

SECTION 1C – CHANGE CONTROL

9. CHANGE CONTROL

- 9.1 The purpose of this Section 1C is to make provision for the terms and conditions of this Agreement to be varied.
- 9.2 No variation of this Agreement may be made or may have effect unless it is made in accordance with the provisions of this Section 1C.
- 9.3 For the purposes of this Section, all actual or potential provisions of this Agreement shall be deemed to have the status of either a Part 1 Matter or a Part 2 Matter.

Part 1 Matters

- 9.4 Any actual or potential provision of this Agreement shall be deemed to have the status of a **Part 1 Matter** to the extent that it satisfies one or more of the following criteria:
- 9.4.1 it is likely to have a significant impact on the interests of electricity consumers;
- 9.4.2 it is likely to have a significant impact on competition in one or more of:
- (A) the generation of electricity;
 - (B) the distribution of electricity;
 - (C) the supply of electricity; and
 - (D) any commercial activities connected with the generation, distribution or supply of electricity;
- 9.4.3 it is likely to discriminate in its effects between one Party (or class of Parties) and another Party (or class of Parties);
- 9.4.4 it is directly related to the safety or security of the Distribution Network; and
- 9.4.5 it concerns the governance or the change control arrangements applying to this Agreement; and

9.4.6 it has been raised by the Authority or a DNO/IDNO Party pursuant to Clause 10.2.5, and/or the Authority has made one or more directions in relation to it in accordance with Clause 11.9A.

Part 2 Matters

9.5 Any actual or potential provision of this Agreement which does not satisfy one or more of the criteria set out at Clause 9.4 shall be deemed to have the status of a **Part 2 Matter**.

Guidelines

9.6 The Panel shall produce such documents (if any) as it considers appropriate to provide guidance to the Parties in relation to the process set out in this Section 1C, and shall publish any such documents on the Website. Such documents shall be for guidance only and shall not affect the interpretation of this Agreement.

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 Consumer Body;

10.2.3 the National Electricity Transmission 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 (which may include, in respect of a Charging Methodology, any person whose interests are materially affected by that Charging Methodology); and

10.2.5 the Authority or a DNO/IDNO Party acting at the direction of the Authority (in each case only in relation to Authority Change Proposals).

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;
 - 10.4.5A a statement of whether the Proposer believes that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being 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 a statement of whether, in the opinion of the Proposer, the proposed variation relates to a Part 1 Matter or a Part 2 Matter;
 - 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; and
 - 10.4.10 in the case of variations proposed by DNO/IDNO Parties, confirmation as to whether it is raising the proposal in compliance with a direction of the Authority as envisaged by Clause 10.2.5.
- 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.

Criteria for Urgent Change Proposals

- 10.7 A Change Proposal should be treated as urgent if it relates to a current or imminent issue that if not urgently addressed may cause:
- 10.7.1 significant adverse commercial impact upon the Parties (or a class of Party), electricity consumers and/or any other person;
 - 10.7.2 significant adverse impact on the safety and security of the Distribution Network; or
 - 10.7.3 one or more Parties to be in breach of the Relevant Instruments or other law.

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 Change Proposals specified as urgent in accordance with Clause 10.4.8, 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. The Panel shall consider whether to accept or refuse the Change Proposal, and whether or not the Change Proposal should, in light of the criteria set out in Clause 10.7, properly be treated as urgent. Only Change Proposals that the Panel considers should be treated as urgent shall be treated as **Urgent Change Proposals**.

Refusal by the Panel

10.13 Subject to Clause 10.14A, 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 Subject to Clause 10.14A, 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 (as supplemented by Condition 22A) of the Distribution Licences.

10.14A The Panel may not refuse a Change Proposal submitted pursuant to Clause 10.2.5.

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.
- 10.22 In addition to the right of the Panel to refuse the referral of a Change Proposal under Clause 10.13 or 10.14, the Panel shall refuse the referral of a Change Proposal that it considers to fall within the scope of a Significant Code Review and that is submitted during the relevant Significant Code Review Phase, unless the Authority otherwise directs (including where the Authority determines that the referral of the Change Proposal may be accepted, having taken into account (among other things) the urgency of the subject matter of the proposal).
- 10.23 Where a Change Proposal is submitted during a Significant Code Review Phase, the Panel shall:
- 10.23.1 unless the Authority gives notice otherwise, notify the Authority as soon as practicable of:
- (A) any representations received in relation to the relevance of the Significant Code Review to the proposal; and
 - (B) the Panel's assessment of whether the proposal falls within the scope of the Significant Code Review and its reasons for that assessment; and

10.23.2 comply with any direction of the Authority stating that the Change Proposal should be treated as falling:

- (A) within the scope of the Significant Code Review, in which case the referral of the Change Proposal shall be rejected (or its progress suspended if its referral was previously accepted); or
- (B) outside the scope of the Significant Code Review, in which case the referral of the Change Proposal shall be accepted.

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 Consumer Body;

11.2.3 the National Electricity Transmission 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 (taking into account the Proposer's opinion provided pursuant to Clause 10.4.7).
- 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 or Clause 13.22.
- 11.9A The Definition Procedure shall not apply to Authority-Led Change Proposals. In respect of all Authority Change Proposals, the Authority may by direction specify and/or amend:
- 11.9A.1 the timetable to apply to each stage of the Assessment Process for the Change Proposal; and/or
 - 11.9A.2 the date from which the variation envisaged by the Change Proposal is to take effect.

Timetable

- 11.10 Unless a timetable has already been established by the Authority in accordance with Clause 11.9A, 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. For the avoidance of doubt, the Panel shall not make any determinations regarding the proposed implementation date at this stage.
- 11.11 The overall timetable originally established for an Assessment Process in accordance with Clause 11.10 may not exceed six months. 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 Save in the case of a timetable established by the Authority in accordance with Clause 11.9A, 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 (including where the Working Group established to consider that Change Proposal so requests). The Authority may, either on the application of a Party or of its own volition, veto any such variation, in which case the timetable will remain as it was immediately before the variation in question.
- 11.13 The Panel, the Secretariat and any Working Group shall each:
- 11.13.1 in the case of a timetable determined in accordance with Clause 11.9A, complete the respective tasks assigned to them under the Assessment Process within that timetable; or
 - 11.13.2 in the case of a timetable determined in accordance with Clauses 11.10 and 11.12 (inclusive), use their best endeavours to complete the respective tasks assigned to them under the Assessment Process within that timetable.

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 parties, on the proposal, which third parties shall include, in respect of proposals to vary one or more of the Charging Methodologies, any person whose interests the Working Group identifies as being materially affected by a Charging Methodology (which consultation shall, where appropriate, be by way of consultation with bodies who represent the interests of such third parties);
- 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 (and, in undertaking such evaluation in respect of a Change Proposal to vary one or more of the Charging Methodologies (but not the CCCM), the Working Group shall have regard to the ability of the Authority to veto any Change Proposal that appears to the Authority to have as its purpose or effect the full or substantial substitution of one Charging Methodology for another);
- 11.14.3A determining a plan to meet the timetable established for the Change Proposal under Clause 11.9A or Clauses 11.10 to 11.12 (as applicable), and notifying the Panel in the event that the Working Group requires more time to complete the activities set out in this Clause 11.14 (in which case the Working Group shall recommend an alternative timetable, and provide supporting information to justify the extension);
- 11.14.4 evaluating the likely impact of the proposed date for implementation of the variation, and where it considers appropriate amending this date, subject to the following:

- (A) an implementation date specified by the Authority in accordance with Clause 11.9A.2 may not be amended;
- (B) (subject to (A) above) the implementation date should be the date that enables the proposed variation to take effect as soon as practicable after the decision to implement has been reached, taking into account the complexity, importance and urgency of the variation; and,
- (C) in undertaking such evaluation in respect of a Change Proposal to vary one or more of the Charging Methodologies, the Working Group shall have regard to the obligations of DNO Parties under this Agreement, and under their Distribution Licences, regarding the frequency of changes to Use of System Charges, and regarding the notice to be given in advance of such changes

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: and

11.14.6 considering whether it is likely that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being made, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the treatment of carbon costs and evaluation of greenhouse gas emissions issued by the Authority from time to time).

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;
- 11.20.5A in any case in which the proposal was not subject to the Definition Procedure prior to the Report Phase, include the Proposer's statements of:
- (A) the detailed reasons why the Proposer believes that this Agreement would, if the proposed variation was made, better facilitate the achievement of the DCUSA Objectives than if the variation was not made; and
 - (B) whether the Proposer believes that there would be a material impact on greenhouse gas emissions as a result of the proposed variation being made; and
- 11.20.6 in any case in which the proposal was subject to the Definition Procedure prior to the Report Phase, provide a detailed 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;
 - (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; and

- (D) whether the Working Group considers it is likely that there would be a material impact on greenhouse gas emissions as a result of the proposed variation (or any of the alternative variations referred to in Clause 11.20.6(C)) being made, and (if so) the Working Group's assessment of such impact (in accordance with any guidance on the treatment of carbon costs and evaluation of greenhouse gas emissions issued by the Authority from time to time).

11.21 At any time prior to the Change Report being approved for submission to the Voting Procedure in accordance with Clause 11.22, 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 13.22, and any such determination, when made, shall prevail over any earlier opinion of the Authority.

11.22 Following receipt of a Change Report, the Panel shall either:

11.22.1 where the Panel considers that additional work or significant amendment of the Change Report is required, send it back to the Working Group (or, where the Change Proposal was not subject to the Definition Procedure, form a new Working Group) to consider the Change Report; or

- 11.22.2 as soon as reasonably practicable following receipt of the Change Report (but, unless otherwise exempted by the Authority, not earlier than 7 days after the Change Report was provided to the Authority), 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 (provided that the Panel may not amend an implementation date specified by the Authority in accordance with Clause 11.9A.2);
- 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); and
- 11.23.4 to clarify or correct typographical errors in the Change Report or make other amendments which do not alter the substance of the Change Report,
- 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; provided that, where the Proposer raised the Change Proposal pursuant to Clause 10.2.5, the Proposer may not withdraw such support unless it also provides evidence that the Authority has given its consent to such withdrawal.

11.29A Where the Authority issues a "back-stop" direction under Condition 22.9ED of the Distribution Licences in respect of one or more Change Proposals, those Change Proposals (including any alternatives) shall be deemed to have been withdrawn (and Clause 11.31 shall not apply in respect of the withdrawal of those Change Proposals).

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 11.30, 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, the CVA Registrants and the Gas Supplier 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;

12.9.2 the Party Category comprising the Gas Supplier Parties; or

12.9.3 any other Party Category where five or fewer Groups in that Party Category cast their vote,

each 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 Except where Clause 12.9 applies, the Weighted Vote of each 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 Supplier Parties, the aggregate number of Metering Points against which those Suppliers are registered across all of the MPAS Registration Systems; and
- (c) in respect of a Group comprised of CVA Registrants, the sum of the Maximum Export Capacities or Maximum Import Capacities (whichever is the greater on a site-by-site basis) of all of the Entry Points relating to Metering Systems for which those CVA Registrants 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(a) and (b) 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(c), 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 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, for the majority of the Party Categories that were eligible to vote, the sum of the Weighted Votes of the Groups in each 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, for the majority of the Party Categories that were eligible to vote:

- 13.6.1 the number of Groups in each 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 the Groups in each 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. Notwithstanding such rejection, where:

- 13.7.1 the tests under Clauses 13.6.1 and 13.6.2 are satisfied in respect of all the Party Categories that were eligible to vote and that comprise 3 or more Groups; and

- 13.7.2 such rejection occurred only because either or both of the tests under Clauses 13.6.1 and 13.6.2 were not satisfied in respect of one or more Party Categories that comprise fewer than 3 Groups,

then, the Change Proposal shall be deemed to relate to a Part 1 Matter and the Parties shall be deemed to recommend to the Authority that the proposal should 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 Consumer Body;

13.8.3 the National Electricity Transmission 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.
- 13.11A Where the Authority determines that it cannot properly form an opinion on whether to accept or reject a Change Proposal, the Authority may direct the Panel to revise and resubmit the Change Report, in which case:
- 13.11A.1 the vote under Clause 12 in respect of such Change Proposal shall be null and void;
- 13.11A.2 the Panel shall give effect to any direction of the Authority as to how the Change Proposal should be treated, including where necessary sending the Change Proposal back to the relevant Working Group (or establishing a Working Group) to further consider the Change Proposal and any matters identified by the Authority in such direction;
- 13.11A.3 once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Change Proposal to the Voting Procedure.
- 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.
- 13.13 Any direction as referred to in Clause 13.12 will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat). Where any such direction or notification is, nevertheless, communicated to the DNO Parties and IDNO Parties, those Parties shall, as soon as practicable following receipt of such direction or notification, forward a copy to the Panel (care of the Secretariat).

13.14 The Secretariat shall, as soon as is reasonably practicable after the receipt, pursuant to Clause 13.13, by the Panel of a determination by the Authority, as referred to in Clause 13.12), notify the following persons whether the Change Proposal has been accepted or rejected:

13.14.1 each Party;

13.14.2 the Consumer Body;

13.14.3 the National Electricity Transmission System Operator; and

13.14.4 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.

13.15 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

13.16 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

13.17 Any of the following persons who are aggrieved by the acceptance or rejection of a Change Proposal by virtue of Clause 13.6 or Clause 13.7 may appeal such acceptance or rejection to the Authority. Those persons are:

13.17.1 a Party;

13.17.2 the Consumer Body;

13.17.3 the National Electricity Transmission System Operator; and

13.17.4 any person or body that is designated in writing by the Authority for the purposes of Clause 10.2.4.

13.18 Such appeal 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. Such appeal 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 13.20) that the acceptance or rejection of the Change Proposal by virtue of Clause 13.6 or 13.7 should be quashed; and

13.18.3 be copied to the Secretariat and to the Panel.

13.19 Where an appeal is validly made in accordance with Clauses 13.17 and 13.18, and such appeal is in respect of an accepted Change Proposal, then such acceptance shall be suspended pending the Authority's decision pursuant to Clause 13.20 and (if applicable) Clause 13.21.

13.20 If the Authority, following receipt of valid appeal under Clause 13.17 (and after having consulted with any persons and had regard to any information that it thinks fit), determines that:

13.20.1 the person making the appeal is likely to be unfairly prejudiced by the acceptance or rejection of the Change Proposal; or

13.20.2 where the Change Proposal was accepted, such acceptance may not better facilitate the achievement of at least one of the DCUSA Objectives than if it was rejected; or

13.20.3 where the Change Proposal was rejected, acceptance of the Change Proposal may have better facilitated the achievement of at least one of the DCUSA Objectives,

and that the appeal is not brought for reasons that are trivial or vexatious, and nor does the appeal have no reasonable prospect of success, then Clause 13.21 shall apply. Where the Authority determines that the requirements of this Clause 13.20 are not

met, then any suspension of an accepted Change Proposal pursuant to Clause 13.19 shall cease, and Clause 14 shall apply.

13.21 Where this Clause 13.21 applies in respect of a Change Proposal in accordance with Clause 13.20 (but not otherwise), then:

13.21.1 the Panel shall give effect to any interim direction of the Authority pending the decision of the Authority for the purposes of Clause 13.21.2, which interim direction may include a direction to implement the Change Proposal pending such decision of the Authority; and

13.21.2 the Authority may (having regard to the matters at Clauses 13.9 and 13.10 as if the Change Proposal related to a Part 1 Matter) determine that:

(A) the appeal is dismissed, in which case the acceptance or rejection of the Change Proposal in accordance with Clause 13.6 or 13.7 shall stand (and any suspension of an accepted Change Proposal pursuant to Clause 13.19 shall cease); or

(B) the appeal is successful, in which case the Authority may determine that:

(i) the acceptance under Clause 13.6 shall be quashed (and the Change Proposal deemed rejected) or the rejection under Clause 13.7 shall be quashed (and the Change Proposal deemed accepted); or

(B) the Change Proposal shall be sent back to the Panel for reconsideration, and once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Change Proposal to the Voting Procedure.

13.22 Where the Authority's decision for the purposes of Clause 13.21.2(B)(i) quashes the acceptance or rejection of a Change Proposal under Clause 13.6 or 13.7, then the Change Proposal shall be treated as if it related to a Part 1 Matter. Accordingly, the vote shall be reassessed in accordance with Clause 13.5 to determine the Parties

recommendation to the Authority, and the decision for the purposes of Clause 13.21.2(B)(i) shall be treated as a direction under Clause 13.12.

14. IMPLEMENTATION

14.1 The purpose of this Clause 14 is to provide that, where a Change Proposal has been accepted in accordance with Clause 13, the Panel shall make arrangements by which this Agreement will be varied in accordance with the variation so accepted (**Implementation**).

Implementation Date

14.2 In respect of Change Proposals which provide for a variation to Schedule 16, 17, 18, 20 and/or 29, where:

14.2.1 the implementation date for such Change Proposal accepted in accordance with Clause 13 is 1 April in any year; and

14.2.2 the date on which such Change Proposal was accepted in accordance with Clause 13 occurred less than 3 months prior to the date on which notice would need to be given in accordance with Clause 19.1A in order for amended Use of System Charges to have effect from that 1 April,

then the implementation date for such Change Proposal shall be deemed to be the following 1 April, unless the Authority has made a direction under Clause 19.1B, in which case the implementation date for such Change Proposal shall be the date directed by the Authority.

14.3 Where, in respect of any Change Proposal, the proposed variation to this Agreement is accepted in accordance with Clause 13 but the proposed implementation date is rejected:

14.3.1 the Change Proposal will be re-submitted to the Assessment Process and Voting Procedure but so that only the newly proposed implementation date (and not the proposed variation to the Agreement) is assessed and voted upon; and

14.3.2 the provisions of this Clause 14 shall not apply to the Change Proposal until the proposed implementation date is also accepted in accordance with Clause 13.

- 14.4 Where, in respect of any Change Proposal, the proposed variation to this Agreement is rejected in accordance with Clause 13 but the proposed implementation date is accepted, the Change Proposal as a whole shall be deemed to have been rejected in accordance with Clause 13.

Implementation

- 14.5 In respect of a Change Proposal which provides for a variation to Schedule 16, 17, 18, 20 and/or 29:

14.5.1 the relevant Schedules will be revised and issued to Parties clearly stating the implementation date (as set in accordance with Clause 14.2 where applicable);

14.5.2 in respect of each such Schedule to have effect from 1 April in any year, a finalised set of the Schedule must be issued (at the latest) within 5 Working Days after the date 3 months prior to the date on which notice would need to be given in accordance with Clause 19.1A in order for amended Use of System Charges to have effect from that 1 April (or, where the Authority has made a direction under Clause 19.1B in relation to the Schedule, within 5 Working Days after the date of such direction); and

14.5.3 following the issue to Parties of the finalised set of Schedules in accordance with Clause 14.5.2, the Panel shall, within 30 Working Days, arrange for the models referenced in the Schedules to be issued to Parties identifying the Schedules to which such models relate.

- 14.6 In respect of a Change Proposal not subject to Clause 14.5, the Panel shall, at the next Panel meeting after a Change Proposal has been accepted:

14.6.1 determine what actions are required in order to ensure that the accepted variation may be made by the accepted implementation date; and

14.6.2 set a timetable for the completion of each of those actions which is required to ensure that the accepted variation may be made by the accepted implementation date.

14.7 It shall be the duty of the Panel to ensure that actions which are required to secure that an accepted variation may be made by the accepted implementation date are taken so as to secure that the variation is made by that date.

14.8 It shall be the duty of each Party to co-operate with the Panel to the extent required to ensure that such variation may be made by such date.

Subsequent Amendment to Implementation Date

14.9 Where, having regard to representations received from the Secretariat or from any Party, the Panel considers that it is not reasonably practicable to vary this Agreement by the relevant implementation date:

14.9.1 the Panel may request the Authority to direct that a new later implementation date be substituted for the first such date; and

14.9.2 where the Authority makes such a direction following a request by the Panel, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to that later date.

14.10 Where, having received representations from any Party as to the appropriateness of the relevant implementation date, the Authority (having first consulted with the Panel) considers that the implementation date should be amended so as to be either a later or an earlier date:

14.10.1 the Authority may direct that a new implementation date be substituted for the first such date; and

14.10.2 where the Authority makes such a direction following representations from any Party, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to the date so directed.

14.11 Without prejudice to Clause 14.10, in respect of an Authority Change Proposal:

- (a) the Authority may direct that a new implementation date be substituted for the first such date; and
- (b) where the Authority makes such a direction, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to the date so directed.