

# **Government Response to ‘Offshore Electricity Transmission – A further Joint Ofgem/DECC Regulatory Policy Update’**

## **Annex 4**

### **Distribution and Connection Use of System Agreement (DCUSA)**

URN 09/692 (DECC) & 23d/09 (Ofgem)

23 March 2009

This annex sets out further change proposals for the Distribution Connection and Use of System Agreement (DCUSA) that have been developed by the chair of the DCUSA Panel for the implementation of the proposed offshore transmission regime.

We consider that the changes proposed in this annex are robust and accurately reflect the policy position set out in the consultation documents. **We propose that the Secretary of State makes the changes set out in the annexes to this consultation, subject to evidence to the contrary. We would welcome respondents' views.**

These change proposals have been developed in light of responses to our June 2008 and November 2008 Policy Update, further development of offshore transmission policy and consideration of practicalities of this matter.

Details on the changes made since our November 2008 Policy Update can be found in Chapter 7 of this consultation document. Detail on the responses received to the November 2008 Policy Update can be found in Chapter 8.

DCUSA Ltd has reviewed version 3.0 of the DCUSA. Change proposals have been developed for the following parts of the DCUSA. DCUSA Ltd does not consider that changes were required to other parts of the DCUSA to implement the proposed offshore transmission regime. Only those sections of the DCUSA that contain proposed changes have been published in this annex.

DCUSA Section	Changes proposed to:
Section 1: Governance and Change Control	
Section 1A Preliminary	Define circumstances where the OTSO may not accede to the STC.
Section 1B Governance	The DCUSA Panel composition to extend the IDNO representative category to include the OTSO.
Section 1C Change Control	The DCUSA voting arrangements to extend the IDNO party category to include the OTSO.
Section 2: Commercial Arrangements	
Section 2A Distributor to Supplier/Generator Relationships	The format of the definitions of the relevant categories to align with the approach adopted for references to OTSO/IDNO Parties in section 2B.
Section 2B Distributor to Distributor Relationships	Extend this section to include the OTSO. Extend the rights and obligations of being connected to a distribution system to include connections of offshore transmission systems to a distribution system. Extend arrangements for establishing liability for Guaranteed Standard payments to include the OTSO in respect of each offshore transmission system.

Section 3 General Legal Provisions	The limitation of liability provisions.
Schedule 13 Bilateral Connection Agreement	Extend the proforma bilateral connection agreement so that it can form the basis of a contract between the OTSO and a distribution licensee in respect of an offshore transmission system connection to a distribution system.

#### Changes under normal governance

There has been a further update to the DCUSA since the version that was used as the baseline for the offshore change proposals since our November 2008 Policy Update. The chair of DCUSA Panel has advised that changes to DCUSA version 3.0, made under normal governance, will not require different treatment offshore.

[W&Co 16/02/09: Marked to show the changes to incorporate the connection of offshore transmission networks.]

**DATED 5<sup>th</sup> October 2006**

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**THE PARTIES (1)**

**and**

**DCUSA LIMITED (2)**

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**DISTRIBUTION CONNECTION AND  
USE OF SYSTEM AGREEMENT**

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**NOTE**

The Gas and Electricity Markets Authority is not a party to this Agreement. References in this Agreement to duties and functions of the Authority have been approved by it, but are merely declaratory as to its role and do not entail any contractual duties being owed by it to, or contractual rights being owed to it by, other Parties.

## **INTRODUCTION**

- (A) The Parties comprise certain electricity distributors, suppliers and generators and the OTSO Party.
- (B) The DNO Parties and IDNO Parties are required, by their licences, to be party to, comply with, and maintain this Agreement.
- (C) The Supplier Parties are required, by their licences, to be party to, and comply with, this Agreement.
- (D) The DG Parties are under certain obligations, under other industry agreements, regarding distribution use of system arrangements, and have agreed to accede to this Agreement in order to meet those obligations.
- (E) The OTSO Party wishes to connect to and use the systems of the DNO Parties and the IDNO Parties, and has agreed to accede to this Agreement in order to do so.
- ~~(E)~~(F) DCUSA Ltd is a company established under this Agreement to facilitate the operation of this Agreement.
- ~~(F)~~(G) The Parties and DCUSA Ltd have agreed to give effect to, and to be bound by, this Agreement in accordance with an Accession Agreement.

**SECTION 1**  
**GOVERNANCE AND CHANGE CONTROL**

**SECTION 1A – PRELIMINARY**

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In this Agreement, except where the context otherwise requires, the expressions in the left hand column below shall have the meanings given to them in the right hand column below:

<b>Accession Agreement</b>	means the agreement by which DCUSA Ltd and each Party agreed to be bound by this Agreement.
<b>Act</b>	means the Electricity Act 1989.
<b>Affected Party</b>	has the meaning given to that term in Clause 55.1.
<b>Affiliate</b>	means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985.
<b>Agreement</b>	means this Distribution Connection and Use of System Agreement (including its Schedules and Annexes), and is to be construed as including the Accession Agreements.
<b>Alternate</b>	has the meaning given to that term in Clause 6.11.
<b>Alternative Solution</b>	means, in respect of a Connection Point, the means of data collection and provision (if any) agreed between the Company and the User (or determined by the Authority) pursuant to Clause 42.3, as an alternative to installing metering equipment at that Connection Point.
<b>Applicant</b>	has the meaning given to that term in Clause 4.1.

<b>Application Form</b>	has the meaning given to that term in Clause 4.3.
<b>Approved Budget</b>	has the meaning given to that term in Clause 8.5.
<b>Approved Contractor</b>	has the meaning given to that term in Schedule 5.
<b>Assessment Process</b>	has the meaning given to that term in Clause 11.1.
<b>Authority</b>	means the Gas and Electricity Markets Authority as established under Section 1 of the Utilities Act 2000.
<b>Balancing and Settlement Code or BSC</b>	means the Balancing and Settlement Code, including all Code Subsidiary Documents (as therein defined), established pursuant to the <a href="#">GBNational Electricity Transmission</a> System Operator Licence.
<b>Basic Vote</b>	has the meaning given to that term in Clause 12.10.
<b>Bilateral Connection Agreement</b>	<p>means an agreement entered into pursuant to Clause 38.1 which, unless agreed otherwise by the Company and the User, is substantially in the form set out in Schedule 13, and which together with this Agreement shall:</p> <ul style="list-style-type: none"><li>(a) govern the terms under which a User's <del>Distribution</del> System shall be entitled to be Connected and remain Connected to the Company's Distribution System at each relevant Connection Point; and</li><li>(b) detail the ownership, operational and maintenance responsibilities and procedures in respect of the Connection Equipment at each relevant Connection Point.</li></ul>

<b>Breaching Party</b>	has the meaning given to that term in Clause 54.1.
<b>BSC Party Agent</b>	has the meaning given to the term ‘Party Agent’ in the BSC.
<b>BSCCo</b>	has the meaning given to that term in the BSC.
<b>CDCA</b>	means the Central Data Collection Agent as defined in the Balancing and Settlement Code.
<b>Change Proposal</b>	has the meaning given to that term in Clause 10.1.
<b>Change Register</b>	has the meaning given to that term in Clause 11.25.
<b>Change Report</b>	has the meaning given to that term in Clause 11.19.
<b>Charges</b>	means, in respect of Section 2A, those charges referred to in Clause 19.2, and, in respect of Section 2B, those charges referred to in Clause 43.2 (and in each case, for the avoidance of doubt, includes both Use of System Charges and Transactional Charges).
<b>CMRS</b>	means the Central Meter Registration Service as defined in the Balancing and Settlement Code.
<b>Company</b>	has, in respect of Section 2A, the meaning given to that term in Clause 15.1, and, in respect of Section 2B, the meaning given to that term in Clause 36.1.

<b>Competent Authority</b>	means the Secretary of State, the Authority, and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Union insofar as it is acting within the limits of its proper authority.
<b>Competent Person</b>	has the meaning given to that term in Schedule 5.
<b>Connect</b>	means, in respect of Section 2B, to provide Connection Assets in such a way that, subject to Energisation and the terms of this Agreement and the relevant Bilateral Connection Agreement, electricity may flow between the Distribution System of the Company and the <del>Distribution</del> System of the User across the Connection Point, or series of related Connection Points (such related Connection Points to be identified in the relevant Bilateral Connection Agreement), and cognate expressions shall be construed accordingly.
<b>Connection and Use of System Code or CUSC</b>	means the Connection and Use of System Code (and the CUSC Framework Agreement) established pursuant to the <a href="#">GB National Electricity Transmission</a> System Operator Licence.

<b>Connectee</b>	means, in respect of: <ul style="list-style-type: none"><li>(a) Section 2A and a Customer Installation, the relevant Customer;</li><li>(b) Section 2A and a Generation Installation, the relevant Generator;</li><li>(c) Section 2A and a User Installation, the User; and</li><li>(d) Section 2B, a person whose premises are connected to the Company's Distribution System or a person whose premises are connected to the User's <del>Distribution</del> System (as determined in accordance with Clause 36.4).</li></ul>
<b>Connected Installation</b>	means a Customer Installation, a Generator Installation or a User Installation (as the case may be).
<b>Connection Agreement</b>	means an agreement between a Company and a Connectee which provides that that Connectee has the right for its Connected Installation to be and remain directly or indirectly connected to that Company's Distribution System.
<b>Connection Assets</b>	means those assets, including the Company's Connection Equipment, that are operated and maintained by the Company, and which are provided for the sole use of <del>the User in</del> Connecting the User's <del>Distribution</del> System to the Company's Distribution System.

<b>Connection Equipment</b>	means any Electrical Plant and/or Electric Line which is provided and installed at the Connection Point for the purposes of providing a connection between the Company's Distribution System and the User's <del>Distribution</del> System, as specified in the relevant Bilateral Connection Agreement and (where appropriate) illustrated on the diagram annexed thereto.
<b>Connection Point</b>	means a point at which the Distribution System of the Company Connects to the <del>Distribution</del> System of the User via the Connection Equipment, such point being specified in the relevant Bilateral Connection Agreement.
<b>Contract</b>	means a Supply Contract or a Power Purchase Contract.
<b>Contract Manager</b>	has the meaning given to that term in Clause 60.5.
<b>Cost Contribution</b>	has the meaning given to that term in Clause 8.9.
<b>Cover</b>	has the meaning given to that term in Schedule 1.
<b>CRA</b>	means the Central Registration Agent as defined in the Balancing and Settlement Code.
<b>CUSC Framework Agreement</b>	means the agreement of that name, in the form approved by the Secretary of State, by which the CUSC is made contractually binding between the parties to it.

<b>Customer</b>	means: <ul style="list-style-type: none"><li>(a) in respect of Section 2A, a person to whom a User proposes to supply, or for the time being supplies, electricity through an Exit Point, or from whom a User, or any Relevant Exempt Supplier, is entitled to recover charges, compensation or an account of profits in respect of electricity supplied through an Exit Point; and</li><li>(b) in respect of Section 2B, any owner or occupier of premises in Great Britain who is supplied or requires to be supplied with electricity, and includes an electricity supplier when acting on behalf of such a person.</li></ul>
<b>Customer Installation</b>	means any structures, equipment, lines, appliances or devices used or to be used by a Customer and connected or to be connected directly or indirectly to the Distribution System.
<b>Daily Statement</b>	means a statement based on the Supercustomer DUoS Report and providing the data items set out in Data Transfer Catalogue D0242 as amended from time to time in accordance with the provisions of the Master Registration Agreement.
<b>Data Aggregator</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Data Collector</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Data Protection Act</b>	Means the Data Protection Act 1998.

<b>Data Services</b>	has the meaning given to that term in the Distribution Licences.
<b>Data Transfer Catalogue</b>	means the catalogue of data flows, data definitions and data formats established under the Master Registration Agreement.
<b>Data Transfer Network</b>	means the electronic network provided as part of the Data Transfer Service.
<b>Data Transfer Service</b>	has the meaning given to that term in the Distribution Licences.
<b>Data Transfer Service Agreement</b>	means the agreement for the provision of the Data Transfer Service dated 30 July 1997.

**De-energise**

means:

- (a) in respect of Section 2A, deliberately to prevent the flow of electricity:
  - (i) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or
  - (ii) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, any one or more of the relevant Entry Points) from, a Connected Installation, for any purpose other than a System Outage on the Company's Distribution System (and cognate expressions shall be construed accordingly); and
- (b) in respect of Section 2B, deliberately to prevent the flow of electricity through a Connection Point for any purpose other than a System Outage on the Company's Distribution System (and cognate expressions shall be construed accordingly).

**De-energisation Works**

means the movement of any switch, the removal of any fuse or meter, or the taking of any other step to De-energise a Connection Point, Metering Point or Metering System.

**Definition Procedure**

has the meaning given to that term in Clause 11.14.

<b>Default Interest Rate</b>	means 8% above the base lending rate of Barclays Bank plc.
<b>De-register</b>	means: <ul style="list-style-type: none"><li>(a) in relation to a Metering Point, to change the status of the Supply Number relating to that Metering Point within MPAS so as to prevent any further registrations (as defined by the Master Registration Agreement) in respect of that Supply Number (and <b>De-registered</b> shall be construed accordingly, and <b>De-registration Notice</b> shall be construed as a notice issued by the Company to De-register); and</li><li>(b) in relation to a Metering System, to De-register that Metering System in accordance with the provisions of the Balancing and Settlement Code.</li></ul>
<b>Directive</b>	includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force.
<b>Disconnect</b>	means to permanently De-energise a Connection Point by the removal of all or part of the Company's Connection Equipment and Connection Assets.

<b>Disconnection Notice</b>	<p>means, in relation to a Metering Point, a notice sent by the User to the Company pursuant to Clause 25 and which:</p> <ul style="list-style-type: none"><li>(a) identifies the Metering Point to which the notice relates by reference to the Supply Number for that Metering Point; and</li><li>(b) requests the Company to send a De-registration Notice to the MPAS Provider instructing it to De-register the Metering Point,</li></ul> <p>and means, in relation to a Metering System, the equivalent notice from the User to the Company requesting that the Company sends a notice to the CRA instructing it to De-register the Metering System.</p>
<b>Distribution Business</b>	<p>has, in respect of each DNO Party or IDNO Party, the meaning given to that term in that Party's Distribution Licence.</p>
<b>Distribution Code</b>	<p>has, in respect of each DNO Party or IDNO Party, the meaning given to that term in that Party's Distribution Licence.</p>
<b>Distribution Licence</b>	<p>means a licence granted, or treated as granted, pursuant to Section 6(1)(c) of the Act.</p>
<b>Distribution Network</b>	<p>means, collectively, the Distribution Systems of the DNO Parties and the IDNO Parties.</p>
<b>Distribution Services Area</b>	<p>means, in respect of each DNO Party, the area specified in respect of that Party pursuant to its Distribution Licence.</p>

**Distribution System** has the meaning given to that term in the Distribution Licences, and means:

- (a) in respect of each DNO Party or IDNO Party, that Party's Distribution System; and
- (b) in Section 2A (unless the context otherwise requires), the Company's Distribution System.

~~**Distribution Systems**~~ ~~has the meaning given to that term in the BSC.~~  
~~**Connection Point**~~

**Draft Budget** has the meaning given to that term in Clause 8.2.

**DCUSA Objectives** has the meaning given to that term in Clause 3.1.

**DCUSA Ltd** means DCUSA Limited, a company incorporated in England and Wales with registered number 5812381.

**DG Party** means a Party that:

- (a) holds a Generation Licence; or
- (b) is engaged in the generation of electricity and is exempt from the requirement to hold a Generation Licence pursuant to Section 5 of the Act,

and:

- (c) has one or more of its generating stations connected to the Distribution Network; and
- (d) does not hold a Distribution Licence,

and, for the avoidance of doubt, a Party may be both a DG Party and a Supplier Party.

**DNO Party**

means a Party that holds a Distribution Licence in which Section B of the standard distribution licence conditions has effect, whether or not that Party is also engaged in the supply or generation of electricity.

**DNO/IDNO Party**

means a DNO Party or an IDNO Party (and DNO/IDNO Parties shall mean the DNO Parties and the IDNO Parties collectively).

**DNO/IDNO/OTSO Party**

means a DNO Party, an IDNO Party or the OTSO Party (and DNO/IDNO/OTSO Parties shall mean the DNO Parties, the IDNO Parties and the OTSO Party collectively).

**Electric Line**

means any line which is used for carrying electricity to or from a Connection Point, Entry Point or Exit Point and includes, unless the context otherwise requires:

- (a) any support for such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
- (b) any apparatus connected to such line for the purpose of carrying electricity; and
- (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line.

- Electrical Plant** means any plant, equipment, apparatus or appliance used for or for purposes connected with the distribution of electricity (including any metering equipment) other than an Electric Line.
- Enabling Agreement** means an agreement for the provision of Exempt Supply Services.
- Energise** means:
- (a) in respect of Section 2A, deliberately to allow the flow of electricity:
    - (i) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or
    - (ii) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, one or more of the relevant Entry Points) from,a Connected Installation, where such a flow of electricity has never previously existed (and cognate expressions shall be construed accordingly);
  - (b) in respect of Section 2B, deliberately to allow the flow of electricity through a Connection Point where such a flow of electricity has never previously existed (and cognate expressions shall be construed accordingly).

<b>Energisation Works</b>	means the movement of any switch or the addition of any fuse or meter to Energise a Connection Point, Metering Point or Metering System.
<b>Entry Point</b>	has the meaning given to that term in the Distribution Licences.
<b>Equivalent Meter</b>	means an equivalent half-hourly meter as defined by the Unmetered Supplies Procedure.
<b>ESPR</b>	means the Electricity (Standards of Performance) Regulations 2005 (SI 2005/1019).
<b>Event of Default</b>	has the meaning given to that term in Clause 54.1.
<b>Exempt Supplier</b>	means a person who is authorised to supply electricity by an exemption granted under Section 5 of the Act.
<b>Exempt Supply Services</b>	means services, provided by a Supplier Party to an Exempt Supplier, pursuant to which the Supplier Party becomes Registered in respect of one or more Metering Points and Metering Systems that relate to premises supplied, or required to be supplied, by the Exempt Supplier.
<b>Exit Point</b>	has the meaning given to that term in the Distribution Licences.
<b>Extra-Settlement Determination</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Financial Year</b>	means the financial year adopted by DCUSA Ltd from time to time and established, at the date of this Agreement, as 1 April to 31 March.

**Force Majeure**

means, in respect of any person, any event or circumstance which is beyond the reasonable control of that person and which results in or causes the failure of that person to perform any of its obligations under this Agreement, including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, explosion, fault or failure of plant or machinery which (in each case) could not have been prevented by Good Industry Practice; and any governmental restraint, Act of Parliament, other legislation, bylaw and Directive (not being any order, regulation or direction under Section 32, 34 or 35 of the Act), or (in the case of each Company) the failure of any generator or other person to deliver electricity to that Company or any deficiency in such delivery to the extent that such failure or deficiency or the consequences thereof could not have been prevented by Good Industry Practice by the Company: provided that lack of funds shall not be interpreted as a cause beyond a person's reasonable control.

**Gateway**

has the meaning given to that term in the Data Transfer Service Agreement.

**GB System Operator**

~~means the holder, from time to time, of the GB System Operator Licence.~~

<b><del>GB System Operator Licence</del></b>	<del>means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the Act and in which section C of the standard transmission licence conditions applies.</del>
<b>Generation Licence</b>	means a licence granted, or treated as granted, pursuant to Section 6(1)(a) of the Act.
<b>Generator</b>	means a person from whom a User purchases, or proposes to purchase, electricity, at an Entry Point (who may from time to time be supplied with electricity as a Customer of that User (or another electricity supplier) through an Exit Point).
<b>Generator Installation</b>	means any structure, equipment, lines, appliances or devices used or to be used by a Generator and connected or to be connected directly or indirectly to a Distribution System.
<b>Good Industry Practice</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.
<b>Grid Code</b>	has the meaning given to that term in the <a href="#">GB National Electricity Transmission</a> System Operator Licence.
<b>Group</b>	means, in respect of each Party Category and subject to Clause 12.3, each Party that is a member of that Party Category collectively with that Party's Affiliates (if any) who are also members of that Party Category.

**IDNO Party** means a Party that holds a Distribution Licence in which Section C of the standard distribution licence conditions does not have effect, whether or not that Party is also engaged in the supply or generation of electricity.

**IDNO/OTSO Party** means an IDNO Party or the OTSO Party (and **IDNO/OTSO Parties** shall mean the IDNO Parties and the OTSO Party collectively).

**Implementation** has the meaning given to that term in Clause 14.1.

**Initial Account** has the meaning given to that term in Clause 20.3.

**Initial Settlement Run** has the meaning given to that term in the Balancing and Settlement Code.

**Intellectual Property** means patents, registered design rights, unregistered design rights, domain names, copyrights, rights in trade marks whether registered or not, goodwill and rights in confidential information and know-how, and any associated or similar rights (including, in all cases, applications and rights to apply therefor).

**Interconnection**

means, in respect of each relevant Bilateral Connection Agreement, to connect (or permit the connection of) the User's ~~Distribution~~-System (or any Electric Lines connected thereto) to:

- (a) the Company's Distribution System, at Connection Points other than those that are the subject of the Bilateral Connection Agreement; or
- (b) a Distribution System of any person other than the Company, or to an Offshore Transmission System, where (in either case) that ~~Distribution~~ System is connected (directly or indirectly) to a source of energy (other than via the Connection Points that are subject to the Bilateral Connection Agreement),

in each case so that (subject to energisation) electricity may flow to or from the User's ~~Distribution~~-System.

**Interested Industry Participant**

has the meaning given to that term in Schedule 14

**Interim Information Settlement Run**

has the meaning given to that term in the Balancing and Settlement Code.

**Invoice Date**

means, in respect of each account (including an Initial Account or Reconciliation Account), the date on which that account is produced by a Company pursuant to this Agreement.

**kVA**

means kilovoltamperes.

<b>Late Payment Notice</b>	has, in respect of Section 2A, the meaning given to that term in Clause 23.2, and, in respect of Section 2B, has the meaning given to that term in Clause 46.2.
<b>Legacy Meter Asset Provision</b>	means the provision of Legacy Metering Equipment (as such term is defined in the Distribution Licences).
<b>Market Domain I.D.</b>	has the meaning given to that term in the Data Transfer Service Agreement.
<b>Master Registration Agreement or MRA</b>	has the meaning given to the term “Master Registration Agreement” in the Distribution Licences.
<b>Maximum Export Capacity</b>	means: <ul style="list-style-type: none"><li>(a) in respect of Section 2A and any Entry Point, the maximum amount of electricity, as agreed with the Company and expressed in kilowatts or kilovoltamperes, which may be exported onto the Distribution System via that Entry Point; and</li><li>(b) in respect of Section 2B and any Bilateral Connection Agreement, the maximum amount of electricity, as set out in that Bilateral Connection Agreement and expressed in kilowatts or kilovoltamperes, which may be exported onto the Company’s Distribution System via the Connection Point or defined group of Connection Points to which that Bilateral Connection Agreement relates.</li></ul>

<b>Maximum Import Capacity</b>	<p>means:</p> <ul style="list-style-type: none"><li>(a) in respect of Section 2A and any Exit Point, the maximum amount of electricity, as agreed with the Company and expressed in kilowatts or kilovoltamperes, which may be imported from the Distribution System via that Exit Point; and</li><li>(b) in respect of Section 2B and any Bilateral Connection Agreement, the maximum amount of electricity, as set out in that Bilateral Connection Agreement and expressed in kilowatts or kilovoltamperes, which may be imported from the Company's Distribution System via the Connection Point or defined group of Connection Points to which that Bilateral Connection Agreement relates.</li></ul>
<b>Meter Administrator</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Meter Operation Services Agreement</b>	means an agreement between the Meter Operator Agent and the User (or, where applicable, the Connectee) for the provision of meter operation services to be provided by the Meter Operator Agent.
<b>Meter Operator Agent</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Meter Operation Code of Practice</b>	means Schedule 5 of the Meter Operation Code of Practice Agreement.

**Meter Operation Code of Practice Agreement or MOCOPA** means the Meter Operation Code of Practice Agreement dated 8 September 1998.

**Meter Technical Details** has the meaning given to that term in the BSC.

**Metering Data** means, in respect of a Metering Point or Metering System:

- (a) any Meter Technical Details associated with that Metering Point or Metering System; and/or
- (b) data concerning the quantities of active energy and reactive energy (exported or imported) measured, collected or otherwise determined as having been conveyed across that Metering Point or Metering System.

**Metering Point** means the point, determined according to the principles and guidance given at Schedule 9 of the Master Registration Agreement, at which a supply to (export) or from (import) a Distribution System:

- (a) is or is intended to be measured; or
- (b) where metering equipment has been removed, was or was intended to be measured; or
- (c) in the case of an Unmetered Supply under the Unmetered Supplies Procedure, is deemed to be measured,

where in each case such measurement is for the purposes of ascertaining the User's liabilities under the Balancing and Settlement Code.

<b>Metering System</b>	means a metering system registered in CMRS in accordance with the provisions of the BSC, and relating to an Entry Point or an Exit Point.
<b>Modification</b>	<p>means any actual or proposed replacement, renovation, modification, alteration or construction:</p> <p><u>(a) _____ by or on behalf of the Company <del>or the User</del> to <del>either</del> the Company's Electrical Plant or Electric Lines (or the manner of their operation);</u> or</p> <p><u>(b) _____ by or on behalf of the User (or, in the case of the OTSO Party, the Offshore Transmission Owner) to the User's (or that owner's) Electrical Plant or Electric Lines (or the manner of their operation),</u></p> <p>which in either case has, or may have, a material effect on the User <u>(or the User's System)</u> or <u>on</u> the Company <u>(or the Company's Distribution System)</u> respectively.</p>
<b>Modification Application</b>	means an application for a Modification in the form set out in the relevant Bilateral Connection Agreement.
<b>Modification Offer</b>	means an offer made pursuant to Clause 52 and in the form set out in the relevant Bilateral Connection Agreement setting out the terms for a Modification.
<b>MPAS</b>	has the meaning given to that term in the Master Registration Agreement.
<b>MPAS Provider</b>	means a DNO Party or IDNO Party in its capacity as the person who provides the services described in Condition 18 of the Distribution Licences.
<b>MPAS Registration System</b>	has the meaning given to that term in the Master Registration Agreement.

**MRASCo** has the meaning given to that term in the Master Registration Agreement.

**National Consumer Council** means the body of that name established by Part I, section 1 of the Consumers, Estate Agents and Redress Act 2007.

**National Electricity Transmission System Operator** means the holder, from time to time, of the National Electricity Transmission System Operator Licence.

**National Electricity Transmission System Operator Licence** means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the Act and in which section C of the standard transmission licence conditions applies.

**National Terms of Connection** has the meaning given to that term in Clause 17.1.

**Offshore Transmission Owner** means, in respect of an Offshore Transmission System, the owner of that Offshore Transmission System.

**Offshore Transmission System** has the meaning given to that term in the Grid Code.

**Operational Metering Equipment** means metering equipment suitable to provide a Company with such data as it requires for use of system or operational purposes.

**OTSO Party** means the National Electricity Transmission System Operator in its capacity as the operator of Offshore Transmission Systems.

<b>Panel</b>	means the body established as such in accordance with Clause 5.
<b>Panel Member</b>	has the meaning given to that term in Clause 5.5.
<b>Panel Objectives</b>	has the meaning given to that term in Clause 5.2.
<b>Panel Chairman</b>	means the person appointed as such in accordance with Clause 7.1.
<b>Panel Secretary</b>	means the person appointed as such in accordance with Clause 7.5.
<b>Part 1 Matter</b>	has the meaning given to that term in Clause 9.4.
<b>Part 2 Matter</b>	has the meaning given to that term in Clause 9.6.
<b>Party</b>	means a party to this Agreement from time to time, but excluding (except in the case of Clauses 53, 54.1.1, 58 and 60) DCUSA Ltd.

<b>Party Category</b>	<p>means, as the context requires, one of the following categories:</p> <ul style="list-style-type: none"> <li>(a) the DNO Parties collectively;</li> <li>(b) the IDNO/<u>OTSO</u> Parties <del>collectively</del>;</li> <li>(c) the Supplier Parties collectively; and</li> <li>(d) the DG Parties collectively.</li> </ul> <p><u>save that, in determining which Party Categories are eligible to vote on a particular Change Proposal, the IDNO Parties and the OTSO Party may be considered separately, so that the IDNO Parties may be eligible to vote on a Change Proposal and the OTSO Party not (or vice versa).</u></p>
<b>Party Details</b>	means, in respect of each Party, the information relating to that Party and corresponding to the heads of information set out in Schedule 11.
<b>Party Liable</b>	has the meaning given to that term in Clause 53.1.
<b>Password Controlled Pages</b>	has the meaning given to that term in Schedule 14.
<b>Payment Default</b>	has, in respect of Section 2A, the meaning given to that term in Clause 23.1, and, in respect of Section 2B, the meaning given to that term in Clause 46.1.
<b>Permission</b>	has the meaning given to that term in Schedule 5.
<b>Post-Final Settlement Run</b>	has the meaning given to that term in the Balancing and Settlement Code.

<b>Power Purchase Contract</b>	means a contract between a User and a Generator for the purchase by the User of electricity generated by such Generator and (if agreed in such contract) the sale of electricity to the Generator by the User.
<b>Prescribed Period</b>	has the meaning given to that term in regulation 3 of the ESPR.
<b>Prescribed Sum</b>	has the meaning given to that term in regulation 3 of the ESPR.
<b>Proposer</b>	has the meaning given to that term in Clause 10.3.
<b>Public Pages</b>	has the meaning given to that term in Schedule 14.
<b>Qualification</b>	has the meaning given to that term in the Balancing and Settlement Code, and <b>Qualified</b> shall be construed accordingly.
<b>Quarter</b>	means the period of three months commencing on 1 January, 1 April, 1 July and 1 October respectively in each year.
<b>Radio Teleswitch Agreement</b>	means the agreement of that name dated 1 April 2001, which details the rights and obligations of its signatories in relation to the use of radio teleswitches.
<b>Reconciliation Account</b>	has the meaning given to that term in Clause 20.4.
<b>Reconciliation Run</b>	has the meaning given to the term “Reconciliation Settlement Run” in the Balancing and Settlement Code.
<b>Recoverable Costs</b>	has the meaning given to that term in Clause 8.1.

**Re-energise**

means:

- (a) in respect of Section 2A, deliberately to allow the flow of electricity:
  - (i) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or
  - (ii) in the case of an Entry Point, to the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, any one or more of the relevant Entry Points) from,a Connected Installation, where such flow of electricity was previously prevented by De-energisation Works (and cognate expressions shall be construed accordingly); and
- (b) in respect of Section 2B, deliberately to allow the flow of electricity through a Connection Point, where such flow was previously prevented by De-energisation Works (and cognate expressions shall be construed accordingly).

**Re-energisation Works**

means the movement of any switch, the replacement of any fuse or meter, or the taking of any other step to Re-energise a Connection Point, Metering Point or Metering System.

**Registered**

means, in respect of a User and:

- (a) a Metering Point, that that User is registered in respect of that Metering Point under and in accordance with the Master Registration Agreement; and
- (b) a Metering System, that that User is registered in respect of that Metering System under and in accordance with the BSC.

**Registration Notice**

means, in respect of:

- (a) a Metering Point, a notice sent to the MPAS Provider by either the User or the Company, as the case may be, instructing the MPAS Provider to change the status of that Metering Point in the way set out in the notice; and
- (b) a Metering System, a notice sent to the CRA or the CDCA (as applicable) by the User giving instructions to change the status of that Metering System in the way set out in the notice.

**Regulations**

means the Electricity Safety, Quality and Continuity Regulations 2002 (S1 2002/2665).

**Related Person**

means, in relation to an individual, any member of that individual's immediate family; any partner with whom that individual is in partnership; that individual's employer; any Affiliate of such employer; any person by whom that individual was employed in the previous 12 months; and any company (or Affiliate of a company) in respect of which that individual (individually or collectively with any member of his immediate family) controls more than 20% of the voting rights in respect of the shares in that company.

**Related Undertaking**

means, in respect of any person, any undertaking in which that person has a participating interest as defined in Section 260 of the Companies Act 1985.

**Relevant Charging Statement**

means, as the case may require, any of the following:

- (c) the statement prepared by a Company in relation to charges for use of system for the time being in force pursuant to Condition 14 of its Distribution Licence;
- (d) the statement prepared by a Company in relation to charges for the provision of MPAS for the time being in force pursuant to Condition 18 of its Distribution Licence;
- (e) the statement prepared by a Company in relation to charges for Legacy Meter Asset Provision and Data Services for the time being in force pursuant to Condition 36 of its Distribution Licence;
- (f) the statement prepared by a Company and for the time being in force pursuant to Condition 38 of its Distribution Licence in relation to Last Resort Supply Payments (as described in that Condition); and
- (g) any statement prepared by a Company and for the time being in force in relation to charges for any other services offered by the Company.

**Relevant Exempt Supplier**

means, in respect of a User, an Exempt Supplier which has entered into an Enabling Agreement with that User in respect of supplies of electricity to Customers of that Exempt Supplier.

**Relevant Instruments**

means:

- (a) the Act and all subordinate legislation made under it as amended from time to time;
- (b) the Data Protection Act and all subordinate legislation made under it as amended from time to time;
- (c) the Distribution Licence and the Supply Licence, and any determination, direction, consent or notice made or issued by the Authority pursuant to the terms thereof;
- (d) the Data Transfer Service Agreement;
- (e) the Master Registration Agreement;
- (f) the Connection and Use of System Code; and
- (g) the Balancing and Settlement Code,

and, whether under any of the foregoing or otherwise, all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents and other matters which are required, or which a Company acting in accordance with Good Industry Practice would obtain, in connection with the provision of the services under this Agreement, of or from any Competent Authority.

**Report Phase**

has the meaning given to that term in Clause 11.19.

**Reserve**

has the meaning given to that term in Clause 6.5.

<b>Revenue Protection Code of Practice</b>	means the code of practice of that name, detailing the rights and obligations of certain persons in relation to the prevention of meter interference and other forms of illegal abstraction of electricity.
<b>Secretariat</b>	has the meaning given to that term in Clause 7.36.
<b>Secretary of State</b>	has the meaning given to that term in the Interpretation Act 1978.
<b>Security and Safety of Supplies Statement</b>	means, in respect of each DNO Party or IDNO Party, the statement prepared by that Party in relation to security and safety of supplies for the time being in force pursuant to Condition 8 of its Distribution Licence.
<b>Settlement</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Settlement Class</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Settlement Day</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b>Settlement Run</b>	means, as appropriate, an Initial Settlement Run, Reconciliation Run, or Interim Information Settlement Run.
<b>Small Scale Generator</b>	means any generator that is installed in accordance with, and complies with the requirements of, Regulation 22 (2) sub-paragraphs (a) to (c) of the Regulations.

<b>Standard Settlement Configuration</b>	has the meaning given to that term in the Balancing and Settlement Code.
<b><u>STC</u></b>	<u><a href="#">has the meaning given to that term in the CUSC.</a></u>
<b>Supercustomer DUoS Report</b>	means a report of profiled data by Settlement Class providing the data items set out in Data Transfer Catalogue D0030 (as amended from time to time in accordance with the provisions of the Master Registration Agreement).
<b>Supplier/DG Party</b>	means a Supplier Party or a DG Party (and <b>Supplier/DG Parties</b> shall mean the Supplier Parties and the DG Parties collectively).
<b>Supplier Party</b>	means a Party that holds a Supply Licence and that does not hold a Distribution Licence, and, for the avoidance of doubt, a Party may be both a Supplier Party and a DG Party.
<b>Supplier Volume Allocation Agent or SVAA</b>	has the meaning given to “Supplier Volume Allocation Agent” in the Balancing and Settlement Code.
<b>Supply Business</b>	means, in respect of a Supplier Party, that Party’s business of supplying electricity (as authorised pursuant to the Act).
<b>Supply Contract</b>	means a contract (whether oral, in writing or deemed) between a User, or any Relevant Exempt Supplier, and a Customer for a supply of electricity to such Customer through an Exit Point.

**Supply Licence** means a licence granted, or treated as granted, pursuant to Section 6(1)(d) of the Act.

**Supply Number** has the meaning given to that term in the Master Registration Agreement.

**Surplus Vote** has the meaning given to that term in Clause 12.13.

**Surplus Vote Adjustment** has the meaning given to that term in Clause 12.10.

**System** means, in respect of:

(a) a DNO/IDNO Party, that Party's Distribution System; and

(b) the OTSO Party, the Offshore Transmission System relating to the relevant Connection Point (and references to the User's System shall be construed accordingly, notwithstanding that the OTSO Party may not own that Offshore Transmission System).

**Systems Connection Point** has the meaning given to that term in the BSC.

**System Outage** means, in relation to a DNO Party or IDNO Party, a planned or unplanned interruption to the flow of electricity through the whole or part of that Party's Distribution System implemented by or on behalf of that Party for safety or system security reasons or to enable that Party to inspect or effect alterations, maintenance, repairs or additions to any part of that Distribution System.

<b>Transactional Charges</b>	has, in respect of Section 2A, the meaning given to that term in Clause 22.1, and, in respect of Section 2B, the meaning given to that term in Clause 45.1.
<b>Unit</b>	means a kilowatt hour.
<b>Unit Rate</b>	means a charge in pence and/or pounds applied to a Unit.
<b>Unmetered Supplies Certificate</b>	means a certificate issued by a Company (in its sole discretion) to a Customer in accordance with the Unmetered Supplies Procedure which states (amongst other things) the Supply Numbers of the Metering Points by reference to which the Company has authorised the Customer to receive Unmetered Supplies.
<b>Unmetered Supplies Procedure</b>	means Section S of the Balancing and Settlement Code and BSC Procedure BSCP 520 established under the Balancing and Settlement Code and any replacement or substitute BSC Procedure from time to time in force.
<b>Unmetered Supply</b>	means a supply of electricity the quantity of which the Company, through the issue of a relevant Unmetered Supplies Certificate, has authorised not to be measured by physical metering equipment.
<b>Urgent Change Proposal</b>	has the meaning given to that term in Clause 10.7.

<b>Use of Distribution System</b>	means, in respect of a Company or User, the use by that User of that Company's Distribution System for the passing of electricity into a Distribution System and for the conveyance of such electricity by that Company through its Distribution System:  (a) in the case of Section 2A, to Exit Points or from Entry Points; or  (b) in the case of Section 2B, to or from Connection Points.
<b>Use of System Charges</b>	has, in respect of Section 2A, the meaning given to that term in Clause 19.2.1, and, in respect of Section 2B, the meaning given to that term in Clause 43.2.1.
<b>User</b>	has, in respect of Section 2A, the meaning given to that term in Clause 15.2, and, in respect of Section 2B, has the meaning given to that term in Clause 36.2.
<b>User Installation</b>	means any structures, equipment, lines, appliances or devices used or to be used by a User and connected or to be connected directly or indirectly to the Distribution System at any Exit Point or Entry Point in relation to which that User is Registered.
<b>Value Added Tax or VAT</b>	means VAT as defined in the Value Added Tax Act 1994 and any tax of a similar nature which may be substituted for or levied in addition to it.
<b>Voting Procedure</b>	has the meaning given to that term in Clause 12.1.
<b>Web Account</b>	has the meaning given to that term in Schedule 14.

<b>Website</b>	means a dedicated website established at the direction of the Panel for the purposes of this Agreement.
<b>Weighted Vote</b>	has the meaning given to that term in Clause 12.8.
<b>WG Chairman</b>	has the meaning given to that term in Clause 7.28.
<b>Working Day</b>	has the meaning given to that term in Section 64 of the Act.
<b>Working Group</b>	means a sub-committee established by the Panel in accordance with Clause 7.24.
<b>Works</b>	has the meaning given to that term in Schedule 5.

## **Interpretation**

- 1.2 In this Agreement, unless the context otherwise requires, any reference to:
- 1.2.1 a “person” includes a reference to an individual, a body corporate, an association or a partnership;
  - 1.2.2 the singular includes the plural, and vice versa;
  - 1.2.3 a gender includes every gender;
  - 1.2.4 a numbered Clause, Section or Schedule is a reference (respectively) to a clause, part or section of, or a schedule to, this Agreement which bears that number;
  - 1.2.5 a numbered Paragraph or Annex is a reference (respectively) to a paragraph of, or an annex to, the Schedule in which such reference occurs;
  - 1.2.6 a numbered Condition (with or without a letter) is a reference to the standard condition bearing that number (and, where relevant, letter) in the licence indicated;

- 1.2.7 writing includes all methods of reproducing words in a legible and non-transitory form;
  - 1.2.8 “include”, “including” and “in particular” are to be construed without limitation to the generality of the preceding words;
  - 1.2.9 any statute or statutory provision includes any subordinate legislation made under it, any provision which it has modified or re-enacted, and any provision which subsequently supersedes or re-enacts it (with or without modification);
  - 1.2.10 an agreement, code, licence or other document is to such agreement, code, licence or other document as amended, supplemented, novated or replaced from time to time;
  - 1.2.11 a term that is stated to have the meaning given to it in the BSC is, where the BSC contains more than one definition of that term, a reference to that term as defined in annex 1 of section X of the BSC; and
  - 1.2.12 a term that is stated to have the meaning given to it in the Distribution Licences or the Supply Licences is a reference to that term as defined in the standard conditions of the Distribution Licences or of the Supply Licences (as applicable).
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

## 4. ACCESSION OF ADDITIONAL PARTIES

### Eligibility for Admission

- 4.1 Any person who applies to be admitted as a Party (an **Applicant**) shall be entitled to be admitted as a Party, subject to and in accordance with the provisions of this Clause 4.
- 4.2 An Applicant may not be admitted as a Party if:
- 4.2.1 it is already a Party; or
  - 4.2.2 the Panel believes that the Applicant has no reasonable prospect of satisfying the relevant conditions precedent set out in (in the case of all Applicants [other than the OTSO Party](#)) Clause 16, and (in the case of only [the OTSO Party or](#) those applying to be DNO Parties or IDNO Parties) Clause 37, in the six-month period following its application to be so admitted.

### Accession Procedure

- 4.3 The Panel shall establish, in such format as it may prescribe, a form to be completed by Applicants (the **Application Form**) and shall publish a copy of the form on the Website together with a summary of the process set out in this Clause 4.
- 4.4 An Applicant shall submit a duly completed Application Form (and any other supporting documents required by that form) to the Panel.
- 4.5 As soon as reasonably practicable following receipt of an Application Form from an Applicant, the Panel shall:
- 4.5.1 notify the Applicant if it is ineligible to be admitted as a Party in accordance with Clause 4.2;
  - 4.5.2 where the Applicant is not ineligible, check that the Application Form has been duly completed and that any supporting documentation requested has been provided, and notify the Applicant of any omissions;
  - 4.5.3 where there are no such omissions, notify each Party and the Authority of the Applicant's identity and of the information that will, on that Applicant's

admission as a Party, become its Party Details; and

- 4.5.4 prepare an Accession Agreement, in substantially the form set out in Schedule 9, for the Applicant and send it to the Applicant for execution.
- 4.6 Upon receipt by the Panel of an Accession Agreement, in substantially the form set out in Schedule 9, duly executed by an Applicant, DCUSA Ltd shall promptly:
  - 4.6.1 execute and deliver a counterpart of such Accession Agreement on behalf of itself and all the Parties; and
  - 4.6.2 send such executed counterpart of the Accession Agreement to the Applicant, and the Panel shall give notice of that Applicant's accession (and the effective date of such accession) to the Applicant, to each other Party and to the Authority.
- 4.7 Subject to, and in accordance with, this Clause 4, each Party hereby irrevocably and unconditionally authorises DCUSA Ltd to execute and deliver, on behalf of such Party, any Accession Agreement, in substantially the form set out in Schedule 9, duly executed by an Applicant.
- 4.8 The accession of an Applicant to this Agreement shall be effective from the effective date set out in the relevant Accession Agreement.

#### **Disputes as to Admission**

- 4.9 Where:
  - 4.9.1 the Panel determines that an Applicant is ineligible to be admitted as a Party in accordance with Clause 4.2;
  - 4.9.2 an Applicant believes that the content of the prescribed Application Form is not consistent with the DCUSA Objectives; or
  - 4.9.3 an Applicant believes that there has been an unreasonable delay in obtaining a response to its application or that the process set out in this Clause 4 has not been followed,

the Applicant may refer the matter to the Authority for its determination, which shall be final and binding.

## **SECTION 1B – GOVERNANCE**

## 5. FUNCTIONS AND CONSTITUTION OF THE PANEL

### **Establishment of the Panel**

- 5.1 The Panel is hereby established. The Panel shall:
- 5.1.1 pursue the objectives, undertake the duties, and have the powers, set out in Clauses 5.2 to 5.4, and be composed in accordance with Clauses 5.5 to 5.9;
  - 5.1.2 comprise Panel Members elected in accordance with Clause 6, who shall have the duties and protections set out in Clause 6; and
  - 5.1.3 conduct its activities in accordance with the procedures set out in Clause 7.

### **Panel Objectives**

- 5.2 In conducting its operations in accordance with this Agreement, the Panel shall act in a manner designed to achieve the following objectives (the **Panel Objectives**):
- 5.2.1 that this Agreement is given full and prompt effect in accordance with its terms and conditions;
  - 5.2.2 that this Agreement is given effect in such a manner as will facilitate achievement of the DCUSA Objectives;
  - 5.2.3 that this Agreement is given effect in a fair and economical manner; and
  - 5.2.4 that this Agreement is given effect without undue discrimination between the Parties or any classes of Party.

### **Duties**

- 5.3 Without prejudice to any other duties or obligations imposed on it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement:
- 5.3.1 manage and co-ordinate any applications from Applicants to become a Party in accordance with Clause 4;
  - 5.3.2 manage and co-ordinate the process by which Panel Members are appointed,

- in accordance with Clause 6;
- 5.3.3 develop budgets in accordance with Clause 8;
- 5.3.4 manage and co-ordinate the modification process set out in Section 1C, and give effect to any modifications resulting from such process in accordance with Section 1C;
- 5.3.5 manage the termination of a Party's accession to this Agreement in accordance with Clause 54;
- 5.3.6 oversee and, where appropriate, approve the actions and decisions of DCUSA Ltd as contemplated by Schedule 10;
- 5.3.7 periodically review this Agreement and operations under it, in order to:
- (A) evaluate whether this Agreement meets the DCUSA Objectives;
  - (B) consider whether any Part 2 Matters are inconsistent with any Part 1 Matters; and
  - (C) consider whether it would be appropriate to develop this Agreement to include any of the issues set out for consideration in Schedule 12,
- and report to the Parties on the outcome of each such review;
- 5.3.8 at the written request of the Authority, undertake a review in accordance with Clause 5.3.7 in respect of such parts of this Agreement as the Authority may specify;
- 5.3.9 procure the creation, hosting and maintenance of the Website, which the Panel shall endeavour to ensure complies with the requirements of Schedule 14;
- 5.3.10 make an accurate and up-to-date copy of this Agreement available on the Website, and arrange (in return for a charge not exceeding the reasonable cost of so doing) for an accurate and up-to-date copy of this Agreement to be supplied to any person requesting a copy of the same;

- 5.3.11 at the written request of the Authority, collect and provide to the Authority (or publish in such manner as the Authority may direct) such information regarding the operation of this Agreement as the Authority may reasonably request (and each Party shall provide to the Panel such information as the Panel reasonably requires in order to enable the Panel to comply with any such request of the Authority);
- 5.3.12 endeavour to establish joint working arrangements with other relevant industry committees and panels in order to facilitate robust interaction between this Agreement and the industry documents for which such industry committees and panels are responsible; and
- 5.3.13 consider whether it is appropriate to obtain insurance in respect of the costs, charges, expenses, damages and other liabilities referred to in Clause 6.20, and, where it is appropriate to do so, obtain such insurance.

#### **Powers**

- 5.4 Without prejudice to any other rights or powers granted to it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement, have the power to:
  - 5.4.1 appoint and remove the Secretariat;
  - 5.4.2 appoint and remove professional advisers;
  - 5.4.3 consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with Intellectual Property belonging to DCUSA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, the DCUSA Objectives;
  - 5.4.4 consider, approve and authorise the entering into by DCUSA Ltd of contracts under which DCUSA Ltd procures the performance by a third party of any activities which might otherwise be carried out by the Panel under this Agreement;
  - 5.4.5 constitute Working Groups to which the Panel may delegate any of its duties

and powers under this Agreement;

5.4.6 without prejudice to the generality of Clause 5.4.5 or the process for considering Change Proposals, and only where it sees fit, constitute Working Groups to consider and report on issues and problems relating to the operation of this Agreement that have been brought to its attention by one or more Parties; and

5.4.7 do anything necessary for, or reasonably incidental to, the discharge of its duties under this Agreement.

### **Panel Composition**

5.5 The Panel shall comprise the following persons (each a **Panel Member**):

5.5.1 two persons elected by the DNO Parties;

5.5.2 one person elected by the IDNO/[OTSO](#) Parties;

5.5.3 two persons elected by the Supplier Parties;

5.5.4 one person elected by the DG Parties; and

5.5.5 any additional person appointed by the Authority in accordance with Clause 5.8.

5.6 No one person can hold more than one office as a Panel Member.

5.7 The following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:

5.7.1 one person appointed from time to time, by notice to the Panel Secretary, by the Authority;

5.7.2 one person appointed from time to time, by notice to the Panel Secretary, by the [National Electricity TransmissionGB](#) System Operator;

5.7.3 one person appointed from time to time, by notice to the Panel Secretary, by the National Consumer Council;

5.7.4 (at the invitation of the Panel from time to time) a representative of BSCCo;  
and

5.7.5 (at the invitation of the Panel from time to time) a representative of  
MRASCo.

### **Appointment of Additional Panel Member by the Authority**

5.8 Where at any time:

5.8.1 no person is currently appointed as a Panel Member pursuant to this Clause  
5.8; and

5.8.2 the Authority considers that there is a class or category of person having an  
interest in the distribution of electricity in Great Britain whose interests are  
not adequately represented in the composition of the Panel at that time, and  
whose interests would be better represented if a particular person were  
appointed as an additional Panel Member,

the Authority may (by notice to the Panel Secretary) appoint (subject to Clause 6.17)  
that particular person as a Panel Member. The Authority may, at any time thereafter  
by notice to the Panel Secretary, remove that person from the office of Panel Member.

### **Natural Persons**

5.9 Each Panel Member, each Alternate, each person appointed in accordance with Clause  
5.7 or 5.8, and each person serving on a Working Group from time to time must be an  
individual (and cannot be a body corporate, association or partnership).

## **8. COSTS OF THE DCUSA**

### **Recovery of Costs**

8.1 The Panel shall be entitled to recover, in accordance with the procedures set out in this Clause 8, all the reasonable costs and expenses properly incurred by:

- 8.1.1 the Panel;
- 8.1.2 the Panel Secretary;
- 8.1.3 any Working Group;
- 8.1.4 the Secretariat; and
- 8.1.5 DCUSA Ltd,

in performing their respective duties, powers and functions under this Agreement (the Recoverable Costs), which may include their general administration costs and expenses, any costs and expenses they incur in holding, or travelling to, meetings, any costs and expenses of any professional advisers properly retained by them, and any tax payable by DCUSA Ltd. Recoverable Costs shall not include any payment to Panel Members, to directors of DCUSA Ltd or to those who serve on Working Groups in respect of their time.

### **Preparation of Draft Budgets**

8.2 In respect of:

- 8.2.1 the Financial Year ending on 31 March 2007, the Panel shall, as soon as reasonably practicable following the date on which this Agreement becomes effective; and
- 8.2.2 each subsequent Financial Year, the Panel shall (not earlier than 60, nor later than 30, Working Days before the commencement of that Financial Year),

prepare, circulate to all the Parties, and invite comments on, a draft budget for that Financial Year (a **Draft Budget**).

8.3 Each Draft Budget shall be accompanied by a detailed work plan showing the activities and projects to which the relevant costs and expenses relate, and shall set out the Panel's good-faith estimate of the Recoverable Costs that it anticipates will either be:

8.3.1 incurred in the Financial Year to which the Draft Budget relates; or

8.3.2 committed to in the Financial Year to which the Draft Budget relates, even though the Recoverable Costs are not expected to be incurred until a subsequent Financial Year.

### **Approval of Budgets**

8.4 The Draft Budget for the Financial Year ending on 31 March 2007 shall, on its preparation, automatically become the Approved Budget for that Financial Year. The Panel shall, nevertheless, consider any comments received from the Parties in the 20 Working Days following its circulation, and the Panel shall, where it considers it appropriate to do so, amend such Approved Budget in the light of those comments.

8.5 In respect of the Draft Budget for each subsequent Financial Year, the Panel shall:

8.5.1 arrange for publication on the Website of all of the comments received from the Parties regarding the Draft Budget and/or the accompanying work plan in the 20 Working Days following their circulation;

8.5.2 consider, and (where it considers it appropriate to do so) respond to, those comments;

8.5.3 to the extent that it considers it appropriate to do so, amend the Draft Budget and/or the accompanying work plan in the light of those comments; and

8.5.4 no less than 20 Working Days following such circulation, approve the Draft Budget (as so amended) as the **Approved Budget** for the relevant Financial Year.

### **Amendments to Budgets**

8.6 The Approved Budget relating to each Financial Year may be amended by the Panel

from time to time, provided that the Panel has first:

- 8.6.1 circulated and invited comments on the proposed amendments in accordance with Clause 8.2 as if it were a Draft Budget; and
- 8.6.2 published and considered any comments received on the proposed amendments within 20 Working Days of such circulation on the same basis as is referred to in Clause 8.5.

### **Payment of Costs Incurred**

- 8.7 Where the Panel, the Panel Secretary, any Working Group, the Secretariat or DCUSA Ltd wishes to recover any cost or expense under this Clause 8, details of the cost or expense in question shall be submitted to the Panel (or a named person approved by the Panel) for approval. Such cost or expense shall only be approved to the extent that it is a Recoverable Cost provided for in an Approved Budget, and only if it is submitted in a timely manner (and in any event on or before the 20<sup>th</sup> Working Day following the end of the relevant Financial Year). Once approved, details of the cost or expense shall be submitted to the Secretariat or DCUSA Ltd (as directed by the Panel or such named person) for payment.
- 8.8 Upon receipt of an invoice or other statement relating to costs or expenses that have been approved in accordance with Clause 8.7, the Secretariat or DCUSA Ltd (as applicable) shall pay the amount stated in such invoice or other statement (together with VAT thereon, if applicable) to the person named in such invoice or other statement.

### **Share of Costs**

- 8.9 The amount (a **Cost Contribution**) that each Party shall be obliged to bear as its share of the Recoverable Costs, in respect of each Quarter, shall:
  - 8.9.1 in the case of each DG Party; ~~(in its capacity as such)~~ [and the OTSO Party](#), be zero; and
  - 8.9.2 in the case of each other Party, be calculated as follows:

$$CC = 50\% \times \frac{N}{TN} \times RC$$

where:

**CC** is the relevant Party's Cost Contribution in respect of that Quarter;

**N** is, in respect of a DNO Party or an IDNO Party, the aggregate number of Metering Points which each such Party has on its MPAS Registration System; and, in respect of a Supplier Party, the aggregate number of Metering Points against which that Party is registered across all of the MPAS Registration Systems (based, in each case, on the average figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA);

**TN** is, in respect of each Party and that Quarter, the aggregate number of Metering Points across all of the MPAS Registration Systems (based on the average aggregate figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA); and

**RC** is the total amount of the Recoverable Costs incurred, or otherwise accounted for, in that Quarter.

### **Recovery of Budgeted Costs**

8.10 The Panel shall, in respect of each Party and as soon as reasonably practicable after the start of each Quarter:

8.10.1 calculate the Panel's best estimate (by reference to the Approved Budget) of that Party's Cost Contribution (together with VAT thereon, if applicable) in respect of that Quarter; and

8.10.2 arrange for an invoice or other statement, on such terms as the Panel may from time to time prescribe, for an amount equal to such estimate to be sent to that Party.

8.11 Each Party shall, on receipt of an invoice or other statement submitted under Clause 8.10, pay the amount requested of it in accordance with (and within the time period

prescribed by) the terms referred to in Clause 8.10.

#### Annual Reconciliation of Costs

8.12 Within 40 Working Days following the end of each Financial Year, the Panel shall calculate each Party's actual Cost Contribution in respect of each Quarter of that Financial Year, and shall reconcile the actual amounts against the amounts paid (or payable) by that Party in accordance with Clause 8.11.

8.13 Where, in respect of a Financial Year and any Party, the aggregate amount paid in accordance with Clause 8.11:

8.13.1 is greater than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for that Party to be reimbursed with the difference by means of either (at the Panel's discretion but so that each Party to be reimbursed in respect of a Financial Year is reimbursed by the same means):

(A) a cheque payment prior to the next invoice to be raised pursuant to Clause 8.10; or

(B) a credit against the next invoice to be raised pursuant to Clause 8.10; or

8.13.2 is less than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for the difference to be added to the next invoice raised pursuant to Clause 8.10.

#### **Audit**

8.14 The Panel shall arrange for the costs and expenses recovered under this Clause 8 to be audited by a firm of chartered accountants on an annual basis in order to verify that all such costs and expenses were Recoverable Costs provided for in an Approved Budget.

8.15 The Panel shall copy the auditor's report to all Parties within 15 Working Days of receipt.

**SECTION 1C – CHANGE CONTROL**

## 10. CHANGE PROPOSALS

10.1 Each variation of this Agreement must commence with a proposal made in accordance with the provisions of this Clause 10 (a **Change Proposal**).

### **Persons Entitled to Propose**

10.2 A Change Proposal may be made by any of the following:

10.2.1 a Party;

10.2.2 the National Consumer Council;

10.2.3 the [National Electricity Transmission](#)~~GB~~ System Operator;

10.2.4 any person or body that may from time to time be designated in writing by the Authority for the purpose of this Clause 10.2.

### **Form and Content of the Proposal**

10.3 A Change Proposal must be submitted in writing by the person making the Proposal (the **Proposer**) to the Secretariat.

10.4 A Change Proposal must contain the following information:

10.4.1 the name of the Proposer;

10.4.2 the name and contact details of an employee or representative of the Proposer who will act as a principal point of contact in relation to the proposal;

10.4.3 the date on which the proposal is submitted;

10.4.4 a description in sufficient detail of the nature of the proposed variation to the Agreement and of its intended purpose and effect;

10.4.5 a statement of the reasons why the Proposer believes that this Agreement would, if the proposed variation were made, better facilitate the achievement of the DCUSA Objectives than if that variation were not made;

10.4.6 a statement as to which parts of the Agreement the Proposer considers would

require to be changed in order to give effect to the proposed variation or as a consequence of that variation;

10.4.7 where the proposed variation would entail the incorporation of wholly new provisions into this Agreement, a statement of whether, in the opinion of the Proposer, those provisions are Part 1 Matters;

10.4.8 a statement of whether the Proposer considers, in the light of the criteria set out in Clause 10.7, that the Change Proposal should be treated as urgent and, if so, its reasons for so considering; and

10.4.9 the date from which the Proposer recommends that the proposed variation should have effect.

10.5 The Panel may from time to time publish a standard form of Change Proposal to be used by a Proposer. Any such standard form must require the provision by the Proposer of all of the information listed at Clause 10.4, but may also require it to provide such further information as the Panel may reasonably specify. The Panel shall ensure that the latest version of any standard form of Change Proposal is made available on the Website.

10.6 Where a standard form of Change Proposal has been published under Clause 10.5, a Proposer must submit its Change Proposal in accordance with that standard form.

### **Urgent Change Proposals**

10.7 A Change Proposal specified as urgent in accordance with Clause 10.4.8 shall be an **Urgent Change Proposal**. The criteria for assessing whether a Change Proposal should properly be treated as an Urgent Change Proposal are that:

10.7.1 there is a very real likelihood of significant adverse commercial impact upon the Parties (or a class of Party) and/or electricity consumers if the Change Proposal is not dealt with urgently;

10.7.2 the safety and security of the Distribution Network is likely to be adversely affected if the Change Proposal is not dealt with urgently; or

10.7.3 the Change Proposal is linked to an imminent date-related event.

### **Refusal by the Secretariat**

- 10.8 The Secretariat may refuse to accept the submission of any Change Proposal that does not contain all of the information listed at Clause 10.4 or is not made in accordance with any standard form that has been published by the Panel.
- 10.9 Where the Secretariat refuses to accept the submission of a Change Proposal, it shall:
- 10.9.1 notify the Proposer of that refusal as soon as is reasonably practicable, specifying the reason for such refusal; and
  - 10.9.2 notify the Panel of that refusal at the next Panel meeting.
- 10.10 Where the Panel is notified that the Secretariat has refused to accept the submission of a Change Proposal, it may decide to instruct the Secretariat to accept the submission of that proposal, in which case the proposal shall be treated with effect from the time of the decision as if it had been referred to the Panel under Clause 10.11.

### **Initial Assessment**

- 10.11 Except where the Secretariat refuses to accept the submission of a Change Proposal, it shall:
- 10.11.1 refer that proposal to the Panel;
  - 10.11.2 (without altering the Change Proposal in any way and without undertaking any detailed evaluation of the Change Proposal) prepare an initial written assessment of the likely effect of the proposal for the assistance of the Panel; and
  - 10.11.3 suggest a timetable to apply if the Panel chooses to place the proposal into the Assessment Process.
- 10.12 The Panel shall consider the Change Proposal and the accompanying documents referred to in Clause 10.11.2:
- 10.12.1 in respect of Urgent Change Proposals, within five Working Days of the proposal's submission;

10.12.2 in respect of all other Change Proposals, within 25 Working Days of the proposal's submission,

and, where necessary, the Panel Secretary shall convene a Panel meeting for such purpose.

### **Refusal by the Panel**

10.13 The Panel may choose to refuse the referral of a Change Proposal by the Secretariat if that proposal has substantively the same effect as another Change Proposal which was submitted by a Proposer on an earlier date and:

10.13.1 which has been neither accepted nor rejected in accordance with the provisions of this Section 1C at the time of the Panel meeting; or

10.13.2 which was rejected in accordance with the provisions of this Section 1C on a date that falls within the period of two months that immediately precedes the date of the Panel meeting.

10.14 The Panel may choose to refuse the referral of a Change Proposal by the Secretariat if in its opinion the content of the proposed variation of the Agreement is outside the scope of the Agreement as set out at Condition 22 of the Distribution Licences.

10.15 Where the Panel refuses the referral of a Change Proposal, the Secretariat shall notify the Proposer of that refusal as soon as is reasonably practicable, and shall publish details of the Change Proposal in question and the Panel's reasons for such rejection on the Website.

10.16 Nothing in this Clause 10 shall prevent the Proposer of a Change Proposal that is refused by the Secretariat or by the Panel from submitting a subsequent Change Proposal in relation to the same subject matter, and any such subsequent proposal shall be treated for the purposes of this Clause 10 as a new Change Proposal.

10.17 Where a Change Proposal is referred to the Panel, and where the Panel has not refused to accept the referral of that proposal, the Panel shall ensure that the proposal is placed into the Assessment Process in accordance with Clause 11.

### **Referral to the Authority**

- 10.18 If the Panel refuses to accept the referral of a Change Proposal pursuant to Clause 10.13 or 10.14, the Proposer may ask the Authority to direct the Panel to accept the referral of that proposal.
- 10.19 Such a request by a Proposer may only be made within 10 Working Days of the Proposer being notified by the Secretariat of the Panel's refusal to accept the referral of the Change Proposal.
- 10.20 Such a request by a Proposer must:
- 10.20.1 be made in writing;
  - 10.20.2 be accompanied by a copy of the Change Proposal;
  - 10.20.3 (in the case of a refusal under Clause 10.13) state the reasons why the Proposer believes that the Panel was wrong to conclude that the proposed variation has substantively the same effect as another proposal;
  - 10.20.4 (in the case of a refusal under Clause 10.14) state the reasons why the Proposer believes that the Panel was wrong to conclude that the content of the proposed variation was outside the scope of the Agreement; and
  - 10.20.5 be copied to the Panel and to the Secretariat.
- 10.21 If the Authority, within 10 Working Days of receiving a request by a Proposer (and after having consulted with any persons and had regard to any information that it thinks fit), directs the Panel to accept the referral of the Change Proposal, the Panel shall comply with that direction and ensure that the Change Proposal is placed into the Assessment Process in accordance with Clause 11.

## 11. ASSESSMENT PROCESS

11.1 Where the Panel receives and accepts the referral of a Change Proposal in accordance with Clause 10, it shall ensure that the proposal is subjected to a process of assessment in accordance with this Clause 11 (the **Assessment Process**).

### **Notification of Parties**

11.2 The Secretariat shall, as soon as is reasonably practicable after a Change Proposal is placed into the Assessment Process, send a copy both of that proposal and of its initial written assessment of the proposal to:

11.2.1 each Party;

11.2.2 the National Consumer Council;

11.2.3 the [National Electricity Transmission](#)GB System Operator;

11.2.4 any person or body which is designated in writing by the Authority for the purpose of Clause 10.2.4; and

11.2.5 the Authority.

### **Determination of Procedure**

11.3 At the Panel meeting at which the Panel receives and accepts the referral of a Change Proposal, it shall determine whether that proposal is to be subject to the Definition Procedure.

11.4 Where the Panel determines that a Change Proposal is to be subject to the Definition Procedure, that procedure shall first be completed before the proposal is submitted to the Secretariat for the purposes of the Report Phase.

11.5 In every other case, the proposal shall be submitted directly to the Secretariat for the purposes of the Report Phase.

11.6 The Panel shall not determine that a Change Proposal is to be subject to the Definition Procedure if in its opinion the proposal is:

11.6.1 insubstantial in nature, concerned solely with the technical legal drafting of this Agreement, or concerned solely with a variation to this Agreement that is obligatory under or by virtue of any legislation; and

11.6.2 unlikely to be the subject of significant controversy between the Parties.

11.7 The Panel shall otherwise, having regard in respect of a Change Proposal to:

11.7.1 the complexity, significance and urgency of that proposal; and

11.7.2 the degree of clarity as to the issues to which the proposal gives rise and the likely effects of the proposed variation of the Agreement,

consider whether in its opinion it would be appropriate for the proposal to be subject to the Definition Procedure and determine the matter accordingly.

### **Part 1/Part 2 Matters**

11.8 At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also determine whether in its opinion the proposal relates to a Part 1 Matter or a Part 2 Matter.

11.9 A Change Proposal shall be treated as relating to a Part 1 Matter or a Part 2 Matter in accordance with the determination of the Panel for all the purposes of this Section 1C, unless and until the Authority determines to the contrary under Clause 11.21, Clause 13.19 or Clause 13.20.

### **Timetable**

11.10 At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also, having regard to the complexity, significance and urgency of that proposal, determine a timetable for the completion of each stage of the Assessment Process.

11.11 The overall timetable originally established for an Assessment Process in accordance with Clause 11.10 may not exceed 60 Working Days. Where a Change Proposal is an Urgent Change Proposal, the Authority may, either on the application of a Party or of its own volition, direct that an alternative timetable applies in place of that set by the

Panel.

11.12 The Panel may agree to vary the timetable at any subsequent meeting, having regard to any information about the complexity and significance of the Change Proposal that has been revealed by the Assessment Process prior to the date of that meeting. The overall timetable for an Assessment Process may, where the Panel so determines, be extended beyond the original limit of 60 Working Days by successive periods of up to 40 Working Days. The Authority may, either on the application of a Party or of its own volition, veto any such extension, in which case the timetable will remain as it was immediately before the extension in question.

11.13 The Panel, the Secretariat and any Working Group shall use their best endeavours to complete tasks assigned to them under the Assessment Process within the timetable determined by the Panel.

#### **Definition Procedure**

11.14 The Panel may establish, in respect of a Change Proposal, a Working Group for the purpose of undertaking the activities (the **Definition Procedure**) of:

11.14.1 consulting with the Parties, and (where appropriate) with any interested third party, on the proposal;

11.14.2 considering and clarifying the likely effects of the proposed variation to the Agreement, and indicating which Party Categories it considers will be affected by the proposed variation;

11.14.3 evaluating, developing and refining the proposed variation to the Agreement;

11.14.4 evaluating the likely impact of the proposed date for implementation of the variation, and where it considers appropriate amending this date; and

11.14.5 considering whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made.

11.15 A Working Group established for the purposes of the Definition Procedure shall comprise:

- 11.15.1 at least five individuals who each have relevant experience and expertise in relation to the subject matter of the Change Proposal and whose backgrounds are broadly representative of the persons likely to be affected by the proposed variation to the Agreement; and
- 11.15.2 where the Proposer nominates such a person, one person nominated by the Proposer.
- 11.16 The Secretariat shall be invited to, and shall attend, meetings of the Working Group for the purposes of providing support to the group and facilitating the fulfilment of its duties in the Report Phase.
- 11.17 A Working Group established for the purposes of the Definition Procedure shall:
- 11.17.1 publish on the Website, and bring to the Parties' attention, a final consultation draft of the Change Proposal, including in particular the text of the proposed variation, the proposed implementation date and the Party Categories that it considers will be affected by the variation;
- 11.17.2 publish on the Website all consultation responses received and not marked as confidential; and
- 11.17.3 in accordance with the applicable timetable (but not less than five Working Days, and not more than 20 Working Days, after publication of such consultation draft), prepare, having regard to any consultation responses received, instructions to the Secretariat on the content of the Change Report.
- 11.18 Where any person serving on the Working Group objects to any aspect of the final consultation draft referred to in Clause 11.17, that person may require the Working Group to include in the final consultation draft such alternative to any aspect of the final consultation draft as he may specify, so as to allow the Parties to comment on those alternatives.

### **Report Phase**

- 11.19 The Secretariat shall, in respect of any Change Proposal submitted to it by the Panel, prepare a written report (the **Change Report**) on the proposal (the **Report Phase**).

Where the Definition Procedure has been followed, the Secretariat shall prepare the Change Report in accordance with the instructions of the relevant Working Group.

11.20 The Change Report shall:

11.20.1 be addressed and delivered to the Panel;

11.20.2 specify which Party Categories should (in the opinion of the Secretariat or, where the proposal was subject to the Definition Procedure, the Working Group) be eligible to vote on the Change Proposal;

11.20.3 set out the proposed variation to the Agreement;

11.20.4 specify the likely effects of the proposed variation were they to be implemented;

11.20.5 state the proposed date for implementation; and

11.20.6 in any case in which the proposal was subject to the Definition Procedure prior to the Report Phase, provide a summary of:

- (A) the views of the Working Group as to whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made;
- (B) any responses received to the consultation process conducted by the Working Group under the Definition Procedure and not marked as confidential, together with a statement of the location on the Website at which such responses can be found; and
- (C) why the Working Group considers that the proposed variation better facilitates the achievement of the DCUSA Objectives than any alternative variation put forward in accordance with Clause 11.18 or by a respondent to the consultation.

11.21 At any time before the completion of the Change Report, the Authority may decide, having regard to any determination made by the Panel under Clause 11.8, that in its

opinion the Change Proposal relates to a Part 1 Matter or a Part 2 Matter, in which case –

11.21.1 the Authority shall inform the Panel and the Secretariat of its opinion;

11.21.2 the Secretariat shall ensure that a statement of the Authority’s opinion is included in the Change Report;

11.21.3 the Authority’s opinion shall prevail over any contrary determination of the Panel under Clause 11.8, and the proposal shall be treated as relating to a Part 1 Matter or a Part 2 Matter in accordance with that opinion for all the purposes of this Section 1C; and

11.21.4 the Authority’s opinion shall be without prejudice to its right subsequently to make a determination contrary to that opinion under Clause 13.19 or Clause 13.20, and any such determination, when made, shall prevail over any earlier opinion of the Authority.

11.22 On receipt of a Change Report, the Panel shall, subject to Clause 11.24, ensure that the Change Proposal is submitted to the Voting Procedure in accordance with Clause 12.

11.23 The Panel may, prior to submitting a Change Report to the Voting Procedure, and having had regard to the consultation responses received, direct the Secretariat to amend the Change Report in one or more of the following ways:

11.23.1 to alter the Party Categories who will be eligible to vote on the proposal;

11.23.2 to alter the proposed date for the implementation of the proposal; and

11.23.3 to add (in addition to the variation proposed) up to two of the alternative variations referred to in Clause 11.20.6(C),

11.23.4 but where one of the alternative variations referred to in Clause 11.20.6(C) is a variation that was submitted by the Proposer, the Panel must use its power under Clause 11.23.3 to direct the Secretariat to add that variation to the Change Report, whether or not it also directs that a second alternative variation shall be added.

11.24 Where the Change Report is amended in accordance with Clause 11.23.3, unless the Panel considers it necessary to modify the applicable Voting Procedure in some other manner, the Voting Procedure applying to such a Change Report will be modified so that the Parties can vote either to reject all of the proposed variations or to accept one of the proposed variations and reject the others.

### **The Change Register**

11.25 The Secretariat shall establish and maintain a register (the **Change Register**) for the purpose of assisting the Panel in the operation of the Assessment Process and ensuring that the Parties and any interested third parties may be informed as to the progress of Change Proposals.

11.26 The Change Register shall contain, in respect of each Change Proposal that is in the Assessment Process:

11.26.1 details of the proposal (including the name of the Proposer, the date of the proposal and a short summary of its intended purpose and effect);

11.26.2 whether the proposal relates to a Part 1 Matter or a Part 2 Matter;

11.26.3 whether the proposal is an Urgent Change Proposal;

11.26.4 the timetable for the completion of each stage of the Assessment Process;

11.26.5 the current level of progress of the proposal within the Assessment Process;  
and

11.26.6 such other matters relating to the proposal as the Panel may from time to time direct the Secretariat to include in the Change Register.

11.27 The Secretariat shall ensure that the Change Register is updated at regular intervals so that the information it contains in relation to each Change Proposal that is in the Assessment Process is, so far as is reasonably practicable, accurate and up-to-date.

11.28 The Secretariat shall ensure that the Change Register is made available on the Website. The Secretariat shall send a copy of the Change Register to the Authority on the first Working Day of each month.

### **Withdrawal by Proposer**

- 11.29 The Proposer may withdraw his support for a Change Proposal on notice to the Secretariat at any time.
- 11.30 As soon as is reasonably practicable after receiving any such notice, the Secretariat shall notify the Parties that the Proposer has withdrawn his support and shall update the Change Register accordingly.
- 11.31 Where, within 10 Working Days of the Secretariat sending notice under Clause 11.29, the Secretariat receives notice from a Party that it is prepared to support the Change Proposal, that Party shall:
- 11.31.1 become the Proposer for the Change Proposal (and the Secretariat shall amend the Change Register accordingly); and
  - 11.31.2 where the original Proposer has already nominated a person to serve on the relevant Working Group in accordance with Clause 11.15.2, be entitled to nominate a person to serve on the Working Group in place of the person so nominated.
- 11.32 Unless the Secretariat receives a notice under Clause 11.31, a Change Proposal withdrawn in accordance with Clause 11.29 shall cease to be subject to the Assessment Process and any Working Group established in respect of it shall be dissolved.

## 12. VOTING

12.1 The purpose of this Clause 12 is to make provision for the Parties to vote as to whether any Change Proposal should be accepted or rejected (the **Voting Procedure**).

12.2 Each Change Proposal shall be put to a vote of the Parties in accordance with the Voting Procedure.

### **Groups – DNO Parties**

12.3 The IDNO/[OTSO](#) Parties, the Supplier Parties and the DG Parties shall cast their votes on a corporate group basis, so that all of the Parties in each such Party Category that fall within a single Group shall collectively have only one vote. The DNO Parties shall cast their votes individually, so that each such Party has one vote. References in this Clause 12 and in Clause 13 to a “Group” shall, therefore, in the case of DNO Parties only, be taken as references to a “Party”.

### **The Voting Procedure**

12.4 The Panel shall procure the design, establishment and maintenance of a system by which:

12.4.1 the Change Report on each Change Proposal is sent to all Parties, specifying the time period within which votes must be cast;

12.4.2 each Group within each Party Category that is eligible to vote may cast one (and not more than one) vote on each of the questions comprising each vote (whether to accept or reject the proposed variation and whether to accept or reject the proposed implementation date);

12.4.3 each Group that votes is given the opportunity (but is not obliged) to comment on the reasons for its vote;

12.4.4 the vote of each Group is cast by means of a standard form;

12.4.5 the vote of each Group is cast in such a way as to permit its authentication as the valid and properly authorised vote of that Group;

12.4.6 the vote of each Group may be transmitted in such a manner as (so far as is

reasonably practicable) ensures that it is secure and will not be interfered with; and

12.4.7 the votes of all of the Groups are received and collated for the purposes of Clause 13.

12.5 The Panel shall ensure that all Parties are informed of the means by which they may have access to and use the system established under Clause 12.4 for the purposes of the Voting Procedure, and of any changes made to that system from time to time which are likely to affect the way in which it may be accessed and used.

### **The Vote**

12.6 In respect of each Change Proposal and the Change Report relating to that proposal, the Groups within the Party Categories specified in that Change Report as eligible to vote shall be entitled to cast a vote to accept or to reject either or both of:

12.6.1 the proposed variation set out in that proposal; and

12.6.2 the proposed implementation date set out in that proposal,

by means of the system established under Clause 12.4.

12.7 Each Group which casts a vote on whether to accept or reject the proposed variation in respect of a Change Proposal shall:

12.7.1 vote on the basis of its judgment, made by it in good faith, as to whether or not, if the proposed variation were made, this Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made; and

12.7.2 where it wishes to do so, provide a statement in accordance with the system established under Clause 12.4 of the reasons, by reference to the DCUSA Objectives, for its vote.

### **Weighted Votes**

12.8 The vote of each Group shall be allocated a weighting expressed as a percentage of the votes of all of the Groups within the same Party Category who voted (the

**Weighted Vote**), which weighting shall be calculated in accordance with the provisions of Clauses 12.9 to 12.16.

12.9 In the case of:

12.9.1 the Party Category comprising the IDNO/OTSO Parties; or

12.9.2 any other Party Category where If five or fewer Groups in ~~that~~<sup>that</sup> Party Category cast their vote,

each ~~such~~ Group in the Party Category shall have an equal Weighted Vote, calculated by dividing 100% by the number of Groups within that Party Category who cast their vote.

12.10 Subject to Clause 12.9~~If more than five Groups in any Party Category cast their vote,~~ the Weighted Vote of each ~~such~~ Group shall be calculated as follows:

$$WV = V + SVA$$

where:

**WV** is the Weighted Vote;

**V** is an initial allocation of a weighting to the vote of that Group (the **Basic Vote**), calculated in accordance with Clause 12.11; and

**SVA** is an adjustment factor (expressed as a percentage), designed to re-allocate between the Parties in a Party Category the Basic Vote of any Party in that category that is greater than 20% (the **Surplus Vote Adjustment**), and calculated in accordance with Clause 12.13.

### **Basic Vote**

12.11 For the purposes of Clause 12.10, the Basic Vote (**V**) shall be calculated as follows:

$$V = \frac{N}{TN} \times 100\%$$

where:

**N** is (subject to Clause 12.12):

- (a) in respect of a Group comprised of DNO Parties, the aggregate number of Metering Points which each such DNO Party has on its MPAS Registration System;
- (b) in respect of a Group comprised of IDNO Parties, the aggregate number of Metering Points which each such IDNO Party has on its MPAS Registration Systems;
- (c) in respect of a Group comprised of Supplier Parties, the aggregate number of Metering Points against which those Suppliers are registered across all of the MPAS Registration Systems; and
- (d) in respect of a Group comprised of DG Parties, the sum of the Maximum Export Capacities of all of the Entry Points relating to Metering Systems for which those DG Parties are Registered; and

**TN** is, in respect of any Group, the sum of the values of N for all the Groups within the same Party Category as that Group which cast a vote.

12.12 In undertaking the calculations provided for in Clause 12.11, the Secretariat shall rely upon:

12.12.1 in the case of Clauses 12.11(i), (ii) and (iii), the information regarding registrations last provided under clause 27.6 of the MRA and made available to the Secretariat prior to the vote in question; and

12.12.2 in the case of Clause 12.11(iv), the Party Details as set out in Schedule 11 on the date of the vote in question.

### **Surplus Vote Adjustment**

12.13 For the purposes of Clause 12.10, the Surplus Vote Adjustment (**SVA**) shall:

12.13.1 in respect of a Party Category within which the Basic Vote of any Group is

greater than 20%:

- (A) for that Group, have a negative value equal to the sum by which its Basic Vote is greater than 20% (the **Surplus Vote**); and
- (B) for each other Group within the same Party Category who casts a vote, be calculated in accordance with Clause 12.14; and

12.13.2 in respect of each Group in any other Party Category, have the value of zero.

12.14 In respect of each Group to which Clause 12.13.1(B) refers, the Surplus Vote Adjustment (**SVA**) shall have a positive value calculated as follows:

$$SVA = SV \times \frac{N}{XN}$$

where:

**SV** is the sum of the values of the Surplus Votes of any Groups in the same Party Category as that Group;

**N** has the same meaning for that Group as it does in Clause 12.11; and

**XN** is the sum of the values of N for all the Groups in the same Party Category as that Party which cast a vote, excepting those with a Surplus Vote.

### **Further Adjustment**

12.15 Where, on applying the formula at Clause 12.14 in respect of any Group, the Weighted Vote of that Group is greater than 20%:

12.15.1 the Weighted Vote of that Group shall be 20%;

12.15.2 the amount by which the Weighted Vote of that Group would otherwise have exceeded 20% shall be allocated between the other Groups within the same Party Category which cast a vote and which have Weighted Votes of less than 20%;

12.15.3 that amount shall be allocated between those other Groups on the same basis as a Surplus Vote allocated in accordance with Clause 12.14; and

12.15.4 the Weighted Votes of those other Groups shall be increased accordingly.

12.16 Where the effect of any adjustment in accordance with Clause 12.15 is to increase the Weighted Vote of any Group so that it is greater than 20%, a process of adjustment equivalent to that set out in Clause 12.15 shall be repeated until no Group's Weighted Vote is greater than 20%.

If no Group in a Party Category Votes

12.17 Where, in respect of a Change Proposal and a Party Category that is specified in the relevant Change Report as being eligible to vote, no Group in that Party Category casts a vote, such Party Category shall, for the purposes of Clause 13, be treated as if it were not eligible to vote.

### **13. THE CHANGE DECISION**

- 13.1 The purpose of this Clause 13 is to determine whether or not a Change Proposal is to be accepted and the proposed variation to this Agreement made accordingly. The process shall be applied independently to the vote concerning the proposed variation and to the vote concerning the proposed implementation date, to determine in each case whether the proposal is accepted or rejected.
- 13.2 In the case of a Change Proposal that relates to a Part 1 Matter:
- 13.2.1 that proposal shall not be accepted unless, in accordance with the provisions of this Clause 13, the Authority determines that it shall be so accepted; and
  - 13.2.2 a vote by the Parties to accept or reject that proposal shall have the status of a recommendation to the Authority to determine that the proposal is to be accepted or rejected, and shall not by itself have the effect of an acceptance or rejection of the proposal.
- 13.3 In the case of a Change Proposal which relates to a Part 2 Matter, a vote which meets the criteria set out in this Clause 13 shall be effective to determine the acceptance or the rejection of the proposal.

#### **Declaration by the Secretariat**

- 13.4 The Secretariat shall be responsible, in respect of each Change Proposal, for:
- 13.4.1 monitoring the votes which are received and collated in accordance with Clause 12.4;
  - 13.4.2 calculating whether the votes, having regard to the Weighted Vote allocated to each Group, are sufficient to meet the thresholds set out in Clauses 13.5 and 13.6;
  - 13.4.3 having made those calculations, declaring whether:
    - (A) in the case of a Change Proposal that relates to a Part 1 Matter, the Parties are deemed to have recommended to the Authority that the

proposal should be accepted or rejected; and

(B) in the case of a Change Proposal that relates to a Part 2 Matter, the proposal is accepted or rejected; and

13.4.4 publishing, on the Website, which Groups voted and how each such Group voted.

### **Part 1 Matters**

13.5 Where a Change Proposal relates to a Part 1 Matter, the Parties shall:

13.5.1 be deemed to recommend to the Authority that the proposal should be accepted where, in respect of each Party Category that was eligible to vote, the sum of the Weighted Votes of the Groups in that Party Category which voted to accept the proposal is more than 50%; and

13.5.2 in all other cases, be deemed to recommend to the Authority that the proposal should be rejected.

### **Part 2 Matters**

13.6 Where a Change Proposal relates to a Part 2 Matter, that proposal shall be accepted where, in respect of each Party Category that was eligible to vote:

13.6.1 the number of Groups in that Party Category which voted to accept the proposal is greater than 65% of the total number of Groups in that Party Category which voted; and

13.6.2 the sum of the Weighted Votes of those Groups in that Party Category which voted to accept the proposal is greater than 65%.

13.7 In all other cases a Change Proposal which relates to a Part 2 Matter shall be rejected.

### **Notice by the Secretariat**

13.8 The Secretariat shall, as soon as is reasonably practicable after making a declaration under Clause 13.4.3, give notice of that declaration to:

- 13.8.1 each Party;
- 13.8.2 the National Consumer Council;
- 13.8.3 the [National Electricity Transmission](#)~~GB~~ System Operator;
- 13.8.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4; and
- 13.8.5 the Authority,

and shall ensure that the Change Register is updated so as to indicate the declaration made in relation to the Change Proposal.

### **The Change Decision – Part 1 Matters**

- 13.9 Where the Authority receives notice from the Secretariat of a declaration made under Clause 13.4.3 in respect of a Change Proposal relating to a Part 1 Matter, the Authority shall determine whether that proposal shall be accepted or rejected having regard to:
  - 13.9.1 its principal objective and statutory duties under sections 3A to 3D of the Act; and
  - 13.9.2 whether in its opinion the proposed variation, if it were made, would better facilitate the achievement of the DCUSA Objectives than if that variation were not made.
- 13.10 In making a determination under Clause 13.9, the Authority:
  - 13.10.1 may follow such procedure as it considers appropriate;
  - 13.10.2 may have regard to such matters, and to any representations by such Parties, as it considers appropriate; and
  - 13.10.3 shall in any event have regard to the recommendation made by the Parties by virtue of the Voting Procedure.
- 13.11 Where the Authority is to make a determination under Clause 13.9, the Secretariat

shall provide the Authority with a copy of the relevant Change Report (with the notice referred to in Clause 13.8 attached) and shall, at the Authority's request, provide any other existing documents or information in respect of the Change Proposal in question.

13.12 Where the Authority, acting in accordance with Clauses 13.9 and 13.10, determines that a Change Proposal shall be accepted or rejected, it shall direct the DNO Parties and IDNO Parties accordingly and that proposal shall be so accepted or rejected for the purposes of this Clause 13. Those Parties agree that such direction will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat). Where such direction is, nevertheless, communicated to the DNO Parties and IDNO Parties, those Parties shall, as soon as practicable following receipt of such direction, forward a copy of the determination contained therein to the Panel (care of the Secretariat). The DNO Parties and IDNO Parties agree that the receipt by the Panel of any one such copy shall be an instruction on behalf of all DNO Parties and IDNO Parties to amend the DCUSA in accordance with the determination.

13.13 The Secretariat shall, as soon as is reasonably practicable after the receipt by the Panel of a determination by the Authority, give notice of that determination to:

13.13.1 each Party;

13.13.2 the National Consumer Council;

13.13.3 the [National Electricity Transmission](#)GB System Operator; and

13.13.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4,

and shall ensure that the Change Register is updated so as to indicate the determination made in relation to the Change Proposal.

13.14 Where any Change Proposal that relates to a Part 1 Matter is accepted by virtue of Clause 13.12, the Panel shall ensure that the proposal is subject to Implementation in accordance with Clause 14.

## **The Change Decision – Part 2 Matters**

13.15 The Panel shall, in the case of any Change Proposal that relates to a Part 2 Matter and that is accepted in accordance with Clause 13.6, ensure that the proposal is subject to Implementation in accordance with Clause 14.

### **Appeal of Part 2 Decisions**

13.16 Any Party which is aggrieved by the acceptance or rejection of a Change Proposal by virtue of Clause 13.6 or Clause 13.7 may ask the Authority to determine that the proposal relates not to a Part 2 Matter but to a Part 1 Matter.

13.17 Such a request may only be made within 10 Working Days after the Secretariat notifies the aggrieved Party of the acceptance or rejection of the proposal in accordance with Clause 13.8.

13.18 Such a request must:

13.18.1 be made in writing;

13.18.2 state why the Party believes (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter; and

13.18.3 be copied to the Secretariat and to the Panel.

13.19 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter:

13.19.1 the acceptance or rejection of the proposal by virtue of Clause 13.6 shall be deemed to have no effect;

13.19.2 on being notified of the determination by the Authority, the Secretariat shall treat the proposal as relating to a Part 1 Matter for the purposes of Clause 13.5 and shall make a declaration under that Clause as if no declaration had previously been made; and

13.19.3 the Authority shall determine whether the proposal shall be accepted or rejected in accordance with Clauses 13.9 and 13.10.

13.20 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal does not relate to a Part 1 Matter, the acceptance or rejection of the proposal by virtue of Clause 13.6 or Clause 13.7 shall continue to have effect.

**SECTION 2**  
**COMMERCIAL ARRANGEMENTS**

**SECTION 2A – DISTRIBUTOR TO SUPPLIER/GENERATOR**  
**RELATIONSHIPS**

## **SCOPE OF SECTION 2A**

This Section 2A and the Schedules referred to in it set out the terms and conditions under which a DNO Party or an IDNO Party shall provide Use of Distribution System to a Supplier Party or a DG Party.

## 15. INTERPRETATION OF SECTION 2A

### Party Obligations

- 15.1 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, a reference to a **Company** is a reference to each Party that is either a DNO Party or an IDNO Party separately and individually and, where an obligation is imposed on, or a right granted to, a Company, that obligation is imposed on, and that right is granted to, each such Party separately and independently.
- 15.2 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, a reference to a **User** is:
- 15.2.1 a reference to each Party that is either, or both of, a Supplier Party or a DG Party separately and individually and, where an obligation is imposed on, or a right is granted to, a User, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and
- 15.2.2 when made in relation to a Company and any period of time, a reference to each User (separately, individually and to the relevant extent) who is (or was), during that period, Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System (provided that, in the case of Clauses 15, 16, 17 and 24, it shall include those Users who are taking steps to be so Registered, and that, in the case of Clauses 15, 24, 34 and 35, it shall include those Users who were once so Registered).
- 15.3 This Section 2A, and the Schedules when applied pursuant to it, shall:
- 15.3.1 only create rights and obligations between DNO/IDNO Parties ~~or IDNO Parties~~ (on the one hand) and Supplier Parties/DG Parties (on the other), and shall not create rights or obligations between DNO-~~Parties~~/IDNO Parties and other DNO-~~Parties~~/IDNO Parties or between Supplier/DG Parties and other Supplier/DG Parties;

15.3.2 not apply to the OTSO Party;

~~15.3.1~~15.3.3 only create obligations between a Company and a User to the extent that, and in relation to those periods for which, that User is (or was) or is seeking to be Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System; and

~~15.3.2~~15.3.4 not impose any obligations between a Company and a User in relation to periods for which that User is (or was) not, and is not seeking to be, Registered in respect of any Metering Points or Metering Systems relating to Entry Points or Exit Points on that Company's Distribution System.

### **References in Relation to Companies and Users**

15.4 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, references to:

15.4.1 a Metering Point or Metering System are, when made in relation to a User and any period of time, references to a Metering Point or Metering System Registered to that User during that period;

15.4.2 an Entry Point or Exit Point are, when made in relation to a Company, references to an Entry Point or Exit Point on that Company's Distribution System;

15.4.3 an Entry Point or Exit Point are, when made in relation to a User and any period of time, references to an Entry Point or Exit Point relating to a Metering Point or Metering System Registered to that User during that period;

15.4.4 a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge are, when made in relation to a Company, references to a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge relating to an Entry Point or Exit Point on such Company's Distribution System; and

15.4.5 a Connectee, Connected Installation, Connection Agreement, Contract or Charge are, when made in relation to a User and any period of time, references to a Connectee, Connected Installation, Connection Agreement, Contract or Charge relating to an Entry Point or Exit Point relating to a Metering Point or Metering System Registered to that User during that period.

#### **Use of the Same Market Domain I.D.**

15.5 Where, in relation to any period of time, more than one User is using the same Market Domain I.D. and where it is not reasonably practicable for a Company to identify which of those Users is Registered in respect of a particular Metering Point or Metering System, the Users shall be deemed, as against that Company, to be jointly and severally liable in respect of that Metering Point or Metering System.

#### **Additional Interpretation**

15.6 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, any reference to a “charging period” is, subject to any contrary indication, a reference to the period specified in the Relevant Charging Statement (or, if no period is specified therein, a calendar month).

#### **Distribution Code, Distribution Licence and Distribution Business**

15.7 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, any reference to “Distribution Code”, “Distribution Licence” and “Distribution Business” are references to the Company’s Distribution Code, the Company’s Distribution Licence and the Company’s Distribution Business.

## **18. USE OF SYSTEM**

### **Provision of Use of System**

18.1 Subject to the other provisions of this Agreement, the Company shall convey electricity through its Distribution System, for the User, to each Exit Point and from each Entry Point relating to a Metering Point or Metering System Registered to that User, subject to (in respect of each such Entry Point and Exit Point):

18.1.1 any arrangements made between the respective Connectee and the Company and the requirements (if any) of the respective Connectee agreed between such Connectee and the Company;

18.1.2 the Maximum Import Capacity (if any) or the Maximum Export Capacity (if any); and

18.1.3 such variations (if any) as may be permitted by the Regulations.

### **Prior Requirements: General**

18.2 The obligation of the Company to convey electricity to a particular Exit Point or from a particular Entry Point pursuant to Clause 18.1 is, in each case, subject to:

18.2.1 there being a Connection Agreement in full force and effect relating to the connection of the relevant Connected Installation (whether such Connection Agreement was entered into in accordance with Clause 17 or otherwise);

18.2.2 the Company receiving confirmation that a Qualified Meter Operator Agent, Qualified Data Collector and Qualified Data Aggregator have been appointed in relation to that Exit Point or Entry Point (except that no Meter Operator Agent is required to be appointed in relation to an Unmetered Supply);

18.2.3 subject to Clause 29.10, the Company receiving confirmation that metering equipment has been installed in accordance with Clause 29;

18.2.4 where applicable, the Company receiving confirmation that the User has given notice of that Exit Point or Entry Point (as the case may be) to the

[National Electricity TransmissionGB](#) System Operator pursuant to the Connection and Use of System Code and the Grid Code (where appropriate); and

- 18.2.5 the Company not being entitled under Schedule 6 of the Act to De-energise an Exit Point or Entry Point.

### **Prior Requirements: Exit Points**

18.3 In addition to the conditions set out in Clause 18.2, the obligation of the Company to convey electricity to an Exit Point is also subject to:

18.3.1 the User being validly Registered in respect of each Metering Point or Metering System relating to that Exit Point;

18.3.2 the User being authorised by its Supply Licence to supply electricity to each of the premises to be supplied with electricity through such Exit Point (or, where the Exit Point relates to a User Installation that comprises a generating station, the User being authorised by its Generation Licence to generate electricity at that generating station);

18.3.3 where the User intends to provide any Unmetered Supply to a Customer, there being in full force and effect, in relation to that Exit Point, an Unmetered Supplies Certificate and an Unmetered Demand Connection Agreement;

18.3.4 where the User intends to provide an Unmetered Supply to a Customer which is to be submitted to Settlement on the basis of half-hourly data generated by an Equivalent Meter, a Qualified Meter Administrator having been and remaining appointed by the User in relation to that Exit Point; and

18.3.5 the User being party to an agreement with the Company or a third party for provision of the services of meter asset provision in relation to that Exit Point. In the event that the User is not a party to such an agreement, the Company shall be entitled to provide such services and to pass on to and recover from the User the costs of so doing.

**Prior Requirements: Entry Points**

18.4 In addition to the conditions set out in Clause 18.2, the obligation of the Company to convey electricity from an Entry Point is also subject to:

18.4.1 the User being validly Registered in respect of each Metering Point or Metering System relating to that Entry Point; and

18.4.2 where the Entry Point is also an Exit Point, the User or another user being validly Registered for the supply of electricity at such Entry Point.

**SECTION 2B – DISTRIBUTOR TO DISTRIBUTOR/[OTSO](#)  
RELATIONSHIPS**

**SCOPE OF SECTION 2B**

This Section 2B and the Schedules referred to in it, together with the relevant Bilateral Connection Agreement, set out the terms and conditions ~~pursuant to~~ which a DNO/IDNO Party ~~or an IDNO Party~~ shall allow ~~Connection of~~ the ~~Distribution~~ System of ~~another~~ DNO ~~Party or~~ /IDNO/OTSO Party to Connect to the DNO/IDNO Party's Distribution System, and pursuant to which the DNO/IDNO Party shall provide Use of Distribution System to the ~~at other~~ DNO ~~Party or~~ /IDNO/OTSO Party.

## 36. INTERPRETATION OF SECTION 2B

### Party Obligations

36.1 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the terms defined in Clause 1 when used in this Section 2B or those Schedules, a reference to a Company is a reference to each Party, separately and individually, that is ~~either a DNO Party or an~~ IDNO Party acting in the capacity of a Party who provides Connection and Use of Distribution System to ~~another DNO Party or~~ IDNO/OTSO Party and, where an obligation is imposed on, or a right granted to, a Company, that obligation is imposed on, and that right is granted to, each such DNO/IDNO Party separately and independently.

36.2 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the terms defined in Clause 1 when used in this Section 2B or those Schedules, a reference to a User is:

36.2.1 a reference to each DNO/IDNO/OTSO Party, separately and individually, ~~that is either a DNO Party or an IDNO Party~~ acting in the capacity of a Party who receives Connection and Use of Distribution System from ~~another DNO Party or~~ IDNO Party, and where an obligation is imposed on, or a right granted to, a User, that obligation is imposed on, and that right is granted to, each such DNO/IDNO/OTSO Party separately and independently; and

36.2.2 when made in relation to a Company and any period of time, a reference to each User (separately, individually and to the relevant extent) who is (or was), during that period, Connected to that Company's Distribution System (provided that, in the case of Clauses 36, 37, 38, 39 and 47, it shall include those Users who are taking steps to be so Connected, and that, in the case of Clauses 36, 38, 47, 50 and 51, it shall include those Users who were once so Connected).

36.3 This Section 2B, and the Schedules when applied pursuant to it, shall, together with the relevant Bilateral Connection Agreement:

36.3.1 only create rights and obligations between DNO ~~Parties~~/IDNO Parties (on the

one hand) and ~~other~~-DNO-~~Parties~~/IDNO/OTSO Parties (on the other); ~~and~~

- 36.3.2 shall not apply to Supplier/DG Parties;
- 36.3.3 only create obligations between a Company and a User to the extent that, and in relation to those periods for which, the User is (or was) or is seeking to be Connected via a Connection Point to the Company's Distribution System; and
- 36.3.4 not impose any obligations between a Company and a User in relation to periods for which that User is (or was) not, and is not seeking to be, Connected via a Connection Point to the Company's Distribution System.

### References in Relation to Companies and Users

- 36.4 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the relevant Bilateral Connection Agreement, references to:
- 36.4.1 a Connection Point are references to a Connection Point between the Company's Distribution System and the User's ~~Distribution~~-System;
- 36.4.2 a Connectee are, when made in relation to the Company or the Company's Distribution System, references to a Connectee to the Company's Distribution System, and, when made in relation to the User or the User's ~~Distribution~~-System, references to a Connectee to the User's ~~Distribution~~ System; and
- 36.4.3 Charges are references to the Charges payable by the User to the Company in relation to Connection Points on the Company's Distribution System.

### Additional Interpretation

- 36.5 In this Section 2B, in the Schedules when applied pursuant to it, and in the relevant Bilateral Connection Agreement, any reference to a "charging period" is, subject to any contrary indication, a reference to the period specified in the Relevant Charging Statement (or, if no period is specified therein, a calendar month).

### Disputes

36.6 Notwithstanding Clause 58, any dispute between the Company and the User arising under, out of, or in connection with this Section 2B or a relevant Bilateral Connection Agreement will not be referred to arbitration unless:

36.6.1 the relevant provision of this Section 2B expressly provides for arbitration; or

36.6.2 the Company and the User agree to refer the dispute to arbitration.

### **37. CONDITIONS PRECEDENT**

- 37.1 The rights and obligations of each Company as against each User (and of each User as against each Company) under the remaining Clauses of this Section 2B (save for Clauses 50 and 51) are conditional upon each of the following conditions precedent being fulfilled:
- 37.1.1 that the User holds a Distribution Licence [or is the OTSO Party](#);
  - 37.1.2 that the Company holds a Distribution Licence;
  - 37.1.3 that both the User and the Company are party to the Connection and Use of System Code and any necessary supplemental agreement pursuant to it;
  - 37.1.4 that both the User [\(unless it is the OTSO Party\)](#) and the Company are party to the Master Registration Agreement and the Data Transfer Service Agreement;  
and
  - 37.1.5 that both the User and the Company are party to the BSC.
- 37.2 If the conditions precedent set out in Clause 37.1.1 to 37.1.5 (inclusive) are not fulfilled in respect of a Company or a User at the date this Agreement becomes effective in respect of that Party, that Party shall take all appropriate steps within its power to procure the fulfilment of those conditions relating to it which have not already been fulfilled.
- 37.3 Once each of the conditions precedent in Clause 37.1 has been fulfilled in respect of a Company or a User, that Party shall take all appropriate steps within its power to keep such conditions precedent relating to it fulfilled.

## **38. BILATERAL CONNECTION AGREEMENTS**

### **New Bilateral Connection Agreements**

38.1 Where requested by the User or its agent, the Company shall offer to enter into a Bilateral Connection Agreement with the User in respect of each relevant Connection Point or group of Connection Points. Such offer shall be made as soon as is practicable and within any period required by the Company's Distribution Licence or the Act.

38.2 Where either the Company or the User disputes the terms of the Bilateral Connection Agreement either of them shall be entitled to refer the dispute to the Authority in accordance with the provisions of Condition 7 of the Company's Distribution Licence.

38.3 In the event that:

38.3.1 the ~~Distribution~~ System of one DNO-~~Party~~/IDNO/OTSO Party is connected to the Distribution System of ~~another~~ DNO-~~Party~~/IDNO Party (so that, subject to energisation, electricity may flow between the two); but

38.3.2 there is no written agreement between them regarding such connection, either of them may, on notice to the other, require such other to (as applicable) enter into, or offer to enter into, a Bilateral Connection Agreement in respect of the point of such connection. Where no such Bilateral Connection Agreement can be agreed within a reasonable period of time, either of them may (save where pending determination of a dispute referred to the Authority in respect of such point of connection) de-energise or disconnect such point of connection.

### **Deemed Bilateral Connection Agreements**

38.4 In the event that:

38.4.1 the ~~Distribution~~ System of one DNO-~~Party~~/IDNO/OTSO Party is connected to the Distribution System of ~~another~~ DNO-~~Party~~/IDNO Party (so that, subject to energisation, electricity may flow between the two); but

38.4.2 there is no written agreement between them regarding such connection,

those two Parties agree that the limitations on liability set out in Clause 53 shall apply in relation to such connection.

- 38.5 Where a party to a Bilateral Connection Agreement (a “**disposing party**”) disposes of the Distribution System (or relevant part thereof) relating to one or more of the Connection Points that are subject to that Bilateral Connection Agreement, the disposing party shall notify the other party to that Bilateral Connection Agreement (the “**continuing party**”).
- 38.6 Where the person (the “**acquiring party**”) who acquires such Distribution System (or part thereof) is a Party to this Agreement:
- 38.6.1 it shall notify the continuing party of such acquisition; and
- 38.6.2 it is agreed that (subject to any contrary agreement between the continuing party and the acquiring party) the continuing party and the acquiring party shall (with effect from the time of acquisition) have the benefit of, and be subject to, a Bilateral Connection Agreement on identical terms to that referred to in Clause 38.5 (insofar as applicable to the Connection Points referred to in Clause 38.5).

### **Breach of Bilateral Connection Agreements**

- 38.7 Without prejudice to Clauses 39.1.1 and 40.1.2, a breach of a Bilateral Connection Agreement is not, of itself, a breach of this Agreement.

### **39. THE USER'S RIGHT TO BE CONNECTED AND ENERGISED**

39.1 The obligation of the Company to Connect the relevant Connection Point or Connection Points to its Distribution System, and to Energise the relevant Connection Point or Connection Points, is subject to:

39.1.1 the User entering into a Bilateral Connection Agreement with the Company in respect of such Connection Points and such agreement being in full force and effect (and any conditions precedent therein being satisfied);

39.1.2 the User and the Company having exchanged such contact, invoicing and other similar information as the other reasonably requests and agreeing arrangements for the provision of Use of Distribution System information to the Company; and

39.1.3 where the Connection Point is a ~~Distribution~~-Systems Connection Point, such Connection Point being registered in accordance with the provisions of the BSC.

39.2 Subject to the provisions of this Section 2B and the relevant Bilateral Connection Agreement, the Company shall Connect the User's ~~Distribution~~-System at each of the relevant Connection Points, and Energise each such Connection Point.

39.3 Subject to the provisions of this Section 2B and the relevant Bilateral Connection Agreement, the Company shall use its reasonable endeavours to:

39.3.1 ensure the Maximum Import Capacity and the Maximum Export Capacity is available to the User at all times; and

39.3.2 maintain the connection characteristics at the Connection Point in accordance with the provisions of the relevant Bilateral Connection Agreement.

#### **Land Rights**

39.4 In respect of each Connection Point, where either the Company has Connection Assets installed on property under the control of the User, or the User has Connection Equipment installed on the property of the Company then the Company and the User shall agree appropriate arrangements in respect of the rights to place such Connection

Equipment or Connection Assets on the property of the other and to operate such Connection Assets or Connection Equipment. Such agreement will be part of the relevant Bilateral Connection Agreement or in an agreement pursuant to the relevant Bilateral Connection Agreement.

### **Access Rights**

39.5 In respect of each Connection Point and subject to the other provisions of this Section 2B and the relevant Bilateral Connection Agreement, where the Company has Connection Assets installed on property under the control of the User, the User shall provide the Company, its invitees and any relevant employee, agent or contractor acting on behalf of the Company, with safe and unobstructed access at all times to such Connection Assets together with such facilities as the Company may reasonably request and the User may reasonably be expected to provide. The Company shall procure that any individuals to whom access is given pursuant to this Clause 39.5 shall comply with all reasonable directions given by the User as to general safety and site security arrangements.

39.6 In respect of each Connection Point and subject to the other provisions of this Section 2B and the relevant Bilateral Connection Agreement where the User has Connection Equipment installed on property under the control of the Company, the Company shall provide the User, its invitees and any relevant employee, agent or contractor acting on behalf of the User, with safe and unobstructed access at all times to such Connection Equipment together with such facilities as the User may reasonably request and the Company may reasonably be expected to provide. The User shall procure that any individuals to whom access is given pursuant to this Clause 39.6 shall comply with all reasonable directions given by the Company as to general safety and site security arrangements.

### **Maintenance of Assets**

39.7 Subject to the terms of this Agreement and the relevant Bilateral Connection Agreement (and without prejudice to Company's rights to make Modifications) the Company and the User shall use all reasonable endeavours to maintain their respective Connection Equipment relating to the Connection Point in the condition necessary to render the Connection Point fit for the purpose of conveying electricity in accordance

with this Agreement and the relevant Bilateral Connection Agreement.

- 39.8 Subject to the relevant Bilateral Connection Agreement, the Company and the User each acknowledges that the other may use, in relation to its ~~Distribution~~-System, whatever equipment of whatever nature it considers appropriate, provided the same complies with all Relevant Instruments, legislative requirements and Directives.

### **Maximum Import Capacity and Maximum Export Capacity**

- 39.9 The Maximum Import Capacity and Maximum Export Capacity shall be specified in the relevant Bilateral Connection Agreement and the User shall use its reasonable endeavours to ensure that the electricity imported and exported does not exceed the Maximum Import Capacity and the Maximum Export Capacity (respectively).
- 39.10 The Company shall only be obliged to export or import electricity up to the Maximum Import Capacity and Maximum Export Capacity as specified in the relevant Bilateral Connection Agreement. Where the User exceeds the Maximum Import Capacity or the Maximum Export Capacity, it shall be a breach of the relevant Bilateral Connection Agreement, but not of this Agreement.
- 39.11 Where the User's import of electricity exceeds the Maximum Import Capacity or the User's export of electricity exceeds the Maximum Export Capacity (each an "**Event**"), the User shall:
- 39.11.1 upon being notified by the Company, take reasonable actions to reduce the import or export of electricity to within the limits specified in the relevant Bilateral Connection Agreement; and
- 39.11.2 if appropriate propose a variation to the relevant Bilateral Connection Agreement; and/or
- 39.11.3 if appropriate, submit a Modification Application to the Company in accordance with the provisions of Clause 52.

- 39.12 Following the occurrence of an Event (as defined in Clause 39.11), the Company shall be entitled to:

39.12.1 charge the User any additional Use of System Charges for Use of Distribution

System that is in excess of the Maximum Import Capacity or Maximum Export Capacity in accordance with the Company's Relevant Charging Statement;

39.12.2 exercise any rights it may have under Clause 41; and/or

39.12.3 exercise any rights it may have under the relevant Bilateral Connection Agreement.

### **Phase Balance**

39.13 The User shall ensure, as far as is reasonably practicable, that the flow of electricity at each Connection Point is balanced between the phases.

### **Power Factor**

39.14 The User shall at all times and at its own expense take reasonable steps to maintain the power factor of any supply of electricity through each Connection Point is between unity and 0.95 lagging unless otherwise agreed with the Company in the relevant Bilateral Connection Agreement. Any capacitors or other devices provided by the User for power factor improvement purposes shall be controlled so as to ensure that (unless otherwise agreed between the Company and the User) the total capacitance connected to the User's ~~Distribution~~-System at any time is not greater than that required to produce a power factor of unity at that time.

39.15 Nothing in Clause 39.14 shall require the User to treat any Customer taking a supply of electricity from its ~~Distribution~~-System less favourably than equivalent Customers taking supplies of electricity from the Company's Distribution System are treated by the Company in equivalent circumstances.

### **Interference**

39.16 Unless otherwise agreed, the Company and the User shall each ensure that it and its respective employees, contractors, agents and invitees do not alter or interfere in any way with the Connection Equipment of the other.

## 40. USE OF DISTRIBUTION SYSTEM

### Provision of Use of Distribution System

- 40.1 Subject to the other provisions of this Agreement, the Company shall convey electricity through its Distribution System, for the User, to and from each Connection Point subject to:
- 40.1.1 the Company and the User being party to this Agreement and it being in full force and effect;
  - 40.1.2 there being a Bilateral Connection Agreement in full force and effect between the Company and the User in respect of such Connection Point (and any conditions precedent therein being and remaining satisfied);
  - 40.1.3 the Maximum Import Capacity (if any) or the Maximum Export Capacity (if any) set out in the relevant Bilateral Connection Agreement;
  - 40.1.4 where the Connection Point is a ~~Distribution~~-Systems Connection Point, a Meter Operator Agent being (and remaining) appointed; and
  - 40.1.5 such variations (if any) as may be permitted by the Regulations or as otherwise agreed in the relevant Bilateral Connection Agreement.

### Provision of Loss Adjustment Factors

- 40.2 The Company shall provide loss adjustment factors to the User:
- 40.2.1 in respect of each Connection Point to the Company's Distribution System that is not a ~~Distribution~~-Systems Connection Point, 20 Working Days before the User has to provide loss adjustment factors to the BSCCo in accordance with provisions of the BSC; and
  - 40.2.2 in respect of each Connection Point to the Company's Distribution System that is a ~~Distribution~~-Systems Connection Point and where the User is the party responsible under the BSC for submitting the loss adjustment factors to BSCCo, 20 Working Days before the User has to provide loss adjustment factors to the BSCCo in accordance with provisions of the BSC.

## 41. ENERGISATION, DE-ENERGISATION AND RE-ENERGISATION

### Company's Right to De-energise

#### 41.1 The Company may De-energise a Connection Point:

- 41.1.1 if the Company is required to do so in an emergency and in accordance with Clause 41.4;
- 41.1.2 if the User is in material breach of the Bilateral Connection Agreement relating to such Connection Point and such breach results, or is likely to result, in the Company being in breach of the Regulations, the Company's Distribution Code, or any other relevant statutory requirement;
- 41.1.3 if the User is in breach of the Regulations, or is likely to be in material breach of the Regulations, or is likely to compromise the security of the Company's Distribution System or of any ~~other~~ Distribution System or Offshore Transmission System connected to the Company's Distribution System or of the supply of electricity to any Connectee of the Company's;
- 41.1.4 if the Company is required to do so to comply with its obligations under the Company's Distribution Code or any Relevant Instruments;
- 41.1.5 subject to the terms of a replacement agreement, if this Agreement or the relevant Bilateral Connection Agreement is terminated, or the User ceases to be a Party in accordance with the provisions of Clause 54;
- 41.1.6 if the rights of the User are suspended in accordance with Clause 54.2;
- 41.1.7 if requested to do so by the User; or
- 41.1.8 if the Company is required to do so as part of a System Outage on its Distribution System carried out in accordance with its statutory rights and obligations and Good Industry Practice.

### Notice Periods for De-energisation

- 41.2 Prior to De-energising a Connection Point pursuant to Clauses 41.1.2 to 41.1.4, the Company shall first give the User notice in writing, specifying:

- 41.2.1 the nature of the circumstances that have given rise to the right to De-energise;
- 41.2.2 the remedial works required to be carried out (as the Company reasonably determines) by the User or by the Company to remedy such circumstance; and
- 41.2.3 (where the User is to carry out such works) such reasonable period within which the User must carry out such works,

and the Company may only De-energise the Connection Point where the User fails to carry out the remedial works specified in such notice within the period specified in such notice.

- 41.3 In the case of Clause 41.1.2, the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the User (who shall reimburse the Company where such works are undertaken by the Company). In the case of Clauses 41.1.3 and 41.1.4 and where the circumstance giving rise to the right to De-energise was caused by an act or omission of the User (or its employees, contractors or agents), the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the User (who shall reimburse the Company where such works are undertaken by the Company). In the case of Clauses 41.1.3 and 41.1.4 and where the circumstance giving rise to the right to De-energise was caused otherwise than by an act or omission of the User (or its employees, contractors or agents), the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the Company (who shall reimburse the User where such works are undertaken by the User).

### **Emergency De-energisation**

- 41.4 If, in the reasonable opinion of the Company, the condition or manner of operation of the Company's Distribution System or of the User's ~~Distribution~~-System poses an immediate threat of injury to any person or material damage to the Company's Distribution System or to the User's ~~Distribution~~-System, the Company shall have the right to:

- 41.4.1 without prior notice, De-energise the relevant Connection Point by

undertaking De-Energisation Works on the Company's Distribution System;  
or

41.4.2 request the User to immediately De-energise the Connection Point, or that part of the User's ~~Distribution~~ System connected to the Connection Point that has given rise to the Company's request under Clause 41.4 (in which case the User shall promptly comply with such request); or

41.4.3 where the Company has the appropriate authorisations from the User in writing or under the relevant Bilateral Connection Agreement, without prior notice, De-energise that part of the User's ~~Distribution~~ System.

41.5 De-energisation Works undertaken under Clause 41.4 shall be undertaken in accordance with the relevant provisions of the Regulations.

41.6 Where the Company undertakes De-energisation Works pursuant to Clause 41.4.1 or 41.4.3, the Company shall give notice to the User, as soon as is reasonably practicable, of the fact that the Connection Point has been De-energised.

41.7 Where the User undertakes De-energisation Works pursuant to Clause 41.4.2, the User shall give notice to the Company, as soon as is reasonably practicable, of the fact that the Connection Point has been De-energised.

### **Post Emergency Re-energisation**

41.8 Where a Connection Point has been De-energised pursuant to Clause 41.4:

41.8.1 in the case where the Company has De-energised the Connection Point by undertaking De-energisation Works on its Distribution System, the Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist and give notice to the User that such Re-energisation Works have been completed;

41.8.2 in the case where the User has De-energised the Connection Point by undertaking De-energisation Works on its ~~Distribution~~ System, the Company shall advise the User as soon as is reasonably practicable after the

circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist and the User shall then be entitled to undertake Re-energisation Works on its ~~Distribution~~-System to Re-energise the Connection Point and shall, where applicable, give notice, as soon as reasonably practicable, to the Company that such Re-energisation Works have been completed; or

41.8.3 in the case where the Company has De-energised the Connection Point by undertaking De-energisation Works on the User's ~~Distribution~~-System, the Company shall, as soon as is reasonably practicable after the circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist:

- (A) advise the User; and
- (B) with the consent of the User, undertake Re-energisation Works on the User's ~~Distribution~~-System to Re-energise such Connection Point and advise the User when such Re-energisation Works have been completed; or
- (C) authorise the User to undertake such Re-energisation Works (in which case the User shall, as soon as reasonably practicable, notify the Company once such Re-Energisation Works have been completed).

### **Disputes on remedial works**

41.9 Where the User disputes the nature of the remedial works specified, or the period for undertaking such remedial works specified, in any notice issued by the Company pursuant to Clause 41.2, then the Company and the User shall negotiate in good faith to resolve such dispute. If such dispute remains unresolved after 20 Working Days either the Company or the User shall be entitled to refer such dispute for arbitration in accordance with the provisions of Clause 58.

41.10 Where the Company requires remedial works to be undertaken prior to determination of the dispute, the User shall undertake any specified remedial works in accordance with the notice issued pursuant to Clause 41.2. Where arbitration determines that

remedial works were not required, or that a lower cost remedial solution would have remedied the circumstance giving rise to the right to De-Energise, the Company shall reimburse the User for those costs that are in excess of the determined solution (together with any applicable VAT).

### **De-energisation and Re-energisation Works**

41.11 If the Company resolves to De-energise a Connection Point pursuant to Clause 41.1:

41.11.1 the Company shall decide on the extent and nature of the De-energisation Works reasonably required to De-energise the relevant Connection Point;

41.11.2 the Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended; and

41.11.3 except where the Company resolves to De-energise a Connection Point pursuant to:

(A) Clause 41.1.1 (where the emergency is caused by one or more of (i) the Company, (ii) the Company's Connectees, and (iii) persons other than the User acting in relation to the Company's Distribution System);

(B) Clause 41.1.4; or

(C) Clause 41.1.8,

the Company shall be entitled to undertake both the De-energisation Works and the subsequent Re-energisation Works at the cost of the User, and where required, the User shall pay to the Company the relevant Transactional Charges associated with both the De-energisation Works and the subsequent Re-energisation Works.

41.12 Subject to Clauses 41.8.3(c) and 41.13.2, the User shall not be entitled to Re-energise a Connection Point which has previously been De-energised by the Company.

### **User's Right to Energise, De-energise or Re-energise a Connection Point**

41.13 The User may Energise, De-energise or Re-energise a Connection Point by

undertaking Energisation Works, De-energisation Works or Re-energisation Works:

41.13.1 (subject to Clause 41.12) on the User's ~~Distribution~~ System at the Connection Point; or

41.13.2 on the Company's Distribution System at the Connection Point where the User has agreed with the Company that the User may do so in that specific instance.

41.14 Subject to Clause 41.13, where the User undertakes Energisation Works, De-energisation Works or Re-energisation Works and such works involve works on the Company's Connection Equipment the User shall undertake such works in accordance with the provisions of this Agreement and the relevant Bilateral Connection Agreement.

#### **Works Undertaken by the User**

41.15 Energisation Works, De-energisation Works and Re-energisation Works on the Company's Connection Equipment carried out by or on behalf of the User pursuant to this Clause 41 shall be carried out at the User's cost by a suitably competent person who is either engaged by the User and authorised in writing to carry out such work or who:

41.15.1 is an Approved Contractor, in accordance with the procedure set out in Schedule 5;

41.15.2 is a Competent Person to whom a Permission has been issued, in accordance with the procedure set out in Schedule 5, to carry out the particular activities comprising the Energisation Works, De-energisation Works or Re-energisation Works in question; and

41.15.3 acts in accordance with the requirements set out in Schedule 5.

#### **Works Undertaken by the Company**

41.16 Where:

41.16.1 neither the User nor any of its contractors is an Approved Contractor; or

41.16.2 no employee of the User or any of its contractors (if Approved Contractors) holds a Permission; or

41.16.3 the User does not have the rights of access required to undertake such Energisation Works, De-energisation Works or Re-energisation Works; or,

41.16.4 where the Company and the User so agree,

the Company shall, subject to the provisions of this Agreement and the relevant Bilateral Connection Agreement, to the extent that it may lawfully do so, carry out Energisation Works, De-energisation Works and Re-energisation Works at the relevant Connection Point on behalf of the User. Such works will be at the cost of the User and carried out within a reasonable time or, in circumstances of urgency, as soon as is reasonably practicable. The Company shall on request by the User inform the User of its reasonable requirements for the details by reference to which Connection Points to be Energised, De-energised or Re-energised are to be identified.

### **Good Industry Practice**

41.17 The Company and the User shall both act in accordance with Good Industry Practice when carrying out, or procuring the carrying out of, any Energisation Works, De-energisation Works or Re-energisation Works.

### **Duty to Indemnify**

41.18 Where the Company carries out works on behalf of the User pursuant to Clause 41.16:

41.18.1 the Company shall indemnify the User against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the User as a consequence of, physical damage to the property of the User, its officers, employees or agents, and in respect of the liability of the User to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the Company (or its employees, contractors or agents) acting contrary to an accurate and appropriate instruction to Energise, De-energise or Re-energise a Connection Point; and

41.18.2 the User shall indemnify the Company against all actions, proceedings, costs,

demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, physical damage to the property of the Company, its officers, employees or agents, and in respect of the liability of the Company to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the Company (or its employees, contractors or agents) acting in reliance on any instructions given by the User to the Company which are materially inaccurate or misleading,

provided that (notwithstanding that an indemnity is given) neither the Company's nor the User's liability, pursuant to this Clause 41.18 and in respect of a particular incident or series of related incidents, shall exceed the figure referred to in Clause 53.1.

41.19 Where the User carries out works on the Company's Distribution System pursuant to Clause 41.13 or Clause 41.15:

41.19.1 the User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, physical damage to the property of the Company, its officers, employees or agents, and in respect of the liability of the Company to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the User (or its employees, contractors or agents) acting contrary to an accurate and appropriate instruction to Energise, De-energise or Re-energise a Connection Point; and

41.19.2 the Company shall indemnify the User against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the User as a consequence of, physical damage to the property of the User, its officers, employees or agents, and in respect of the liability of the User to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the User (or its employees, contractors or agents) acting in reliance on any instructions given by the Company to the User which are materially inaccurate or misleading,

provided that (notwithstanding that an indemnity is given) neither the User's nor the Company's liability, pursuant to this Clause 41.19 and in respect of a particular incident or series of related incidents, shall exceed the figure referred to in Clause 53.1.

### **Disconnection Procedure**

41.20 In respect of a Connection Point, the User shall be entitled to send to the Company a notice requesting the Company to Disconnect a Connection Point. In respect of any notice sent to the Company pursuant to this Clause 41.20, the User shall specify the Connection Point, the location of the Connection Point and the date on which the Disconnection is required.

41.21 Unless agreed otherwise and in respect of the relevant Connection Point, following the receipt of a notice under Clause 41.20 the User shall remove its Connection Equipment from the Company's premises and the Company shall remove its Connection Equipment from the User's premises (in each case at the User's cost).

## 42. PROVISION OF DATA AND METERING EQUIPMENT

42.1 The User shall procure the provision to the Company of (without charge) such data (from the metering equipment installed in accordance with this Clause, or as prescribed by the Alternative Solution) as the Company may reasonably require for:

42.1.1 the calculation of Use of System Charges;

42.1.2 the operation, design and planning of its Distribution System; and

42.1.3 validation that the electricity that is imported or exported across a Connection Point is no greater than the Maximum Import Capacity or the Maximum Export Capacity described in the relevant Bilateral Connection Agreement,

such data to be provided in accordance with the timescale specified in the Company's Relevant Charging Statement or, where no timescale is specified, as soon as reasonably practical after the charging period.

### **Requirement for Metering at the Connection Point**

42.2 Subject to Clause 42.4, the User shall (at its own cost) procure the installation and maintenance of metering equipment at each Connection Point, or as close as is reasonably practical to each Connection Point, for the purpose of recording data including all relevant registers required pursuant to Clause 42.1, unless an Alternative Solution applies in respect of the Connection Point.

42.3 Subject to Clause 42.4, the User may propose an Alternative Solution in respect of the Connection Point. The Company and the User shall negotiate in good faith the terms of any such proposal. The proposal must allow for the accurate provision of the data referred to in Clause 42.1, and must include a mechanism for resolution of data disputes, and for the outcome of such disputes to be recognised in subsequent invoices. If agreement has not been reached within 20 Working Days, either of the Company or the User shall be entitled to refer the matter to the Authority, pursuant to Condition 4E of the Company's Distribution Licence. The Company and the User shall give effect to the determination of the Authority.

42.4 Where the Connection Point is also a ~~Distribution~~-Systems Connection Point, the User

shall (at its own cost) procure that:

42.4.1 metering equipment is installed, operated and maintained;

42.4.2 meter technical details are registered; and

42.4.3 meter aggregation rules are registered,

in each case in accordance with the provisions of the BSC.

42.5 Where the Connection Point is not a ~~Distribution~~-Systems Connection Point, any metering equipment installed at the Connection Point pursuant to Clause 42.2, shall be installed, operated and maintained with an accuracy equivalent or better than that specified in Schedule 6.

42.6 Where metering equipment is required in accordance with Clause 42.2 or Clause 42.4, the Company shall not be obliged to convey electricity across its Distribution System to or from the relevant Connection Point unless the necessary metering equipment is installed.

### **Interconnection**

42.7 Without prejudice to Clause 52, the User shall (unless expressly agreed in the relevant Bilateral Connection Agreement) use all reasonable endeavours to ensure that no Interconnection occurs. The User shall immediately notify the Company where it becomes aware of any Interconnection not expressly provided for in the relevant Bilateral Connection Agreement.

### **Nested Networks**

42.8 The User shall immediately notify the Company where it becomes aware that the User's ~~Distribution~~-System (or any Electric Lines connected thereto) has been connected to:

42.8.1 a Distribution System of any person other than the Company; or

42.8.2 an Offshore Transmission System.

so that (subject to energisation) electricity may flow to or from the User's ~~Distribution~~ System.

## **Generation**

42.9 The User shall (to the extent the User is aware of the same):

42.9.1 notify the Company of any changes in the number of Small Scale Generators connected in parallel with the User's ~~Distribution~~-System, such notification to be made within 20 Working Days of the User becoming aware of such change; and

42.9.2 in respect of generation to be connected in parallel with the User's ~~Distribution~~-System that does not fall under the definition of a Small Scale Generator:

- (A) notify the Company of such generation prior to connection of that generation (providing such information as the Company may reasonably request in order to allow compliance with a Relevant Instrument);
- (B) obtain the Company's consent to connection of that generation (such consent not to be unreasonably withheld); and
- (C) notify the Company if any such generation ceases to be so connected or if its generation characteristics change.

## **Rights of Inspection**

42.10 The Company shall be entitled to inspect, test and if necessary require the User to correct any metering equipment installed and maintained pursuant to Clause 42.2 or Clause 42.4. The User shall use its reasonable endeavours to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to such metering equipment. The Company shall procure that any individuals to whom access is given pursuant to this Clause 42.10 shall comply with all reasonable directions given by the User as to general safety and site security arrangements. Where the Company disputes the accuracy of

the metering equipment so installed, the provisions of Schedule 6 shall apply.

### **Operational Metering Equipment**

- 42.11 The Company shall be entitled to install Operational Metering Equipment at or as close as reasonably practicable to any Connection Point in addition to any metering equipment installed and maintained pursuant to Clause 42.2 or Clause 42.4 to collect data for the operation, design and planning of its Distribution System, but if it exercises this right it shall make no additional charge to the User in respect of such Operational Metering Equipment and shall not (except in the case of the failure of metering equipment installed and maintained pursuant to Clause 42.2 or Clause 42.4, the failure to install metering equipment pursuant to Clause 42.2 or Clause 42.4, or the failure of the User to provide data pursuant to the Alternative Solution) use data from the Operational Metering Equipment for the calculation of Use of System Charges.
- 42.12 Where the Company installs Operational Metering Equipment in accordance with Clause 42.11, the User shall:
- 42.12.1 ensure that the employees, agents and invitees of the User will not interfere with such equipment or the immediate connections to such equipment without the prior written consent of the Company, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property proximate to the Operational Metering Equipment; and
  - 42.12.2 use its reasonable endeavours to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to the Operational Metering Equipment. The Company agrees to procure that any individuals to whom access is given pursuant to this Clause 42.12.2 shall comply with all reasonable directions given by the User and its appropriately authorised employees and agents as to general safety and site security arrangements.

## **48. COMPLIANCE WITH CODES**

### **General Compliance with Codes**

- 48.1 The Company and the User each undertake to comply with the Company's Distribution Code, the User's Distribution Code, the CUSC, the Grid Code and the Electricity Supply Emergency Code (in each case) as appropriate and as applicable to them in respect of each Connection Point. Where the User is the OTSO Party, the User undertakes to comply with the STC as applicable to it in respect of each Connection Point.
- 48.2 Each of the Company and the User shall cooperate with the other to facilitate compliance by them both with their obligations under Clause 48.1.

### **CUSC and Grid Code**

- 48.3 Each of the Company and the User ("**DistributorOperator A**") undertakes not to do anything (or allow anything to occur) in relation to its ~~Distribution~~ System that causes, or is likely to cause, the other ("**DistributorOperator B**") to breach the CUSC or the Grid Code.
- 48.4 Where ~~DistributorOperator~~ B could not, in compliance with the Grid Code and the CUSC, do something (or allow something to occur) in relation to its ~~Distribution~~ System if its ~~Distribution~~ System was a Distribution System directly connected to the ~~GB~~National Electricity Transmission System at the Connection Point (rather than to ~~DistributorOperator~~ A's ~~Distribution~~ System) without undertaking an Action or obtaining an NGETNETSO Action, then ~~DistributorOperator~~ B shall not do that thing (or allow that thing to occur) without undertaking or obtaining the Equivalent Action.

### **Conflict**

- 48.5 In the event of any conflict between this Section 2B or the relevant Bilateral Connection Agreement (on the one hand) and a code specified in Clause 48.1 (on the other), then the provisions of the relevant code shall prevail.

### **Definitions**

- 48.6 In this Clause:

<b>Action</b>	means any request, submission, notification or other action by (or to be procured by) a person other than the <a href="#">National Electricity Transmission GB</a> System Operator under or pursuant to the CUSC or the Grid Code.
<b><del>Distributor A</del></b>	<del>has the meaning given to that expression in Clause 48.3.</del>
<b><del>Distributor B</del></b>	<del>has the meaning given to that expression in Clause 48.3.</del>
<b>Electricity Supply Emergency Code</b>	means the code of that name designated as such by the Secretary of State from time to time.
<b>Equivalent Action</b>	means: <ul style="list-style-type: none"> <li>(a) in respect of an Action, the equivalent request, submission, notification or other action by (or to be procured by) <a href="#">Distributor Operator B</a>; and</li> <li>(b) in respect of an <a href="#">NGETNETSO</a> Action, the equivalent confirmation, consent, approval or other action of <a href="#">Distributor Operator A</a> (or a confirmation by <a href="#">Distributor Operator A</a> that the <a href="#">National Electricity Transmission GB</a> System Operator has undertaken that <a href="#">NGETNETSO</a> Action).</li> </ul>
<b><a href="#">GB National Electricity Transmission System</a></b>	has the meaning given to that expression in the CUSC.
<b><a href="#">NGETNETSO</a> Action</b>	means any confirmation, consent, approval or other action of the <a href="#">National Electricity Transmission GB</a> System Operator (including entry by the <a href="#">National</a>

Electricity Transmission~~GB~~ System Operator into a contract).

**Operator A**

has the meaning given to that expression in Clause 48.3.

**Operator B**

has the meaning given to that expression in Clause 48.3.

## 49. GUARANTEED PERFORMANCE STANDARDS

- 49.1 Where the Company or the User (the “**Proximate OperatorDistributor**”) is liable to make a payment, pursuant to any provision of regulation 5, 6, 7, 9 or 12 of the ESPR, to a Customer, and that liability arises wholly or partly from a failure, act or omission on the part of the other of them (the “**Remote OperatorDistributor**”), the Remote DistributorOperator shall make (as appropriate) all or part of an equivalent compensation payment directly to the Proximate OperatorDistributor for the benefit of the Customer.
- 49.2 For the purpose of this Clause “**equivalent compensation payment**” means:
- 49.2.1 the prescribed sum (as such term is defined in the ESPR); plus
- 49.2.2 the Proximate DistributorOperator’s reasonable costs incurred in facilitating such payment.
- 49.3 Where the Proximate OperatorDistributor is of the opinion that the Remote OperatorDistributor is liable for making an equivalent compensation payment to the Proximate OperatorDistributor under Clause 49.1, the Proximate OperatorDistributor shall prepare a report specifying the equivalent compensation payments required and submit such report to the Remote OperatorDistributor. Such report shall be of sufficient detail to enable the Remote OperatorDistributor to reasonably validate such claim for the equivalent compensation payment.
- 49.4 On receipt of a report provided by the Proximate OperatorDistributor under Clause 49.3, the Remote OperatorDistributor shall advise the Proximate OperatorDistributor whether the Remote OperatorDistributor considers itself wholly or partly liable for the failure. The Proximate OperatorDistributor and the Remote OperatorDistributor shall endeavour to agree the extent of responsibility of each part (where relevant) in relation to the failure to meet the prescribed level of performance pursuant to the ESPR, and the proportion of compensation payable by the Remote OperatorDistributor in each case.
- 49.5 For the purpose of this Clause 49 an act or omission by the Remote OperatorDistributor shall include, but shall not be restricted to:

- 49.5.1 such act or omission by the Remote ~~OperatorDistributor~~ in respect of its ~~Distribution~~—System that compromises the ability of the Proximate ~~OperatorDistributor~~ to meet performance standards defined in the ESPR in respect of Customers connected to the Proximate ~~OperatorDistributor~~'s ~~Distribution~~—System; or
- 49.5.2 failure of the Remote ~~OperatorDistributor~~ to provide timely information to the Proximate ~~OperatorDistributor~~ in respect of the operation of the Remote ~~OperatorDistributor~~'s ~~Distribution~~—System to enable the Proximate ~~OperatorDistributor~~ to prevent failure of the standards prescribed in the ESPR.
- 49.6 If a Customer connected to the Proximate ~~OperatorDistributor~~'s ~~Distribution~~—System contacts the Remote ~~OperatorDistributor~~ in relation to a matter which might form the basis of a claim under the ESPR, then the Remote ~~OperatorDistributor~~ shall diligently record the details of the Customer's complaint and shall pass on the details of the Customer's complaint to the Proximate ~~OperatorDistributor~~ as soon as reasonably practicable together with details of the Customer's name and address. If any compensation payment becomes payable by the Proximate ~~OperatorDistributor~~ as a consequence of the Remote ~~OperatorDistributor~~'s failure to pass on details of the Customer's complaint, the Remote ~~OperatorDistributor~~ shall be liable to the Proximate ~~OperatorDistributor~~ for such payment.
- 49.7 When the Proximate ~~OperatorDistributor~~ has received a payment from the Remote ~~OperatorDistributor~~ pursuant to Clause 49.1, then the Proximate ~~OperatorDistributor~~ shall pass such payment to the Customer or to the Customer's supplier for the benefit of the Customer as soon as reasonably practicable and if, due to the Proximate ~~OperatorDistributor~~'s delay, an additional payment becomes due pursuant to ESPR regulation 19 then this additional payment shall be the liability of the Proximate ~~OperatorDistributor~~.
- 49.8 Neither the Remote ~~OperatorDistributor~~ nor the Proximate ~~OperatorDistributor~~ shall lead a Customer to believe that he has a valid claim for a guaranteed standard payment by reason of the action or default of the other. Where, however, a Customer does have a valid claim, a breach of the provisions of this Clause 49.8 shall not excuse

the person against whom the claim lies from making the relevant payment.

- 49.9 In the event of a dispute between the Remote ~~OperatorDistributor~~ and the Proximate ~~OperatorDistributor~~ as to which of them is liable to pay compensation, or as to the extent of responsibility in relation to any failure to meet a prescribed level of performance pursuant to any provision of the ESPR, in each case in respect of a Customer connected to the Proximate ~~OperatorDistributor~~'s ~~Distribution~~-System, then in the first instance the Proximate ~~OperatorDistributor~~ shall make the compensation payment for the benefit of the Customer and then the dispute shall be deemed to be a dispute which may be referred to the Authority by either the Company or the User in accordance with Section 39B of the Act and ESPR regulation 18 and the provisions as to practice and procedure contained in ESPR Schedule 2 shall be deemed to apply to any such dispute. If the Authority determines that the Remote ~~OperatorDistributor~~ is liable to pay the Proximate ~~OperatorDistributor~~ the compensation payments (or a proportion of the compensation payments) then the Remote ~~OperatorDistributor~~ shall pay to the Proximate ~~OperatorDistributor~~ the equivalent compensation payments as soon as is reasonably practicable.
- 49.10 If a Customer connected to the Proximate ~~OperatorDistributor~~'s ~~Distribution~~-System refers to the Authority, under Section 39B of the Act, a dispute between the Customer and the Remote ~~OperatorDistributor~~ as to whether the Customer is entitled to compensation under the ESPR (rather than as to which of the Proximate ~~OperatorDistributor~~ and the Remote ~~OperatorDistributor~~ is liable, which shall be subject to Clause 49.9), the Proximate ~~OperatorDistributor~~ shall (unless otherwise agreed with the Remote ~~OperatorDistributor~~) have conduct and management of such dispute (in which case, provided the Proximate ~~OperatorDistributor~~ agrees to reimburse the Remote ~~OperatorDistributor~~'s costs, the Remote ~~OperatorDistributor~~ shall use its best endeavours to comply with the Proximate ~~OperatorDistributor~~'s directions in relation to such dispute).
- 49.11 The Company and the User shall each cooperate with the other, and exchange information with the other, regarding System Outages on its ~~Distribution~~-System that may give rise to claims under this Clause 49.

## **52. MODIFICATIONS**

52.1 Unless agreed otherwise by the Company and the User in the relevant Bilateral Connection Agreement, no Modification may be made by or on behalf of the Company or the User otherwise than in accordance with the provisions of this Clause 52.

### **Modifications Proposed by Users**

52.2 If the User wishes to make a Modification it shall complete and submit to the Company in advance of the Modification a Modification Application in the form shown in the relevant Bilateral Connection Agreement and comply with the terms thereof.

52.3 As soon as reasonably practicable (but not later than the date required by the Company's Distribution Licence) after receipt by the Company of the Modification Application, (save where the Authority consents to a longer period) the Company shall make a Modification Offer to the User. The Modification Offer shall include the form of any variations the Company requires to the relevant Bilateral Connection Agreement and its schedules. During such period the Company and the User shall discuss in good faith the implications of the proposed Modification(s).

52.4 The Modification Offer will be open for acceptance in accordance with its terms for up to 3 calendar months from the date upon which the Modification Offer is sent to the User (unless either the Company or the User makes an application to the Authority under Condition 7 of the Company's Distribution Licence, in which case the Modification Offer shall remain open for acceptance until the date 14 days after any determination by the Authority pursuant to such application). If the Modification Offer is accepted by the User, the Modification shall proceed according to the terms of this Agreement, and the relevant Bilateral Connection Agreement shall be varied to reflect the terms of the Modification.

### **Modifications proposed by the Company**

52.5 If the Company wishes to make a Modification to the Company's Distribution

System, whether at or remote from the Connection Point, the Company shall complete and submit to the User a notification of the Modification and shall advise the User of any works which the Company reasonably believes that the User may have to carry out as a result.

- 52.6 The User may, as soon as practicable after any notice by the Company under Clause 52.5, consult with it over the proposed Modification. The User may, (save where the Authority consents to a longer period) within the period stated therein (which shall be sufficient to enable the User reasonably to assess the implications of the proposed Modification), make an application to the Authority under Condition 7 of the Company's Distribution Licence.
- 52.7 As soon as practicable after the receipt of notification of the Modification pursuant to Clause 52.5 or, if an application to the Authority has been made by the User, the determination by the Authority, and in any event within 2 calendar months thereof, the User shall submit to the Company a Modification Application and shall comply with the terms thereof.
- 52.8 Subject to the payment of its reasonable charges, if any, as provided in this Clause 52.8 the Company will provide advice and assistance reasonably requested by the User to enable the User to assess the implications, including the feasibility, of making a Modification to the User's ~~Distribution~~-System. If the Modification under consideration by the User is or may be required as a result of a Modification required by the Company, then the Company shall provide such reasonable advice and assistance free of charge. If the proposed Modification is or may be proposed by the User, the Company may charge the User such amount as is reasonable in all the circumstances for such advice and assistance. The provision of such advice and assistance shall be subject to the terms of the relevant Bilateral Connection Agreement.
- 52.9 Where a Modification by the Company alters the technical characteristics of the Connection Point (as set out in the relevant Bilateral Connection Agreement), but not otherwise, the Company shall compensate the User for the reasonable cost and expense of any modification required to be made by the User as a result of such Modification; provided that the Company shall not be obliged to compensate the User

where such Modification is required as a consequence of any Relevant Instrument, legislative requirement or Directive. Any dispute as to whether the Company is obliged to compensate the User or as to the amount of any such compensation may be referred to arbitration in accordance with the provisions of Clause 58.

**SECTION 3**  
**GENERAL LEGAL PROVISIONS**

## 53. LIMITATION OF LIABILITY

### Physical Damage

53.1 Subject to Clause 53.5 and save as provided in this Clause 53.1 and Clause 53.2, and save where any provision of this Agreement provides for an indemnity, no Party (the **Party Liable**) nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

53.1.1 physical damage to the property of that other Party, its officers, employees or agents; and/or

53.1.2 the liability of that other Party to any other person for loss in respect of physical damage to the property of any person,

provided that the liability of the Party Liable in respect of all claims for such loss shall in no circumstances exceed £1 million (or, in relation to Bilateral Connection Agreements under Section 2B, such higher figure as the two Parties thereto may agree in such Bilateral Connection Agreement) per incident or series of related incidents, and provided further that the Party Liable shall be entitled:

53.1.3 to deduct from any sums payable to another Party in respect of [the Party Liable's](#) liability for loss or damage in respect of any event under this Agreement any sums which it is liable to pay to a person who has a connection to the [Party Liable's Distribution](#) System or any other person (whether or not a Party) in respect of the same loss or damage in respect of the same event; and

53.1.4 where it has already made payment in respect of its liability for loss or damage in respect of an event under this Agreement, at the time at which it becomes liable to pay any other person (whether or not a Party) in respect of the loss or damage in respect of the same event, to reclaim from the Party to whom it made a payment under this Agreement the amount of its liability to that other person but not exceeding the amount already paid to that Party in

respect of loss or damage in respect of the same event,

provided that where any Party Liable becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to a person other than another Party in respect of an event which may also give rise to a liability to another Party under this Agreement, then the Party Liable shall consult with the other Party as to the conduct of that claim, difference, or dispute or those proceedings (actual or threatened).

### **Death or Personal Injury**

53.2 Nothing in this Agreement shall exclude or limit the liability of any Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents, and the Party Liable shall indemnify and keep indemnified the other Parties and their officers, employees and agents, from and against all such liability and any loss or liability which such other Parties may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

### **Economic and Consequential Loss**

53.3 Subject to Clause 53.5, and save where any provision of this Agreement provides for an indemnity, neither the Party Liable, nor any of its officers, employees or agents, shall in any circumstances whatsoever be liable, under or in relation to this Agreement, to another Party for:

53.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

53.3.2 any indirect or consequential loss; or

53.3.3 loss resulting from the liability of such other Party to any other person howsoever and whenever arising save as provided in Clauses 53.1 and 53.2.

### **Exclusive Remedies**

53.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural)

rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights any Party may possess in tort (or delict) which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from, all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

### **Overriding Nature of this Clause**

53.5 Save as otherwise expressly provided in this Agreement, this Clause 53 insofar as it excludes or limits liability shall override any other provision in this Agreement, provided that nothing in this Clause 53 shall exclude or restrict or otherwise prejudice or affect any of:

53.5.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Act, any licence granted pursuant to the Act, or any subordinate legislation made under the Act; or

53.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.

### **Other Matters**

53.6 Each of the sub-clauses of this Clause 53:

53.6.1 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, then the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

53.6.2 shall survive the termination or expiry of this Agreement.

53.7 Each Party hereby acknowledges and agrees that each other Party holds the benefit of Clauses 53.1, 53.2 and 53.3 for itself and as trustee and agent for its officers,

employees and agents.

53.8 Each Party hereby acknowledges and agrees that the provisions of this Clause 53 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

53.9 Nothing in this Clause 53 shall prevent or restrict any Party from enforcing any payment obligation (including suing for a debt) owed to it under or pursuant to this Agreement, or prevent DCUSA Ltd from enforcing any payment obligation (including suing for debts owed under Clause 8) owed to the Panel.

### Offshore Transmission Systems

53.10 The following provisions apply only in relation to arrangements pursuant to Section 2B and between the OTSO Party and a DNO/IDNO Party in respect of an Offshore Transmission System owned by an Offshore Transmission Owner:

53.10.1 in consideration of the rights conferred upon the DNO/IDNO Party under this Agreement, the right of the DNO/IDNO Party to claim in negligence, other tort, or otherwise howsoever against the Offshore Transmission Owner in respect of any act or omission of the Offshore Transmission Owner in relation to the subject matter of the STC is hereby excluded and the DNO/IDNO Party agrees not to pursue any such claim; save that nothing in this Clause 53.10 shall restrict the ability of the DNO/IDNO Party to claim in respect of:

(A) any contract to which the DNO/IDNO Party and the Offshore Transmission Owner are (from time to time) party;

(B) fraudulent misrepresentation; or

(C) death or personal injury resulting from the negligence of the Offshore Transmission Owner; and

53.10.2 the OTSO Party shall ensure that the STC contains a waiver from the Offshore Transmission Owner in favour of (and enforceable by) the DNO/IDNO Party in respect of any claim the Offshore Transmission Owner

may have in negligence, other tort, or otherwise howsoever against the DNO/IDNO Party in respect of any act or omission of the DNO/IDNO Party in relation to the subject matter of Section 2B, and the OTSO Party shall ensure that such waiver includes an agreement on the part of the Offshore Transmission Owner not to pursue such a claim: save that the waiver need not apply to claims in respect of:

(A) any contract to which the DNO/IDNO Party and the Offshore Transmission Owner are (from time to time) party;

(B) fraudulent misrepresentation; or

(C) death or personal injury resulting from the negligence of the DNO/IDNO Party.

## 54. TERMINATION

### Events of Default

54.1 It shall be an **Event of Default** in respect of a Party (the **Breaching Party**) if:

- 54.1.1 the Breaching Party is in material breach of any of its material obligations under this Agreement and, if the breach is or was capable of remedy, the Breaching Party has failed to remedy the breach within 20 Working Days of receipt of a notice from any Party to whom that obligation was owed giving full details of the breach, requiring the Breaching Party to remedy the breach, and stating that a failure to remedy the breach may give rise to the consequences set out in this Clause 54;
- 54.1.2 the Breaching Party passes a resolution for its own winding-up, dissolution, administration or reorganisation (except for the purposes of a solvent reconstruction or reorganisation approved by the Panel), or a court of competent jurisdiction makes an order for the winding-up or dissolution of the Breaching Party;
- 54.1.3 the Breaching Party has an administrator appointed in respect of it, or an administration order is made in relation to it, or a receiver, administrative receiver, trustee, liquidator, compulsory manager or other similar officer is appointed in respect of the Breaching Party or the whole or a substantial part of its assets, or an encumbrancer takes possession of or sells the whole or a substantial part of the Breaching Party's assets, rights, or revenues;
- 54.1.4 the Breaching Party makes an arrangement, compromise, composition, assignment or assignation with its creditors generally or makes an application to a court for protection from its creditors generally;
- 54.1.5 the Breaching Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that section the sum of £10,000 was substituted for the sum of £750;
- 54.1.6 without prejudice to Clause 55, a circumstance of Force Majeure that affects the performance by the Breaching Party of substantially all of its obligations

under this Agreement continues for more than 180 days and any Party to whom any such obligation was owed serves a notice on the Breaching Party referring to this Clause 54; or

54.1.7 any of the conditions precedent relating to the Breaching Party set out in Clauses 16.1.2 to 16.1.7 (inclusive) or in Clauses 37.1.1 to 37.1.5 (inclusive) cease to be satisfied in respect of the Breaching Party.

### **Suspension of Rights**

54.2 For so long as an Event of Default is continuing, where a Supplier/DG Party is a User under Section 2A, or where ~~an IDNO Party~~ or a DNO/IDNO/OTSO Party is a User under Section 2B, and, in either case, that Party is a Breaching Party pursuant to:

54.2.1 Clause 54.1.1 or 54.1.6, any Party to whom the obligations in question were owed shall be entitled to suspend its performance of the services described in Section 2 to the Breaching Party by notice in writing to the Breaching Party; and

54.2.2 any other provision of Clause 54.1, any Party shall be entitled to suspend its performance of the services described in Section 2 to the Breaching Party by notice in writing to the Breaching Party,

and the Breaching Party shall pay to the suspending Party an amount equal to any reasonable costs incurred by such Party as a result of such suspension. Any party serving a notice under this Clause 54.2 shall send a copy of the notice to the Panel.

54.3 Where an Event of Default is continuing, the Panel may resolve that the Breaching Party in question shall not, for such period as the Panel may specify, be entitled to exercise its election and voting rights under Section 1, in which case the provisions of Clause 6 and Section 1C shall operate (during that period) as if that Party were not a Party. The Panel shall notify the Authority and all the Parties of any such resolution.

54.4 Any Party whose rights are restricted in accordance with Clause 54.3 may apply to the Panel to have those restrictions removed. The Panel shall consider such application and may levy a fee on the relevant Party for doing so. Where the Panel considers that no Event of Default is continuing in respect of the applicant, it shall notify the Parties

and the Authority accordingly, and the restrictions imposed under Clause 54.3 shall cease to apply.

### **Ceasing to be a Party**

54.5 Subject to Clause 54.6:

54.5.1 where a Party applies to the Panel to be removed as a Party; or

54.5.2 where an Event of Default occurs in respect of a Party, and is continuing, and has been continuing for at least six months,

the Panel may resolve to terminate that Party's accession to this Agreement. On written notice by the Panel of such resolution to the Parties and the Authority, the Party in question shall cease to be a Party.

54.6 A Party's accession to this Agreement may not be terminated:

54.6.1 in the case of a DNO Party or an IDNO Party, where that Party holds a Distribution Licence which requires it to be a party to this Agreement;

54.6.2 in the case of a Supplier Party, where that Party holds a Supply Licence which requires it to be a party to this Agreement.

### **Panel Member Conflict**

54.7 A Panel Member shall be disqualified from acting, and shall not act in his capacity as a Panel Member, in relation to a resolution pursuant to this Clause 54 and a Breaching Party where his employer is that Breaching Party or an Affiliate of that Breaching Party. Any Alternate of such Panel Member shall act in that Panel Member's place (unless that Alternate is also employed by that Breaching Party or an Affiliate of that Breaching Party).

### **Consequences of Termination**

54.8 Except where expressly stated to the contrary, the rights and obligations of a Party under this Agreement shall cease immediately upon that Party's accession to this Agreement being terminated and it ceasing to be a Party. However, such termination shall not affect any rights and obligations which have accrued on or before the date of

such termination.

- 54.9 Clauses 1, 8 (only in respect of those Financial Years, and parts thereof, during which it was a Party), 15, 19 to 25 (inclusive), 32, 34, 35, 36, 41, 43 to 47 (inclusive), 50, 51, 53, 54.8 and 54.9 shall survive the termination of such accession and continue to apply to a Party after it ceases to be a Party.

## **60. MISCELLANEOUS**

### **Entire Agreement**

- 60.1 This Agreement and any document referred to therein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter; and supersedes any previous agreement whether written, oral, or deemed between any of the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.
- 60.2 Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, it has not relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to therein.

### **Severability**

- 60.3 If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any Competent Authority whose decisions are binding on the Parties, that provision shall be deemed severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

### **Waivers**

- 60.4 The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided under this Agreement or a Distribution Code or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any future exercise thereof or the exercise of any other right, power, privilege or remedy.

### **Contract Management**

- 60.5 Each Party (other than DCUSA Ltd) shall appoint an appropriate person (each a **Contract Manager** and together the **Contract Managers**) to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.
- 60.6 The Contract Manager relating to each Party from time to time shall be the person referred to in that Party's Party Details.
- 60.7 The Contract Manager of each Party shall meet with the Contract Manager of each other Party (collectively or individually) at such venues and at such intervals as may be agreed between the Parties from time to time.

### **Third Party Rights**

- 60.8 Except for the benefit:
- [60.8.1](#) that DCUSA Ltd holds under Clause 6.22; ~~and~~
- [60.8.2](#) that each Party holds under Clause 53.8; ~~and~~
- [60.8.3](#) bestowed on Offshore Transmission Owners by Clause 53.10 (which shall be enforceable by Offshore Transmission Owners),

the Parties do not intend that any of the Agreement's terms will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

- 60.9 Notwithstanding that a person who is not a Party may have a right to enforce particular Clauses under the Contracts (Rights of Third Parties) Act 1999 in accordance with Clause 60.8, the Parties may vary or terminate this Agreement in accordance with its terms without requiring the consent of any such person.

### **Assignment and Sub-contracting**

- 60.10 No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld.
- 60.11 Any Party may sub-contract or delegate the performance of all or any of its obligations under this Agreement (including activities envisaged by a Distribution

Code) to any appropriately qualified and experienced third party, but shall at all times remain liable to the other Parties in relation to all sub-contracted or delegated obligations.

### **Law and Jurisdiction**

- 60.12 Each Party agrees that, in performing its obligations pursuant to this Agreement, it shall be required to comply with relevant statutes, statutory instruments and the general law and shall not be liable for any failure to perform its obligations in accordance with this Agreement where to do so would put it in breach of any such statute, statutory instrument or general provision of law.
- 60.13 Each Party agrees that, without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any Party by being delivered to or left for that Party at its address for service of notices referred to in Clause 59.
- 60.14 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Subject to Clause 58, the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland.

## **SCHEDULES**

**SCHEDULE 9 – ACCESSION AGREEMENT**

**THIS ACCESSION AGREEMENT** is made on 20

**BETWEEN:**

- (A) [ ] a company incorporated in [ ] (registered number [ ]) whose registered office is at [ ] (the “**New Party**”); and
- (B) **DCUSA LIMITED** a company incorporated in England and Wales (registered number [ ]) whose registered office is at [ ] (“**DCUSA Ltd**”).

**WHEREAS**

- (A) The DNO Parties and IDNO Parties are required, by their licences, to be party to, comply with, and maintain the DCUSA.
- (B) The Supplier Parties are required, by their licences, to be party to, and comply with, the DCUSA.
- (C) The DG Parties are under certain obligations, under other industry agreements, regarding distribution use of system arrangements, and have agreed to accede to the DCUSA in order to meet those obligations.

(D) The OTSO Party wishes to connect to and use the systems of the DNO Parties and the IDNO Parties, and has agreed to accede to the DCUSA in order to do so.

~~(D)~~(E) DCUSA Ltd is a company established under the DCUSA to facilitate the operation of the DCUSA.

~~(E)~~(F) The New Party wishes to become a party to, and bind itself by, and DCUSA Ltd has agreed (on behalf of the DCUSA Parties) to admit the New Party as a party to, the DCUSA in accordance with the terms and conditions of this Accession Agreement.

**NOW IT IS HEREBY AGREED** as follows:

1. The “**DCUSA**” is the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority (as such agreement is

amended from time to time). A “**DCUSA Party**” is a party from time to time to the DCUSA. Unless the context otherwise requires, the words and expressions defined in the DCUSA shall bear the same respective meanings when used herein.

2. With effect from [ACCESSION DATE]:
  - (e) the New Party hereby accepts its admission to the DCUSA, and undertakes to DCUSA Ltd (acting on behalf of itself and each DCUSA Party) to perform its obligations under the DCUSA in accordance with, and subject to, the terms and conditions thereof; and
  - (f) DCUSA Ltd (acting on behalf of itself and each DCUSA Party) hereby admits the New Party as a party to the DCUSA.
3. The New Party’s Party Details shall, initially, be as set out in the schedule hereto and those Party Details shall be added to schedule 11 of the DCUSA in accordance with clause 57.5 of the DCUSA.
4. This Accession Agreement may be executed in two counterparts, each signed by one of the parties hereto.
5. This Accession Agreement shall be governed by and construed in accordance with the laws of England and Wales. The parties hereto hereby submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland.

**THIS ACCESSION AGREEMENT** has been entered into on the date first stated above.

**SIGNED** by ..... )  
duly authorised )  
for and on behalf of ) .....  
**NEW PARTY** )

**SIGNED** by ..... )  
duly authorised )  
for and on behalf of ) .....  
**DCUSA LTD** )



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**THIS BILATERAL CONNECTION AGREEMENT** is made on the [ ] day of [ ] 20[ ]

**BETWEEN**

- (1) [ ] a company registered in [ ] with number [ ] whose registered office is at [ ] (the “**Company**”, which expression shall include its successors and/or permitted assigns); and
- (2) [ ] a company registered in [ ] with number [ ] whose registered office is at [ ] (the “**User**”, which expression shall include its successors and/or permitted assigns).

**WHEREAS**

- (A) The User has applied for Connection to and use of the Company’s Distribution System and pursuant to the Company’s Distribution Licence the Company is required to offer terms in this respect.
- (B) The Company and the User are parties to the Distribution Connection and Use of System Agreement (the “**DCUSA**”) as referred to in Condition 22 of their distribution licences granted, or treated as granted, under the Electricity Act 1989.
- (C) This Bilateral Connection Agreement including its schedules (this “**BCA**”) is entered into pursuant to the DCUSA and shall be read as being governed by it.
- (D) For the purposes of this BCA, the Company is the person providing Connection and Use of Distribution System (and so is the Company for the purposes of the DCUSA) and the User is the person receiving Connection and Use of Distribution System (and so is the User for the purposes of the DCUSA).

**NOW IT IS HEREBY AGREED** as follows:

**1 DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

- 1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in the DCUSA have the same meanings in this BCA. Where terms and expressions have different meanings in respect of Sections 2A and 2B

of the DCUSA, the meanings given in respect of Section 2B of the DCUSA shall apply.

1.2 The following terms and expressions shall have the meaning set out below:-

[Term]	[Meaning]
.....	.....
.....	.....

1.3 Unless the subject matter or context otherwise requires or is inconsistent therewith, the rules of interpretation applying in the DCUSA shall apply equally to this BCA, and accordingly clause 1.2 of the DCUSA shall apply to this BCA as if it was set out herein and referred to this BCA (rather than “the Agreement”). Where different rules of interpretation apply in respect of Sections 2A and 2B of the DCUSA, the rules of interpretation applying in respect of Section 2B of the DCUSA shall apply.

**2 COMMENCEMENT, DURATION AND CONNECTION**

2.1 This BCA shall take effect on the date hereof and shall continue in force until terminated in accordance with Clause 7.

2.2 The DCUSA and this BCA shall supersede any prior agreements or arrangements between the Company and the User in respect of Connection at the Connection Points specified herein.

**3 THE USER’S RIGHT TO BE AND TO REMAIN CONNECTED TO THE COMPANY’S DISTRIBUTION SYSTEM**

3.1 Subject to the terms and conditions of the DCUSA and this BCA, the User shall have the right for the User’s ~~Distribution~~ System to be, and to remain, Connected to the Company’s Distribution System at the Connection Points specified herein, and (subject to the DCUSA) the right to be and remain Energised.

3.2 The rights referred to in Clause 3.1 are conditional upon:

- 3.2.1 ['Completion'] of the relevant Connection Assets under and in accordance with any agreement for the construction or modification of the Connection Assets so that they may be Energised;
- 3.2.2 the Company having procured, or the User having procured or granted to the Company in respect of land under its control, the land rights and interests for the Connection Assets as specified in Schedule 3 (and those land rights and interests remaining in force) [or the User having provided an indemnity to the Company (on terms reasonably acceptable to the Company) in respect of the absence of such rights]; and
- 3.2.3 [ANY FURTHER SITE SPECIFIC CONDITIONS TO BE AGREED].
- 3.3 If the conditions set out in Clause 3.2 are not fulfilled at the date hereof each party shall use reasonable endeavours to procure the fulfilment of those conditions relating to it which have not already been fulfilled. If the conditions have not been fulfilled within three months of the date hereof, the Company shall have the right to terminate this BCA.
- 3.4 Once each of the conditions in Clause 3.2 has been fulfilled, each party shall use reasonable endeavours to keep such conditions relating to it fulfilled throughout the term of this BCA.
- 3.5 The User and the Company undertake to each other that they shall forthwith notify the other of any change of circumstances occurring hereafter as a result of which any of the above conditions ceases to apply and the User and the Company shall indemnify each other against all actions, proceedings, claims or demands brought or threatened against them by a third party as a result of any breach of the undertakings contained in Clause 3.

#### **4 THE CONNECTION POINTS, CONNECTION EQUIPMENT AND CONNECTION ASSETS**

- 4.1 The Connection Points, Connection Equipment and Connection Assets to which this BCA relates are more particularly described in Schedules 1 and 3.

#### **5 MAXIMUM CAPACITY**

5.1 The Maximum Import Capacity and the Maximum Export Capacity for this BCA are specified at Schedule 1.

## **6 COMPLIANCE WITH SITE SPECIFIC CONDITIONS AND OPERATIONAL ARRANGEMENTS**

6.1 The site specific conditions and operational arrangements are specified in Schedule 3. As appropriate the Company and/or the User shall use reasonable endeavours to comply with them.

## **7 TERM**

7.1 Subject to Clause 3.3, this BCA shall continue in full force and effect until:

7.1.1 terminated by the User giving the Company 3 months' notice in writing (or such lesser period as may be agreed between the parties);

7.1.2 terminated by the Company giving the User 3 months' notice in writing (or such lesser period as may be agreed between the parties) save that for so long as the Company is required to offer terms for Connection and Use of Distribution System to the User in respect of the Company's Distribution System pursuant to the Company's Distribution Licence, such termination shall only be effective if the User does not notify the Company within 14 days of the date of the Company's notice that the User requires replacement terms to be entered into pursuant to Condition 12 of the Company's Distribution Licence;

7.1.3 terminated in accordance with Clause 7.3; or

7.1.4 (subject to contrary agreement between the parties) Disconnection of the Connection Point.

7.2 For the purpose of this BCA it shall be an event of default if:

7.2.1 the User ceases to be a Party to the DCUSA;

- 7.2.2 the User breaches in any material respect any of its obligations under this BCA and (if it is capable of remedy) it is not remedied within 30 days of receiving written notice from the Company of the occurrence thereof; or
- 7.2.3 any of the conditions precedent set out in Clause 3.2 and relating to the User cease to be satisfied.
- 7.3 Upon an event of default pursuant to Clause 7.2, the Company (without prejudice to its other rights and remedies) shall have the following rights:
- 7.3.1 to terminate this BCA;
- 7.3.2 to an injunction or equitable relief, or to make restitution of amounts improperly received; and
- 7.3.3 to set off any amounts then due and owing by the User to the Company against amount payable by the Company to the User.
- 7.4 Upon termination of this BCA the User shall allow the Company at its sole option to Disconnect, and to enter the User's [\(and/or, in the case of an Offshore Transmission System, the Offshore Transmission Owner's\)](#) premises in order to Disconnect, the Connection Point and shall pay to the Company all sums then due and payable or accrued due under this BCA and any costs incurred by the Company in Disconnecting the Connection Point and removing the Company's Connection Equipment and/or the User's Connection Equipment and re-instating the Company's premises or those of any Affiliate.
- 7.5 Termination of this BCA shall not affect any rights or obligations which may have accrued prior to termination or resulting from the event giving rise to the right to terminate and shall not affect any continuing obligations which survive termination.
- 7.6 Clauses 7.3, 7.4, 7.5, 7.6, 7.7 and 9 shall survive termination of this BCA.
- 7.7 Upon termination of this BCA for any reason whatsoever, the User shall pay to the Company the charges due or owing to the Company under the DCUSA and this BCA (or such other agreements as may be in place) together with any, costs, fees and expenses properly incurred by the Company as a result of such termination, and the

User shall pay the same within 28 days of the date of an invoice submitted by the Company.

## **8 VARIATIONS**

- 8.1 Subject to Clause 8.2, and 8.3 below, no variation to this BCA shall be effective unless made in writing and signed by or on behalf of both parties.
- 8.2 Either party shall at any time be entitled to propose variations to this BCA by notice in writing to the other party (including variations to the Maximum Import Capacity and the Maximum Export Capacity). The Company and the User shall negotiate in good faith the terms of any such variation, but if a variation to this BCA has not been agreed and put into effect within 20 Working Days after it has been proposed, either party shall be entitled to refer the matter to the Authority, pursuant to Section 23 of the Act, as if the variation were a new connection as referred to in that Section. The parties shall give effect to the determination of the Authority and shall enter into any agreement supplemental to this BCA as shall be necessary to give effect to any variation agreed or so determined.
- 8.3 The parties shall use reasonable endeavours to ensure the BCA is maintained (or varied) in line with the DCUSA and other Relevant Instruments.

## **9 GENERAL**

- 9.1 For the purposes of this BCA and the provisions of the DCUSA referred to in Clause 9.2.1, the figure of “£1 million” referred to in that provision of the DCUSA shall [remain unchanged] / [be replaced with “£5 million”] [DELETE AS APPROPRIATE].
- 9.2 Subject to Clause 9.1, the provisions of the DCUSA under the following headings shall apply to this BCA as if they were set out herein and referred to this BCA (rather than “the Agreement”):
- 9.2.1 Limitation of Liability;
  - 9.2.2 Force Majeure;
  - 9.2.3 Disputes;



## **SCHEDULE 1 - CONNECTION CHARACTERISTICS**

### **NAMING AND DEFINITION OF THE CONNECTION**

Including commencement date and geographic plans where appropriate.

### **DECLARATION OF CAPACITY REQUIREMENTS**

## **SCHEDULE 2 - USE OF SYSTEM, METERING AND DATA PROVISION**

### **USE OF SYSTEM**

Tariff for the Connection Point (by reference to the Relevant Charging Statement)

### **METERING**

Including type of meter, functionality, registers if applicable. If no meter is required state that this is the case.

### **DATA PROVISION**

Including unique references, data formats, frequency, type of LAF (generic/specific).

## **SCHEDULE 3 - SITE SPECIFIC CONDITIONS**

### **OPERATIONAL ARRANGEMENTS AND DIAGRAMS**

### **ASSET OWNERSHIP AND RESPONSIBILITY SCHEDULES**

*[In the case of Offshore Transmission Systems, the Electrical Plant and Electric Lines of the Offshore Transmission Owner should be identified as being Connection Equipment of the OTSO Party.]*

### **TECHNICAL CONDITIONS AND DEROGATIONS**

### **CONNECTION ASSETS**

### **LAND RIGHTS**

## SCHEDULE 4 - GENERATION

~~DISTRIBUTED~~ GENERATION CONNECTED TO USER'S ~~DISTRIBUTION~~ SYSTEM

EXCLUSION AND LIMITATIONS OF LIABILITY FOR ~~DISTRIBUTED~~ GENERATION

UNAVAILABILITY PAYMENT

**SCHEDULE 5 - APPLICATION FOR MODIFICATION**

## **SCHEDULE 14 – WEBSITE REQUIREMENTS**

The following requirements apply in relation to the Website:

- 1 The Website is to comply with best practice regarding accessibility and the use of widely used or open formats.
- 2 The Website is to comprise public facing pages (the **Public Pages**) that are accessible by all, and pages (the **Password Controlled Pages**) that are only accessible by those with a user name and password (a **Web Account**).
- 3 This Agreement, a list of the Parties and a copy of the Change Register shall be accessible through the Public Pages. The minutes of (and papers associated with) the meetings of the Panel, Working Groups and the DCUSA Ltd board of directors shall only be accessible through the Password Controlled Pages, as shall the contact details for Contract Managers and holders of Web Accounts.
- 4 Subject to Paragraph 5, Web Accounts shall only be given to the Panel, a Party, the Panel Secretary, the Secretariat, the Authority, the Consumer Council, MRASCo, the [National Electricity TransmissionGB](#) System Operator, BSCCo or DCUSA Ltd (or to the employees of any of them).
- 5 The Panel may, at its sole discretion, also give Web Accounts to persons (each an **Interested Industry Participant**) other than those referred to in Paragraph 4. A person wishing to become an Interested Industry Participant shall submit an application for a Web Account via the Website. Such application shall include the requirement to specify a sponsoring Party.
- 6 The access rights attributable to each Web Account may (as determined by the Panel) provide individual users (or classes of user) with different levels of access within the Password Controlled Pages, including so that (a) DCUSA Ltd's business confidential or financial information is only available to Parties; and (b) DCUSA Ltd's corporate governance information is only available to the directors of DCUSA Ltd.
- 7 The Panel may, at its sole discretion, withdraw or reduce the access rights associated with a Web Account at any time.