Summary of submissions

Default agreement for distribution services

20 December 2016

Introduction

1 The Electricity Authority (Authority) published a consultation paper Default agreement for distribution services (consultation paper) on 26 January 2016. The consultation paper is available on the Authority's website.[1]

2 In the consultation paper the Authority sought submissions on a proposal to develop a default agreement for distribution services (default distributor agreement, or DDA). The submissions are available on the Authority's website.

3 Agreements for distribution services (distribution agreements) are agreements entered into by local distributors (distributors) and traders that are retailers (retailers) that seek to trade on a distributor's network. Distribution agreements:

(a) set out the terms and conditions for distribution services that are provided by distributors and purchased by retailers

(b) enable retailers to sell electricity to customers supplied by the distributor's network, delivered to the customer's installation control point (ICP)

(c) have traditionally been referred to as "use of system agreements" (UoSAs).

4 The consultation paper provided:

(a) background about the project, including about the problems the Authority identified with the way in which distributors and retailers enter into distribution agreements

(b) a proposal to introduce requirements for distribution agreements into Part 12A of the Code, including a requirement for distributors to develop and publish a DDA that acts like a benchmark agreement for distribution services

(c) a regulatory statement that included a problem definition, statement of objectives and an evaluation of costs and benefits of the proposal.

5 The consultation paper sought responses from submitters on the following questions:

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

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

[1] http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c15756

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

Q4. What are your views on the regulatory statement set out in section 4?

Q5. What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?

6 The consultation period ran from 26 January to 19 April 2016.

7 Due to an error, the table of questions in Appendix A of the consultation paper showed question 2 twice (with a minor variation to the wording) and omitted question 3. Although some submitters identified this error, the Authority provided all interested parties with an additional two weeks to make submissions on question 3. The second consultation period ran from 11 to 25 October 2016.

8 This paper summarises the feedback received from stakeholders in response to the questions and other material presented in the consultation paper.

9 Due to the nature of the material included in the consultation paper, and the significant interest in the project shown by a range of stakeholders, this summary of submissions paper provides a comprehensive picture of the points made in the submissions received. The paper also summarises at a high level the key themes that arose.

10 Please note that this paper provides a summary of submissions only.

Feedback received

In response to the consultation paper, the Authority received feedback from the 33 parties listed in Table 1.Table 1Table 1 List of parties that provided feedback

Suppliers	Networks	Consumers
Contact Energy	Auckland Airport	Bryan Leyland
Electricity Retailers' Association of New Zealand (ERANZ)	Alpine Energy	Electricity and Gas Complaints Commissioner
Flick Energy	Auckland Energy Consumer Trust	Fonterra
Genesis	Eastland Network	Major Electricity Users' Group (MEUG)
Mad Power	Electricity Networks Association	New Zealand Steel
Meridian	Energy Trusts of New Zealand	Progressive Enterprises
Mighty River Power	Northpower	
Nova Energy	Orion New Zealand	
Pioneer Energy	Powerco	

Simply Energy (Andrew Shelley Economic Consulting)	PwC	
Trustpower	The Lines Company	
	Transpower	
	Unison	
	Vector	
	Wellington Electricity Lines	
	WEL Networks	

How we have structured this paper

11 We have organised this summary of submissions in two parts.

The body of the paper summarises key themes

12 The first part of this summary of submissions briefly describes a number of key themes that have emerged from submissions.

13 We acknowledge that identifying key themes in the context of a relatively complex proposal and a substantial amount of submissions is a somewhat subjective exercise. Nevertheless, we have sought to include in this part some high-level submission themes that relate to submitters' views of:

(a) legal impediments to the Authority amending the Code to give effect to the proposal

(b) the Authority's description of the issues it sought to address, described in section 2 of the consultation paper

(c) the Authority's proposal, described in section 3 of the consultation paper

(d) the regulatory statement, including the problem definition, the objectives of the Code amendment and analysis of costs and benefits, as described in section 4 of the consultation paper

(e) the draft Code amendment, set out in Appendix B of the consultation paper, including the draft DDA template set out in Appendix C.

14 The summary of key themes is set out in the following section.

Appendix A groups similar submissions together in the tables

15 The second part is a comprehensive summary of submissions grouped as tables in Appendix A.

16 Submitters frequently submitted essentially similar views about particular aspects of the Authority's proposal. Where this has occurred, we have sought to group common submission points together in the summary tables.

17 Some submitters indicated in their submissions that they support or endorse submissions made by other submitters. In those cases, we have identified the submission as being made the by submitter who made the submission, as well as those submitters that have indicated they support or endorse the submission.

18 Next, we have divided the summary tables in a way that reflects the marked difference in the nature of submissions received from distributors, from retailers, and from other parties. Accordingly, Appendix A is divided into three sections:

(a) Section 1 contains a summary of the submissions received from distributors

(b) Section 2 contains a summary of the submissions received from retailers

(c) Section 3 contains a summary of the submissions received from parties that are not, in the context of their submissions, distributors or retailers.

19 Next, in each of the three sections, we have grouped the submission points as follows:

(a) General comments

(b) Legal issues (for the distributor submissions only)

(c) Submissions in response to questions 1–4 respectively

(d) Code amendments – general comments

(e) Code amendments – comments on specific clauses/subparts

(f) Default distributor agreement – general comments

(g) Default distributor agreement – comments on specific clauses/schedules.

20 For each submission, the summary tables set out the name of the submitter, the relevant page number from the submission, and a summary of the submission.

Summary of key themes in submissions

21 This section provides a high-level summary of feedback in the following areas:

(a) Can the Authority legally amend the Code in the way it has proposed?

(b) Is there a problem with the way distributors and retailers enter into agreements for distribution services?

(c) Should the Authority amend the Code in the way it has proposed? What aspects (or omissions) of the proposal would benefit from further consideration?

(d) Is the regulatory statement robust and how could it be improved?

22 Please note that we have not attributed submission points to specific submitters. Full attribution of specific submission points is provided in the summary tables included in Appendix A.

Distributors consider there are legal impediments to the Authority's proposed Code amendment

23 Seven distributor submissions (including a submission from the Electricity Networks Association (ENA) made on behalf of its members) questioned the Authority's lawful right to amend the Code in the way it proposed in the consultation paper.

24 The legal issues included in submissions included:

(a) that the proposal inappropriately overlapped with the Commerce Commission's jurisdiction under Part 4 of the Commerce Act

(b) that the Authority had predetermined its decision

(c) that the proposal did not meet the Code amendment principles

(d) that the Authority is not able to make the proposal for a number of stated reasons.

Submitters were divided on the question of whether a problem exists

25 Section 2 of the consultation paper provided background about the project, including about the problems the Authority identified with the way in which distributors and retailers enter into distribution agreements.

26 Question 1 asked submitters: *"What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons."*

Distributors considered there is no problem and questioned the Authority's assessment of costs and benefits

27 In general, distributors considered:

(a) that either a problem did not exist or was not supported by evidence or

(b) the Authority's proposal to introduce into the Code a default agreement for distribution services was not appropriate.

28 In respect of the competition benefits of the proposal, distributors (for example):

(a) disagreed with the Authority's view that easing access to the market for distribution services by standardising the core terms of trade would lead to increased retail competition

(b) considered there was already enough retail competition in electricity markets

(c) considered the problems caused by non-standardised terms in distribution agreements were overstated and that standardisation of agreement terms will occur in future without the proposed Code amendment

(d) questioned whether there was any evidence demonstrating that diversity in existing agreements had favoured some retailers over others.

29 In respect of the efficiency benefits of the proposal, distributors (for example):

(a) considered that transaction costs were lower than stated in the consultation paper

(b) considered transaction costs will not be reduced if standardisation of operational terms does not occur within the DDA formation process.

30 Some distributors considered that retailers were satisfied with the current arrangements for forming distribution services agreements.

Retailers considered there is a problem

31 In contrast to distributors' views, most retailers submitted that a problem did exist and supported this view with a range of observations based on their experiences in entering into agreements with distributors.

32 Retailers generally considered that replacement of legacy agreements with new MUoSA-based agreements had been slow and time consuming and that efforts to date had delivered insufficient benefit to consumers, retailers and distributors.

33 An entrant retailer stated there was no ability for a small entrant retailer to negotiate with distributors and that, as a result, its practice was to simply accept whatever agreement was offered and rely on the even-handedness terms to ensure it was not disadvantaged compared with its competitors.

34 Retailers cited high transaction costs as an issue and an ongoing lack of standardisation of terms.

Major users considered there is a problem

35 MEUG and the large consumers that provided submissions considered there are problems with the way distribution agreements are developed and negotiated and that these problems are unlikely to be resolved with voluntary measures. These submitters further considered that the problems that relate to agreements between distributors and retailers also applied in cases where distributors enter into distribution services agreements directly with consumers.

Submitters provided a range of views about the Authority's proposed solution

36 Section 3 of the consultation paper described the Authority's preferred option in detail. It described how Part 12A would need to be amended to require each distributor to develop and publish a DDA using a DDA template. A draft DDA template was included in the consultation paper.

37 Question 2 asked submitters: *"What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?"*

Distributors and retailers submitted a range of suggestions about the proposal

38 Distributor suggestions included:[2]

(a) clarifying the status of existing agreements for additional services, since the proposed DDA may include only terms relating to distribution services

(b) reconsidering the proposed appeals process about operational terms as it relates to the role of the Rulings Panel

(c) considering whether the proposal provides sufficient flexibility to allow for future changes to distribution services

(d) questioning whether the MUoSA is the right starting point for developing a DDA template

(e) clarifying that a binding contractual relationship would be established if either party exercised its right to choose to contract using the DDA

(f) further considering the termination provisions, eg if the distributor terminates a distribution services agreement due to a retailer default, whether a new DDA has to be offered to the same retailer

(g) reviewing constraints around the use of prudential securities

(h) reviewing implementation timeframes.

39 Retailer suggestions included:

(a) clarifying the obligation of the distributor to offer to contract on the terms of the DDA after the distributor publishes its DDA and the subsequent options available to each party to contract on the basis of either the published DDA or an alternative agreement

(b) that the Authority should have a role to assess and approve all DDAs for compliance with the Part 12A provisions, obviating the Rulings Panel's proposed appeals role

[2] Please note that the lists of submitted suggestions in this section of the summary are provided here to give a high-level view only – Appendix A contains more detail about each submission point and identifies the submitting parties.

(c) a conflicting view to (b) that the Rulings Panel is the appropriate body to undertake the proposed appeals role

(d) allowing mediation and arbitration to resolve appeals about operational terms as an option if the parties agree to this

(e) reviewing implementation timeframes

(f) allowing replacement of a DDA with an alternative agreement at any future time

(g) reviewing the proposal related to alternative agreements, and the potential conflict this might pose regarding maintaining a level playing field for competing retailers

(h) reviewing the proposed mechanisms for changing core terms (the proposal would require a Code amendment) and operational terms (the proposal provides that only the distributor can invoke a change) in the future

(i) that the Authority makes its expectations clear about the application of standardised distribution agreements to embedded networks

(j) conflicting views between submitters over whether additional services should be included in the proposal

(k) clarifying what effective consultation about published DDAs would require

(l) reinstating MUoSA clause 3 about equal access to distribution services and even-handed treatment of competing retailers

(m) reconsidering the inclusion of EIEPs as operational terms only (as opposed to core terms, which would have the effect of mandating the use of specific EIEPs)

(n) reviewing the proposed limitation on the terms that can be included in an alternative agreement.

Submitters provided feedback about the level of demand they saw for new and replacement distribution agreements

40 Section 4 of the consultation paper contained the regulatory statement.

41 Question 3 asked submitters: *"What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any."*[3]

Distributors generally considered demand for new and replacement UoSAs was overstated while retailers and major users considered the level was understated

42 Most distributors considered that the Authority's estimate of the number of additional agreements that would be required is incorrect and misleading.

43 Retailers considered the Authority had underestimated the number of future agreements required. Retailers also considered that parties with existing agreements may prefer to move to the DDA.

44 Major users considered the need for new and replacement agreements is more likely to increase in future than decrease.

[3] As set out in paragraph 7, the consultation paper contained a discrepancy between the wording of question 3 on page 44 and the table summarising all questions included in Appendix A. That is, the table of questions in Appendix A of the consultation paper showed question 2 twice (with a minor variation to the wording) and omitted question. The summarised submissions in this paper relate to the correct question 3 (as stated on page 44 of the consultation paper).

Submitters provided a range of views about the regulatory statement

45 Question 4 asked submitters: *"What are your views on the regulatory statement set out in section 4?"*

Distributors considered there were significant issues with the regulatory statement

46 Distributors raised a number of concerns about the regulatory statement. Some examples:

(a) the problem definition is not robust or consistent and does not identify a market failure

(b) the cost benefit analysis is inadequate or incorrect

(c) the consultation paper provides insufficient evidence for the claims made

(d) the benefits are overstated and the costs understated.

Retailers supported the conclusion reached in the regulatory statement

47 In contrast, retailers considered the cost benefit analysis was reasonable but potentially conservative. Some examples of retailer views:

(a) the benefits may be understated given the recent influx of new retailers and the potential for established retailers to expand

(b) the costs of updating legacy agreement is understated - the DDA provides a simple and inexpensive mechanism to update old legacy agreements

(c) the implementation costs appear reasonable, considering that only incremental effort is required to develop and publish a DDA

(d) there are potentially significant dynamic efficiency benefits arising from lower entry barriers, enhancing competitiveness in the retail market.

48 Major users noted that the benefits would be greater if the scope of the DDA initiative included agreements between distributors and large consumers.

Submitters provided a substantial amount of feedback about the draft Code amendment

49 Question 5 asked submitters: *"What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?"*

50 A draft Code amendment was presented in the consultation paper in two parts:

(a) draft amendments to Part 12A in Appendix B

(b) a draft DDA template, which was proposed to be a new schedule in the Code, in Appendix C.

51 Submitters collectively provided a substantial amount of feedback on the draft Code amendment they considered would improve the draft. Please refer to the summary tables in Appendix A.

Appendix A Summary of submissions by submitter group

A.1 Appendix A contains the submission summary tables noted in paragraph 15.

Section	Name of submitter	Submissions endorsed/supported
Section 1: Distributors	Alpine Energy	Represented by ENA's and PwC's submissions
Section 1: Distributors	Auckland Energy Consumer Trust (AECT)	
Section 1: Distributors	Eastland Network	Supports the submissions of ENA and PwC
Section 1: Distributors	Electricity Networks Association (ENA)	ENA represents all 26 distributors
Section 1: Distributors	Energy Trusts of New Zealand (ETNZ)	
Section 1: Distributors	Northpower	Fully supports the position in ENA and PwC submissions
Section 1: Distributors	Orion New Zealand	Endorses ENA's submission
Section 1: Distributors	Powerco	
Section 1: Distributors	PwC	PwC is submitting on behalf of 18 distributors
Section 1: Distributors	The Lines Company	Submitted through the ENA and PwC
Section 1: Distributors	Unison	
Section 1: Distributors	Vector	
Section 1: Distributors	Wellington Electricity Lines	Endorses ENA's submission
Section 1: Distributors	WEL Networks	Endorses ENA's submission
Section 2: Retailers	Contact Energy	
Section 2: Retailers	Electricity Retailers' Association of New Zealand (ERANZ)	
Section 2: Retailers	Flick Energy	
Section 2: Retailers	Genesis	Endorses ERANZ's submission
Section 2: Retailers	Mad Power	
Section 2: Retailers	Meridian	Also submitted on behalf of Powershop
Section 2: Retailers	Mighty River Power	Endorses ERANZ's submission
Section 2: Retailers	Nova Energy	
Section 2: Retailers	Pioneer Energy	
Section 2: Retailers	Simply Energy/Andrew Shelley Economic Consulting (ASEC)	
Section 2: Retailers	Trustpower	Endorses ERANZ's submission in relation to the proposed Code amendment
Section 3: Others	Auckland Airport	
Section 3: Others	Bryan Leyland	
Section 3: Others	Electricity and Gas Complaints Commissioner	

Section 3: Others	Fonterra	Supports MEUG's submission
Section 3: Others	Major Electricity Users' Group (MEUG)	
Section 3: Others	New Zealand Steel	Supports MEUG's submission
Section 3: Others	Progressive Enterprises	Supports MEUG's submission
Section 3: Others	Transpower	

Section 1: Distributors

General comments	
Submitters	**Submission**
Powerco (p.1), Vector (p.1)	The Authority should consider previous industry submissions. In particular: • the Authority has not adequately addressed concerns raised in earlier submissions (Vector p.1).
AECT (p.2), Unison (pp.3-4, 7)	The Authority has moved away from previously stated support for allowing innovation in the negotiation of UoSAs.
Eastland Network (p.2)	The proposal will result in increased costs to consumers.
Wellington Electricity Lines (p.2)	The proposal creates a material and inefficient cross over between the Authority and the Rulings Panel that will ultimately be borne by customers.
Orion New Zealand (p.1)	It is not best practice to consult on the proposed Code drafting and proposed DDA template when the policy approach has not been finalised.
Orion New Zealand (p.1)	The Authority should consult further if the Authority changes its policy approach.
Powerco (p.2), AECT (p.3)	The proposal is inflexible.
Unison (p.2), Counties Power, Electra, Top Energy, North Power (p.1)	Slow update of the MUoSA has resulted from regulatory uncertainty.

General comments	
Submitters	**Submission**
AECT (pp.3-4)	The proposal could inhibit the AECT from collection information about its beneficiaries and executing its deed effectively. The Authority must address this.
ENA (p.19)	The Authority has assumed significant resources are required to incrementally develop agreements. This will fall on the Authority in the future. It is not clear whether the estimated costs to the regulator reflect this or whether those costs will be passed on ultimately to consumers.
Unison (p.2)	The proposal will undermine the Authority's future ability to encourage industry to invest effort in developing voluntary solutions in the knowledge that if other parties do not adhere to the solutions, the Authority will regulate.
AECT (p.2), ENA (p.17), Powerco (p.1), Unison (p.5), Wellington Electricity Lines (p.9)	The proposal does not treat distributors and traders neutrally. In particular: • judgment is reserved as to whether this was intentional (Unison p.5).
AECT (p.2), ENA (p.3), Counties Power, Electra, Top Energy, North Power (p.1), Unison (p.2), Wellington Electricity Lines (pp.2, 5), Vector (p.4)	The proposal is not justified. In particular: • analysis of retail competition should relate to what is happening in the retail market, not by examination of input markets (AECT p.2) • it is not flexible (Counties Power, Electra, Top Energy, North Power p.1), (Wellington Electricity Lines p.5) • progress to MUoSA based agreements was occurring (Unison p.2), (Counties Power, Electra, Top Energy, North Power p.1), (AECT p.2) • it could reduce innovation (Vector p.4) • it is inconsistent with facilitating market based approaches (Wellington Electricity Lines p.5) • it provides little scope for negotiation (AECT p.2), (Vector p.4).
Vector (p.3), ENA (pp.16, 27)	To address standardisation the Authority should seek industry collaboration.
Wellington Electricity Lines	If the proposal proceeds, the Authority should first publish all relevant quantitative information used to define the problem, support assumptions, and quantify the CBA.

General comments	
Submitters	**Submission**
(p.5)	
Alpine Energy (pp.1-3)	An alternative option should be implemented under which the DDA, with changes following submissions, should become the updated MUoSA, and market participants should be given two years to enter negotiations and update their UoSA. This is because: • The DDA is a better agreement than the MUoSA. • The Authority can achieve its mandate without the DDA. This approach is more likely to result in least cost negotiations, and standardisation in an acceptable timeframe. • If the Authority wants to incentivise negotiation using the MUoSA, it could set a time period for starting, or completing, the process. Two years from the publication of the new MUoSA is a reasonable time to have started, if not completed, negotiations. • The changes made to the current MUoSA by Alpine during its latest consultation are largely captured by the DDA. If the DDA became the new MUoSA, Alpine would not need to have made some of the variations.
Counties Power, Electra, Top Energy, North Power (p.1), WEL Networks (p.1), ENA (p.3)	An alternative option should be implemented under which the Authority will instead review and update the MUoSA using input from consultation.
Counties Power, Electra, Top Energy, North Power (p.3)	If discrimination in different terms between retailers is an issue (which evidence has not been provided for), a more proportionate and targeted measure would be to include in the Code provisions requiring distributors to: • treat retailers on an equal access and non-discriminatory basis (rather than just the current good faith obligation) • publicly disclose on their website the UoSA, including any limits, and offer these terms to all traders/retailers (unless otherwise agreed with the Authority as commercially sensitive) – this provides transparency, equal treatment, and enables retailers to migrate to newer terms or have the benefit of any amendments. Similar provisions are currently in the MUoSA but, by including such provisions in the Code, distributors cannot contract out of the obligation, and penalties apply for non-compliance.

General comments	
Submitters	**Submission**
Orion New Zealand (p.5)	Instead of implementing the DDA, the Authority should focus on key operational terms that vary across distributors and which impose material and unreasonable costs on participants. For example, there has already been some mandated standardisation of EIEPs and further standardisation could occur in the area of outage notifications and related processes (if the benefits exceed the costs).
Orion New Zealand (p.6)	An alternative option where the core and/or operational terms of the distribution service are specified in the Code could be better because: • it is not clear how binding the constraints on setting of operational terms are • it is not likely that distributors would negotiate agreements that are materially different to the DDA, and if they did they could advantage one trader over another.
Powerco (p.5)	The Authority, distributors, and retailers could agree a timing and standardisation framework, to satisfy the Authority that a commercial approach could meet the statutory objectives. Opportunity was not provided to allow the industry to proceed under the current arrangements to a point that would demonstrate the process was working efficiently.
PwC (p.9)	Instead of implementing the DDA, the Authority should: • recognise there has been some progress towards standardisation under the MUoSA • retain the current approach using the MUoSA • monitor uptake of new UoSAs over a timeframe that is sufficient for substantial negotiations to take place. 1-2 years would be appropriate • provide clear guidance of its expectations regarding uptake rates and variations from the MUoSA. This alternative could be progressed using industry input. However, if parties have UoSAs based on the 2012 MUoSA they should not be required to update their agreements. This approach would be more consistent with principles set out in the Authority's consultation charter, in particular: • Principle 4 – preference for small scale trial and error options • Principle 7 – preference for flexibility to allow innovation • Principle 8 – preference for non-prescriptive options.

General comments	
Submitters	**Submission**
Unison (p.3)	Instead of implementing the DDA, the Authority should consider implementing the approach taken in respect of embedded networks.
Unison (pp.2, 5)	Instead of implementing the DDA, the Authority should consider a more targeted response to replace legacy UoSAs with new agreements based on the revised MUoSA and reviewing UoSA terms against MUoSA core principles, and a process for alignment if deviation is material and detrimental. At a minimum, recently negotiated agreements based on the MUoSA should be honoured. This would help achieve the Authority's objective while not undermining good faith negotiations and investments made by the industry.
Vector (pp.3, 8)	Instead of implementing the DDA, the Authority could amend Part 12A to require all distributors and retailers to negotiate a UoSA within a reasonable timeframe. The Authority should consult on the timeframe. Under this option, which represents the option with the least cost to consumers: • the MUoSA may be used as a starting point • disruption to existing agreements is avoided • new negotiations can proceed fairly • jurisdictional issues are avoided • operational inefficiency of the DDA is avoided
WEL Networks (p.2, 4)	Instead of implementing the DDA, the Authority should set a reasonable timeframe and sensible process under the Code to prohibit non-MUoSA agreements. This will preserve the work done to update the MUoSA and allow parties to continue to evolve their agreements.
Wellington Electricity Lines (pp.3, 4)	Instead of implementing the DDA, the Authority should encourage uptake of MUoSA based UoSAs and strengthen the Code to ensure distribution services allow retail competition and are practical for the efficient operation of a network. This would include: • requiring distributors to provide the same distribution agreement to each trader, which would be equitable and transparent. Such agreements would vary by distributor depending on their circumstances • codifying some principles that must be adhered to when amending the MUoSA • reporting to the Authority the rationale of any deviations from the MUoSA with reference to the codified

General comments	
Submitters	**Submission**
	principles • publicising any new and existing agreements to ensure transparency • ensuring good faith negotiations and mediation on any disputed terms • creating a joint Authority/EARNZ/ENA working group to develop reference principles for variations from the MUoSA • providing a time limit for parties to transition to a single distribution agreement • enabling time bound termination and periodic review of clauses.
Wellington Electricity Lines (p.8)	Instead of implementing the DDA, the Authority should develop a mechanism that is more market based.
ENA (p.26)	If the Authority chooses to continue with its proposal, the DDA and Code should be modified to better balance risk and cost between distributors and traders (as per ENA's suggestions), and traders and distributors should be able to participate in refining DDAs under which participants would conduct business in the future. Traders and large distributors have demonstrated they are able to negotiate mutually agreeable terms that have been adopted in other network areas.
Orion New Zealand (p.6)	If the Authority chooses to continue with its proposal, the Code should make the DDA automatically apply unless the parties agree otherwise. In practice distributors and traders could nominate their approach to the DDA and if either party prefers the DDA then it will apply automatically with no execution required.
Vector (p.3)	If the Authority chooses to continue with its proposal, core terms should be agreed by industry participants to ensure an operationally successful outcome.

Legal issues	
Submitters	**Submission**
Orion New Zealand (p.8)	The Act does not prevent the Authority from asking a distributor for information if, for example, a trader alleged that it was disadvantaged by the distributors' agreement with other traders or from suggesting changes to the Commission's disclosure requirements.
ENA (pp.11-12, 17), Orion New Zealand (pp.5, 8), Powerco (pp.2-3), Unison (p.5), Vector (pp.1, 3-4), Wellington Electricity Lines (pp.2, 6)	The proposal overlaps with Part 4 of the Commerce Act. In particular: • the shift away from GEIP raises the possibility that the cost to meet undefined standards in the DDA may not be recoverable under Part 4 of the Commerce Act (ENA p.17), (Wellington Electricity Lines pp.2,6) • it exposes key areas of distributor's business decisions to Rulings Panel review (Orion New Zealand p.5), (Powerco pp.2-3), (Wellington Electricity Lines pp.2, 6) (Unison p.5) • the DDA effectively regulates areas which affect distributors more tangibly than information disclosure requirements. For example, timing of cash flows, service guarantee payments, and risk allocation and liability (Orion New Zealand p.8) • the service guarantee payments place substantial revenue at risk (Powerco pp.2-3), (Vector p.4), (Wellington Electricity Lines pp.2, 6) • the proposal covers the same grounds as the Commission's Quality Standards Framework in the EDB DPP Determination (Powerco pp.2-3) • shifting negotiation power in the trader's favour has a potentially significant impact on price-quality (Unison p.5) • it is simplistic to suggest that only certain terms may overlap and that jurisdictional concerns can be resolved by simply removing certain terms from the DDA (Vector pp.1, 3-4).
ENA (pp.10, 17, 24)	The Authority has predetermined its decision. In particular: • clause 4.5.3 implies a predetermination by the Authority for standardised terms.
ENA (p.25)	The proposal does not meet Code amendment principles because: • the proposal is not lawful because the Authority is not empowered by section 16 to put the proposed scheme in place • the proposal is not lawful because the provisions in the DDA coincide with provisions of Part 4 of the

Legal issues	
Submitters	**Submission**
	Commerce Act • the Authority has not demonstrated that the proposal will improve efficiency for the long-term benefit of consumers • the Authority has not clearly identified a market failure • the Authority has not established a problem with the existing Code that requires a Code amendment or a change to the way the Code is applied • the proposal does not provide a meaningful, quantitative CBA to assess long-term net benefit for consumers • the Authority does not provide adequate proof that the benefits of the proposal outweigh the costs.
AECT (p.4), ENA (pp.11-12, 24), Vector (p.2, 4)	The Authority is not able to make the proposal. In particular: • the Authority does not have the power to impose the DDA (AECT p.4) • the provisions of section 32 cannot be used to augment or expand the Authority functions in section 16 (ENA p. 24), (Vector pp. 2, 4) • the Authority is only empowered to make amendments to the Code for "more standardisation" and not "standardisation" (AECT p.4), (ENA pp.11-12) • the reference to model arrangements in the context of market facilitation measures in section 16(1)(f) implies assisting in bringing about a particular end or result, rather than active intervention (ENA pp.11-12) • if the Authority was intended to be able to require mandatory DDAs, it would have been expressly stated in the Act (ENA pp.11-12), (AECT p.4) • the proposal interferes in existing property rights (ENA pp.11-12).
Orion New Zealand (p.8)	Agrees with the Authority at paragraph 3.6.34 that the Act constrains the Authority.
Orion New Zealand (p.8)	The Authority has not reviewed existing disclosures before suggesting "complete transparency" disclosures would be useful.

Q1: What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
Submitters	**Submission**
Counties Power, Electra, Top Energy, North Power (p.3), PwC (pp.7-8), WEL Networks (pp.1, 3), Wellington Electricity Lines (p.5), Vector (p.2), ENA (p.14)	The problem of variation in contracts is overstated. In particular: • standardisation is likely to occur without the proposal (Counties Power, Electra, Top Energy, North Power p.3) (ENA p.15) • the process of updating contracts based on the MUoSA has been impeded by concerns the Authority would intervene, as has now been proposed (PwC p.8), (ENA p.14), (Wellington Electricity Lines p.5) • variation in terms is not necessarily anti-competitive, it can allow for unusual circumstances and facilitate innovation (PwC p.7), (ENA p.14), (Vector p.2), (WEL Networks p.3) • it is not clear that variation in contract terms has any material effect on entrant retailer decisions (PwC p.7).
Orion New Zealand (p.2)	Have any traders claimed that a distributor's agreement favours some traders over others? Were those claims borne out?
Orion New Zealand (p.2)	The Authority should provide: • an analysis of the diversity in existing UoSAs and how much "higher than necessary" the consequent transaction costs are • examples of agreement terms that restrict competition in related markets.
PwC (pp.7-8), ENA (pp.13, 15), Orion New Zealand (pp.2, 10), WEL Networks (p.1), Vector (p.2), Eastland Network (p.3), ETNZ (p.2), Wellington Electricity Lines (p.2)	The problem with competition is overstated. In particular: • the level of retail competition calls into question the case for, and the scale of, regulation proposed by the Authority (Vector p.2) • the MUoSA already requires equal access and even-handed treatment (PwC p.7) • if equal access is a problem, it would be better addressed in the Code (PwC p.7) • distributors are not incentivised to reduce competition on their networks (PwC p.8) • safeguards against anti-competitive behaviour already exist in the Commerce Act, etc (PwC p.8) • distributors are unable to impose terms and any monopoly power is fully counted by the inability of distributors to cease supply to customers of retailers who refuse to agree a proposed contract (PwC p.8)

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Submitters	**Submission**
	• the Authority has not provided evidence for the impact on competition and innovation from specific terms (ENA p.13), (Orion New Zealand p.2) • UoSAs are not a barrier to new entrants (ENA p.15), (Eastland Network p.3), (ETNZ p.2), (Orion New Zealand p.10), (Vector p.2), (Wellington Electricity Lines p.2), (PwC p.7).
PwC (pp.3, 7, 9), ENA (pp.13-15, 18), WEL Networks (pp.1-3, 5), Powerco (p.5), Alpine Energy (pp.1-2), Orion (p.2), Vector (p.5)	The problem definition is not justified. In particular: • transaction costs are lower than stated (Alpine Energy p. 2) (ENA p.14) • the Authority has not defined the problem in economic terms (ie, a specific market failure) (ENA p.13) • the MUoSA regime is successful (ENA pp.15, 18), (Alpine Energy pp.1-2) (WEL Networks p.5) • the Authority alternatively appears to be identifying the problem as a lack of standardisation, and/or too much standardisation (ie, uniformity) (ENA p.14) • the Authority has not provided evidence as to the incidence of inefficient terms, or the ways in which they are inefficient, and the problem is qualified as a possibility rather than a fact (ENA p.14) • the Authority has not established the link between the voluntary basis of current agreements and the problems it has identified (ENA p.15), (Powerco p.5) • retailers have said that they have other, more important concerns (ENA p.18), (Vector p.5), (PwC p.7).
Orion New Zealand (p.3), Eastland Network (p.3), ENA (pp.14, 18), Powerco (p.5), PwC (p.7), WEL Networks (pp.1, 2)	The problems are not resolved by the proposal. In particular: • allowing parties to negotiate variations means that a trader could still be advantaged over its competitors (Orion New Zealand p.3), ENA p.14) • if there is no material standardisation of operational terms via the DDA process, then transaction costs will not be reduced and the non-standardisation of terms will be locked in via the DDAs (Orion New Zealand p.3) • the current approach better achieves standardisation (Powerco p.5) • there are better ways to deal with the slow uptake of MUoSA based agreements (ENA p.18) • variations will still occur under the proposal (PwC p.7).

Q1: What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
Submitters	**Submission**
Powerco (p.5), Unison (p.6)	Supports the Authority's work on more standardisation but not the proposal.
ETNZ (pp.1, 2)	The Authority suggests that distributors have adopted deliberately anticompetitive policies in negotiating UoSAs. In reality, as part of their legislatively enforced sale in the late 1980s, a number of emerging distributors were encouraged to accept undesirable or potentially anticompetitive conditions in the trading arrangements with their merging incumbent retailers.
Vector (p.5), WEL Networks (pp.1, 3)	Retailers are satisfied with the status quo.
ENA (p.27)	There is no clear problem definition.
PwC (pp.6-7)	The proposal has significant transaction costs.

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
Unison (pp.4, 6)	The DDA specifically excludes additional services and clarity is needed as to how they may be provided for.
WEL Networks (p.5), Orion New Zealand (p.5), Powerco (p.2)	The process to update DDA and operational terms needs improvement. In particular: • the agreements will effectively be perpetual (Powerco p.2) • the terms of the DDA should be able to be changed if a defined proportion of traders agree (Orion New Zealand p.5).
Wellington Electricity Lines (p.5)	Load control and other forms of alternative investment, along with information provision, form an integral component of providing the distribution service. The proposed terms in the DDA cannot remove these aspects without significant impact on the overall costs faced by consumers and the high responding quality impact.
ETNZ (p.3)	The Authority should make it clear that the proposal does not preclude moving to conveyance arrangements.
Powerco (p.6)	The success of the proposal is dependent on its ability to provide an agreement for single distributor/retailer relationships in the present environment, but also for distributor business models operating now and in future environments. The proposed DDA does not achieve this.
Wellington Electricity Lines (p.5)	Agrees that distribution agreements should be restricted to distribution services only.
ETNZ (pp.2-3)	ETNZ disagrees with the Authority's statement about what constitutes distribution services, and that such services are provided by a distributor delivering electricity through its network. That definition excludes anything that Transpower does even if it were identical to the service provided by a typical distributor. Including a definition of distribution services in the Code might overcome this anomaly.
Unison (pp.4, 6)	Operational terms could be frequently adjudicated rather than produced as an outcome of a bilateral or multilateral negotiation process. This approach risks standards being set too high (inefficient) or too low (reduced performance/reliability). The Authority should retain the current two-tier approach (mediation first, Rulings Panel second).
Orion New Zealand (p.5), Powerco (p.2)	The extent of traders' right of appeal is too far. In particular: • the Rulings Panel could amend operational terms in a way that is costly or operationally unworkable for

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Submitters	**Submission**
	distributors, and could reduce standardisation (Powerco p.2) • it is inefficient (Orion New Zealand p.5) • exposing core business decisions to review reaches into key areas of distributor's financial decision making (Orion New Zealand p.5).
Powerco (p.6)	The MUoSA is not an appropriate basis for the DDA because: • the Powerco UoSA is highly aligned with the MUoSA, yet contains company specific amendments and addresses areas of poor drafting • the DDA creates a very different contractual relationship and the MUoSA is not suitable. This is exacerbated by the enduring nature of the DDA and the inability to amend core terms • the MUoSA is not fit for purpose as the DDA. For example, different distributors operate different business models and IT systems. This is just a small example of how careful consideration is needed to ensure core terms relate to the generic distribution of electricity and that there is "no good reason" why they should be tailored to particular distributors or retailers, or to the features of a particular region. The proposed DDA has not achieved this
Orion New Zealand (p.4)	The consultation paper contradicts itself when describing the process of developing new operational terms. For example, paragraph 3.4.17 states that new operational terms will not need to be developed. However, in paragraph 3.4.18 the paper states that timeframes should be practical if each distributor incorporates the example operational terms and amends them only to reflect the distributor's practice.
WEL Networks (p.5)	It is currently unclear whether contractual relationship would be established under a default situation. Parties need to be in a clear contractual relationship before relying on remedies in tort. If the remedies differ there may be an incentive to not enter into an agreement and simply rely on the DDA. The Authority should provide a clear requirement to actually enter into contracts rather than relying on any default mechanism.
WEL Networks (p.5)	The requirement to offer a DDA when termination for default has occurred is problematic and will need to be amended to avoid undermining termination provisions.

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Submitters	**Submission**
Powerco (p.3)	It is of highest priority that the Authority reconsider constraints around the use of prudential security. This is because: • the proposal does not allow distributors to draw down on prudential security to cover unpaid charges that are disputed, and the trader is not obliged to correspondingly top up security • therefore disputed charges are effectively ignored by the prudential regime in calculating the distributor's overall credit exposure to the trader, even though disputed amounts may ultimately be due and payable • distributors usually manage this risk by refusing to deal with traders. However, this will not be possible under the proposal.
Orion New Zealand (p.4), Unison (pp.4, 6)	Timeframes for implementation are too short. In particular: • the Authority should clarify how much time it anticipates should be available between when the Code changes are finalised and when they come into force (Orion New Zealand p.4).
Orion New Zealand (p.3)	It is not clear why the DDA has been limited to just distribution services. Additional services can be encompassed in a single agreement by obliging the distributor (or trader) to supply other services as listed in a schedule.
PwC (pp.13-14)	Establish a process to deal with proposed changes to core terms by stakeholders. In particular, the Authority should: • record recommended changes publically • respond to each recommended change within a set timeframe (for example, one month) • undertake to update the core terms where a change is justified. Urgent changes could be done as soon as practicable. Other changes could be done perhaps every 1-2 years. Such a process will make concerns about terms transparent, show the Authority's position on those concerns, and show the change process. This process would be used for a short time after the proposal comes into force, it is then unlikely to be needed until some aspects of the DDA become obsolete. However, an updated DDA should not automatically apply to distributor agreements. Updated DDAs could be used for new agreements and for voluntary uptake. This appears to be consistent with clause 12A.11(4).

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
PwC (p.13)	It is unclear if the proposal applies to conveyance. Please confirm the Authority's intention. Any limit on distributors' ability to operate under a conveyance model is not supported.
Orion New Zealand (p.3)	The delineation of distribution services is incorrect. For example, paragraph 3.3.21 discusses the reconciliation process (which is not a part of the distribution service), physical losses (a consequence of the distribution service but not a service provided by the distributor), and "commercial or non-physical losses" (not part of the distribution service).
PwC (p.12)	There should be no right of appeal because: • Distributors do not have monopoly power. Therefore, there is no reason to believe that unreasonable operational terms could be in a UoSA. • The DDA, like the MUoSA, contains a sufficient dispute resolution procedure. The Rulings Panel is a heavy handed tool to deal with what will be quite technical disagreements • Using the Rulings Panel creates risks that: – the Panel makes decisions that are operationally impossible for the distributor – the Panel's decision creates a precedent that may not translate well to other networks. This could result in multiple parties seeking to be joined to an appeal.
PwC (p.11), Eastland Network (p.3)	The proposed DDA should not be the default agreement. In particular: • if a UoSA has been based on the 2012 MUoSA, it should be the default, and remain unless both parties agree to adopt the DDA (PwC p.11) • Eastland Network's agreement should be considered as the standard because it has already signed all 13 traders on its network to the MUoSA based agreement (Eastland Network p.3).
PwC (pp.11-12), Eastland Network (p.2)	Timeframes for implementation are too short. In particular: • the current timeframes are unclear. This is assumed to be an error. PwC's interpretation is that the two months to agree an alternative occurs after the 60 or 120 working days which distributors have to negotiate and agree the operational terms (PwC p.11)

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
	• if the Authority continues its proposal, it should provide 1-2 years for parties to agree (PwC p.12).

Q3: What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	
Submitters	**Submission**
Counties Power, Electra, Top Energy, North Power (p.4)	The submitters have recently experienced growth in the number of retailers on their networks but are unable to speculate if this will continue. The Authority has overstated the savings and understated the costs from the proposal.
ENA (p.18-19, 28-29), WEL Networks (p.5)	The Authority's statement that an additional 175 MUoSAs would be needed is incorrect and misleading.
WEL Networks (p.5)	The Authority's assessment of the likely levels of demand for UoSAs is overstated. The real problem is the lack of incentives to move away from legacy arrangements.
Powerco (p.7)	Agree that there will be increased demand for UoSAs in coming years and that generally retail competition is a positive market characteristic.
Powerco (p.7)	The Authority should reconsider whether easing access to the market will lead to increased competition and consumer benefits. This is because: • New Zealand has a high number of retailers per capita • a natural side effect of increased competition is greater probability of failure • there is little benefit in attracting new entrants who are unable to ensure security in the long term • the proposed changes will not have a material effect on the number of new entrants either to the sector or

Q3: What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	
Submitters	**Submission**
	network areas.
Powerco (supp., p.1-2)	Competition is increasing despite the current arrangements. For example, since April 2016, several new entrant retailers have expressed no concern with Powerco's MUoSA.
Orion New Zealand (supp., p.1-2)	The number of UoSAs to be negotiated or renegotiated is irrelevant as UoSAs can be negotiated quickly. Accordingly, the proposal will not result in material negotiation cost savings, and the Authority has significantly overstated the benefits of the proposal.
Orion New Zealand (supp., p.2)	The Authority's assessment is overstated because retailers are unlikely to expand into all network areas.
Orion New Zealand (supp., p.2)	The Authority has not demonstrated whether retailers incur costs due to having different agreements across distributors, and if so, the extent of those costs. The Authority has also not demonstrated that these costs outweigh the cost of renegotiating the relevant agreements. Even if such costs exist, these will not just be based on different contractual terms between distributors, but also on distributors' different operational approaches.
Orion New Zealand (supp., p.2)	Limiting the DDA to just distribution services (and excluding additional services) increases the complexity and number of agreements that need to be negotiated. Distribution and additional services should be covered by the same agreement (the DDA).
Orion New Zealand (supp., p.2)	The proposal imposes additional negotiation costs, because it requires agreements to be renegotiated even if parties are happy with the existing arrangements.

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
ENA (p.23)	Allocative efficiency benefits are not justified. The Authority's statements appear to assume that it can develop agreement terms that are more efficient than those in agreements voluntarily agreed by market participants.
ENA (p.23)	It is not clear how the tension between increasing standardisation and enabling innovation balance out. The Authority has weighted the (assumed) benefits of standardisation more heavily than the benefits of (or risk to)

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
	innovation. Dynamic efficiency is more significant for the long-term benefit of consumers than static efficiency.
AECT (pp.3-5), ENA (pp.20, 24, 26), Orion New Zealand (pp.6-7), Wellington Electricity Lines (p.5), AECT (p.3)	CBA is inadequate. In particular: • the claim in clause 4.4.27 is not supported by a review of previous relevant consultations (AECT p.3) • the benefits of the status quo are not taken into account (AECT pp.4-5) • the benefits of variations are not taken into account (ENA p.20) • there is a general lack of evidence for the claims made (ENA p.24), (Orion New Zealand p.6), (AECT pp.4-5).
Orion New Zealand (p.7)	The Authority should establish the considerations that are important for traders when considering new network areas. For example, The Lines Company directly bills customers, however, according to the Authority's data, it has the second highest HHI of any network reporting region, and the highest market share by a single trader.
Eastland Network (p.3), ENA (pp.17, 21-22, 24), Orion New Zealand (pp.6-7), Unison (p.3), Vector (pp.2-3, 6), WEL Networks (p.6), ETNZ (p.6)	The CBA is incorrect. In particular: • transaction costs will increase substantially (Eastland Network p.3) • the status quo is much less costly for participants than stated and less costly than the proposal (Orion New Zealand p.6) • the net benefits will be negative (Orion New Zealand p.7), (ENA p.24) • the proposal will likely inhibit innovation and competition to the long term detriment of consumers (Vector p.2) • there are clear advantages to tailoring agreements to the specific needs of parties (Vector pp.2-3) • the $50,000 upper band for negotiating MUoSA based UoSAs is unjustified (ENA pp.21-22).
ENA (p.23), Orion New Zealand (p.7), Wellington Electricity Lines (pp.3, 7-8)	The dynamic efficiency benefits are not justified.
Wellington Electricity Lines (p.8)	The proposal will negative impact on competition because it is unclear how the proposal, and in particular the Rulings Panel decisions, will impact competition and innovation.

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
ENA (p.29)	The problem definition and the regulatory analysis/CBA are not aligned.
AECT (p.2)	The problem definition is not justified because the Authority has not justified its assessment that distributors are using monopoly power to create a variety of UoSAs and thereby harm the interests of consumers.
Wellington Electricity Lines (p.9)	Substantial variation could occur under the proposal as traders will sign contracts at different stages as operational terms evolve.
Wellington Electricity Lines (pp.2, 7), Orion New Zealand (p.10)	The proposal does not provide long term benefits to consumers.
Wellington Electricity Lines (p.3)	The proposal may unintentionally remove the ability of distributors to utilise load control in managing network security and peak demand.
Unison (p.3), Wellington Electricity Lines (p.7)	The proposal is not flexible enough.
Unison (p.3)	Current arrangements are not a barrier to entry.
AECT (p.2), Orion New Zealand (p.6), Powerco (p.2)	Status quo should be the preferred option. In particular: • there are potential advantages in allowing innovation and variety (AECT p.2).
ENA (p.15)	The Authority has not identified alternatives.
ENA (p.22), Unison (p.7)	The benefits are overstated. In particular: • the cost reduction, once the MUoSA has settled down, is between $1,000 and $5,000 over the 10 year period of assessment (ENA p.22).
Wellington Electricity Lines	The costs are understated. In particular:

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
(pp.3-7), Orion New Zealand (p.3), Vector (pp.6-7), Unison (pp.3, 7), ENA (p.23), ETNZ (p.6)	• $5,000 per agreement is too low (Orion New Zealand p.6) • $10,000 per agreement is more realistic (Orion New Zealand p.7) • the cost of appeals has not been taken into account (Orion New Zealand pp.6-7) • significant transaction costs have not been taken into account (Wellington Electricity Lines pp. 3, 7) • sunk costs of previous negotiations are not taken into account (Unison p.3) • the proposal undermines future industry participation (Unison p.3) • Vector will be required to pay approximately $50 million due to outages (Vector p.7).
Vector (p.7)	AECT receives consumer data which allows dividends to be paid out to beneficiaries. The DDA will remove these provisions and will require distributors to contract separately for this requirement. This will put at risk dividend payments worth $100 million, which represent a direct injection into Auckland's economy.
ENA (pp.19-20), Powerco (pp.7-8)	The regulatory statement is insufficient because: • it does not have the rigour of other similar statements in other consultation papers released by the Authority • it does not meet the standards expected of analysis for regulatory proposals from other government agencies • it does not have a robust and consistent problem definition that identifies underlying market failure and the costs and benefits of the status quo • the full range of feasible options has not been identified and assessed • the CBA does not set out the costs and benefits for the full term of the NPV calculation • there is a general lack of empirical evidence • the problem definition in the regulatory analysis/CBA are not aligned • neither the proposal nor the alternative options are assessed against the stated objectives.

Q5: What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	
Submitters	**Submission**
Answers to this question are set out in the tables below.	

Code amendments – general comments	
Submitters	**Submission**
PwC (p.19)	Suggestions on how to improve the drafting of the new Part 12A are made without prejudice to the view that the MUoSA should be retained.
ETNZ (p.4)	The consultation provisions in Part 12A should be explained as a mechanism for collecting ideas and reactions, to clarify that it is not a prescribed process of negotiation.
ETNZ (pp.4-6)	The Code drafting is very complex and convoluted.
ENA (p.17)	The proposal is inconsistent around the treatment of conveyance agreements and the Authority needs to provide clear direction. The provisions for conveyancing have not been fully worked through.
Wellington Electricity Lines (p.9)	The Authority should: • embed an arbitration process within the Code specific to resolving disputes on establishing terms • remove the Rulings Panel jurisdiction to determine terms • strengthen the principles in the Code to provide guidance as to how standard distribution agreements should be developed.
Wellington Electricity Lines (p.7)	GEIP should be reinstated as a principle within the definition of distribution services.
WEL Networks (p.6)	Liability limits should be in the operational terms. Liability limits benefit both parties and there is no benefit to consumers from increasing the limits or excluding annual caps, as is common in legacy agreements and in WEL Networks' UoSA. Any increase in liability will require parties to increase insurance coverage and costs.
WEL Networks (p.6)	There are no mechanisms for updating core and operational terms in Part 12A. The mandating of regulated contract terms discourages innovation and creates costs.

Code amendments – general comments	
Submitters	**Submission**
WEL Networks (p.6)	There is no clear requirement to enter into a DDA. There is a potential for inconsistent access to remedies as it is untested whether a breach of a DDA can be remedied in tort, where clearly any alternative agreements to the DDA can be.
Wellington Electricity Lines (p.7)	Service level guarantees and service level guarantee payments should be removed from the core terms of the DDA.
WEL Networks (p.6)	The lack of termination by notice and lack of consideration for termination by default in the proposed Part 12A are problematic.
WEL Networks (p.6)	The current drafting of core terms has in some places accidently captured operational terms.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Subpart 1	ENA (p.30)	Subpart 1 should state the template DDA only applies to ICPs where distributors do not have a conveyance agreement. This would identify clearly where the interposed DDA applies despite any explicit exceptions.
Subpart 1	ENA (p.30)	The Authority should clarify whether the conveyance UoSA will prevail for ICPs where conveyance agreements are in force, or whether this is an interim step before a conveyance DDA is introduced.
Subpart 1	Wellington Electricity Lines (p.15)	Replace reference to "Default Distribution Agreement template" and "Default Distributor Agreements" with "Distributor Agreement template". This is to implement Wellington Electricity Lines' alternative.
12A.1	Wellington Electricity Lines (p.15)	Amend clause 12A.1(1)(a) so that "standardised distribution agreement" replaces "default distributor agreement". This is to implement Wellington Electricity Lines' alternative.
12A.2	Unison (pp.7-	Redraft this clause. This clause implies that distribution agreements only apply to distributors that convey electricity and do not apply to distributors that have a conveyance contract in place with any consumers

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	8)	on the network. Most distributors have such arrangements with at least one consumer so that effectively excludes all distributors, which we assume is not the intent. We assume the intent is to exclude conveyance arrangements. Conveyance arrangements are excluded from the Code, but are still referenced in the draft DDA. The Authority should give clear direction on its approach to these types of agreements, and the status of the current conveyance MUoSA, and how these agreements will be treated in the future.
12A.3	PwC (pp.12-13)	Clause 12A.3(2)(b) should refer to the "legitimate interests" or "reasonable requirements" of both parties. "Legitimate interests" may be a narrower term than "requirements". The clause may therefore have a bias against the interests of the distributor. It is also unclear why the clause uses "requirements" rather than "reasonable requirements" as in clause 12A.3(2)(d). This could imply that under clause 12A.3(2)(b) the operational terms need to reflect all of a retailer's requirements, whether reasonable or not.
12A.3	Wellington Electricity Lines (p.15)	Amend clause 12A.3(1) by removing subclause (b). This removes the Rulings Panel as an arbitrator of contract terms.
12A.3	Wellington Electricity Lines (p.15)	Amend clause 12A.3(2) by adding the following principles: • "be consistent with the Commerce Commission's regulation of distributors price quality under Part 4 of the Commerce Act 1986" • "treat all traders who trade on the distributor's network equally". Remove the principle in clause 12A.3(2)(d). The principles are added to provide guidance for the development of any contract terms by distributors when establishing a standardised distribution agreement. The principles would also apply if the Rulings Panel jurisdiction remained as proposed. The principles are expanded to ensure both the regulation of distributors under Part 4 and current operational practices are recognised without the imposition of additional costs or risks. The removal of clause 12A.3(2)(d) will address the fact that this principle prejudices the outcome and it is already covered by the principles.
Old 12A.3	Wellington	Reinstate previous clause 12A.3 as amended:

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Electricity Lines (pp.23-24)	"***12A.3 Arbitration*** *(1) If a distributor or a trader considers that it is unlikely that it will agree the terms of a standardised distribution agreement with the other party, the distribution or the trader may give written notice to the other party of that fact.* *(2) The notice given under subclause (1) must—* *(a) state that it is a notice given under subclause (1); and* *(b) include a copy of subclause (1); and* *(c) state that at the close of the 20th business day after the date of the notice, the distributor or trader (as the case may be) may require the other party to enter into mediation.* *(3) No earlier than the close of the 20th business day after the date on which the notice referred to in subclause (2) is given, the distributor or the trader may, by written notice to the other party, require the other party to undertake arbitration with the party who gave notice under this subclause.* *(4) The notice given under subclause (3) must—* *(a) state that it is a notice given under subclause (3); and* *(b) include a copy of subclause (3).* *(5) On receipt of a notice given under subclause (3), the distributor and the trader must attempt in good faith to agree on the following matters:* *(a) the arbitrator:* *(b) the date or dates for the arbitration:* *(c) the location of the arbitration:* *(d) the scope of the arbitration:* *(e) the allocation of the costs of the arbitration.* *(6) If, at the close of the 15th business day after receipt of the notice given under subclause (3), the distributor and the trader are in dispute regarding 1 or more of the matters specified in subclause (5), either party may refer the dispute to the Rulings Panel for determination.*

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		(7) The Rulings Panel may make such determination as it thinks fit. *(8) The distributor and the trader must carry out the arbitration in accordance with any agreement reached under subclause (5) and any determination made under subclause (5).* *(9) The Arbitrators decision shall be binding.*" This provides a workable alternative to the Rulings Panel that will lower costs, provide opportunities for innovation, and avoid the overlap with Part 4 issue. Arbitration provides a strong incentive for parties to self-mediate.
12A.3(2)(c)	Unison (p.8)	This clause uses the word "consumer" but the DDA has been amended to "customers". Unison supports the change and considers that the Authority should amend this in the Code and legislation.
12A.4	ENA (p.30)	Clause 12A.10 includes provision for alternative agreements to be negotiated within 20 days but the obligation to offer to contract on the basis of the DDA in 12A.4 is compulsory. The clause requires the distributor to reinstate an agreement if a retailer defaults. This should not be the case unless the retailer subsequently qualifies for an agreement following a default. When read alongside the treatment of termination in clause 19, the DDA operates more in the manner of a mandatory arrangement than a default arrangement.
12A.4	ENA (p.30)	In relation to clause 12A.4(4), the timeframe is arbitrary and does not appropriately reflect the significance of the transition. The Authority does not advance its statutory objective by imposing such a tight timeframe. There is an inconsistency between the timing in clause 12A.4 and 12A.12(5). 12A.4 gives distributors 60 (or 120) business days to publish their DDA, but 12A.12(5) gives distributors two months from the clause coming into effect to agree an alternative contract with existing traders, failing which the DDA will apply. Assuming both clauses come into effect simultaneously, it is probable some distributors will not have published a DDA by the time the DDA will be deemed to come into force under clause 12A.12(5). The timeframe in clause 12A.12(5) should run from when the distributor has published its DDA in accordance with the timeframe in 12A.4. ENA requests that members: • be notified of the *Gazette* date

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		• regardless of how much notice is given in the *Gazette*, the four "group one" distributors should have 120 business days to develop and consult on their operational terms and then publish the DDA, with the other distributors having 180 business days • members then have no less than three months from the date they have published their DDA to reach a new agreement.
12A.4	Wellington Electricity Lines (p.16)	Replace clause 12A.4 with the following: "*(1) Each distributor must have a standardised distributor agreement that does not include any other services other than Distribution Services.* *(2) In setting its standardised distributor agreement, a distributor must apply the principles set out in clause 12A.3(2).* *(3) A distributor must make its standardised distributor agreement available prominently on its website from the following date:* *(a) for Orion New Zealand Ltd, Powerco Limited, Unison Networks Limited, and Vector Limited, 120 business days after the date on which this clause comes into force:* *(b) for each distributor that is a distributor on the date on which this clause comes into force and is not named in paragraph (a), 180 business days after the date on which this clause comes into force:* *(c) for each other distributor, from the later of the following:* *(i) 120 business days after the date on which this clause comes into force:* *(ii) 30 business days before the date on which the distributor commences engaging in the business of distribution on the basis described in clause 12A.2(a).* *(4) A distributor must—* *(a) document the rationale for any differences between the standardised distribution agreement and the distribution agreement template in Schedule 12A.1; and* *(b) before making its default distributor agreement available on its website, consult each trader trading on the distributor's network, and each participant that the distributor considers is likely to*

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		be affected by the default distributor agreement, on the terms that the distributor proposes to include in its default distributor agreement; and *(c) no later than 5 business days after making the agreement available, advise each such trader that the default distributor agreement is available on the distributor's website.* *(5) A distributor must publish all existing agreements it has with traders to trade on its network within 30 business days after the date on which this clause comes into force.*" Although it removes the need for enforcing specific terms, it will require the development of rationale for the differences between the template and the standardised distribution agreement, the agreement is for distribution services only, and all existing agreements must be published. The timeframes are changed to ensure it is practicable.
12A.4(1)(b)	Orion New Zealand (p.11)	Delete clause 12A.4(1)(b). It is not clear why the DDA cannot include any other terms and why it cannot reference a schedule of associated services.
12A.4(4)	Unison (p.8)	The Authority should provide more information about how the group 1 distributors have been selected. This is not an even-handed way to regulate, and the group 1 distributors will incur higher costs and be under greater time pressure to implement than other distributors. The 60 day timeframe is arbitrary and will not help achieve the objective of increased standardisation and competition. Instead, UoSAs based on the MUoSA should remain in force until expiry. All new UoSAs should first be negotiated based on distributors' standard terms based on the MUoSA. Only if agreement cannot be reached within a reasonable time and through negotiation and mediation would the DDA apply.
12A.4(5)	ETNZ (pp.3-4)	The consultation requirement creates uncertainties and confusion about the level of consultation required, and about the effort that should be put into such consultation with different parties. A more specific requirement for consultation with retailers and known potential retailers is supported. The wider requirement to consult with participants who "might be affected" should be removed or significantly modified.
12A.4(5)	Unison (p.9)	The DDA is effectively a mandatory agreement, which is too heavy-handed a regulatory approach. This section of the Code requires significant redrafting to retain the current concept of good faith negotiation

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		and mediation, then defaulting to the DDA process.
12A.4(5), 12A.5	ENA (p.31)	These clauses remove mediation prior to appeal to the Rulings Panel. This will add costs and not advance the statutory objectives.
12A.5	Orion New Zealand (p.11)	It is reasonable for the Code and/or the DDA to constrain the frequency of, and notice period for, changes to operational terms.
12A.5	Orion New Zealand (p.11)	The Code needs to be clear which operational terms are subject to appeal and which are not. Service standards, service guarantee payments, and prices should not be subject to appeal to the Rulings Panel. It is not reasonable to subject all of the operational terms to appeal to the Rulings Panel. It is not uncommon for recourse to dispute resolution to be limited.
12A.5	Powerco (p.10)	This change must be made for the DDA to be adopted. Add a new clause 12A.5(5) as follows: "*The Rulings Panel may modify an operational term only to the extent necessary to prevent the term violating the principles set out in clause 12A.3(2). The Trader has the onus of showing that this is necessary.*" Clause 12A.5 is not clear on what the Rulings Panel is being asked to decide. This change provides a clear question for the Rulings Panel to decide.
12A.5	Powerco (p.9)	This change must be made for the DDA to be adopted. Add new clause 12A.5(5) as follows: "*Notwithstanding anything to the contrary in this Part 12A, the operational terms contemplated in Schedule 7 of the Default Distribution Agreement Template cannot be appealed to the Rulings Panel.*" Clause S7.2 of Schedule 7 of the DDA provides that the Distributor's pricing methodology, pricing categories, price options, and prices are part of the operational terms. This suggests traders can appeal those matters to the Rulings Panel. This would cut across regulatory processes under the Commerce Act and the existing price changing consultation provisions of clause 7 of the DDA.
12A.5	Powerco (p.9)	This change must be made for the DDA to be adopted. If a right of appeal is retained, appeals should be to a specially constituted branch of the Rulings Panel,

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		with its members specially selected for their experience with the operations of distributors and traders. The Rulings Panel has the power to amend operational terms in a distributor's DDA. There is no built in right of appeal for the Distributor (see section 65 of the Electricity Industry Act 2010).
12A.5	Unison (p.9)	Mediation should be reintroduced in the Code. The only course of action for disagreements should not be appeal to the Rulings Panel. Removal of mediation can result in limited engagement in negotiation and overuse of an appeal. Adjudication may result in outcomes that unreasonably reapportion risk, lessen efficiency, and potentially reduce reliability.
12A.5	Wellington Electricity Lines (p.17)	Delete clause 12A.5. This will implement Wellington Electricity Lines' suggested alternative.
12A.6	Wellington Electricity Lines (pp.18-19)	Delete clause 12A.6. This will implement Wellington Electricity Lines' suggested alternative.
12A.6(4)	Powerco (p.11)	This change must be made for the DDA to be adopted. Amend clause 12A.6(4) so that: • before amending an operational term, the Rulings Panel is expressly required to consider the impact on the distributor of having differences between the operational terms in its distribution agreements • if a change to an operational term is mandated by the Rulings Panel in one distribution agreement, the distributor always has the option of applying the same change in each of its other distribution agreements. If the Rulings Panel decides only the traders can elect to apply a change, it could result in different distribution agreements for the same distributor having different operational terms, with no ability for the distributor to ensure consistency. This would create significant cost and complexity.
12A.5, 12A.6, 12A.7	PwC (p.19)	Delete these clauses. There should not be an appeal to the Rulings Panel on operational terms. The dispute resolution procedure within the DDA will be sufficient.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
12A.7	Wellington Electricity Lines (p.19)	Replace clause 12A.7 with the following: "*Amendment to terms by distributor* *(1) If a distributor amends 1 or more terms of its standardised distributor agreement the distributor must—* *(a) make an updated version of its default distributor agreement that reflects the amendment available prominently on its website no later than 5 business days after making the amendment; and* *(b) no later than 5 business days after making the agreement available, advise each trader trading on the distributor's network, that an updated version of the agreement is available on the distributor's website.*" The timeframes are changed to ensure it is practicable. The change will ensure standardisation and transparency.
12A.8	Orion New Zealand (p.11)	It would be more efficient if parties do not "enter into" an agreement, but rather notify other parties that the DDA applies (see Orion's comment to 12A.9). It might be easier to deem that a trader, that is not subject to some other agreement, is subject to the DDA.
12A.9	ENA (p.31)	No allowance is made for a situation where a trader has previously defaulted. There should be an additional carve out so a distributor is not forced to enter into a DDA unless the trader has remedied the circumstances of its default.
12A.9	ENA (pp.31, 32)	The short timeframe in subclause (1) means that any risk/non-compliance becomes a breach of contract issue, where currently distributors can take time to ensure the retailer is ready to trade before commencing. This also places risks on the clearing manager and the wider industry. The long-term interests of consumers are better served by ensuring traders meet certain requirements, regardless of the time it takes. Requirements on a trader before they are allowed to trade include: • having systems in place to enable accurate billing • prudential requirements satisfied

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		• providing a forecast of likely monthly billing • checking retailers' customer terms and conditions to ensure they contain clauses required by the UoSA • meeting with distributors to ensure mutual understanding and ability to meet obligations.
12A.9	Powerco (p.20)	Amend clause 12A.9 so that, if a distributor has terminated a distribution agreement for the trader's default, the trader cannot give notice initiating the negotiation process under clause 12A.9, and no distributor is obliged to allow that trader to trade on its network.
12A.9	PwC (p.20)	Distributors should not be forced to offer a DDA to a trader that has previously defaulted unless they have remedied their previous default.
12A.9	Wellington Electricity Lines (pp.20-21)	Delete clause 12A.9(2) to 12A.9(6). Insert new subclauses (2)–(5): "*(2) The trader and the distributor must seek to agree the terms of the Distribution Agreement in good faith.* *(3) In the event that an alternative agreement is made other than the standard, the agreement must be published on the distributor's website within 5 days and all Traders must be notified that an alternative Agreement has been entered into.* *(4) The Distributor must offer the alternative agreement to all Traders operating on the network.* *(5) Traders have 20 business days to accept the alternative agreement as the basis for the provision of distribution services.*"
12A.9(3)	PwC (p.20)	This clause refers to subclause (2). It should refer to subclause (1) as the notice referred to under subclause (3) is given under subclause (1).
12A.9(4)	Orion New Zealand (p.11)	It would be more efficient if either party could give immediate notice that the DDA applies. This removes delay and cost of negotiation if either party does not want to negotiate. At least some traders and distributors will take this approach.
12A.9(1), 12A.9(5)	Powerco (p.21)	Amend the period in 12A.9(1) and 12A.9(6) from 20 business days to 90 business days. Amend the period in 12A.9(5) from the 5th business day to the 20th business day. The timeframes are extremely tight and will be difficult to meet, taking into account the need for set up

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		requirements including: • accounts receivable and billing systems set up, file provision and trial billing run • outage management and other network ops set up, retailer training • connections system set up and retailer training • prudential security provision • other sundry system changes. Many of these requirements are mandated by the Code, so the commencement of trading on the network before those steps are completed may result in a breach of the Code.
12A.9, 12A.10	ENA (p.32)	The construct for establishing the DDA, negotiating an alternative agreement, and the mechanism where the default agreement binds the parties, is unclear. If parties do not sign an alternative to the DDA, and do not sign the DDA, then as long as the trader has a connection contract in place and posts appropriate prudential cover, they can proceed with the DDA terms applying automatically. The effect of clause 12A.9 is that after 20 business days either party can elect to use the default agreement (or it applies automatically). That time constraint is inappropriate and will lead to more use of the default and fewer alternative agreements, if any, making the DDA arrangements effectively mandatory. The construct of the DDA should encourage innovation and use the default as an exception.
12A.9, 12A.10	ENA (p.32)	Part 12A is ambiguous about remedies. Legal recourse for failure under both the DDA and the negotiated alternatives should be through the courts.
12A.9, 12A.10	ENA (p.32)	Existing contracts with fixed terms negotiated under the MUoSA arrangements should be left to run their course. Retailers have said the issue with UoSAs lie with legacy evergreen agreements, rather than agreements negotiated under the Authority's guidance.
12A.10	Counties Power, Electra, Top Energy, North Power	The requirements around the content of alternative agreements in clause 12A.10 should be removed, and the parties should be free to enter into alternative agreements which include terms that relate to matters other than distribution services. This is because the restriction will severely limit the ability of parties to adapt in the rapidly evolving electricity sector. Allowing parties to freely agree alternatives will provide flexibility to respond to change, and encourage innovation and competition, which should provide net

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	(p.5)	benefits to customers.
12A.10	Powerco (p.22)	Amend clause 12A.10 to clarify that it does not prevent parties from entering distributor agreements like: • electricity connection agreements (conveyance or interposed) • distribution price agreements • distribution service agreements, provided the distributor's agreement does not interfere with any existing retailer agreement with that customer. The current proposal may outlaw certain ancillary arrangements such as the above.
12A.10	Unison (pp.9-10)	Clarify the intent of this clause. A separate agreement is likely to be costly and may stifle innovation. Alternative agreements will be the exception, which is contrary to the Authority's description of a default arrangement in its previous consultation.
12A.10	Wellington Electricity Lines (p.21)	Delete clause 12A.10. This is to implement Wellington Electricity Lines' suggested alternative.
12A.11	ENA (pp.32-33)	Clause 12A.11 and the termination provisions create an arrangement that will lead to less standardisation. This is because distributors cannot update all DDAs for all traders, even where an operational term they wish to introduce must by definition apply to all traders. Those changes can't be forced on traders, which would lead to a proliferation of operational terms. This will not address one of the proposal's objectives, and the problem definition is so muddled it is not clear which issues the proposal is designed to address.
12A.11	Orion New Zealand (p.11)	Delete clause 12A.11(4). This clause locks in the operational terms of any agreement that is in effect when the distributor introduces new terms.
12A.11 (DDA 22.1)	Powerco (p.12)	This clause change must be made for the DDA to be adopted. Amend clause 12A.11 so that: • when operational terms are updated, affected traders have 10 business days to appeal under clause 12A.5, and unless amended by the Rulings Panel, the update applies to all of that distributor's existing agreements

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		• a party can apply to the Panel for a change to the terms of an agreement where reasonably necessary to enable that party to comply with the law. Under the proposal, distribution agreements will effectively be perpetual because if a distributor updates the operational terms of a DDA, it will not affect existing distribution agreements. Further, the DDA has removed the provisions of the MUoSA that allowed the distributor to: • update certain "variable provisions" • use a third party dispute mechanism • terminate the agreement without cause, on notice, after the initial term.
12A.11	Wellington Electricity Lines (pp.21-22)	Delete clause 12A.11. This implements Wellington Electricity Lines' suggested alternative and would be covered by the Authority's proposed clause 12A.7.
12A.4(4), 12A.6(3)(a), 12A.7(1)(a), 12A.11(1)	PwC (p.19)	Delete the term "prominently" from each of these clauses, because: • the term is not defined and will be impossible to enforce. Regulating the layout of distributors' websites is excessive • all relevant industry participants will be notified of the agreement because distributors are required to contact each trader on their network and each participant that may be affected by the DDA within 2 business days of placing the DDA on their website • it is unlikely that the primary route by which traders will find a DDA will be by routinely checking a distributor's website. Distributor notifications and contact points will be the primary route. The "prominence" of a DDA on a distributor's website will have very limited effect on its accessibility.
12A.12	ENA (p.33)	This provision makes the default provision compulsory because it obliges distributors to offer an alternative agreement that overrides existing commercially negotiated agreements. If the intention is to create a "default", parties should only seek to use it when they have failed to agree. The combined effect of clauses 12A.4, 12A.9, 12A.12 create a mandatory obligation.
12A.12	Wellington Electricity	Delete clause 12A.12(3) to 12A.12(5). Amend clause 12A.12(2) to read:

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Lines (p.22-23)	"*(2) The distributor must publish all existing use of system agreements and other agreements for distribution services it has with Traders on its website.*" This implements Wellington Electricity Lines' suggested alternative. This also maintains the parties' rights and obligations under the contracts. The change will be incentivised through publication of distribution agreements rather than by providing a party with the unilateral right to terminate a commercial contract.
12A.4, 12A.12(5)	Counties Power, Electra, Top Energy, North Power (p.5)	The provisions are inconsistent. The timing in clause 12A.12(5) should be changed so that distributors and existing traders have two months from the date the relevant DDA is published to agree the terms of an alternative agreement before the DDA is deemed to apply. This is important because both clauses come into force on the date the amendments to Parts 12A come into force and, therefore, it is possible and probable that a number of distributors will not have published their DDA by the time the DDA may be deemed to come into force under clause 12A.12(5), clearly frustrating the application of clause 12A.12(5).
12A.4(4), 12A.12(5)	PwC (p.20)	The DDA should not be the default when an existing UoSA, based on the MUoSA, is in place. The default option should be the existing agreement unless one party actively chooses to move to the DDA. This clause would need to be changed to give effect to this recommendation. The timeframe for all parties to negotiate new agreements should be extended to 1-2 years, because the 120 day and 2 month timeframes are inadequate. Clause 12A.12(5) may need to be amended because it appears to conflict with clause 12A.4(4). Unless the Authority plans to bring the different clauses into force at different times, it will not be workable as DDAs will be required to be signed before the DDA is made available to traders. Instead, clause 12A.12(5) should refer to 2 months (or, preferably, a much longer timeframe) after the DDA template has been made available to traders in accordance with clause 12A.4(4).
12A,16, 12A.17	ENA (p.33)	The prudential requirements are duplicated across the Code and the DDA. Prudential requirements could be referenced in one and detailed in the other.
12A.17(3)(a)	Unison (p.10)	Amend this clause as follows: "*… the cash deposit is elected, the distributor must pay a charge to the trader… at a per annum rate equal to the sum of the market rate for short term benchmark debt plus 5%...*" This is an issue of equity with an effective cross-subsidy between customers. The clause overly favours

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		traders and incentivises them to elect cash deposits for additional security. This is inefficient as distributors must pay beyond commercial rates. The cost is ultimately borne by customers.
12A.1(a), 12.A.13(a), 12A.21(a)	PwC (p.19)	The drafting implies the clauses do not apply to any distributor with a conveyance agreement with one customer, even where the rest of the distributor's customers are supplied under interposed arrangements. We assume this was not intended.
12A.2, 12A.13, 12A.21	ENA (p.30)	The clauses appear to exclude distributors operating with one or more consumers on conveyance agreements. If this is the case, most distributors would be ruled out of all provisions in Part 12A. If this is modified to capture ICPs for distributors with interposed agreements, there would be a clear distinction between customers on interposed agreements and those on conveyance agreements.
Schedule 1	WEL Networks (p.7)	The current drafting of core terms, use of examples of operational terms, and the introduction of Rulings Panel powers means that alternative approaches to currently proposed operational terms may not be maintained. WEL Networks makes "charter payments" directly to customers for breaching self-imposed loss of supply restoration timeframes and sees no good reason to change this well established and efficient practice.

Default distribution agreement – general comments	
Submitters	**Submission**
Eastland Network (p.2), ENA (pp.9-10)	Opposed to the introduction of a DDA.
Eastland Network (p.4)	There is asymmetry in the treatment of distributors and traders. For example, Schedule 2, clause 2.4(b) states that "the Trader must provide the information by 5pm on the 5th working day after the last day of each month". Clause 9.3(a) states "the distributor must invoice the Trader within 10 working days after the last day of the month to which the Tax Invoice relates". If a distributor does not meet the relevant deadline, the due date for payment is extended by a day for each day the Tax Invoice is late. There are no penalties imposed when a trader fails to provide the required information by the due date. In fact, where cashflows are an issue this could even be an incentive for traders to provide the

Default distribution agreement – general comments	
Submitters	**Submission**
	information late.
ENA (p.8)	Overall, ENA's economic consultants (Sapere) found: • none of the agreements negotiated under the MUoSA were detrimental to the Authority's statutory objective • current arrangements allow for innovation in contractual arrangements in the cases examined • in most cases the clauses in agreements that varied from the draft DDA better met the Authority's statutory objective.
ENA (p.8)	Supports measures that: • improve the market where those improvements satisfy the Authority's statutory objective • do not undermine other governing legislation such as Part 4 of the Commerce Act • are commercially practicable.
ENA (p.18), Powerco (p.2)	20 days is not enough time to negotiate an alternative agreement.
ENA (p.9), Orion New Zealand (p.7)	The Authority must have a strong case for the proposed change.
ENA (p.34)	Separating out additional services will raise transaction costs and may not encourage competition in those additional services. A number of activities that fall into this category are services currently provided by traders to distributors (for example, distribution of trust dividends). In the future this could also cover a range of activities that relate to distribution services. Removing the services means contracts will have to be duplicated.
Orion New Zealand (p.3)	A loss investigation service should not be part of the DDA. The Code adequately addresses this. It can be provided in a schedule of associated service and fees, should the distributor wish to provide it.
Orion New Zealand (p.4)	The DDA might lock in a particular conception of distribution services that negatively restricts future change. Such limitation means that terms favouring one trader over another might not relate to the distribution service and therefore must be contracted for separately and may be less transparent.

Default distribution agreement – general comments	
Submitters	**Submission**
Orion New Zealand (p.4), PwC (pp.17-18), Vector (p.11)	The balance of core and operational terms needs to be considered further. In particular: • the majority of clauses in Part III – Operational Requirements should be moved from core terms to operational terms (PwC pp.17-18) • service guarantee payments should be subject to negotiation (Vector p.11).
Orion New Zealand (p.7)	The DDA core terms should start with what parties have recently commercially agreed and, if the negotiations varied the MUoSA terms, only revert to the MUoSA with good reason.
PwC (p.17)	Disagree with large distributors developing operational terms for other distributors.
PwC (p.19)	Suggestions on how to improve the drafting of the DDA are made without prejudice to the view that the MUoSA should be retained.
PwC (p.22)	Clause 4 of the MUoSA should be reinstated. Some distributors have found this clause helpful in persuading smaller retailers that they are being treated equally. This is a standard type of clause found in many agreements relating to network access (for example, telecommunications) and, at worst, does no harm.
PwC (p.17), Vector (p.11)	The example operational terms should be removed. In particular: • instead, in each schedule, there should be principles for what the schedule is intended to achieve (PwC p.17).
PwC (p.19), ENA (p.7)	Further consultation is required.
PwC (p.15)	Schedule 2 of the MUoSA should be reinstated within the DDA, particularly as it relates to distributor discounts, rebates, and dividends.
PwC (p.16)	The number of retailers on a network should not materially influence distributors' total liability exposure, especially as the number has no relationship to the total damage suffered by customers. Something similar to the Vector UoSA should be included in the final DDA (or any updated MUoSA).
PwC (pp.16-17)	Either party should be able to terminate on 120 days' notice. A termination right is a standard feature of all contracts. Removing it would be problematic as it would enable any retailer to prevent contractual or operating model changes in the following situations: • where a distributor chooses to move from an interposed model to a conveyance model

Default distribution agreement – general comments	
Submitters	**Submission**
	• where a distributor purchased or merged with another distributor and seeks to merge the contractual terms across the new network • where a distributor decided that it needed to update its operational terms (for example, to reflect technological changes), In each of these scenarios, if one retailer refused to accept the changes it may not be possible for the distributor to run both models or both contracts simultaneously, meaning that all retailers would effectively have a veto over such changes. This is not sensible or commercially acceptable.
Unison (p.4), Vector (p.11)	Good Electricity Industry Practice should be reinstated. In particular: • in clauses 2.2, 2.3, and 24.5(b) (Unison p.4).
Vector (p.11)	The DDA is not drafted optimally and is unclear. It is also challenging to assess the effect of some provisions, meaning the DDA is likely to lead to greater contractual uncertainty and disputes. Vector has not sought to identify all material drafting issues at this stage. If a standardised agreement is required, it should be prepared by industry participants.
Vector (p.12)	There are a number of matters currently covered in Vector's UoSA that should be covered in the DDA.
Wellington Electricity Lines (p.2)	Wellington Electricity Lines is already financially incentivised to manage both the frequency and duration of interruptions through Part 4 SAIDI and SAIFI performance measures.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Cover pages	Orion New Zealand (p.12)	Delete the agreement, commencement date, and signature pages. A formal execution of a DDA is not necessary or appropriate. The DDA could become the agreement via deeming under, for example, clauses 12A.9 and 12A.12 and so execution would not apply in such cases. The entered commencement date on the agreement page is not consistent with the deemed date under clauses 1.1 and elsewhere. Further consideration needs to be given as to how the contract is formed and how the terms and the Code interact. It may be best if the DDA makes specific reference to the Code.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Title	Orion New Zealand (p.12)	Agree with removal of "use of system".
Title	Orion New Zealand (p.12)	Change the title page to "default delivery services terms." This is consistent with the fact that the DDA is not an agreement as normally understood, and that the document covers the entire delivery service, including transmission, and not just distribution.
Title	Orion New Zealand (p.12)	This page should also identify the distributor whose terms it is.
2, 2.2, 2.3	ENA (pp.33-34)	At the very least clause 2.2(a) should include GEIP in association with the service levels and GEIP should similarly be used consistently throughout the DDA. This is because: • the shift away from GEIP in the 2012 MUoSA and its omission in the DDA is a major imposition by the Authority • the GEIP is an objective and well defined standard applying widely to the obligations of both parties • the GEIP benefits consumers and the industry by providing certainty • the replacement terms for GEIP are less well defined. This will raise compliance costs and, in turn, conflict with Part 4 of the Commerce Act • no case has been made to drop the GEIP standard • removing GEIP as an over-arching objective is likely to undermine the Authority's statutory objective • if the Authority wants to add consideration of its statutory objectives, the agreements would still have to be commercially and operationally practicable and reflect the fact that parties are operating and utilising infrastructure.
2	Orion New Zealand (p.3)	In relation to clause 2.2I, the obligation on distributors to publish loss factors and to "investigate adverse trends in losses" (via clause 6) is inconsistent with the Authority's proposal to delineate distribution services.
2	Unison (p.11)	Amend clauses 2.2 and 2.3 as follows: "*2.2 Summary of Distributor's general obligations: In summary, this Agreement requires the Distributor*

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Clause/ Schedule	**Submitters**	**Submission**
		to provide distribution services to the Trader in accordance with good electricity practice… *2.3 Summary of Trader's general obligations: In summary, this Agreement requires the Trader to perform obligations in accordance with good electricity practice…*" Removing GEIP moves further away from an efficient market approach and towards more rigid terms that may be inefficiently costly. GEIP is consistent with the objectives of efficiency and reliability.
2	Orion New Zealand (p.12)	A standard of GEIP should be established upfront as a key guiding principle.
2	Orion New Zealand (p.12)	Amend clause 2.2(g) to include ", reconnect" after "disconnect", and amend clause 2.3(g) to include ", reconnected" after "disconnected". Reconnection is one of the core services.
2.2, 2.3	Counties Power, Electra, Top Energy, North Power (p.6)	All obligations should be subject to GEIP. The submitters strongly support the ENA submission in this respect. The GEIP is widely adopted and provides certainty.
2.2,2.3	Wellington Electricity Lines (p.25)	Insert GEIP into these clauses. Although this clause does not itself apply any obligation to the parties, it sets the tone of the agreement.
2.2, 2.3, 4.1, 4.3, Sch 1	PwC (p.20)	These clauses create absolute obligations. It is not feasible to deliver services to the exact standard specified in the agreement, or it may be very expensive. The term "the distributor/trader will endeavour in accordance with good electricity industry practice to" should be used in these clauses. GEIP is a well-understood term and a reasonable standard.
3	Powerco (p.24)	Add new clause 3.8 as follows: "*At all times while an ICP is subject to a valid Direct Customer Agreement, or for any other reason is not being supplied on an interposed basis, the Distributor has no obligation to the Trader under this Agreement:*

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Clause/ Schedule	**Submitters**	**Submission**
		(a) to supply Distribution Services in respect of that ICP; *(b) to meet the Service Standards in respect of that ICP, and will not be liable for any Service Guarantee Payments in respect of that ICP; or* *(c) to comply with clause 14.2 in respect of that ICP.*" It is unclear which provisions apply while an ICP or customer is conveyance only, and which do not. This may result in the DDA cutting across or doubling up the arrangements agreed by the distributor and the customer under a direct customer agreement. In particular there is no clear statement that: • there is no obligation to provide "distribution services" at conveyance only ICPs. • the service standards and service guarantee payments do not apply to conveyance only customers/ICPs. • the pricing consultation provisions in clause 7.4 do not apply to conveyance only customers/ICPs (this is inconsistent with clause 12A.19(1) of the Code).
3	Orion New Zealand (pp.12-13)	Amend clause 3.1 by deleting everything after "request", and adding "Any conflict between the terms of the Direct Customer Agreement and the Electricity Supply Agreement will be resolved pursuant to clause 3.6(b)". Having the specific limitation in the DDA at clause 3.1 is unnecessary. This is partly because: • the fixed term contract may readily accommodate such a change (eg, larger customers usually contract on a pass through basis) • the most likely way to discover whether a fixed term agreement exists and is relevant is for the distributor and the customer to seek to contract on this basis, and for the trader to then challenge this. Clause 3.6(b) seems adequate to deal with this.
3	Unison (p.11)	It is unclear why the draft DDA includes provisions about conveyance only agreements when such contracts are excluded from subpart 1 of Part 12A. The Authority should give clear direction on its approach to these type of agreements, the status of the current conveyance MUoSA, and how these agreements will be treated in the future.

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3	Orion New Zealand (p.13)	Delete clause 3.2(b)(ii) and instead make clause 3.2(b)(i) a requirement on the distributor. Replace clause 3.3 with "*The Trader must not supply electricity on an energy only basis to an ICP unless there is a valid Direct Customer Agreement in force in relation to an ICP as indicated by the Registry field that indicates that the Distributor is directly billing the customer*". Notification by the distributor and compliance by the trader should be clarified.
3.1	Vector (p.13)	Clause 3.1 allows distributors to enter into an agreement directly with a consumer provided the consumer is not in a "fixed term agreement" with the trader. It is not clear whether "fixed term agreement" applies only to the supply of line services, or to the supply of electricity and line services. The more sensible interpretation is the former as traders will often have a fixed term agreement for supply of electricity with large consumers that may also have a direct contract with a distributor. The drafting of the DDA should be amended to make this clear.
3.1	Powerco (p.22)	Amend clause 3.1 as follows: "*3.1 Distributor may enter into Direct Customer Agreement with a Customer: The Distributor may enter into a Direct Customer Agreement with a Customer provided that the Direct Customer Agreement does not oblige the Customer to take any action that will constitute a breach or a repudiation of any existing Customer Agreement with the Trader*." Clause 3.1 could prevent the distributor from entering into a direct customer agreement wherever the agreement between the customer and the trader includes a fixed term, even if the fixed term was ended and the agreement is now on a rolling basis. Presumably the Authority's intention was only to prevent a direct customer agreement cutting across a commitment that a customer has made to continue taking line function services from the trader for a particular period. This intention is best captured by the proposed change.
3.1	Wellington Electricity Lines (p.25)	Delete reference to "at the Customer's written request provided that any existing Customer Agreement between the Trader and the Customer is not a fixed term agreement" in clause 3.1. The distributor may initiate this. Although the distributor will engage with the customer, it will not be at the customer's written request. It is possible that the customer may refuse to provide a written request.
3.2(b)(ii)	Powerco	Amend clause 3.2(b)(ii) as follows:

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Clause/ Schedule	**Submitters**	**Submission**
	(p.23)	"*For each relevant ICP, either:* *(i) in accordance with the requirements of the Code relating to information included in the Registry, update the Registry field that indicates that the Distributor is directly billing the Customer in respect of that ICP, except where the Distributor and the Trader have agreed in writing that the Trader will be responsible for billing the Customer; or …*". In many cases, even where a direct customer agreement is in place, the parties will agree that the trader is to remain responsible for billing. This should be recognised as an exception in clause 3.2(b)(ii).
3.3	Wellington Electricity Lines (p.26)	Delete "knowingly" as this information is on the registry.
4	Unison (pp.11-12)	Include the following in clause 4.4(d)(i): "*Maintain a safe environment (<u>including for the purpose of maintaining public health and safety</u>), consistent with the Distributor's health and safety policies.*"
4	Unison (p.12)	Replace "as soon as possible" with "as soon as reasonably practicable", which is a more common and widely understood and consistent with clause 14.2 of the DDA.
4	Orion New Zealand (p.13)	Delete the requirement to acknowledge. The requirement is onerous, unnecessary, and could be costly. Distributors are obliged to restore within certain timeframes, and will be providing updates on unplanned outages as set out in the operational terms.
4	Orion New Zealand (p.13)	Delete the requirement to have a system emergency event policy. This is because: • the development of such a policy may be costly and time consuming • it may restrict distributors' ability to respond in innovative ways to what is potentially a very wide range of circumstances • system emergency events include grid emergencies when distributors may be operating under the control and instruction of the system operator • if the policy is needed, it could be a Code requirement

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Clause/ Schedule	**Submitters**	**Submission**
		• distributors are already required by the Code to produce, regularly update, and publish a rolling outage plan for managing energy shortages. It is unclear what unmet need the system emergency event policy would address, taking into consideration the existing requirements in the Code.
4	Orion New Zealand (p.13)	Delete clause 4.11 and, if necessary, relocate the inherent limitation of liability to the liability section. Clause 4.10 could then reference Schedule 1 where service guarantee payments, if any, are set out. Clause 4.11 implies that there will be service guarantee payments. Not all distributors make such payments.
4	Orion New Zealand (p.14)	The reference to operational terms include the word "must" in italicised sections (for example S1.6). Italicised terms are optional.
4.3	Powerco (p.23)	Amend clause 4.3 as follows: "*Managing load on the Network during a System Emergency Event: The Distributor must manage load on the Network during a System Emergency Event in accordance with the Code, and using reasonable endeavours in accordance with Good Electricity Industry Practice to comply with the Distributor's System Emergency Event management policy set out in Schedule 4*". Under the proposal the distributor has an absolute obligation to comply with its system emergency event management policy. Given the nature of system emergencies, GEIP is a more appropriate standard.
4.4	Wellington Electricity Lines (p.26)	Add "and public safety policies" at the end of clause 4.4(1)(i). This is added for clarity and it also acknowledges the Health and Safety at Work Act 2015.
4.7	Wellington Electricity Lines (p.26)	Delete clause 4.7. This is an operational provision in Schedule 5, and should not be a core term. Otherwise it does not accommodate various distributor and trader operations and systems, and may inhibit innovation. Not all distributor systems will support acknowledgment of receipt.
4.8	Wellington Electricity	Insert GEIP. This type of work will necessarily impact customers and GEIP will ensure that the work can be scheduled to support supply reliability.

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	Lines (p.26)	
4.9	Wellington Electricity Lines (p.26)	Insert reference to "trader" in clause 4.9. Both parties are involved in the planned outage communication processes and so both should be equally required to comply.
4.10	Wellington Electricity Lines (p.27)	Amend references to "as soon as possible and no later than the timeframe set out in Schedule 1" to "as far as is reasonably practicable within the timeframe set out in Schedule 1". Factors outside the distributor's control can impact supply restoration, and the distributor cannot guarantee restoration times. The wording proposed may overlap with the Health and Safety at Work Act 2015 and Part 4 of the Commerce Act.
4.11	Wellington Electricity Lines (p.27)	Replace all references to "Service Guarantee Payments" with "Service Payments" as the distributor cannot guarantee continuous service and the distributor is already subject to service quality payments under Part 4 of the Commerce Act.
5	Orion New Zealand (p.14)	In relation to clause 5.1, either: • revise the clause fundamentally (along the lines of the Vector agreement); or • add the following text (or similar) "For the avoidance of doubt, nothing in this clause prohibits the distributor continuing to send ripple or other load management signals even though the distributor does not provide specific Price Categories or Price Options." Orion does not control load in the way conceived of in clause 5.1. Rather, it provides price signals that encourage and reward demand side response. For the majority of connections Orion does not have specific price categories or price options for such response and does not know whether the retailers' price categories reflect Orion's price signals. Orion does not know whether any equipment at particular connections exists or responds to those signals (Orion only sees the response in aggregate). As clause 5.1 is currently drafted, it is not clear whether Orion's approach is consistent with the DDA. Clause 5.1 needs to be clarified as it potentially poses a risk to Orion's ability to continue managing load as it currently does. There could be a dramatic reduction in security of supply in the short term and a significant increase in network investment in the long term. This clearly cuts across Part 4 of the Commerce Act. Orion is happy to discuss this with the Authority.

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5	Orion New Zealand (p.15)	Appendix D.15 indicates that the Authority considers Vector's clause 6.1(a) is "an improvement on the MUoSA drafting", but this is not reflected in DDA clause 5.1.
5	Orion New Zealand (p.15)	How does the distributor know which trader price option the customer has chosen? Clause 5.1 relates to the choice of price options, both in relation to clause 8.3, and the wider question of who creates customer price options and how these relate to distribution pricing. Orion considers that traders create customer price options.
5.1	Vector (p.13)	Amend clause 5.1 to reflect Vector's clause 6.1 to ensure that customers are offered distributor load control services. Expand the clause to reflect clause 6.1(b) of Vector's UoSA, which encourages innovation by allowing for other services in respect of the consumer's load that may be separate to the low control price option.
5.1	Powerco (p.24)	Amend clause 5.1 as follows: "*Distributor may control load: Subject to clause 4.3, if the Distributor provides a Price Category or Price Option that provides for a non-continuous level of service by allowing the Distributor to control part or all of the Customer's load (a "Controlled Load Option"), and the Customer's ICP is allocated to the Price Category for the Controlled Load Option, the Distributor may control the relevant part of the Customer's load in accordance with this clause 5, Schedule 1 and Schedule 8.*" This is because the distributor does not have visibility of whether or not the consumer has taken up the trader's controlled load price option.
5.1	Wellington Electricity Lines (p.27)	Revise clause 5.1 to: • ensure that the distributor's non-continuous supply Price Category is passed on the customer by the trader • provide for future load management innovation (ie, the "Other Load Control Option").
5.1	PwC (p.20)	The proposal states that this clause has been amended in the DDA from the MUoSA version to reflect the approach taken by Vector. This has not been done.
5.1	ENA (p.39)	Amend clause 5.1. Under the DDA, the provision for load management relies on the distributor providing a price category or price option and the retailer providing a corresponding price-tariff that the

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		customer takes up. Distributors have no control over retailer tariffs and, generally have no direct relationship with the customer. Clause 5.1(a) does not reflect how distributors provide for a non-continuous level of service. A distributor provides a price category or price option and "charges the retailer on the basis of the controlled load option with respect to the consumer". Clause 5.1 should similarly provide for the reality of interaction between the retailer and the distributor. Some distributors do not provide a controlled load option in order to provide a load control service. Vector's UoSA clause 6.1(b) should be adopted in the DDA to cater for such services that are not provided under a controlled load price option.
5.3	Powerco (p.25)	Amend clause 5.3 as follows: "*Control of load by an Entrant if some load is controlled by an Incumbent: If either party (the "Entrant") seeks to control part of a Customer's load at a Customer's ICP, but the other party (the "Incumbent") has obtained the right to control part of the load at the same ICP in accordance with clause 5.1 or 5.2 (as the case may be), then except to the extent that the Incumbent agrees otherwise in writing, the Entrant may only control the part of the Customer's load that: …*" This is because it would be preferable if the parties were able to agree alternative load control arrangements *as part of* a DDA.
5.3	Powerco (p.25)	Add the following to the end of clause 5.3: "*Notwithstanding the foregoing, the eligibility criteria specified by the Distributor for a controlled load option may include a requirement that the Trader agree to the Distributor controlling the relevant part of the Customer's load in accordance with this clause 5 and Schedule 8, in which case, while the relevant ICP is allocated to that controlled load option, the Trader will be deemed to have agreed to the Distributor controlling that load accordingly, and the Trader will ensure that it holds the rights necessary to enable the Distributor to do so.*" If the trader offers a pricing plan incorporating a controlled load option from the distributor, then where a consumer takes up that offer the distributor should be entitled to control the relevant load, regardless of whether the trader is the "incumbent" holder of load control rights at that ICP. This is controlled by the trader, and it is the trader who updates the registry to indicate that the ICP should be allocated to a controlled load option.

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		The suggested drafting requires the trader to ensure it has the rights necessary to enable the distributor to control load. Only the trader can ensure it has the necessary rights, and the functionality of the controllable load.
5.4	Powerco (pp.25-26)	Insert new clause 5.4 as follows, while retaining and renumbering the subsequent clauses: "*Responsibility for enabling and disabling Network Load Control Equipment: If the Distributor provides a Controlled Load Option utilising Network Load Control Equipment, then without limiting clause 5.8, the Trader will ensure that the Network Load Control Equipment is enabled for each ICP allocated to a Controlled Load Option, and disabled for each ICP allocated to a Price Category that is not a Controlled Load Option. The Trader acknowledges that, until it is disabled, the Network Load Control Equipment will control the relevant part of the Consumer's load in response to signals from the Distributor's Load Signalling Equipment, and the Distributor will not be taken to be in breach of this agreement by reason of controlling that load accordingly.*" Insert new definition in clause 33.1: "*Network Load Control Equipment*" *means Load Control Equipment that is installed at a Customer's Premises and designed to respond to load control signals injected into the Network. Examples include ripple relay receivers and pilot wire (cascade) systems.*" Because signalling for ripple relays and pilot wires cannot discriminate between individual ICPs and their tariff option allocation, the distributor is reliant on the trader to ensure that these items are enabled or disabled.
5.6	Wellington Electricity Lines (p.28)	Insert reference to network security in clause 5.6. System security and network security are separate functions and should be identified separately.
5.6, Schedule 8	ENA (p.39)	There is an ambiguity because clause 5.6 may not capture what is referred to separately from system security being S8.1(b)(i). The category "Network management: Managing network system security"; should also be excluded from clause 5.6. It should read: "*trader to make controllable load available to the distributor for management of system security and network system security*".

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		The other categories referred to in S8.1 would remain the subject of clause 5.6.
5.9	ENA (pp.39-40)	This clause is an example of how the DDA is not future proofed and potentially discourages innovation. The load control provisions need to be future proofed, and cater for instances where a distributor's visibility and controllability for network and system security could be compromised.
5.9	Powerco (p.26)	Amend clause 5.9 as follows: "*Assignment of load control rights: A party that has obtained the right to control a Customer load in accordance with clauses 5.1 or 5.2 may assign that right to the other party or a third party, provided that the rights holder has obtained the right to make such an assignment from the Customer.*" The reference in clause 5.9 to assigning load control rights to "another party" could be more clearly expressed to encompass a third party.
5.9	Wellington Electricity Lines (p.28)	Amend clause 5.9 so that compliance with the relevant clauses of the DDA is a prerequisite for any party accessing the customers' load. This supports supply reliability.
6	Orion New Zealand (pp.15-16)	If new obligations are to be placed on distributors or traders, these should be done via the Code and only after further consultation. This is because: • the obligation to calculate loss factors, publicise loss factors and associated categories and codes and to assign loss categories codes to ICPs, is in the Code already. Therefore, any obligation to use the Loss Factor Guidelines should only be done via the Code, and only after consultation. It is not currently a Code obligation • investigation of adverse trends in non-technical losses by the distributor should only be provided on a voluntary basis, and be able to be charged for, possibly as an associated service. A distributor may incur costs to carry out this task and may be a less efficient provider of this service than, for example, the reconciliation manager • the DDA includes an obligation on traders to "minimise" non-technical losses. If this is a sensible obligation it should be in the Code (in the Parts that deal with the preparation of submission information if the Code is not already adequate in this area) rather than the DDA. Minimise is the wrong word as non-technical "losses" are not restricted to sign – they can be gains, and minimising

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		losses would mean maximising gains by overstating actual consumption.
6	Orion New Zealand (p.3)	The Authority should separately consult on the obligation to use the loss factor guidelines.
6	Vector Limited (p.13)	Abnormal losses are best addressed through industry reconciliation processes.
6	Orion New Zealand (p.15)	Delete clause 6. This is not part of the distribution service. The DDA should be able to encompass optional additional services such as loss investigation.
6.1	Counties Power, Electra, Top Energy, North Power (p.6)	Add the following to the end of clause 6.1: "*The trader will provide all information requested by the distributor pursuant to this clause 6.1, at no cost*." Clause 6.1 is silent as to who is responsible for such costs. It would be unreasonable for the distributor to be required to pay the costs, particularly given the lack of control the distributor has over these costs.
6.1	Wellington Electricity Lines (p.29)	Reword clause 6.1 so that the distributor may obtain information from the reconciliation manager for the purpose of calculating Loss Factors. This provides flexibility to obtain information from any source necessary.
6.5, 6.6	PwC (p.20)	The requirement for traders to investigate and minimise, in accordance with GEIP, non-technical losses is welcome. The majority of losses experienced are non-technical in nature and it is important for the DDA to recognise this. As the majority of losses are likely to rest with the trader it would be more appropriate for the traders to take the lead in investigating adverse trends in losses under clause 6.6.
6.6	Counties Power, Electra, Top Energy, North Power (p.6)	Add the following to the end of clause 6.6: "*The trader will provide the distributor, at no cost, any additional information the distributor reasonably requires in order to investigate abnormal movements in losses*". It is reasonable and necessary to require the trader to provide such information.

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6.6	Wellington Electricity Lines (p.29), ENA (p.36)	As the trader is required to investigate and minimise, in accordance with GEIP, the non-technical losses in clause 6.5, the reciprocal clause 6.6 should read "the distributor must investigate and minimise, in accordance with good electricity industry practice, technical losses". Each party will investigate losses that it is in the best position to investigate.
6.8	Powerco (p.26)	Amend clause 6.8 to clarify that if a dispute over loss factors is referred to arbitration, the arbitrator will only change the loss factor notified by the distributor to the extent necessary to correct an error in methodology or an error in input information. This is because the clause does not make it clear what the arbitrator would be asked to decide.
7	Vector Limited (p.13)	Add the following to clause 7.7 "*an error is not a price change for the purpose of clause 7.2*". Otherwise, section 7 implies that an error can be fixed only once in any period of 12 months unless the agreement of the trader is obtained.
7	Orion New Zealand (p.16)	Redraft clause 7.2 to allow only one change in any year ending 31 March. Clause 7.2 is unduly restrictive – for example, a distributor may delay a price change for a month due to a need to consult further. As drafted, the distributor could not get back to a normal 1 April cycle unless it waited 23 months for its next price change.
7	Orion New Zealand (p.16)	Clause 7.6 should reference clauses 7.4 and 7.5, rather than clauses 7.3 and 7.4.
7	Orion New Zealand (p.16)	It is not clear whether the obligation in clause 7.4 is best placed in an agreement or the Code. The wording of the proposed Code is arguably superior to the wording of DDA clause 7, in particular because the Code does not use the confusing term "pricing methodology" but instead uses "pricing structure". Clause 7.4 appears to repeat what is in draft Code clause 12A.19 (currently clause 12A.7). The drafting note for clause 7 says it now includes clause 12A.7. This appears to be an error.
7, 8, 33.1	PwC (p.21), Vector Limited (p.14)	Use "price structures" to replace the term "tariff structures" (not "pricing methodologies"). The term "pricing methodologies" is used in Commerce Commission regulation to mean something different.
7.1	Powerco	Amend clause 7.1 as follows:

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	(p.27)	"*Distribution Services pricing information: The Distributor's Pricing Methodology, and a schedule of Price Categories, Price Options (if any), and Prices, are set out in Schedule 7. The Distributor may amend the Pricing Methodology, Price Categories, Price Options and Prices from time, in accordance with this clause 7, and subject to the Code and any other applicable law.*" It is important this clause is clear that distributors are free to change pricing methodology, price categories, price options and prices, subject only to the constraints set out in the other provisions of clause 7, as well as the Code and the Commerce Act.
7.1	Wellington Electricity Lines (p.29)	Amend clause 7.1 to read "a schedule of Price Categories, Price Options (if any), and Prices, are available as described in Schedule 7". Most distributors set out Price Categories and Pricing Options on their websites. Having these in the DDA will require annual updates. Instead, Schedule 7 should contain a link to the relevant website. This is a more efficient and practicable.
7.2	Powerco (p.27)	Amend clause 7.2 as follows: "*Price changes: Unless otherwise agreed with the Trader, the Distributor may not change its Prices, Price Categories or Price Options more than once in any period of 12 consecutive months, unless a change is a material increase to one or more existing Prices and results from a change in:* *(a)… (b)… (c)…* *To avoid doubt, this does not prevent the Distributor from introducing a new Price Category or Price Option at any time.*" Clause 7.2 limits pricing changes to "a material increase in one or more existing Prices". Therefore, even if other criteria are satisfied, the distributor can only change the existing tariff rates, and cannot introduce a new tariff or change the criteria for a price category.
7.4	Wellington Electricity Lines (p.30)	Change "Pricing Methodology" to "Pricing Structure". Pricing Methodology is a term used by the Commission. It would be inappropriate for distributors to consult with traders in relation to its obligations under Part 4 of the Commerce Act.
7.4(a)	Powerco (p.27)	Delete clause 7.4(a). The clause creates a quasi-regulation-making power for the Authority, without any of the process

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		safeguards for making amendments to the Code.
7.5	Powerco (p.27)	Delete clause 7.5, and rely on clause 12A.19 of the Code instead. Clause 7.5 doubles up clause 12A.19, but uses slightly inconsistent language.
7.5	Powerco (p.28)	Amend clause 7.5(a) as follows: "*give the Trader at least 40 Working Days' notice of the Price change, unless…*" The clause leaves open arguments about the validity of notification where the distributor gives more than 40 Working Days' notice.
7.6	Powerco (p.28)	Amend clause 7.6 as follows: "*7.6 Pricing Methodology change and Price change disputes: Once a change to a Pricing Methodology has been finalised in accordance with clause 7.4, or a Price change is notified in accordance with clause 7.5, the Trader may raise a Dispute under clause 23 in respect of the Pricing Methodology or the Price change (as the case may be) only on the grounds of non-compliance ~~if the Trader considers that the Distributor has not complied~~ with clause 7.3 or 7.4. If a Dispute is raised, the Trader must continue to pay the Distributor's Tax Invoices until the Dispute is resolved.*" We assume the intention is that traders can only dispute pricing or pricing methodology on procedural grounds, rather than the substance of the pricing or pricing methodology. The current wording could leave the door open for substantive challenge.
7.7	Powerco (p.28)	Amend clause 7.7 as follows: "*Changes containing an error: If the Trader identifies an error in the Pricing Methodology finalised and Published in accordance with clause 7.4, and the error is obvious on its face (either from the Pricing Methodology itself or by reference to previous versions circulated by the Distributor for the purposes of consultation), or an error in a Price change notified in accordance with clause 7.5 that arises from an obvious error in applying the Pricing Methodology, the Trader must bring that error to the Distributor's attention as soon as possible after becoming aware of the error. The Distributor may correct such an error, including an error that it identifies itself, without following the process under clause 7.4 or giving notice under clause 7.5(a) (as the case may be)~~, provided that the correction of the error must not have a material effect on the Trader~~.*"

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		There is little purpose in correcting immaterial errors. The distributor should be able to correct material errors. This should not be controversial so long as the errors are obvious, meaning they should not come as a surprise to traders.
7.7	Wellington Electricity Lines (p.30), ENA (p.37)	Amend clause 7.7 so that either party is able to identify an error.
7.7	ENA (p.37)	The material effect standard is unreasonable. Materiality would have to be relative to the size of the retailer, otherwise this creates an exemption from the impact of an error for smaller retailers.
8	Orion New Zealand (p.17)	Clarify clause 8.10. The clause needs to be clear that the obligation to pay charges that were incurred before the relevant dates remain. For example, if charges for any ICP already billed include any estimates or amounts that are subsequently revised in relation to the prior period, these can still be washed up with the trader even though it is not responsible for ongoing charges (the revisions may result in credits to the Trader).
8	Orion New Zealand (pp.16-17) Unison (p.4)	Redraft clause 8.3. Orion considers clause 8.3 inappropriately requires the use of a voluntary EIEP. More generally, clause 8.3 is not sufficiently futureproof to a situation where interval data becomes the normal basis for distributor billing, and third party load management systems become more common. Unison recommends additional wording be added to ensure equity between traders and distributors regarding treatment of errors in selecting incorrect price codes and price categories. The process for allocation, review, correction and redress in relation to price categories is clear, but clause 8.3 has no such provisions and yet is a significant source of errors with material financial implications for consumers, distributors and retailers.
8	Unison (p.12)	Add the following at the end of clause 8.3: "*… if it is found at any time that the Trader has been overcharged or undercharged by the Distributor as a consequence of the Trader's selection of a Tariff Option for a meter register that does not reflect the meter register code in the Registry, clause 9.8 will apply.*"
8	Vector Limited	Amend clause 8.2 so that traders can only request a reallocation once per year for residential

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	(p.14)	consumers (unless the ICP has a new customer). Otherwise it will encourage seasonal arbitrage of residential Price Categories, due to the Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004. It would also lead to great cross-subsidies within the market and enable seasonal arbitrage. Alternatively, repeal the Low Fixed Charge regulations.
8	Orion New Zealand (p.16)	Redraft clause 8.1(c). In clause 8.1(c)(ii) the new "must" should be a "may". Clause 8.1(c) sets out the business rules that might apply "if known and relevant", so "must" is inappropriate. Subclauses 8.1(c)(i)-(v) are examples of attributes, and would be better listed under subclause 8.1(b) as an "including but not limited to".
8.1	Powerco (p.29)	Amend clause 8.1(c)(ii) as follows: "*(ii) the meter register configuration(s) of the Metering Equipment and any Load Control Equipment installed for the ICP~~, which must determine the Price Option or Price Options that apply if more than 1 Price Option is defined for the relevant Price Category~~;*" Clause 8.1(c)(ii) reads as if the meter register configurations of the metering equipment and load control equipment will be determinative in every case – which contradicts the remainder of clause 8.1.
8.2	ENA (p.38)	Clause 8.2 provides for prices categories to be changed on request. The Vector UoSA provides a qualifier so that such requests should be made no more frequently than annually, preventing traders from being able to arbitrage prices.
8.3	Powerco (p.29)	Amend clause 8.3 as follows: "*Trader to select Price Option to match meter register configuration: If the Distributor provides options within a Price Category that correspond to alternative eligible meter register configurations ("Price Options"), the Trader must select the Price Option that corresponds to the configuration of each meter register installed at the relevant ICP, and is otherwise available for the relevant ICP based on the eligibility criteria for that Pricing Option, and notify the Distributor of that selection within 10 Working Days after its selection using the appropriate EIEP. If the meter register configuration at an ICP is changed at any time, the Trader must change the Price Option to match the new configuration and notify the Distributor of the change using the appropriate EIEP within 10 Working Days after the*

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		change." It is important to clarify that the trader must only select a price option where all eligibility criteria, including the meter register configuration, are satisfied.
8.3-8.5	ENA (p.38)	The goal for pricing practices is accuracy and integrity. Incorrect price categories or price options may be the result of distributor action or trader action. Distributors issuing a credit note to traders in these circumstances should either be waived or be reciprocated, depending on where the fault for the misallocation lies. Clause 8.3 establishes that there will be price options. The MUoSA and now DDA (8.4) allow that a trader can request the category allocation. If there is a correction under 8.5 the distributor needs to change the price (and billing) it applies to the customer and issue a credit note where backdating applies. This suggests that the distributor will compensate the trader for the error, but the error may have come from the trader (under the Code the responsibility for the meter categorisation in the registry and the determination of the price category lies with the trader).
8.5	Powerco (p.29)	Insert a new clause 8.7 as follows, and renumber other clauses accordingly: "*Trader's obligations:* *(a) Within 20 Working Days of the Trader becoming responsible for a particular ICP, the Trader will provide the Distributor with any information and/or evidence requested by the Distributor and required by Schedule 2 to enable the Distributor to allocate that ICP to the correct Price Category. Within 20 Working Days of the Trader becoming aware of any change to that information which would entitle the Distributor to allocate the corresponding ICP to a different Price Category, the Trader will promptly notify the Distributor and provide any information or evidence requested by the Distributor and required by Schedule 2 to enable the Distributor to allocate that ICP to the correct Price Category. The Trader will ensure that any information and/or evidence provided under this clause is accurate and complete.* *(b) If as a result of a breach of sub-clause (a) an ICP is allocated to a Price Category for which it is not eligible, or remains allocated to a Price Category for which it is no longer eligible, ("Misallocation"), then when the Distributor becomes aware of the Misallocation, the Distributor will be entitled to revise the Distribution Service charges applied in respect of that ICP for the period of*

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		the Misallocation, to reflect any higher charges that the Distributor would have been entitled to apply for that same period but for the Misallocation. However, the Distributor cannot revise charges under this clause 8.7 for any period earlier than 14 months prior, unless agreed otherwise in writing." If an ICP has been incorrectly allocated to a Price Category as a result of a trader error the distributor should be entitled to charge the trader for any undercharging that occurred. Otherwise traders have little incentive to ensure the accuracy of the information provided to distributors, and in fact may even have a perverse incentive in the other direction. The reference to "15 months" should also be amended to "14 months" to match market practice on revision periods, and remove the need for out-of-cycle (manual) wash-ups.
8.5, 8.7	PwC on behalf of 20 distributors (p.21)	Clause 8.5 requires a distributor to compensate the trader in certain circumstances. However, the trader is not required to compensate the distributor under 8.7. Either both parties should be required to pay, or neither should.
8.5, 8.6, 8.7	ENA (p.38)	The DDA is biased against distributors. If a distributor makes an error they pay a penalty, but this is asymmetric. The provisions should apply to both traders and distributors, depending on the source of the corrections. Also "12A. Principles" reflect reasonable requirements on everyone except distributors. Where a customer has been allocated to a price category on the basis of information from the customer or retailer that is misleading or incorrect, the distributor should be able to apply the correct price category either to the applicable change date or to a maximum of 15 months, whichever is the lesser. The distributor should also be able to apply the price category in the month following notification to the trader.
8.5, 8.7(b)	Wellington Electricity Lines (pp.30, 31)	This clause is asymmetric because trader notified reallocations are implemented with immediate effect and distributor notified reallocations are implemented after 40 working days. One or the other should apply to both parties. Applying a corrected Price Category may result in an increase in line charges as well.
8.7(b)	Powerco	Amend clause 8.7(b) as follows:

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	(p.30)	"*(b) unless the Trader is able to provide evidence to the Distributor's reasonable satisfaction within 10 Working Days of the Distributor's notice that the current Price Category has not been Incorrectly Allocated, the Distributor may allocate the Price Category that it considers appropriate to that ICP (acting consistently with clause 8.1 ~~reasonably and, if the Distributor identified more than one eligible Price Category in its notice, taking into account the Trader's or the Customer's preferred Price Category as communicated to the Distributor by the Trader),~~ and may commence charging the Trader for Distribution Services in accordance with that Price Category after a further 40 Working Days.*" The discretion in clause 8.7(b) is worded differently from the similar discretion in clause 8.1 relating to initial allocation. There is no reason to take two different approaches.
8.10	Orion New Zealand (p.17)	Delete clause 8.10(c). If clause 8.10(a) says "for and from the date…" rather than "for the day…" then clause 8.10(c) is not needed. Clause 8.10(c) appears to require the distributor to carry out vacant site disconnections. This is not a service that all distributors provide, and the clause is not needed.
9	Wellington Electricity Lines (p.31)	Billing and payment functions should be in the operational section of the DDA as each party may have different processes. Billing and payment provisions in the core terms may impose costs, and will inhibit innovation.
9	ENA (p.37)	Billing should be an operational term. Traders have different preferences. Distributors have different billing methods. In principle, variations in operational terms should reflect differences in operational approaches across distributors.
9	Vector Limited (p.14)	Billing timeframes and procedures should be an operational term and moved to a schedule so that existing billing practices may continue. A single approach would be difficult because distributors have significantly different practices.
9	Orion New Zealand (p.17)	Reconsider core/operational terms balance. Clause 9 is prescriptive around timing and process. Much of the section would be better placed in the operational terms to allow flexibility to accommodate some existing variety of practice. The process of billing and associated systems can be expensive, time consuming, and risky to change. Such changes should not be driven by the DDA. For example: • Orion invoices partly in advance. As drafted, clause 9.3 does not allow this • Orion has charges that require a full season (May to August) of data to calculate. These cannot, at

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		least not without adding complexity, be washed up according to a cycle that is triggered by just one of those months becoming available, or changing.
9	Orion New Zealand (p.18)	The DDA core terms should permit the use of money adjustments rather than require them. Clause 9.3(d) requires that wash-ups attract use of money adjustments. For Orion this would involve a potentially costly system change to deal with what is essentially a zero sum set of unders and overs and associated interest payments.
9.10	Counties Power, Electra, Top Energy, North Power (pp.6-7)	Insert the following at the end of clause 9.10: "*The trader agrees to pass onto the relevant customer any refund of distribution services charges made by the distributor in respect of a continuance interruption for 24 hours or longer*". The customer is ultimately affected and should receive the refund.
9.10	Counties Power, Electra, Top Energy, North Power (p.6)	Insert the following after "network" in the first sentence of clause 9.10: "(*not resulting for a force majeure event or resulting from third party damage to the network*). The distributor should be relieved of its obligation in those events.
9.10	Wellington Electricity Lines (p.32)	Delete clause 9.10. A low user customer would receive 15 cents as refund of charges for a 24 hour loss of supply. Implementation would be impractical.
9.3, 9.7, 9.8	ENA (p.38)	These clauses are inconsistent on what constitutes an error on an invoice and when the use of money should be paid as compensation. They should be consistent. Also, parties should be liable for default payments where there has been notification of a dispute and a ruling against one of the parties. It is not the case under proposed 9.7 and 9.8.
9.3	Powerco (pp.30-31)	Amend clause 9.3 as follows: "*Issuing of Tax Invoices: The Distributor must issue Tax Invoices for Distribution Services as follows:*

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		(a) *the Distributor must invoice the trader within 10 working days after the last day of the month to which the tax invoice relates ("Billing Month")"* *(b) at the same time as it provides a Tax Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Tax Invoice;* *~~(c) if late, incomplete, or incorrect information is provided and the Tax Invoice is estimated in accordance with clause 9.2 on the basis of that information, the Distributor must issue a Credit Note or Debit Note in the month after it receives additional or revised consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month;~~* *(c~~d~~) if the information received by the Distributor during a particular Billing Month in accordance with Schedule 2 includes revised reconciliation information or additional ~~or revised~~ consumption information ("Updated Billing Information") for previous months ("Consumption Months"), then when it issues a Tax Invoice for the Billing Month, the Distributor must also revise the charges for the other affected Consumption Months and provide a separate Credit Note or Debit Note to the Trader reflecting those revisions ~~in respect of the revised consumption information~~ ("Revision Invoice"), and a Use of Money Adjustment; and* *~~(e) if a Revision Invoice is required, the Distributor must issue the Revision Invoice in the month after the Distributor receives the revised reconciliation information or additional consumption information, at the same time as the Distributor issues a Tax Invoice to the Trader for its Distribution Services charges for that month; and~~* *(d~~f~~) at the same time it provides a Revision Invoice, the Distributor must provide to the Trader, in accordance with the relevant EIEP, sufficiently detailed information to enable the Trader to verify the accuracy of the Revision Invoice."* The clause overlaps with but also contradicts clause 9.3(d), (e) and (f), which provide for the distributor to issue a credit note or debit note as a wash-up against previous charges, taking into account additional or revised consumption information received by the distributor, but in this case applying a Use of Money Adjustment.

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		It is not clear what the dividing line is between the situations covered by 9.3(c) and those covered by 9.3(d), (e) and (f). It is also unclear why there should be different terms for (1) wash-up against estimated charges (on the one hand) and (2) wash-up against charges that were based on information that is subsequently revised. To add to the confusion, clauses 9.2 and 9.3(c) envisage that charges may be estimated where billing information is "materially incorrect", but correction of earlier information is also covered in clauses 9.3(d), (e) and (f), which provide for initial billing on one set of information and then wash-up billing in subsequent months as more accurate information is received.
9.4	Wellington Electricity Lines (p.31)	This clause should read: "*Working Days after the last day of the month to which the Tax Invoice relates, the due date for payment is extended by one working day for each Working Day that the Tax Invoice is late unless the delay is due to the trading not meeting its obligations in accordance with Schedule 2. In this latter circumstance no extension will be provided to the Trader*". The distributor should not be responsible for delay caused by the Trader.
9.5	Wellington Electricity Lines (p.31)	Remove all references to Service Guarantee Payments because the distributor cannot guarantee continuous service, and the distributor is already subject to service quality payments under Part 4 of the Commerce Act.
9.7, 9.8	Powerco (p.31)	Replace clauses 9.7 and 9.8 with the following (almost identical wording has been accepted by a significant number of traders in the context of their Gas UoSAs with Powerco): "*9.7 Disputing or correcting invoices* *(a) At any time within 18 months following the date of an invoice issued under this Agreement, the party to which that invoice was issued ("Recipient") may dispute the invoice by giving notice to the other party ("Issuer") setting out reasonable details of the dispute (in each case, an "Invoice Dispute Notice").* *(b) Where the Recipient issues an Invoice Dispute Notice before the due date for payment, it may withhold payment of the disputed portion of the invoice until the dispute has been resolved, so long as it has given the Invoice Dispute Notice in good faith, and pays any undisputed portion of the*

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		invoice by the applicable due date. *(c) When the correct amount of the disputed invoice is finally agreed by the parties or determined by an arbitrator, court or other tribunal of competent jurisdiction ("Resolution Date"), except to the extent the parties agree otherwise:* *(i) where the Recipient has withheld payment of an amount that was correctly included in the disputed invoice, the Recipient will pay the amount within 10 Working Days of the Resolution Date, together with Default Interest applied from the original due date up to but excluding the date of payment;* *(ii) where the Issuer has undercharged the Recipient, the Issuer may issue a debit note for the amount of the undercharge, together with a Use of Money Adjustment applied to that amount from the due date of the original invoice up to but excluding the date of the new invoice, and the Recipient will pay that invoice within 10 Working Days of receipt, so long as that invoice is accompanied by reasonably detailed supporting information;* *(iii) where an amount has been incorrectly included in the disputed invoice, the Issuer will promptly issue a corresponding credit note to the Recipient, and if the Recipient has already paid some or all of that amount, then within 10 Working Days of the Resolution Date, the Issuer will refund the overpayment to the Recipient, together with:* *(A) a Use of Money Adjustment, applied from the date of overpayment up to but excluding the date of the refund, or (if earlier) the date 15 Working Days after receipt of the Invoice Dispute Notice; and* *(B) unless the overpayment is refunded to the Recipient within 15 Working Days after receipt of the Invoice Dispute Notice, Default Interest, applied from the date 15 Working Days after receipt of the Invoice Dispute Notice up to but excluding the date of the refund.* *(d) Notwithstanding the other provisions of this clause 9.7, the incorrect allocation of an ICP to a Pricing Category will give rise to an adjustment to the Distribution Service charges only in accordance with clause 8, and not under this clause 9.7."* Specific examples of overlap and confusion are provided in Powerco's submission.

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9.8	Wellington Electricity Lines (p.32)	Change "Open Tax Invoice" to "Adjust Tax Invoices". This makes it clear that the relevant invoices will not be adjusted (up or down) after the period. "Reopen" is imprecise.
10	Wellington Electricity Lines (p.32)	The proposal moves the provisions of Part 12A.4 and 12A from the Code to the DDA. It is unclear whether there is any benefit to this proposed move.
10	Unison (pp.12-13)	Amend clauses 10.9 and 10.10(a) as follows: Reward clause 10.9 to state "*… if the Distributor requires the Trader to provide additional security, both parties must agree on the type of security the Trader provides …*" Amend clause 10.10(a) to "*If a cash… deposit is elected, the Distributor must pay a charge to the Trader… at a per annum rate equal to the sum of the market rate for short term benchmark debt plus 5%..*.". Unison disagrees with clause 10.9 and 10.10(a), which overly favour the trader and create an incentive for traders to provide additional security in the form of a cash deposit as they would make substantial excess returns on the funds deposited. This is inefficient because distributors would have to pay beyond commercial rates to mitigate this risk. The cost of mitigating this risk is ultimately borne by all distributors' customers, which creates an issue of equity with effective cross-subsidies between customers.
10	Eastland Network (p.4)	15% above the bank bill yield rate is unreasonable and it is not clear how this figure has been derived. A rate similar to that used by IRD to calculate use of money interest payments would be better.
10	Vector Limited (p.14)	Amend clause 10.10 to include a provision similar to Vector's UoSA clause 12.8(d). Under clause 12.8(d) of Vector's UoSA, Vector is not required to pay interest on any additional security provided by the trader in excess of the amount required by the distributor. This saves costs and increases efficiency by allowing parties to agree that security provided over and above the actual security required will not be treated as security. Traders experiencing growth can provide larger amounts if desired, and not have to arrange increases each time additional security is required. The distributor is not required to pay interest on the additional amount.

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10	Orion New Zealand (p.18)	Align the clause with the wholesale market prudential requirements. This is because: • it is unclear why the prudential requirements applicable to traders with respect to the distribution service should be less onerous than those applying to the same traders in the wholesale market, and why the credit position distributors are in is markedly different to (lower risk than) that of generators in the wholesale market • distributors cannot refuse to supply traders, and nor can distributors practically apply different prices to traders due to poor relative credit quality. Both options are available to suppliers in workably competitive markets • having consistent and effective credit terms allows distributors to view all traders neutrally from a risk perspective, which is good for competition. This would also be a clear move towards standardisation of terms for traders.
10	Orion New Zealand (p.18)	Delete clauses 12A.15, 12A.16, 12A.17, and 12A.18. The DDA drafting note for clause 10 says that the draft DDA incorporates what is currently in clauses 12A.4 and 12A.5 of the Code, and that the references to the Code have been deleted. However, draft Code clauses 12A.16 and 12A.17 repeat clause 10 of the draft DDA. This is presumed to be an error.
10.10	Powerco (pp.33-34)	It would be clearer to say "1.15 times the Bank Bill Yield Rate". Clause 10.10 refers to "the sum of the Bank Bill Yield Rate plus 15%", which could be ready as adding 15 percentage points to the Bank Bill Yield Rate (eg, 5% + 15% = 20%).
10.10(a)	PwC on behalf of 20 distributors (p.21)	The interest rate is excessive. Reconsider whether it remains justifiable.
10.11(b)	PwC (p.21)	The word "is" seems to be missing from between "good faith" and "necessary".
10.12	Powerco (p.34)	Limit trader-initiated reviews to no more than one per six months, except where trader can provide evidence that the aggregate distribution charges payable by the trader have dropped more than say, 20% from the level last used to determine the security amount. Clause 10.12 allows the trader to require a review of the security amount at any time. This would be

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		administratively unworkable for distributors if exercised frequently.
10.15	Powerco (p.34)	Replace clause 10.15 with the following (identical language has been accepted by many electricity retailers in the context of their gas UoSA with Powerco): "*For the purposes of clause 10.13:* *(a) If the Trader (or its ultimate parent company) is a "listed issuer" for the purposes of the Financial Markets Conduct Act 1988, the Trader may require the Distributor to enter into a confidentiality and/or security trading prohibition agreement on terms reasonably satisfactory to the Trader prior to the giving of notice and disclosure of any information under clause 10.13, if and for so long as, the Retailer reasonably considers any such information to be "inside information" as defined in that Act.* *(b) If the Trader (or its ultimate parent company) is listed on the NZX Main Board or the NZX Debt Market, the Trader may withhold any notice or information to the extent that the Trader reasonably considers such information is material information under the applicable Listing Rules, except to the extent that the notice and accompanying disclosure under clause 10.13 can be brought within one or more exceptions under the applicable Listing Rules so as to allow disclosure to the Distributor without those Listing Rules requiring the Trader to disclose that information to any third party.*" The proposed clause ignores the various exceptions in the FMCA and Listing Rules that would allow this kind of information to be disclosed to a distributor on a confidential basis. It is crucial for the distributor to have access to this kind of financial information to allow it to manage its exposure to the trader. The information should not be withheld unless the FMCA or Listing Rules do in fact prohibit disclosure, even on a confidential basis.
10.23, 10.25	Powerco (p.13)	This change must be made for the DDA to be adopted. Amend clause 10.23 and 10.25 so that the distributor is entitled to increase the additional security to include any amounts disputed and withheld by the trader, so that the maximum combined security amount is equal to the distributor's estimate of 2 months' charges plus the amounts disputed and withheld. Distributors will likely only use this power where genuinely concerned by credit exposure to a trader, because they would be required to pay a premium for that security, at the higher rate in clause 10.10.

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		This is an issue because the distributor cannot draw down on the prudential security to cover disputed unpaid charges, and the trader is not obliged to top up the security by the amount in dispute. Accordingly, disputed charges are effectively ignored in calculating the distributor's overall credit exposure to the trader, even though amounts may be payable. To date, distributors have managed this risk largely by excluding traders. However, under the proposal, this will not be possible.
10.27	Wellington Electricity Lines (p.32)	Cash bonds are rare and typically small. The cost of managing a trust account is an unnecessary burden and will be passed on to customers.
10.4	Powerco (p.33)	Amend to refer to clause 10.2. Includes an incorrect cross-reference to clause 10.1.
11	Wellington Electricity Lines (p.33)	Amend clause 11.1(a) to read "*to inspect, install, maintain, repair, replace, operate or upgrade…*". This provides clarity and ensures the distributor can gain access for all the functions it requires.
11	Vector Limited (p.15)	Amend clause 11 to include access to customer's premises for legitimate purposes. For example, clause 13.1(h) of Vector's UoSA.
11.1	Wellington Electricity Lines (p.33)	Add the following subclause: "*(h) to ascertain the cause of any interference to the quality of service that has been provided by the distributor to any person*". This will ensure that the distributor can gain access to the premises of a customer.
12	Vector Limited (p.15)	Amend clause 12.7 so that it is future proofed and technology neutral.
13	Orion New Zealand (pp.18-19)	Consider adding a cross-referencing schedule. If distributor's existing documents do not meet the requirements in the DDA they will need to be revised. Revision can be a time consuming process. To facilitate implementation there could be a schedule in the DDA that cross-references distributor documents without requiring name changes.

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14	Unison (p.13)	Because it is unnecessary and overly prescriptive, delete "... *and, if appropriate, install equipment at the Customer's Point of Connection of meter power quality…*"
14.2	Counties Power, Electra, Top Energy, North Power (p.7)	Insert "the distributor considers it" before "appropriate" in clause 14.2.
14.2	Powerco (p.13)	This change must be made for the DDA to be adopted. Delete clause 14.2. Such matters are adequately dealt with by the Consumer Guarantees Act and EGCC requirements. The obligations in clause 14.2 may result in the number of requests exceeding the number of monitoring devices available. It would not be an efficient use of capital for distributors to purchase excessive numbers of these devices.
14.2	Wellington Electricity Lines (p.33)	Insert the following at the end of clause 14.2: "*If the Trader has data or information that will assist the Distributor with its investigations, the Trader must provide this to the Distributor at no cost to the Distributor*." This facilitates the distributor's power quality investigations.
15	Orion New Zealand (p.19)	It is not clear that the DDA should record that a distributor has agreed to maintain service lines. The customer may still have obligations even when the distributor agrees to maintain service lines. For example, the maintenance might only relate to fair wear and tear.
17	Orion New Zealand (p.19)	Amend clause 17.2 to require compliance with the relevant EIEP and other formats set out in Schedule 3. Currently, clause 17.2 mandates the use of a voluntary EIEP, which is inappropriate and contradictory.
17.4	Orion New Zealand (p.19)	Delete clause 17.4. Clause 17.4 appears to introduce new obligations in relation to medically dependent and vulnerable customers. There is no need to introduce obligations in the DDA when the matter is covered by other regulation. The relevant guidelines are specifically targeted at trader actions

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		with respect to credit related disconnections. In an interposed situation the distributor is not a party to those actions.
17.4	Powerco (p.35)	Delete clause 17.4. Operational procedures for notifying planned works are well established and adhered to. If a similar proposal goes ahead, it should be clearly set out in the DDA.
17.4	ENA (p.40)	This provision has to reflect the interests of medically dependent and vulnerable customers with the potentially significant impact on planning and execution of planned works in the network, or in isolating temporarily for safety. The distributor should only need to provide the trader with advance notice of a temporary disconnection, as set out in the service interruption provisions and in compliance with the guidelines. No justification is provided for further cooperation.
17.5	Orion New Zealand (p.19)	Delete clause 17.5. There is no need to repeat requirements set out in the Code.
17.6	Orion New Zealand (p.19)	Delete clause 17.6. This clause is better dealt with via the Code (if regulation is actually required).
18.4	Counties Power, Electra, Top Energy, North Power (p.7)	Delete the remainder of clause 18.4 after "set out in clause 18.1," and replace with: "*the non-breaching party may (at its election):* *(a) issue a notice of termination in accordance with clause 19.2;* *(b) in the case of an event of default by the trader prohibit the trader from using the network to supply any point of connection which is not currently supplied by it;* *(c) exercise any other legal rights available to it; and/or* *(d) if the breach is a serious financial breach by the trader, the distributor may notify the Electricity Authority and/or the clearing manager that clause 14.41(h) of the Code applies*". The distributor should also be entitled, in light of the circumstances which trigger the event of default, to prohibit the trader from using the network to supply any additional points of connection that are not currently supplied.
18.6	Wellington Electricity	Insert the following:

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	Lines (p.34)	"*Additionally, if the Trader is a party subject to an insolvency event, the Distributor may:* *(a) undertake a Temporary Disconnection of some or all of the ICPs supplied by the Trader, in which case the Trader will take all steps necessary to allow those disconnections to be made and will provide the information required the Distributor in relation to such ICPs; and/or* *(b) prohibit the Trader from using the Network to supply any Point of Connection which is not currently supplied by it,* *In exercising its rights under this clause 18.6 the distributor shall ensure that its notification to the Electricity Authority and/or the clearing manager is not inaccurate or misleading.*" The Code requires that active ICPs must be assigned to a trader. ICPs connected and consuming with no trader are in breach of the Code. The distributor must be able to comply with the Code with immediate effect if necessary.
19	Powerco (p.13)	This change must be made for the DDA to be adopted. Add new clause 19.1(g) that allows either party to terminate the agreement on not less than 180 days' notice, in the event that the Code no longer provides for a default or mandated form of distribution agreement.
19	ENA (p.34)	The termination clause is unworkable. Because neither party can terminate on notice: • the DDA is effectively perpetual. If the Code is amended or appealed so that it no longer controls the terms of these agreements, traders and distributors could be stuck with perpetual contracts • the DDA is effectively a mandatory obligation that locks in interposed arrangements. If the arrangement was truly default distributors could terminate. The DDA needs to provide for distributors changing to conveyancing.
19, 22	ENA (p.34)	There needs to be a mechanism for changes: • required by law • where the Code is changed • where the parties don't agree

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		• where one party doesn't engage. Distributors should be able to change the variable provisions where necessary for operational reasons or to maintain consistency across traders. The mechanism in the MUoSA at 18.6 should be reinstated in clause 22.
19	Unison (pp.13-14)	Add a new clause 19.7(c): "*The Distributor may notify any Customer that there is no longer a Default Distributor Agreement between the Trader and the Distributor and the Customer needs to enter into a Customer Contract with an electricity Trader who has a current Default Distributor Agreement with the Distributor, provided that the information contained in that notice is not inaccurate or misleading.*"
19.1	Counties Power, Electra, Top Energy, North Power (pp.7-8)	Add new subclause (g) to clause 19.1: "*(g)* ***conveyance only****: the distributor may terminate this agreement by giving the trader at least 120 working days' notice in writing of termination and the date on which this agreement will terminate if the distributor proposes to move a conveyance only form of distribution agreement. Where the distributor issues a notice of termination to the trader under this clause 19.1(g), the distributor will at the same time provide any customer that it proposes to move to a conveyance only arrangement with a copy of the standard distribution agreement (conveyance only) it proposes will apply between the distributor and the customer after termination of this agreement. If the customer wishes to continue using the network, the parties will negotiate any amendments to the proposed new distribution agreement (conveyance) in good faith during the 120 working day notice period with a view to entering into a new distribution agreement effective from the termination of this agreement.*" The decision to move to conveyance only should be able to be made by distributors (and not be subject to agreement with retailers). This will provide flexibility and encourage innovation and provide net benefits for consumers.
19.1	Wellington Electricity Lines (p.35)	Insert new subclause (g): "*by other party for any reason on 120 days' notice*". This will enable the parties to move to a later or more beneficial version of the DDA, and will allow the

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		distributor to terminate in the event that it converts to a conveyance model. Requiring trader agreement would hinder this.
19.1	PwC (p.21)	Reinstate the right of either party to terminate the agreement by giving 120 working days' notice. This will ensure sensible commercial changes can go ahead efficiently.
19.6	Counties Power, Electra, Top Energy, North Power (p.8)	Add the following sentence to the end of clause 19.6: "*If the distributor continues to charge the trader for distribution services after the effective date of termination of this agreement in accordance with clause 19.5, then the trader will continue to be bound by the terms and conditions of this agreement as if the agreement had not been terminated for so long as the trader is liable to pay such charges with respect to such connections.*" It is reasonable that the terms and conditions of the agreement apply as if it had not been terminated until such time as the services cease being provided.
20.1	Powerco (p.14)	This change must be made for the DDA to be adopted. Amend clause 20.1 as follows: "*Commitment to preserve confidentiality: Each party to this agreement undertakes that it will:* *(a) preserve the confidentiality of, and will not directly or indirectly reveal, report, publish, transfer or disclose the existence of any confidential information of the other party except as provided for in clause 20.2; and* *(b) only use the other party's confidential information for the purposes for which it was provided, or for the purposes of performing its obligations and exercising its rights under this agreement, or otherwise for the purposes expressly permitted by this agreement.*" The change is required because it is not clear that the confidentiality obligations of each party relate solely to the other party's confidential information. In addition, clause 20.1(b) unnecessarily limits use of confidential information.
21	Counties Power, Electra, Top Energy,	Insert new clause 21.6: "*21.6 Charges continue: If a Force Majeure Event occurs:* "*(a) the occurrence of such Force Majeure Event will not affect the parties' obligations in relation to the calculation and payment of fixed charges or capacity charges in relation to the Distribution Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a*

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	North Power (p.9), Unison (pp.14-16)	*supply of electricity during the period of the Force Majeure Event); but* *(b) any variable charges applicable to ICPs will not be payable to the extent that the consumption of, or demand for, electricity at the ICP is reduced due to the Force Majeure Event*." Insert the following at the end of clause 21.1: "*(except with respect to payment of the charges in accordance with clause 21.6)*". It is reasonable for the trader to be liable for capacity charges during a force majeure event, but not any variable charges. This effectively shares risk for such events.
21	Wellington Electricity Lines (p.35)	Add subclause 21.6: "*the occurrence of a Force Majeure event will not affect the party's obligations in relation to the calculation and payment of fixed and variable line charges in relation to the Distribution Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received supply of electricity during the period of the Force Majeure event). For the avoidance of doubt, any variable component of charges applicable to ICPs will continue to be payable to the extent that the consumption of, or demand for, electricity at the ICP continues*." This provides clarity. Continued revenue is required to facilitate fast restoration of supply and network rebuild after a major event. Continuation of charges supports improved supply reliability.
21	Wellington Electricity Lines (p.35)	Add clause 21.7: "*for the avoidance of doubt both parties accept that the Service Standards detailed in this agreement may not apply during a Force Majeure Event.*"
21	Unison (pp.14-16)	This clause reflects the principle that distribution services are deployed through a common operating platform (the network, and the operational capabilities of Unison). The cost of service provision includes common costs, apportioned as far as possible on a basis that is reflective of the capacity services provided. Interruptions to service are a normal part of electricity distribution. Under such circumstances fixed charges remain payable, and service guarantee payments are explicitly excluded – see Schedule S1 (including the case of force majeure). The principle holds that common costs must continue to be met including in the event of interruption due to force majeure. For this reason fixed charges continue. The counterfactual is that the loss of revenue if fixed charges were

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		not payable would in the short term be borne by the shareholder, however under distribution pricing regulations (Commerce Commission input methodologies) this would in the longer term be recovered from all customers, representing a transfer from those unaffected by the force majeure event to those affected by it. This outcome is inconsistent with service based pricing (and is more reflective of insurance, which is not part of the network service, but is entirely within the control of the customer to obtain). At the same time, under a force majeure event, Unison and its shareholders bear the risk of additional costs associated with mitigation (but without foregoing revenue contributions to common costs) – again, an appropriate outcome. Secondly, this clause reflects current practice where service interruptions that have occurred despite GEIP do not result in the suspension of fixed charges. In addition to the principle justification provided above, this situation is reflective of the practical aspects of distribution services billing, where charges are billed based on customer connection records (fixed component) and metered consumption (a variable component). This means that during service interruptions, variable charges are impaired as a matter of course (ie, no consumption is metered – submitted), however there is no ready mechanism for costs effectively processing a suspension to fixed charges.
21	Vector Limited (pp.15, 16, 17)	In both the Vector UoSA and the DDA, a party may be excused from a default if a force majeure event has occurred. This option is not available if the party did not act in accordance with GEIP. However, the DDA approach significantly changes the risk profile of the parties in the case of force majeure. As recognised in the Sapere Report, the regime in the Vector UoSA works to "enhance operational efficiency". The DDA proposes to shift away from this regime by making four key changes being: 1. standard for foreseeable events 2. no equivalent of Vector's network failure (subclause 23.1(b)(v)) 3. "reasonable" controls versus total control 4. changes to charges continue. A full description can be found in the submission.
21.1	Counties Power,	Delete subclause 21.1(b)(i) and replace with the following:

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	Electra, Top Energy, North Power (pp.8-9)	"*(i) any event or circumstance by, or in consequence of, and an Act of God, being an event or circumstance:* *(A) due to natural causes; and* *(B) that was not reasonably foreseeable; or* *(C) if it was reasonably foreseeable, the failure did not occur as a result of the party involved invoking this clause 21 failing to act in accordance with good electricity industry practice or;*" Insert new subclause clause 21.1(b)(v) as follows (and renumber subclause (v) appropriately): "*(v) failure of the network or any part of it which can be reasonably proven by the distributor to be an event that did not arise from distributors' failure to act in accordance with Good Electricity Industry Practice; or*" The word "reasonable" should be inserted before the word "control" in current subclause (v). The current definition of force majeure event in clause 21.1 is unusual and needs clarifying as it is not wide enough.
22	Wellington Electricity Lines (p.36)	UoSAs based on the MUoSA include an overarching GEIP standard. GEIP is an objective and well defined standard. It benefits customers by providing certainty.
22	PwC (p.21)	Retain the ability to make *de minimis* changes by notice. Minor changes should be able to be agreed between parties, but this overlooks the additional cost and effort involved. If there is any dispute regarding a *de minimis* change the dispute resolution procedures would apply.
22	Orion New Zealand (pp.19-20)	The Authority should further consider how an agreement deemed to be in place can be deemed to be changed. "This agreement" in clause 22.1 is the DDA. Core terms cannot be changed as they are fixed by the Code reference to the template. It is unclear how changes to the template get applied to existing traders. Operational terms can presumably be changed via a consultative process subject to appeal to the Rulings Panel. However, it is unclear how new operational terms can be applied to existing traders (see Orion comments re 12A.11(4)). Operational terms include items which can change from time to time. It needs to be clear that such items are not subject to Rulings Panel consideration or dispute

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		resolution processes.
22	Unison (p.16)	Removing good faith from clause 22.1 gives both parties the impression that the DDA is a mandatory agreement preferred over an alternative agreement. That is not ideal, and the good faith clause should be retained.
22	Unison (p.16)	Large sections of clause 22 of the MUoSA have been removed (eg, changes to variable provisions), and changes can only be made to "pricing (Schedule 7), loss factors, by law or GXP changes". This leaves little room for adaption or flexibility and Unison questions how the Authority intends to allow the refinement of the DDA.
22	Orion New Zealand (p.20)	Clarify the rationale for clauses 22.1(e) and 22.2, they do not appear to be necessary. So long as supply is maintained to connections it does not matter if the relevant GXP changes (and the relevant GXP can change in real time in any case). Any obligation to consult on changes to the grid should be on the grid owner, not the distributor.
22.1	ENA (p.40)	It is not clear whether: • clause 22.1(a) means that any part of the agreement can be amended by the agreement of the parties; and • clauses 22.1(b), (c), (d), (e) are subclauses of clause 22.1(a), in that there are only certain aspects of the agreement that can be changed. The Authority should clarify its intention. It should be that any part of the agreement can be amended by the agreement of the parties.
23.7 and 23.10	Powerco (p.35)	Remove arbitration provisions. Disputes over the interpretation and application of the DDA should be resolved in court. Private arbitration would deprive the industry of meaningful precedents in this area. Clauses 23.7 and 23.10 are fundamentally incompatible – the purpose of allowing either party to refer a dispute to arbitration is to remove court proceedings as an option.

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24	Unison (pp.16-18)	Add the following clause 24.5(b)(vii): "*Such failure has arisen notwithstanding that the Distributor has acted in acted in accordance with good electricity industry practice.*" This ensures the scope of liability is consistent with that which a reasonable and prudent operator employing GEIP could be expected to manage or mitigate. The provision of the service is subject to a range of factors that in can give rise to damage, in spite of exercising GEIP. For events beyond the distributor's control, the risk is more appropriately mitigated by the customer. The addition of this clause achieves this appropriate apportionment of risk puts the obligation for mitigation with the party most able to take such measures.
24	Unison (p.16)	Unison supports the new clause 24.4.
24	Unison (p.18)	Unison supports this clause 24.7.
24	Orion New Zealand (p.20)	There are a number of significant issues with the liability clause. It currently has the same significant problems that the MUoSA had, specifically: • the limitation is expressed per ICP rather than per affected ICP, so the amount an affected customer might get depends on how many ICPs are with the trader • the cap gets larger for the same event as the number of traders on the network increases. A distributor's financial risk position worsens as the number of traders increases • retailer limitations of liability in their terms and conditions of supply are typically based on the customer being affected (and are typically around $10,000 per customer per event) • indemnification of the trader for breaches by the distributor is uncapped, leaving unlimited liability for the majority of the distributor's exposure, because clause 27.2(a)(i) is not subject to the limitation.
24	Orion New Zealand (p.21)	A number of distributors have liability clauses that deal with the appropriate allocation of an aggregate cap based on market share. Orion is happy to discuss this with the Authority.
24	Vector Limited (pp.19, 20)	The Vector UoSA provides generally higher caps than the proposed on a per event basis overlaid with an aggregate liability cap for events in any 12 month period, with the amount of this annual cap calculated based on the number of active ICPs supplied by the retailer. This provides the parties with

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		greater contractual certainty. The approach under the DDA does not reflect the way the industry works. Vector's UoSA presents a more appropriate and reasonable reflection of risk faced by both parties. The Authority should have taken note of Sapere's assessment of Vector's liability cap (page 4) and drafted a liability regime conducive to encouraging entry by new traders. The Authority should amend the liability caps in the DDA to reflect Vector's UoSA. In addition, the caps should apply to indemnities in clause 27(a).
24	Vector Limited (pp.18, 19, 20)	It is inappropriate to extend liability to negligence and failure to exercise GEIP. The parties should not be responsible for failures under other standards of care or practice. Being held to a general standard of care or practice in relation to acts that are outside of the scope of performing the contractual obligations creates unnecessary uncertainty. It is very common in commercial contracts to exclude non-contracted liability for this reason. Distributors require certainty that they will not be liable for any failure to convey electricity if they act in accordance with GEIP and a failure still occurs (see Vector UoSA clause 26.5(b)(vii). Vector's submission contains further detail.
24.5	Counties Power, Electra, Top Energy, North Power (pp.9-10)	The first sentence of clause 24.5 should refer to clause 25 not clause 24.9.
24.5	Counties Power, Electra, Top Energy, North Power (p.10)	Add new subclause (vii) to clause 24.5(b): "*(vii) such failure has arisen notwithstanding that the Distributor has acted in accordance with Good Electricity Industry Practice;*". Distributors should not be liable for a failure to convey electricity where they have acted in accordance with GEIP.
24.5	ENA (p.35)	GEIP should be specifically included in relation to distributor liability. Vector, Unison and others include

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		a subclause in their UoSAs that references GEIP. The GEIP should be included in clause 24.5: "*where such failure occurs in spite of Distributor exercising GEIP*". This will link liability to the recognised service standard. The DDA and MUoSA add uncertainty by including negligence as a trigger for claims. A party in breach should be held to the standard it has breached, not for failures of other standards of care beyond the scope of the contract. The DDA's approach to liability does not adequately reflect industry practice. It significantly increases distributors' liability with each new retailer (regardless of the size of the retailer). Each party's liability is limited only on a "per event" basis (and not in aggregate). This does not create fair or appropriate outcomes for either party.
24.5	Wellington Electricity Lines (p.36)	Add subclause (d): "*where such failure occurs in spite of Distributor exercising Good Electricity Industry Practice (GEIP)*". This is required to reduce uncertainty and risk.
24.7	ENA (p.37)	The core/operational split seems arbitrary. No guidelines or principles are provided to show how the decision was made. This is particularly the case with 24.7. Liability amounts should be agreed between the parties and included in operational terms. Liability should be subject to an annual amount provided in the operational schedule. Such caps provide certainty. The Authority has not justified providing a "per event cap". It is more appropriate to cap liability on a per ICP basis. This provision should not be able to be overridden by clause 27.2.
24.7	PwC (p.19)	Delete the $20 million per event liability cap. Replace it with a new cap that better meets the principle that an event should lead to consistent liability limits per customer affected irrespective of the size, scale or number of industry participants.
24.7	Wellington Electricity Lines (p.37)	Liability should be subject to an annual amount provided in the operational schedule. Annual caps provide certainty for both parties. The "per event" cap is not justified. Wellington Electricity Lines' caps are based on the number of ICPs per trader so that liability is proportional to the level of activity of each trader. This approach was accepted through negotiation and is more appropriate.

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24.8	Counties Power, Electra, Top Energy, North Power (p.10)	References to clauses 24.10 and 29.3 should be included in clauses 24.2, 24.3 and 24.8. The parties' liability under clauses 24.10 and 29.3 should be excluded from the liability cap in clause 24.7 and not be subject to the direct damage restriction or the consequential loss exclusion in clauses 24.2 and 24.3 respectively.
24.8	Counties Power, Electra, Top Energy, North Power (p.10)	Clause 24.4 should refer to liability under clause 29.3.
25	ENA (pp.40-41), Orion (p.21)	The DDA does not need to repeat the provisions that are already covered in other legislative instruments, it could simply refer to the relevant sections of the Consumer Guarantees Act.
25	Powerco (p.14)	This change must be made for the DDA to be adopted. Delete clause 25. Clause 25 replicates the statutory indemnity in section 46A of the Consumer Guarantees Act. This serves no legal purpose, and creates potential for inconsistency with the Act if it is amended or repealed.
25	Unison (p.18)	Unison supports this clause.
25	Vector Limited (p.21)	Amend clause 25 so that it reflects Vector's UoSA indemnity, which is neutral, with clear and express exclusions. The Vector UoSA indemnity clause is fair and reasonable as it recognises that the parties should take responsibility for managing risks where possible.
25.1	Counties Power, Electra,	Insert "section 7A of" before "Consumer Guarantees Act 1993" in clause 25.1(a). Insert ", as determined in accordance with section 46A(1) of the Consumer Guarantees Act 1993" after "(a "Failure")" in clause 25.1(a).

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	Top Energy, North Power (p.10)	This further aligns the indemnity provision in clause 25.1 with the Consumer Guarantees Act 1993.
26	Powerco (p.14)	This change must be made for the DDA to be adopted. The definition of distributor's indemnity should be amended to include the statutory indemnity in the Consumer Guarantees Act. This is because the clause fails to provide for claims brought under the identical statutory indemnity in section 46A of the Act, meaning traders could easily avoid this clause altogether by claiming under the Act instead of clause 25.
26.1	Powerco (p.15)	This change must be made for the DDA to be adopted. Amend clause 26.1 as follows: "*Claim against trader: If a customer makes a claim against the trader in relation to which the trader seeks (at the time or later) to be indemnified by the distributor under the distributor's indemnity (a "claim"), the trader must:* *(a) give written notice of the claim to the distributor as soon as reasonably practicable after the trader has become aware of the claim and any facts or circumstances indicating that the underlying failure may be related to an event, circumstance or condition associated with the network, specifying the nature of the claim in reasonable detail;".* Because clause 26.1 applies only from the time at which the trader "wishes" to be indemnified, it could severely prejudice a distributor's position where a trader simply pays out claims without turning its mind to whether it "wishes" to be indemnified. In that situation a distributor would have had no opportunity to be notified of or consulted on the claim, but this will not prevent the trader then seeking indemnification from the distributor after the fact. This would defeat the purpose of clause 26.
26.5	Powerco (p.36)	Delete the reference to legal counsel in clause 26.5(b). In many cases this will not be practicable, as most claims are dealt with by non-legal personnel. It should be up to the other party to involve its own legal counsel as it deems necessary.

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26.7	Powerco (p.15)	This change must be made for the DDA to be adopted. Delete clause 26.7(a). If the clause is retained, amend it so that the distributor is required to pay costs only where the distributor is actually obliged to indemnify for the associated remedy costs under the distributor's indemnity. The clause effectively makes a distributor liable for the trader's defence costs merely because the trader wishes to be indemnified, irrespective of whether the trader is actually entitled to be indemnified. This overrides any checks and balances built into the indemnity itself. Requiring the distributor to pay traders' defence costs also overrides the policy in the Consumer Guarantees Act to limit the distributor's liability to the Consumer Guarantees Act remedy cost. No justification is provided for this approach and it may incentivise traders to pursue meritless claims.
26.8	Powerco (p.16)	This change must be made for the DDA to be adopted. Delete clause 26.8. The clause results in distributors assuming all credit risk of a trader being unable to repay prefunded consumer pay-outs in the event the trader was not entitled to indemnification (see also Powerco's comments about the prudential regime). This effectively results in distributors taking the place of investors, lenders, and insurers. This has not been justified. Clause 26.8(c) appears to envisage that the trader may also receive insurance proceeds in relation to a claim, but clause 26.8 virtually removes any incentive for a trader to obtain any insurance.
27.1,27.2, 27.4	ENA (pp.35-36)	"Direct loss" does not have a settled legal meaning and is ambiguous. The indemnity for third party claims should not cover liabilities which a trader has voluntarily assumed. Otherwise the indemnity potentially provides a blank cheque for traders to expose distributors to liability. The indemnity in clause 27.1 is not subject to any monetary limitations, this renders the limitations in clause 24.7 meaningless. If this is the Authority's intention, the case should be made in the context of

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		the statutory objectives.
27.2	Powerco (pp.16-18)	This change must be made for the DDA to be adopted. Insert an additional provision at the end of what is now clause 27.2: "*However, the Distributor will not be liable under this indemnity:* *(a) for any liability of the Trader to a third party other than for losses actually suffered or incurred by that third party as a direct, natural and probable consequence of the cause listed in clauses 27.2(a)(i) to 27.2(a)(vi);* *(b) for any liability of the Trader to a third party for network event losses, to the extent those network event losses consist of:* *(i) loss of profits, loss of revenue, loss of use, loss of opportunity, loss of contract, or loss of goodwill of any person;* *(ii) any loss that is a not a direct, natural and probable consequence of the network event;* *(ii) any loss resulting from the claimant (that is, the person claiming against the Trader) being liable to another person; or* *(iii) any loss resulting from loss or corruption of, or damage to, any electronically-stored or electronically-transmitted data or software; and/or*" *(a) for more than the first $[10,000.00] of Network Event Losses arising in connection with any one ICP, from any single event or series of connected events; and/or* *(b) for more than the first $[2,000,000] of aggregate network event losses arising in connection with any single event or series of connected events*." Insert new definitions as follows: "***Network Event***" *means any surge, spike or under-frequency event on the Network, and any outage or failure to restore supply on the Network, in each case whether or not attributable to any breach or other default by the Distributor.*" "***Network Event Losses***" *means any kind of losses, damages, costs, expenses or other compensation*

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		incurred or suffered, wholly or partly, as a result of a Network Event, by a person claiming against the Trader as contemplated in clause 27.2(a)." Direct loss or damage does not have a settled legal meaning and, in the context of clause 27.2, is ambiguous. Indemnity for third party claims should not cover liabilities which the trader has voluntarily assumed. Otherwise, the indemnity provides a blank cheque for traders to expose distributors to liability. This is not efficient, because other parties are better placed to mitigate the risks and it would cut across the "*service guarantee regime*" in Schedule 1. Similarly, in the context of network events, the indemnity should not allow pass through of third party claims for commonly excluded types of loss (for example loss of profits) as the trader and any downstream claimant is able to exclude these (subject to the Consumer Guarantees Act). This is an efficient outcome, because the third parties are better placed to assess and mitigate such losses. Also, distributors are not able to insure for liability which they assume via an indemnity, whereas users of electricity should be able to insure themselves against most of the loss for which they might suffer as a result of a network event. Traders cannot limit or exclude their liability to consumers under the Consumer Guarantees Act. However, in that context, the Act also provides retailers with an unlimited right of indemnity against distributors. It is not necessary to cover this again in a general indemnity in the DDA. The proposed changes do not affect the distributor's liability for direct damage under clause 24.2. Further consultation and analysis is required to establish optimal dollar figures. The limitations in clause 26.7 are meaningless because the indemnities in clause 27.2 are not subject to any limit.
28	Unison (p.18)	Unison supports this clause.
31	ENA (pp.38-39)	Issues covered in a number of places could be bundled in clause 31. For example, Vector's UoSA's 6.10, 29.2, and S1.7 could be captured in wording along the following lines: "*Consumer information: The retailer will on reasonable written request from the distributor and within a reasonable time frame, provide the distributor with such consumer information, including consumers' demand and consumption information (where such information has been obtained from such*

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		consumers), as is reasonably available to the retailer and necessary to enable the distributor to exercise its rights or fulfil its obligations under this agreement."
31	Orion New Zealand (p.21)	Delete clause 31.3. The clause requires the use of voluntary EIEPs, and with respect to mandatory EIEPs unnecessarily repeats a requirement that is in the Code.
31	Orion New Zealand (p.21)	Redraft clause 31.1. The clause implies that customer information would only be required on an "on request" basis. Many distributors get regular updates at various intervals. The clause should also reference the relevant format to be used as set out in schedule 3.
31	Orion New Zealand (p.21)	Reconsider the limitation to the distribution service in clause 31.2. The clause restricts the uses of the customer data to the distributors' obligations under the agreement. This appears to be inefficient. For example, if their information is used for other purposes, such as communication of discount information to customers, it would need to be covered off separately.
31.2	Wellington Electricity Lines (p.37)	Amend clause 31.2 to read "*…provide the Distributor with such Customer information as is reasonably available to the Trader and necessary to enable the Distributor to exercise its rights or fulfil its obligations in accordance with this Agreement*". This adds clarity.
31.7	Unison (p.18)	Unison supports this clause.
32	Wellington Electricity Lines (p.38)	Insert new clause 32.4: "*where the Trader is seeking assignment to any benefit or burden under or in relation to this Agreement, it shall not be reasonable for the Distributor to refuse its consent to such assignment where the Trader and/or the proposed assignee demonstrates, to the Distributor's reasonable satisfaction, that the proposed assign is able to meet the requirements of clause 12 (credential requirements).*" This adds clarity.
33	Unison (p.18)	We support the word change from consumer to customer. Other inconsistencies with the Act and Code should be considered, as consistency is preferable to avoid confusion.
33	Unison (p.18)	It is not clear whether a separate agreement is required between traders and distributors if additional services are provided by distributors, or whether no additional services are allowed to be provided to retailers from distributors. If it is the second scenario, Unison has concerns, as that is likely to stifle

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		innovation. If additional services are allowed under different agreements, it is likely to be a barrier to providing such services as additional contracts will need to be developed, incurring additional costs for both parties.
33.1	Powerco (p.36)	Amend the definition of "Distribution Services" as follows: "*Distribution Services*" *means the provision, maintenance and operation of the Network for the conveyance of electricity to Customers, including all services and activity undertaken by the Distributor on or in connection with the Network to comply with the requirements of this Agreement, but excluding any additional service or activity that is not a necessary part of improving or maintaining the reliability or quality of conveyance on the Network and is not otherwise required in order to meet the Distributor's obligations this Agreement;*" Where a DDA applies, the core terms remove distributors' flexibility to define the precise scope of the services. The new definition of "Distribution Services" should be more clearly limited to those aspects essential for conveyance. Otherwise the DDA may inadvertently regulate other services commonly agreed between the parties.
33.1	Wellington Electricity Lines (p.38)	Insert reference to "in accordance with Good Electricity Industry Practice".
33.2	PwC (pp.21-22)	Remove the reference to regional holidays from the defined term "working day". Otherwise it can cause problems where the anniversary day of a retailer falls on the 20th of a month but the distributor is in a different region. In such circumstances the distributor is paid one day late and needs to carry additional funding to cover that scenario, which is generally not efficient.
All schedules	PwC (p.22)	Replace the detailed italicised terms in the schedules with high level principles for what each schedule should achieve. This will avoid the terms becoming default wording. It would reduce confusion if all core terms were in the main section of the DDA and all non-core terms were in the schedules.
Schedules	Orion New Zealand (p.21)	The layout of the template schedules is confusing because they include drafting notes and guidance and numbered clauses (for example, S5.13). Having clearly separate notes and guidance (as in the

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		MUoSA and some parts of the DDA template) is a better approach.
Schedules	Orion New Zealand (p.21)	Creating obligations by referencing documents which are maintained and published separately (as in Schedule 7) should be adopted for other Schedules (for example Schedules S1.6, S1.7, Schedule 1, Table 1, Schedule 4, and Schedule 6). The current drafting implies that information that changes regularly changes the DDA. This is unnecessary and inefficient.
Schedule 1	Eastland Network (p.4)	Schedule 1: The service guarantee payments are penalties that impose unreasonable costs on networks such as Eastland Network. This is because: • Eastland Network's network spans 12,000km, much of which is in rural or remote areas and it would be unrealistic to meet the Service Guarantees included in the DDA. • The penalties and incentives in the Commerce Commission's default price quality path regulations are sufficient. This is especially true of the incremental rolling incentive scheme to encourage service quality. • The payments would be administratively costly and are relatively small compared to the cost of administration. • None of the 13 traders that recently re-signed agreements with Eastland Network raised any objection to the removal of service guarantee payments.
Schedule 1	Orion New Zealand (p.14)	Delete S1.6(b)(i). The "targets" are actually set by regulation, and in any case frequency keeping is the responsibility of the system operator. It is inefficient to repeat (and maintain) this information in the DDA.
Schedule 1	Orion New Zealand (p.14)	Regarding S1.6(a): Orion does not define price categories and price options in this way.
Schedule 1	Powerco (p.19)	This change must be made for the DDA to be adopted. Insert a new clause S1.6 to Schedule 1: "*The distributor's obligation is to use reasonable endeavours, consistent with Good Electricity Industry Practice, to meet each Service Standard. A failure to meet a Service Standard is not in and of itself a breach of this agreement, and the only consequence of such a failure is the applicable Service*

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		Guarantee Payment (if any)." Insert a new clause S1.7 to Schedule 1: "*A failure to comply with a Services Standard will be excused where caused by a Force Majeure Event*." Schedule 1 presents the service standards as strict obligations, meaning any non-compliance will be a breach, and may trigger indemnity liability under clause 27. Not all of the factors that could affect compliance with the service standards are within the distributor's control. Strict liability would represent a major shift, and would create liability that is more "absolute" than even the guarantees in the Consumer Guarantees Act. It would also cut across the price/quality trade-offs inherent in the regulatory decisions made under Part 4 of the Commerce Act. Accordingly, it is essential to clarify that: • the distributor's obligation is to use reasonable endeavours, applying GEIP • a failure to comply with the service standards is not necessarily a breach of the distribution agreement • the only consequence for the failure to comply with the service standards is payment of a service guarantee payment (if any), although further contractual consequences could follow if the distributor has breached its "reasonable endeavours" obligation.
Schedule 1	Powerco (p.20)	This change must be made for the DDA to be adopted. Amend Schedule 1 clause S1.5 by adding the following sentence at the end: "*The Trader will credit each Service Guarantee Payment against any other liability the Distributor may have to the trader (whether under this Agreement, at law or otherwise) in connection with the events or circumstances that gave rise to the Service Guarantee Payment*." In many cases, service guarantee payments will overlap the distributor's liability under the statutory indemnity in section 46A of the Consumer Guarantees Act. To ensure the payments are not a penalty, it should be clear that the retailer will credit them against any other relevant liability to the distributor.
Schedules	Unison (pp.18-	The operational terms will be subject to appeal to the Rulings Panel. Mediation should not be removed

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
1-8	19)	as a form of dispute resolution.
Schedule 1 (S1.1-S1.3), Schedule 3.1, Schedule 7.1, Schedule 8.1	Wellington Electricity Lines (p.38)	There are operational terms that embody DDA core terms, which, in effect, make all or parts of those operational terms regulated and mandatory. These core terms should be operational terms and not core terms.
Schedule 3	Orion New Zealand (p.21)	Schedule 3.1 unnecessarily repeats a Code obligation.
Schedule 7	Orion New Zealand (p.22)	Schedule 7.1(a): EIEP 12 is especially designed for transfer of pricing information, and is mandated in the Code. It does not need to be in the proposal. EIEP 12 does not include the provision of information in PDF format.
Schedule 7	Orion New Zealand (p.22)	Schedule 7.1(b): A "change-highlighted" version of a price schedule can be virtually unreadable. One of the information disclosure requirements is that distributors publish information on the prices that currently apply, and the prices that applied immediately prior. This is better.
4.11, 9.5(a)(ii), 9.10, Schedule 1, 1.3	ENA (pp.36-37)	"Service guarantee payments" should not be included in the core terms. Some distributors currently provide a payment relating to the timing and nature of service restoration in certain circumstances. Whether such payments are provided, and in what circumstances, vary. One distributor reports none of the 13 retailers on their network objected to the removal of such a penalty clause. Further, there is no requirement to pass a payment through to the customer. "Payment" in relation to service interruptions is not appropriate for core terms. It is also inappropriate to use the schedules (in this case, Schedule 1) to introduce a non-core point into the core terms. Payment matters should be in operational terms. Payment matters cannot be "standardised" without passing on increased costs to consumers. The service level obligations should be clearly linked to GEIP. There should be no liability where the distributor operates to GEIP but an force majeure event occurs.

Section 2: Retailers

General comments	
Submitters	**Submission**
ERANZ (p.1), Genesis Energy, Mighty River Power	The problem definition is correct. Negotiating agreements can take a significant commitment of retailer and distributor resources, and can be time consuming and challenging.
ERANZ (p.1), Trustpower (p.1), Contact Energy (p.1), Nova Energy (p.1), Genesis Energy, Mighty River Power	There is no added benefit from forcing parties to move to any new agreement. Compulsion adds unnecessary cost to the proposal overall, and undermines the overall net positive benefit of the introduction of the DDA. Retailers and distributors should be free to maintain their current agreements if both parties choose. Existing agreements can be renegotiated by either party if required. Requiring the replacement of existing agreements would also discard the effort the industry has expended over recent time, add unnecessary cost and distraction to new entrants and established retailers, and divert them from their roles increasing innovation and competition in the market. This aspect of the proposal is aimed at addressing an issue that has not been proven to be having a material impact on consumer ability to access competitive pricing, or created an anti-competitive environment. The proposal, in this respect, imposes costs on participants for an uncertain, speculative benefit.
Trustpower (p.1)	Requiring the migration of existing bilateral contracts is inconsistent with regulatory best practice. If the Authority is intent on ensuring consistency across agreements (or even that its preferred arrangements bound all parties by default), then it should seek advice from an industry working group on the best process to implement this objective.
Simply Energy/ASEC (p.2)	The proposal reduces the transaction costs of entering into a UoSA, but unnecessarily requires those distributors that have already developed appropriate agreements to again incur the cost of consultation, and for both distributors and retailers to incur the cost of re-contracting for little, if any, additional benefit. This sends the undesirable signal that it is not worth complying with voluntary initiatives in the future.
Meridian Energy (p.1), ERANZ (p.2), Pioneer Energy (p.1), Contact Energy (p.1),	The Authority's proposal will reduce transaction costs and lead to more open and equal access to distribution services, which will lead to a more competitive retail market and deliver greater value and benefits to consumers.

General comments	
Submitters	**Submission**
Simply Energy/ASEC (p.8), Genesis Energy, Mighty River Power	
Meridian Energy (p.1), Nova Energy (p.1)	The proposal will allow for ease of entry of additional retailers into the market and on equal terms with existing retailers. The resulting increased consumer choice is likely to improve consumer satisfaction.
ERANZ (p.2), Genesis Energy, Mighty River Power	There are significant benefits from greater standardisation of distribution agreements. Correcting the current contracting power imbalance will provide greater value to consumers and will lead to all retailers providing level playing fields across distribution regions.
Meridian Energy (p.1), ERANZ (pp.2-3), Genesis Energy, Mighty River Power	The Authority's proposal provides an appropriate balance between standardisation and flexibility. The availability of the complete, well considered DDA on each network will ensure avoided transaction costs are maximised, while the potential for a mutually agreed alternative agreement ensures that beneficial variations can be adopted and innovation is not constrained. Allowing for alternative agreements and providing for default operational terms to be updated over time will leave room for innovation. This is particularly important given rapid developments in consumer technologies.
Simply Energy/ASEC (p.6), Nova Energy (p.1)	Traders and distributors should be able to negotiate bespoke contracts, particularly when retailers propose to offer an innovative set of services that require different operational terms. A DDA with the ability to negotiate customised operational terms is appropriate, as it will reduce transaction costs for the majority of the industry, but will not prevent new services and contract clauses from emerging.
Pioneer Energy (p.2)	The proposed DDA has a mandatory set of terms, but it allows discretion for each network company to define the operational terms. Therefore, the proposal does not achieve any simplification or standardisation of those terms. If operational terms were standardised, significant benefits could be realised that would enable competition and innovation, and reduce the transaction costs involved in retailing across more than one distribution company. There are also issues as to whether the proposed DDA structure enables the Authority to mandate standard

General comments	
Submitters	**Submission**
	information exchange agreements (or standard pricing, tariff terms, definitions, etc) in the future if/when agreement is reached.
Pioneer Energy (pp.2-3)	It may be more efficient for the Authority to develop one mandatory UoSA that includes operational terms, which would be available if a Retailer cannot reach agreement with a Distributor. This agreement may not be particularly attractive to any party but would have the major benefit of being common across all networks, would reduce transaction costs for the counterparties, and may encourage more engagement about a more desirable agreement. The default agreement could have appendices where the parties are able to come to further agreement. This is analogous to the default benchmark agreement for transmission customers or the default connection agreement in Part 6 of the Code.
Simply Energy/ASEC (pp.2, 6)	The Authority should explore an alternative process where a DDA would not be required unless a trader could establish to a Compliance Committee that the distributor's existing arrangement materially disadvantages the trader relative to the DDA. This would provide clear benefit to distributors who have already meaningfully engaged with retailers and developed appropriate agreements. The only costs to be incurred would be by distributors that have not already meaningfully engaged with traders to develop a balanced agreement based on the MUoSA. This process would require a trader to allege via the breach process that a particular part or parts of the distributor's existing agreement create a material disadvantage to the trader relative to what would exist under the DDA. A Compliance Committee would then arbitrate on the question, and if it were held that a material disadvantage did arise, the distributor would be required to develop a DDA using the processes proposed by the Authority in the current consultation.
Meridian Energy (pp.1-2)	The DDA should also apply to embedded networks. As there are numerous embedded networks and the number of customers on each network is small, the transaction costs associated with these negotiations are relatively large. There is significant scope for greater efficiency from a more standardised process for agreeing embedded network distribution agreements. An appropriate starting point may be to consider whether an embedded network should adopt the DDA of the parent network, or use their parent network's DDA as the basis for their own DDA, which would avoid the need for substantial additional consultation and negotiation processes.
Mighty River Power (p.4)	The DDA should not initially apply to embedded networks, given the separate issues relating to those arrangements. The inclusion of embedded networks should be reconsidered following the current RAG process for evaluating the

General comments	
Submitters	**Submission**
	competition and efficiency issues for embedded networks.
Pioneer Energy (p.3)	The proposal entrenches the current industry structure by reducing the costs of the relationship between retailers/traders and the distributor. The efficiency benefits of this proposal should be available to other market participants – for example, electricity consumers that contract directly with distributors.
ERANZ (p.2), Genesis Energy, Mighty River Power	There are only a few regional characteristics that require different provisions in a DDA.
Mighty River Power (p.3)	The Authority should propose a second round of consultation to comment more specifically on any finalised draft DDA.
Trustpower (p.2)	There are two issues that are of far greater importance to consumers than the introduction of the DDA, as they are currently imposing significant cost on retailers' operations: 1. **Pricing structures**: In the absence of guidance from the Authority, there is the potential for changes to Distributors' pricing structures to occur in an inefficient and ad-hoc manner 2. **Secondary networks**: The proliferation of secondary networks, of which there are now well over 150, increases Traders' costs per customer on these networks significantly. Examples of these costs include monthly reconciliation in pricing, as well as securing agreements.
Flick Energy (p.1)	The pricing and operational regimes of distribution companies are bigger issues to be resolved in terms of enabling innovation than the DDA. Addressing the Low Fixed Charged Tariff Regulations and the roll out of smart meters would have a more positive effect on enabling innovation.
Pioneer Energy (p.2)	There would be significant economic efficiency gains if there were a default information exchange standard, because significant resources are required to convert information received from each network a Retailer has customers on into a common format that the Retailer then uses. Governance of the quality and timeliness of outage information could be improved by this DDA process. Standardisation of the information provided by distribution companies about planned and unplanned outages would result in significant benefits for the customers of distribution companies.
Simply Energy/ASEC	EIEPs should be more precisely defined and the use of more EIEPs should be mandated. This would reduce the

General comments	
Submitters	**Submission**
(p.8)	amount of system customisation required by Traders, lower costs, and induce entry into new distribution network areas.
Simply Energy/ASEC (p.8)	If an EIEP provides for multiple different file types, a default file type should be specified if the parties cannot agree on the appropriate type.
Meridian Energy (p.2)	The draft DDA states at S5.5A that information relating to an Unplanned Service Interruption must be provided in accordance with EIEP5. However, this clause is an example operational term and therefore subject to change by an individual Distributor through the specified consultation process. Requiring the use of EIEP5A has been considered but decided against by the Authority previously, a decision which was announced without detailed reasoning and without further opportunity for industry to comment. Greater standardisation and outage information is favourable from an efficiency and customer perspective. If the Authority's current preference is for an optional approach to the EIEP5 format, the next stage of the DDA consultation should be used to obtain further feedback from industry and undertake a detailed cost benefit analysis of compulsory adoption.
Simply Energy/ASEC (pp.2, 8-10)	Some distributors have demonstrated that they lack the incentives to provide the high quality service level that would be provided in a competitive market. As distributors are subject to neither competitive pressures, nor regulated performance requirements, they provide a lower level of service quality than they would in a competitive industry and are indifferent to the costs imposed on traders by their practices. Distributors should be incentivised to act in a manner similar to what they would if they face competition. This incentive could be provided by way of a process which would allow "operational breaches" to be notified to the Authority, who would rule on the validity of the claimed breach and publish a "league table" of the number of complaints against each distributor/retailer (similar to the Electricity and Gas Complaints Commission process). The requirement to participate in such a scheme could be specified in the core terms of the DDA, or in the Rules. This would provide the Authority with a much clearer picture of the realities of interactions between retailers and distributors, and would provide a more robust basis for deciding whether any further changes are required. For instance, in many cases, poor performance is the result of poor systems, but there is no incentive to invest in better systems (in fact, Part 4 of the Commerce Act could provide an incentive not to do so, as this would provide the distributor with a lower cost base and higher profits). Providing incentives for improved distributor behaviour would: • promote competition, by further standardising the arrangements facing traders and facilitating entry of traders into

General comments	
Submitters	**Submission**
	distribution networks where they do not currently trade • promote reliable supply, by providing incentives for distributors to accurately notify outage information to traders, and for requiring traders to provide notifications to distributors in a consistent format (electronically, using an EIEP) • promote efficient operation of the electricity industry, by standardising arrangements and reducing transaction costs.
Simply Energy/ASEC (pp.3, 10)	Formal dispute resolution can be costly, particularly for small retailers in disputes with large, well-resourced networks. Requiring the use of high cost mechanisms (such as the Courts, or arbitration which requires the parties to utilise lawyers) will result in many breaches and service quality issues never being addressed, and larger parties refusing to comply with the rules. If dispute resolution is to support efficient outcomes, then the parties should have equal power in the process. This is demonstrably not the case when the parties have widely disparate financial resources. The dispute resolution process should be supplemented with an initial step that allows parties to lodge complaints with the Authority, providing a low cost means of resolving disputes. This would require the Compliance Unit and the Compliance Committee to consider disputes that might in other circumstances be considered not material. Generally, it should be expected that matters would go no further than the Compliance Committee, although it is possible that there may be initial appeals to the Rulings Panel to establish precedent. This dispute resolution mechanism has worked well for Distributed Generation. Similar dispute resolution mechanisms are also employed by Telecommunications Dispute Resolution, the Privacy Commissioner, and the Domain Name Commission.
Simply Energy/ASEC (p.11)	If retailers are to be able to push distributors to improve service (potentially being able to lodge complaints against distributors with the Authority), they need to have confidence that there will not be retaliatory action. Allowing distributors to refuse connection to traders because distributors do not want the risk of traders raising issues with service levels, would allow distributors to restrict competition and to continue with inefficient processes. Accordingly, distributors should be required to contract with the Retailers using their standard agreement (whether that is a DDA or a customised MUoSA). Termination should only be available in the event of non-payment of an undisputed invoice, or if the retailer has demonstrated an inability to meet health and safety obligations to an extent that creates liabilities to the distributor.

Q1: What is your view of the Authority's assessment of the arrangements that are currently in place governing the way Distributors and Retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
Submitters	**Submission**
ERANZ (pp.1, 5), Nova Energy (p.2), Genesis Energy, Mighty River Power	The MUoSA has delivered insufficient benefit to consumers, retailers and distributors. While it has shortened negotiation timeframes in some instances, it has not addressed the monopoly negotiating power imbalance with bilateral agreements which can have significant impacts on consumers, and market competition. For example, when distributors introduce standard contracts, they frequently add alternative terms and conditions to existing templates, which can require extensive discussion to understand the need for those changes and to resolve different views on the applicability of those terms. Some distributors have tended to work on the basis that, if they can agree the UoSA with one or more of the major retailers, then the agreement is satisfactory for all and they do not need to make further concessions (i.e. distributors come to adopt a "take it or leave it" attitude).
Simply Energy/ASEC (p.12)	As there is no obligation on distributors to enter into UoSAs, distributors may refuse to enter into UoSAs with retailers (e.g. small retailers). This adversely affects the competitiveness and efficiency of the retail market.
Genesis Energy (p.1)	The MUoSA provides little efficiency benefit, as negotiations under the MUoSA consume significant time and resource but do not result in materially different outcomes from one network to another.
Meridian Energy (p.4)	Adoption of the MUoSA has been slow to non-existent, with negotiations often leading to significant deviations from the MUoSA terms.
Simply Energy/ASEC (p.4)	Many Distributors have made a genuine effort to implement contracts based on the MUoSA.
Contact Energy (p.2)	The Authority's analysis appears to draw on the Vector pan-Auckland UoSA experience, and it does not appear to take into account progress since September 2012. The key to this progress has been Distributor willingness to materially align with the 2012 MUoSA, to use a transparent process and to negotiate in good faith changes that reflect a fair and reasonable balance between the legitimate interests of Distributors, Retailers and consumers.
Contact Energy (p.2), Simply Energy/ASEC (p.5), Meridian Energy (p.4),	Greater standardisation of distribution agreements would decrease transaction costs, encourage more efficient negotiations, and increase competition. Distributors and retailers both face higher than necessary transaction costs from developing, negotiating and agreeing multiple different UoSAs under the current arrangement. For example, understanding and negotiating different terms in

Q1: What is your view of the Authority's assessment of the arrangements that are currently in place governing the way Distributors and Retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
Submitters	**Submission**
Mighty River Power (pp.1, 4)	each distributor's contract; and modifying systems to accommodate processes, data formats, and other distributors' requirements. This raises consumer cost and undermines the ability of entrant traders to trade on different networks, decreasing competition. This is not in the best interests of consumers.
Meridian Energy (p.4)	The Authority should progress its proposal as soon as possible to ensure further delays in negotiating new distribution agreements are minimised.
Trustpower (p.1)	No evidence has been produced by the Authority to substantiate its inference that existing agreements provide an anti-competitive environment. The level of switching remains high and the proliferation of new retailers entering the market is evidence that existing UoSAs are not a barrier to competition.
Flick Energy (pp.1, 3)	There is no ability for small retailers to negotiate UoSAs (for instance, Flick Energy has simply accepted the existing arrangements and has relied on the even-handedness obligations). Only large Retailers are in a position to negotiate UoSAs, and smaller Retailers (and direct connect customers) have to take the existing terms. These issues are unlikely to be resolved voluntarily.
Contact Energy (p.2)	There is no evidence of distributors offering non-equivalent terms to retailers, as the Authority suggests.
Simply Energy/ASEC (p.5)	Distributors may offer retailers different terms, meaning that retailers with less favourable terms may be at a competitive disadvantage. Distributors can also impose inefficient terms on all retailers on their network, which can prevent retailers from innovating and providing new services in the face of evolving technologies, and restrict innovation and competition in the market.

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
ERANZ (pp.1,	No existing agreement should be required to be replaced by a new agreement, or default to the DDA, unless (and until)

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Submitters	**Submission**
5), Trustpower (p.3), Nova Energy (p.2), Genesis Energy, Mighty River Power	either party so chooses. There is insufficient justification to overrule commercial arrangements that both parties may be happy to work with and likely improve over a longer timeframe than the 2 months specified in the draft Code. Although agreements should not provide a competitive advantage to any participant, forcing adoption of the DDA does not achieve this goal.
ERANZ (p.5), Trustpower (p.3), Genesis Energy, Mighty River Power	Distributors should provide the Authority with their proposed distributor agreements and have them approved as complying with the new proposed Part 12A requirements before they are presented to retailers.
Trustpower (p.3)	If the Authority requires distributors to provide it with the proposed distributor agreements and have them approved as complying with the requirements; and if the Authority agrees that no existing agreement should be required to be replaced by a new agreement unless and until either party so chooses, this will remove any requirement for the Rulings Panel or any industry group to act as referees in what is a commercial contract between two companies.
Meridian Energy (p.4), Flick Energy (p.4)	The 60 and 120 business day timeframes to consult on the published DDAs are relatively condensed and substantial interactions may be necessary over the period, especially if there are to be wide amendments to the existing arrangements. The Authority should keep industry well informed on the potential go-live date of this proposal, to ensure that industry is ready to participate.
Trustpower (p.3), Contact Energy (p.3)	The timeframes the Authority has proposed are unrealistic. For instance, the process of presenting and consulting on 27 DDAs to 25 traders will take at least a year, not the six months proposed by the Authority. Similarly, the following are also unrealistic: • 8 business days for any Trader to appeal to the Rulings Panel on an operational term in the published DDA • 20 business days to negotiate an alternative agreement, or two months for transitional provisions for existing

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Submitters	**Submission**
	agreements.
Contact Energy (pp.5-6)	Although there are potential synergies from Distributors cooperating or leveraging contractual terms that have been negotiated since 2012, the timelines for developing and publishing DDAs and negotiating alternative agreements are unrealistic. In particular: • the process does not appear to contemplate traders suggesting amendments to operational terms, or additional operational terms – only that traders have an opportunity to respond to distributors' amendments to the example operational terms • a transparent process takes many months and several consultation rounds, even where the starting point for negotiating a new UoSA is alignment with the 2012 MUoSA • retailers are not resourced to respond in the time proposed to such a large group of distributors who will all be consulting on operational terms at the same time • for alternative distribution agreements, there does not appear to be any reason why the timeframe needs to be specified. Instead, it may be appropriate to have a process where the initial default position is the DDA and, if either party indicates it prefers an alternative agreement, the parties could agree on a timeframe to negotiate an alternative agreement.
Mighty River Power (pp.1, 2, 4), Nova Energy (p.2)	Allowing traders and distributors to negotiate alternative terms gives parties flexibility and the ability to innovate and/or have more favourable terms where possible. However, parties should be able to subsequently agree alternative terms at any time, even though the DDA may have applied in default. This better allows the parties to maintain flexibility as situations may arise after the DDA comes into force that would enable a better, more cost-effective alternative. Parties should be at liberty to have an alternative agreement applying at the most appropriate time. For example, parties should be able to adopt the DDA immediately in the absence of a satisfactory existing agreement; then engage with the other party with a view to agreeing alternative terms and the wider service relationship. Once they agree, they should be able to terminate the DDA and adopt the alternative agreement. If this were the case, there would be no need for a specific timeframe for the negotiations to be completed. This is also in line with clause 12.11 of the Code, in relation to transmission agreements. Clause 12A.10(1) should be amended accordingly, as detailed later in this summary.

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
Flick Energy (p.4)	Section 3.5 sets out that retailers can negotiate alternative terms. However distribution companies are unlikely to accept trade-offs. Unless alternative arrangements are available to all traders and even-handedness continues, this arrangement is not in the interests of small retailers. It would be more preferable for each distribution company to have one fair agreement that largely follows a template and enables continued innovation.
Contact Energy (p.3)	In principle, the proposed Code provisions are acceptable. In particular, Contact Energy agrees with the provisions for default core terms and requirements which local distributors with interposed arrangements will have to comply with when drafting operational terms, and which Traders will have to comply with when trading or contemplating trading on local Distributor networks with interposed arrangements.
Contact Energy (p.3)	As proposed, only distributors can propose amended operational terms after the DDA is published (clause 12A.11). The process to amend default core terms via a Code amendment is likely to be too slow. Where Code change processes have been proposed by participants, achieving changes to the Code has been a lengthy process. For example, the proposal to cease ICP-days scaling in 2012, which was supported by traders, has not been progressed.
Contact Energy (pp.3-4)	The proposed Part 12A (and Part 11) require Traders trading on embedded networks to have a distribution agreement, when there is no intention to prescribe the contents of a DDA appropriate to embedded networks. The current Code requirement on traders trading on both local and embedded networks is to have in place "necessary arrangements for the provision of line function services in relation to an ICP". A valid arrangement would be an email or letter that acknowledges that the Trader can trade without a signed UoSA. It is appropriate that a trader trading on a local distributor's network with interposed arrangements will have to have a distributor agreement. This is because the requirement to publish a DDA will include prescribed core terms and operational terms that meet requirements specified in the Code. However, in the absence of a prescribed DDA for embedded networks, it is not appropriate to place an equivalent obligation on traders trading on embedded networks, as the Authority proposes. With the significant growth of embedded networks, negotiating fit-for-purpose UoSAs has, in many cases, been problematic. Many of the embedded networks with unacceptable UoSAs were established long before the MUoSA was finalised in 2012. Since 2012, there has been limited or no progress towards embedded network owners offering amended UoSAs materially aligned with the MUoSA embedded networks example. The two primary embedded network agents have been engaging with retailers to finalise two standard UoSAs for the embedded networks where they act as agent.

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
	The Authority needs to issue a clear expectation (outside Part 12A) that it expects embedded network owners to align their UoSAs with the default core terms and operational terms consistent with the requirements specified in the DDA template, as applicable to embedded networks. This should be done within a reasonable timeframe (for example, two years) for existing embedded networks and, for new embedded networks, when notice is provided.
Contact Energy (p.5)	The exclusion of additional services from DDAs for alternative agreements is a backwards step for establishing consistent terms between retailers and distributors – for example, where distributors apply network rebates, discounts or dividends via credits on customers' bills. Although the Authority states that the proposal does not affect additional services and that they can still be agreed, this will require additional negotiations outside the standard process.
Nova Energy (p.2)	Additional services should be excluded from the DDA, as they currently are, because these should be capable of being negotiated by the parties directly.
Meridian Energy (p.4)	The Authority should add a description of what an effective consultation process by Distributors would involve, to ensure that adequate consultation processes are undertaken.
Meridian Energy (p.4)	Distributors should be required to publish all submissions to their consultations.
Meridian Energy (p.4)	The Authority should produce a similar table for the DDA as it did for the MUoSA. This table sets out which clauses in the DDA would require changes to retailers' customer contracts.
Mighty River Power (pp.1, 2, 4), Contact Energy (p.6)	The Rulings Panel provides necessary oversight and accountability to ensure that the operational terms are fair and reasonable. Generally speaking, the Rulings Panel is the most appropriate forum for resolving any issues that may arise, which is also consistent with the dispute regime for transmission agreements (see clause 12.45 of the Code).
Contact Energy (p.6)	Clause 3 of the MUoSA (equal access and even-handed treatment of competing traders) is appropriately addressed in the Code, but should also be reinstated as a default core term of the DDA. This is because it is the application of terms in the agreement that the equal access/even-handedness obligation was intended to cover, not just the offer of each new agreement to traders.
Mighty River	In addition to the Rulings Panel, the Authority should also provide parties the option to refer matters to mediation or

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
Power (pp.2, 4)	arbitration by mutual agreement. This would avoid the Rulings Panel being the singular forum for disputes and would give the parties flexibility to form their own timeframe for resolution where appropriate.
Mighty River Power (p.4)	Parties should be able to mutually agree a negotiation period for an alternative agreement before the DDA applies by default.
Mighty River Power (p.2)	The proposed clause 31.2 of the DDA should be narrowed even further to avoid contentious requests for consumption data. The Authority had expressed some concerns about the Vector agreement relating to requests for demand and energy information. The way clause 6.10 of the Vector agreement is drafted may result in Vector acquiring commercially sensitive information, and there is a potentially significant moral hazard in allowing access to this information. Therefore, the Authority should exclude clause 31.2 from the DDA, which is substantially similar to clause 6.10 of the Vector agreement. Further, traders should be entitled to recover reasonable costs in gathering, formatting, and sending information to distributors. While clause 31.2 should be narrowed, compliance monitoring is extremely difficult for the trader, if not impossible, which also poses challenges for the regulator.
Nova Energy (p.3)	Some terms are best left to the Code, rather than being incorporated into the DDA. In this way, terms can be enforced through the audit and rulings process requirements rather than in the DDA itself (the DDA can only be enforced between the parties to the contract).
Nova Energy (p.3)	Clause 6.5, "non-technical losses", should be in the Code only.
Flick Energy (p.4)	Just as retailers are required to comply with the Authority's model terms and conditions, distributors should be required to comply with model/default distribution terms. The DDA template should include consideration of the Fair Trading Act (including the unfair contract terms requirements), especially where these terms are required to be carried over to retailers' customer agreements There should be better alignment between the legal terms of the DDA and operational matters for example the provision of outage information). Having different processes for each network adds complication and cost that is

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
	ultimately borne by customers.
Flick Energy (p.4)	There is not necessarily a distinction between the legal and operational terms.
Mad Power (p.1)	The process streamlines network access arrangements for entrant traders, brings significant gains in efficiency and consistency between agreements, and significantly streamlines on-boarding processes for new distributors (i.e. distributors on whose networks Mad Power wishes to trade).
Simply Energy/ASEC (p.12)	The level of tailoring available to distributors should be kept to a minimum. For instance, the EIEPs so that they become standards, and mandating the use of EIEPs. Modifying systems and processes to accommodate the idiosyncrasies of each distributor can be extremely costly and drive transaction costs within the trader's business.
Simply Energy/ASEC (pp.2, 6-7)	The proposed clause 12A.10 requires that alternative agreements address only the subject matter of the DDA and relate only to distribution services. This is unnecessary. If a distributor and a retailer negotiate additional terms that address other matters, it is their prerogative whether those terms are included in the Use-of-System agreement or in another agreement. In many instances, the variations may be recorded in the form of a side-letter; in which case it would be quite normal for the parties to include any non-distribution matters in the same side-letter. When alternative agreements take this form, the variations are much easier for the parties to assess. On the other hand, requiring non-distribution terms to be in a separate agreement could lead to inefficiencies, as additional comprehensive contracts may need to be negotiated. Further, if a distributor and a retailer negotiate an alternative agreement, they do so willingly, and both must receive a net gain relative to the alternative (whether or not that is the DDA).
Mad Power (p.1)	All distributors should be required by the Code to have their default UoSAs/DDA published on their website publicly in an easily accessible location. This should also be able to be provided by email or post within a specified timeframe (for instance, five or fewer business days).

Q3: What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	
Submitters	**Submission**
Contact Energy (p.6)	The Authority's analysis is reasonable.
ERANZ (p.5), Nova Energy (p.3), Genesis Energy, Mighty River Power	The Authority has underestimated the potential future demand for new distribution agreements. The Authority's assessment that completed UoSAs are still fit-for-purpose may be true, but parties to existing agreements may still wish to move to the DDA. For example, Nova Energy considers that it has agreements it would prefer to renegotiate in the short term, and is currently engaging in replacing several agreements. This suggests that the Authority's estimate that there are 124 UoSAs to renegotiate across the market is on the low side.
ERANZ (pp.1, 5), Trustpower (p.3), Nova Energy (p.2), Genesis Energy, Mighty River Power	Existing agreements should not be required to be moved to the DDA or an alternative if both parties are happy to remain with their existing agreement. Removing this unnecessary automatic transition will also reduce the costs associated with the introduction of the DDA and lead to a higher net benefit.
ERANZ (p.5), Genesis Energy, Mighty River Power	The Authority appears to assume that completed agreements are still fit for purpose. This may be the case in general, but parties to many of the existing agreements may also prefer to move to the DDA.
Flick Energy (p.5)	The Authority's analysis is sound. However, there are a number of existing distribution company agreements that are not based on the MUoSA. These should be replaced.
Nova Energy (p.3)	The Authority's statement at paragraph 3.6.32 that this proposal "*provides an opportunity to lock in significant value…*" is correct.
Trustpower (p.3)	The number of UoSAs is not relevant to trader's efficient operation, as UoSAs are just one of many complex contracts traders must negotiate and implement.
Simply Energy/ASEC	The Authority has assumed that the 7 niche traders (currently trading on only one distribution network) do not seek to expand their operations to other networks on the basis that they have not yet expressed a desire to do so. However, it

Q3: What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	
Submitters	**Submission**
(pp.12-13)	is likely that niche traders would more readily seek to trade on other networks if there was improved consistency between UoSAs. The Authority has also assumed that the 18 active traders each seek to operate on all 27 distribution networks using interposed arrangements. This is an unrealistic upper estimate. Although some of the niche traders are likely to want to expand (and are more likely to do so when there is consistency between UoSAs), not all 18 active retailers are likely to want to trade on all 27 distribution networks. For example, retailers requiring ground staff are unlikely to want to operate in areas of low population density. As another example, the new DDA will bring standardisation, but operational terms will still differ between distributors, which means that there are still likely to be additional costs associated with each agreement.
Meridian Energy (supp., p.2)	The Authority's assessment of the number of new UoSAs to be negotiated is generally correct, but its analysis is likely to be conservative because: • it assumes that existing niche traders will not expand into new networks; • it does not assume that new traders will enter the market, despite a clear pattern of recent new entry; and • the Authority estimates that 50% of existing UoSAs are legacy UoSAs, but Meridian considers that approximately two-thirds of its existing UoSAs will need to be renegotiated (some are legacy UoSAs, and some need to be renegotiated because they are not substantially based on the MUoSA and, due to the power imbalance resulting from distributors' natural monopoly position, are biased in favour of distributors).

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
ERANZ (p.3), Meridian Energy (p.5), Genesis Energy, Mighty River Power	The Authority's net positive benefit in the cost benefit assessment of this proposal ($0.2 million to $3.2 million) is reasonable. The estimate may even be potentially conservative, given the recent flux of new entrants in the New Zealand retail market, and the potential for existing retailers to expand.

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
ERANZ (p.3), Genesis Energy, Mighty River Power	The Authority undervalues the benefits of the change for existing historical distribution agreements. The DDA provides a simple and inexpensive method for either party to review a historical distribution agreement that may predate the MUoSA or even the Authority itself.
ERANZ (p.3), Genesis Energy, Mighty River Power	The Authority's estimates of costs to implement the proposal are reasonable. Significant effort has already been expended to develop appropriate terms under the MUoSA and, where appropriate, customise those terms to individual networks. The additional costs to develop and publish a DDA will be incremental.
Meridian Energy (p.5)	The Authority's estimate of costs savings per negotiation ($5,000 to $50,000) arising from the proposal is reasonable.
Pioneer Energy (p.3)	The CBA does not fully take into account the cost of each network company having to develop, consult, finalise, and then sign a new agreement with every retailer on its network.
Meridian Energy (p.5), ERANZ (p.3), Flick Energy (p.5), Mad Power (p.1), Genesis Energy, Mighty River Power	There are potentially significant dynamic efficiency benefits from the proposal arising from lower barriers to entry. Smaller retailers and embedded networks are more likely to enter into UoSAs if the process (and costs) are streamlined. The proposal allows entrant retailers to quickly establish distribution agreements on all networks in the country with low effort, which will clearly enhance the competitiveness of the retail market.
Mighty River Power (p.5)	The Authority's proposal to deal with the problem definition supports the Authority's statutory objective because retaining a voluntary arrangement could have long-term negative effects on competition, efficiency, and regulatory certainty.
Trustpower (pp.3-4)	The Authority's proposal does not address the single largest cost of any trader, which is the cost of having to interact regularly with potentially 150+ networks within New Zealand. Putting in place an initial agreement with the distributor is an insignificant cost when compared to the real costs and pain points of the electricity industry.
Flick Energy	There ought to be a balance between standardisation, and incentives to promote value-adding terms of service. However, smaller retailers have few resources and less negotiation power, so even-handedness obligations should

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
(p.5)	continue with respect to distribution services.
Simply Energy/ASEC (p.14)	The efficiency gains of the proposal could be even greater if the Authority: • mandated standardised EIEPs • provided for an ability to appeal operational breaches to the Authority • created a "league table" of distributor performance • implemented an efficient dispute resolution process.

Q5: What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	
Submitters	**Submission**
Answers to this question are set out in the tables below.	

Code amendments – general comments	
Submitters	**Submission**
Meridian Energy (p.5)	The Code should include guidance around distributor consultation processes.
Trustpower (p.4)	A more effective method of addressing the precise detailed Code drafting is required. A working group of experienced persons from distributors and traders could provide an agreed template for consideration in the next round of consultation.
Flick Energy (p.6)	The Authority's proposal to replace "line function" with "distribution", and "use of system" with "distribution" are correct.
Mad Power (pp.1-2)	The Authority should introduce more certainty into the Code in relation to prudential requirements. For instance, the subsection that states "*the trader must provide and maintain acceptable security … at the trader's election…*" is subject to wild variation in interpretation based on the distributor's discretion. This has a significant impact on new retailers (or

Code amendments – general comments	
Submitters	**Submission**
	existing retailers entering into new UoSAs), particularly so when initial trading amounts are projected to be low. The Code should specify that prudential requirements will not be required under a specified trading volume (for instance, $1,000 to $2,500 per trading period or month).
Genesis Energy (p.1)	The short period of negotiation proposed for variations to the DDA allows scope for innovation while ensuring agreements are entered into in a timely and consistent manner.

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
11.5	Contact Energy (p.11)	In the absence of extending the DDA provisions to embedded networks, clauses 11.5 and 11.16 must reflect the status quo. Clauses 11.5(2)(a) and 11.16(a)(i) should be split into two subclauses for subpart 1 (local networks with interposed arrangements) and subpart 2 (embedded networks). Clause 11.5(2) would read: "*(a) in the case of a Trader to whom subpart 1 applies, a distribution agreement with the Distributor in accordance with clause 11.16;* *(b) in the case of a Trader to whom subpart 2 applies, a distribution agreement or arrangement for the provision of distribution services with the Distributor in accordance with clause 11.16; or* *…*" Clause 11.16(a) would read: "*(i) if a Trader is a Trader to whom subpart 1 of Part 12A applies, a distribution agreement with the Distributor on whose network the ICP is located; or* *(ii) if a Trader is a Trader to whom subpart 2 of Part 12A applies, a distribution agreement or arrangement for the provision of distribution services with the Distributor on whose network the ICP is located; or* *…*"
Title of	Contact Energy	The title of subpart 1 of Part 12A should be amended for clarity by adding the words "that use interposed

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
Part 12A, Subpart 1	(p.8)	arrangements".
12A.2(a)(ii)	Contact Energy (p.9)	On many networks, the distributor will have a distribution services contract with one or more (large) consumers, so it is unclear whether this clause provides the appropriate context.
12A.3(2)	Meridian Energy (p.6), ERANZ (p.7), Trustpower (p.4), Genesis Energy, Mighty River Power	The criteria in 12A.3(2) could be simplified. The ability of a distributor to meet a trader's requirements should not be a separate consideration if the trader's requirements are otherwise reasonable. Clause 12A.3(2)(b) should be amended to refer to the "**reasonable** requirements of Traders". Clause 12A.3(2)(d) can be deleted if that change is made.
12A.3(2)	Simply Energy/ASEC (p.15)	This clause should be amended to provide that: "*(a) the Distributor is only required to develop a DDA if a Trader can demonstrate to the Compliance Committee that the Distributor's existing standard agreement presents a material disadvantage relative to the regulated default agreement; and* *(b) breaches of the operational terms can be referred to the Authority's compliance unit.*"
12A.4(1)(b)	Contact Energy (p.9)	Clause 12A.4(1)(b) is ambiguous and would exclude a DDA including some additional operational terms that relate to distribution services not considered by the Authority, because its primary reference point is the Vector UoSA. For example, seven of eight new local distributor UoSAs executed by Contact Energy, (but not the Vector UoSA), include a section in Schedule 8 covering distributor load management service priority and use, instructing retailers, and the retailer load management service. These clauses are all in the long-term interest of consumers, and all relate to distribution services. This subclause should be amended to allow for additional operational terms, related to distribution services, to avoid the need to negotiate such provisions in alternative agreements.
12A.4(4)	Contact Energy (p.9)	Paragraphs (a) and (b) should be amended to extend the time periods to a more realistic 120 business days for group 1, and 180 business days for group 2. This is because 2 of the 4 group 1 distributors, and 15 of the 23 group 2 distributors, are yet to offer new UoSAs to Contact Energy based on the 2012 MUoSA. The process typically takes two to three cycles

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
		before an agreement is finalised, and traders do not have the resources that will enable them to respond immediately and meaningfully on the scale and in the timeframes proposed under the draft Code change.
12A.5(1)	Contact Energy (p.9)	The time allowed for the appeal process is unrealistic, as it requires traders to consider whether or not to appeal, draft the appeal in the correct form, provide content that will enable the Rulings Panel to make an informed decision, and get legal sign-off, within 8 days. This is unlikely to produce the best outcomes. The time period should be 20 business days.
12A.5(1)	Meridian Energy (p.6), ERANZ (p.7), Trustpower (p.4), Genesis Energy, Mighty River Power	The appeal timeframe in clause 12A.5(1) should run from when the Distributor notifies a participant under clause 12A.4(5)(b). Otherwise, there would be no consequence for the distributor failing to comply with the notification requirement, and the appeal timeframe could run out before participants are notified by distributors of the availability of a DDA. The words "makes its" in clause 12A.5(1) should be replaced with "advises a participant in accordance with 12A.4(5)(b) that".
12A.5(1)	Meridian Energy (p.6), ERANZ (p.7), Trustpower (p.4), Genesis Energy, Mighty River Power	It is not clear what "participated in the consultation" means. The word "participated" should be replaced with the phrase "made a written or verbal submission to the Distributor".
12A.5, 12A.6, and 12A.7	Flick Energy (p.6)	Small retailers are unlikely to appeal to the Rulings Panel, as the time and cost of doing so would be prohibitive. It is more efficient to require distributors to adhere to fair, consistent, and workable DDA terms.
12A.8	Simply Energy/ASEC (pp.15-16)	This clause should be amended to make clear that the obligation to enter into a distribution agreement goes both ways. That is, a distributor should also be obliged to enter into a distribution agreement with a trader or a direct market participant. Some small retailers have had networks express reluctance to enter into UoSAs. Such reluctance is a

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
		direct barrier to the expansion of smaller retailers, impeding the ability of those retailers to effectively compete and reducing the efficiency of the market. Distributors with appropriately designed systems should have no concerns about additional retailers active on their systems.
12A.9	Simply Energy/ASEC (p.16)	Events constituting a default that could lead to termination of a contract should be tightly defined. This might include, for instance, serious financial breach, or issues impacting liability associated with health and safety. On the other hand, a breach that could lead to termination should exclude breaches of operational terms. Breaches of operational terms would be better dealt with by way of appeal to the Authority and the creation of a "league table", as suggested above.
12A.10	Flick Energy (p.6)	Clause 12A.10 should be linked to an even-handedness obligation. This obligation is relied on by smaller retailers when dealing with distributors. It would be concerning if there were alternate agreements that were not open and available to all retailers (if Distributors and Traders can enter into alternative arrangements that relate only to distribution agreements).
12A.12(4)	ERANZ (p.7), Trustpower (p.4), Genesis Energy, Mighty River Power	The appropriate notice period should be at least 20 business days (instead of 5 business days), to allow for internal processes to be adjusted.
12A.12	ERANZ (p.8), Trustpower (p.4), Genesis Energy, Mighty River Power, Nova Energy (p.3)	The two month transitional requirement should be removed entirely. Retailers and Distributors should be free to maintain their current arrangements with the ability to change to the DDA at any time. Clause 12A.12(3) should be amended to replace the words "*before the default Distributor agreement applies as a binding contract between the Distributor and to the Trader under subclause (5),*" with the phrase "*after the offer to contract has been made under subclause (2)*". Subclause (5) should also be deleted.
12A.12(5)	Contact Energy (p.9)	The two month transitional requirement in respect of existing agreements is unreasonable and should be extended to six months This timeframe is based on the time it has taken to work with local distributors to negotiate new UoSAs that are materially aligned with the 2012 MUoSA.

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
12A.13 and 12A.14	Simply Energy/ASEC (pp.16-17)	In both clauses 12A.13 and 12A.14, there should be a reciprocal requirement for distributors to enter into a distribution agreement with traders.
12A.14	Contact Energy (p.9)	Traders should not be obliged to have a distribution agreement with embedded network owners when there is no equivalent proposal requiring embedded network owners to develop, negotiate and publish DDAs along similar lines to local networks with interposed arrangements. This clause should be amended as follows: "*(1) A Trader trading on a Distributor's network must have an arrangement for the provision of distribution services with the Distributor in relation to an ICP.* *(2) A Trader that wishes to trade on a Distributor's network must give notice to the Distributor of that fact at least 20 business days before the Trader proposes to commence trading on the Distributor's network and must have an arrangement for the provision of distribution services with the Distributor in relation to an ICP before it commences trading.*"
12A.14	ERANZ (p.9), Trustpower (p.4), Genesis Energy, Mighty River Power	The Authority should continue with an embedded network workstream as there are significant benefits for consumers and retailers from regulation of this area. Accordingly a new subclause (4) should be added to clause 12A.14, that reads, "*for the purposes of subclauses (1) and (2), distribution agreement excludes an embedded network.*" This would make it clear that the embedded network workstream will continue, but that traders are not yet required to enter into distribution agreements with embedded network owners.
12A.19	Simply Energy/ASEC (p.18)	The word "materially" in this clause should be deleted, because this gives the distributor the ability to make a judgment about whether a change will affect a business that it only has superficial knowledge of. Instead, consultation should be required if a change in the pricing structure may affect one or more traders or consumers. This change would mean that clause 12A.19(3) should also be deleted.
12A.20	Simply Energy/ASEC (p.19)	This clause should be amended to provide that data must be provided in the form of a standard form electronic file. Traders require data in a standard form that supports each invoice received from a distributor, so that the distributor invoice can be reconciled with the trader's billing. Obtaining data in a standard format is currently very difficult: distributors provide a range of file types and formats, which

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
		means that significant work is required by retailers each month to ensure that files are processed correctly.
12A.21	Contact Energy (p.10)	On many networks, distributors will have distribution services contracts with one or more consumers, so it is unclear whether clause 12A.21(a)(ii) provides the appropriate context.
12A.22	Contact Energy (p.10)	For consistency, "tariff rate" should be replaced with "pricing" in clause 12A.22(3)(d).
12A.22	Simply Energy/ASEC (pp.19-20)	The standardisation of information exchange formats should be increased, as standard form EIEPs make a significant difference to improving the efficient operation of the electricity industry by reducing transaction costs. In this clause: • the Authority should mandate the use of EIEP (Planned Outage Notifications) due to the work and liability that flows from non-notifications • an EIEP should be required in respect of unplanned outage notifications and a requirement for electronic exchange • in the event of disagreement on the form of EIEPs then there should be a default standard.
12A.23	Simply Energy/ASEC (pp.20-21)	This clause should be amended to provide that there should be a consequence for non-compliance. To the extent that the data is required to support an invoice from a distributor to a trader, an appropriate consequence would be that the trader has no obligation to pay the invoice until the supporting data is provided. Further, in such a circumstance, the clause should be amended to state that non-payment would not be a "serious financial breach". In other circumstances, the appropriate consequence should be that the affected party can make a complaint to the Authority which can then investigate, require corrective action, and publish the number/types of complaints in a "league table", as suggested above.
14.41	Simply Energy/ASEC (p.21)	The word "distributor" in (h)(iii) of this clause is an error. This word should be replaced with "trader".
14.41	Simply Energy/ASEC	Where a breach of health and safety requirements exposes the distributor to liability, this should be treated as an event of default.

Code amendments – detailed comments		
Clause	**Submitters**	**Submission**
	(p.21)	

Default Distribution agreement – general comments	
Submitters	**Submission**
ERANZ (p.6), Genesis Energy, Mighty River Power, Trustpower	The Authority should separate the purpose of the individual clauses from the example terms.
Nova Energy (p.1)	Distributors should not have an automatic right under the DDA to receive detailed customer information. This is irrespective of a trader's concerns over how that data is likely to be used or managed. The confidentiality clause in the DDA should be strengthened; and traders should have the right to withhold customer information if, in their opinion, the distributor has not given satisfactory undertakings over the protection of that data. This is dealt with further at clause 31.

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
2.2(f)	Contact Energy (p.12)	The Distributor only allocates Price Categories, while the Trader selects Price Options. This is consistent with 8.3.
2.3	ERANZ (p.9), Contact Energy (p.12), Genesis Energy, Mighty River Power,	MUoSA clause 3.1 (even-handedness) should be reinserted into DDA clause 2.3. Clause 3.2 of the MUoSA codifies the requirement that distributors will be neutral to the different retailers that operate on their networks, which allows retail competition to deliver value to consumers. Accordingly a new paragraph (j) should be inserted into clause 2.3 as follows:

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
	Trustpower	"***Equal access and even-handed treatment:*** *The Distributor will give all Traders equal access to the distribution services and will treat all Traders even-handedly.*"
2.3(e)	Contact Energy (p.12)	The retailer provides information to enable the distributor to calculate loss factors. The retailer does not provide information about loss factors.
2.3(i)	Contact Energy (p.12)	Clause 31 is about more than customer details – it is about customer information.
2.3(i)	Mighty River Power (p.6)	Not all EIEPs are mandatory under the Code, and voluntary ones should not be subject to a mandatory regime via the DDA. Clause 2.3(i) should be amended by inserting the word "mandatory" before the word "EIEPs" in the clause.
3.2	Contact Energy (p.12)	It is important that the distributor updates the registry in all cases. Accordingly, it should be "and" not "or" at the end of clause 3.2(b)(i).
3.4	Contact Energy (p.12)	The word "valid" should be in lower case.
4	Contact Energy (pp.12-13)	The planned service interruption section should include a clause similar to the following: "***Party responsible for notifying customers of planned service interruptions*** *The party responsible for notifying customers of planned service interruptions is identified in Schedule 5.*" This would reflect current arrangements where either the distributor or the trader may be responsible.
4.3	Mighty River Power (p.6)	The clause should provide that the distributor must consult with traders trading on its network if it wishes to update its System Emergency Event management policy set out in Schedule 4 to the DDA.
5.9	Mighty River Power (p.6)	For efficiency and transparency both the customer **and the trader** should be notified of any assignment. The trader should also have to give consent to any assignment.
6.5	Meridian Energy (p.8)	The "non-technical" aspect of non-technical losses is not defined. Meridian Energy understood that this refers to Unaccounted For Energy, and supports the clause on the

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
		basis that non-technical losses refers to UFE.
6.5	Nova Energy (p.4)	The wording of this clause is much stronger than the clause in the existing MUoSA. It would be more appropriate to include this as a requirement in the Code, where consideration can be given in terms of how this requirement is applied. This is particularly so given that there is no simple way of determining if the trader is meeting its contractual commitment to the distributor on this point.
6.6	Contact Energy (p.13)	"Losses" should be replaced with "unaccounted for energy (UFE)" and "UFE" should be defined in clause 33.2. The most transparent losses information available is UFE ex the settlement process (GR-060, GR-260). The current drafting of clause 6 was before 2008 when reconciliation by difference preceded global reconciliation, and the incumbent retailer was allocated 100% of UFE. While the loss factor guidelines attempted to differentiate between technical and non-technical losses, the calculation of technical losses is somewhat imprecise. Therefore, the best measure to trigger clause 6.6 and potentially clause 6.7 is the UFE published in the GR-060/GR-260 reports.
7	Contact Energy (pp.13-15)	The terminology used for pricing terms differs across the industry. The Authority and industry should agree common terminology for pricing and charge terms. This suggested amendment should be read in conjunction with clause 33.2 and Schedule 7, and any other clauses that use similar terms. In Contact Energy's view: • "pricing" is more appropriate than "tariff" or "tariff rate" or "line charge", noting that "tariff rate" was introduced by the Authority with its standard tariff rates initiative • "price option" is more appropriate than "tariff option" • the most important documents distributors need to provide to traders to enable prices to be implemented are as follows: – Price schedule: This must be a compact document summarising price category codes and descriptions, price codes and descriptions, registered contents codes and period of availability for each variable price, prices and units. The price schedule should also include the loss codes and loss factors for the network as these are required for retail billing and pricing. Distributors should prepare a

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
		separate document for information disclosure purposes that requires additional information not relevant to traders. Distribution prices/pricing also tends to imply that it is only the distribution component of total delivery prices. – Pricing policy: This is a critical document for traders to be provided at the same time as the price schedule, and it must include all the information reasonably required by traders to apply the prices, including the processes and methods (formulae) to set chargeable quantities and apply prices, describe eligibility criteria for price categories and price options, and set out the distributor's billing methodology. – Pricing methodology: Traders primarily have an interest in the pricing structure, not the pricing methodology, which is required for information disclosure purposes as set out in the Electricity Information Disclosure Determination 2012, clause 2.4. In this context, the pricing methodology is required to set out the distributor's approach to cost allocation and derivation of prices, and demonstrate alignment or otherwise with the distribution pricing principles. It is primarily of interest to the Authority and Commerce Commission. While it is a useful reference document for traders, it should not contain information not included in the price schedule and pricing policy that is required by traders to implement the prices. On the other hand, distributors are expected to consult on proposed changes to pricing structure – adding a price category, removing a price category, amending price options within an existing price category, or changing the eligibility criteria for a price category or prices. Ultimately, when decisions are made after consultation, it is the confirmation of the pricing structure, final price schedule and pricing policy that are important to traders, and, for transparency, a mark-up of the pricing policy document. – Loss factors: To ensure trader pricing analysts have all the information reasonably required to implement network prices and set retail prices, the price schedule notified to traders must include loss codes and loss factors, notwithstanding that they may not be changing. For embedded networks, traders need both the embedded network loss codes and loss factors, and the local network gateway/LE ICPs, loss codes and loss factors, and overall loss factors (being the product of the embedded network and local network loss factors). This is essential information, as loss factors are used for pricing and customer billing.

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		Clauses 7 and 33.2, and Schedule 7, should focus on the terms "network/delivery price schedule", "prices" and "pricing policy" as being the key documents required by traders, and consider the term "pricing structure" rather than "pricing methodology" in the context of consulting on and implementing pricing structure changes.
7.5(b)	Contact Energy (p.15)	This clause should also include the existing price category to ensure there is no confusion.
7.5(b)	Meridian Energy (p.8)	Clause 7.5(b) should be amended to make clear that the distributor must give the trader a mapping table which relates to **all** affected ICPs on the distributor's network when a price change results in ICPs being allocated to a different price category. This clause does not currently make it clear whether the distributor must give the Trader a mapping table relating to all affected ICPs, or only the affected ICPs for which the particular trader is responsible. This proposed amendment will ensure that traders can provide accurate price quotes to prospective customers in situations where there has been a distributor price change but the changes have not yet been reflected in the Registry (a time period which can span up to 40 working days).
7.7	Meridian Energy (p.8)	The last sentence of this clause should be amended to reflect that the distributor may only correct an error without following the processes under clauses 7.4 or 7.5(a) where it does not have a material effect on the Trader or its customer.
8.1	Contact Energy (p.15)	Clause 8.1 should use the term "Distributor's pricing schedule" rather than "Distributor's pricing methodology".
8.2	Simply Energy/ASEC (p.22)	A distributor should be required to publish criteria for a particular price category code and be required to comply with that criteria. The retailer should then be able to sell to a consumer on the basis of the published criteria, and not have to check whether the distributor will agree in each instance (which adds unnecessary time and cost, creating inefficiency). This clause should be amended to read: "*At any time, the Trader may request that the Distributor allocate an alternative Price Category to an ICP, and must provide any information necessary to support its request. If the ICP meets the eligibility criteria published in* ***annual pricing notification*** *or the requested alternative Price Category, the Distributor must apply the change.*"

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8.2	Contact Energy (p.16)	This clause does not reflect industry practice. For price category changes, the retailer uses the EIEP8 file to request a change from the distributor. If the distributor agrees, it changes the price category code in the registry and the loop is closed, with the trader receiving the registry notification file. If the distributor disagrees, it communicates via email.
8.3	Contact Energy (p.16)	This clause does not reflect industry practice. For price option changes, whether or not as a consequence of a change to the meter register configuration, the trader does not notify the distributor of the change within 10 working days. Rather, the distributor learns of the change via the trader's EIEP1 file provided to support billing of network charges.
8.3	Meridian Energy (p.8)	Clause 8.3 should be amended to provide for Traders to notify distributors of the change to price option within one month after such a change. This is because Meridian's current process is for such EIEP files to be generated only once a month.
8.7	Mighty River Power (p.6)	It is unreasonable and unrealistic for a distributor to require a trader to request a statutory declaration (or similar) as proof of the fact that supply is to a particular consumer's primary place of residence. The clause requires traders to satisfy this requirement for evidence and could result in large groups of customers being moved to standard charges in the absence of it. There should be a carve-out for this aspect, although if a distributor wants to carry out this exercise with the retailer's consent, then they should be able to do so.
8.10(a)	Contact Energy (p.16)	In clause 8.10(a), "for" should be "from".
8	Contact Energy (p.16)	A new clause should be added to clause 8 to cover the scenario where an upgrade or downgrade is not initiated by the trader but results in a change in price category. In such circumstances, the trader receives notification of the change via the registry notification file.
9	Mighty River Power (p.6)	The specified timeframes in the DDA for invoicing and payment may not be realistic or preferred by the parties. The timeframes should be removed and left for the operational terms to give the parties flexibility.
9.3	Simply Energy/ASEC	Invoices should always be supported by data that can be added to match the total of the invoice. However, some distributors supply incomplete data so that it is not possible to reconcile the invoice. Other distributors

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	(pp.23-24)	supply data in a format that requires processing by the retailer to obtain the specific data used for the invoice. This would be unacceptable in any other industry. Data should always be provided to support any invoice, and it should always be possible to obtain the invoice total by addition of the data provided. Clause 9.3(b) should be amended to read: "*At the same time as it provides the Tax Invoice, the Distributor must provide to the Trader, in a standard file format compliant with the relevant EIEP, sufficiently detailed and complete information to enable the Trader to verify the accuracy of the Tax Invoice by simple addition*;"
9.3	Simply Energy/ASEC (pp.23-24)	A new subclause should be added to clause 9.3 to provide the trader with the ability to dispute an invoice if insufficient information is provided from the network, or if information is not provided in the required form.
9.4, 9.5(b)	Contact Energy (pp.16-17)	Payment obligations should be clarified when a local anniversary day falls on the 20th day of the month. This should be common across all DDAs. The suggested change is as follows: "In the event the 20th day of the month falls on a local anniversary day in the city specified for the Trader's street address at the start of this agreement, the settlement date will be the 20th day of the month or the last working day preceding the 20th working day of the month."
10.2	Meridian Energy (p.8)	Clause 10.2 should be amended to provide that a trader should be able to elect which prudential requirement it will satisfy (which is consistent with clause 10.4 of the DDA template, and clause 12A.4(2) of the Code). The chapeau of the clause should be amended to say that "the Trader may elect to comply with the prudential requirements in either of the following ways".
10.3(b)	Contact Energy (p.17)	It is not clear why the first part of clause 10.3(b) has been deleted. The original words were appropriate and should be retained. This is because negative credit watch only means there is a 50% chance that the credit rating will be reduced in the next three months, but, even if reduced, may still comply with (a).
10.3, 10.4, 10.5	Meridian Energy (p.9)	Clauses 10.3, 10.4, and 10.5 should be amended to reference clause 10.2 rather than clause 10.1.
12.8(B)	Meridian	This clause may be ineffectual, and the Authority should consider redrafting it. This is because the clause

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	Energy (p.9)	requires the trader to notify a distributor if it has reasonable grounds to believe that the distributed generator does not have a connection contract distributor. However, Meridian generally does not have the visibility of a connection agreement between its distributor and the customer.
12.9	Meridian Energy (p.9)	The Authority should clarify what is covered by the term "theft" (and any other potentially ambiguous terms in this clause).
12.10	Meridian Energy (p.9)	The Authority should consider clarifying in the DDA procedures and cost allocation relating to installing new metering equipment where there is no available meter board space.
17.2	Mighty River Power (p.7)	The word "mandatory" should be inserted before the word "EIEPs", because not all EIEPs are mandatory under the Code. Voluntary EIEPs should not be subject to a mandatory regime via the DDA.
17.4	Mighty River Power (p.7)	The process for dealing with medically dependent customers is quite different to dealing with financially vulnerable consumers. There are robust credit processes in place to deal with situations involving vulnerable customers (for instance prepaid services, working with WINZ and other social agencies as appropriate, entering into payment arrangements, and smooth payments). This connection is a measure of last resort. Consultation with networks is not necessary in dealing with vulnerable consumers, and therefore references to vulnerable customers should be removed from clause 17.4.
17.4	Meridian Energy (p.9)	Clause 17.4 should be amended to take into account that both the MDC and VC guidelines are voluntary, and whether it is appropriate to mandate aspects of these guidelines through the DDA. Clause 17.4 should accordingly be amended to replace "comply with" with "have regard to", and the words "to the fullest extent practicable in the circumstances" should be deleted.
17.4	Meridian Energy (p.9)	If notification timeframes are mandated, this clause should provide an exception for when notification timeframes cannot be met for safety reasons.

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17.6	Contact Energy (p.17)	In clause 17.6(b)(iii), "customers" is a typo, and should be replaced with "ICPs".
21	ERANZ (p.9), Mighty River Power (p.7), Genesis Energy, Mighty River Power, Trustpower	Clause 21.1(c) may be used to thwart the Consumer Guarantees Act indemnity referred to in clause 25 – for instance, by using a force majeure exemption on the basis that distributors have acted in accordance with good electricity industry practice. Clause 25(1) should be exempted from clause 21. Accordingly, a new clause 21.6 should be inserted as follows: "***Application to the acceptable quality guarantee:*** *There will not be a Force Majeure Event if the conditions for a Distributor indemnity set out in clause 25(1) satisfied.*"
22	ERANZ (p.10), Genesis Energy, Mighty River Power, Trustpower	Clause 22 needs to be reviewed for consistency with the new Clause 12A.11 of the Code.

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22	ERANZ (p.10), Genesis Energy, Mighty River Power, Trustpower	Clause 22.1 allows for amendments to the DDA in particular circumstances, including the ability to change the agreement (by the written agreement of the parties). This differs from clause 18.16 of the MUoSA, which provides a clear process whereby such changes are notified and agreed by the parties to the agreement. The DDA should be rationalised with this clause from the MUoSA. Accordingly, a new clause 22.1A should be inserted as follows: "***22.1A Trader Change requests:*** *The Trader may suggest a change to the operational terms of this Agreement by notice to the Distributor.* *(a) A notice of change request will:* *(i) set out the reasons for the proposed change; and* *(ii) set out the change in the form that the change is proposed to be incorporated in this agreement;* *(b) The parties will negotiate the change request in good faith;* *(c) If the Distributor sees merit in the change request they will promptly initiate an amendment to the operational terms in accordance with Rule 12A.11 of the Code.*"
23	Meridian Energy (p.10)	The drafting of clause 23 does not make it clear what the potential relationship is between arbitration and court proceedings in the DDA. Did the Authority intend that, like the MUoSA, the parties should delete either the arbitration clause or the court proceedings clause on entering into the agreement?
24.4	Meridian Energy (p.10)	Clause 24.4 should be deleted. It is not good practice to exclude liability in this way in a default agreement.
23.10	Meridian Energy (p.10)	Disputes should be resolved by arbitration only, as this provides a faster, less expensive means of dispute resolution while maintaining confidentiality. Therefore, clause 23.10 should be deleted.
24.4	Meridian Energy (p.10)	This clause appears to be inconsistent with clause 24.7 which limits liability (a cap should not be imposed on liability when it already has been broadly excluded under clause 24.4).

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24.7	Nova Energy (p.4)	The liability clause is not entirely clear whether the cap applies as: • $10,000 per ICP; or • $10,000 x the number of ICPs. It should be made clearer that the cap is a total of $10,000 x the number of ICPs that the Trader trades on. The difference is important in terms of how the trader caps its liability to commercial or industrial consumers, who could reasonably expect a higher liability cap than $10,000 for a negligent act by a distributor.
24.7	Nova Energy (p.4)	Regardless of the amendment suggested above, an alternative option to the option in the current DDA is to link the liability cap to the annualised consumption for the Trader's ICPs. That is, $1 per kWh supplied per year. This would automatically provide cover where the trader has just a few industrial or commercial customers in a network.
24.10	Meridian Energy (p.10), Mighty River Power (p.7)	The Authority should discuss the legality of clause 24.10 with the Commerce Commission in light of the unfair contract term regime, and amend it if necessary.
25	ERANZ (p.11), Genesis Energy, Mighty River Power, Trustpower	The Authority should delete clause 25 and replace it with: "***25.1 Distributor acceptable quality indemnity*** *The Distributor indemnifies the Trader from failures of the acceptable quality guarantee in the supply of electricity, as set out in sections 7A and 46A of the Consumer Guarantees Act 1993*". This amendment is to rectify a drafting error in which the definition of a failure in paragraphs 46A(1)(a)(i) through (iii) of the Consumer Guarantees Act, has been excluded. Alternatively, if the Authority is not minded to delete clause 25, clause 25.1(a) should be amended to read: "***25.1 Distributor indemnity*** *The Distributor indemnifies the Trader as follows:* *If:* *(a) there has been a failure of the acceptable quality guarantee in the Consumer Guarantees Act 1993*

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		in the supply of electricity to a Customer by the Trader, as determined – (a "Failure"); *(i) by the Trader; or* *(ii) if the Trader does not make a determination or if the Trader's determination is challenged, by the dispute resolution scheme following a complaint made under section 43EA of the Gas Act 1992 or under section 95 of the Electricity Industry Act 2010 (as the case requires); or* *(iii) in accordance with clause 23, if the dispute is not accepted by the Electricity and Gas Complaints Commissioner; and*"
25	Contact Energy (p.17)	This clause could be simplified to align with section 46A of the Consumer Guarantees Act as follows: "*Notwithstanding any other provision of this agreement, the Trader is entitled to be indemnified by the Distributor in accordance with, but subject to the terms of, section 46A of the Consumer Guarantees Act 1993.*"
26	Contact Energy (pp.17-18)	Clause 26 should not be included as a default core term because it removes any flexibility from the parties being able to agree what are essentially operational and administrative processes to deal with claims, including such that the customer has a right to determine whether the distributor or retailer should take primary responsibility for managing and resolving any particular claim. This clause is based on the Vector UoSA, which is not the best approach. The operational and administrative processes for claims for which the trader wishes to be indemnified should be an operational term that is negotiated as a part of each distributor's DDA establishment process. In other UoSAs, distributors and Contact Energy have agreed to either: • not specify the operational and administrative processes in detail (preferring the status quo), and existing unwritten processes are regarded as sufficient; or • have agreed much simpler operational and administrative processes which have been recorded in Schedule 1 – most importantly, giving the customer the right to agree or disagree with the distributor, assuming management and defence of the claim. The following is a clause that has replaced MUoSA clause 26.8(d) in each of Contact's UoSAs, which refers to the operational and administrative processes set out in Schedule 1:

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		"***Claims for which the Retailer wishes to be indemnified under the Distributor's indemnity*** *If a consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor's indemnity under clause 26.8, the parties will follow the process outlined in Schedule 1.*"
26	ERANZ (p.12), Mighty River Power (p.8), Genesis Energy (pp.1-2), Trustpower	Clause 26 should be deleted for the following reasons: 1. Clause 26 of the DDA provisions goes substantially beyond the requirements of section 46A of the Consumer Guarantees Act. It purports to establish additional reasons for a distributor to resist indemnity (eg, failing to let the distributor manage the claim). 2. Clause 26 unnecessarily delays resolution of the customer's problem by requiring the distributor's approval or requiring the customer to take legal action against the retailer. 3. Clause 26 undermines the purpose of the Consumer Guarantees Act acceptable quality guarantee and the retail indemnity, which were introduced to provide customers with a clear and timely redress for breaches of service quality by allowing distributors to choose whether they take over a claim. Clause 26 introduces unnecessary ambiguity into the Consumer Guarantees Act claim process for consumers. Retailers are also disincentivised from settling a claim by the introduction of new criteria which further limit the statutory indemnity. 4. Although it is a general principle that the person paying should be able to control a claim against them, this general principle is not immutable and should not be applied in this situation. The primary claim in question is established under section 7B of the Consumer Guarantees Act and cannot be simply taken over by the distributor: it is between the retailer and the customer. Because it is a statutory obligation, the retailer cannot legally transfer this responsibility to the distributor. 5. Insofar as parties can agree to a process to manage claims under the Consumer Guarantees Act between themselves, the proposed clause 26 is inconsistent with the indemnity process of the Consumer Guarantees Act. Rather than improving the management of claims or restating the statutory process in section 46A, clause 26 creates unnecessary ambiguity and ignores the Consumer Guarantees Act provisions that allow for the resolution of indemnity disputes between the retailer and the distributor. Instead, it ensures that the distributor can easily dispute claims. The Authority should delete this clause and allow the processes as set out in section 46A of the Consumer

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		Guarantees Act to retain their primacy.
26.4	Nova Energy (p.4)	The customer should be provided with the discretion over who they prefer to deal with in respect of any claim they may make.
27	Mighty River Power (p.8)	The rights of indemnity clause (clause 26.13) of the MUoSA should be included in clause 27 of the DDA. This clause reads as follows: "*The indemnities in clause 27 are in addition to and without prejudice to the rights and remedies of each party under this agreement, the Rules or under statute, in law, equity or otherwise.*"
29.1	Contact Energy (p.18)	Clause 29.1(a)(ii)(A) needs to be amended as follows to ensure consistency with clause 27.1(a)(i) and to reflect that, in reality, the provisions in the distribution services agreement and the customer agreement are not expected to be identical but, rather, to have substantially the same effect: "*Enter into a variation of a customer agreement to include provisions that have substantially the same effect as the provisions required…*"
29.1	Contact Energy (p.19)	Clause 29.1(b) needs to be amended to reflect the reality that the trader cannot be expected to have two standard customer agreements – one for new and another for existing customers – and that, secondly, if changes are required, this requires 12 months. The following sentence should be inserted at the end of the clause: "*However, to the extent that the Trader's standard customer agreement does not comply with this clause 29.1(b) as at the commencement date, the Trader will not be obliged to remedy that non-compliance until the date that is 12 months after the commencement date*."
29.2	Mighty River Power (pp.8-9)	This clause should also refer to changes by the parties' written agreement made in accordance with clause 22.1(a).
29.2	Mighty River Power (pp.8-9)	This clause should allow for the trader to "vary an existing provision or include a new provision".
31	Contact Energy (p.19)	The title of this clause should be amended to "Electricity Information Exchange".
31.2	ERANZ (pp.13-	The exchange of information provisions should be improved to ensure that customer information requested

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	14), Mighty River Power (p.2), Genesis Energy, Trustpower	by a distributor, is only information directly related to the provision of the lines services, as defined by the DDA. Clause 31.2 should be amended by adding the following text to the end of the clause: "*For the avoidance of doubt:* *(a) the Trader must comply with such requests as soon as practicable, subject to its obligations under the Privacy Act 1993 and under the terms and conditions of its Consumer Contracts;* *(b) the format for Customer information will be the relevant regulated or agreed EIEP, or as otherwise agreed between the Distributor and Trader;* *(c) the Distributor must only use the Customer information it holds or obtains from the Trader to the extent required for:* *(i) customer surveys in relation to the provision of Distribution Services;* *(ii) communicating with Customers in relation to Planned Service Interruptions or Unplanned Service Interruptions;* *(iii) engagement regarding construction of new assets and network configuration (excluding those relating to solar, batteries, or other competitive products);* *(iv) tree trimming requirements;* *(vi) safety concerns; or* *(vii) for any other reason agreed between the Distributor and the Trader.* *(d) the Distributor must not use this information for the purpose of electricity retailing or any other non-network service offering (including solar, batteries, or other competitive products);* *(e) the Distributor may only pass the Customer information it holds or obtains by virtue of this clause to other entities or business operations, whether or not part of the Distributor's group of companies, where it is necessary for the Distributor to fulfil its obligations provided for in subclause (c); and* *(f) the Distributor must pay the Trader's (or third party authorised by the Trader) for reasonable costs in*

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		providing Customers' demand or consumption information."
31.2	Contact Energy (pp.19-21)	Appendix D, clauses D.71–D.76, comments on this clause and the relevant Vector UoSA clause. It may be useful for the Authority to be aware of a related clause in Vector's UoSA S1.7 which outlines in more detail what the Distributor can use customer information for. In terms of clauses D.71–D.76: • Vector's clause 6.10 is out of place in clause 6 (load management) • the information can be provided to Distributors if it complies with the Privacy Act obligations in the customer agreement. Clause 31.2 should be amended to provide for all three clauses.
31.2	Contact Energy (pp.19-21)	Given that there are distributors that are shareholders in retailers or that are actively retailing electricity, this clause needs to be amended to clarify the purposes for which customer information can be used: "*For the avoidance of doubt:* *(a) the Trader must comply with such requests as soon as practicable, subject to its obligations under the Privacy Act 1993 and under the terms and conditions of its Consumer Contracts;* *(b) the format for Customer information will be the relevant regulated or agreed EIEP, or as otherwise agreed between the Distributor and Trader;* *(c) the Distributor must only use the Customer information it holds or obtains from the Trader to the extent required for:* *(i) customer surveys in relation to the provision of Distribution Services;* *(ii) communicating with Customers in relation to Planned Service Interruptions or Unplanned Service Interruptions;* *(iii) engagement regarding construction of new assets and network configuration (excluding those relating to solar, batteries, or other competitive products);* *(iv) tree trimming requirements;*

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		(vi) safety concerns; or *(vii) for any other reason agreed between the Distributor and the Trader;* *(d) the Distributor must not use customer information for the purpose of any other non-network service offering;* *(e) the Distributor must not transfer customer information to any other business operations that are not in the business of electricity distribution; and* *(f) the Distributor will pay the Trader's (or third party authorised by the Trader) reasonable costs in providing customers' demand or consumption information.*"
31.2	Nova Energy (p.5)	The clause as currently written gives distributors excessive freedom on how they can use customer information. There have been complaints from customers where they have been contacted on confidential phone numbers by distributors, or by third party contractors. Traders should be given the right to withhold customer information if, in their opinion, the distributor has not given satisfactory undertakings over the protection of that data. The following text should be included in the clause after the word "agreement": "*This includes carrying out customer surveys (in relation to the provision of Distribution Services), communicating with consumers in relation to planned service interruptions, unplanned service interruptions, engagement regarding construction of new assets and network configuration, network complaints, tree trimming requirements and safety concerns. The Distributor will not use this information for the purpose of electricity retailing or any other non-network service offering*". Such a clause has been accepted already by some distributors as it does not impinge on their business operations. Even so, it is extremely difficult to monitor how distributors manage customer information and determine if it has been accessible to the wider operating group conducting non-network-related activities.
33.2	Contact Energy (pp.21-23)	Contact Energy has the following comments on the definitions in the agreement: • **Direct customer agreement**: Suggest amending "lines charges" to the more common industry term "network charges".

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		• **Distributed generator**: It is unclear how the definition can include a person who "intends to own or operate" distributed generation. Actually owning or operating distributed generation appears to be more appropriate. • **EIEP**: The original MUoSA words in relation to this definition should be retained because there are a number of EIEPs that have been developed and found on the Authority's website but that are not regulated or agreed/used. • **Electricity Supply Agreement**: To avoid confusion given Retailers typically use this term to cover all customer supply agreements/contracts, this term should be changed to "**electricity only supply agreement**". • **Load management service**: This definition should be reinserted into the DDA because there are additional provisions that have been agreed between retailers and distributors that use this definition – the Authority is obviously not aware of this. • **Pricing methodology**: Use of this term in the DDA adds unnecessary confusion. Instead, the terms "pricing policy" and "pricing structure" should be used and defined as these are more appropriate terms and more commonly used in the industry. • **Service guarantee payment**: "Service standard" should be amended to "service level", and "not be" should be amended to "is not". • **Unaccounted for electricity**: A definition of this term should be included (see comments on clause 6.6).
S1.3	Meridian Energy (p.11)	The Authority should look at promoting more widespread adoption of Service Guarantee Payments, if such payments are very effective at driving good distributor performance.
S1.6	Contact Energy (p.23)	As is well known in the industry, several of the example service standards in the MUoSA are inappropriate, and others would add value. S1.6 wrongly assumes that the example service standards are all required and that no others are appropriate. The following three amendments to this clause should also be made:

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		• S1.6A: The service standards relating to prices must be covered in the **pricing policy**, not the service standards, so (a) should be deleted. • S1.6E: This is set out in Schedule 5. Accordingly, there is no need to repeat it in the service standards, so S1.6E should be deleted. • "Pricing information": All UoSAs that Contact Energy has signed since the 2012 MUoSA have included a service standard setting out expectations reflecting the ongoing challenges to get some distributors to provide transparency of changes and complete information to support processing. Contact Energy also now asks for loss factor codes and loss factors (together with the effective date) to be included with all price schedules and/or policy documents. It is possible that some amendments to clause 7.5 of the DDA could remove the need for this service standard.
Sch 1	Meridian Energy (p.11)	Service Measure 5.1 is inconsistent with the procedures set out under the Electricity and Gas Complaints Commission (EGCC) Scheme. For instance, the DDA specifies that the distributor has five working days after being notified of a complaint to investigate and respond to the trader or customer, whereas the EGCC scheme recommends two working days. As another example, the DDA specifies that upon completion of its investigation, the distributor must provide information to the trader so that the trader can offer a resolution to the customer, whereas under EGCC guidelines, distributors are encouraged to resolve their complaints directly with the customer. An appropriate starting point would be to use terms consistent with the EGCC guidelines.
S2.4	Contact Energy (pp.23-24)	Some distributors that receive and process replacement normalised EIEP1 files are not fully replacing previous replacement normalised data. This requirement should be made clear either in Schedule 2, clause S2.4, or clause 9.3 of the DDA. By way of example, if an ICP is in the initial file but a subsequent back-dated switch occurs meaning it is not included in the next revision (replacement) file, then the distributor must not charge for it in the revision invoice. However, it appears that this is not necessarily happening such that replacement files are, in part, being treated as incremental. There is also an error in the regulated EIEP1 with respect to replacement normalised data, which Contact Energy has brought to the Authority's attention and provided a mark-up of the changes required. Contact

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		Energy's mark-up covers the above point consistent with the construct of the EIEP1 for incremental normalised data.
S3.4	Contact Energy (p.24)	S3.4 should be restricted to those EIEPs commonly in use in the industry, which are as follows: • EIEP 4 • EIEP 5A (planned service interruptions) • EIEP 7 • EIEP 8 • EIEP 9.
S6.9	Contact Energy (p.24)	In clause S6.9, "Trader's" should be "Trader".
S6.18	Meridian Energy (p.11)	Clause S6.18 should be amended to note that a reconnection can occur later than three working days after conditions for reconnection have been satisfied, if this is at the customer's request.
S6.20	Contact Energy (pp.24-25)	The word "must" in this clause should be amended to "should". While it is important to manage vacant consumption risk, it is not a variable charge revenue risk to the distributor if the trader continues to read meters and report any vacant consumption. It is also noted that the distributor continues to bill the Trader for vacant energised fixed charges. Traders need to weigh up the unrecoverable cost of a vacant disconnection versus the cost of continuing to read meters and/or monitor smart meter reads in risk of unauthorised consumption.
S6.29	Meridian Energy (p.11)	Clause S6.29 should be amended to make clear that a trader can comply with the requirement to notify a distributor by updating the Registry, because updating the Registry in turn notifies the distributor.
Sch 7	Contact Energy (pp.25-26)	It is not clear what Schedule 7 is intended to deliver. The key information to be provided by email at the time of the notification of price changes must be set out in clause 7.5 in this Schedule 7, being: • price schedule • loss codes and loss factors

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
		• pricing policy • EIEP12 • map and table of existing and new price categories if the notification includes any changes to pricing structure • map and table by ICP of changes to price category if initiated by the Distributor (eg, the Unison Annual NDH-NDL changes). Further, a change in pricing structure will trigger a change in price category for each affected ICP, and the distributor will set out a process to be followed between the trader to nominate, and the distributor to confirm, the appropriate new price category. Once confirmed, the distributor must provide a map and table by ICP of the existing and new price category ahead of making the changes on the registry. The price schedule and pricing policy must be loaded on the distributor's website. The information disclosure determination requires the pricing methodology to be disclosed and published on the distributor's website so it does not need to be covered in this Schedule.
S 8	Contact Energy (pp.26-27)	There should be additional sections in this schedule covering load management. These should cover: • Distributor load management service – priority and use: – priorities for use of the load control system which aligns with S8.1A being first ranking priority, S8.1B being second ranking priority, and S8.1C being third ranking priority (market participation, or otherwise referred to as "non-network-related purposes") – instructing retailer, which requires a distributor to load control for non-network-related purposes if requested/supported by a retailer or combination of retailers in supplying more than 50% of the ICPs, subject to compliance with the minimum period of availability relevant to each controlled load option – Retailer load management service, which sets out the matters to be agreed and the protocol between the retailer and the distributor in the event that the retailer has capability to manage load independently of the distributor – for example, load control using AMI. These additional provisions fit the criteria for operational terms that can be negotiated for inclusion in DDAs, and optimise the use of the consumer's controllable load in the long term interest of consumers. It is noted

Default Distribution agreement – detailed comments		
Clause/ Schedule	**Submitters**	**Submission**
		that Contact Energy's customer agreements contemplate the instructing Retailer concept. If requested, Contact will provide this drafting to the Authority.
OT5.2	Mighty River Power (p.9)	There should be a clause which requires the distributor to adopt the trader's preferred form of notification of an unplanned service interruption. This is because traders need to receive notifications in a certain form which allows relevant information to be quickly forwarded to relevant centres. There have been issues with notification in the past being received too late because information was not directly or readily available. This is not in the best interests of consumers.
OT5.3	Mighty River Power (p.9)	The operational terms should include after "information", "(including, but not limited to, a list of affected ICPs (where possible), and estimated restoration times)". This is because there have been issues with distributors not being forthcoming with information about unplanned outages.
OT5.10	Mighty River Power (p.9)	The operational terms should require the distributor to have appropriate mechanisms in place to deal with consumers directly. This is because some distributors have policies whereby they have no obligation to have direct contact with the customer, or indeed prohibit such contact. This would give the proposed clause 5.10 no effect.
OT5.17	Mighty River Power (p.9)	The 10 working day timeframe should be extended to 14 days, in light of the fact that postal services have recently limited deliveries to twice a week.
OT5.18	Mighty River Power (p.9)	The timeframe of two working days should be extended to 10 working days. This is because customers often contact retailers regarding changing dates or planned outages due to personal circumstances beyond those customers' control.

Section 3: Others

General comments	
Submitters	**Submission**
Electricity and Gas Complaints Commissioner (p.1)	The proposal will promote competition and innovation in the electricity industry, and is likely to improve consumer satisfaction, by retailers competing through the provision of excellent customer service and innovation in improved products that are more suitable for consumers.
Transpower (p.1)	Retailers do not have the right to enter into negotiations, so may be forced to enter into the DDA even if they prefer their current arrangements. This approach differs from the Benchmark Agreement regime for transmission, which does not allow Transpower to unilaterally require designated transmission customers to accept the unaltered Benchmark Agreement. Rather, if the customer wants variations and cannot agree with Transpower, the Rulings Panel can intervene.
Transpower (p.2)	The Authority should consider the networks access regime under the Telecommunications Act 2001 as precedent, particularly in relation to standard terms and undertakings. For example, under this regime: • there are no mandated timeframes for negotiation • parties are required to negotiate in good faith (including if the access seeker would like to negotiate variations to the standard terms) • "standard access principles" apply • the Commerce Commission can determine standard and residual terms, and regulated suppliers can propose access undertakings • the Commerce Commission can give written notice to one or more access providers, requiring them to submit a standard terms proposal.
Transpower (p.2)	The DDA should accommodate an evolution mechanism to take account of changing conditions.
Fonterra (p.1), New Zealand Steel (p.1), Progressive	Some major electricity users contract directly with Distributors. These contracts range in duration and frequency of renegotiation. The DDA focuses on the distributor-retailer relationship and does not take this into account.

General comments	
Submitters	**Submission**
Enterprises (p.1)	
New Zealand Steel (pp.1-2), Progressive Enterprises (p.2)	Distributors are monopoly providers. Consumers (even large ones) have limited ability to negotiate terms with distributors directly. Although most distributors have been willing to engage in open and transparent dialogue, some distributors have been unwilling to move on financial or technical points. The Authority and the Commerce Commission have been reluctant to intervene, and the DDA does not fix this issue.
Progressive Enterprises (p.2)	Distributors have different ways to notify customers of outages, which creates problems.
Progressive Enterprises (p.2)	There is currently little to no transparency as to how costs are determined by distributors – for example, in relation to supply to construction sites.
MEUG (p.1), Progressive Enterprises (p.1), Fonterra, New Zealand Steel	Distributors' productivity should be increased. Distributors should provide better service for any given level of line charges, and should continuously ensure their costs to serve are as low as possible.
MEUG (p.1), Progressive Enterprises (p.1), Fonterra, New Zealand Steel	The costs of negotiating distribution service agreements (which are high) or indirectly bearing those costs as incurred by retailers should be more efficient for direct consumers.
Auckland Airport (pp.1-2)	The DDA should not apply to embedded networks. The DDA is focused on striking a fair balance between retailers and distributors, and it would not be appropriate or proportionate to extend it to embedded networks. If the DDA were to apply to embedded networks in future, the Authority must consult with embedded networks and

General comments	
Submitters	**Submission**
	produce a DDA that takes into account the unique features of those networks.

Q1: What is your view of the Authority's assessment of the arrangements that are currently in place governing the way Distributors and Retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	
Submitters	**Submission**
MEUG (p.1), Progressive Enterprises (p.2), Fonterra, New Zealand Steel	All consumers will benefit if the barriers to retail competition arising from the current UoSA regime are removed. Benefits include: • a more vibrant retail sector • more choice and liquidity in the financial derivative and physical demand side response markets • improvements in productivity and competition in the hedge and demand side response markets • reduced annual energy costs.
MEUG (p.2), Progressive Enterprises, Fonterra, New Zealand Steel	There are problems with the way UoSAs are developed, negotiated and agreed that are unlikely to be resolved voluntarily. MEUG agrees with the Authority's statement at paragraph 4.1.2 of the paper.
MEUG (p.2), Progressive Enterprises, Fonterra, New Zealand Steel	The same problems facing traders in relation to UoSAs also apply to individual end consumers wishing to contract for distribution services directly. Agreements between individual end consumers and distributors should be considered within the scope of the DDA.

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
MEUG (p.3), Progressive Enterprises, Fonterra, New Zealand Steel	No explanation or evidence has been provided by the Authority to support its view that different issues arise under distribution service agreements directly between end consumers and distributors (compared to between distributors and traders). These agreements should be included in the DDA.
MEUG (p.3), Progressive Enterprises, Fonterra, New Zealand Steel	The consultation obligations on distributors (for example, regarding operational terms) are too restrictive. Distributors should have to publicise material being consulted on and directly contact parties they think may have an interest in making submissions.
MEUG (p.4), Progressive Enterprises, Fonterra, New Zealand Steel	The governance of the quality and timeliness of outage information is a controversial topic and should not be left for the operational terms. The current arrangements relating to outage are inefficient and add unnecessary costs. This is a problem both for large direct consumers and for Retailers. The Authority has accepted this, noting that "the Retailer Working Group is also looking to improve processes for verification of medically dependent consumers (MDCs) and information provision to mitigate the risks to MDCs arising from unplanned power outages". As another example, Meridian Energy stated in its submission that "greater standardisation of planned outage information will enable material operational efficiency-related improvements to be made. Is it the Authority's intention to have outage information and usage of EIEP5A addressed as part of the review?". The criteria for allocating terms and conditions to either the core DDA or operational matters have not been adequately applied to the governance of outage information. The distinction between core DDA and operational matters is that the scope and detail of operational requirements should be neither new nor expected to be controversial. However, the governance of outage information is clearly controversial.
MEUG (p.5), Progressive Enterprises,	The clause in the 2012 MUoSA for equal access to distribution services and for even-handed treatment of retailers has been controversial in terms of the boundary between the Authority and the Commerce Commission in relation to information disclosure requirements. MEUG supports the Authority's stated next step to further discuss information

Q2: What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each Distributor's DDA is a tailored benchmark agreement?	
Submitters	**Submission**
Fonterra, New Zealand Steel	disclosure relating to distribution agreements with the Commerce Commission.

Q3: What are your views of the Authority's assessment of the likely levels of demand for new and replacement UoSAs in coming years? Please support your response to this question with reasons and your alternative quantified assessment, if any.	
Submitters	**Submission**
MEUG (p.5), Progressive Enterprises, Fonterra, New Zealand Steel	Agrees that the need for new/replacement UoSAs is more likely to increase than decrease relative to actual historic rates to date.
MEUG (p.5), Progressive Enterprises, Fonterra, New Zealand Steel	There is potential for a higher level of end consumers wishing to enter directly into distribution service agreements with distributors, should the DDA extend to these parties. This will decrease transaction costs.

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
MEUG (pp.5-6),	If the DDA were to be extended to end consumers contracting directly with Distributors, the regulatory statement and CBA should be amended as follows:

Q4: What are your views on the regulatory statement set out in section 4?	
Submitters	**Submission**
Progressive Enterprises, Fonterra, New Zealand Steel	• Productive efficiency benefits would increase because savings in negotiating agreements will also apply to end consumers directly negotiating agreements. Similarly, both allocative and dynamic efficiency would increase. • Establishment costs would be higher, although the incremental cost relative to those of the proposal would be modest (because there would be economies of scale). • The net benefit of a DDA that also applied to end consumers would be substantially positive. The NPV of this option would be higher than the NPV of the proposal because: – the incremental cost of modifying the DDA now would be much less than implementing the DDA as proposed and then, at a later date, reconsidering and re-implementing a DDA for end consumers – there would be benefits foregone by delaying the introduction of a DDA for end consumers directly. A combination of the economies of scale of the cost of implementing a DDA for end consumers now and realising the benefits earlier makes implementing a DDA for end consumers preferable to the current proposal.
Transpower (p.1)	The Authority assumes the DDA will reduce transaction costs and increase competition, but it has not assessed the extent to which competition will improve, or the level of benefits from greater competition. The Authority should conduct an analysis of the competition benefits of this proposal.

Q5: What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	
Submitters	**Submission**
Answers to this question are set out in the tables below.	

Code amendments – general comments	
Submitters	**Submission**
Auckland Airport (pp.1-2)	It needs to be made clearer that the DDA does not apply to embedded networks.

Code amendments – general comments	
Auckland Airport (p.2)	The amendments to the prudential requirements for distributors on embedded networks (in subpart 2 of Part 12A) are appropriate.
Transpower (p.1)	The tight timeframes for agreeing alternative agreements curb the ability for distributors and retailers to negotiate alternative access arrangements, as they could do in a workably competitive market.

Code amendments – comments on specific clauses		
Clause	**Submitters**	**Submission**
12A.2	MEUG (p.7), Progressive Enterprises, Fonterra, New Zealand Steel	This clause should be revised to include consumers that wish to directly contract with Distributors rather than contract with Retailers, and all other parts of the Code should be amended accordingly.
12A.4(5)(a)	MEUG (p.7), Progressive Enterprises, Fonterra, New Zealand Steel	This clause does not require Distributors to consult with end consumers or their representatives (such as MEUG). Distributors should be required to carry out more inclusive and broader consultation. The word "on" in this clause should be "or".
12A.8	MEUG (p.7), Progressive Enterprises, Fonterra, New Zealand Steel	Because the Code should be amended to reflect that direct contracting between consumers and Distributors are covered by the DDA, this clause should be amended as follows: "*(1) A **Trader** trading on or a **direct purchaser** connected to the **Distributor's network** must have a **distribution agreement** with the **Distributor**.* *…* *(3) A **direct purchaser** must ensure that a **distribution agreement** comes into force on or before the day on which the **direct purchaser** commences purchasing from the **clearing manager** on the **Distributor's network**.*"
12A.19	MEUG (p.7), Progressive	Distributors do not currently need to consult with end consumers or their representatives. Distributors should be required to carry out more inclusive and broader consultation.

Code amendments – comments on specific clauses		
Clause	**Submitters**	**Submission**
	Enterprises, Fonterra, New Zealand Steel	
12A.20	MEUG (p.8), Progressive Enterprises, Fonterra, New Zealand Steel	Deciding what information is needed, the format in which that information is exchanged, and when, is critical to ensure upstream and downstream processing costs are efficient and to minimise the downtime and expense of having to resolve reconciliation problems. This should be prescribed in the DDA and, to ensure that there is no ambiguity, should be mandatory (unless parties opt out). The Code should provide that a Distributor that fails to provide prescribed data in a timely manner would breach not only the DDA but also the Code, and the consequences should reflect the seriousness of the breach.
12A.22(3)	MEUG (p.8), Progressive Enterprises, Fonterra, New Zealand Steel	The Authority should include an EIEP for planned and unplanned outage information in clause 12A.22(3).

Default Distribution agreement – general comments	
Submitters	**Submission**
Brian Leyland (p.1)	The DDA should address load control by inserting the following clause: "*If the consumer has a load which can be controlled by the lines company, retailer or Transpower in order to manage peak demands, system disturbances, price spikes and the like, and if controlling the load will not be noticed by the consumer, then the consumer must allow them to control this load.*" This would reflect the situation in the past when universal ripple control managed demand and ensured load remained steady. Without ripple control, a large amount of money is being spent on demand-side management that is "less effective and much more complicated".

Default Distribution agreement – general comments	
	With this clause, new technology (for example, smart water heater thermostats) would become attractive. If load control had been in place 10 years ago, the 400kV line would not have had to be built.
MEUG (p.9), Progressive Enterprises, Fonterra, New Zealand Steel	An EIEP for planned and unplanned outage information should be compulsory. This should be a mandatory requirement in the DDA.