



**Submission on more standardisation of
model use-of-system agreements**

20 May 2014

Public version

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Executive Summary

Overview of Vector's position and why the Vector UoSA delivers on the Competition, Reliability and Efficiency objectives

1. Vector wants to ensure that electricity consumers on our network can benefit from a competitive, vibrant and transparent retail market. We support initiatives that will improve retail competition on our network and on other networks – such initiatives are ultimately in the interests of all parties.
2. It is our view, supported by the attached Sapere report and our clause-by-clause assessment of the key variations, that Vector's UoSA does not hinder competition and in fact better promotes network security and efficient operation of the market than the MUoSA.
3. The amendments we have made to the MUoSA were not made lightly – they were the result of careful analysis and detailed negotiations. Further, we believe the amendments are objectively justifiable and collectively deliver on the CRE outcomes.
4. Vector also considers that its process of agreeing variations to the MUoSA in good faith was in line with the Authority's expectations as set out when the MUoSA was published in September 2012. At that time the Authority indicated that the MUoSA was a base to start commercial negotiations between the parties – which is the way Vector has utilised the MUoSA.
5. We also note that retailers have been as willing (in fact seemingly more so) to negotiate and sign up to the Vector UoSA as they have to a UoSA that is much closer to the MUoSA. This does not support a view that the Vector UoSA is biased towards distributors, or that the MUoSA provides a contract that all parties are happy to support.
6. However, if the Authority or any other party can present convincing evidence or analysis that a clause in Vector's UoSA may not be in the long-term interest of consumers we would happily consider amending it. This means there are avenues open to the Authority to resolve its concerns without resorting to regulation.
7. We ask the Authority to take this opportunity to step back from its proposed path and reconsider its assessment of the MUoSA, the Vector UoSA and other developments related to industry participants' negotiations of UoSAs.

The Authority's jurisdiction to regulate UoSAs

8. Vector questions whether the Authority has the jurisdiction it purports to have to fix standard forms of contract given that what the Authority is embarking on is the regulation of non-price terms of supply for entities already regulated through Part 4 of the Commerce Act 1986, even though the Electricity

Industry Act prohibits the Code from regulating (or purporting to regulate) “anything that the Commerce Commission is authorised or required to do or regulate under part 4 of the Commerce Act.”

9. Even assuming there was no issue of jurisdictional overlap with the Commission, Vector questions the basis on which the Authority considers it has the jurisdiction to implement the options it has proposed. It is not clear exactly how far the Authority’s power to amend the Code extends and the statutory basis for implementing the proposals cannot simply be assumed.
10. Vector also believes the Authority is acting prematurely. In proposing to act in a timeframe significantly less than the Authority itself considered would be needed to observe meaningful change from the release of the MUoSA, the Authority is acting without sufficient evidence to support its position.
11. We are also concerned that there is a disproportionate emphasis in the Consultation Paper on Vector’s individual conduct. This has the strong appearance that the Authority is actually seeking to “correct” the actions of a single market participant, rather than seeking to act on the basis of an industry-wide initiative.
12. Finally, Vector is concerned that the Authority is mistakenly focusing on whether its expected outcomes of the MUoSA process have been accomplished, rather than whether the Authority’s statutory objectives are being achieved in the market (whether by the MUoSA or by other means).

Allegations made regarding Vector

13. In the Consultation Paper and in industry meetings the Authority has made a series of allegations and statements which imply improper behaviour on the part of Vector during its negotiations of the UoSA. Vector:
 - a) **Rejects** the allegations and implications;
 - b) **Notes** that the Authority has at no time explicitly presented these concerns directly to Vector;
 - c) **Notes** that there is no evidence or fact to support the allegations and implications; and
 - d) **Requests** that the Authority withdraw its remarks urgently.
14. Overall we are disappointed that, despite the lack of any supporting evidence, the Authority has made inferences and allegations regarding negotiations to which it was not a party and about which it clearly has limited information.
15. Vector is confident that it has negotiated openly and in good faith with each retailer and there has been no instance of misuse of a monopoly position. If the Authority has evidence that Vector or any other party has misused their

monopoly position during the negotiation of a UoSA, we request that this is put on the table so it can be assessed through appropriate channels.

Why Vector's UoSA contains variations from the MUoSA

16. Vector's operational review of the MUoSA discovered a number of terms that were missing from the agreement and a number of provisions requiring significant amendment to ensure workability. Our amendments reflect these necessary changes.
17. Vector also considers the MUoSA to be insufficiently future-proofed in some areas. It is of paramount importance for long-term use of system agreements such as the UoSA to be sufficiently robust to handle (among other things) evolution of technology and industry practices during the term of the agreement. The Vector UoSA, in this sense, provides a more comprehensive set of terms than the MUoSA.
18. The Authority presents 10 examples of "material variations" between the MUoSA and the Vector UoSA in Table 1 of the Consultation Paper. We make three key comments on these:
 - a) The Authority's assessment of a number of these material variations is not correct, either because the Authority has not properly understood the effect of the provision that has been varied or because it has not properly understood the rationale behind the variation.
 - b) It is inaccurate to categorise a number of the variations identified by the Authority as "material".
 - c) The Authority's assessment does not include any of the material variations to the MUoSA that have been made in favour of the retailer or at a retailer's request of which there were several (by definition, these amendments are likely to be commercially favourable to retailers). The Authority's failure to consider all variations as a package is a concerning indicator of a one-sided assessment that has not taken all relevant material into account.

Discussion of next steps and options presented by the Authority

19. Firstly, Vector **requests** the Authority delay reaching any decision following the consultation process until Vector has received the information it has requested under the Official Information Act regarding the Authority's work on use-of-system agreements, been given a reasonable amount of time to consider that information and to provide a further submission to the Authority based on the new information.

20. Vector considers there is value in options 0 and 1. While they would not deliver contracts that are as “standardised” as the other options, in our view this is offset by the following benefits:
- a) Providing flexibility to negotiate variations allows for contracting innovation and for the unique circumstances of participants to be reflected in the UoSAs.
 - b) A more standardised approach means that amendments will in most cases only be able to be made through a regulated process, which will limit the scope for amendments and create delays and costs.
 - c) Enabling parties to agree terms among themselves means the contracts will reflect actual commercial practice.
21. Overall, Vector does not believe a lack of UoSA standardisation is a problem of any materiality. The transaction costs from the existence of UoSA variations have been overstated and are likely to be outweighed by the benefits of flexibility and ensuring that contracts reflect actual business practices.
22. If the Authority does regulate for a default or mandatory agreement (and Vector does not accept the Authority has the jurisdiction to do so), Vector prefers options in the order the Authority presents them in the paper – i.e. option 0 is our preferred option; option 1 is our second best option; option 2 is our third best option and so on. Vector also **recommends** the Authority consult further – it should not simply regulate to implement the MUoSA. This will be necessary to ensure the default or mandated agreement is workable. In particular, a number of clauses (detailed in the submission below) from the Vector UoSA, at a minimum, must be reflected in the default or mandated MUoSA and/or parties must be able to agree to vary them. Based on our learnings through the negotiation process, these clause amendments are needed to ensure any default or mandatory agreement is efficient and operationally workable.

The Authority’s process for handling complaints should be reviewed

23. Finally, Vector **recommends** that the Authority review its process for handling concerns and complaints regarding industry participants to ensure the process adheres to the principles of natural justice and provides for speedy and effective resolution of the concerns and complaints.

Introduction

24. Vector welcomes the opportunity to provide this submission to the Authority on the consultation paper *More standardisation of use-of-system agreements* (Consultation paper), dated 8 April 2014.
25. This submission:
- a) Notes that Vector wants to ensure that electricity consumers on our network can benefit from a competitive, vibrant and transparent retail market and that we support initiatives to improve competition;
 - b) Discusses why we believe that Vector's UoSA does not impede retail competition and better promotes efficiency and network security than the MUoSA (although we are open to hearing different opinions, supported by evidence);
 - c) Questions whether the Authority has jurisdiction to regulate in the way it proposes;
 - d) Responds to the Authority's serious allegations about Vector's practices and demonstrates that the allegations are inaccurate and without foundation;
 - e) Includes a section-by-section analysis of the key variations between the MUoSA and the Vector UoSA;
 - f) Notes that the Authority's assessment of the Vector UoSA is inaccurate because (variously):
 - i. it is based on an out of date version (although the Authority was provided with more recent versions by Vector),
 - ii. the Authority has not understood the effect of some amendments,
 - iii. the Authority views some variations as material when they are not, and
 - iv. the Authority's analysis is biased as it ignores all variations that are favourable to the retailer;
 - g) Discusses Vector's preferences with regard to the options put forward by the Authority; and
 - h) Identifies an opportunity to improve processes for addressing complaints and concerns raised with the Authority regarding industry participants.
26. Attached to this submission as Schedule 1 is a report by Sapere Research Group (Sapere report), who have undertaken an independent review of the Vector use-of-system agreement (UoSA) and its variations from the model use-of-system agreement (MUoSA).

27. We also attach a table (Schedule 2) that discusses the key variations between the MUoSA and the most recent version of the Vector UoSA. This highlights the reasons for the variations and notes that in some areas the Authority has misunderstood the effect of such variations.
28. For completeness and transparency, a comparison of the MUoSA with the current version (1.4) of the Vector UoSA is also provided as Schedule 3.
29. Vector's contact person for this submission is:

Allan Carvell
Group General Manager Commercial Regulatory Affairs
09 978 8340
allan.carvell@vector.co.nz

Overview

30. Vector wants to ensure that electricity consumers on our network can benefit from a competitive, vibrant and transparent retail market. We support initiatives that will improve retail competition on our network and on other networks – such initiatives are ultimately in the interests of all parties.
31. It is our view, supported by the attached Sapere report, that Vector's UoSA does not hinder competition and in fact better promotes network security and efficient operation of the market than the MUoSA. However, the Authority clearly believes that the MUoSA is the optimal agreement.
32. Ultimately, reasonable persons should be able to disagree on this issue without resorting to the type of allegations contained in the Consultation Paper. A better approach is for the parties to work constructively and seek to reach a consensus.
33. If the Authority or any other party can present convincing evidence or analysis that a clause in Vector's UoSA may not be in the long-term interest of consumers we would happily consider amending it. This means there are avenues open to the Authority to resolve its concerns without resorting to regulation.
34. We therefore ask that the Authority take this opportunity to step back from its proposed path and reconsider its assessment of the MUoSA, the Vector UoSA and other developments related to industry participants' negotiations of UoSAs.

The Vector UoSA delivers on the Competition, Reliability and Efficiency objectives

35. In 2013, Vector became aware that the Authority had concerns regarding the variations between the MUoSA and the Vector UoSA, particularly with regard to retail competition. Vector commissioned the Sapere report as an independent review of the extent to which the variations to the MUoSA that were agreed between Vector and the retailers affected retail competition. Sapere extended the scope of its analysis to also consider the Authority's reliability and efficiency objectives. Sapere's conclusions were:¹

In our analysis of the variations we have found no evidence to suggest that any of the individual clauses would hinder entry or expansion of a retailer into Vector's distribution area. In aggregate we consider that the majority of the variations contained in the VUoSA promote competition in the retail market and in the wider electricity market.

In our view, a significant emphasis in the VUoSA is ensuring the continued security and reliability of the network. Changes related to this topic in the VUoSA enhance rather than impede this objective. In our view, none of the provisions that enhance reliability or security have any detrimental impact on retail competition.

While many of the variations in our assessment are not material, the summation of the incremental variations lead us to conclude that the changes made to the MUoSA will, in our view, improve clarity of arrangements between the Retailer and Distributor, reduce transaction costs and improve operational workability. On balance we consider that the VUoSA will promote more efficient operation of the market relative to the MUoSA.

In our view, the Authority's framework has been successful in encouraging distributors such as Vector to seek improvements to the MUoSA. Within the scope of the regulatory framework Vector has negotiated with retailers to improve the operational and commercial workability of the MUoSA. In that process, the three limbs of the statutory objective have not been impaired. Rather the VUoSA, in our view, will promote greater reliability and operational efficiency. There has been no impact on barriers to entry for small retailers. Enforcing a model would remove the ability for other parties to do what Vector (and the retailers) has done.

36. As noted above, Vector has prepared a table summarising the key variations between the MUoSA and the current version of the Vector UoSA (i.e. version 1.4). This table provides detail of the reasoning for each of the variations. The table also summarises the key variations to the Vector UoSA that have been made since version 1.1, which illustrates the importance of the Authority

¹ Sapere report, pages vii - viii.

making its assessment of the Vector UoSA based on the up-to-date version of the agreement.

37. The Sapere report also contains a thorough clause-by-clause analysis of the key variations between the Vector UoSA and the MUoSA. We respond below to the Authority's comments on the ten "material" variations listed in the Consultation Paper. In our view, the body of analysis and explanation provided in this submission package demonstrate that:
- a) The amendments we have made to the MUoSA were not made lightly – they were the result of careful analysis and detailed negotiations;
 - b) The amendments are objectively justifiable and collectively deliver on the CRE outcomes.

The Authority's jurisdiction to regulate UoSAs

38. Before going into more detail regarding the Vector UoSA and the Authority's consultation paper, we first consider the Authority's jurisdiction to make the regulations it is proposing and the process it has followed to date.

Overlapping jurisdiction with the Commerce Commission

39. Vector questions whether the Authority has the jurisdiction it purports to have to fix standard forms of contract given that what the Authority is embarking on is the regulation of non-price terms of supply for entities already regulated through Part 4 of the Commerce Act 1986.
40. The Electricity Industry Act prohibits the Code from regulating (or purporting to regulate) "anything that the Commerce Commission is authorised or required to do or regulate under part 4 of the Commerce Act."² The prohibition includes matters able to be regulated by the Commission, whether or not the current price-quality path regulates those matters. It is not sufficient merely that the Code not overlap with the current price-quality path; the Code must also not overlap with any matters that the Commission is authorised to regulate through a potential future price-quality path.
41. Vector considers that the approaches put forward by the Authority would purport to regulate matters that the Commission is authorised to regulate under part 4 of the Commerce Act.

² Electricity Industry Act 2010, s 32(2).

42. Specifically, the Commission has very clear jurisdiction to deal with supply terms in respect of electricity distribution businesses both through information disclosure regulation and, for those suppliers that are not consumer-owned, price-quality regulation. While price-quality regulation is not defined in the Commerce Act, its meaning can be ascertained from sections 53M, 53O and 53P which refer to maximum prices and “quality standards that must be met by the regulated supplier”. Each of these sections indicate a very broad interpretation of “quality standards” that the Commission is authorised or required to regulate under Part 4 of the Commerce Act.

Authority’s jurisdiction does not extend to its preferred option

43. Even assuming there was no issue of jurisdictional overlap with the Commission, Vector questions the basis on which the Authority considers it has the jurisdiction to implement the options it has proposed. While power for the Authority to amend the Code is phrased in broad terms, it is not clear exactly how far this power extends and the statutory basis for implementing the proposals cannot simply be assumed.
44. Several indicators arising from the text and scheme of the Electricity Industry Act indicate that the Authority’s power to promote greater standardisation through a Code amendment is more limited than the options considered by the Authority would indicate. In particular, the Electricity Industry Act is unlikely to allow the Authority to impose direct regulation of non-price terms of supply, either on a default (options 3 and 4) or mandatory (options 2, 5 and 6) basis. These statutory indicators include the following:
- a) While the statutory power to amend the Code is phrased in broad terms, it is clear that this power is not unrestricted.
 - b) The Authority’s proposals would directly regulate non-price terms of supply, which is a particularly heavy handed form of regulatory intervention.
 - c) The Authority’s mandate to promote competition is limited to the development of market facilitation measures, and is unlikely to extend to include regulation of specific commercial terms.
 - d) The Authority appears to rely on monopoly bargaining power as a public policy justification for its proposed intervention. However, that monopoly bargaining power is a genuine issue in this case is asserted rather than demonstrated on the available evidence.

The Authority's statutory objectives include reliability

45. As discussed below, a significant number of amendments Vector made to the MUoSA were specifically targeted at ensuring the continued security and reliability of the Vector network. The Sapere report concludes that approximately twelve variations sought to improve provisions related to network reliability and security. Vector is surprised that the Authority, given its specific statutory objective as to reliability, has failed to acknowledge Vector's reliability enhancing amendments to the MUoSA.
46. By way of example, one key area of variations Vector carefully considered to the MUoSA is in respect of anticipating and facilitating control of a consumer load by third parties. The variation in clause 6.11 of the VUoSA seeks to put in place an arrangement that will facilitate third party provision of load control in a manner that does not interfere with or damage Load Control Systems but allows the Distributor to fulfil its performance obligations.
47. A further example is in clause 6.10 of the VUoSA which provides for the Distributor to obtain information from the retailer about consumer demand and energy. As the Authority will be well aware, energy and demand information is an important input for network operators to assist with network planning and will enhance medium to long term network reliability.

Authority is acting prematurely and without sufficient evidence

48. Vector believes the Authority is acting prematurely. In proposing to act in a timeframe significantly less than the Authority itself considered would be needed to observe meaningful change from the release of the MUoSA³, the Authority is also acting without sufficient evidence to support its position. Vector believes it is unhelpful (and unfortunate) that the Authority is only able to refer to just two electricity distribution businesses in its consultation paper (out of a possible twenty-nine) meaning its analysis is based on very limited actual observations. In the absence of a broad collection of evidence amongst wider industry conduct, there is a disproportionate emphasis on Vector's individual conduct. This has the strong appearance that the Authority is actually seeking to "correct" the actions of a single market

³ The Authority in its 15 February 2012 consultation paper believed that distributors would put in place efficient processes to update UoSAs "over a period of four to five years, that is, by mid-2017". This reflected the Authority's appreciation that "the negotiation of new UoSAs can require considerable time and effort" – see 4.2.1. Also "the Authority intends to provide participants with a reasonable opportunity to give full effect to core components of the regime....The timeframes outlined in the February 2012 consultation papers set out the Authority's view of the related activity it would expect from participants over the next five years" (page 30).

participant, rather than seeking to act on the basis of an industry-wide initiative.

Mistaken focus on MUoSA rather than market outcomes

49. Vector is concerned that the Authority is mistakenly focusing on whether its expected outcomes of the MUoSA process have been accomplished, rather than whether the Authority's statutory objectives are being achieved in the market (whether by the MUoSA or by other means).
50. The Authority states that the outcome sought by the Authority in releasing the MUoSA was, in summary, "to achieve more standardised terms and conditions in UoSAs used by retailers and distributors."⁴ Ultimately, the Authority asserts, this "would support the Authority's objective of promoting efficiency and competition."⁵
51. In the Consultation Paper, the Authority gives some attention to the extent to which the MUoSA has been adopted by distributors and retailers. But this is asking the wrong question. The Authority should instead be considering the state of competition, efficiency and reliability in the market. It is clear that these objectives are being achieved (including through the VUoSA), and it is irrelevant that their achievement may not have come about in the way anticipated by the Authority.

Response to Authority statements regarding Vector

52. In the Consultation Paper and in industry meetings the Authority has made a series of allegations and statements which imply improper behaviour on the part of Vector during its negotiations of the UoSA. Vector:
 - a) **Rejects** the allegations and implications;
 - b) **Notes** that the Authority has at no time explicitly presented these concerns directly to Vector;
 - c) **Notes** that there is no evidence or fact to support the allegations and implications; and
 - d) **Requests** that the Authority withdraw its remarks urgently.
53. Overall we are disappointed that, despite the lack of any supporting evidence, the Authority has made inferences and allegations regarding negotiations to which it was not a party and about which it clearly has limited information.

⁴ Consultation Paper, p 14.

⁵ Consultation Paper, p 14. As discussed above, the Authority did not take into account reliability considerations.

"De-facto" standard and "take it or leave it" stance

54. The Authority has stated that "The agreements already executed with Vector's larger retailers now represent a de facto Vector standard that smaller retailers and prospective entrant retailers will be strongly encouraged to adopt."⁶ Similarly, the Authority has suggested there is a practice of agreeing the UoSA with large retailers first and then offering it with limited scope for change to the smaller retailers.
55. These allegations are incorrect. We have not only reached agreements with the larger retailers. We have reached agreement with smaller retailers and done so before signing with some of the larger parties such as Contact Energy. To demonstrate this, Table 1 below lists the retailers in the order in which they entered into the Vector UoSA (noting three retailers are yet to sign).

Table 1: retailers that have entered into a UoSA with Vector from 2013 in the order they reached agreement

Retailer	Percentage of ICPs
Genesis Energy	19%
King Country Energy	<1%
Opunake Hydro	<1%
Mighty River Power	46%
Prime	<1%
Powershop	4%
Meridian Energy	5%
Flick Energy	<1%
Hunet (MegaEnergy)	<1%
Contact Energy	21%
Simply Energy	<1%
Pulse	<1%

56. Similarly, the Authority has expressed the view that distributors can adopt a "take it or leave it" stance and not negotiate properly after agreeing the first

⁶ Paragraph 4.2.1(c).

UoSA.⁷ This view is incorrect and without foundation. If it were correct, Vector would have ceased negotiating after entering into version 1.0 of the Vector UoSA with Genesis Energy and insisted that all other retailers adopt the same version of the agreement. In fact, Vector continued to negotiate in good faith and at considerable expense with all other retailers on our network, including three new entrants. The most recent UoSA Vector has entered into with a retailer (i.e. version 1.4 of the Vector UoSA) contains significant changes from version 1.0, which demonstrates the Authority is plainly wrong to conclude that we have adopted a “take it or leave it” stance.

57. As new retailers approach Vector with a view to commence trading on our network, we will continue to negotiate in good faith and consider carefully any amendments they wish to put forward in relation to the Vector UoSA. We do note that, as a matter of practicality, smaller retailers tend to leverage off the negotiations of larger retailers – so they do not need to engage in detail on each clause, but can focus on the items that matter most to them.
58. Further, Vector has demonstrated a significant degree of flexibility to assist new retailers enter the Auckland electricity market. We actively support new entrants to help them understand the commercial requirements and the practical obligations of supplying electricity via our network.

Undue pressure

59. The Authority has implied that Vector applied undue pressure on Contact Energy, and possibly other retailers, to sign the Vector UoSA. This is incorrect, offensive and unsupported by evidence. We are at a loss to understand how we could have applied undue pressure on Contact.
60. The Authority places great weight on the concerns raised by Contact Energy in February 2013.⁸ As the Authority is aware, Contact has subsequently negotiated and signed the Vector UoSA. Contact is one of New Zealand’s largest listed companies, with a market capitalisation that is larger than Vector’s. It is not plausible that Vector would have any monopolistic bargaining power over Contact as (a) even if they had refused to sign Vector would have continued to supply Contact’s customers (disconnecting them is not an option) and (b) Contact is sufficiently well resourced and connected to defend its own position.
61. Further, the Authority says that it is unaware “of any broader considerations that may have encouraged Contact to change its earlier stance”. This is not

⁷ Consultation paper, paragraph 4.1.4.

⁸ Paragraph 3.3.1 of the consultation paper says this concern was raised in February 2012 but we are assuming this is an error.

correct – Vector actively advised the Authority in writing⁹ of the changes being made to the Vector UoSA as negotiations continued, some of which were intended to alleviate Contact’s concerns.

Mechanisms are available under the Code to address unreasonable negotiating tactics and these mechanisms have not been used

62. In this context it is important to recognise that Part 12A of the Code requires distributors and retailers to negotiate the terms of a UoSA in good faith. If there was a view that Vector was not negotiating in good faith, any retailer could have lodged a complaint with the Authority or the Authority could have initiated an investigation on its own initiative. Vector is confident that it has negotiated openly and in good faith with each retailer and there has been no instance of misuse of a monopoly position. In fact we have received emails from retailers which acknowledge the good faith contributions of Vector and its advisors to the negotiation process, and recognise that there was always an opportunity to raise and debate every issue which arose during the negotiations.
63. If the Authority has evidence that Vector or any other party has misused their monopoly position during the negotiation of a UoSA, we are unaware of it and we request that this is put on the table so it can be formally assessed through appropriate channels (e.g. the Rulings Panel).
64. Part 12A of the Code also provides for mediation if either party considers that it is unlikely that it will agree the terms of a UoSA. Vector has now completed negotiations and entered into new UoSAs with 12 retailers, who together supply electricity to around 95% of ICPs on Vector’s network. Neither Vector nor the retailers chose to take the negotiations to mediation. The only plausible conclusion to draw from this is that the parties negotiated in good faith and were able to reach agreement.

Response to the Authority’s views on distributors’ negotiating positions

The Authority has over-stated the negotiating power of distributors

65. The Authority’s view¹⁰ that distributors have heightened negotiating power is, with respect, no more than theory and unsupported by any actual evidence. For example, in respect of retailers that already have a presence on a distributor’s network, the negotiating imbalance put forward by the Authority cannot meaningfully exist. Retailers on the network will by definition be supplying consumers on the network. Practically, no distributor

⁹ Refer to letters referenced in footnotes 14 and 16.

¹⁰ Consultation paper, section 2.2.

would (or would be able to) disconnect those customers due to a contractual dispute with their retailer. This was recognised by the Authority in its introduction of a retailer default mechanism, where it said:

The Authority also agrees with the RAG, and the vast majority of submitters, that... the mass disconnection of potentially a very large number of consumers – households, industry, essential services – who have paid their bills is not a practical or sensible option.¹¹

It is in distributors' interests to have more retailers on their networks

66. The Authority expresses a view that distributors have no incentive to have more than one retailer on their network.¹² This takes an incorrect and narrow view of the interests of distributors. Vector, and we believe other distributors, is a supporter of strong retail competition on its network. Such competition is in the interests of our consumers (many of whom are beneficiaries of the Auckland Energy Consumer Trust, Vector's majority shareholder) and is also in the interest of Vector as it lowers energy costs for parties in the Auckland region. At a time of growing political and public interest in power prices, it is not in our interests to see prices increase due to a lack of competition.
67. For example, consider a network that had only one retailer and the distributor refused to sign up additional retailers to that network. Consumers on that network would have no ability to switch retailers and this would most likely make them unhappy. Would-be entrant retailers would also be unhappy. It would quickly become clear that it was the distributor that was preventing entry of new retailers and thus the distributor would be likely to receive complaints and, probably, political pressure. Similar, although possibly less intense, pressure would apply to any distributor with multiple retailers on its network that unreasonably refused access to new entrant retailers. None of this is costless for the distributor.
68. In addition, where supply is on an interposed basis, having only one retailer on a network would concentrate the credit risk in relation to the payment of the distributor's line charges on a single entity, which would make no sense from the distributor's perspective.
69. Overall, additional retailers on a distributor's network are more likely to benefit the distributor than otherwise.

¹¹ Electricity Authority, *Arrangements to manage a retailer default situation: Consultation Paper*, 18 June 2013, paragraph 2.2.12.

¹² Consultation Paper, paragraph 2.2.2.

Vector's consultation process for the UoSA

Vector's process has largely met the Authority's expectations

70. Vector considers that its process of agreeing variations to the MUoSA in good faith was in line with the Authority's expectations as set out when the MUoSA was published in September 2012:

the MUoSA represents... a best practice benchmark agreement... If the parties mutually consent to an alternative provision or drafting detail, and inappropriate negotiating power has not been a factor in its development, the Authority would be unconcerned (and would like to learn of the development for possible adoption in a future revision of the MUoSAs).¹³

71. This indicates the MUoSA was a base to start commercial negotiations between the parties – which is the way Vector has utilised the MUoSA.

72. In paragraph 4.1.6 the Authority sets out what it expected when it published the MUoSAs. Vector can confirm that it has:

- a) Varied the operational and policy detail of the MUoSA to reflect our own network circumstances;
- b) Proposed amendments to retailers that were clearly highlighted to the retailer by tracking changes from the MUoSA;
- c) Triggered a significant level of engagement between ourselves and existing and new entrant retailers on our network on the UoSA; and
- d) Uploaded the different versions of the Vector UoSA onto our website as they were signed and provided new versions to all retailers within 20 working days of each new version of the agreement. Vector would be happy to publish more information on our website if that would be helpful (further guidance from the Authority might be of value in this area).

73. Vector has amended some of the core terms published in the MUoSA. These amendments were mutually agreed by the parties following good faith negotiations and, in our view and that of Sapere, enhance network security and efficiency without harming competition.

74. It is therefore unclear to us why the Authority believes its objectives are not being met, in the Auckland region at least.

75. The Authority considers that variations between UoSAs and variations from the MUoSA are impediments to retail competition. Vector notes that its network has more retailers trading on it than any other network in the country. We can also advise from our negotiations with new entrant retailers

¹³ Electricity Authority, *Information Paper and Summary of Submissions: Standardisation of distribution arrangements – model use-of-system agreements*, 11 September 2012, paragraphs 6.13-6.14.

that Vector's UoSA terms do not pose a significant barrier to entry for new entrants. New entrants are comfortable with the robustness of discussions that have been undertaken between Vector and larger (and likely better resourced) retailers and their right to take up newer versions of the agreement in accordance with clause 4 of the Vector UoSA. The findings of the Sapere report support this view.

Indications that Vector's UoSA is preferable to the MUoSA

76. Based on the Authority's own information, two distributors have made notable efforts to agree new UoSAs with retailers on their network. One, Network Tasman, proposed a UoSA that was closely aligned with the MUoSA. Another, Vector, proposed a UoSA that had several variations from the MUoSA (although the variations were not as many and not as extensive or as material as the Authority has indicated). The logical inference from this is that retailers have been as willing (in fact seemingly more so) to negotiate and sign up to the Vector UoSA as they have to a UoSA that is much closer to the MUoSA. This does not support a view that the Vector UoSA is biased towards distributors, or that the MUoSA provides a contract that all parties are happy to support.
77. In paragraph 6.4.2 of the Consultation Paper, the Authority notes "It appears that updating current UoSAs... is not a priority for many distributors and retailers." Vector submits that the Authority should pause to consider why so many industry participants may not see negotiation of UoSAs as a priority. In our view, the most likely explanation is that most distributors and retailers do not see significant advantage to them in moving to the MUoSA from their current terms of access. In contrast, Vector developed a contract retailers were interested in engaging on, negotiating and ultimately signing up to. It is therefore not clear that retailers or distributors agree with the Authority that the MUoSA is the optimal form of the agreement. Further, as noted in the Sapere report, UoSAs are not a material issue for retailers' competitive position when compared to issues such as availability of hedge contracts.
78. Further, the Authority may itself have undermined participants' willingness to negotiate new UoSAs by signalling as early as mid-2013 that it was considering intervening in the process. In such circumstances, it would be a rational decision for retailers and distributors to put their plans for UoSA negotiations on hold until such time as the Authority's intentions were clear.

Relevance of negotiation pathway for assessment of early versions of a UoSA

79. The Authority seems to have reached its view on the merits of the Vector UoSA primarily through reviewing version 1.1. However, this would lead to

- a misunderstanding of the nature of the agreement that is reached between Vector and the retailers. It seems the Authority may have misunderstood the effect of clause 4 of the MUoSA and the Vector UoSA (which Vector considers are substantially the same). The effect of this clause on the UoSAs is an important factor to consider when assessing the level of convergence between UoSAs and the MUoSA.
80. In line with clause 4 and Vector's commitment to give all retailers equal access and even-handed treatment, all retailers that have signed (or wish to sign) our UoSA have been and will continue to be offered the terms we agreed under the latest version of the Vector UoSA.
81. This is known to all parties in advance, including retailers who sign earlier versions. It means the only logical negotiation path is primarily a gradual erosion of distributor rights. Therefore any assessment of the terms of a UoSA must be undertaken based on the version signed by the last retailer who has signed up to the contract. An assessment of any other than the last version of a UoSA will give an inaccurate picture of the available balance of terms of the contract between parties.
82. Additionally, we note that none of the retailers who signed up to earlier versions of the Vector UoSA have yet taken up the opportunity to move to the newer versions of the Vector UoSA. This suggests that the variations between different versions of our UoSA do not have a material effect on retailers' competitive positions.

Response to the Authority's assessment of the Vector UoSA

The Vector UoSA is more comprehensive than the MUoSA

83. Paragraph 6.5.9(b) of the Consultation Paper contains the Authority's view that the MUoSA provides a "comprehensive set of terms". This is not correct. Vector's operational review of the MUoSA discovered a number of terms that were missing from the agreement. For example, the MUoSA does not include clauses that deal with arrangements between distributors and retailers in relation to:
- a) embedded networks. It is important for use of system agreements to properly deal with the situation where retailers are supplying consumers who are connected to an embedded network. There are currently no provisions relating to embedded networks in the MUoSA – in our view this is an inefficient oversight; or
 - b) third party load aggregators. The MUoSA does not provide for situations where consumers engage third party load aggregators for the control of their load.

84. Vector's operational review of the MUoSA also discovered a number of provisions requiring significant amendment to ensure workability. Examples of such provisions include:
- a) clause 11 of the MUoSA relating to billing information and payment, which required wholesale changes to reflect well-established current practices and system requirements;
 - b) the definition of "Force Majeure Event" in clause 23.1 of the MUoSA, which contains a restricted list of events or circumstances that constitute force majeure. The MUoSA approach to force majeure is conceptually imperfect as they include concepts that broadly describe Good Electricity Industry Practice but do not use that defined term. The Vector UoSA takes the approach that the distributor should not be exposed where the event or failure has occurred despite it having acted in accordance with Good Electricity Industry Practice. That is the right industry standard that distributors should meet. Sapere's report notes that the clarification provided through the Vector UoSA enhances operational efficiency;
 - c) clause 24.4 of the MUoSA, which has been amended to enable changes to be effected to the agreement with the support of retailers supplying 75% of ICPs on the network. It is highly likely that a change to the agreement supported by such high number of retailers is likely to be consistent with Good Electricity Industry Practice. To avoid any such changes unfairly prejudicing individual retailers, the clause has been further refined to allow the Retailer to reject such change if it can be shown that the Retailer will be materially disadvantaged to other retailers because of such change. The approach taken by the Vector UoSA in relation to this clause is consistent with the distributor's obligation to treat all retailers even-handedly, and to act in accordance with Good Electricity Industry Practice;
 - d) clause 26.8 of the MUoSA reflects the distributor's indemnity required to be included in use of system agreements under section 12A.1 of the Code. However, there is a gap between the Code indemnity and the new section 46A of the Consumer Guarantees Act 1993. Clause 26.10 of the Vector UoSA seeks to address the gap between the two indemnity regimes;
 - e) clause 26.11 of the Vector UoSA provides a contractually agreed process between the distributor and the retailer for managing and handling CGA claims relating to alleged breaches of acceptable quality guarantee. In doing so, the Vector UoSA addresses a conceptual gap in the legal framework contained in the Code and the Consumer Guarantees Act 1993, which give rise to an indemnity obligation on the distributor but

fail to contemplate a process for managing and handling the underlying consumer claims. Vector considers that the Vector UoSA provision will result in consumer claims being dealt with more efficiently and with less disagreement between retailers and Vector;

- f) the MUoSA did not have sufficient flexibility to allow Retailers with predominantly “white label” retailer products, such as Simply Energy, to trade electricity. Clause 27A of the Vector UoSA enables these retailers to trade in the manner they currently do; and
- g) a new clause 29.8 has been inserted into the Vector UoSA because the Model UoSA does not contain an obligation to rectify an error discovered during an audit.

We note that Sapere has reported positively about the above changes made to the MUoSA through the Vector UoSA.

- 85. Without robust provisions to deal with the matters described above, the MUoSA falls far short of being comprehensive.
- 86. In fact, Vector considers the MUoSA to be insufficiently future-proofed in some areas. It is of paramount importance for long-term use of system agreements such as the UoSA to be sufficiently robust to handle (among other things) evolution of technology and industry practices during the term of the agreement. The Vector UoSA, in this sense, provides a more comprehensive set of terms than the MUoSA. This view is supported by the Sapere report, which highlights that the manner in which Vector has “future-proofed” its agreement reduces scope for future uncertainty and disputes.
- 87. The issues discussed above are not fatal for a model agreement as the model provides a base from which parties can develop comprehensive and operational terms. It should have been expected that the MUoSA would be finalised during negotiations, which is what has occurred on Vector’s network. However, for a default or mandatory agreement they are significant deficiencies that would need to be addressed.

Analysis of the variations between the Vector UoSA and the MUoSA

- 88. As mentioned above, the Authority appears to have only assessed an early version (“1.1”) of the Vector UoSA in detail. Vector has proactively provided the Authority with updated versions of the Vector UoSA as they have been agreed with retailers. Vector has also made several offers to engage with the Authority and explain the variations.¹⁴

¹⁴ For example: Letter from Simon Mackenzie to Carl Hansen, 20 July 2013; Letter from Allan Carvell to Carl Hansen, 19 December 2013.

89. Despite our best efforts, the Authority appears to have completed the assessments referred to in the Consultation Paper based on a version of the Vector UoSA that has since been superseded. Had the Authority properly reviewed the updated versions that we provided it would have recognised, and been able to acknowledge that, as Vector had advised the Authority, there had been an increasing alignment of the Vector UoSA with the MUoSA as the versions were developed – i.e. of the “47 material variations” the Authority identifies in paragraph 3.4.2 many will no longer exist in the latest version of the Vector UoSA (we assume 37 of them no longer exist as the Authority has described only 10 variations in its consultation paper). As all retailers that have signed earlier versions of the Vector UoSA are entitled to sign up to later versions, the most recent version of the Vector UoSA is the correct one to assess.
90. The Authority presents 10 examples of “material variations” between the MUoSA and the Vector UoSA in Table 1 of the Consultation Paper. We make three key comments on these:
- a) The Authority’s assessment of a number of these material variations is not correct either because the Authority has not properly understood the effect of the provision that has been varied or because it has not properly understood the rationale behind the variation. This lack of understanding has probably arisen because, despite offering to do so, Vector was not provided with the opportunity to discuss these variations with (or explain them to) the Authority. We discuss the reasons for the variations in the table below and in the attached Schedule 2.
 - b) It is inaccurate to categorise a number of the variations identified by the Authority as “material”. The discussion in the table below will identify that several of these variations do not have a material impact.
 - c) The Authority’s assessment does not include any of the material variations to the MUoSA that have been made in favour of the retailer or at a retailer’s request of which there were several (by definition, these amendments are likely to be commercially favourable to retailers). Nor does the Authority’s assessment take into account that Vector has agreed with retailers’ request to move to an interposed distribution model across both its Auckland and Northern networks. This resulted in increased risk to Vector (as it will no longer have direct contracts with consumers connected to its network) and significant operational savings over time to retailers. The package of variations must be considered as a whole, because what one may perceive as a pro-distributor variation in one clause may well be balanced by a pro-retailer variation in another (which is the expected outcome of good faith negotiations). The Authority’s failure to consider all variations as a package is a concerning indicator of

a one-sided assessment that has not taken all relevant material into account.

91. Vector’s comments on the ten “material” variations highlighted by the Authority are set out in Table 2 below.

Table 2: comments on the ten “material” variations highlighted by the Authority

Variation	Comment
<p>Clause 2: Services - GEIP threshold</p>	<p>Vector embraced the “Good Electricity Industry Practice” definition provided in the Model UoSA because this accurately reflects the benchmark that the parties’ businesses should operate to. This also allows the parties’ businesses to understand their respective obligations in an operational sense. Accordingly, it was considered appropriate for other provisions in the Vector UoSA to be qualified to the same standard of performance. In negotiations, retailers accepted this as an appropriate standard for the provision of services to end consumers.</p> <p>It is worth noting that retailers are careful not to offer services better than they receive from distributors so this variation does not transfer any risk onto the retailer.</p> <p>Vector disagrees with the Authority’s view that the variation creates an inefficient reallocation of risk – the standard reflects how the parties currently operate and is therefore consistent with retailers’ own contracts with consumers and current service provision.</p> <p>We also note that this clause changed in favour of retailers over the course of negotiations.</p>
<p>Clause 2.1(f): Services - Loss Factors</p>	<p>Clause 2.1(h) in the latest version of the Vector UoSA is very similar clause 2.1(f) in the MUoSA (which the Authority does not appear to have recognised) and our drafting reflects current practice.</p> <p>The issue of investigating abnormal trends in losses is in our view best addressed through anomalies found through industry energy reconciliation as opposed to the distributor’s data. The distributor just does not have the necessary level of information to conduct the loss factor</p>

Variation	Comment
	analysis and there has not been any retailer demand for such investigation.
Clause 4.1: Equal access and even- handed treatment	The variation made in this clause simply recognises that the Vector UoSA is very different from the previous interposed use of system agreement that applied in relation to Vector’s Northern Network. As a result, it will not be possible (as a matter of practicality) to treat retailers even-handedly when they are party to very different contracts. We emphasise that Sapere has found Vector’s amendments to clause 4.1 of the MUoSA to be non-material.
Clause 5.3: Load Shedding	Vector drafted this clause to reflect current practice – i.e. that the distributor will provide a copy of the relevant protocols to the retailer upon request – and no retailer objected. The retailers were satisfied with the way Vector manages this process.
Clause 6.1: Load Control	<p>The Authority appears to have misunderstood the effect of this clause.</p> <p>The Authority has stated that Vector’s amendment to clause 6.1 has “asserted Vector’s view over the view of the retailer and/or the consumer as to whether a controlled tariff option applies”. This is not correct – the clause does not limit consumer or retailer choice.</p> <p>Vector fully supports the principle that the consumer owns the load and can choose how it is used – including which party (if any) has rights to interrupt the consumer’s load. The clause was drafted in accordance with this principle.</p> <p>The commercial effect of clause 6.1 is the same as clause 6.1 of the MUoSA: Vector can operate load control if the consumer chooses a controllable tariff. The retailer can determine the tariff option that applies (refer to clause 10). Clause 6.1 has been amended to provide that Vector could enter into an arrangement directly with the consumer in relation to load control in addition to load control being through a tariff option – i.e. the consumer and Vector could agree to a load control arrangement</p>

Variation	Comment
	<p>that does not involve a tariff option; but this is only an option and the consumer retains discretion.</p> <p>We have added subclause (b) to future proof the agreement to capture other load management services which the distributor may provide in the future. Importantly, the consumer must elect to take up such other service. The MUoSA only focussed on hot water controllable load, while the Vector UoSA covers any future new load control technology.</p> <p>Load management is a fast-evolving area of the electricity industry. As the Model UoSA and the Vector UoSA are long-term agreements, they both need to deal with the different manner in which load management services may be provided by industry participants – in other words, load management cannot simply drive off price categories or tariff options.</p>
<p>Clause 6.10: Consumer information</p>	<p>This clause was inserted into the Vector UoSA to enable the distributor to request the retailer to provide consumers’ demand and energy information to assist the distributor in managing and planning the Network.</p> <p>This obligation is not considered to be onerous. Retailers now have access to more information in relation to network performance than has previously been available. Provision of the demand and energy information assists distributors in planning their Networks. Access to this information can help to reduce costs for all parties, including consumers, and therefore deliver a better customer experience. The MUoSA as drafted impedes the capture of such benefits.</p>
<p>Clauses 22 and 26: Confidentiality and Liability</p>	<p>The Authority has stated that the Vector UoSA, which has removed uncapped liability on Vector for breach of confidentiality, is “inefficient, as it weakens the compliance incentive on the party best placed to manage the risk”. Vector does not agree with this assessment.</p> <p>The provision giving rise to uncapped liability for breach of confidentiality has been amended, so that the distributor’s liability for a breach of confidentiality is uncapped, except where the retailer requests the</p>

Variation	Comment
	<p>distributor to provide consumer information using a secure file transfer process (to be agreed between the distributor and the retailer) and the distributor breaches its confidentiality obligations by complying with such request.</p> <p>The confidentiality regime as amended by Vector also provides each retailer with a contractual right to claim against any other retailer that uses for its economic gain confidential information received in error (refer to clause 29.3). This is efficient as it significantly reduces the risk of the loss occurring that retailers are concerned about.</p> <p>Vector continues to be incentivised to ensure that confidentiality is maintained even if its liability is capped. This right of action by retailers is not referred to in the consultation paper and is material to any assessment of the overall effect of Vector's variation in relation to confidentiality.</p> <p>Further, Vector considers that the Vector UoSA approach to limitation of liability is commercially more appropriate than that in the Model UoSA, and consistent with the distributor's obligation to treat all retailers even-handedly.</p> <p>The distributor's aggregate liability to all retailers does not fluctuate as the number of retailers supplying ICPs on the Network changes. This is a logical result, as the level of distribution services provided by the distributor does not change as the number of retailers changes.</p> <p>Also, under the Model UoSA, the distributor does not have an express ability to notify consumers that they may wish to engage another retailer for supply of electricity, where an Event of Default or an Insolvency Event has occurred. Not having this ability may result in the distributor not being able to as swiftly reduce its ongoing credit exposure to a defaulting retailer.</p>
<p>Clause 24: Amendments to the Agreement</p>	<p>This clause allows the contract to evolve. Changes Vector proposes to make to the contract would need to be good for retailers and end consumers or they will not achieve the necessary 75% support. An inability to</p>

Variation	Comment
	<p>change a contract can stifle the ability of distributors to improve their services; and in our view it is inefficient to require unanimous agreement for change.</p> <p>However, a change will not be deemed to be made if the retailer establishes to the distributor's reasonable satisfaction that it will be materially disadvantaged relative to other retailers if the change is made. This is an important safeguard.</p>
Clause 24.5: Changes to GXP	Vector drafted this clause to reflect current practice and no retailer raised any concerns about this change.

The Authority's proposed options

Options 0 and 1

92. Vector agrees with the Authority that options 0 and 1 may not further promote uptake of un-amended versions of the MUoSA. This is because parties to future agreements are likely to consider that variations to MUoSA clauses such as those made in the Vector UoSA are superior for retailers, distributors and ultimately consumers.
93. Vector considers there is value in these options. While they would not deliver contracts that are as "standardised" as the other options, in our view this is offset by the following benefits:
- a) Providing flexibility to negotiate variations allows for contracting innovation and for the unique circumstances of participants to be reflected in the UoSAs.
 - b) A more standardised approach means that amendments will in most cases only be able to be made through a regulated process, which will limit the scope for amendments and create delays. The regulatory amendment process also creates costs for parties.
 - c) Enabling parties to agree terms among themselves means the contracts will reflect actual commercial practice. While under the default and mandating options the Authority will dictate what the contracts say, it will be up to the parties to choose whether to enforce instances of non-compliance with the contracts. We expect that in many cases parties would simply not comply with certain aspects of the default or mandated UoSAs and, as they had not agreed (or wanted) the particular terms, neither party would seek to enforce the terms. One of Vector's key

objectives in negotiating the Vector UoSA was to ensure the UoSA would reflect actual commercial practices, which is a desirable feature of any contractual arrangement.

Option 2

94. Vector considers codification of large parts of the MUoSA to be impractical and would make the Code unwieldy. However, an approach where the Authority codifies a few key clauses (as it has previously done for prudential requirements) would be preferable to any of options 3 to 6 as it retains the benefits identified above in relation to options 0 and 1 for the remaining terms in the contract.

Options 3 and 4

95. Vector does not believe these options are desirable as they restrict the benefits of being able to vary the UoSAs, as discussed above.
96. However, as the Authority appears likely to implement one of these options, we note there is a lack of clarity regarding how options 3 and 4 would be implemented. The Authority has put effort into distinguishing between core terms and operational terms. However, it has not identified how the transition from current arrangements would work. Would all parties be compelled to adopt the MUoSA from a particular date unless they agreed otherwise in advance?
97. It appears to Vector that we have already agreed a variation from the MUoSA with the retailers on our network. It is therefore not clear if the Authority would require Vector to again undertake negotiations with retailers to identify whether there are variations to the MUoSA that both sides can agree.
98. If one of these options is implemented, Vector **recommends** that parties who have signed UoSAs since the MUoSAs were published should be able to retain that contract.

Options 5 and 6

99. Vector agrees with the Authority that options 5 and 6 (making all or part of the MUoSA mandatory) are not desirable. This would remove any ability for the parties to agree to innovative terms and risks making the contract out of date and ineffective as it could only be amended through a regulatory consultation and review process.

Next steps

100. Vector **recommends** that the Authority first obtain the advice of senior counsel (as Vector has done) as to the Authority's jurisdiction to adopt the options under consideration.
101. Further, as the Authority is aware, Vector has issued a request under the Official Information Act 1982 for information relating to its work on use-of-system agreements. The Authority has recently notified Vector that it will not be able to provide the information requested until 11 July 2014. Vector notes that material provided under the OIA request may have influenced the content of this submission had it been provided prior to the submission due date. Therefore, in light of the delay in providing the information, Vector reserves the right to make further submissions once the information is available. Vector also **requests** the Authority delay reaching any decision following the consultation process until Vector has received the information it has requested, been given a reasonable amount of time to consider that information and to provide a further submission to the Authority based on the new information. Vector asks the Authority to confirm that it accepts this proposal.

Vector's preferred approach

102. Vector does not believe a lack of UoSA standardisation is a problem of any materiality. The transaction costs from the existence of UoSA variations have been overstated and are likely to be outweighed by the benefits of flexibility and ensuring that contracts reflect actual business practices. If the Authority does regulate for a default or mandatory agreement (and Vector does not accept the Authority has the jurisdiction to do so) we prefer options in the order the Authority presents them in the paper – i.e. option 0 is our preferred option; option 1 is our second best option; option 2 is our third best option and so on.
103. We also consider the Vector UoSA to be better than the MUoSA and thus a move to standardisation of the MUoSA would have a negative effect for consumers. If contracts are to be standardised, in our view they should be standardised to a version that is closer to the Vector UoSA than to the MUoSA.
104. However, if the Authority does choose to make the MUoSA a default or mandatory agreement, the Authority should not do this on the basis of the current version of the MUoSA. Vector and other parties submitted on the process to develop the MUoSA on the basis that it was a model agreement that parties could agree to amend.¹⁵ Vector **recommends** the Authority

¹⁵ Vector Limited, *Submission to Electricity Authority Model Use-of-System Agreements*, 11 April 2012, paragraphs 6-8.

reconsult on the contract that is to be made mandatory. This is necessary to ensure the default or mandatory agreement is operationally workable and comprehensive.

105. Importantly, the MUoSA was finalised in September 2012. Since that time Vector and other parties have considered the UoSA in greater detail as they have entered into negotiations. In our view, it would be wise to take account of the learnings of the parties as they have negotiated new UoSAs in good faith based on the model, when considering whether to further regulate in this area.
106. In particular, Vector submits that the following clauses from the Vector UoSA, at a minimum, must be reflected in the MUoSA and/or parties must be able to agree to vary them. Based on our learnings through the negotiation process, these clause amendments are needed to ensure the MUoSA is efficient and operationally workable (our reasoning in support of these clauses is outlined in Schedule 2):
 - a) Clause 11 (billing).
 - b) Clause 11.17 (refund of charges).
 - c) Clause 23.1 (force majeure).
 - d) Clause 23.6 (charges continue).
 - e) Clause 26 (liability).
 - f) Clauses 26.7 and 26.8 (limitation of liability).
 - g) Clauses 26.10 – 26.12 (CGA indemnity).
 - h) Clause 27 (consumer contracts).
 - i) Clause 29.3 (consumer information received in error by retailer).
 - j) Clause 29.4 (auditing information provided).
 - k) Clause 29.8 (non-compliance).
107. Further, the Authority should be mindful of the risks and costs involved in making MUoSA terms default across the industry. In particular:
 - a) Retailers and distributors already have established operating systems in place and these would be costly and time consuming to change (noting that consumers are likely to face these costs eventually).
 - b) The Authority, in determining the default, may not choose the optimal operating systems – at present the parties to the UoSA agreements face the costs of such poor decisions, which is a good incentive to ensure optimal systems are chosen. These decisions are currently made by

commercial experts within the businesses, who are likely to have better information and understanding than the Authority.

- c) Even a menu of clauses reflecting the most common operational systems can still impose costs as parties need to apply their systems within the contractual limits and are restricted in their ability to innovate.

The Authority's review of UoSAs would be assisted by more up to date information

- 108. In sections 3.1 and 3.2 of the consultation paper, the Authority sets out the monitoring processes it carried out on the alignment of the various UoSAs across New Zealand with the MUoSA. This appears to have included feedback in January 2013 and a review in March and April 2013 that was reported to the Board in May 2013 (the first of a series of annual reports). Since that time it does not appear the Authority has done any further formal monitoring of progress, although Vector and possibly other parties have kept the Authority informed of progress in negotiating their UoSAs.
- 109. Based on the Authority's timetable, it is due to complete its second review of alignment of UoSAs with the MUoSA this month (May 2014). Vector has not been asked to provide input specifically for that review so we are not sure whether it is being carried out according to the timetable.
- 110. In any case, Vector submits that information that was predominantly gathered in the first half of 2013 is unlikely to be a robust data set for making decisions this year on whether to further regulate use-of-system agreements. In particular, Vector and retailers have signed several versions of the UoSA since then and the learnings from that process should be considered by the Authority. Vector **recommends** the Authority at least complete its second-year formal review of alignment and consult on the results of that review before making any decision regarding the options put forward in the consultation paper.

Towards a better process for resolving concerns or complaints

- 111. Vector became aware that the Authority had concerns with the Vector UoSA over the course of 2013. The Authority's comments on these concerns were in general terms and did not enable Vector to understand the substance of the Authority's concerns, despite Vector seeking an explanation from the Authority and, when this was not forthcoming, providing detailed explanations to the Authority on the reasons for the variations we had made from the MUoSA.¹⁶ The consultation paper was the first time that we have

¹⁶ For example, letter from Allan Carvell to Carl Hansen, 27 September 2013.

seen the concerns and the Authority's reasoning at a clause-by-clause level (and even then only for 10 clauses).

112. [

¹⁷] **VCI**

113. In neither case was Vector notified of the detail of the concerns or given an opportunity to respond before they were publicised.

114. Vector submits that the Authority's processes in handling these matters were far from best practice, were inconsistent with principles of natural justice and did not foster good relationships. They were also a very ineffective and inefficient way of resolving the perceived concerns or complaints.

115. Vector **recommends** that the Authority review its process for handling concerns and complaints regarding industry participants to ensure the process adheres to the principles of natural justice and provides for speedy and effective resolution of the concerns and complaints.

116. In particular, we believe a "no-surprises" approach should be implemented in which parties are consulted prior to being singled out. This is particularly important where the references in the consultation document could have a significant impact on their reputation. It would also enable the Authority to check the information in the paper is accurate and up to date.

¹⁷ It is worth recording that the concerns were unsubstantiated and the parties that had raised them were surprised with the way the Authority had characterised the issue.