

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 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;

- 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.
- 54.1.8 the Breaching Party fails to remedy a DCUSA Payment Default within 5 Working Days after receipt of a DCUSA Late Payment Notice.

Suspension of Rights

54.2 For so long as an Event of Default is continuing, where a Supplier/CVA Registrant is a User under Section 2A, or where 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;
- 54.2.2 Clause 54.1.8, the Panel shall be entitled to instruct each DNO/IDNO Party to procure suspension of registration services for the Breaching Party under the Master Registration Agreement, in which case the DNO/IDNO Parties shall procure such suspension, and the Panel shall notify the Breaching Party of such suspension and each DNO/IDNO Party shall report the alleged event of default to the MRA Executive Committee as required under the Master Registration Agreement; and
- 54.2.3 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 (in the case of Clauses 54.2.1 and 54.2.3) 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.
- 54.4A Where the Panel has instructed the DNO/IDNO Parties to procure suspension of registration services for a Party in accordance with Clause 54.2.2 and that Party remedies the DCUSA Payment Default, then the Panel shall notify each DNO/IDNO Party and the Authority that the DCUSA Payment Default has been remedied. Following receipt of such notification, each DNO/IDNO Party shall cease the suspension of registration services, and notify the MRA Executive Committee that the suspension of registration services has been lifted.

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.

55. FORCE MAJEURE

55.1 If any Party (the **Affected Party**) is unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall (subject to Clause 54.1.6) remain in effect but:

55.1.1 the Affected Party's obligations;

55.1.2 the obligations any other Party owes to the Affected Party under this Agreement; and

55.1.3 any obligations such other Parties owe between themselves under this Agreement which the relevant Party is unable to carry out directly as a result of the suspension of the Affected Party's obligations in accordance with this Clause 55,

shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

55.1.4 the Affected Party gives the other Parties prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure; and

55.1.5 the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure; and

55.1.6 no obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and

55.1.7 the Affected Party uses all reasonable efforts to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and

55.1.8 immediately after the end of the circumstance of Force Majeure, the Affected Party notifies the other Parties in writing that the circumstance of Force Majeure has ended and resumes performance of its obligations under this Agreement.

56. DEROGATIONS

Panel's Ability to Grant Derogations (excluding Sandbox Applications)

- 56.1 The Panel may (subject to Clause 56.3) resolve, on the application of any Party, to grant a derogation to any Party or Parties in relation to any obligation or obligations contained in this Agreement. In resolving to grant such derogation, the Panel may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation. Derogations, save for derogations requested under Sandbox Applications, will normally only be granted in respect of newly introduced or amended obligations (or obligations due to be implemented in the future).
- 56.2 The Panel may, from time to time and as it sees fit (subject to Clause 56.3), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.
- 56.3 A derogation granted to any Party by the Panel under Clause 56.1, or any retraction, amendment or addition under Clause 56.2, shall, in each case, only be effective if made in conformity with any representations received from the Authority in accordance with Clause 56.5.3 and if not vetoed by the Authority within 10 Working Days of notification of the Panel's decision and the rationale for it.

Application for Derogation

- 56.4 A Party may, at any time, apply to the Panel for a derogation under Clause 56.1 by notice in writing to the Panel Secretary.
- 56.5 Where the Panel Secretary receives such an application, it shall ensure that the matter is added to the agenda for the next Panel meeting occurring more than 10 Working Days after receipt of such application, and shall give notice to all the Parties and to the Authority, at least 10 Working Days before the Panel meeting in question:
- 56.5.1 setting out the identity of the Party by whom the application has been made and the terms of the derogation sought;
- 56.5.2 specifying the date on which the Panel is due to consider the matter; and

56.5.3 inviting representations or objections with respect to the derogation before that time.

56.6 Where representations or objections are made in accordance with Clause 56.5.3, the Panel Secretary shall, as soon as reasonably practicable after receipt thereof and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.

Licence Derogations

56.7 Without prejudice to Clause 56.1, where the Authority grants a derogation to a Party under its Licence relieving that Party of certain of its licence obligations (including any derogation in respect of one or more of the Charging Methodologies or any element of them), that derogation shall also be effective for the purposes of this Agreement in the same terms (to the extent relevant to this agreement). The Party seeking to rely upon such derogation shall, as soon as reasonably practicable after receipt of such derogation send a copy of it to the Panel.

Derogation from Performance

56.8 For so long as a Party has the benefit of a derogation in accordance with Clause 56.1 or 56.7, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.

56.9 A Party may, immediately by notice in writing to the Panel at any time, reject any derogation then applying to it, in which case the derogation shall cease to apply for the purposes of this Agreement and the Party shall become subject to the obligations under this Agreement set out in the derogation in question.

Sandbox Applications

56.10 The Secretariat shall, in respect of any Sandbox Application received from the Authority, add it to the Sandbox Register and prepare a written report (the "**Sandbox Report**") containing the information listed at Clause 56.12.

56.11 The Secretariat shall not be required to conduct an evaluation of a Sandbox Application or submit a draft Sandbox Report to the Panel until the Sandbox Applicant has:

56.11.1 provided all the information that the Secretariat reasonably requires in order to conduct such evaluation and prepare a Sandbox Report; and

56.11.2 paid to the Secretariat a fee which represents the reasonable costs to the Secretariat of processing the Sandbox Application, such fee to be approved by the Panel from time to time.

56.12 The Sandbox Report shall:

56.12.1 be addressed and delivered to the Panel;

56.12.2 specify the identity of the Sandbox Applicant;

56.12.3 specify the Party/Parties seeking the derogation (if not the Sandbox Applicant);

56.12.4 set out the reason for the derogation;

56.12.5 set out the derogation required to this Agreement;

56.12.6 identify any impact on Parties including applicable costs (if any);

56.12.7 state the period of the requested derogation, the end of which shall be no longer than two years from the Authority's approval of such derogation;

56.12.8 state the reason(s) why the derogation better facilitates the DCUSA Objectives; and

56.12.9 set out a reporting plan.

56.13 Following receipt of a Sandbox Report, the Panel shall either:

56.13.1 where the Panel considers that additional work or significant amendment of the Sandbox Report is required, send it back to the Secretariat to further develop or amend the Sandbox Report; or

- 56.13.2 where the Panel considers that no additional work or amendment of the Sandbox Report is required, ensure that the Sandbox Report is provided to Parties and the Authority within 2 Working Days by the Panel Secretary, and that Parties are invited to submit representations with respect to the Sandbox Application within 10 Working Days of receipt of the Sandbox Report.
- 56.14 Where representations or objections are made in accordance with Clause 56.13.2, the Secretariat shall, as soon as reasonably practicable after receipt thereof, and unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.
- 56.15 Following the end of the period referred to in Clause 56.13.2, the Panel shall make its recommendation to the Authority as to whether the Panel considers the Authority should accept or reject the Sandbox Application. The Panel shall consider any representations or objections received from the Parties and the Authority, and may make any amendment or apply any conditions to the derogation request, in making such recommendation.
- 56.16 Where Clause 56.15 applies, the Secretariat shall provide the Authority with:
- 56.16.1 the Sandbox Report;
 - 56.16.2 the Panel's recommendation;
 - 56.16.3 any applicable amendments or conditions to apply to the Sandbox Application;
 - 56.16.4 any representations or objections received from Parties; and
 - 56.16.5 at the Authority's request, any other existing documents or information in respect of the Sandbox Application in question.
- 56.17 In making a determination pursuant to Clause 56.16, the Authority:
- 56.17.1 may follow such procedure as it considers appropriate;
 - 56.17.2 may have regard to such matters, and to any representations by such Parties, as it considers appropriate; and
 - 56.17.3 shall, in any event, have regard to the recommendation made by the Panel.

56.18 Where the Authority determines that it cannot properly form an opinion on whether to accept or reject the Sandbox Application, the Authority may direct the Panel to revise and re-submit the Sandbox Report, in which case, the following shall apply:

56.18.1 the Panel shall give effect to any direction of the Authority as to how the Sandbox Report should be treated, including where necessary, sending the Sandbox Report back to the Secretariat to consider any matter identified by the Authority in such direction; and

56.18.2 once the Panel is satisfied that the issues identified by the Authority have been addressed, the Panel shall resubmit the Sandbox Report to the Parties and the Authority in accordance with Clause 56.13.2.

56.19 Where the Authority determines pursuant to Clause 56.16 that a Sandbox Application shall be accepted or rejected, it shall direct the Panel accordingly. Any direction will be effectively given if communicated by the Authority to the Panel (which may be care of the Secretariat).

56.20 The Secretariat shall, as soon as is reasonably practicable after receipt of the direction by the Authority as referred to in Clause 56.19, notify the Sandbox Applicant and shall ensure that the Sandbox Register is updated so as to indicate the decision made in relation to the Sandbox Application.

56.21 The Panel may, from time to time and as it sees fit, resolve to retract any derogation, or to amend or add to the conditions applicable to any Sandbox Application subject to seeking representations from Parties and approval from the Authority.

57. FURTHER INFORMATION PROVISIONS

Confidentiality and the Panel

57.1 The Parties acknowledge that, in order for the Panel (and its Working Groups) to properly carry out its duties under this Agreement, the Panel may decide, or be obliged, to keep confidential to it (and may instruct its Working Groups to keep confidential) matters, minutes, reports, consultation responses, data and other information produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or any Working Group. In such cases, the Panel, the Panel Members, the Secretariat, the Panel Secretary and any Working Group and its members shall not disclose such matters, minutes, reports, consultation responses, data and other information. The Panel shall use reasonable endeavours to keep such cases to a minimum.

57.2 Each Party agrees, subject to any relevant confidentiality provision binding on it, to provide the Panel, the Panel Secretary and the Secretariat with all data and other information reasonably requested by the Panel and necessary for the Panel, the Panel Secretary and/or the Secretariat properly to carry out their duties and responsibilities under this Agreement.

57.3 The following provisions apply in relation to information provided by a Party (under or in relation to this Agreement) to one or more of the Panel, DCUSA Ltd, any Working Group, the Panel Secretary and/or the Secretariat (including any information that a Party provides under Clause 57.2):

57.3.1 where the Party wishes such information to remain confidential, it shall clearly mark such information as such. The Panel, its Working Groups and the Secretariat shall ensure that all information so marked is kept secret and confidential, provided that such information shall still be made available to the Authority on the understanding that the Authority shall keep such information confidential: or

57.3.2 where the Party does not mark any such information as confidential, the Panel, its Working Groups and the Secretariat need not treat such information as secret or confidential, and the Party hereby consents to the publication of such information on the Website (provided the requirements of Schedule 14 are

observed). The Party providing such information shall indemnify DCUSA Ltd in respect of any claim relating to the publication of such information on the Website in accordance with Schedule 14 (whether under the Data Protection Legislation, section 105 of the Utilities Act or otherwise).

Intellectual Property in Change Proposals

57.4 In respect of each Change Proposal that a Proposer may make, the Proposer hereby:

57.4.1 assigns fully, irrevocably and unconditionally any and all present and future Intellectual Property Rights that it may have in such Change Proposal to DCUSA Ltd; and

57.4.2 confirms that, to the best of its knowledge and belief, no other person has any Intellectual Property Rights in such Change Proposal.

Party Details

57.5 On each Party's accession to this Agreement, the Secretariat shall add that Party's Party Details to Schedule 11.

57.6 Each Party shall ensure that the Secretariat is notified of any changes from time to time in that Party's Party Details, so as to ensure that the same can be kept up-to-date from time to time.

57.7 The Secretariat shall, on receipt of any notification under Clause 57.6, promptly:

57.7.1 amend Schedule 11 to reflect the relevant changes in the relevant Party's Party Details; and

57.7.2 circulate a copy of the amended Schedule 11 to all the Parties.

57.8 Notwithstanding Clauses 9.2 and 10.1, any changes to Schedule 11 in accordance with Clause 57.5 or 57.7 shall not constitute a change to which Section 1 C applies.

58. DISPUTES

Arbitration

58.1 Save where expressly stated in this Agreement to the contrary, and subject to:

58.1.1 any contrary provisions of the Act, of any licence issued pursuant to the Act, or of the Regulations (or any other regulations made under Section 29 of the Act); and

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

any dispute or difference of whatever nature howsoever arising under, out of, or in connection with this Agreement between two or more Parties shall be and is hereby referred to arbitration between such Parties, pursuant to the arbitration rules of the Electricity Arbitration Association from time to time in force.

58.2 Whatever the nationality, residence, or domicile of the Parties in question and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be Great Britain and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.

Third Party Claims

58.3 Subject always to Clause 58.5, if any consumer of electricity (the **consumer**) brings any legal proceedings in any court against any Party (the **defendant party**) and the defendant party wishes to make a third party claim (as defined in Clause 58.4) against another Party which would but for this Clause 58.3 have been a dispute or difference referred to arbitration by virtue of Clause 58.1, then, notwithstanding the provisions of Clause 58.1 (which shall not apply) and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the consumer and the defendant party but also between either or both of them and the other

such Party, whether by way of third party proceedings or otherwise as may be ordered by the court.

58.4 For the purposes of this Clause 58, **third party claim** shall mean:

58.4.1 any claim by a defendant party against another Party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

58.4.2 any claim by a defendant party against another Party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the consumer; or

58.4.3 any requirement by a defendant party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the consumer and the defendant party but also as between either or both of them and another Party (whether or not already a party to the legal proceedings).

58.5 Clause 58.3 shall apply only if, at the time at which the legal proceedings are commenced, no arbitration has been commenced between the defendant party and the other Party in question that raises or involves the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

59. DATA TRANSFER AND NOTICES

Data Transfer

59.1 Unless otherwise agreed between the sender and the recipient, any notice, request or other communication under Section 2 shall be sent in accordance with Good Industry Practice, and Good Industry Practice will include sending it by the means (if any), and, with the content (if any), required pursuant to:

59.1.1 the Balancing and Settlement Code;

59.1.2 the Master Registration Agreement; and/or

59.1.3 the Data Transfer Catalogue.

59.2 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the relevant message shall be addressed to the Market Domain I.D. specified for such purpose in that Party's Party Details.

Data Transfer Responsibility

59.3 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the Party sending the relevant message shall be responsible for ensuring that it reaches the relevant Gateway within any time period laid down in this Agreement for the provision of such notice, request or communication (and any such message shall be deemed to be received by the recipient at the point in time at which it is delivered to such Gateway): provided that the Party sending a message shall have no obligation to ensure receipt where the intended recipient has failed, contrary to the Data Transfer Service Agreement, to remove or process all messages delivered to its Gateway and to ensure that such messages are made available to its internal systems as expeditiously as possible so that the Gateway is able to continue to process incoming and outgoing messages effectively.

Unavailability of DTN

59.4 If the Data Transfer Network or any relevant part of such network is at any time for any reason unavailable for the sending of messages between the Parties, then during the period of unavailability:

- 59.4.1 the Parties shall use any means reasonable in the circumstances to send any notice, request or other communication that this Agreement would otherwise require to be sent via the Data Transfer Network;
- 59.4.2 where other means are used in accordance with Clause 59.4.1, the Parties shall be relieved from any service levels set out in this Agreement relating to any affected notice, request or other communication (except to the extent that this Agreement expressly provides for alternative service levels in such circumstances) but shall use their reasonable endeavours to send such notice, request or other communication as soon as is reasonably practicable; and
- 59.4.3 to the extent that no such other means are practicable given the nature of the communication and the surrounding circumstances, such unavailability of the Data Transfer Network shall be deemed (to the extent not caused by a breach by either party of the Data Transfer Service Agreement) to constitute a circumstance of Force Majeure for the purposes of this Agreement.
- 59.5 Where any Party, in breach of its obligations under Clause 59.3, fails to deliver any notice, request or other communication to the recipient's Gateway and such failure occurs for reasons outside that Party's direct control, the breaching Party shall have no liability to the other under this Agreement and the relevant Parties shall rely instead upon the provisions of the Data Transfer Service Agreement.

Notices

- 59.6 Save as provided in Clause 30.5, Clause 59.1 and Schedule 8, any notice, request or other communication to be made by one Party to another Party under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier, fax or email to that other Party at the address specified for such purpose in that Party's Party Details.
- 59.7 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clauses 30.5, 59.6 or paragraph 11.1 of Schedule 8 shall be deemed to be received:

- 59.7.1 if delivered personally, when left at the address set out for such purpose in the relevant Party's Party Details;
 - 59.7.2 if sent by post, three Working Days after the date of posting;
 - 59.7.3 if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error; and
 - 59.7.4 if sent by email, one hour after being sent, unless an error message is received by the sender in respect of that email before that hour has elapsed.
- 59.8 Notices to or from DCUSA Ltd shall also be subject to the provisions of Clause 59.7, and notices to DCUSA Ltd shall be sent to the address given, from time to time, on the Website (or, in the absence of any such address, to its registered office).
- 59.9 Notices to the Panel shall also be subject to the provisions of Clause 59.7, and notices to the Panel shall be sent care of the Secretariat to the address given, from time to time, on the Website (or, in the absence of any such address, to the registered office of DCUSA Ltd).

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;
 - 60.8.2 that each Party holds under Clause 53.8;
 - 60.8.3 bestowed on Offshore Transmission Owners by Clause 53.10 (which shall be enforceable by Offshore Transmission Owners); and
 - 60.8.4 that Green Deal Providers hold under Clause 25.19C,
- 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.

60.15 The words and expressions used in this Clause 60.15 and not defined elsewhere in this Agreement shall be interpreted in accordance with any meaning given to them in the Data Protection Legislation.

- a. From time to time, personal data may be shared between Parties in accordance with the provisions of this Agreement.
- b. It is acknowledged that each Party is likely to process such personal data as a data controller, and when jointly agreeing on the manner in which, and the purpose for which, such data is processed, as joint data controllers.
- c. Each Party warrants that it has effected, and undertakes that it shall (while it remains a Party to this Agreement) effect and maintain, all such notifications and registrations as it is required to effect and maintain under the Data

Protection Legislation to enable it lawfully to perform the obligations imposed on it by this Agreement, and exercise the rights granted to it by this Agreement.

- d. Each Party undertakes to comply with the Data Protection Legislation in the performance of this Agreement, including ensuring that it has a lawful basis for sharing personal data with another Party and that it complies with the Data Protection Legislation in relation to such sharing of personal data.
- e. Each Supplier Party shall provide to its Customers, and each DNO/IDNO Party shall provide to its Connectees the information (if any) required by the Data Protection Legislation to be provided by them in respect of the processing to be undertaken under this Agreement. If a data subject is dealing with two or more Parties at the same time, then both those Parties shall be separately responsible for complying with their obligations under the Data Protection Legislation regarding the processing of the data subject's personal data.
- f. Each Party shall comply with the Data Protection Legislation as regards the exercise of rights by data subjects for which the Party is the data controller. In particular, each Party shall designate its own contact point responsible for dealing with data protection queries raised by data subjects for which the Party is the data controller. Unless otherwise agreed bilaterally in writing at the relevant time, and to the extent any Parties are joint controllers:
 - i. each Party shall independently comply with the Data Protection Legislation regarding the rights of data subjects under the Data Protection Legislation; and
 - ii. each Party shall independently inform the data subjects about its processing activities and shall refer to the other joint controller in such notices.
- g. The Parties do not anticipate that they will act as data processors in relation to any personal data shared pursuant to this Agreement. If a Party becomes aware of instances in which personal data may be processed under this Agreement by a Party as a data processor it shall notify the Panel so that consideration can be given to whether a Change Proposal should be raised to describe such personal

data and the purpose, nature and duration of such processing, and to set out the clauses required by the Data Protection Legislation to be included in contracts between data controllers and data processors.