SECTION H: DISPUTES

1. INTRODUCTION

1.1 This Section H sets out:

1.1.1 the obligations on the Parties to escalate and seek to resolve Disputes;

1.1.2 the types of Dispute that are referable to the Authority under this Code and the arrangements and obligations in relation to such referrals; and

1.1.3 the types of Dispute that are referable to arbitration under this Code and the arrangements and obligations in relation to such referrals.

2. GENERAL

2.1 Subject to any contrary provision of the Act, any Transmission Licence and the Regulations, and the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act or Transmission Licences or otherwise howsoever, any Dispute between the Parties shall be resolved as provided in the applicable Section of this Code and this Section H.

3. ESCALATION

3.1 Notwithstanding the remaining provisions of this Section H, Parties shall identify and progress Disputes without undue delay and consistently with the objective of resolving such Disputes as early and as efficiently as reasonably practicable.

3.2 A Party may raise a Dispute by issuing a Dispute Notice to the Authority and each of the other Dispute Parties.

3.3 As soon as reasonably practicable, and in any event within 10 Business Days (or such longer period as the Dispute Parties may agree) of the date of issue of a Dispute Notice, representatives of each of the Dispute Parties who have authority to resolve the Dispute shall use their best endeavours to seek to resolve such Dispute.

3.4 If the Dispute Parties are unable to resolve a Dispute pursuant to paragraph 3.3, then the Dispute Parties' obligations under that paragraph shall no longer apply to that Dispute and a Dispute Party may refer the matter to the Authority or to arbitration as appropriate in accordance with paragraphs 4 and 5 below.

4. REFERRALS TO THE AUTHORITY

4.1 Subject to paragraph 3, a Party may refer a Dispute falling under sub-paragraphs 4.3 or 4.4 or an Implementation Dispute under paragraph 4.6 to the Authority for determination by issuing a Reference Notice to the Authority copied to each of the other Dispute Parties.

4.2 Subject to paragraph 4.5 below, any Dispute falling under this paragraph 4 shall not be capable of being referred to arbitration pursuant to the rules of the Electricity Arbitration Association or otherwise, or to any court.

4.3 In addition to those matters falling under paragraph 4.4, the following matters shall constitute a Dispute referable to the Authority under the Code:

4.3.1 a failure to agree pursuant to Section A, paragraph 4.4;

4.3.2 a failure to agree pursuant to Section B, sub-paragraph 3.2.5 or any other dispute in relation to the scope, content or performance of the Party Entry Processes;

4.3.3 a failure to agree pursuant to Section B, sub-paragraph 5.1.6 or any other dispute in relation to the scope, content or performance of the Decommissioning Actions;

4.3.4 a failure to agree pursuant to Section B, sub-paragraph 7.3.4;

4.3.5 a failure to agree an amendment to the form of the Services Capability Specification pursuant to Section C, Part One, paragraphs 3.2 or 3.3;

4.3.6 a dispute in relation to the reasonableness of a request for further information by NGESO pursuant to Section C, Part One, paragraph 3.4;

4.3.7 a dispute in relation to the net costs reasonably incurred by the Transmission Owner as a result of an Outage Change (as defined in the licence);

4.3.8 a dispute in relation to the provision of, or failure to provide, training pursuant to Section C, Part Three, paragraph 7.3;

4.3.9 a failure to agree a National Electricity Transmission Performance Report Timetable or any part thereof pursuant to Section C, Part Three, paragraph 8.3;

4.3.10 a failure to agree amendments to draft text of a National Electricity Transmission System Performance Report pursuant to Section C, Part Three, paragraph 8.5;

4.3.11 a failure to agree a SYS Programme or any part thereof pursuant to Section D, Part One, sub-paragraph 4.1.2;

4.3.12 a failure to agree amendments to draft text of a Seven Year Statement pursuant to Section D, Part One, sub-paragraph 4.1.4;

4.3.13 a failure to agree an ODIS Programme or any part therefore pursuant to Section D, Part One, sub-paragraph 5.1.2;

4.3.14 a failure to agree amendments to the draft text of an Offshore Development Information Statement pursuant to Section D, Part One, sub-paragraph 5.1.4;

4.3.15 a dispute pursuant to Section E, paragraph 5.1;

4.3.16 a failure to agree under Section G, sub-paragraphs 6.1.1 or 6.1.2; and

4.3.17 a dispute as to whether a matter falling under paragraph 4.4 materially and adversely affects a Dispute Party's ability to develop and maintain an efficient, co-ordinated and economical system of electricity in the National Electricity Transmission System Operator Area for the purpose of determining such Dispute Party's entitlement to refer a matter to the Authority under paragraph 4.4.

4.4 In addition to those matters falling under paragraph 4.3, the following matters shall constitute a Dispute referable to the Authority by a Dispute Party under the Code only where such matter(s) materially adversely affect(s) that Dispute Party's ability to develop and maintain an efficient, co-ordinated and economical system of electricity transmission in the National Electricity Transmission System Operator Area:

4.4.1 a failure to agree a Services Restoration Proposal or any modification to a Services Restoration Proposal under Section C, Part One, paragraphs 4.7 and 4.8 or 4.9;

4.4.2 a dispute in relation to either a request by NGESO or the adequacy of preparatory steps taken by a Transmission Owner pursuant to Section C, Part One, paragraph 4.13;

4.4.3 a dispute in relation to the manner in which matters contained in an Outage Proposal are included, or are not included, in an Outage Plan pursuant to Section C, Part Two, paragraph 2.4;

4.4.4 a failure to agree in relation to any Outage Plan or Outages Implementation Process pursuant to Section C, Part Two, paragraphs 5.7, 6.1 or 6.5;

4.4.5 a dispute in relation to a direction issued by NGESO regarding discontinuation of an Outage or Outages pursuant to Section C, Part Two, paragraph 7.1;

4.4.6 a dispute in relation to a request for a change to Planning Assumptions pursuant to Section D, Part One, paragraph 2.2;

4.4.7 a dispute in relation to a Planning Request pursuant to Section D, Part One, sub-paragraph 2.4.4;

4.4.8 a dispute in relation to the reasonableness of a request by NGESO for information pursuant to Section D, Part One, sub-paragraph 2.6.2;

4.4.9 a dispute in relation to a Transmission Interface Site Specification pursuant to Section D, Part One, sub-paragraph 2.7.4;

4.4.10 a dispute in relation to a Embedded Transmission Interface Site Specification pursuant to Section D, Part One, sub-paragraph 2.8.3;

4.4.11 a dispute in relation to a the effectiveness of a NGESO Construction Application pursuant to Section D, Part Two, paragraph 2.5;

4.4.12 a dispute in relation to a request for a change to Construction Planning Assumptions pursuant to Section D, Part Two, paragraph 3.7;

4.4.13 a dispute in relation to a notice by the Transmission Owner that it does not intend to submit a TO Construction Offer or a notice of any assumptions which a Transmission Owner intends to make in relation to User Equipment at a Relevant Connection Site pursuant to Section D, Part Two, paragraph 4.3;

4.4.14 a dispute in connection with a TO Construction Offer or an OTSDUW Completion Report (including any documents included within it) pursuant to Section D, Part Two, paragraph 5.2;

4.4.15 a failure to agree Communications Plant under Section D, Part Two, paragraph 9.1;

4.4.16 a dispute in relation to the effectiveness of a NGESO TEC Exchange Rate Application pursuant to Section D, Part Three, paragraph 1.4;

4.4.17 a dispute in relation to a request for a change to TEC Exchange Planning Assumptions pursuant to section D, Part Three, paragraph 2.7;

4.4.18 a dispute in relation to the effectiveness of a NGESO Request for a Statement of Works pursuant to Section D, Part Four, paragraph 1.4;

4.4.19 a dispute in relation to a request for a change to Statement of Works Planning Assumptions pursuant to Section D, Part Four, paragraph 2.7; and

4.4.20 a dispute in relation to a TO Statement of Works Notice by the Transmission Owner that it does not require Transmission Construction Works to be undertaken in respect of a Statement of Works Project or of any assumptions which a Transmission Owner intends to make in relation to User Equipment at a Relevant Connection Site pursuant to Section D, Part Four, paragraph 3.3.

4.5 The Authority's determination of a Dispute pursuant to this paragraph 4 shall, without prejudice to any ability to apply for judicial review of any determination, be final and binding on the Dispute Parties.

4.6 It is expected that, in most cases, the Authority's determination of a Dispute pursuant to this paragraph 4 will set out the effect of the determination in terms of any actions or other steps that the Dispute Parties should take. To the extent that there is a Dispute between the Dispute Parties over the implementation of any such determination by the Authority (an "**Implementation Dispute**"), then any such Dispute Party may, subject again to the obligation to hold initial discussions in the same terms as under paragraph 3.3, refer the Implementation Dispute back to the Authority for determination.

4.7 Following a determination under this paragraph 4, each Dispute Party shall take such steps as are required to give full and timely effect to that determination including, without

limitation, issuing, withdrawing or modifying any document, notice, plan or process or taking any other steps required pursuant to this Code.

5. REFERRALS TO ARBITRATION

5.1 Subject to paragraph 3, a Dispute Party may, unless otherwise specified in this Code, refer:

5.1.1 a Dispute that is specifically designated for referral to arbitration under this Code; or

5.1.2 any other Dispute not referable to the Authority under paragraph 4.1,

to arbitration pursuant to the applicable rules of the Electricity Arbitration Association in force from time to time by issuing a Reference Notice to the Electricity Arbitration Association and to each of the other Dispute Parties and the Authority.

5.2 Whatever the nationality, residence or domicile of any Dispute Party and wherever the Dispute arose, the law of England shall be the proper law of reference to arbitration under this paragraph 5 and, in particular (but not so as to derogate from the generality of the foregoing), the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever it or any part of it shall be conducted save as prescribed below.

5.3 Subject to paragraph 5.4 the Parties hereby consent to the President of the Electricity Arbitration Association deciding at ~~his~~ their discretion and ensuring, so far as practicable, that the proceedings relating to such a decision are managed effectively, fairly and expeditiously:

5.3.1 following the same process as set out in Article 13 of the Electricity Arbitration Association rules in respect of pending arbitrations, that two or more disputes referred to it for arbitration (whether pending or underway), be consolidated or otherwise heard together (whether or not such disputes are all Disputes or a Dispute and any dispute(s) referred under an Other Code), where a Party (or Other Code Party to a dispute under an Other Code) so requests in writing to the Electricity Arbitration Association copied to each of the other Parties and relevant Other Code Parties setting out the reasons for such consolidation; or

5.3.2 that a dispute referred to it (whether pending or underway and whether a Dispute or a dispute referred to it under an Other Code) be stayed for a period not exceeding three months after the referral of such dispute to the Electricity Arbitration Association, pending resolution of another dispute referred to it (whether pending or underway and whether a Dispute or a dispute referred under an Other Code).

5.4 The consent of the Parties under paragraph 5.3.1 shall be deemed not to have been given where a request for consolidation thereunder is received by the Electricity Arbitration Association more than three months (or such other period as the Electricity Arbitration Association may at its discretion determine) after the referral of any Dispute or Other Code dispute to the Electricity Arbitration Association which is the subject of such request.

5.5 Any arbitrator or panel of arbitrators appointed by the Electricity Arbitration Association rules under this paragraph 5 shall determine such issues as are referred to ~~him or~~ them consistently with any determination by the Authority of a Dispute under paragraph 4, whether or not relating to the same or different facts.

5.6 The arbitrator of a Dispute under this paragraph 5 may order that the arbitration be stayed pending approval of a proposal to amend the Code under the STC Modification Procedures by the Authority.

5.7 Subject to any order of the arbitrator, the Dispute Parties shall keep confidential and not use for any collateral or ulterior purpose the subject matter of the arbitration and all information, documents and materials produced for, or arising in relation to the arbitration including any relief granted save insofar as is necessary to enforce any such relief.

5.8 The arbitrator may make any award concerning the costs of the parties or the costs of the arbitration as ~~he~~ they consider~~s~~ appropriate.

5.9 The determination of an arbitrator under this paragraph 5 shall be final and binding on the Dispute Parties.

5.10 Following a determination under this paragraph 5, each Dispute Party shall take such steps as are required to give effect to that determination including, without limitation, under this Code.