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Submissions
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UNISON SUBMISSION ON DEFAULT AGREEMENT FOR DISTRIBUTION SERVICES

Introduction and Background

Unison welcomes the opportunity to provide a submission to the Electricity Authority on its consultation paper: *Default Agreement for Distribution Services*. This consultation follows on from the 2014 discussion paper, *More Standardisation of Use-of-System Agreements (UoSA)*.

Unison's submission focuses initially on highlighting our key concerns with the Authority's Default Distribution Agreement (DDA) proposal. We then address the Authority's specific questions regarding the paper (Appendix One), drafting of the Code (Appendix Two) and the drafting of the DDA (Appendix Three).

Unison's key concerns with the Authority's DDA Proposal

Unison has a number of key concerns with the Authority's DDA proposal:

1. The Authority's decision to introduce a DDA
2. Consideration of the net benefits versus costs of a DDA
3. The substance of the proposed Code and DDA:
 - a) Seemingly mandatory in nature (e.g. DDA overturns existing arrangements; and the DDA is first, negotiation second)
 - b) DDA specifically excludes additional services
 - c) Context of Good Electricity Industry Practice (GEIP) is not provided for
 - d) Mediation has been removed from the Code – now only appeal on operational terms to the Rulings Panel, no mediation
 - e) Price Category Codes (Clause 8.3)
 - f) Implementation – Group 1 and 2 split and timings, and
4. Overall shift in balance of rights/risk between Traders and Distributors.

We address each of these in the following sections.

1. Authority's Decision to Introduce a Default Distribution Agreement (DDA)

The original proposal for a DDA type UoSA was set out in the 2014 paper, *More Standardisation of UoSAs*. The Authority's preferred option was to amend the Code to establish a default UoSA. Following submissions, the Authority then signalled its intention in February 2015 to proceed with a Code amendment, but noted that a final decision would be made in 2016. The expectation was that distributors and retailers would continue to negotiate UoSAs comparable to the existing MUoSA.

Throughout this period (April 2014 to September 2015), the ENA undertook four surveys of its members to assess the progress distributors were making towards the voluntary uptake of UoSAs based on the MUoSA. The results of these surveys, in particular the last one undertaken in September 2015, showed that good progress was being made to move towards UoSAs based on the model, in line with the Authority's intention¹. However, the Authority has noted in its latest consultation paper that *"...retailers and distributors were not moving to adopt the MUoSA or, if new UoSAs were being negotiated, many of the terms materially departed from the terms of the MUoSA"*².

While Unison acknowledges that a few smaller distributors and traders may have made little progress towards adopting UoSAs based on the MUoSA, positive progress has still been made under the current voluntary arrangements. This information has been provided to the Authority by the ENA, but does not appear to have been considered in the current paper. For example, what are the common features of traders and distributors who have not progressed with adopting UoSAs based on the model? The full uptake of the MUoSA under the 'voluntary' regime may have been seen by smaller distributors/retailers as requiring too much investment, particularly in an uncertain regulatory environment, with the possibility of future change/intervention. Given the Authority had indicated that it would put in place a more regulated UoSA process should its expectations not be met, this was a self-fulfilling outcome. We understand that some parties have only limited resources to negotiate new agreements, and it was necessary to queue to make the process manageable. This factor has been recognised in the Authority's own proposal, which requires a select group of larger distributors to negotiate agreements within a certain timeframe.

In this context, Unison submits that a more targeted approach by the Authority, in conjunction with a review of the current MUoSA terms, would be a more appropriate regulatory response to consider. This would address the issues of distributors still offering legacy-type UoSAs or deviating from the core principles of the MUoSA (in particular equal access and even handed treatment), and reduce the barriers to entry for new retailers, while at the same time providing greater regulatory certainty. In Unison's view, to over-ride recently negotiated UoSAs, which no retailer was compelled to agree to given the threat of regulatory intervention, would undermine the Authority's future ability to encourage industry arrangements. Market participants would naturally become reluctant to invest effort in developing voluntary industry solutions in the knowledge that, if other parties do not adhere to the solutions, then the Authority will regulate.

¹ The September 2015 survey showed that of the 24 respondents: 2 distributors had signed new UoSAs with all retailers on their network, 10 distributors had signed new UoSAs with either almost all or some retailers on their network, 5 distributors were in active negotiations with retailers on new UoSAs based on the Authority's model, and 7 distributors had not started negotiations. Of the 7 distributors who had not started, all but one were actively reviewing the MUoSA with a view to entering into negotiations with retailers later this year or early next year.

² Paragraph 2.3.1, page 6.

2. Consideration of the net benefits versus costs of a DDA

In the consultation paper, the Authority assesses the benefits and costs of introducing a DDA into the Code, and concludes that there is a net benefit of progressing with this option. While Unison agrees with the Authority that there are issues such as more standardisation and lowering barriers to entry that need to be addressed, we are concerned that the benefits of a DDA have been overstated and the costs understated:

- a) The Authority states that the new Part 12A and the DDA will reduce transaction costs to draft, review, negotiate, amend, approve and maintain distribution agreements. Unison submits that this point represents a very long-term benefit, but overlooks the significant short-term cost – specifically the investment that has already been made to review, negotiate and agree UoSAs based on the MUoSA. For example, Unison has successfully negotiated agreements based on the MUoSA with ten retailers on our network (the equivalent to 75% of ICPs). In addition to this, new entrant retailers are signing up on our network with our standard UoSA; thus it is not proving a barrier to entry. With the proposed requirement to offer a new DDA to retailers, irrespective of whether they have a UoSA based on the MUoSA, majority of this incurred cost of negotiation will effectively be sunk costs. This is likely to also undermine future industry compliance with voluntary guidelines, particularly if there is an associated cost in doing so.
- b) The benefit of flexibility with the current voluntary MUoSA uptake will be lost. Unison's main concern regarding this is the removal of 'additional services' from the DDA, even within the 'negotiated' operating terms. The effect of this is the potential to stifle innovation as separate agreements between traders and distributors would need to be negotiated if any additional services were to be provided between the parties. There will be additional costs of separate agreements, creating further complexity and inefficiency.

Unison therefore submits that the Authority consider the approach to be given to embedded network UoSAs alongside the current DDA proposal and submission feedback. Given this issue is not considered in the current Code amendments, Unison submits that the Authority consider to be an appropriate response to this concern.

3. The substance of the proposed Code and DDA

Unison has concerns with the substance of the proposed Code and DDA drafting. The following points are discussed in more detail in Appendices Two and Three:

- The DDA is seemingly mandatory in nature. E.g. the DDA overturns existing arrangements; the DDA is offered first (and binding within 20 days maximum); and negotiations of alternative agreements second. This is contrary to the explicit definition of "default terms" provided in the 2014 consultation paper: *More Standardisation of Use-of-System Agreements*". Specifically, in section 5.3.20 of the 2014 paper it states:

"Default terms" means an enforceable complete set of core terms that are incorporated into the contract between a distributor and retailer if the two parties choose not to negotiate or, having undertaken a period of negotiation, fail to agree an alternative agreement. Any alternative agreement that might be agreed, even if it comes about by amending a single clause, is an

“alternative agreement” by definition. This is identical to the structure adopted in Part 6 of the Code in relation to forming the terms of agreement for connecting distributed generation to a local network.

- The DDA specifically excludes additional services, and clarity is needed on how these may be provided for. Firstly, to what extent are distributors and traders able to negotiate bilateral agreements outside the scope of the DDA (or does the DDA represent the entire scope of the relationship in the EA's view)? Secondly, how do distributors negotiate standard additional services with all retailers (for example for processing of distributions/discounts)?
- Context of Good Electricity Industry Practice (GEIP) is not provided for. Specifically, this should be addressed in the following DDA clauses: 2.2, 2.3 and 24.5 (b). The absence of GEIP as a standard for distribution services (as well as Trader obligations) is critical as this impacts the risk profile for distributors in a potentially significant manner. In response to this, distributors will be incentivised to reduce their risk exposure with the only means available reducing the performance thresholds in the operational terms. This would appear to be counter to the Authority's objective of reliability. These efforts however may ultimately result in the rulings panel intervening, with their decision representing not only a specific service level, but in fact arbitrarily shift in apportionment of risk (another issue that is discussed further below). This issue is a concrete example of where through a regulated and adjudicated regime outcomes result that are less efficient (than a commercial, market based approach through negotiation, mediation), and potentially detrimental to reliability. The result of this may be reduced efficiency and stifled innovation.
- Mediation has been removed from the Code and there is now only appeal on operational terms to the Rulings Panel (rather than the current two-tier process of mediation first, then rulings panel). Unison's specific concern is that operational terms could be frequently adjudicated on rather than produced as an outcome of a bilateral (or multilateral) negotiation processes. Having a mandatory and adjudicative approach (as opposed to a commercial, market based process), risks achieving a less efficient and reliable outcome as standards could for example be set too high (inefficient) or too low (reduced performance/reliability).
- Price Options (Clause 8.3): Unison recommends additional wording be added to this clause to ensure equity between traders and distributors regarding treatment of errors in selecting incorrect price codes and price categories (refer to detail in Appendix Three). There is a clear process established for allocation, review, correction and redress (in favour of trader) in relation to Price Categories, but 8.3 which covers Price Options has no such provisions, yet is regularly a significant source of issues (errors) with material financial implications for consumers, distributors and retailers.
- Implementation – Group 1 and 2 split and timings. Unison has concerns with (a) the group 1 and 2 split and associated costs, and (b) the timeframes. Appendix Two provides more detail around these concerns.

4. Overall balance of rights/risk between Traders and Distributors.

The cumulative impact of the Authority's DDA proposal introduces a shift in negotiating power and risk between the Trader / Distributor relationship. In Unison's view, the DDA and Code amendments will shift the negotiating and appeals power in the Trader's favour, with the greater risk being incurred by Distributors. Unison considers that the Authority's proposals and implications for risk apportionment go far beyond "more standardisation" (the overarching scope for the UoSA review) – suggestive of "regulatory overreach" (we reserve judgement as to whether this is unintended or otherwise).

More fundamentally, this also leads into a potentially significant issue in terms of the legal context, in that the consequences of such a shift in risk apportionment includes potentially significant impact on Price – Quality (take for example the scenario presented above where in the face of unilateral, trader initiated, arbitrary determinations under the rulings panel for operating terms, incentivises distributors to minimise performance standards and service guarantee payment levels). And further to this Rulings panel decisions relating to these directly intervene in issues of Price-Quality which are in fact under control of the Commerce Act and Commerce Commission. This shift in balance is illustrated in our feedback below on the detailed response to Code and DDA drafting.

Concluding Comments

Based on the above discussion, Unison strongly recommends that the Authority consider an alternative approach to the DDA to achieve the objective of more standardisation and reduced barriers to entry for new traders. For example, introducing a more targeted regulatory response to replace legacy UoSAs with new agreements based on the revised MUoSA (e.g. text of the DDA), has a potential mechanism for review of UoSA terms against MUoSA core principles, and a process for alignment where deviation is material and detrimental. At a minimum, existing recently commercially negotiated agreements based on the MUoSA should be honoured for the term of the agreement. These type of responses would help achieve the Authority's objective while at the same time not undermining the negotiation that has already been undertaken in good faith, and the investment the industry has made in this area to date.

For any questions on the points raised in this submission, please contact Roanna Vining, Regulatory Affairs Analyst, by phone (06) 873 9329 or email Roanna.Vining@unison.co.nz.

Yours sincerely



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Attached:

- Appendix One: Unison Response to Submission Questions
- Appendix Two: Unison Comments on Code Drafting
- Appendix Three: Unison Comments on DDA Template Drafting

Appendix One: Unison Response to Submission Questions

No	Question	Unison Response
1	<p>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.</p>	<p>Unison agrees with the Authority's goals of more standardisation and lowering the barriers to entry for new traders. However as stated in our cover submission letter, we disagree with the Authority's regulatory response to achieve these objectives.</p> <p>Unison considers the current arrangements to be working well for the most part³. Regarding Unison's own progress, we believe the high take-up of our UoSA based on the MUoSA is due in large part to the consultation process undertaken prior to finalising drafting of the Unison UoSA v1.0. Most retailer concerns had been addressed at the consultation stage with the resulting v1.0 agreement reflecting an inherent degree of standardisation due to its basis on the MUoSA and the combined retailer feedback.</p> <p>Unison therefore submits that the Authority consider an alternative approach to the DDA to achieve their objective of more standardisation and reduced barriers to entry for new traders. For example, introducing a targeted regulatory response to replace legacy UoSAs with new agreements based on the revised MUoSA (e.g. text of the DDA), as well as a framework for review of UoSA terms against MUoSA core principles, and a process for alignment where deviation is material and detrimental. At the minimum, existing commercially negotiated agreements based on the MUoSA should be honoured for the term of the agreement.</p>
2	<p>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?</p>	<p>Unison's detailed concerns with the Code and DDA drafting are discussed in Appendices 2 and 3, however, the key points are:</p> <ul style="list-style-type: none"> • Mediation has been removed from the Code – now only appeal on operational terms to the Rulings Panel. Unison recommends that the Authority retain the current two-tier approach (mediation first, rulings panel second). • Additional services have been removed from the DDA and cannot be included in alternative agreements. Unison submits that clarity is needed by the Authority on how these additional services may be provided for. Firstly, to what extent are distributors and traders able to negotiate bilateral agreements outside the scope of the DDA (or does the DDA represent the entire scope of the relationship in the EA's view? Secondly, how do distributors also negotiate standard additional services with all retailers (for example for processing of distributions/discounts)? • Implementation – Group 1 and 2 split and timings. Unison has concerns with (a) the group 1 and 2 split and associated costs, and (b) the timeframes. Refer to Appendix Two for detail of Unison's concerns and recommendation around this point.

³ Refer to cover letter discussion regarding the ENA survey results and Unison's own progress to date under the voluntary MUoSA arrangements.

		<ul style="list-style-type: none"> • DDA first, negotiation second. The DDA is now the preferred agreement, with alternative agreement considered second. This moves away from the ‘commercially negotiated agreement’ with the DDA as a fall-back towards a ‘mandatory agreement’ with little room for innovation. This is contrary to the explicit definition of “default terms” provided in the 2014 consultation paper: <i>More Standardisation of Use-of-System Agreements</i>”. Specifically, in section 5.3.20 of the 2014 paper it states: <i>“Default terms” means an enforceable complete set of core terms that are incorporated into the contract between a distributor and retailer if the two parties choose not to negotiate or, having undertaken a period of negotiation, fail to agree an alternative agreement. Any alternative agreement that might be agreed, even if it comes about by amending a single clause, is an “alternative agreement” by definition. This is identical to the structure adopted in Part 6 of the Code in relation to forming the terms of agreement for connecting distributed generation to a local network.</i> • Clarity around treatment of conveyance agreements. Unison considers that the Code and DDA are inconsistent around the treatment of conveyance agreements and the Authority needs to provide clear direction for these agreements (see further discussion in Appendices 2 and 3).
3	What feedback do you have on the detail provided in section 3, which describes the Authority’s proposal to introduce a DDA into Part 12A of the Code along with supporting processes that are designed to allow distributors’ DDAs to act as tailored benchmark agreements?	Refer to submission points in submission letter attached, responses to question two above, and in appendices two and three.
4	What are your views on the regulatory statement set out in section 4?	Unison is concerned that the benefits have been overstated and the costs underestimated, as described in the covering submission letter.
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	Please refer to appendices two and three attached.

Appendix Two: Unison Comments on Code Drafting

No	Clause Description	Unison Response
1	<p>12A.2 Application of this subpart:</p> <p><i>This subpart applies to (a) each distributor that:</i></p> <ul style="list-style-type: none"> <i>i. conveys electricity to 1 or more consumers on the distributor's local network, and</i> <i>ii. does not have a contract in respect of the conveyance of electricity with 1 or more of those consumers</i> 	<p>The way Clause 12A.2 is currently drafted implies that distribution agreements only apply to distributors that convey electricity <u>and</u> do not have a conveyance contract in place with any consumers on their network. Given most distributors have conveyance agreements with at least one consumer (e.g. through direct connect customers), the current Code drafting would exclude effectively all distributors from distribution agreements. Unison suspects this is not the Authority's intent. Rather, we infer that the intent behind this is that the distributors would not be excluded, but rather the conveyance agreements would not be included in this subpart. Unison recommends the Authority redraft this section of Code as it is currently ambiguous.</p> <p>Further to the consideration of conveyance agreements, these are specifically excluded from the Code in this section, however, they are still referenced in the interposed draft DDA. Unison therefore recommends the Authority give clear direction on its approach to these type of agreements – what is the status of the current conveyance MUoSA, and how will these agreements be treated in the future?</p>
2	<p>12A.3(2)(c) <i>"...reflect the interests of consumers on the distributor's network;"</i></p>	<p>Unison notes that the word 'consumer' is still included in the Code; however the DDA has been amended to 'customers'. Unison supports the change in the DDA to customer, however we query whether the Authority intends to amend this in the Code and possibly legislation? Consistent language is preferable to avoid confusion.</p>
3	<p>12A.4(4) – timeframes for making DDA available on website:</p> <ul style="list-style-type: none"> <i>a) for Orion, Powerco, Unison and Vector, 60 business days after the date on which this clause comes into force</i> <i>b) for each distributor...not named in paragraph (a), 120 business days after the date on which this clause comes into force:</i> 	<p>Unison has concerns with two aspects of this section of draft Code:</p> <ul style="list-style-type: none"> a) The group 1 and 2 split, and b) The Timeframes <p>Group 1 and 2 split: Unison would like more information about how the group 1 distributors have been selected – for example, why isn't Wellington Electricity included here, given they are in the top 5 biggest distributors?</p> <p>In addition, this is not an even-handed way to regulate the introduction of the DDA. The group 1 distributors will incur higher costs and are under a greater time pressure to implement than others, effectively leading negotiation. Ironically, this scenario had already been playing out with the current voluntary MUoSA – Vector had lead the way and others followed.</p> <p>Timeframes Unison considers that the 60-day timeframe is arbitrary and not helpful to achieving the Authority's objective of increased standardisation and competition.</p> <p>Recommendation: Unison's preferred alternative would be to let UoSAs signed based on the 2012 model remain in force until expiry (all should have terms no greater than 5 years). All new UoSAs should <u>first</u> be negotiated (based on</p>

		Distributors standard terms based on the MUoSA. Should agreement be unable to be reached within a reasonable timeframe and efficient process of negotiation and mediation, <u>then</u> DDA terms would apply.
4	Clause 12A.4(5) – Default agreements and consultation	<p>The process for agreeing a DDA under the proposed Code is that irrespective of whether there is an agreement in place, a DDA must be drafted, operational terms consulted on with all retailers and offered to all retailers on a distributor’s network. 12A.10 provides the option of an alternative agreement, however, the process is DDA first then alternative.</p> <p>Unison is concerned that the alternative agreements that have been negotiated based on the model are now the exception rather than negotiate an agreement first, then default as a fall-back.</p> <p>The impact of this is that the DDA is effectively a mandatory agreement. Unison considers this to be too heavy-handed a regulatory approach.</p> <p>Unison therefore submits that this section of the Code requires significant re-drafting in a way that retains the current concept of good faith negotiation and mediation, then defaulting to the DDA process.</p>
5	12A.5 – Appeal against operational terms in default distributor agreement	<p>Unison is concerned that the only course of action should parties not agree on operational terms is appeal through the Rulings Panel. The current Code includes a mediation process first; followed by the use of the Rulings Panel. The absence of GEIP as a standard for the provision of distribution services puts the emphasis on the operational terms (and incorporated standards) to define acceptable performance. Removal of mediation could result in limited engagement in the setting of these and overuse of an appeal to adjudication as there is no obligation to first mediate. Further adjudication may result in outcomes that unreasonably reapportion risk, lessen efficiency and potentially reduce reliability.</p> <p>Unison recommends that mediation be reintroduced as per the current Code as appeal straight to the Rulings Panel is arbitrary rather than a mediation process involving two informed parties.</p>
6	12A.10 – alternative agreements	<p>Clause 12A.10 provides for a distributor and trader to enter into an alternative agreement to the DDA. However, clause 12A.10(2) states that the alternative agreement:</p> <ul style="list-style-type: none"> (a) address only the subject matter of the terms of the default distributor agreement; and (b) relate only to distribution services. <p>Unison would like clarification on the Authority’s intent behind this clause regarding services that the trader and distributor may wish to agree to services outside of the definition of ‘distribution services’. Would a separate agreement be required? If so, this is likely to be costly to negotiate and possibly stifle innovation. (Refer also to our discussion of this point in Appendix Three, omission of ‘additional services’ from the DDA).</p> <p>Conceptually this approach is an “Alternative Agreement as an exception”, as opposed to “Default agreement as a</p>

		<p>backstop for failing to negotiate mutually acceptable commercial agreements” (based on model principles/terms). This is contrary to the Authority’s own description of a Default arrangement / process in their previous consultation:</p> <p><i>“5.3.20 “Default terms” means an enforceable complete set of core terms that are incorporated into the contract between a distributor and retailer if the two parties choose not to negotiate or, having undertaken a period of negotiation, fail to agree an alternative agreement. Any alternative agreement that might be agreed, even if it comes about by amending a single clause, is an “alternative agreement” by definition. This is identical to the structure adopted in Part 6 of the Code in relation to forming the terms of agreement for connecting distributed generation to a local network.”⁴</i></p>
7	12A.17(3)(a) – requirements if distributors require additional security	<p>Unison considers this clause is overly favourable to the trader and creates an incentive for traders to elect cash deposit for additional security. There is also an issue of efficiency – A distributor may have a justified concern regarding prudential risk but to mitigate this must pay “beyond-commercial” rates to offset this risk – reducing efficiency. Further the cost of mitigating this risk is ultimately borne by all the Distributors customers, and not only those associated with the retailer driving the cost. This is an issue of equity with an effective cross subsidy between customers). Unison therefore recommends the following amendment to this clause (as also discussed in the DDA drafting of clause 10.10(a) below):</p> <p><i>“...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 <u>market rate for short term benchmark debt plus 5%...</u>”</i></p>

⁴ <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/>

Appendix Three: Unison Comments on DDA Template Drafting

No.	Clause	Description	Unison Response
1	<p>2. Summary of General Obligations</p> <p>Clauses 2.2 and 2.3: The reference to 'good electricity and industry practice' (GEIP) has been removed from retailer's services and obligations, but retained in other clauses:</p>	<p>Unison amended Clauses 2.1 and 2.2 of its UoSA based on the MUoSA to include a key reference to "Good Electricity Industry Practice":</p> <p><i>"Distributor's services and obligations: Subject to the terms and conditions of this agreement, the Distributor will <u>in accordance with Good Electricity Industry Practice</u>:"</i></p>	<p>Unison recommends that clauses 2.2 and 2.3 of the DDA be amended to include reference to Good Electricity Industry Practice (GEIP). GEIP should remain central to the standard applied to distribution services. By removing this wording moves further away from an efficient market (industry) approach to developing appropriate terms that ensure performance, towards more rigid terms that may be inefficiently costly.</p> <p>Unison considers that the inclusion of GEIP in the overarching clauses of 2.2 and 2.3 is consistent with the objectives efficiency and reliability. We therefore recommend that the words 'good electricity and industry practice' be included in Clause 2.2 and 2.3 as illustrated below:</p> <p><i>2.2 Summary of Distributor's general obligations. In summary, this Agreement requires the Distributor to provide Distribution Services to the Trader <u>in accordance with Good Electricity Practice</u>, as follows:</i></p> <p><i>2.3 Summary of Trader's general obligations. In summary, this Agreement requires the Trader to perform obligations <u>in accordance with Good Electricity Practice</u>, as follows:</i></p>
2	<p>3. Conveyance Only</p>	<p>Query for this inclusion in the DDA</p>	<p>Unison is unclear why the draft DDA includes provisions around conveyance only, when Clause 12A.2 of the Code specifically excludes these contracts from <i>Subpart 1: Distribution agreements in respect of local networks</i>. Unison therefore recommends the Authority give clear direction on its approach to these type of agreements – what is the status of the current conveyance MUoSA, and how will these agreements be treated in the future?</p>
3	<p>4. Service Interruptions</p> <p>Clause 4.4(d)(i) – maintain security</p>	<p>Unison amended the MUoSA to include the following wording which is underlined:</p>	<p>Unison submits the Authority consider the inclusion of this additional wording to clause 4.4(d)(i) of the DDA:</p>

No.	Clause	Description	Unison Response
	and safety	<i>4.4(d)(i) maintain a safe environment (including for the purpose of maintaining public health and safety), consistent with the Distributor's health and safety policies.</i>	<i>4.4(d)(i) maintain a safe environment (including for the purpose of maintaining public health and safety), consistent with the Distributor's health and safety policies.</i>
4	4. Service Interruptions Clause 4.10 – Restoration as soon as practicable.	The MUoSA stated “restoration as soon as practicable ”. However, the body of this clause refers to “ as soon as possible ”.	Unison submits the wording ‘as soon as possible’ be replaced by ‘as soon as reasonably practicable’ as this is a more common term and more widely understood than the DDA wording. This would also be consistent with the DDA clause 14.2.
5	8. Allocating Price Categories and Price Options to ICPs Clause 8.3 – additional wording to be added to this clause regarding Trader selecting the wrong price option (retrospective credit for distributor).	This is new wording that Unison included in its UoSA based on the MUoSA.	Unison's Standard UoSA includes provision for credit if retailer selects wrong price option. Unison would recommend wording to this effect to be considered for inclusion in the DDA as it has the potential for material revenue implications. This also ensures equity in the agreement for both parties. We recommend the following wording be added at the end of Clause 8.3 in the DDA: <i>“...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.”</i>
6	10. Prudential Requirements Clauses 10.9 and 10.10(a) – Additional Security Requirements, and Prudential Requirements in general.	Some of these clauses are currently in the Code, however, Unison would like consideration of a change to the DDA and Code for sections of these clauses.	Firstly, Unison recommends that the detail of the prudential requirements in the DDA should not replicate what is in the Code under Clauses 12A.15-12A.18. The Authority should remove any repetition from the DDA and only reference the relevant clauses in the Code. Secondly, Unison has concerns about the drafting of the additional security requirements that are in the DDA under clause 10.9 and 10.10(a). Clause 10.9 states that “...if the distributor requires the Trader to provide additional security, <u>the Trader may</u> elect the type of security it provides...” Following on in Clause 10.10(a), if a cash deposit is elected, the distributor must pay a charge to the trader... <u>at a per annum rate equal to the sum of the Bank Bill Yield Rate for that day plus 15%...</u> ”.

No.	Clause	Description	Unison Response
			<p>Unison considers these clauses are overly favourable to 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. There is also an issue of efficiency – A distributor may have a justified concern regarding prudential risk but to mitigate this must pay “beyond-commercial” rates to offset this risk – reducing efficiency. Further the cost of mitigating this risk is ultimately borne by all the Distributors customers, and not only those associated with the retailer driving the cost. This is an issue of equity with an effective cross subsidy between customers). Unison therefore recommends to changes to these clauses:</p> <ol style="list-style-type: none"> 1. Clause 10.9 should be reworded to state “...if the distributor requires the Trader to provide additional security, <u>both parties must agree on</u> the type of security <u>the trader provides...</u>” 2. Clause 10.10(a) (refer to Clause 12A.17(3)(a) of the draft Code) should be amended to: “...<i>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 <u>market rate for short term benchmark debt plus 5%...</u></i>”
7	<p>14. Momentary Fluctuations and Power Quality</p> <p>Clause 14.2</p>	<p>A new clause 14.2 has been added to the DDA requiring the distributor to investigate customer or trader concerns regarding the power quality (e.g. frequency or voltage). If appropriate, the Distributor to install equipment at the customer's Point of Connection to measure quality.</p>	<p>While distributor investigation of power quality makes sense, Unison submits that the last part of the first sentence of this clause is unnecessary. We recommend the following wording be deleted as this level of detail is overly prescriptive:</p> <p><i>“...and, if appropriate, install equipment at the Customer's Point of Connection to measure power quality...”</i></p>
8	<p>19. Termination of Agreement</p> <p>Clause 19.7(c) – new sub clause to be added – ‘Events to occur on termination’.</p>	<p>Unison included an additional clause to its UoSA based on the MUoSA, regarding the events to occur on termination.</p>	<p>Unison submits the Authority consider the inclusion of this additional wording to the DDA as a new clause 19.7(c):</p> <p><i>“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</i></p>

No.	Clause	Description	Unison Response
			<p><i>current Default Distributor Agreement with the Distributor, provided that the information contained in that notice is not inaccurate or misleading.”</i></p>
9	<p>21. Force Majeure</p> <p>Clause 21.6 – new clause to be added – ‘Charges continue’.</p>	<p>Unison included an additional clause to its UoSA based on the MUoSA – Charges continue: If a Force Majeure Event occurs:</p>	<p>Unison submits the Authority consider the inclusion of this additional clause in the DDA that clarifies the arrangements regarding charges in a force majeure event:</p> <p>“21.6 Charges continue: If a Force Majeure Event occurs:</p> <p>(a) <i>the occurrence of such Force Majeure Event will not affect the parties’ obligations in relation to the calculation and payment of fixed charges in relation to the Services (whether or not, in the case of charges relating to ICPs, the relevant ICP received a supply of electricity during the period of the Force Majeure Event); but</i></p> <p>(b) <i>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;</i></p> <p><i>provided that where access to any Consumer’s Premises is prevented by law or a regulatory authority, other than due to any action or inaction on the part of the relevant Consumer, fixed charges will not be payable during which such access is prevented.”</i></p> <p>The rationale for including the addition to this clause is to firstly reflect 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, e.g. <i>“keeping a certain amount of network capacity available for the consumer”</i>⁵. Interruptions to service are a normal part of electricity distribution, and can occur in spite of the exercise of Good Electricity Industry Practice. Under such circumstances fixed charges remain payable, and service guarantee</p>

⁵ Source: Electricity Authority

No.	Clause	Description	Unison Response
			<p>payments are explicitly excluded – see Schedule 1 (including in the case of Force Majeure). Thus the principal holds that common costs must continue to be met including in the event of interruption due to Force Majeure (e.g. the fixed costs contribute to restoration of the network in the aftermath of an event, despite the service being impaired). For this reason fixed charges continue. The counterfactual is that the loss of revenue if fixed charges were not payable would in the short term be borne by the shareholder, however under distribution pricing regulation (ComCom input methodologies) this would in the longer term be recovered from all customers, representing a transfer from those unaffected by the FM event to those affected by it. Such an outcome is inconsistent with service based pricing (and is more reflective of insurance – which is not a part of the Network Service, but is entirely within the control of the customer to obtain). At the same time, under an FM event, Unison and its shareholders bear the risk of the additional costs associated with mitigation (but without foregoing revenue contributions to common costs) – again, an appropriate outcome.</p> <p>Secondly, the clause is reflective of the actual situation in practice where service interruptions that have occurred in spite of Good Electricity Industry Practice (including in instances where FM is invoked) do not result in a suspension of fixed charges. In addition to the principled 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 (variable component). This means that during service interruptions, variable charges are impaired as a matter of course (i.e. no consumption is metered/submitted), however there is no ready mechanism for cost effectively processing a suspension to fixed charges.</p> <p>Finally we note that this clause was debated during the consultation on Unison's UoSA in 2014, and in response to</p>

No.	Clause	Description	Unison Response
			<p>a range of retailer feedback, Unison amended the original draft to include the following: <i>“provided that where access to any Consumer’s Premises is prevented by law or a regulatory authority, other than due to any action or inaction on the part of the relevant Consumer, fixed charges will not be payable during which such access is prevented.”</i> This additional wording was a feature of equivalent clauses in the UoSA negotiated between Vector and retailers based on the recent practical experience of the Christchurch Earthquake and “Red Zoning / Red Stickers”. In the Christchurch case, there was no reasonable prospect of resupply by the Distributor and consumption by the customer, therefore, suspension of ALL charges is deemed appropriate. This clause was added to the Unison UoSA following consultation and on request of some retailers, and is now incorporated in signed UoSA agreements with retailers representing >66% of ICPs on Unison’s networks and >95% of ICPs on Centralines’ network.</p>
10	22. Amendments to the Agreement	The concept of <i>“good faith: the parties will negotiate the change in good faith”</i> has been removed from the re-worked clause 22.1 of the DDA.	The effect of this removal gives both parties the impression that the DDA effectively becomes a mandatory agreement which is preferred over any alternative agreements. Unison submits that this is not an ideal position, and that the good faith clause be retained as this is key to discussions in commercially negotiated agreements.
11	22. Amendments to Agreement	Large sections of this section of the former MUoSA have been removed, e.g. there is no clause addressing changes to variable provisions, nor is there a clause setting out the procedure for changes. Changes can now only be made to pricing (schedule 7), loss factors, by law or GXP changes.	Unison is concerned there is little room for adaptation, flexibility and refinement of the DDA as the industry evolves. We also question how the Authority intends to allow the refinement of the DDA under the proposed new Part 12A rules.
12	24. Liability Clause 24.4 - No liability in tort, contract etc.	This is a new clause that has been included, based on the Vector UoSA.	Unison is supportive of this clause being included in the DDA.
13	24. Liability Clause 24.5(b)(vii) to be added – Distributor not liable	Clause 24.5(b)(vii) is a new clause that Unison has included in its UoSA based on the MUoSA.	Unison would like the Authority to also consider the inclusion of this clause in the DDA as Clause 24.5(b)(vii): <i>“such failure has arisen notwithstanding that the Distributor</i>

No.	Clause	Description	Unison Response
			<p><i>has acted in accordance with Good Electricity Industry Practice”.</i></p> <p>The purpose of the clause is to ensure the scope of liability is consistent with that which a reasonable and prudent operator employing GEIP could be expected to manage or mitigate. The nature of electricity distribution and line function services is such that uninterrupted and “fault free” supply cannot be guaranteed. Further, the provision of the service is subject to a range of environmental and other inherent factors which in extreme cases can give rise to damage, in spite of exercising GEIP. As such events “beyond the distributor’s control” have a reasonable chance of occurrence, but affect only a small number of customers, the risk is more appropriately mitigated through the customers’ electrical protection measures (e.g. surge protection) or personal insurance. The addition of this clause achieves this appropriate apportionment of risk between the parties and puts the obligation for mitigation (through either physical or financial means) with the party most able to take such measures.</p> <p>The addition of this clause is also relevant to draw attention to the underlying principles and “origins” of this clause – it is a feature of Unison’s legacy UoSAs⁶. In addition to this explicit exclusion, the same “legacy agreement” (cl 20.3) was added to the Unison UoSA following consultation and on request of some Retailers.</p> <p>This is operatively the same as the new agreement clause references 26.2 (which matches 20.3 in the existing “2000 Agreement”), and 26.4 (b) (viii) (which aligns with clause 20.1.7 in the existing “legacy Agreement”)</p>

⁶ For reference that agreement contains the following clauses:

20.1 Exclusions from distributors Liability: Notwithstanding any other provision of this contract, the distributor shall not in any circumstances be liable to the Retailer for;

20.1.7 Any failure to convey electricity or to satisfactorily convey electricity or to provide a Remote Signalling Service or to perform any other obligation under this agreement where, notwithstanding such failure, the Distributor has acted in accordance with Good Industry Practice.

No.	Clause	Description	Unison Response
			This highlights that the proposed clause is consistent with both legacy and current arrangements, and therefore (on this point at least), not representing a shift in risk apportionment between the parties.
14	24. Liability Clause 24.7 – Limitation of liability	The liability caps are the same in the DDA as in Unison’s UoSA based on the MUoSA.	Unison is comfortable with the DDA clauses regarding liability as they are the same as Unison’s UoSA terms.
15	25. Indemnity	The indemnity procedure here is based on the Vector approach.	Unison is comfortable with the DDA clauses regarding indemnity as it has the same equivalent effect as Unison’s UoSA terms.
16	28. Conduct of Claims	The conduct of claims is based on the Vector approach.	Unison is comfortable with the DDA clauses regarding conduct of claims as it has the same equivalent effect as Unison’s UoSA terms.
17	31.7 – Electricity Information Exchange Protocols Clause 31.7 - non-compliance	The remedial action in this clause is based on the Vector approach.	Unison is comfortable with the DDA clauses regarding non-compliance as it has the same equivalent effect as Unison’s UoSA terms.
18	33. Interpretation Removal of definition of ‘ additional services ’ and all references to this term from the DDA.	The Code makes it explicit that a DDA will “relate only to distribution services” (clause 12A.10(2)). Distribution Services are set out in the DDA clause 2.2.	This is a key change and Unison would like clarification on this point from the Authority. Is a separate agreement required between traders/distributors should additional services be provided by distributors? Or, are no additional services allowed to be provided to retailers from distributors? If it is the second scenario, Unison has concerns as this is likely to stifle innovation in the electricity industry. If additional services are allowed under different agreements it is likely to be a barrier to providing such services as additional contracts would need to be developed, incurring additional costs for both parties.
19	33. Interpretation Replacement of the word ‘ consumer ’ with ‘ customer ’.	Throughout the agreement, ‘consumer’ has been replaced with ‘customer’.	Unison supports the word change to ‘customer’ from ‘consumer’. However, the Authority needs to consider subsequent inconsistencies with the Act and Code and whether these will be amended. Consistency is preferable to avoid confusion.
20	Schedules 1-8 (Operating terms)		Unison notes that the Operational Terms, under the current Code drafting, will be subject to appeal to the Rulings Panel. Unison has commented above on the removal of mediation as a form of resolving disputes, and the effect of

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			this may have unintended consequences on the drafting of Operational Terms. For example, distributors will be incentivised to reduce their exposure to arbitrary rulings panels. This may take the form of reducing the thresholds and penalties described in operational terms.