the Data Template will better promote competition in and efficient operation of the electricity industry for the long-term benefit of consumers.

Consumers are the ultimate recipient of the terms negotiated between a trader and a distributor. We expect that:

- (a) The DDA Template should mean consumers receive better retail electricity services. The DDA Template will reduce undue barriers to traders entering and expanding across markets, and also promote competition in retail and emerging service markets (such as demand response). This enhanced competition means traders will compete on price and quality to win consumers and develop innovative and new products providing consumers with more choice.
- (b) The Data Template should mean consumers throughout New Zealand receive a better distribution service, because distributors are able to better plan and maintain their networks to improve network resilience.

Monitoring and Support

We will support distributors in developing and publishing their DDAs. The DDA proposal is a significant change to the Code. We will help distributors interpret the drafting of the terms inside the DDA Template.

We expect the needs of industry to evolve over time as new participants enter and new business models are introduced. We will be monitoring the terms included in all distributor agreements to ensure they continue to promote our statutory objective. We have in place mechanisms to update default terms as industry evolves to ensure the DDA Template, Data Template and default terms for Income Payments remain fit-for-purpose. We expect these updating mechanisms to be used sparingly.

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Glossary

Term	Definition
Additional services	Services which are not related to the provision of the distribution services. For example, exchange of consumer information or income payments.
Alternative agreement	A mutually agreed contract for distribution services, by the distributor and trader, which includes terms that are different from those in the distributor's DDA.
Collateral terms	A term in a distributor's DDA that is not a core term, operational term, recorded term, or default term for an additional service.
Core terms	Terms which are set out in the DDA Template and must be included in a distributor's DDA.
DDA	A Default Distributor Agreement published by each distributor.
DDA Template	A template set out in the Code and used by each distributor to develop their own DDA.
Default term	Terms which are deemed to apply if one or both parties opt for the term.
Distribution	The conveyance of electricity on lines which are not part of the national grid. This is the regulated and primary service a distributor provides.
Distributor agreement	Any agreement between a distributor and a network user.
MEP	Metering Equipment Provider.
MUoSA	Model Use-of-System Agreement. This is the benchmark 'model' UoSA which was published by the Authority in 2012.
Operational terms	Terms that must be included in a distributor's DDA and must meet requirements specified in the DDA Template, but which reflect a distributor's local practices and policies. These must be drafted by the distributor and are subject to consultation and, if requested by a submitter, reviewed by the Rulings Panel.
Recorded terms	A placeholder for recording terms which may fall outside of our jurisdiction and that distributors are not required to be included in the published versions of their DDAs but may be required as part of a whole distributor agreement.
Related services	Services related to and are provided alongside distribution services, but which are not, themselves, part of distribution services. Related services include activities that can support the transport of electricity at the transmission or distribution level, such as voltage support, reserve generation, and demand response.
UoSA	A use-of-system agreement between a distributor and trader. This is the bi-laterally negotiated contract which contains the terms for the distribution service.

1 We have decided to amend Part 12A of the Code to introduce the DDA Template and Data Template

- 1.1 The Authority has decided to introduce the DDA Template and Data Template into the Electricity Industry Participation Code (Code). The Authority and many industry participants believe the current contract arrangements between distributors and traders for use of the network inhibit competition or efficiency in the electricity industry. Further, there are undue challenges to distributors and traders negotiating access to smart meter data on reasonable terms.
- 1.2 The Electricity Price Review (EPR) Panel agreed with our assessment of the problems, and recommended the Authority continue to develop the DDA project to ensure: that electricity distributors offer traders more standardised default terms for use of their network, and traders provide distributors access to smart meter data on reasonable terms.
- 1.3 This paper sets out the Authority's decision on the proposal to amend Part 12A of the Code and our approach to monitoring and promoting progress.
- 1.4 The amendment to Part 12A of the Code will introduce the DDA Template which will provide traders access to local distribution networks on reasonable terms. The amendment will also introduce the Data Template which will provide distributors access to consumption data on reasonable terms. Both the DDA Template and Data Template have been amended to reflect feedback from submissions by stakeholders.

We have conducted two consultations on the amendment

- 1.5 We have twice consulted on the proposal to amend Part 12A of the Code. The January 2016 consultation³ introduced the first draft of the DDA Template, and the August 2019 consultation⁴ proposed a revised draft and introduced default terms for some additional services. Submissions to both consultations helped us refine the drafting of:
 - (a) the proposed amendments to Part 12A of the Code
 - (b) the default terms for:
 - (i) the DDA Template
 - (ii) the Data Template, and
 - (iii) Income Payment services.

We revised the DDA Template and Data Template

- 1.6 We have made some drafting changes since the August 2019 consultation on the proposal to amend the Code. We reviewed the submissions and there were no material new policy issues. The majority of submissions focused on technical drafting of existing terms. At a high-level, we have:

³ Electricity Authority, 2016. *Proposal to introduce a default agreement for distribution services*. Available at: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/consultation/#c15756>

⁴ Electricity Authority, 2019. *Default Distributor Consultation Paper*. Available at: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/consultation/#c18154>

- (a) introduced transitional provisions which enable parties to complete processes already in action. For example, to complete dividend distributions which have been notified under the UoSA.
- (b) revised the Data Template to ensure:
 - (i) distributors can access data from MEPs if the trader does not hold the data,
 - (ii) the drafting better reflects modern data privacy, storage and usage concerns under the Privacy Act 1993,
 - (iii) the clauses better protect the trader from data misuse.
- (c) revised the Income Payment services terms to ensure they are fit for purpose and reflect current practices. We incorporated advice from submissions which outlined best practice.
- (d) Improved the indemnity and liability clauses by providing more protections for both distributors and traders. This includes:
 - (i) referencing the Consumer Guarantees Act 1993 under the liability provisions,
 - (ii) updating the indemnity protocol to require distributors and traders better communicate with each other during customer claims, and
 - (iii) updating the definition of a serious financial breach to ensure smaller traders and distributors are covered under the protocol.

General feedback on proposal

- 1.7 During the August 2019 consultation on our proposal to amend Part 12A of the Code to introduce the DDA Template and Data Template, we hosted industry workshops with interested stakeholders to explain our proposal, collect ideas and have conversations about the proposed Code amendment.
- 1.8 We also provided additional support to help stakeholders improve their DDA submissions. The support included: four stakeholder briefing workshops⁵, an *Information for Industry Participants* summary document⁶, and an online *DDA Questions and Answers* webpage.⁷
- 1.9 Through both the 2016 and 2019 consultations and workshops, submitters provided a substantial amount of feedback and suggested drafting changes to the Code amendment and DDA Template. Most industry participants' submissions focused on technical amendments to the proposed Code amendment and the DDA Template.
- 1.10 Some industry participants requested another round of submission or cross-submissions on the DDA Template and Data Template. We decided against another round of

⁵ Electricity Authority, 2019. *Stakeholder Briefing Workshops*. Available here: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/events/presentation-to-major-electricity-users-group-2/>

⁶ Electricity Authority, 2019. *Information for Industry Participants*. Available here: <https://www.ea.govt.nz/dmsdocument/25649-default-distributor-agreement-proposal-information-for-industry-participants>

⁷ Electricity Authority, 2019. *Questions and Answers*. Available here: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/development/questions-and-answers/>

consultation as we considered that we had already heard and understood the views of submitters, noting:

- (a) many submissions have already commented on the position and incentives of other parties
 - (b) we found that the positions of submitters have remained relatively unchanged since the 2016 consultation. This was reiterated when some submitters explicitly referred to re-affirming their 2016 submissions on the DDA consultation. We have already considered many of these matters and provided our response in the 2019 DDA consultation paper.
- 1.11 As per our consultation charter, the Authority is charged with breaking deadlocks on contentious policy matters by making decisions.⁸ This is especially so for policy matters with widely divergent views which have been unresolved for many years. As such, we have decided to amend Part 12A of the Code and introduce the DDA Template and Data Template.
- 1.12 More information about the Code amendment, DDA Template and Data Template is available on our website at: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/>.

Monitoring and support

- 1.13 We will be monitoring the terms included in all distributor agreements to ensure they promote our statutory objective. The proposed Part 12A of the Code will include an obligation which specifies that traders are required to give the Authority a copy of any distributor agreement they enter into. If we discover terms which do not promote our statutory objective, we may choose to prescribe or prohibit terms through amending the Code but expect to take this approach sparingly.
- 1.14 Some participants have requested mechanisms to ensure their DDAs remain fit-for purpose. We have reclarified how participants can request amendments to the Code and Core Terms of the DDA. We expect these mechanisms to be used sparingly, and only through widespread demand from industry. We have also clarified how distributors and traders can amend other terms in their DDAs.

Next steps

- 1.15 The Authority's Board approved amending Part 12A of the Code on 02 April 2020. The amendment includes introducing the DDA Template and the Data Template. The next steps are:
- (a) Publish a DDA Gazette Notice.
 - (b) The new Part 12A of the Code coming into effect by July 2020.
 - (c) After the Code amendment coming into effect, provide support to:
 - (i) the largest five distributors to develop and implement the first DDAs within 150 days from Code change coming into effect, and
 - (ii) the remaining distributors to develop and implement their DDAs within 210 days from Code change coming into effect.

⁸ Electricity Authority, 2010. Part 2, Subclause 2.1(e) of *Consultation Charter*. Available at: <https://www.ea.govt.nz/dmsdocument/2941-consultation-charter-december-2010>

- (d) Monitor the update of default terms and contract negotiations going forward.

2 Background

There are barriers associated with negotiating access to local distribution networks

- 2.1 Traders use a distributor's network to on-sell electricity to consumers such as households and businesses. The contract that governs the relationship between the distributor and trader is called a UoSA. Under the current Part 12A of the Code, a trader and distributor must enter into a good-faith negotiation to create a new UoSA each time a trader seeks to trade on a new distribution network.

Ongoing problems with contract negotiations

- 2.2 Industry participants recognised there were problems with contract negotiations in the early-2000s when industry restructuring separated retail and network functions, and retail competition expanded. These problems represent barriers to traders entering and expanding across distribution networks.
- 2.3 The problems can be generally grouped into three categories:
- (a) **higher-than-necessary costs and effort.** UoSAs are complex and costly agreements which require significant amounts of technical, commercial and legal resources to draft and negotiate. At the same time, the underlying distribution service is essentially the same throughout New Zealand. Higher-than-necessary costs and the need to negotiate multiple UoSAs introduces a barrier to traders entering and expanding across new distribution networks.
 - (b) **limiting retail competition.** There is an imbalance of positions when it comes to contract negotiations. Distributors have the stronger bargaining position and can shift more risks and costs onto traders in a way that is unfairly balanced.⁹ Equally, traders can sometimes hold a stronger bargaining position and refuse to renegotiate existing contracts, inhibiting innovation in the distribution service.
 - (c) **limiting competition in contestable services.** We were concerned access to contestable services has been inhibited by the terms in current UoSAs. Responses to our 2018 DDA survey result confirmed our concerns. Some distributors write terms into their UoSA which favour themselves or their affiliates to provide contestable services such as demand response.¹⁰ This allows a distributor to leverage its natural monopoly position as a provider of distribution services to also provide other related, but contestable, services. Traders and third parties submitted that this behaviour inhibits workable competition to provide products and services such as demand response, and can prevent other competing providers

⁹ Mercury DDA Submission, October 2019 (pp. 5-6). Available at: <https://www.ea.govt.nz/dmsdocument/25941-mercury-dda-submission-2019>

Trustpower DDA Submission, October 2019, (pp.4-5). Available at: <https://www.ea.govt.nz/dmsdocument/25950-trustpower-dda-submission-2019>

¹⁰ Some distributors are incentivised to behave this way because they have a commercial interest in related services markets. The distributor, or its affiliates, may be competing in related services markets against retailers.

from offering innovative products and services altogether.¹¹ Some state the threat of anti-competitive behaviour can be enough to discourage traders and third parties from entering a local network to provide products and services, denying consumers of the value these technologies could bring to the industry.

Voluntary solutions were unsuccessful

- 2.4 In 2003, the Authority's predecessor¹² proposed introducing two model UoSAs ('MUoSAs') to address the problems associated with UoSA negotiations.¹³ The MUoSAs were developed between 2003 and 2012 in conjunction with industry working groups made up of representatives from distributors, traders and consumers. The MUoSAs were designed as benchmark agreements which contained more balanced terms for the exchange of the distribution service between distributors and traders.
- 2.5 When publishing the MUoSAs in 2012, the Authority signalled that the MUoSA package represented a point of transition where we would begin monitoring the activity of distributors and traders as they engage in UoSA negotiations. We defined our expectations of industry and said we would revisit the problem if our expectations were not being met.
- 2.6 A post-implementation review of the MUoSAs in 2014 found our expectations were not being met. There were:
- (a) distributors offering a UoSA based on a significantly amended MUoSA,
 - (b) traders refusing to engage with a distributor,
 - (c) little evidence of developing new more standardised UoSAs, and
 - (d) low levels of voluntary disclosure of UoSA information on websites.

We considered a range of alternative solutions

- 2.7 In 2014, the Authority published a further consultation paper that discussed evolving issues related to the formation of UoSAs between distributors and traders. We also consulted on a range of alternative options of achieving efficiency and competition benefits from more standardised UoSAs.
- 2.8 We concluded a default agreement was the preferred solution. We consulted on the first draft of the DDA in 2016. We considered the feedback and developed the second draft of the DDA.
- 2.9 We were legally challenged on our proposal to introduce the DDA Template. In 2016, a distributor and its shareholder trust sought a declaratory judgement on the Authority's ability to introduce the DDA Template. The declaratory judgment was heard by the High Court in 2017 and ultimately ruled in favour of the Authority. Between 2018 and 2019, the High Court ruling was appealed and heard at the Court of Appeal. The Court rulings reconfirmed the Authority's overall ability to introduce a DDA Template but outlined some limitations relating to the jurisdictional overlap with the Commerce Act 1986. The

¹¹ Mercury (pp. 5-6), Contact (p. 2), Nova (p. 5) and Major Electricity Users' Group (MEUG) (p. 2) also note this concern in their submissions to the 2019 DDA consultation. Trustpower (p. 12) agrees with the intent of the Regulatory Statement as it relates to the costs and benefits in the related services market.

¹² The Electricity Commission.

¹³ The Authority proposed introducing two MUoSAs: Interposed and Conveyance. The DDA project only addresses interposed relationships, which is the predominant contractual type between distributors and traders today.

Authority incorporated all Court rulings into the drafting of the DDA Template and released a second version of the DDA Template for consultation in August 2019.

The DDA Template aims to address the problems

2.10 We are amending Part 12A of the Code and requiring distributors to develop and make available a DDA based on the DDA Template provided by the Authority. The amendment makes Part 12A a forward-looking and future-proofed solution to problems with contract negotiation. The DDA will:

- (a) **reduce transaction costs and effort required to negotiate contracts between traders and distributors.** The DDA will be deemed to apply unless both parties opt to contract under alternative terms. Transaction costs will be lower because the DDA proposal provides a more streamlined and efficient method for traders and distributors to enter into a distributor agreement.
- (b) **improve competition in the retail market** by:
 - (i) ensuring traders are not placed in a position where they must sign unfavourable UoSAs to trade on a distributor's network. This will promote more equal bargaining positions between distributors and traders, and between traders in similar circumstances.
 - (ii) allowing distributors to replace legacy UoSAs, which lock-in a potentially historical interpretation of distribution and additional services. This means traders in similar circumstances will have access to equal terms for the distribution service and can compete on a level-playing field.
- (c) **promote competition in the contestable related services market.** The DDA and Part 12A will separate distribution services from related services,¹⁴ as the latter are becoming increasingly contestable. The proposed Code amendment will promote competition in the related services market by unbundling distribution- and related services. The DDA will provide traders access to the distribution services, without having to transfer exclusive right to provide any other contestable services to the distributor (or its affiliates). This limits the ability of some distributors to control access to contestable services through UoSAs. It also allows traders and third parties to offer these related services, such as demand response, to consumers and have more confidence that they will be competing on fair and equal terms.

2.11 On 19 August 2019, we published a consultation paper titled: *Code Amendment Proposal: Default Distributor Agreement*.¹⁵ It was our second consultation on a proposal to amend Part 12A of the Code to introduce a DDA Template and change the way distributors and traders contract for distribution services.

There are also barriers to negotiating access to smart meter data

2.12 During the 2016 DDA consultation, industry participants also raised concerns about undue barriers to negotiating access to consumption data on reasonable terms.

¹⁴ Related services include activities that can support the transport of electricity at the transmission or distribution level, such as voltage support, reserve generation, and demand response.

¹⁵ Electricity Authority, 2019. *Default Distributor Agreement consultation paper*. Available at: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/consultation/#c18154>

- 2.13 Smart meters are capable of measuring a wide range of data at the household level. One valuable type of data measured is half-hourly household consumption. Consumption data is a consumer's individual information about how much and when they use electricity. Consumption data collected by MEPs on behalf of the consumer is held by the trader. This data is typically used for billing and invoicing purposes.
- 2.14 We believe consumption data is valuable in identifying consumer behaviours. It can be used strategically to develop innovative products and services which consumers may want, improve the efficiency of existing operations, and help plan and maintain New Zealand's distribution networks to improve reliability.

Some traders were concerned about privacy and permitted uses for data

- 2.15 Our consultation paper noted that some traders were unable to access the distribution service without agreeing to provide other services in exchange. One example is the requirement for traders to hand over detailed consumer consumption data or information (including sensitive contact details) at the ICP-level.
- 2.16 At the high-level, traders were concerned about the privacy and competition implications of exchanging such sensitive data with distributors. Specifically, they were concerned about:
- (a) unreasonable access to consumption data. Detailed customer consumption data has high commercial value. Traders were concerned that some distributors were using their stronger bargaining position as a method to collect sensitive consumer information through UoSAs.
 - (b) the ability for distributors or their affiliates to use commercially sensitive information, originally intended for asset and network management purposes, to enter into emerging related services markets.
 - (c) the reputational and privacy implications of handing sensitive consumer consumption data to the distributor, or its affiliates. One trader had received complaints from customers that the distributor and third-party contractors had contacted the customer on confidential phone numbers.¹⁶
 - (d) the extra cost associated with collecting and handling data on behalf of the distributor or its affiliates, and an inability to recover these costs.

Most distributors need access to data to develop more effective and efficient network management practices

- 2.17 Distributors currently have good knowledge of the state of their high-voltage network assets but have little to no visibility over the performance of their low-voltage networks—the network between the transformer and the meters of end consumers. Detailed half-hourly consumption data can provide distributors with a higher-resolution view of their low-voltage networks.
- 2.18 Without access to data regarding consumption taking place across their networks, distributors will not be able to manage their low-voltage networks as effectively as would otherwise be the case.

¹⁶ Electricity Authority, 2016. *Default Agreement for Distribution Services – Summary of Submissions*. Available at: <https://www.ea.govt.nz/dmsdocument/21611>

- 2.19 Increasing access to consumption data on reasonable terms will also enable distributors to:
- (a) develop more cost-reflective distribution prices,
 - (b) expand their networks more efficiently by analysing consumption patterns to improve their investment plans
 - (c) plan maintenance more easily, and
 - (d) better respond effectively to electrification and new technologies, like EVs.
- 2.20 Industry generally agreed there is an impasse to negotiating access to smart meter data held by traders on reasonable terms. However, there is little consensus on what 'reasonable terms' look like.
- 2.21 The Authority attended multiple industry *Data Working Group* workshops to gain further insight into the issues faced in negotiating data access. We listened to the discussion between distributors and traders and recognise there was a genuine effort to overcome the data exchange challenges they face.
- 2.22 At the workshop, we also heard practical alternatives to exchanging consumption data the traders hold (or can access via the MEP). These include:
- (a) distributors installing sophisticated monitors on the low-voltage feeder transformers. This approach is suboptimal because it will not provide the level of resolution capable from existing smart meter data, nor does it provide distributors with information about the line further away from the transformer. This would limit the benefits sought in paragraph 2.19 above.
 - (b) distributors installing monitoring devices at one or more properties at the street-level. This approach is also suboptimal because it would duplicate functionality already available from existing smart meter installations. From the consumer's perspective, this would be inefficient as they have paid for metering capabilities through their retail bill, but the benefits are not being realised further up the supply chain.
- 2.23 At the April 2019 workshop, we presented the concept of developing a Data Template. The concept was generally well received by industry participants. However, one distributor expressed concern that default terms written by the Authority would not achieve the best outcomes. This distributor sought a market-led solution, by developing their own data agreements, and to provide copies to the Authority.
- 2.24 We were willing to accept and consider the terms of data agreements negotiated among industry participants as a market-led solution to the barriers of data access. Though, we found that industry participants have been unable to develop enduring contracts for data access. We were informed of one data agreement successfully negotiated in December 2019. However, this agreement is for a time-limited exchange of historical data and includes a provision which allows either party to terminate the agreement and transition to the Authority's Data Template when it is available for use.
- 2.25 We consider that industry did not break the data negotiation deadlock but did inform our process of developing the Data Template with their insights.

The Data Template will address the problem

- 2.26 The Authority has decided to require traders, or their MEPs, provide distributors access to consumer consumption data on default terms provided by the Authority, unless parties agree to contract under alternative terms.
- 2.27 We propose introducing the Data Template as a new Appendix C to Schedule 12A.1 of the Code. At a high-level, it will have the following functions:
- (a) First, it will give distributors access to some historical consumer consumption data. Access to this historical consumption data is required by a distributor to develop cost-reflective distribution prices and for better network investment and management. For example, to plan, maintain and upgrade their network, and to develop more efficient distribution pricing structures.
 - (b) Second, it provides traders with the assurance and remedies they need to exchange data. The Data Template allows the distributor to use the data for a limited number of permitted purposes, and prevents the distributor using the data for services which may compete against the trader (unless mutually agreed). The Data Template also limits the sharing of the data with individuals or affiliates involved in the provision of contestable electricity services. The terms provide a trader with the right to audit the distributor and include termination clauses that apply if a distributor breaches the agreement.
 - (c) Third, it provides a more standardised process of data exchange between distributors and traders. This will unlock significant standardisation benefits by reducing the cost and effort of developing and exchanging multiple file formats. Appendix C defines the process for exchanging data, acceptable timeframes, and the data format. More standardised exchange protocols and better access to data enables industry participants to make faster, more informed decisions and reduces the cost of doing business.
- 2.28 The Data Template was developed by combining: a distributor's standardised consumer information exchange protocol, a trader's proposed consumer information exchange protocol, Electricity Retailers' Association of New Zealand's (ERANZ) core data values, and input from industry participants.
- 2.29 Similar to the DDA Template, we have provided enough flexibility so that industry participants can negotiate alternative terms for the provision of consumer consumption data if they both agree to do so.

A distributor's trust must be able to distribute income payments to their beneficiaries

- 2.30 The Authority is aware that there are some services provided alongside the distribution service that are not, themselves, part of the distribution service.
- 2.31 Some distributors are owned by a shareholder trust or cooperative. Distributors and their shareholder trusts or cooperative dispense annual dividends (income) to beneficiaries on the local network. The size of the dividend can be related to the consumer's annual electricity consumption, and eligibility can be related to who is the account holder, and/or the dates on which they were a customer on the network.
- 2.32 During the 2016 consultation, we identified that a distributor's shareholder trust or cooperative require a method by which they can dispense income payments and confirm receipt of income payment by beneficiaries.

Traders control access to some income payment information

- 2.33 Traders are the only participant with access to much of this sensitive consumer information, which helps the distributor's shareholder trust determine eligibility and size of the dividend distribution to consumers. Therefore, shareholder trusts and cooperatives require a method by which they can dispense dividends and confirm receipt of dividends by beneficiaries.
- 2.34 The Authority is cognisant there are no other viable mechanisms for these services to be provided other than with the cooperation of the trader.

Default Terms for Income Payments will address the problem

- 2.35 Introducing the default terms for income payments addresses these problems by standardising the methods by which dividends are paid to beneficiaries. The default terms written by the Authority provide access to the information required to calculate and pay dividends and provide traders with the assurance they need to exchange data with distributors and their shareholder trust or cooperative.
- 2.36 We recognise there are two common methods by which distributors' shareholder trusts make payments to beneficiaries on their network. These include:
- (a) Method one: Credit beneficiaries' accounts with annual dividend distribution, or
 - (b) Method two: Send the dividend direct to the beneficiary.
- 2.37 We have drafted default terms for both methods. Providing default terms for both methods makes it easier for a trust or cooperative to pay dividends to their beneficiaries.
- 2.38 To protect traders, we have provided robust clauses which outline the permitted disclosures and uses for the data. The clauses provide traders with the assurance and remedies they need to exchange data.

3 The amendment promotes our statutory objective

- 3.1 The Authority's statutory objective is to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

The amendment promotes competition and efficiency in the electricity industry

- 3.2 After considering all submissions on the Code amendment proposal, the Authority considers the Code amendment will deliver long-term benefits to consumers.
- 3.3 The Code amendment will promote:
- (a) efficient operation of the electricity industry by minimising:
 - (i) higher-than-necessary transaction costs of UoSA formation
 - (ii) duplication of effort required by traders and distributors to undertake multiple UoSA negotiations, and
 - (iii) minimising barriers to accessing, exchanging and using consumption data on reasonable terms.
 - (b) competition in:
 - (i) the retail market, by minimising barriers to accessing a distributor's network and ensuring traders can compete on fair terms both on the same network and across different networks, and

- (ii) emerging related services markets, by making sure participants can compete for and provide related services on a level playing field.
- 3.4 Enhanced retail competition, including the threat of new entrant traders, increases competitive pressure on electricity prices, encourages efficient investment, and promotes innovation. Enhanced competition also provides consumers with greater confidence that:
 - (a) the price of electricity more closely reflects the efficient cost of producing, transporting, and retailing electricity, and
 - (b) price movements are driven by underlying supply and demand movements.
- 3.5 The Authority does not expect the Code amendment to have a direct effect on the *reliability of supply* aspect of our statutory objective. However, through increasing access to:
 - (a) the related services market, participants may bring new ways of doing business, such as: home energy management, demand response, and competing in the related services market for network support services. These new business models may have the effect of reducing demand during times of system stress, which indirectly contributes to maintaining security of electricity supply.
 - (b) smart meter data under reasonable terms, distributors will be able to:
 - (i) promote network reliability through improved network planning, and
 - (ii) develop more efficient distribution price structures to support efficient investment in network alternatives and send signals that could avoid reliability problems.¹⁷

The benefits of the proposal

- 3.6 The Authority has assessed the economic benefits and costs of the amendment and expects it to deliver a net economic benefit.
- 3.7 The benefits of the DDA are:
 - (a) **lower cost and effort required to enter into a UoSA:** Amending Part 12A and introducing the DDA Template will:
 - (i) reduce transaction costs compared to the status quo. We estimate introducing the DDA proposal will reduce the costs of negotiating new UoSAs between \$1.1 and \$1.3 million per annum across the entire industry through lower technical, commercial and legal resources required to draft and negotiate distributor agreements.
 - (ii) reduce the duplication of effort required by both parties to negotiate and maintain multiple UoSA simultaneously. The DDA will allow traders to enter and expand across networks using nationally consistent terms of network access. The proposal also allows a trader and distributor to build systems and processes around one standardised distributor agreement.
 - (b) **more equal bargaining positions between distributors and traders:** The DDA proposal will:

¹⁷ Electricity Authority, 2019. *More efficient distribution prices principles and practice*. Available here: <https://www.ea.govt.nz/dmsdocument/25436-more-efficient-distribution-prices-principles-and-practice>

- (i) promote competition through more equal bargaining positions between traders and distributors. Traders will no longer be placed in a position where they must sign unfavourable UoSAs to trade on a distributor's network. Equally, distributors will be able to update legacy agreements to more standardised terms of access.
 - (ii) Ensure traders in similar circumstances can access equal terms for the distribution service. This means fairer competition on the same network and across different networks.
- (c) **promoting a more pro-competitive environment.** More standardised terms enhance competition by creating a level playing field. Strong competition between the traders on the distribution network encourages them to innovate and offer new and more cost-effective products or services to consumers over time.
- (d) **encouraging more participation in emerging markets.** The DDA proposal will remove real or perceived barriers which prevent innovative and new service providers entering the market and competing to provide related services. New and existing industry participants will have greater confidence that they can access the network on terms equivalent to other participants on the same network.

The costs of the proposal

3.8 Our 2019 cost-benefit analysis estimated that the benefits of introducing the DDA outweighed the costs.

3.9 In 2018, we surveyed traders and distributors to estimate the benefit and cost of introducing the DDA Template. We asked all participants to include time, effort, and human resources required (such as lawyers). All responses were anonymous, but we collected some basic information such as their participant type and company size (measured by ICPs).

3.10 We did not report negotiation costs in detail in the consultation paper because the survey revealed each process is bespoke and therefore direct cost comparisons are unhelpful. For example, submissions showed:

- (a) one trader could spend up to \$150,000 negotiating a bespoke agreement. Whereas, another trader said the survey presumes there is the ability to negotiate - the trader did not consider this to be the case; and
- (b) one distributor reported costs are minimal because they offer a standardised agreement based on the Authority's MUoSA and simply request a signed copy from traders. Whereas, another distributor includes the cost of negotiating the contract, and ongoing support services such as trader training as part of their negotiation costs.

The cost of developing a standardised contract

3.11 Two distributors and one trader said that the bulk of the cost in standardising UoSAs is incurred during the development stage. Only one distributor quantified the cost, saying: a consultation process to develop their own standardised agreement cost \$20,000 and the cost to sign a UoSA is less than \$500 per agreement. Equally, the distributor discussed in paragraph 3.10(b) above offers the MUoSA developed by the Authority, so there is no development cost.

- 3.12 We expect the cost of developing a DDA would be lower than parties developing their own entire standardised agreement, because the Authority will be providing core terms which cannot be varied; representing the bulk of the agreement.
- 3.13 We have attempted to minimise any potential disruption further, by making technical amendments to the DDA terms to ensure that the drafting is workable for industry participants.

The cost of negotiating a bespoke agreement

- 3.14 Based on the 2018 survey responses, the total cost for negotiating each UoSA was estimated at \$17,938 each. The majority of the cost was borne by traders: an average of \$15,055 per UoSA compared to an average of \$2,883 per UoSA for distributors. Generally, the ranges of estimated costs were much higher for traders than distributors.
- 3.15 Traders who estimated low costs argued that costs were only low when the trader chose not to negotiate UoSAs with the distributor because they perceive themselves to have little bargaining power.
- 3.16 Section 5 of the consultation paper described the costs and benefits of the proposal in more detail.

The amendment is consistent with regulatory requirements

- 3.17 The proposed Code amendment is consistent with the requirements of section 32(1) of the Electricity Industry Act 2010 ('Act') as it is necessary and desirable to promote competition in and the efficient operation of the electricity industry.
- 3.18 The proposal is expected to promote competition in the electricity industry through:
- (a) even-handed treatment of traders and providing equal access to distribution services, and
 - (b) increased competition in markets for electricity-related services by providing opportunities and incentives for efficient entry, exit, investment and innovation.
- 3.19 The proposal is expected to promote the efficient operation of the electricity industry by reducing the transaction costs and duplication of effort associated with traders and distributors developing, negotiating, and maintaining distributor agreements.
- 3.20 The proposal may indirectly promote reliability for the reasons outlined in paragraph 3.5.
- 3.21 The amendment of the Code will come into effect following the procedural requirements of section 38 of the Act.

4 The Authority considered the following matters in making this decision

- 4.1 The Authority has undertaken a range of engagements to better inform the drafting of our decision paper, the DDA Template, Data Template, and default terms for Income Payments. Engagements include:

- (a) Between February and March 2018 we conducted a survey of both distributor and retailer experiences when negotiating distribution contracts. We have published the results on our website.¹⁸
 - (b) We published early drafts of the DDA Template and Default Terms for Income Payments in January 2019 and we received informal feedback from interested stakeholders.
 - (c) The Authority attended multiple industry Data Working Group workshops to gain further insight into the issues faced in negotiating data access. We listened to the discussion between distributors and traders and recognise there was a genuine effort to overcome the data exchange challenges they face. We also presented an early draft of our proposed Data Template.
 - (d) We produced some non-technical communication documents for stakeholders to ensure they better understand the proposal and could provide high-quality submissions to our recent 2019 consultation. This engagement includes an *Information for Industry Participants* document, and an online *Questions and Answers* webpage.
 - (e) We conducted one-to-one meetings with interested stakeholders on request. Stakeholders used these meetings to generally share their specific experiences when negotiating contracts, or to raise concern with the drafting of specific terms inside the Code amendment proposal.
 - (f) During the August 2019 consultation on our proposal to amend Part 12A of the Code to introduce the DDA Template and Data Template, we also hosted four industry workshops with interested stakeholders to explain our proposal, collect ideas and have conversations about the proposed Code amendment. In total, about 45 stakeholders attended the workshops. A wide range of participant types attended the workshops, including distributors, traders, an MEP, a distributor's Trust, third-party service providers, and industry bodies (ERANZ, Electricity Networks Association, and MEUG). The workshop slide pack was made available online for stakeholders who could not attend in person.¹⁹
- 4.2 We received submissions on our August 2019 consultation paper from the 28 parties listed in Table 1. Submissions are available on our website at: <https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/consultation/>.
- 4.3 We also considered the submissions received to the 2016 DDA consultation and was mindful of the drafting of the interposed MUoSA (paragraph 2.4 above).

Table 1: List of submitters

Submitter	Submitter	Submitter
Aurora Energy	Flick	Orion

¹⁸ Electricity Authority 2019, DDA Research Report 2018. Available at: <https://www.ea.govt.nz/dmsdocument/25536-dda-research-report-2018>

¹⁹ Electricity Authority, Stakeholder Briefing Workshop slides [Online]. Available at: <https://www.ea.govt.nz/dmsdocument/25648-dda-stakeholder-briefing-workshop-slides-17-september-2019>

Submitter	Submitter	Submitter
Axos Systems	Genesis	Powerco
Contact	Intellihub	Simply Energy
Counties Power	MainPower	Trustpower
Distribution Group	Mercury	Unison
Eastland	Meridian Energy	Vector
Electric Kiwi	MEUG	WEL Networks
Electricity Networks Association	Network Tasman	Wellington Electricity
Entrust	Northpower	
ERANZ	Nova	

4.4 Issues raised by submitters fell into three categories:

- (a) the Authority's description of the problems that it is seeking to address, described in Section 3 of the consultation paper
- (b) the Authority's proposal (including the proposed Code amendment and DDA Template), described in Section 4 of the consultation paper, and
- (c) the regulatory statement described in Section 5 of the consultation paper.

4.5 Each of these issues is discussed below.

Whether there is a problem that needs to be addressed

We have reconfirmed there are competition and efficiency problems with how participants negotiate and enter into contracts for distribution services. Distributors did not consider there was sufficient evidence the problems exist. However, both traders and third parties agree the problems exist and are consistent with their real-world experience. Progressing with the DDA remains a priority to address these problems and ensure consumers have access to and choice of ultimately better electricity products and services at a fair price.

We made the case there are competition and efficiency problems with contract negotiations

4.6 In Section 3 of the 2019 consultation paper, we stated that the proposed Code amendment seeks to address the problems faced with UoSA negotiations. At a high-level, the current arrangements lead to:

- (a) higher-than-necessary transaction costs and duplication of effort,
- (b) unequal bargaining positions that inhibit competition in the retail market, and
- (c) unequal bargaining positions that inhibit competition in emerging related services markets.

Submitters' views on the problem varied

Many distributors question whether problems exist and the evidence of problems

- 4.7 Many distributors question whether the problems identified by the Authority exist, and do not agree that the evidence referred to by the Authority was robust or supported the case for change. In doing so, several distributors observe that the issues identified by the Authority relating to high transaction costs under the current framework are not consistent with their experience. Some submissions also:
- (a) disagreed that the current approach to distribution agreements acts as a barrier to entry or limits competition in the retail market, and
 - (b) raised issues relating to the reliability of the survey referred to by the Authority in relation to problems with current arrangements.

Traders generally agree that there is a problem and support the proposal

- 4.8 In contrast to the view of most distributors, most traders indicate that they support the DDA proposal (subject to some refinements), and generally agree with the Authority's assessment of the problems with the current framework. Many agree that the proposed standardisation of distribution contracts would reduce transaction costs, lower barriers to entry, and increase competition in the retail market. Several submitters also raise concerns about the ability of distributors to reduce competition in related services markets.
- 4.9 The Major Electricity Users Group also indicates that it agrees with the policy problems identified by the Authority.

Several submitters raise concerns about unnecessary costs and suggest other projects would better meet the Authority's objectives

- 4.10 Several submitters raise concerns about:
- (a) the priority the Authority has given to the DDA project,
 - (b) the associated costs to implement the changes, and
 - (c) potential disruption to their business operations.
- 4.11 One submitter stated that the Authority should prioritise other projects that promote competition (e.g., hedge market development), as retail market problems are allegedly not driven by distribution arrangements. However, we note that:
- (a) most traders and third parties support the proposal to introduce the DDA, and
 - (b) the hedge market development project is already in development.
- 4.12 Some traders suggested that the Authority's proposal didn't reach far enough, and there were significantly greater benefits to be unlocked. Some traders and third parties:
- (a) remained concerned distributor would still be able to shift more risks and costs onto traders through distributor agreements
 - (b) supported the introduction of the DDA Template but considered the Authority could do more in terms of standardisation of data formats and exchanges

- (c) considered there should be available default agreements for other types of networks (for example, embedded networks) or other types of network users (direct connects)
- (d) recommended broadening the scope to include MEPs and meter installation terms.

We decided the problem does exist and needs to be addressed

- 4.13 The Authority re-confirms its view that the problems outlined in the 2019 consultation paper exist and reflect real-world experiences. We also re-confirm that more standardised distribution contracts are required and will go some way to address the efficiency and competition concerns identified.
- 4.14 We continue to consider both the DDA Template and Data Template as priorities for the Authority's work programme. The DDA Template contributes to developing an equal access framework and promoting more participation, innovation and competition in the electricity industry. The Data Template will provide access to consumption data, which is a valuable input to developing more efficient distribution prices and better network management practices. This will ultimately promote more efficient use of, and investment in, the distribution network and across the electricity supply chain and lead to improved decision-making by consumers and other parties using distribution networks.
- 4.15 The DDA Template and Data Template both also align with our 2020 strategy reset,²⁰ which responds to the ongoing rapid changes in the electricity sector. Specifically:
 - (a) **The DDA Template supports the Thriving Competition theme.** This theme recognises that market competition is a key mechanism to deliver better energy outcomes for consumers. The DDA Template will reduce undue barriers to traders competing on and across local networks. Access to local networks on reasonable terms will enable new and existing participants to provide consumers value for money through a growing range of innovative products, services and business models. This competition and competitive pressure in the retail market will drive efficiency and productivity.
 - (b) **The Data Template supports the Innovation Flourishing theme.** This theme recognises that the evolution of the electricity system will be achieved through innovation and disruption, with both participants and the Authority thinking well beyond the sector and the status quo. The Data Template will give distributors access to the data they need to develop better insight of their low-voltage networks and more efficient distribution prices. Access to this data is key to identifying opportunities and supporting industry participants and consumers to participate more directly – especially through the connection of new technology to the grid or through new business models.
- 4.16 We consider the DDA Template is a positive step towards a more balanced distributor agreement. We will monitor terms in all distributor agreements to ensure they promote our statutory objective. Our expectation of distributors is that they do not shift undue cost and risk onto traders. However, there are safeguards in place to protect traders – the requirement for distributors to consult on operational terms and the Rulings Panel.
- 4.17 We are cognisant that there may also be contract negotiation problems among other network users, embedded networks, other services, and with conveyance arrangements.

²⁰ Electricity Authority, 2020. *Strategy Reset 2020*. Available at: <https://www.ea.govt.nz/about-us/strategic-planning-and-reporting/strategy-reset-2020/>

Addressing all these challenges is too large for the DDA project, as each arrangement has unique demands. However, we have designed the amended Part 12A to be a forward-looking and more future-proofed solution to the contract negotiation problems. Part 12A and the Code's language has been structured so that we can provide default agreements for these other arrangements in the future by appending extra schedules, based on industry demand and further consultations. We expect to use the current DDA Template as a starting point for other default agreements in the future. We can consider these other negotiation problems as part of our ongoing work programme development.

Most submitters suggested changes to refine the proposal

Submitters collectively provided a substantial amount of feedback and suggested drafting changes to the Code amendment, DDA Template and Data Template. The Authority has decided to proceed with the DDA Template and Data Template and has refined the Code drafting based on feedback.

We refined our proposal to be future-proofed and forward-looking

4.18 In Section 4 of the 2019 consultation paper, we outlined all our proposed amendments to Part 12A of the Code and the DDA Template to provide traders access to distribution networks on more standardised terms. We also outlined our proposal to introduce the Data Template to allow distributors access to some consumption data on reasonable terms. The changes were made to ensure the Code amendment was forward-looking and future proofed. The amendments were based on:

- (a) feedback on the 2016 DDA Template,
- (b) the High Court and Court of Appeal outcomes, and
- (c) feedback we gathered directly from industry participants.

Submitters provided more suggested drafting changes to the proposal

4.19 Submitters to the 2019 consultation suggested more drafting changes to the Code, DDA Template and Data Template. For brevity, we have not repeated the detailed suggested drafting changes in this paper, as they are set out in detail in Appendix A of the DDA Summary of Submission document.²¹ We have provided a summary of the suggested drafting changes and our responses in Appendix A of this Decision Paper.

We have decided to include many of the drafting suggestions

4.20 The Authority has decided to:

- (a) incorporate many of the amendments into Part 12A of the Code, DDA Template and Data Template
- (b) be available to help industry develop and implement their DDAs
- (c) monitor the development of the DDA over time to:
 - (i) ensure it remains fit for purpose, and
 - (ii) to make amendments as and when required by consulting with industry - we intend to use this approach sparingly.

²¹ Electricity Authority, 2019. *DDA consultation 2019 Summary of submissions*. Available here: <https://www.ea.govt.nz/dmsdocument/26135-dda-consultation-2019-summary-of-submissions>

- 4.21 We note that many industry participants want further amendments to the Code to suit their requirements. We have listened to these suggestions and have carefully considered each suggested amendment. The final drafting of Part 12A, DDA Template and the Data Template reflects our view of a more balanced contract between the interests of all parties.
- 4.22 We are mindful that the purpose of the project is to introduce into the Code more standardised contracts for distribution services and the exchange of consumption data, which is consistent with our statutory objective. Our approach will address the efficiency and competition problems associated with contract negotiation, which many submissions continue to highlight.
- 4.23 The objective of the project is not and cannot reasonably be to create 'one-size-fits-all' contracts which satisfies the desires of all participants. Some submitters have opposing interests which are reflected in their suggested drafting of terms. Neither commercial negotiations, working groups, or consultation have been able to resolve these matters. To this end the Authority must, via the Code, resolve the deadlock in this decisions paper.

Submitters had differing views on the regulatory statement

Stakeholders held opposing views with regards the regulatory statement. Distributors generally felt the costs of the DDA outweighed the benefits. Whereas, traders generally agreed with our regulatory statement and that the DDA would provide net benefits. We consider our proposal is adequately justified.

There are static and dynamic efficiency benefits to introducing the DDA

- 4.24 Section 5 of the 2019 consultation paper stated we expect there are:
- (a) static efficiency benefits from introducing the DDA proposal. The 2019 consultation paper estimated the DDA will reduce the costs of negotiating all UoSAs between \$1.1 and \$1.3 million per annum across the entire industry between 2019 and 2021.²²
 - (b) dynamic efficiency benefits from introducing the DDA proposal, which include:
 - (i) improved operational efficiency. Each distributor's DDA will be significantly more standardised compared with the current range of UoSAs and will require fewer commercial and legal resources for development and understanding.
 - (ii) allowing a trader and distributor to build systems around one standardised contract for distribution services, if desired. The core terms contained in every DDA mean that a trader can expand into all networks in New Zealand using essentially one set of terms.
- 4.25 In the 2019 paper, we also cited:
- (a) anticipated demand for new UoSAs as a key factor in considering the costs and benefits of the proposed Part 12A.
 - (b) competition benefits of introducing the DDA proposal. The DDA proposal will:

²² The estimated cost is based on feedback we received on the 2018 DDA survey sent out to distributors and traders. The true cost of negotiating UoSAs may be even higher.

- (i) promote more equal bargaining positions between distributors and traders, and between traders in similar circumstances
- (ii) provide a more balanced contract for distribution services between participants
- (iii) remove the ability to impose additional costs through UoSAs, and
- (iv) provide an opportunity to update legacy UoSAs.

Submitters' views of the regulatory statement were divided

Distributors considered that the benefits do not outweigh the costs

- 4.26 Distributors that commented on the regulatory statement generally expressed the view that the proposal had not been adequately justified because:
- (a) the benefits do not outweigh the costs, or the claimed net benefits are small
 - (b) the cost-benefit analysis relies on unverified survey information, with the costs of contract negotiation skewed by an outlier
 - (c) the analysis does not sufficiently consider the potential unintended consequences of the standardised approach
 - (d) some of the benefits referred to by the Authority are already available
 - (e) retaining the MUoSA approach would involve less cost and disruption.

Traders generally supported the regulatory statement

- 4.27 In contrast, traders that commented on the regulatory statement generally agreed that the proposal would provide benefits such as increased efficiency and reduced barriers to entry. However, some raised concerns about the costs, particularly if existing agreements are required to transition to the DDA.

We consider the proposal is justified and would deliver net benefits

- 4.28 The Authority has decided that:
- (a) the proposal has been adequately justified.
 - (b) on balance, the proposal's estimated benefit would be larger than its estimated cost.
 - (c) we will be providing additional support to help reduce the cost and effort required to develop and enter into a DDA.
- 4.29 Submissions from traders and third parties have reconfirmed the problems identified during the prior MUoSA and DDA consultations remain, and the DDA is a step towards addressing the problems. Also, some Trader submissions submitted net benefits calculations which are greater than those found by the Authority.
- 4.30 We have included optional mitigation measures to reduce the cost of developing the DDA. This includes providing example operational terms based on the MUoSA, developed with significant industry input. We have also provided extra support from the subject matter expert to help participants develop and transition to a DDA.

5 Other relevant matters considered

The DDA has been subject to legal challenges

- 5.1 The Authority's ability to introduce the DDA Template has been legally challenged and a declaratory judgement was sought. The High Court and Court of Appeal have confirmed that the Authority can amend the Code to prescribe standard terms in distributor agreements where necessary or desirable to achieve our statutory objective. The current drafts of the DDA Template, Part 12A of the Code, and consultation paper have been revised to ensure consistency with these decisions.
- 5.2 In addition, the Court of Appeal has also clarified that:
- (a) The proposed part 12A must allow flexibility for terms additional to those contemplated in the proposed part 12A to be included in distributor agreements. Our original proposal to broadly prohibit "*any other terms*"²³ being included in distribution contracts would be unlawful. We have since removed these restrictions and distributors and traders can agree collateral terms being included in the agreements.
 - (b) we may not regulate quality standards in any distribution agreement between distributors and their customers as that term is used in Part 4 of the Commerce Act 1986. We had already introduced a new category of terms ('recorded terms') which allow distributors to record obligations under the Commerce Act 1986. Recorded terms are not subject to the Code.
 - (c) we may:
 - (i) amend the Code to require distributors to offer a default distributor agreement on terms prescribed by the Authority. We may also prohibit terms which are inconsistent with those prescribed, and
 - (ii) prohibit specific types of terms that we can demonstrate are necessary or desirable to prohibit to achieve our statutory objective and the objectives of the Code for the long-term benefit of consumers.

6 A summary of amendments

- 6.1 This section of the paper presents the major changes we have made to Part 12A of the Code, the DDA Template, and the Data Template.
- 6.2 We carefully considered the submissions received as part of the consultation.

A summary of changes to the Code

Reclarifying how additional services work

- 6.3 The 2019 DDA consultation paper and Code drafting provided for standardised terms for some common additional services, which can be appended to the distributor agreement as self-contained agreements. Most participants understood how the clauses worked, and the modular approach to Part 12A was well received. However, some participants incorrectly interpreted the drafting to mean the services are merged into the DDA itself, rather than working as self-contained appendices.

²³ Specifically, terms 12A.4(1)(b) and 12A.10(2) of the 2016 proposal to amend Part 12A of the Code.

- 6.4 This was not our policy intent because:
- (a) it would require both parties to use the DDA Template to access other default additional services such as the Data Template or dividend Income Payment schedules. We can conceive of situations where, for example, parties want to independently negotiate an alternative distributor agreement for distribution, but exchange data using default terms in the Data Template
 - (b) the clauses in each additional service were uniquely drafted to appropriately reflect the balance the risk and cost of providing the service. For example, permitted uses and confidentiality clauses for dividend protocols were drafted to reflect that service only.

6.5 We have made drafting changes to the Code to reclarify our drafting intent. The drafting of the proposed Code amendments has been amended to clarify that Appendices A–C of Schedule 12A.1 can operate as separate, standalone agreements (rather than only existing as an appendix to the DDA). We are implementing this approach as it allows flexibility for participants to negotiate alternative terms for one or more services, but also rely on the default terms in the case of failed negotiations. An illustrative example has been provided below in Table 2.

Table 2: Distributor Agreement and Additional Service combinations

This Table recognises that distribution (covered under the DDA) and additional services can be provided independently. These can either be providing using Default terms or negotiated Alternative terms. The following structure allows any combination of Default / Alternative terms for Distribution and Additional services.

Opt in	(A) Default Distributor Agreement	(B) Alternative Distributor Agreement
(C) Default Additional Service	(A) + (C) Default Distributor Agreement + Default Additional Services	(B) + (C) Alternative Distributor Agreement + Default Additional Services
(D) Alternative Additional Service	(A) + (D) Default Distributor Agreement + Alternative Additional Services	(B) + (D) Alternative Distributor Agreement + Alternative Additional Services

Clarifying the principles for operational terms in DDAs

6.6 Clause 4(2) of Schedule 12A.4 has been amended so that the principles for a distributor’s operational terms include that the operational terms must reflect the reasonable requirements of all participants on the network (not just the participant to the agreement). This change will become useful when developing operational terms, or when the Rulings Panel are considering appeals against operational terms in the DDA.

Collateral terms cannot be grouped

6.7 Some distributors alleged there may be some collateral terms that are intended to function together, and which would not function correctly if they were not included with

other complementary terms. These distributors requested the ability to bundle these terms together as a group which can be collectively accepted or rejected.

- 6.8 We have declined this drafting change. The reasons being:
- (a) the bundling of terms was identified as a major competition policy challenge to innovation in the emerging related services market,
 - (b) collateral terms were designed to ensure the trader has a genuine choice whether to accept or reject these terms. Allowing the bundling of collateral terms would limit genuine choice by requiring the acceptance of one term (which may benefit the trader or consumer) is predicated on the acceptance of another (which may disadvantage the trader and consumer's interests),
 - (c) these distributors failed to give any example where the bundling of terms is necessary to function.
- 6.9 Should a requirement to bundle collateral terms be identified, the Authority can make an appropriate Code amendment proposal which would allow distributors to submit that the DDA should be amended through consultation.

Ability for Rulings Panel to make interim orders

- 6.10 A new clause 8(4) of Schedule 12A.4 has been added to clarify what occurs during the interim period while the Rulings Panel is considering an operational terms appeal. The clause provides for the Rulings Panel to make an order as to the operational terms that apply on an interim basis until the Rulings Panel makes a decision. This will allow parties to continue working together while the operational term(s) is being considered.

Disclosing arbitration decisions relating to interpretation of DDA

- 6.11 A new clause 14 of Schedule 12A.4 and clause 23.12 of the DDA template have been added to require participants who refer a dispute to arbitration under a DDA to disclose parts of the arbitrator's decision to the Authority that relate to the interpretation of the DDA (provided a participant does not have good reason to refuse to supply the information under the Code). Although the Authority already has certain powers to request information from participants, this change will ensure that the Authority can monitor how the terms of the DDA are being interpreted.

Considering audit provisions under Part 16 of the Code

- 6.12 Some distributors were concerned the trader's right to audit data under the Data Template may be too onerous.
- 6.13 Traders agree audit rights are critical to support data exchanges with distributors. However, some traders suggested a more cost-effective method of auditing distributors; combining the data audit provisions with existing audits under Part 16A of the Code.
- 6.14 We considered this change and found it was not possible. This is because the purpose of Part 16A is stated to be to "*require the performance of audits to support the accurate settlement and operation of the wholesale electricity market*". We do not consider that audits under the Data Template (which relate to whether the distributor is meeting its obligations in respect of consumption data supplied under the agreement) fit within that purpose.

Clarifying acceptable forms of giving notice

- 6.15 One distributor requested the Authority amend the requirements to give notice. Their concerns relate to identifying when genuine notice of intention to trade on a network is given. Their concern was to avoid administrative costs for any non-genuine enquiries.
- 6.16 We wanted to strike a balance between ensuring that notice is legitimate and utilising the full benefit of modern technology where available.
- 6.17 In Schedule 12A.1 of the Code we have reclarified that:
- (a) any notice to trade on a network given under this agreement must be in writing and will be deemed to be validly given if personally delivered, posted or sent by facsimile transmission or email to the address for notice,
 - (b) that person 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, and
 - (c) when the default agreement applies as a binding contract.
- 6.18 Within the DDA Template, once it applies as the binding contract, Clause 30 also deals with the delivery and receipt of notices as part of the contract. Specifically, in the case of notice by email, Clause 30.2(d) provides that email notice is deemed to apply when actually received in a readable form.

Increased timeframes for making DDAs available

- 6.19 We have increased the timeframes for making DDAs available (clause 6 of Schedule 12A.4) to 150 days after the new Part 12A comes into force for Orion, Powerco, Unison, Vector, Wellington Electricity Lines and any other distributors who volunteer to develop their DDAs first. All remaining distributors have 210 days.

Terminology changes relating to income distribution services

- 6.20 Appendix A of Schedule 12A.1 relates to income distribution services. We have made the following changes:
- (a) redrafting some terms to respond to concerns that the terminology in Appendix A of Schedule 12A.1 did not work in all cases
 - (b) drafting changes to provide more flexibility which better reflect different circumstances applying to some Shareholder Trusts and Co-operative companies
 - (c) clarifying what is contained in the file provided by a trader to a distributor relating to customers to whom distributions are not fully paid, and
 - (d) requirements relating to notifying a distributor if a trader wishes to be indemnified for a promotional material claim.
- 6.21 Some timeframes have also been added to the DDA Template. For example, to provide for traders to advise distributors within 5 working days of a notice relating to distributions on behalf of the distributor if the trader is unable to meet the requirements set out in the notice, and to clarify the timing for distributors to provide traders with a draft of any promotional and publicity material relating to the distributions.

Change to definition of serious financial breach

- 6.22 We have updated the definition of a Serious Financial Breach in the Code. A 'serious financial breach' by a trader under the Code and DDA gives rise to an event of default

under the DDA and trader default provisions of the Code. The definition has been amended to include a failure by a trader to pay 100% of the actual charges payable by the trader for the previous two months (unless the amount is genuinely disputed). The change addresses concerns raised in submissions that the other threshold (of the greater of \$100,000 and 20% of actual charges payable) would never apply to smaller traders.

Other technical amendments: Increasing timeframes

- 6.23 Submitters alleged that the timeframes provided to complete some tasks were either too short or too long.
- 6.24 Our guiding policy for amendments was to consider amending timeframes so long as it did not: negatively impact competition, introduce an operational inefficiency, or reduce network reliability.
- 6.25 We have reconsidered many of the timeframes and made amendments where appropriate. We did not amend any timeframes where:
 - (a) we considered the timeframe was already reasonable,
 - (b) one party could opt for the clause to apply immediately, or
 - (c) a neighbouring clause allowed for parties to mutually agree to an alternative timeframe.

Amendments to the Data Template

- 6.26 We have made a number of changes to the Data Template to address issues raised in consultation submissions.
- 6.27 For brevity, the following sections outline the changes to the Data Template at a high-level. A track changes version of the Data Template is available under Appendix B of this Decision Paper.
- 6.28 We have made other minor technical amendments to the drafting of terms. However, these are mostly limited to amending timeframes for exchange, consolidating similar terms, or providing more informative provision titles.

Clarifying the default terms for data exchange

- 6.29 Clause one of the data template clarifies the default terms on which distributors may obtain consumption data, so that traders are required to supply (or procure that MEPs supply) requested consumption data to a distributor for permitted purposes.

A minimum frequency of exchange

- 6.30 Clause 3(1)(c) of the Data Template includes a term to allow distributors to use the data template at six monthly intervals if a different frequency cannot be agreed. We have done so to ensure distributors have a backstop and access to a minimum frequency of historical data. This will help distributors fulfil their obligations to develop more efficient distribution prices, or to build, maintain and upgrade their network.
- 6.31 We introduced this timeframe because some traders requested the Authority clarify how frequently a distributor can request data access under the Data template. Also, given the default purposes which the Data Template may be used—developing distribution prices and planning and management of the network—the proposed frequency will ensure

distributors have access to data to complete these tasks, and the data is not too outdated by the time it is received and used.

Accessing data for other purposes

- 6.32 Some distributors wanted to use data provided under the Data Template for other uses. Clause 4 of the Data Template reclarifies that distributors and traders may enter into a Data Agreement if:
- (a) the distributor wishes to use consumption data for purposes other than the permitted purposes, or
 - (b) wishes to access data for permitted purposes on terms that differ from the default terms.

Disclosure of aggregate data

- 6.33 Clause 9(7) of the Data Template clarifies the restrictions on to whom distributors may disclose consumption data (including to clarify that distributors are not prevented from using or disclosing aggregated consumption data if the use or disclosure could not reasonably be expected to identify any individual, ICP, or trader to which the data relates);

Specifying a format for exchanging data under the Data Template

- 6.34 A new Clause 3(2)(ii) of the Data Template requires consumption data exchanges should be done in accordance with a regulated Electricity Information Exchange Protocols (EIEP) published by the Authority, and there will be efficiency benefits to more standardisation of exchange formats.

Remote storage and processing of consumption data

- 6.35 Clause 9 has been amended to allow for transfer of consumption data outside New Zealand so that data can be disclosed to data storage/processing providers. This accommodate modern data arrangements, such as cloud computing and/or storage. All participants must comply with the Privacy Act 1993.

Amendments to the Default Distributor Agreement Template

Reclarifying load control

- 6.36 Clause 5.1 of the DDA Template provided terms under which a distributor may control load.
- 6.37 Some distributors were concerned the provisions would not provide for future load control arrangements, where price categories might allow for both controlled and uncontrolled load (such as time of use pricing).
- 6.38 We have amended the clause to provide the ability for distributors to provide non-price load control options, called “**Other Load Control Options**”. This approach allows a customer to elect to receive Other Load Control Options with the distributor for part of or all of the Customer’s load.

Pro forma invoices

- 6.39 Some distributors were concerned that their current billing practice would not be accommodated under the DDA Template. We have introduced subclauses which allow for the issuing of pro forma invoices to accommodate some distributor’s current billing practice.

- 6.40 Specifically, clauses 9.3 ('Issuing of Tax Invoices') did not accommodate situations where a distributor may need to issue an invoice based on an estimate of line charges. Some examples of this situations occurs when late, incomplete or incorrect information is provided, so an 'Actual Invoice' cannot be issued.
- 6.41 Clause 9.3(b)(ii) now allows distributors to estimate pro forma invoices within 10 Working Days after the last day of the month to which the Tax Invoice relates. The following clauses provide for Credit Notes in relation to the Pro Forma Invoice.

Reintroduced the Electricity Information Exchange Protocols

- 6.42 Some distributors noted that Clause 31 of the DDA Template had omitted some subclauses relating to EIEPs. These clauses were originally introduced in the MUoSA.
- 6.43 These distributors claimed the omission of these terms from the DDA would expose distributors to the risk that they are unable to access customer information necessary to fulfil their obligations under the DDA.
- 6.44 We have reintroduced the EIEP clauses from the MUoSA into the DDA. We have updated the terms which allow either party to the agreement to verify the accuracy of information provided by the other party. Specifically, for a Trader to procure access to the third-party Metering Equipment owner or operator's books and records directly for the purposes of auditing information.

We have removed references to guidelines

- 6.45 Some Distributors submitted that compliance with guidelines issued by the Authority should not be mandatory. The Authority should not be able to extend the regulation of contract terms by elevating the status of guidelines through default contracts to quasi-regulation making powers.
- 6.46 We have amended the DDA Template to ensure that Distributors and Traders are only required to comply with the requirements of the Code, and not Authority guidelines.
- 6.47 Where appropriate, we have either amended or deleted the references to Authority guidelines. We have made clear where there remain requirements in accordance with the Code. This mainly affected the following clauses in the DDA Template:
- (a) 6.2 - Calculation of Loss Factors,
 - (b) 7.4(a) - Process to change Pricing Structure,
 - (c) 17.4 - Medically dependent and vulnerable Customer,
 - (d) 17.5(c) - Unmetered Load, and
 - (e) Clause 33.2 - Distribution Pricing Structure Consultation Guidelines.

Additional provisions relating to customer information and auditing

- 6.48 New clauses 31.2–31.6 of the DDA template have been added (based on the MUoSA) to require traders to give customer information to distributors if required for the distributor to fulfil its obligations under the DDA, and to provide for the auditing of information provided under the DDA. Separate default agreements (in the Appendices to Schedule 12A.1 of the Code) will remain, however, for specific types of information such as consumption data and information required by some distributors to provide distributions or income payments to customers.

Simplifying the definition of Distribution

- 6.49 We have amended the definition of Distribution to align with the service of distribution, as defined in Section 5 of the Act.
- 6.50 A concern raised in the 2016 and 2019 consultation was that the DDA would lock in an outdated definition of Distribution services. We recognised that the prior DDA Template included its own definition of Distribution, which was inherited from the MUoSA. We agreed that this definition may not be suitable in the future, and therefore aligned the definition with the equivalent definition in the Act.

Single billing methodology

- 6.51 The Authority recently consulted on a number of changes to mandate a standardised reporting methodology for EIEP1.²⁴ The decision includes changes to the EIEP overview document and EIEPs 1 to 3. One change as a result of our decision includes making 'replacement RM normalised' the single standardised EIEP1 reporting methodology for billing and volume information.
- 6.52 Schedule 2 and 3 of the DDA Template are operational terms, which are to be drafted by each distributor. The Authority has provided some drafting examples for distributors in both Schedules 2 and 3.
- 6.53 We have updated our drafting examples to ensure they are consistent with the changes we made to billing methodologies and EIEPs 1 and 3. These drafting changes will help any distributor who chooses to use the Authority's example as a starting point of their drafting.

²⁴ Electricity Authority, 2020. *Second consultation on Electricity Information Exchange Protocols (EIEPs)*. Available here: <https://www.ea.govt.nz/development/work-programme/operational-efficiencies/second-consultation-on-electricity-information-exchange-protocols-eieps/>

Appendix A Suggested Changes and Our Responses

Suggested Change	Submitter	Addressed	Our Response
Reviewing the proposed transition process and expanding the implementation timeframes, particularly the timeframe for parties to negotiate alternative agreements	General	Yes	We have amended terms in the Code which allow for any notices provided under the existing UoSA, for example the payment of dividends, to be completed. We have also increased many transitional timeframes. We have done this to minimise transition disruption.
Considering whether the proposal provides enough flexibility so that the DDA is future-proofed and does not limit innovation and provides for changes over time. Also, reviewing the 'evergreen' nature of the agreements, and how agreements could be updated, varied, and terminated over time to reflect changes in the market and the regulatory framework	General	Yes	The proposal provides enough flexibility to accommodate future circumstances. The DDA and Data Templates are embedded within the Code and the Code can be amended in the future based on need. Participants can also request Code amendments if the templates are not fit-for-purpose. Also, once a DDA is in place between two participants, it can be amended or terminated by mutual agreement.
Reviewing the proposed DDA to ensure that it reflects current practices, such as billing practices and data exchange formats.	General	Yes	Participants provided many drafting suggestions to ensure terms in the DDA were fit-for-purpose.
Revising the offer and termination provisions (e.g., to allow for distributors to refuse to enter into an agreement with a trader who has defaulted)	Distributor	In part	<p>We have updated the definition of serious financial breach to include a trader who fails to pay 100% of the actual charges payable by the trader for the previous two months, unless the amount is genuinely disputed by the trader.</p> <p>The DDA is only available to industry participants, and financial viability is a pre-requisite to becoming a participant.</p>
Changing the allocation of risk between traders and distributors under the DDA (e.g., to provide distributors with greater protection through prudential security provisions, and lowering liability caps and indemnities given by distributors)	Distributor	In part	As noted above, we have updated the definition of serious financial breach. We have declined to change the liability, as we have introduced a methodology that scales with participant size.

Expanding the ability of distributors to obtain and use data from traders (e.g., to allow distributors to combine data for network planning purposes), and clarifying default terms that apply to data exchange	Distributor	Yes	We have introduced the default Data Template, which provides distributors access to consumption data for some permitted purposes. Participants are free to negotiate other purposes for the data to be used.
Reconsidering the proposed appeals process for operational terms, including whether the Rulings Panel is equipped to consider issues relating to operational terms, the ability of parties to appeal decisions of the Rulings Panel, and the application of Rulings Panel decisions to existing agreements	Distributor	In part	We have provided principles for operational terms which support the Rulings Panel in their decision-making process. Clause 65 of the Electricity Industry Act 2010 gives the Authority and participants the ability to appeal against certain orders of the Rulings Panel – we think it is sensible to extend the right to appeal DDA disputes in this case. We have also provided the Rulings Panel the ability to make interim decisions while the DDA case is being heard.
Revising or removing requirements under the DDA to comply with Authority guidelines	Distributor	Yes	We have removed references to comply with guidelines
Limiting the ability of the Authority to publish distribution agreements, to address confidentiality concerns and limit publication to agreements relating to distribution services	Distributor	Declined	Lack of transparency was identified as a key challenge to traders negotiating better UoSAs in the 2018 DDA survey.
Clarifying load control provisions to ensure that they allow for future development of load control	Distributor	Yes	We have amended the load control provisions to be future-proofed. The new provisions allow for split load coordination to reflect that multiple agents could control all or separable parts of load at a single household.
Clarifying trust dividend arrangements to ensure that they do not undermine the ability of dividends to be paid to trust beneficiaries.	Distributor	Yes	We have amended the Income Payments protocols to support the ability of shareholder trusts and co-operative companies to pay dividends/incomes to their stakeholders.
Clarifying or changing the proposed treatment of existing distribution agreements (e.g., to allow existing agreements to continue rather than being	Trader	Not applicable	Both parties can mutually agree to retain their existing agreement. There is no requirement to move to the DDA unless one or both parties opt for it to apply.

required to transition to the DDA if both parties want the existing agreement to continue)

Considering further provisions in relation to the transition process and operational terms (e.g., authority approval of proposed distribution agreements, introducing default operational terms, further prescribing the operational terms consultation process, or requiring greater transparency in relation to differences in operational terms)	Trader	Declined	We have declined the make the amendments for the following reasons: <ul style="list-style-type: none">• Distributors are required to develop a DDA based on the DDA Template in the Code. Breaching this obligation is a breach of the Code.• Operational terms reflect local operating practices and so require some flexibility.• All distributors agreements will be provided to the Authority. We have the ability to prohibit terms which do not promote our statutory objective.
Reconsidering whether the right to opt to use the DDA should be given only to the trader, not distributors	Trader	Declined	There are some circumstances where the trader has a stronger bargaining position against the distributor. In these circumstances, the distributor requires the DDA as a backstop agreement.
Increasing the liability caps applicable to distributors under the DDA	Trader	Declined	The liability cap is cumulative. It scales with the number of traders on the network. Also, current liability cap has been developed over successive DDA iterations.
Considering changes to dispute resolution processes	Trader	Declined	Some participants requested a formal dispute resolution process: this has been written into the DDA Template and includes the Rulings Panel. Participants can agree to an alternative dispute resolution process if desired, given their function in the Electricity Industry Act 2010.

Reinstating even-handedness and most-favoured nation provisions in the DDA ²⁵	Trader	Not applicable	The DDA is designed to promote even-handed access to distribution networks. The Authority will be monitoring the types of terms included in distributor agreements.
Introducing further safeguards relating to a distributor's right to use and disclose data provided by traders	Trader	Yes	We have made various amendments to the Data Template to strengthen the permitted purposes. We have also been clearer about who can access the data and for what purposes (unless agreed otherwise).
Considering the application of the DDA to embedded networks and conveyance arrangements.	Trader	Declined	We are cognisant these issues remain. Part 12A has been developed so that in the future, and if necessary, other default agreement templates could be appended as extra schedules. We can consider these other templates as part of our ongoing work programme development.
Clarifying provisions of the DDA that relate to metering, to ensure that they are consistent with Part 10 of the Code	Third-party	Yes	We have clarified that provisions in the DDA Template that the installation of additional metering equipment must be consistent with Part 10 of the Code.
Clarifying data management and audit requirements.	Third-party	In Part	We amended data management plans to be consistent with the Privacy Act 1993 and modern business practices. We have introduced protocols for any data received in error. We have mostly retained the audit provisions but allowed for one audit per year instead of two. We have also re-introduced EIEP audit provisions which existed in the MUoSA.

²⁵ These provisions were designed to ensure that if a distributor and trader entered into a bespoke agreement, then these clauses were offered to all traders. Trader responses to the 2018 DDA survey suggested these clauses were unworkable in practice.

Appendix B Approved Code amendment (Track Changes)