# annex: proposed amendments to part 12A and the dda

Below we explain our proposed amendments to draft Part 12A of the Code and the draft DDA. The descriptions below are organised by the following themes for each of Part 12A and the Code:

1. Contract formation, variation and termination;
2. Risk management;
3. Access to data; and
4. Workability.

The descriptions below are reflected in the mark-ups to the Code and DDA that are enclosed with this submission.

# Contract formation, variation and termination

## Proposed amendments to Part 12A of the Code

| **CONTRACT FORMATION, VARIATION AND TERMINATION: CODE AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| Sch 12A.1, cl 5 | Distributor requirement to offer to contract  | As currently drafted, this clause could be interpreted as an “offer” by the distributor which will immediately become binding once accepted by the trader. This is evidently unintended, as the process for entering into the agreement is specified in clause 6(2). Further, an interpretation that would allow immediate acceptance under clause 5 would undercut the ability of the distributor to suggest a negotiated agreement, as the obligation to “offer” to contract on the standard DDA terms is compulsory. We propose making it clear in clause 5 that the distributor must provide the default distributor agreement terms, rather than requiring the distributor to offer to contract. |
| Sch 12A.1, cl 6(4) | Exclusion of collateral terms in the DDA  | There may be some collateral terms that are intended to function together, and would not function correctly if they were not included with other complementary terms. We propose to make it clear that a trader cannot “pick and choose” and delete components of the collateral terms that are designed to operate as a group. |
| Sch 12A.1, cl 6(5) | DDA applies as a binding agreement  | We have proposed a change to clarify that the “distributor agreement” in this subclause does not include a negotiated “alternative agreement” but only a DDA. |
| Sch 12A.1, cl 6(5) (d)  | Parties using the DDA template can agree to alternative terms under the Appendices  | As currently drafted, it is not clear whether parties using the DDA template can agree to alternative terms that differ from the default position under the Appendices in relation to the services provided for in the Appendices. If the parties are permitted to negotiate alternative agreements generally, then it follows they should be permitted to agree alternative terms in relation to the subject matter of the Appendices. We have proposed a change to clarify this. |
| Sch 12A.1, cl 7(2), 9(1) | Participant that may elect additional services under Appendix C | As currently drafted, either the distributor or the trader can elect that the distributor agreement should include Appendix C. As this appendix is for the benefit of the distributor, it should be at the distributor’s option.  |
| Sch 12A.1, cl 7(3)-(5) | Entering into agreements for additional services | As currently drafted, these clauses only permit the parties to enter into agreements for additional services at the time they initially contract. There is no reason why they should not be permitted to enter into such arrangements at a subsequent date, and so we have proposed clarifying these clauses to permit that. |
| Sch 12A.1, cl 8 | Entering into alternative agreements  | We have inserted a new clause 8(5) to clarify that if the parties have not negotiated a bespoke arrangement before the timeframes in clause 6 expire, nothing should prevent the parties from forming an alternative agreement at a later time if they agree. |
| Sch 12.A1, cl 12 | Transitional provisions for existing agreements | These amendments are consequential changes reflecting the proposals discussed above. |
| Sch 12A.1, cl 13 | Refreshing existing distributor agreements  | As currently drafted, Part 12A does not include a mechanism to periodically refresh existing default distributor agreements, so the agreements will remain evergreen. Evergreen contractual arrangements are extremely unusual, whether in a regulated or unregulated context, because market conditions and the parties’ commercial needs inevitably evolve. At a minimum, there should be an opportunity to periodically refresh all existing distributor agreements to update the terms to reflect the distributor’s current published DDA.We have therefore proposed inserted a new clause 13 to ensure that a distributor’s agreement with a trader is not “locked” in time indefinitely, with no ability for the distributor to update traders onto its most current version of the default distributor agreement. Our proposed wording would permit distributors the option to refresh agreements to their current DDA terms after a period of no less than three years. To ensure that agreements are aligned (which is one of the EA’s objectives) the time period runs from the date the first agreement is entered into by the distributor. |
| Sch 12A.1, cl 14 | Exception to the requirement to contract with traders | As currently drafted, distributors are obliged to contract with all traders under all circumstances, regardless of the trader’s business practices and even if the distributor has previously terminated a distribution agreement with that trader for the trader’s default. For example, a trader terminated for serious financial breach could nonetheless insist on immediately re-contracting on the basis of the DDA and the distributor would have no ability to resist that demand. We have inserted a new clause 14 to ensure that distributors are not always required to contract with traders who continually demonstrate an inability to perform their obligations. Rather than providing expressly for circumstances in which a distributor would be entitled to refuse, we have proposed an option to apply to the EA for an exemption from the obligation to offer to contract with the rogue trader.Ultimately, this decision would be in the Authority’s discretion, but this provision would at least allow distributors to put the case to the Authority. |
| Sch12A.4, cl 4(2) | Principles for operational terms | We accept that it is appropriate for the Authority to promulgate principles for operational terms. However, the principles should not undermine the ability of the distributor to determine its commercially reasonable operational requirements. We have suggested some focused changes to ensure the balance is appropriate set.We have proposed amending cl 4(2)(b) to clarify that it is the requirements of participants (plural), rather than any single participant, that are relevant to the determination of operational terms, and that those requirements must be reasonable.We have also proposed deleting cl 4(2)(d) as this is essentially duplicating the test in 4(2)(b). |
| Sch 12A.4, cl 4 | Circumstances where Rulings Panel can amend an operational term  | As currently drafted, the Rulings Panel must have regard to the principles in cl 4(2) but is not required to identify any error in the operational terms adopted by the distributor. The result is that the Rulings Panel can amend operational terms if it simply prefers a different approach that it considers is also consistent with the principles. This is an unreasonable and unjustifiable intrusion on the ability of distributors to determine – within reasonable bounds – their operational arrangements. Distributors should be free to adopt operational arrangements as long as those arrangements are consistent with the principles. Such an expansive power to amend would also encourage traders not to participate meaningfully in consultation but instead go to dispute resolution, which would be an inefficient approach to resolving these matters.We have therefore proposed amendments that would:* clarify that the Rulings Panel must identify an inconsistency with the cl 4(2) principles before it amends the operational term;
* require the Rulings Panel to have regard to the impact on the distributor of adopting the amended term and be satisfied that it is commercially reasonable to do so; and
* consider the impact on the distributor of having different operational terms applying to different traders.
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| Sch 12A.4, cl 10 | Amending other distributor agreements where the Rulings Panel amends an operational term  | We have inserted clause 10(5) to clarify that, if the Rulings Panel amends an operational term under clause 8(3)(b), the distributor may at any time amend each of its distributor agreements to include the amendment. This change is necessary because clause 10(1)(c) allows the Rulings Panel to permit each participant the option to incorporate the amended term or not. This could result in a situation in which different operational terms apply across the various agreements the distributor has with traders. Not only might this be unworkable from an operational perspective, it would also undermine the Authority’s aim of achieving greater uniformity. Our proposed amendment would allow distributors a corresponding option to require that the amended term apply across all of its agreements. |
| Sch 12A.4, cl 14 | Periodic review by the Authority  | The proposed changes to Part 12A do not provide any built in mechanism for the Authority to review and update default core terms. It is unreasonable to expect that the core terms adopted now will never require revision. Indeed, in the first few years after implementation, it will likely become apparent through experience that further work is required to refine the core terms.To ensure that there is a structured opportunity to revise the core terms, we have proposed inserting new clause 14, which would require the Authority to conduct a periodic review of Part 12A of the Code and the DDA. We have proposed the first review should occur no later than three years as we suspect any issues regarding the DDA process will become readily apparent after the first couple of years, and this will create a process for addressing any necessary changes. Thereafter, the Authority should review the Code and DDA at least every five years, although it is open to the Authority to amend the Code or DDA in the meantime.This approach is analogous to the Commerce Commission’s obligation to periodically review the Input Methodologies to ensure they are fit for purpose (s 52Y, Commerce Act 1986). |

## Proposed amendments to the DDA

| **CONTRACT FORMATION, VARIATION AND TERMINATION: DDA AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| Cl 3, 33.2 | Direct customer agreements | We have proposed amendments to clarify that the distributor and a customer may agree to contract directly without the need for the customer to make a formal written request. The requirement for a written request creates an unnecessary administrative barrier.The remaining amendments clarify the drafting. |
| Cl 6.2Cl 7.2Cl 17.4Cl 17.5 | Requirement to comply with: * Loss Factor Guidelines
* Distribution Pricing Structure Consultation Guidelines
* guidelines relating to medically dependent customers or vulnerable customers
* guidelines relating to unmetered load management
 | These clauses require distributors to comply with various guidelines published by the Authority. These guidelines are not yet defined and can theoretically be changed at any time. This creates a quasi-regulation making power without any of the process safeguards found in the Code. Given the Electricity Industry Act provides for a specific power to make and amend the Code, it is not appropriate for the Authority to arrogate to itself a parallel rule-making power that lacks a proper statutory basis.It also means that new and enforceable contractual obligations may be created through the publication of guidelines rather than a proper rule-making or contractual process.We have proposed deleting references to these guidelines. If the Authority wishes to create binding obligations on distributors, it should do so through the appropriate rule-making powers of the Code. |
| Cl 19.1(b) | Termination of agreement as a result of a dispute resolution process  | As currently drafted, clause 19.1 would allow a dispute resolution process to lead to the termination of the agreement – and potentially the ability of the trader to claim damages resulting – for a simple breach of the agreement and without any materiality threshold. Given clause 18.4 already provides options for termination subject to a materiality threshold, it is hard to see the need for this here.Accordingly, we have proposed deleting clause 19.1(b).  |
| Cl 19.1(f) | Code change to contract requirements  | We have proposed inserting clause 19.1(f) so that if the obligation to enter into a distribution agreement is removed under Part 12A of the Code, the Distributor will be able to end any relevant agreement without these continuing on indefinitely. Without this clause, the binding contracts created by 12A may become “zombie contracts” that live on indefinitely despite their regulatory foundation being repealed. |
| Cl 19.2 | Termination for events of default  | As currently drafted clause 18.1 and 18.3 would mean that a failure of the distributor to remedy any breach of the agreement within 5 Working Days would be an Event of Default that could lead to termination under this clause.We have proposed amending this clause to clarify that clause 19.2 only applies to the events of default described in clause 18.4 – that is, subject to a reasonable materiality standard.  |

# Risk management

## Proposed amendments to Part 12A of the Code

| **RISK MANAGEMENT: CODE AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| Sch12A.3, cl 7  | Requirement to provide additional security  | As currently drafted, the provisions relating to additional security do not take into account amounts that the trader owes or that are disputed. The consequence is that the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. Moreover, traders will have a strong incentive to dispute any amounts owing unless disputed amounts are taken into account for the purposes of security that may be called on. We have proposed amendments to recognise this. Without this change, the amount of security held may be inadequate. |
| Sch12A.3, cl 7 | Additional security requirements  | A 15% premium on bank bill yield rates substantially overstates most Traders’ true cost of posting additional security. This is significantly more than Default Interest under the DDA template. Moreover, the means of providing additional security is at the Trader’s election. This creates a real risk that Traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital. It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices.We have proposed changes to ensure that the real cost of security on normal terms is passed through to the Distributor, and the Trader cannot make a windfall by choosing a cash deposit as security. |

## Proposed amendments to the DDA

| **RISK MANAGEMENT: DDA AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| 10.7 | Requirement to provide additional security  | As currently drafted, the provisions relating to additional security do not take into account amounts that the trader owes or that are disputed. The consequence is that the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. Moreover, traders will have a strong incentive to dispute any amounts owing unless disputed amounts are taken into account for the purposes of security that may be called on. We have proposed amendments to recognise this. Without this change, the amount of security held may be inadequate. |
| 10.9  | Additional security requirements  | A 15% premium on bank bill yield rates substantially overstates most Traders’ true cost of posting additional security. This is significantly more than Default Interest under the DDA template. Moreover, the means of providing additional security is at the Trader’s election. This creates a real risk that Traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital. It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices.We have proposed changes to ensure that the real cost of security on normal terms is passed through to the Distributor, and the Trader cannot make a windfall by choosing a cash deposit as security. |
| 10.20  | Cash deposit on insolvency event  | As currently drafted, the Distributor must give the Trader two working days’ notice before drawing down on the cash deposit. However, if the Trader has gone insolvent, there should be no need to provide notice. We have proposed a change to reflect this.  |
| 10.22  | Situations when a Distributor may make a call on security  | The current drafting suggests that the Distributor is unable to call on security if the Trader has failed to maintain acceptable security. We have proposed an amendment to clarify this.  |
| 24.2 | Liability for direct damage | As currently drafted each party will be liable to the other party for direct damage that results from a breach of the Agreement, negligence, or failure to exercise Good Industry Practice. However where a clause indicates an obligation to exercise Good Electricity Industry Practice, the failure to do so will cause a breach of the Agreement – so this wording is unnecessary to include. Accordingly we have proposed deleting the specific reference to Good Industry Practice. |
| 24.7 | Limitation of liability  | As currently drafted, the greater the number of traders on a Distributor’s network (no matter how small) the higher the cumulative amount of liability for which they could be liable, despite the network itself, and any likely loss arising from events, not changing. There is no justification for liability to scale solely depending on how fragmented the retail market is in relation to that distributor’s network.We have therefore proposed changes to ensure that the Distributor’s exposure to liability from a Trader is proportionate to their share of the network, measured either in terms of ICPs or, for traders that have a smaller number of large (e.g. industrial) customers, proportionate to their share of distribution services charges. |
| Cl 24.11 | Reference to the Contract and Commercial Law Act 2017  | We have proposed amendments to clause 24.11 to ensure that section 15 of the CCLA does not inadvertently prevent the parties from varying the agreement. |
| Cl 26.1  | Claims against the Distributor’s indemnity | As currently drafted this clause suggests that the Trader can turn its mind to whether it “wishes” to be indemnified for any amount to remedy a customer issue after it has already done this and without any consultation with the Distributor. We have proposed amendments to make it clear that the Trader must be aware of any facts or circumstances indicating that the underlying failure may be related to an event, circumstance or condition associated with the Network. |
| Cl 27.1, 27.2 | Circumstances where the Distributor and Trader will be indemnified  | As currently drafted, the Distributor will indemnify the Trader in relation to any direct loss or damage arising out of or in connection with the termination of the agreement by the distributor, except when the termination is the result of a breach by the trader. We have proposed clarifying the drafting to make clear that, if the distributor has a contractual right to terminate, it should not be penalised for exercising it. We have also proposed a corresponding change to cl 27.1 for the benefit of traders. |
| Cl 27.3, 33.2 | Exceptions to indemnity  | The indemnity for third party claims should cover only the third party’s “actual losses”, and not liabilities which a Trader has voluntarily assumed by way of liquidated damages or similar payments. Otherwise the indemnity potentially provides a “blank cheque” for Traders to expose Distributors to unlimited liability for breaches of the default Distributor agreement. This would not be an efficient outcome, because it would require the Distributor to bear a type of risk which other parties are better placed to mitigate.Accordingly, we have inserted clause 27.3 to specify circumstances where the distributor will not be liable under the indemnity in clause 27.2. Moreover, as the concept of “direct loss” does not have a single, settled legal meaning, and would otherwise be ambiguous we have referred to loss that is a “direct, natural and probable consequence”. |
| Cl 33.2 | Definition of “serious financial breach”  | We have amended the definition of “Serious Financial Breach” to include a scenario where the trader has not paid its invoices for two consecutive months. This is to reflect the fact that, for smaller traders, the existing thresholds may provide substantial latitude for a prolonged period of non-compliance with payment obligations. |

# Data access

## Proposed amendments to Part 12A of the Code

| **DATA ACCESS: CODE AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| App C, cl 2(2)-(3) | Provision of Consumption Data | We have proposed several changes to clarify the drafting of these clauses, and to provide that data may be provided by the trader or MEP. |
| App C, cl 2(4) | Supplying Consumption Data in the requested format  | As currently drafted it is unclear how the trader should supply consumption data where the parties are unable to agree the format in which data is provided. We have inserted a new clause 2(4) where the parties are unable to agree the format in which data is provided to mirror the wording in the EU’s General Data Protection Regulation as it relates to the right to data portability. |
| App C, cl 2(5) | Trader’s obligation to ensure Consumption Data is free from viruses and transmitted in an encrypted form  | We have proposed that this wording is moved up from clause 17 below, given it relates directly to how the Consumption Data is supplied. |
| App C, cl 3(2), cl 18 | Provision of Consumption Data to Distributor  | As previously drafted, clause 3(2) and the template in clause 18 suggested that the parties have to reach agreement on a range of matters in the ‘Data Agreement’ that are provided for in the operative clauses themselves. For example, the template Data Agreement suggested that the parties have to agree on the Consumption Data that is to be provided, whereas the aim of Appendix C is to make clear that the distributor has a right to request this data. We have therefore proposed changes to clarify that:* cl 3 sets out the minimum rights the distributor is entitled to insist upon; and
* the Data Agreement covers additional matters agreed by the parties which exceed any default rights of the Distributor under cl 3.
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| App C, cl 3(4)(c), 3(6) | Transferring Consumption Data outside of New Zealand  | Businesses often use third party cloud providers to host most if not all of their business data, often overseas. This is because large and reputable third party providers typically have more secure systems than smaller in-house operations, while providing greater flexibility. Notably, the Privacy Commissioner now stores its data – including highly sensitive complaints data – [via a Microsoft datacentre in Australia](https://www.privacy.org.nz/assets/Files/OPC-cloud-PIA.pdf). We have proposed wording in sub-clauses 3(4) and 3(6) to mirror the approach [under the Privacy Bill](http://www.legislation.govt.nz/bill/government/2018/0034/latest/LMS23318.html) – which recognises data kept in such circumstances is not a “disclosure”. Given the approach of the Privacy Commissioner and the relatively non-sensitive nature of most Consumption Data we believe this clarification is important for workability. |
| App C, cl 3(4)(c) | Combining Consumption Data  | We do not understand the rationale for the inability to combine Consumption Data with other data. Absent this right, there is little point in receiving Consumption Data. For example, this would mean a distributor could not use the Consumption Data with other information about its Network for planning purposes, or combine data from multiple retailers to provide a complete picture of consumption in a particular geographic area, which is essential for network planning purposes.Accordingly, we have proposed removing this restriction.  |
| App C, cl 5 | Trader’s obligations under the Privacy Act  | We have proposed changes to reflect that each trader should ensure that its terms provide authorisation and notice for any relevant uses under the Privacy Act. |
| App C, cl 6(1) | Restriction on disclosing the existence of any Consumption Data  | It would be strange to prohibit the Distributor from being able to acknowledge that it has received Consumption Data from the Trader, provided none of the actual content of this Data is made public. The *existence* of Consumption Data is not plausibly confidential.To address this, we have clarified that the distributor must not disclose the Consumption Data, rather than the existence of such data.  |
| App C, cl 6(2)  | Combining Consumption Data  | As above in relation to clause 3(4), we see no reason to prohibit use of aggregated, anonymised secondary information which provides insights about the Network and distribution services. This is likewise a public good. Absent this clarification, distributors could be unjustifiably prevented from making use of the results of their network planning analyses where that analysis relies on Consumption Data.To address this, we have inserted a new clause 6(2) to make it clear distributors are not prevented from using/disclosing information that is derived from aggregated Consumption Data in certain circumstances.  |
| App C, cl 8 | Data team  | As the relevant people who make up the data team are also described in clause 7 we have proposed simplifying clause 8 to avoid repetition. |
| App C, cl 10 | Requirements for information security plan  | Provided the Distributor has complied with the general requirement to put in place appropriate controls consistent with the Distributor’s own controls for confidential information, there is no need to provide for additional requirements to physically and electronically quarantine the Consumption Data. Further, as described above, to have the benefit the Consumption Data will need to be used with other data, meaning that quarantining is not feasible.Accordingly, we have proposed removing clause 10(2).  |
| App C, cl 11 | Liability and indemnity  | The Distributor should only be obliged to indemnify for losses that are actually caused by the Distributor’s breach. This was not achieved by the previous wording of “arising… in connection with”).The Distributor also should not be liable for losses which were reasonably foreseeable at the time the parties entered the appendix. There should not be an obligation to indemnify for loss that is too remote.We have proposed changes in 11(3) to reflect that the Trader should also be expected to take reasonable steps to mitigate potential loss. |
| App C, cl 13 | Frequency of audits  | To avoid larger distributors having the prospect of multiple audits occurring regularly over time, we have proposed that the Distributor have the option of conducting one audit every 12 months, and providing the results to all its traders. |
| App C, cl 14 | Termination of Appendix C | Under the current proposed wording:* the Trader would have been able to terminate the entire Agreement to which the Appendix belongs, rather than just the Appendix, and
* the Trader would have been able to terminate for any breach, no matter how minor.

It was not clear to us why the previous clause 13 included so much detail attempting to define the materiality/seriousness of a breach, when the previous clause 14 allowed the Trader to terminate for any breach (no matter how minor) that is not a serious breach (see prev. 14(1)(b)), and also for any breach (no matter how minor) that is not remedied within 5 Working Days (this was the effect of the previous 14(2), when read together with the provisions defining what amounts to an Event of Default – specifically the previous 13(1)(b) and 13(3)).Accordingly, we have made changes here to simplify the circumstances where a Trader can terminate the Appendix.  |
| App C, cl 15 | Destruction of Consumption Data  | The Distributor may have a legitimate need to keep and use Consumption Data after the end of the agreement for permitted purposes. Moreover, if distributors are exposed to the risk they will have to return data, this will dis-incentivise them from relying on data for network planning purposes as they may subsequently be deprived of the data on which they have based investment decisions.We have therefore proposed changes to clause 15 to recognise this. The Trader may however request a certificate when the data is erased. |

# Workability

## Proposed amendments to Part 12A of the Code

| **WORKABILITY: CODE AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| Sch 12A.1, cl 3, cl 6(3) | Timeframe for negotiation of distribution agreements  | 20 business days for negotiation of distribution agreements is extremely tight. Many distributors will have difficulty meeting these timeframes, taking account of practical matters such as the need for billing system setup, outage management and other network operations setup, connections, and prudential security set up. This timeframe also undercuts any reasonable ability to enter a negotiated agreement. To address this, we propose amending this timeframe to 40 business days. |
| Sch 12A.1, cl 6(2) | Timeframe for commencement of trading  | Five business days to commence trading is an extremely tight timeframe, taking account practical matters such as the need for billing system setup, outage management and other network operations setup, connections, and prudential security set up. To address this, we propose amending this timeframe to 20 business days.  |
| Sch 12A.1, cl 11(1)(c) | Requirement to provide “any other agreement” to the Authority  | The current drafting would mean that any agreement between the parties – whether or not it is related to distribution services – could be published by the Authority if the parties sign up to the agreement within the DDA contracting window. There is no policy rationale for requiring disclosure of entirely unrelated commercial agreements, and so we have proposed deleting this clause to clarify that only agreements that relate to distribution services are included in the disclosure obligation. |

## Proposed amendments to the DDA

| **WORKABILITY: DDA AMENDMENTS** |
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| **Ref.**  | **Description**  | **ENA’s comment**  |
| Cl 5.1, 5.9 | Alternative load control arrangements  | As currently drafted, clause 5 provides a default rule specifying what part of a customer’s load an entrant may control, where the incumbent already controls a portion of the customer’s load. On the current wording, because of the DDA mechanism, the entrant and incumbent will be unable to vary this rule except by entering into an alternative agreement. We have proposed amendments to allow for an “Other Load Control Option.”We have also proposed new clause 5.9 that ensures there is no conflict between load control by the distributor and by third parties. |
| Cl 7.7 | Requirement to follow certain process where the error is immaterial | There is little purpose in correcting immaterial errors only, given that this would merely bring the charges into line with the Distributor’s regulated pricing. This should not be controversial so long as the errors are obvious.Accordingly we have proposed deleting the requirement that the correction of the error must not have a material effect on the Trader or 1 or more Customers.  |
| Cl 8.5 | Trader’s selection of Price Option | Clause 8.5 currently reads as if meter register configuration is the only relevant detail for selecting a Price Option. Accordingly we have proposed amendments to clarify that the Trader must only select a Price Option where all eligibility criteria, including the meter register configuration, are satisfied. Distributors rely on Traders to maintain correct information about each site as necessary to select the correct Price Option.  |
| Cl 8.9 | Distributor’s right to change Price Category | We have proposed amending this clause so that any correction of a mistake in relation to Price Category is done in the same way as an initial allocation.  |
| Cl 9.3 | Billing provisions | As currently drafted the proposed DDA template has a “one size fits all” approach to billing and payment as part of its core terms. This is not appropriate for all Distributors. We have proposed amendments to ensure that it will work for all Distributors. |
| Cl 20 | Confidentiality | We have proposed an amendment to clarify that each party may use Confidential Information for the purposes of performing their obligations and exercising their rights. |