




# CM066: National Grid Legal Separation - consequential changes to reference NGENSO in STC Section G and to place Nuclear Site Licence Provisions Agreement obligations on NGET for England and Wales






- 01 Initial Modification Report
- 02 Industry Consultation
- 03 **Draft Final Modification Report**
- 04 Final Modification Report

**Purpose of Modification:** This proposal seeks to modify the System Operator Transmission Owner Code (STC) to reflect the creation of a new National Grid Electricity System Operator (NGESO) that is legally separated from National Grid Electricity Transmission Limited. Where relevant, references to NGET throughout Section G in order to ensure the obligations on the System Operator and Transmission Owner are clear. It also seeks to modify Section G of the System Operator Transmission Owner Code (STC) to place Nuclear Site Licence Provisions Agreement obligations on NGET for England and Wales.



This is the Draft Final Modification report containing all responses to the Industry Consultation which closed on 28 June 2018. The purpose of this document is to assist the STC Panel prior to undertaking their recommendation vote on whether to support the implementation of CM066. The document is issued to industry and the Authority for 5 working days for comment. Comments are due back by 5pm on 16 July 2018. The Final Modification Report will be presented to the July STC Panel meeting.

	<b>High Impact:</b> None
	<b>Medium Impact</b> None
	<b>Low Impact</b> National Grid, Scottish Power Transmission, SHE Transmission, Offshore Transmission Owners

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## Timetable

The timetable was approved at the Panel on 25 April as follows:

STC Modification Proposal tabled at the STC Panel	25 April 2018
Panel agreed standard governance route	25 April 2018
Issue Industry Consultation for 20 Business days	31 May 2018
Industry Consultation Closes	28 June 2018
Issue draft STC Modification Report to Industry and Authority for 5 Working days	9 July 2018
Panel to agree Final STC Modification Report	25 July 2018

Final STC Modification Report issued to the Authority	7 August 2018	
Indicative Authority Decision	11 September 2018	
Implementation	1 April 2019	

## Proposer Details

<b>Details of Proposer:</b> (Organisation Name)	NGET
Capacity in which the STC Modification Proposal is being proposed:  (i.e. STC Party, Party Representative or person or persons having a relevant interest as may be designated in writing for this purpose by the Authority)	STC Party
<b>Details of Proposer's Representative:</b>  Name: Organisation: Telephone Number: Email Address:	Bec Thornton NGET 07887 822443 <a href="mailto:Bec.thornton@nationalgrid.com">Bec.thornton@nationalgrid.com</a>
<b>Details of Representative's Alternate:</b>  Name: Organisation: Telephone Number: Email Address:	John Martin NGET 07794 050359 <a href="mailto:John.martin2@nationalgrid.com">John.martin2@nationalgrid.com</a>

**Attachments (Yes):**

STC Section G – General Provisions

For information:

1. Modification Proposals for other Sections and Schedules of the STC (except for Schedules 2 and 14 as no changes are required) will be submitted to the STC Modification Panel in parallel to this one.

**Impact on Core Industry Documentation.**

*Please mark the relevant boxes with an “x” and provide any supporting information*

<b>BSC</b>	<input type="checkbox"/>
<b>Grid Code</b>	<input type="checkbox"/>
<b>CUSC</b>	<input type="checkbox"/>
<b>Other</b>	<input type="checkbox"/>

Although this modification proposal does not directly impact other industry codes, other proposed code modifications (Grid Code, CUSC, BSC, Distribution Code, DCUSA, SQSS) are being simultaneously raised to other industry codes as a result of creating a legally separate System Operator.

**1 Summary**

This document contains the responses to CM066 Industry Consultation that was issued on 31 May 2018 for 20 Working days. The Draft Final Modification Report will be published and issued to the STC Panel for its determination at the STC Panel meeting on 25 July 2018 in accordance with Section B of the Governance Framework.<sup>1</sup>

<sup>1</sup> [https://www.nationalgrid.com/sites/default/files/documents/34844-4\\_SECTION\\_B\\_V15.pdf](https://www.nationalgrid.com/sites/default/files/documents/34844-4_SECTION_B_V15.pdf) (clause 7.2.5.11)

## 2 Assessment by Proposer

### Defect

The STC defines the relationship between the Transmission System Owners and National Grid as the National Electricity Transmission System Operator (NETSO).

On 1 April 2019 and following legal separation of the System Operator and Transmission Owner within National Grid Group, the STC will no longer place the correct relevant obligations on those two National Grid entities.

The STC currently states the Nuclear Site Licence Provisions Agreement (NSLPA) obligations on Scottish Power Transmission for Scotland, not on Transmission Owners. NGET has the same obligations for England and Wales, but this is currently in the Grid Code. When NGET becomes a Party to the STC as an Onshore Transmission Owner, there will be no obligations in the Grid Code covering this for England and Wales.

### What

This proposal aims to modify the structure of the STC to introduce the new NGESO legal entity, and the existing NGET legal entity in a new role as a relevant transmission licensee.

In addition, to the above, in Section G, NGET will need to have the NSLPA obligations placed on them for England and Wales.

The relevant obligations of the System Operator will move to NGESO and National Grid Electricity Transmission plc (NGET) as a Transmission Owner will reflect obligations already in the STC that currently apply to Onshore Transmission Owners.

### Why

In order to implement legal separation, changes are required to NGET's existing licence required to implement legal separation; all system operator obligations will be transferred into a new transmission licence for the NGESO and as such need to be reflected accordingly within the electricity codes. The licence changes are the subject of ongoing consultation<sup>1</sup>.

NSLPA obligations for England and Wales are currently in the Grid Code, but when Legal separation goes ahead, NGET will not be a party to the Grid Code, so the NSLPA obligations on NGET as a Transmission Owner will be lost.

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<sup>1</sup> [Future Arrangements electricity System Operator Informal consultation on ESO Licence Drafting](#)

## How

On 22 September 2017, NGET published an open letter on its approach to modifying the relevant Industry Codes on 22 September 2017<sup>2</sup> stating that NGET intended to raise one Code Modification proposal for each Industry Code, but further work into assessing the changes required means that for the STC, 5 modifications need to be raised. CM066 is the one of these.

In addition, to the above, in Section G, NGET will have NSLPA obligations placed on them as the Onshore Transmission Owner for England and Wales.

## 3 Responses to Industry Consultation

The Industry Consultation Report was issued on 31 May 2018 for 20 Working days. One response was received from National Grid in support of the CM066 Modification Proposal. The full response is contained in table 1.

Table 1: Response Proforma

<b>Respondent:</b>	<i>Rob Wilson</i>
<b>Company Name:</b>	<i>NGET</i>
<b>Please express your views regarding the Industry Consultation, including rationale. (Please include any issues, suggestions or queries)</b>	<p>For reference, the Applicable STC objectives are:</p> <ul style="list-style-type: none"><li>(a) efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act</li><li>(b) development, maintenance and operation of an efficient, economical and coordinated system of electricity transmission</li><li>(c) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the distribution of electricity</li><li>(d) protection of the security and quality of supply and safe operation of the national electricity transmission system insofar as it relates to interactions between transmission licensees</li><li>(e) promotion of good industry practice and efficiency in the implementation and administration of the arrangements described in</li></ul>

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<sup>2</sup> NGET's Open Letter [Open Letter 22 Sept 2017](#)

		<p>the STC.</p> <p>(f) facilitation of access to the national electricity transmission system for generation not yet connected to the national electricity transmission system or distribution system;</p> <p>(g) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.</p>
Q	Question	Response
1	<p><b>Do you believe that CM066 better facilitates the STC objectives? Please include your reasoning.</b></p>	<p>This modification helps to achieve legal separation of NGET's SO and TO functions. As such it better facilitates objectives (a) and (e) in fulfilling what will be a licence obligation and in promoting good industry practice.</p> <p>The principle of these changes is that there is no betterment.</p>
2	<p><b>Do you support the proposed implementation approach? If not, please provide reasoning why.</b></p>	<p>Yes</p>
3	<p><b>Do you have any other comments?</b></p>	<p>No</p>

## 4 Governance

### Justification for Standard Procedure Normal Procedure

On 25 April 2018, the STC Panel agreed with the Proposer's view that this Modification should proceed along the standard governance route for an Authority decision.

## 5 Why change

Following the joint statement issued by BEIS, Ofgem and National Grid on 12 January 2017 entitled "Statement on the future of Electricity System Operation" and the

subsequent consultation response by Ofgem on ESO separation on 3 August 2017<sup>3</sup>, the obligations in the STC will need to be modified to reflect the System Operator requirements and to place the current Transmission Owner requirements on NGET as a Transmission Owner.

NGET and NGESO will become separately licensed entities as a consequence of NGET partially transferring its existing licence to NGESO (the System Operator elements only) to NGESO under section 7A Electricity Act 1989 and NGET will retain the Transmission Owner elements.

## 6 Panel View Pre Consultation

On 25 April 2018, all STC Panel Representatives reviewed the STC Modification Proposal and unanimously agreed that CM066 should be progressed along the standard governance route for an Authority decision and to be issued to Industry Consultation for 20 Working days.

## 7 Code Specific Matters

### Technical Skillsets

Not applicable for this Modification.

### Reference Documents

Please refer to Section 3 above for further information.

## 8 Solution

NGET has been replaced by NGESO where relevant throughout the STC Sections and Schedules in order to ensure the SO and TO obligations are clear.

In Section D, Paragraph 3, actions in relation to NLSPAs will reference NGET as well as Scottish Power Transmission Ltd.

## 9 Impacts & Other Considerations

All parties to the STC are impacted, to the extent that the relationship between the all Transmission Owners will change to be with NGESO not NGET.

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<sup>3</sup> Ofgem's Consultation Response [Future Arrangements Electricity System Operator Ofgem Response](#)



## Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

N/A

### Consumer Impacts

N/A

## 10 Relevant Objectives

Relevant Objective	Identified impact
(a) efficient discharge of the obligations imposed upon transmission licensees by transmission licences and the Act	Positive
(b) development, maintenance and operation of an efficient, economical and coordinated system of electricity transmission	
(c) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the distribution of electricity	
(d) protection of the security and quality of supply and safe operation of the national electricity transmission system insofar as it relates to interactions between transmission licensees	
(e) promotion of good industry practice and efficiency in the implementation and administration of the arrangements described in the STC.	
(f) facilitation of access to the national electricity transmission system for generation not yet connected to the national electricity transmission system or distribution system;	
(g) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.	

The Proposer believes that this change will better facilitate relevant objective (a), by attributing the appropriate obligations to NGESO as System Operator and the Transmission owners in accordance with the new NGESO Transmission Licence and modified NGET Transmission Licence obligations.

## 11 Implementation & Transition

Legal text for CM066 has been drafted using the baseline of April 2018 STC text and as the modification progresses through the governance process, the text may need to be revised in light of Business as Usual modifications to the STC. The Code Administrator will ensure that the Proposer is aware of any Business as Usual Modification Proposals and the Proposer will take into account any relevant amendments to the CM066 that may need to be made prior to 1 April 2019 and notify the STC Modification Panel should anything in CM066 require further modification as a result of this.

CM066 may require transitional changes to the STC and these will be discussed with the STC Panel and drafted into the legal text CM066 as and when the Proposer becomes aware of these.

CM066 together with the other four associated STC Modification proposals and the associated STC novation agreement in respect of National Grid's legal separation are all interdependent and as such, are all required to be implemented as a single update to the STC on 1<sup>st</sup> April 2019 following The Authority's determination.

## 12 Legal Text

### Text Commentary

In Section D, Paragraph 3, actions in relation to NLSPAs will reference NGET as well as Scottish Power Transmission Ltd.

Please refer to Annex 1 for proposed text.

## 13 Annex 1- Legal Text

## SECTION G: GENERAL PROVISIONS

### 1. INTRODUCTION

- 1.1 This Section G contains those provisions that are generic to this Code including, inter alia:
- 1.1.1 provisions to be adhered to by the Parties in relation to safety and environmental issues and nuclear installations;
  - 1.1.2 the limitation of liability of Parties under the Code and the third party rights that apply;
  - 1.1.3 the restrictions on transfer and subcontracting of Parties' rights and obligations under the Code, Framework Agreement or any TO Construction Agreement and the arrangements to apply on disposal by a Party of the whole or a part of its business; and
  - 1.1.4 other provisions defining the legal and contractual relationship between the Parties under this Code.

### 2. SAFETY AND ENVIRONMENT

#### 2.1 General

- 2.1.1 For the avoidance of any doubt, nothing in or pursuant to this Code shall:
- 2.1.1.1 be taken to require a Party to do anything which could or would be unsafe or contrary to that Party's environmental obligations; nor
  - 2.1.1.2 prevent a Party from doing anything which could or would be unsafe or contrary to that Party's environmental obligations to omit to do.
- 2.1.2 A Transmission Owner shall notify ~~NGET~~[NGESO] in the event that, and as soon as, such Transmission Owner:
- 2.1.2.1 becomes aware that, for safety purposes or pursuant to environmental obligations of such Transmission Owner, the Transmission Owner is reasonably likely to configure, or has urgently had to configure, any part of its Transmission System or otherwise take any steps other than in accordance with a direction from ~~NGET~~[NGESO]; or
  - 2.1.2.2 becomes aware that, for safety purposes or pursuant to environmental obligations of such Transmission Owner, it is reasonably likely to be, or has been, prevented, restricted or delayed from complying with a direction from ~~NGET~~[NGESO] in relation to the configuration of any part of its Transmission System.

2.1.3 Each Party shall use its best endeavours to identify and remove or lessen the likelihood of any circumstances arising in which such Party might seek to place reliance upon the provisions of paragraph 2.1.1 including, without limitation, by discussing such issues with the other Parties where appropriate.

## 2.2 User and Transmission Owner Safety Requirements

2.2.1 Notwithstanding that a Transmission Owner is not a party to the CUSC and is not thereby required to comply with the Grid Code, a Transmission Owner shall comply with:

2.2.1.1 the relevant appendix of Operating Code No 8 of the Grid Code as notified by **NGET[NGESO]**; and

2.2.1.2 (in carrying out its obligations under Section D, Part Two, paragraph 14), Appendix 1 of the Connection Conditions of the Grid Code,

(each as amended from time to time).

2.2.2 **NGET[NGESO]** shall comply with, and shall procure that a User shall comply with, the relevant appendix of OC8 and Appendix 1 of the Connection Conditions of the Grid Code where and to the extent that such section applies to **NGET[NGESO]** and the User.

2.2.3 Each Transmission Owner shall provide to **NGET[NGESO]** a copy of and any updates to its Safety Rules as applicable from time to time.

2.2.4 **NGET[NGESO]** shall ensure that no busbar Protection, mesh corner Protection, circuit-breaker fail Protection relays, AC or DC wiring (other than power supplies of DC tripping associated with a Generating Unit itself) may be worked upon or altered by Generator personnel in the absence of a representative of the Transmission Owner or written authority from the Transmission Owner to whose Transmission System the Connection Site at which such works are to be undertaken is connected.

2.2.5 Where a Transmission Owner owns the busbar Protection at the Connection Point Site, **NGET[NGESO]** shall ensure that no busbar Protection, circuit-breaker failure Protection relays, AC or DC wiring (other than power supplies of DC tripping associated with the Network Operator or Non-Embedded Customer's Apparatus itself) may be worked upon or altered by the Network Operator or Non-Network Operator or Non-Embedded Customer's personnel in the absence of a representative of the Transmission Owner or written authority from the Transmission Owner.

2.2.6 A Transmission Owner shall use its best endeavours to provide a representative or to submit a written authority to **NGET[NGESO]** on request from **NGET[NGESO]** for the purposes of paragraphs 2.2.4 and 2.2.5.

**Comment [AQ1]:** Process Point:  
Cross ref to GC

**Comment [AQ2]:** Process Point:  
Cross ref to GC

**Comment [AQ3]:** Process Point:  
Equivalent provision on user in GC or is it covered by OC8?

**Comment [AQ4]:** Process Point:  
Equivalent provision on user in GC or is it covered by OC8?

- 2.2.7 Unless otherwise agreed pursuant to paragraph 2.2.9, a Transmission Owner entering and working on its Plant and/or Apparatus on a User Site will work to such User's Safety Rules as advised by and forwarded to the Transmission Owner by **NGET[NGESO]**.
- 2.2.8 Unless otherwise agreed pursuant to paragraph 2.2.10, **NGET[NGESO]** shall procure that a User entering and working on that User's Plant and/or Apparatus on a Transmission Owner Site will work to the Transmission Owner's Safety Rules, which Safety Rules, the Transmission Owner shall forward to the User directly as directed by **NGET[NGESO]** and notify **NGET[NGESO]** that it has done so.
- 2.2.9 A Transmission Owner may, with a minimum of six weeks notice, apply to **NGET[NGESO]** for permission to work according to its own Safety Rules when working on its own Plant and/or Apparatus at a User Site rather than the User's Safety Rules. **NGET[NGESO]** shall consult with the relevant User and, subject to **NGET[NGESO]** and the User's agreement that the Transmission Owner's Safety Rules provide for a level of safety commensurate with those set out in paragraph 2.2.7, **NGET[NGESO]** will notify the Transmission Owner in writing that, with effect from the date requested by the Transmission Owner, the Transmission Owner may use its own Safety Rules when working on the Transmission Owner's Plant and/or Apparatus on that User Site, which Safety Rules, the Transmission Owner shall forward to the User directly as directed by **NGET[NGESO]** and notify **NGET[NGESO]** that it has done so. Until such written approval from **NGET[NGESO]**, the Transmission Owner will continue to use the Safety Rules in accordance with paragraph 2.2.7.
- 2.2.10 **NGET[NGESO]** may (on behalf of a User), with a minimum of six weeks notice, apply to a Transmission Owner and consult with that Transmission Owner regarding permission for work to be carried out to the User's Safety Rules when work is carried out by such User on the User's Plant and/or Apparatus at the Transmission Owner's Site rather than the Transmission Owner's Safety Rules. If the Transmission Owner and **NGET[NGESO]** agree that the User's Safety Rules provide for a level of safety commensurate with those set out in paragraph 2.2.8, **NGET[NGESO]** will notify the User in writing, copied to the Transmission Owner, that, with effect from the date requested by the User, the User may use its own Safety Rules when working on such User's Plant and/or Apparatus on that Transmission Owner's Site, which Safety Rules, **NGET[NGESO]** shall procure that the User shall forward to the Transmission Owner directly. Until such written approval from **NGET[NGESO]**, **NGET[NGESO]** shall procure that the User shall continue to use the Transmission Owner's Safety Rules in accordance with paragraph 2.2.8.
- 2.2.11 If, pursuant to paragraph 2.2.9, **NGET[NGESO]** notifies a Transmission Owner that the Transmission Owner's own Safety Rules shall apply, this shall not imply that the Transmission Owner's Safety Rules will apply to entering the User's Site and access to the Transmission Owner's Plant and/or Apparatus on that User's

**Comment [AQ5]:** Process Point:  
Safety role for NGESO to discharge

**Comment [AQ6]:** Process Point:  
Safety role for NGESO to discharge

Site. A User has responsibility for the whole of its User Site and entry and access will always be in accordance with such User's Site access procedures.

2.2.12 If, pursuant to paragraph 2.2.10, ~~NGET~~[NGESO] notifies a User that the User's own Safety Rules shall apply, this shall not imply that, for such Transmission Owner's Site, the User's Safety Rules will apply to entering the Transmission Owner's Site, and access to the User's Plant and/or Apparatus on that Transmission Owner's Site. A Transmission Owner has responsibility for the whole of its Transmission Owner Site and entry and access will always be in accordance with such Transmission Owner's Site access procedures.

### 3. NUCLEAR INSTALLATIONS

3.1 Where required by ~~NGET~~[NGESO] upon reasonable notice, a Transmission Owner shall take any reasonable and proper action whatsoever to the extent necessary in order to comply with (or avert an anticipated breach of) any of the matters specified in paragraph 3.2.

3.2 The matters referred to in paragraph 3.1 are any covenant, agreement, restriction, stipulation, instruction, provision, condition or notice contained, or referred to, in a licence for the time being in force, granted in accordance with the Nuclear Installations Act 1995 (or legislation amending, replacing or modifying the same), or any consent, or approval issues, or to take effect from time to time under such licence, any emergency arrangements, operating rules or other matters from time to time under such licence, any emergency arrangements, operating rules or other matters from time to time approved by the relevant authority under, or pursuant to, any such agreements, restrictions, stipulations, instructions, conditions or notices.

3.3 ~~NGET~~[NGESO] shall indemnify and keep indemnified any Transmission Owner for any loss, damage, costs and expenses incurred by that Transmission Owner as a consequence of any action of that Transmission Owner pursuant to paragraph 3.1 (to the extent that the action was not required by any licence or agreement binding on that Transmission Owner).

3.4 Where requested by ~~NGET~~[NGESO] upon reasonable notice, SP Transmission Limited and NGET shall provide such information and advice in relation to ~~its~~their respective obligations and rights under the Scottish NSLPAs and E&W NSLPAs as shall be reasonable to enable ~~NGET~~[NGESO] to comply with its obligations under the Code, the Grid Code and the CUSC.

**Comment [NG7]:** This will need a new definition

3.5 Where requested by ~~NGET~~[NGESO] upon reasonable notice, SP Transmission Limited and NGET shall undertake such actions in relation to ~~its~~their respective obligations and rights under the Scottish NSLPAs and E&W NSLPAs as shall be reasonable to enable ~~NGET~~[NGESO] to comply with its obligations under the Code, the Grid Code and the CUSC.

3.6 Where requested by SP Transmission Limited upon reasonable notice, ~~NGET~~[NGESO] shall provide such information and advice as shall be reasonable to enable SP

Transmission Limited to comply with the Scottish NSLPAs. Where requested by NGET upon reasonable notice, [NGESO] shall provide such information and advice as shall be reasonable to enable NGET to comply with the E&W NSLPAs.

- 3.7 Where requested by SP Transmission Limited upon reasonable notice, ~~NGET~~[NGESO] shall undertake such actions as shall be reasonable to enable SP Transmission Limited to comply with the Scottish NSLPAs. Where requested by NGET upon reasonable notice, [NGESO] shall undertake such actions as shall be reasonable to enable NGET to comply with the E&W NSLPAs.
- 3.8 SP Transmission Limited and NGET shall notify ~~NGET~~[NGESO] as soon as reasonable practicable of any proposal to amend the Scottish NSLPAs and E&W NSLPAs respectively and shall consult with ~~NGET~~[NGESO] in relation to the potential impact of any such proposal on the Code, the Grid Code and the CUSC to ensure that the views of ~~NGET~~[NGESO] on that proposal are obtained and, where ~~NGET~~[NGESO] so requires, communicated to the relevant counterparty to the Scottish NSLPAs or E&W NSLPAs.
- 3.9 ~~NGET~~[NGESO] shall notify SP Transmission Limited and NGET as soon as reasonably practicable of any proposal to amend the Code and/or the Grid Code and/or the CUSC which may affect the Scottish NSLPAs and/or E&W NSLPAs and shall consult with SP Transmission Limited and NGET in relation to the potential impact of any such proposal on the Scottish NSLPAs and/or E&W NSLPAs to ensure that the views of SP Transmission Limited and NGET on that proposal are obtained and, where SP Transmission Limited and/or NGET so requires, considered as part of the consultation process in relation to the Grid Code and the CUSC.

#### 4. LIMITATION OF LIABILITY

- 4.1 This paragraph 4, insofar as it excludes or limits liability, shall override any other provision in the Code provided that nothing in this paragraph 4 shall exclude or restrict or otherwise prejudice or affect any of:
- 4.1.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Act, that Party's Transmission Licence, or the Regulations; or
- 4.1.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Transmission Licence or otherwise howsoever.
- 4.2 Subject to any liquidated damages provisions of any TO Construction Agreement and to the indemnities provided for under paragraphs 3.3 and 4.3 of this Section G, each Party agrees and acknowledges that 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 the Code or TO Construction 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:
- 4.2.1 physical damage to the property of any other Party or its respective officers, employees or agents; or

4.2.2 the liability of any other Party, its officers, employees or agents to any other person for loss in respect of physical damage to the property of that or any other person, subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law.

provided that the liability of any Party in respect of all claims for such loss shall not exceed £5million per incident or series of related incidents unless the incident or series of related incidents arise on or affect a part of a Distribution System required to connect the Offshore Transmission System where the liability of any Party shall not exceed £1 million.

**Comment [AQ8]:** Process Poubt: flag with insurance

Any protection for actual/potential claims in train (between SO and TO managed through hiveout, novation solves between [NGESO] and other STC parties

4.3 Nothing in this Code shall exclude or limit the liability of the Party Liable or restrict the ability of any Party to claim in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the Party Liable and the Party Liable shall indemnify and keep indemnified each other Party from and against all such and any loss or liability which any such other Party may suffer or incur by reason of any claim on account of fraudulent misrepresentation or death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

4.4 In consideration of the rights conferred upon each Transmission Owner under the Code, the right of any of the Transmission Owners to claim in negligence, other tort, or otherwise howsoever against a CUSC Party (other than ~~NGET[NGESO]~~) in respect of any act or omission of such CUSC Party (other than ~~NGET[NGESO]~~) in relation to the subject matter of the CUSC is hereby excluded and each Transmission Owner agrees not to pursue any such claim save that nothing in this paragraph 4.4 shall restrict the ability of a Transmission Owner to claim in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the CUSC Party (other than ~~NGET[NGESO]~~).

4.5 In consideration of the rights conferred upon each Offshore Transmission Owner under the Code, the right of any of the Offshore Transmission Owners to claim in negligence, other tort, or otherwise howsoever against a DCUSA Party (other than ~~NGET[NGESO]~~) in respect of any act or omission of such DCUSA Party (other than ~~NGET[NGESO]~~) in relation to the subject matter of the DCUSA is hereby excluded and each Offshore Transmission Owner agrees not to pursue any such claim save that nothing in this paragraph 4.5 shall restrict the ability of an Offshore Transmission Owner to claim in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the DCUSA Party (other than ~~NGET[NGESO]~~).

4.6 Subject to any liquidated damages provisions of any TO Construction Agreement, and to the indemnities provided for under paragraphs 3.3 and 4.3 of this Section G, the Party Liable nor any of its officers, employees or agents, shall not in any circumstances whatsoever be liable in relation to the Code or its obligations under the Code, to another Party for:

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



- 4.6.2 any indirect or consequential loss; or
- 4.6.3 loss resulting from the liability of another Party to any other person howsoever and whensoever arising, save as provided in sub-paragraph 4.2.1 and 4.2.2.
- 4.7 The rights and remedies provided by the Code 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 the Code, including, without limitation, any rights any Party may possess in tort 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 a Party which is liable to another Party or other Parties, its or their 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 the Code and undertakes not to enforce any of the same except as expressly provided herein.
- 4.8 Each of the paragraphs of this paragraph 4 shall:
- 4.8.1 be construed as a separate and several contract term, and if one or more of such paragraphs is held to be invalid, unlawful or otherwise unenforceable the other or others of such paragraphs shall remain in full force and effect and shall continue to bind the Parties; and
- 4.8.2 survive termination of the Code and/or the Framework Agreement.
- 4.9 Each Party acknowledges and agrees that each of the other Parties holds the benefit of paragraphs 4.2 to 4.7 above for itself and as trustee and agent for its officers, employees and agents.
- 4.10 Each Party acknowledges and agrees that the provisions of this paragraph 4 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the Code Effective Date.
- 4.11 For the avoidance of doubt, nothing in this paragraph 4 shall prevent or restrict any Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Code.

## 5. THIRD PARTY RIGHTS

- 5.1 Subject to the remainder of this paragraph 5, a CUSC Party (other than ~~NGET~~~~NGESO~~) may rely upon and enforce the terms of paragraph 4.4, against a Transmission Owner, a DCUSA Party (other than ~~NGET~~~~NGESO~~) may rely upon and enforce the terms of paragraph 4.5, against an Offshore Transmission Owner and an Other Code Party (other than ~~NGET~~~~NGESO~~) may rely upon and enforce the terms of Section F, sub-paragraph 3.4.3 against a Party.

- 5.2 The third party rights referred to in paragraph 5.1 may only be enforced by the relevant third party subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 and all other relevant terms of this Code.
- 5.3 Notwithstanding any other provision of the Code, the Parties may (pursuant to Section B), amend the Code without the consent of a third party and accordingly, section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply, save that, where and to the extent that any amendment to the Code would have an impact on the rights of third parties conferred under paragraph 5.1, then ~~NGET~~**[NGESO]** shall bring such impact to the attention of Parties and third persons to the extent that such impact is not already brought to their attention in a STC Modification Proposal by the Proposer.
- 5.4 Except as provided in paragraph 5.1, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Code but this does not affect any right or remedy of a third party which exists or is available other than pursuant to that Act.

## **6. TRANSFER AND SUB-CONTRACTING**

- 6.1 The rights, powers, duties and obligations of a Party under the Framework Agreement, the Code or any TO Construction Agreement are personal to that Party and that Party may not assign or transfer the benefit or burden of those documents save in the following circumstances:
- 6.1.1 upon the disposal by that Party of the whole of its business or undertaking it shall have the right to transfer its rights and obligations under the Framework Agreement, the Code or any TO Construction Agreement to the purchaser thereof on condition that the purchaser (if not already a Party) enters into an Accession Agreement pursuant to Section B and confirms to the relevant Parties in writing either that all of the technical or related conditions, data, information, operational issues or other matters notified and/or agreed pursuant to Part One, Section C, paragraphs 3 and 4 or any other matters specified in or pursuant to a relevant TO Construction Agreement, by the purchaser will remain unchanged or, if any such matters are to be changed, the purchaser first notifies the relevant Parties in writing of such changes which the relevant Parties will consider and, until such consideration is complete, the transfer shall not be effective. If, having considered such changes, the relevant Parties in their reasonable opinion do not consider the proposed changes reasonably satisfactory to relevant Parties, they shall consult with the purchaser and, pending the outcome thereof to the relevant Parties' reasonable satisfaction, the transfer shall not be effective, provided always, that any failure to reach an agreement under this sub-paragraph 6.1.1 may be referred by a Party as a Dispute to the Authority under Section H, paragraph 4.1. Such transfer shall become effective once the changes are reasonably satisfactory to the

relevant Parties or have been determined to be so following resolution of such Dispute;

6.1.2 upon the disposal by a Party of part of its business or undertaking comprising a part of its Transmission System that Party shall have the right to transfer its rights and obligations under this Code or any TO Construction Agreement to the purchaser thereof on condition that the purchaser (if not already a Party) enters into an Accession Agreement pursuant to Section B and confirms to the relevant Parties in writing either that all of the technical or related conditions, data, information, operational issues or other matters notified and/or agreed pursuant to Part One, Section C, paragraphs 3 and 4 by the purchaser will remain unchanged or if any such matters are to be changed, the purchaser first notifies the relevant Parties in writing of such changes which the relevant Parties will consider promptly and in any event within 28 days of receiving notice of such change and until such consideration is complete the assignment shall not be effective. If having considered such changes the relevant Parties in their reasonable opinion do not consider the proposed changes reasonably satisfactory to the relevant Parties, they shall consult with the purchaser and pending the outcome thereof to the relevant Parties' reasonable satisfaction the transfer shall not be effective, provided always, that any failure to reach an agreement under this sub-paragraph 6.1.2 may be referred by a Party as a Dispute to the Authority under Section H, paragraph 4.1. Such transfer shall become effective once the changes are reasonably satisfactory to the Parties or have been determined to be so under Section H; and

6.1.3 a Party may assign or charge its rights or benefits under the Framework Agreement, the Code or any TO Construction Agreement in whole or in part by way of security.

6.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under the Code without the prior consent of any other Party. The subcontracting by a Party of the performance of any obligations or duties under the Framework Agreement, the Code or any TO Construction Agreement shall not relieve that Party from liability for performance of such obligation or duty.

6.3 It is acknowledged that the undertaking of OTSDUW by a User does not constitute subcontracting by a Transmission Owner. Nevertheless, the Transmission Owner shall be responsible for the OTSUA (once they form part of the Transmission System) as if the OTSDUW had been undertaken by (or on behalf) of the Transmission Owner.

## 7. INTELLECTUAL PROPERTY

7.1 All Intellectual Property Rights relating to the subject matter of the Code or any TO Construction Agreement conceived, originated, devised, developed or created by a Party, its officers, employees, agents or consultants during the currency of the Code or any TO Construction Agreement shall vest in such Party as sole beneficial owner thereof save where the Parties agree in writing or the provisions of this Code expressly state otherwise.

**Comment [AQ9]:** Process Point:  
cover in novation agreement  
Any additional role for hive out  
agreement?

## **8. FORCE MAJEURE**

8.1 If any Party (the "**Non-Performing Party**") shall be unable to carry out any of its obligations under the Code or any TO Construction Agreement due to a circumstance of Force Majeure, the Code or any TO Construction Agreement shall remain in effect, but:

- 8.1.1 the Non-Performing Party's relevant obligations;
- 8.1.2 the obligations of each of the other Parties owed to the Non-Performing Party under the Code or TO Construction Agreement as the case may be; and
- 8.1.3 any other obligations of the other Parties under the Code or TO Construction Agreement owed between themselves which the relevant Party is unable to carry out directly as a result of the suspension of the Non-Performing Party's obligations,

shall be suspended for a period equal to the circumstance of Force Majeure provided that:

- (a) such circumstances do not constitute a Secured Event;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) no obligations of any Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (d) the Non-Performing Party gives the other Parties prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence and its expected duration, and continues to furnish regular reports to the other Parties with respect thereto during the period of Force Majeure;
- (e) the Non-Performing Party uses all reasonable efforts to remedy its inability to perform; and
- (f) as soon as practicable after the event which constitutes Force Majeure, the Parties shall discuss how best to continue their operations so far as possible in accordance with the Code or TO Construction Agreement.

## **9. PRIVILEGE**

9.1 No Party shall be required to produce documents pursuant to any provision of the Code which such Party could not be compelled to produce in civil proceedings in any court in England and Wales or Scotland or to supply information which such Party could not be compelled to give in evidence in any such proceedings.

## **10. WAIVER**

- 10.1 No delay by or omission of any Party or the STC Modification Panel (including the Panel Secretary) in exercising any right, power, privilege or remedy under the Code, the Framework Agreement or any TO Construction Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.
- 10.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.
- 10.3 For the avoidance of doubt, the Parties acknowledge and agree that nothing in the Code, Framework Agreement or any TO Construction Agreement shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, privileges, remedies, duties and obligations of the Secretary of State or the Authority under the Act or any Transmission Licence or otherwise under any applicable law.

## 11. NOMINATED REPRESENTATIVE

- 11.1 Each Party undertakes to the other Parties that where, under any provision of the Code, action is taken by a representative of that Party, it shall ensure that its representative is duly authorised to take such action.

## 12. COMMUNICATIONS

- 12.1. Save to the extent otherwise set out in the Code or any TO Construction Agreement or otherwise agreed by the Parties, any notice, direction, request or other communication to be given by one Party to another under or in connection with the matters contemplated by the Code, the Framework Agreement or any TO Construction Agreement shall be addressed to the recipient and sent to the address or facsimile number of such other Party provided under Section B.
- 12.2 Such notice or other communication, shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile unless otherwise specified in this Code or otherwise agreed between the Parties, and shall be deemed to have been received:
- 12.2.1 in the case of delivery by hand, when delivered; or
- 12.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail overseas or from overseas) on the fifth day following the day of posting; or
- 12.2.3 in the case of facsimile, on acknowledgement of the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement and in any other case on the day following the day of acknowledgement).
- 12.3 Each Party shall use all reasonable endeavours to ensure that all information provided from that Party to another is accurate and complete and submitted in good faith.

**Comment [AQ10]:** Process Point: need to provide/update addresses

12.4 The provisions of this paragraph 12 extend to any notice or other communication to be given by or to the Panel Secretary.

### 13. COUNTERPARTS

13.1 The Accession Agreement, Framework Agreement and any TO Construction Agreement or Code Procedures may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

### 14. SEVERANCE OF TERMS

14.1 If any provision of the Code or any TO Construction Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject or by order of any other Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Code or TO Construction Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

### 15. LANGUAGE

15.1 Every notice or other communication to be given by one Party to another under the Code shall be in the English language.

### 16. DATA PROTECTION ACT

16.1 Each Party warrants that it has effected, and undertakes that it will during the term of the Code effect and maintain all such notifications and registrations as it is required to effect and maintain under the Data Protection Act 1998 to enable it to lawfully perform the obligations imposed on it by the Code.

16.2 Each Party undertakes to comply with the Data Protection Act 1998 in the performance of its obligations under the Code.

16.3 Each Party undertakes that, in any case where information to be disclosed by it under the Code may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it promptly to perform its obligations under as envisaged by the Code.

### 17. JURISDICTION

17.1 Subject to Section H, the Parties irrevocably agree that only the courts of England and Wales and the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Code or any TO Construction Agreement and

**Comment [AQ11]:** Process Point:  
New notifications/registrations for  
NGESO, changes to those for  
[NGESO]?

Update ref following GDPR

that accordingly any claim or action ("**Proceedings**") arising out of or in connection with this Code or any TO Construction Agreement may be brought in such courts.

17.2 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this paragraph 17 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that judgement in any Proceedings brought in the courts of England and Wales or the courts of Scotland shall be conclusive and binding upon such Party and may be enforced in the courts of any jurisdiction.

17.3 For the avoidance of doubt, nothing contained in paragraphs 17.1 and 17.2 above shall be taken as permitting a Party to commence Proceedings in the courts where the Code otherwise provides for Proceedings to be referred to arbitration or to the Authority.

## 18. GOVERNING LAW

18.1 This Code and any TO Construction Agreement shall be governed by and construed in accordance with English law.

## 19. NO PARTNERSHIP

19.1 Nothing in this Code is intended to or shall operate to create a partnership or joint venture of any kind between the Parties.

## 20. TRANSMISSION DEROGATIONS

20.1 A Party's obligation(s) under this Code shall be relieved, as regards any other Party, to the extent and for such period as such obligation(s) are specified as being relieved by a direction issued by the Authority under paragraph 15 of Standard Condition B12 of its Transmission Licence or under paragraph 4 of Standard Condition E13 of its Transmission Licence as appropriate.

**Comment [AQ12]:** Process Point: SO and TO need to identify And transfer/replicate any derogations that go with SO role

## 21. ~~NGET ACTING AS OFFSHORE TRANSMISSION OWNER~~

~~21.1 Where this Code imposes obligations on an Offshore Transmission Owner and in circumstances where NGET has been directed under Standard Condition B18 of its Transmission Licence to act as an Offshore Transmission Owner, such obligations shall only have effect where they are owed to STC Parties other than NGET. To the extent that obligations owed under this Code by Offshore Transmission Owners to NGET affect other STC Parties, even when NGET has itself been directed to act as an Offshore Transmission Owner under Standard Condition B18 it must ensure such STC Parties are not disadvantaged as a result of this direction.~~

~~21.2 Where this Code imposes obligations on NGET, such obligations shall only have effect where they are owed to STC Parties other than NGET in circumstances where NGET has been directed under Standard Condition B18 of its Transmission Licence to act as an Offshore Transmission Owner. To the extent that obligations owed under this Code by NGET to Offshore Transmission Owners affect other STC Parties, even when NGET has~~

~~itself been directed to act as an Offshore Transmission Owner under Standard Condition B18 it must ensure such STC Parties are not disadvantaged as a result of this direction.~~**[NOT USED]**