**Maximum Import Capacity and Maximum Export Capacity**

39.9 The Maximum Import Capacity and Maximum Export Capacity shall be specified in the relevant Bilateral Connection Agreement (or where no Bilateral Connection Agreement exists, in such other agreement where the connection arrangements are specified) and the User shall use its reasonable endeavours to ensure that the electricity imported and exported does not exceed the Maximum Import Capacity and the Maximum Export Capacity (respectively).

39.10 The Company shall only be obliged to export or import electricity up to the Maximum Import Capacity and Maximum Export Capacity as specified in the relevant Bilateral Connection Agreement. Where the User exceeds the Maximum Import Capacity or the Maximum Export Capacity, it shall be a breach of the relevant Bilateral Connection Agreement, but not of this Agreement.

39.11 Where the User’s import of electricity exceeds the Maximum Import Capacity or the User’s export of electricity exceeds the Maximum Export Capacity (each an “**Event**”), the User shall:

39.11.1 upon being notified by the Company, take reasonable actions to reduce the import or export of electricity to within the limits specified in the relevant Bilateral Connection

39.11.2 if appropriate propose a variation to the relevant Bilateral Connection Agreement; and/or

39.11.3 if appropriate, submit a Modification Application to the Company in accordance with the provisions of Clause 52.

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

39.12.1 charge the User any additional Use of System Charges for Use of Distribution System that is in excess of the Maximum Import Capacity or Maximum Export Capacity in accordance with the Company’s Relevant Charging Statement;

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

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

**Reductions and Increases in Maximum Import Capacity and Maximum Export Capacity**

39.12A The Company or the User may propose a modification to increase the Maximum Import Capacity or Maximum Export Capacity specified in the relevant Bilateral Connection Agreement, or where no Bilateral Connection exists, in such other agreement where the Maximum Import Capacity or Maximum Export Capacity is specified, where:

39.12A.1 the User has previously breached the Maximum Import Capacity or Maximum Export Capacity and in the Company’s or User’s reasonable opinion such increase in capacity is required to enable the connection to be used for the purpose for which it is required; or

39.12A.2 in the User’s reasonable opinion such increase in capacity is required to enable the connection to be used for the purpose for which it is required.

39.12B The Company may charge the User for any works on their distribution required in order to accommodate any increase in Maximum Import Capacity or Maximum Export Capacity, as set out in 39.12A, in accordance with the relevant connection charging methodology statement as is in force at that time.

39.12B The Company or the User may propose a modification to reduce the Maximum Import Capacity or Maximum Export Capacity specified in the relevant Bilateral Connection Agreement, or where no Bilateral Connection exists, in such other agreement where the Maximum Import Capacity or Maximum Export Capacity is specified, where:

39.12B.1 in the reasonable opinion of either the company or the User there is no foreseeable requirement for the unutilised proportion of either the Maximum Import Capacity or Maximum Export Capacity provided to enable the connection to be used for the purpose for which it is required; and

39.12B.2 The Company has, in its reasonable opinion, a requirement to use such unutilised proportion of the Maximum Import Capacity or Maximum Export Capacity to provide and maintain connections to other users in an economic and efficient manner

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39.12C Any modification to the Maximum Import Capacity or Maximum Export Capacity shall be made in accordance with Clause 52 and shall set out the Company’s or User’s (as the case may be) reasonable opinion for why such increase or reduction in the Maximum Import Capacity or Maximum Export Capacity is required.

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**52. MODIFICATIONS**

52.1 Unless agreed otherwise by the Company and the User in the relevant Bilateral Connection Agreement (or where no Bilateral Connection exists, in such other agreement where the is connection arrangements are specified), no Modification may be made by or on behalf of the Company or the User otherwise than in accordance with the provisions of this Clause 52.

**Modifications Proposed by Users**

52.2 If the User wishes to make a Modification it shall complete and submit to the Company in advance of the Modification a Modification Application in the form shown in the relevant Bilateral Connection Agreement (or where no Bilateral Connection exists, in such other agreement where the is connection arrangements are specified) and comply with the terms thereof.

52.3 As soon as reasonably practicable (but not later than the date required by the Company’s Distribution Licence) after receipt by the Company of the Modification Application, (save where the Authority consents to a longer period) the Company shall make a Modification Offer to the User. The Modification Offer shall include the form of any variations the Company requires to the relevant Bilateral Connection Agreement ~~and its schedules~~ (or where no Bilateral Connection Agreement exists, to such other agreement where the connection arrangements are specified). During such period the Company and the User shall discuss in good faith the implications of the proposed Modification(s).

52.4 The Modification Offer will be open for acceptance in accordance with its terms for up to 3 calendar months from the date upon which the Modification Offer is sent to the User (unless either the Company or the User makes an application to the Authority under Condition 7 of the Company’s Distribution Licence, in which case the Modification Offer shall remain open for acceptance until the date 14 days after any determination by the Authority pursuant to such application). If the Modification Offer is accepted by the User, the Modification shall proceed according to the terms of this Agreement, and the relevant Bilateral Connection Agreement (or where no Bilateral Connection Agreement exists, to such other agreement where the connection arrangements are specified) shall be varied to reflect the terms of the Modification.

**Modifications proposed by the Company**

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

52.6 The User may, as soon as practicable after any notice by the Company under Clause 52.5, consult with it over the proposed Modification. The User may, (save where the Authority consents to a longer period) within the period stated therein (which shall be sufficient to enable the User reasonably to assess the implications of the proposed Modification), make an application to the Authority under Condition 7 of the Company’s Distribution Licence.

52.7 As soon as practicable after the receipt of notification of the Modification pursuant to Clause 52.5 or, if an application to the Authority has been made by the User, the determination by the Authority, and in any event within 2 calendar months thereof, the User shall submit to the Company a Modification Application and shall comply with the terms thereof.

52.8 Subject to the payment of its reasonable charges, if any, as provided in this Clause 52.8 the Company will provide advice and assistance reasonably requested by the User to enable the User to assess the implications, including the feasibility, of making a Modification to the User’s System. If the Modification under consideration by the User is or may be required as a result of a Modification required by the Company, then the Company shall provide such reasonable advice and assistance free of charge. If the proposed Modification is or may be proposed by the User, the Company may charge the User such amount as is reasonable in all the circumstances for such advice and assistance. The provision of such advice and assistance shall be subject to the terms of the relevant Bilateral Connection Agreement (or where no Bilateral Connection Agreement exists to such other agreement where the connection arrangements are specified).

52.9 Where a Modification by the Company alters the technical characteristics of the Connection Point (as set out in the relevant Bilateral Connection Agreement (or where no Bilateral Connection Agreement Exists to such other agreement where the connection arrangements are specified)), but not otherwise, the Company shall compensate the User for the reasonable cost and expense of any modification required to be made by the User as a result of such Modification; provided that the Company shall not be obliged to compensate the User where such Modification is required as a consequence of any Relevant Instrument, legislative requirement or Directive. Any dispute as to whether the Company is obliged to compensate the User or as to the amount of any such compensation may be referred to arbitration in accordance with the provisions of Clause 58.

**Changes to DCUSA Schedule 22 [the Common Connection Charging Methodology]**

It is proposed to modify the provisions in respect of capacity ramping as follows:

“**~~Capacity Ramping for LDNOs~~**

**Managing the Required Capacity during the Build out**

1.51 The ~~For an LDNO the~~ Required Capacity (expressed in kVA) for a connection is:

(i) in respect of a connection to an LDNO network, the Maximum Capacity to be provided at the boundary between the LDNO’s distribution network and our Distribution System~~. Th~~i~~s~~ (such value will be agreed with us and stated in the Bilateral Connection Agreement for the relevant embedded network)~~.~~; or

(ii) in respect of a connection to a development that will comprise multiple premises (and thereby multiple MPANs), the Maximum Capacity to be provided to the Customer at the Point of Connection to our Distribution System (such value to be set out in the Connection Offer to the Customer requesting the connection)

1.52 When a connection is provided to a development ~~an LDNO~~, the take-up of capacity may grow over a period of time as the site develops and individual customers are connected. In such circumstances the Bilateral Connection Agreement or connection offer, as appropriate, shall include a phased Required Capacity based on the Development Phases

1.53 The Bilateral Connection Agreement or Connection Offer, as appropriate, shall set out the terms and the basis on which the Required Capacity proposed in the relevant agreement may be modified. Such terms and process shall provide that:

(a) During the Development Phase we may conduct periodic reviews of the take up of the Required Capacity, the frequency of such reviews to not be unreasonable and to be consistent with the size of development.

(b) If, following such review, we have reasonable grounds to believe that the Required Capacity specified in the connection offer is not fully utilised, and is unlikely to be fully utilised we may propose:

(i) a reduction in the Required Capacity specified in the Bilateral Connection Agreement or Connection Offer to a Maximum Capacity that the Company reasonably considers to be appropriate to allow the connection;

(ii) to terminate the Connection Offer where the connection works specified in the Connection Offer have not been started in [a reasonable time].

(c) Where we propose to vary the Required Capacity or terminate the Connection Offer it shall give at least 30 Working Days prior written notice to the Customer of the Company’s intention to do so.

(d) Where we (having properly taken into account any representations and alternative proposals received from you within the period of the notice) reasonably consider that we are not required under the Act:

(i) to maintain the Required Capacity in the Connection Offer; or

(ii) to maintain the Connection Offer,

we may serve a further notice on you in accordance with the Act modifying the Required Capacity or terminating the Connection Offer, as appropriate.

(f) If, after we have served a further notice pursuant to paragraph 1.53(d) above, and you do not agree with the proposed modification to the Connection Offer, you may refer the matter to the Authority for determination. Pending such determination we will not:

(i) modify the Required Capacity in the Connection Offer; or

(ii) remove the Connection Offer

~~During the Development Phase a review may be undertaken annually (on the anniversary of the Energisation of the embedded network,. Any unused capacity identified in such review may be released for use by other customers and the Maximum Capacity reduced to an agreed level within the Bilateral Connection Agreement.~~

1.54 The Required Capacity agreed with us as being required at the end of the Development Phase shall be used to determine the Required Capacity for determination of the Cost Apportionment Factors where applicable.

1.55 Should additional capacity subsequently be required, the LDNO may incur additional Connection Charges for any Reinforcement based on the increase in capacity. The Required Capacity, for the purposes of calculating Reinforcement costs of any additional Connection Charges, shall be the total capacity as determined by the Bilateral Connection Agreement or the Connection Offer, as appropriate, following the application of the process defined in paragraph 1.53

**Definitions**

The terms “*Connection Request*” and “*Connection Offer*” are not defined in Schedule 22 nor in the rest of DCUSA. However the term Connection offer is capitalised in parts. It is suggested that both these terms are defined,

**Connection Offer**

Is our formal written offer to you to provide a connection to our Distribution System.

**Connection Request**

Is a request made pursuant to Section 16A of the Act.

*Development Phase*

At present *Development Phase* is defined as:

*“the three year period, unless otherwise agreed with us, commencing on the date of Energisation of an embedded network over which the development is constructed”*

It is proposed that this is changed to mean

*“the period agreed with us over which the development is constructed; such period to be consistent with period that can be reasonably expected for a development commensurate with its size and nature to take to build out and reach maturity.”*