

## **Consequential draft changes to Distribution Code, DCUSA and CUSC to reflect introduction of new LEEMPS drafting as part of Grid Code Consultation A/10 (Compliance)**

### **1. Summary**

- 1.1 In conjunction with the publication of the Grid Code Consultation A/10<sup>2</sup> (Compliance), requirements for consequential changes have been identified for the Distribution Code, Distribution Connection and Use of System Agreement (DCUSA) and the Connection and Use of System Code (CUSC). Firstly, changes are required to maintain the status quo of historic industry accepted liability positions where not all persons are signatories to the same Codes, in relation to License Exempt Embedded Medium Power Stations (LEEMPS). Secondly, clarity is required of the obligations on all parties involved with the LEEMPS compliance process, which can be chosen by each DNO to be led by either National Grid (NGET), which will be the default position, or by the DNO itself.
- 1.2 This document intends to lay out the requirement and detail of the consequential changes, as well as the proposed process for considering, developing and submitting the changes in parallel.

### **2. Introduction and background**

- 2.1 The Grid Code provisions specify, amongst other things, the requirements that apply to licensed generators connected to the National Electricity Transmission System (NETS) and Distribution Network Operator (DNO) networks and, through links in the Distribution Code, to LEEMPS. In practice, the LEEMPS category covers 50-100MW embedded power stations in England and Wales. These requirements relate to technical capabilities, the provision of planning data to NGET, and the submission of operational data. The provisions ensure that NGET is able to plan and operate the NETS in line with its Transmission Licence obligations.
- 2.2 Historically, NGET has assessed compliance with the Grid Code requirements of generators with which it has contracts, both during the commissioning of new plant and throughout the operational life of existing plant. The assessment procedures and tests are not formally specified in documentation under industry governance, but in recent years NGET has issued Guidance Notes<sup>1</sup> (available to the industry on NGET web site) describing these procedures and tests in order to raise their visibility and ensure consistency.
- 2.3 Following discussions at the Grid Code Review Panel (GCRP), it was agreed that there will be benefit in formally defining a process that should be followed by NGET and generators in assessing and demonstrating compliance with the Grid Code provisions. The Compliance Working Group was established to agree proposals to achieve this. Based on a request from the DNOs, a review of the compliance arrangements for LEEMPS, including a possible transfer to NGET of some of the compliance responsibilities, was included in the remit of the Compliance Working Group.

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<sup>1</sup> <http://www.nationalgrid.com/NR/rdonlyres/6C036707-27A4-4C43-AD8A-777487AAAFF/28685/GuidanceNotesforPowerParkDevelopersIssue2September.pdf>  
<http://www.nationalgrid.com/NR/rdonlyres/B4DF2400-96FD-40E5-AF44-8DB88AADA5DF/28686/GuidanceNotesforSynchronousGeneratorsIssue11Septem.pdf>

- 2.4 A Grid Code Consultation document<sup>2</sup> was published on 1<sup>st</sup> February 2010 describing the proposed revised processes and associated Grid Code drafting. The Consultation identifies a requirement for consequential changes, relating to LEEMPS, in the DCUSA, CUSC and Distribution Code. This note intends to identify these changes and enable the respective code governance processes to run in parallel, based on the same common assumptions.

### **3. Description - Distribution Code**

- 3.1 The roles of NGET and DNOs in compliance assessment of LEEMPS/DCCS (DC Converter Station i.e.: a DC interconnector) has been subject to recent debate and the Compliance Working Group proposes a number of clarifications in the Grid Code, which must also be reflected in the Distribution Code:

- By default NGET will undertake the compliance assessment of new LEEMPS up to the issue of a Final Operational Notification (described in the Grid Code Consultation). During the life of an installation it is proposed to revert to this arrangement to cover the period when projects are subject to material alternation with significant system performance implications;
- A DNO may elect to take on the compliance assessment role for all of the new LEEMPS connecting to its networks;
- Unless otherwise agreed by all relevant parties, DNOs will undertake the compliance assessment of LEEMPS that have a connection agreement in place at the time the proposed Grid Code changes are implemented.

- 3.2 It is proposed that the responsibility for enforcing ongoing (lifetime) compliance of the LEEMPS plant, subsequent to the initial compliance assessment process of the new LEEMPS, will in all cases be the responsibility of the DNO (with the exception of the duration of modification projects).

- 3.3 Initial Distribution Code drafting reflecting the required changes is shown in Annex 1.

### **4. Description - DCUSA and CUSC**

- 4.1 In addition to the changes being made to the Grid Code and Distribution Code to reflect the new rights and obligations of LEEMPS/DCCS (DC Converter Stations) and NGET under those documents, there is a need to deal with the liability of the various parties for such rights and obligations and this will mean changes to both the DCUSA and CUSC.

- 4.2 The provisions of the DCUSA and CUSC that deal with limitation of liability need to be amended to ensure that each of the LEEMPS/DCCS on the one hand and NGET on the other remain liable in respect of their acts and omissions but that the liability of each to each other is subject to the limitation of liability regime in the existing documents. It would not be so without the changes as both the LEEMPS and NGET are not party to a single document.

- 4.3 What is proposed therefore is a treatment of liability between parties to different documents which is similar to the treatment of Users under the CUSC and the Transmission Owners in Scotland under the STC.

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<sup>2</sup> <http://www.nationalgrid.com/uk/Electricity/Codes/gridcode/consultationpapers/>

- 4.4 Without making such changes, each could potentially be exposed to unlimited liability to the other in respect of its acts or omissions as there would be liability (via tort) which would not be excluded.
- 4.5 The advantage of this approach is that NGET and the LEEMPS/DCCS remain contractually liable for their acts or omissions under the Grid Code or Distribution Code (as applicable), but their respective positions in respect of liability generally for such acts or omissions remain unchanged and continue to be dealt with under the existing limitation of liability regime contained in both the CUSC and DCUSA.
- 4.6 In order to illustrate the proposed DCUSA and CUSC changes, worked examples are shown in Annex 2, examining three potential scenarios and the effect on the liabilities between NGET, a DNO and a LEEMPS. The initial CUSC and DCUSA drafting reflecting the required changes is shown in Annex 3.

## 5. Next Steps

- 5.1 At the Grid Code Review Panel meeting of 4<sup>th</sup> February 2010, the requirement for a coordinated approach to implementing consequential changes to the DCUSA, CUSC and Distribution Code was confirmed. NGET consequently produced this document to outline the requirements for each code and highlight the interdependency between them.
- 5.2 NGET intends to raise the required CUSC Amendment Proposal (CAP181) at the CUSC Amendments Panel on 26<sup>th</sup> February, with a recommendation that it progress directly to the Company Consultation stage.
- 5.3 NGET, in conjunction with members from the Grid Code Compliance Working Group, is intending to raise the required DCUSA Change Proposal to the DCUSA Panel on 17<sup>th</sup> March 2010, following the DCUSA governance process.
- 5.4 An overview of the expected amendments required to the Distribution Code was discussed at the Distribution Code Review Panel (DCRP) on 11<sup>th</sup> February 2010. An action was taken to distribute the draft proposals and legal drafting to the DCRP, which this paper seeks to provide. It is expected that, subject to further discussion and agreement by the DCRP, a Consultation could be agreed at an Extraordinary DCRP meeting to be held on 31<sup>st</sup> March 2010 and published shortly thereafter.
- 5.5 Such arrangements allow the code changes to be considered and consulted upon in parallel which should ultimately allow any resultant final recommendations to be simultaneously considered by the Authority.
- 5.6 As a consequence of the volume and technical nature of the Grid Code drafting within the Consultation A/10, National Grid is intending to host an industry information session. This will take place during the Consultation period, in order to discuss the purpose and intention of the various components, aiding the industry to compose responses to the Grid Code Consultation. We will circulate details of the proposed date and venue to the industry, once finalised. There will also be an opportunity to ask questions at the Cross-Codes Electricity Forum on 19<sup>th</sup> March at Elexon's offices in London<sup>3</sup>.

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<sup>3</sup> To register for the Cross-Code Forum, please see the Elexon website at:  
<http://www.elexon.co.uk/bscpanelandcommittees/panelcommittees/crosscodesforum/default.aspx>

**6. Further Information**

- 6.1 If you have any questions on the information in this document, please contact Tom Ireland at National Grid, by phone on 01926 656152, or by email at [grid.code@uk.ngrid.com](mailto:grid.code@uk.ngrid.com) .
- 6.2 To register your interest in an industry information session, please email the Grid Code team at [grid.code@uk.ngrid.com](mailto:grid.code@uk.ngrid.com) .

## Annex 1 – Proposed Distribution Code Changes

### New Definitions:

<a href="#"><u>Network Operator CC Compliance Notice</u></a>	<a href="#"><u>Has the meaning set out in CC.3.3.5 of the Grid Code.</u></a>
<a href="#"><u>User Self Certification of Compliance</u></a>	<a href="#"><u>Has the meaning given in the Grid Code.</u></a>

### Changes to DPC7.5:

#### DPC7.5 Technical Requirements for Medium Power Stations

DPC7.5.1 Where a **Generator** in respect of an **Embedded Power Station** is a party to the **CUSC** this DPC 7.5 will not apply.

DPC7.5.2 In addition to the requirements in DPC7.4, the [following applies in relation to Medium Power Stations:](#)

[DPC7.5.3 Any DC Converter installation of capacity greater than 50MW and less than 100MW is considered to be a Medium Power Station for the purposes of Grid Code compliance in the Distribution Code, and each DC Converter installation owner is a Generator and bound by all obligations on Generators.](#)

[DPC7.5.4 The DNO has an obligation under CC 3.3 of the Grid Code to ensure that all relevant Grid Code Connection Condition requirements are met by Medium Power Stations. These Grid Code Connection Condition requirements are summarised in CC 3.43.3.2 and CC.3.3.3 of the Grid Code. It is incumbent on Each Generator must in respect of its respective Medium Power Stations to comply with the relevant Grid Code requirements listed in CC 3.43.3.2 and CC.3.3.3 of the Grid Code as part of compliance with this Distribution Code. Note that a DC Converter installation of capacity greater than 50MW and less than 100MW is considered to be a Medium Power Station for the purposes of Grid Code compliance in this Distribution Code, as if they were set out in this Distribution Code and formed part of it.](#)

~~DPC7.5.3 Where data is required by NGC from Medium Power Stations, nothing in the Grid Code or Distribution Code precludes the Generator from providing the information directly to NGC in accordance with Grid Code requirements. However, a copy of the information should always be provided in parallel to the DNO.~~

#### ~~DPC7.5.4 Grid Code Connection Conditions Compliance~~

~~DPC7.5.4.1 The technical designs and parameters of the Embedded Medium Power Stations will comply with the relevant Connection Conditions of the Grid Code. A statement to this effect, stating compliance with OC5.8 of the Grid Code is required to be presented to the DNO, for onward transmission to NGC, before commissioning of the Power Station. Note that the statement might need to be resubmitted post-commissioning when assumed values etc have been confirmed.~~

~~DPC7.5.4.2 — Should the **Generator** make any material change to such designs or parameters as will have any effect on the statement of compliance referred to in DPC7.5.4.1, the **Generator** must notify the change to the **DNO**, as soon as reasonably practicable, who will in turn notify **NGC**.~~

~~DPC7.5.4.3~~7.5.5 Tests to ensure **Grid Code** compliance may be specified by **NGC** in accordance with the **Grid Code**. It is the **Generator's** responsibility to carry out these tests.

~~DPC7.5.4.4~~7.5.6 Once **NGC** is satisfied with the outcome of the compliance process, **NGC** will notify the **DNO**. The **DNO** will then notify the **Embedded Medium Power Stations** that ongoing compliance assessment is the responsibility of the **DNO** in accordance with DPC7.5.9(d).

DPC7.5.7 Where **NGC** can reasonably demonstrate that for **Total System** stability issues the **Medium Power Station** should be fitted with a power system stabiliser, **NGC** will notify the **DNO** who will then require it to be fitted for compliance with this ~~DPC7.5.4.4~~7.5.

#### DPC7.5.8 **NGC Role in Compliance Assessment**

- (a) Where a **Network Operator CC Compliance Notice** has not been served by the **DNO**, **NGC** shall undertake the compliance assessment in respect of those Connection Condition requirements in place of the **DNO**. Unless notified under DPC7.5.9 below, **Generators** should assume that **NGC** will undertake the compliance assessment. *[Note: transition issues to be considered.]*
- (b) In ensuring the compliance of its plant with the **Grid Code** requirements, **Generators** owners will comply with and follow the relevant parts of CC.4 and CC.5 as if set out in this **Distribution Code** and as if they formed part of this **Distribution Code**.

#### DPC7.5.9 **DNO Role in Compliance Assessment**

- (a) Where the **DNO** has, by serving a **Network Operator CC Compliance Notice** on **NGC**, an obligation under CC 3.3 of the **Grid Code** to assess whether all relevant **Grid Code** Connection Condition requirements are met by **Medium Power Stations**, it will notify **Generators** and **DC Converter** owners in respect of their respective **Medium Power Stations**, and the provisions of this section DPC7.5.9 apply.
- (b) Each **Generator** will provide a **User Self Certification of Compliance** to the **DNO** in relation to compliance which the **DNO** will then pass on to **NGC**, with its own **User Self Certification of Compliance** addressed to **NGC**.
- (c) In ensuring the compliance of its plant with the **Grid Code** requirements, **Generators** will comply with and follow the relevant parts of CC.4 and CC.5 as if set out in this **Distribution Code** and as if they formed part of this **Distribution Code**.
- (d) Ongoing compliance assessment is the responsibility of the **DNO** except in the situation where a **Generator** has notified the **Network**

**Operator** that it plans to undertake a significant change or modification to its **Plant** and/or **Apparatus** at its **Medium Power Station** and the **DNO** and **NGC** have agreed that **NGC** will undertake compliance assessment in respect of such significant change or modification. In such case the **DNO** will notify the **Generator** that **NGC** is undertaking such compliance assessment and the provisions of DPC7.5.8 shall apply.

**DPC7.5.10 DNO obligation in respect of NGC Grid Code obligations**

Each **DNO** shall ensure that the obligations on **NGC** in respect of compliance testing of **Embedded Medium Power Stations** in the **Grid Code** which are reflected in this **Distribution Planning and Connection Code** are performed and discharged by **NGC**.

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## Annex 2 – DCUSA/CUSC Worked Examples

*Example 1: The DNO has requested for NGET to lead on the LEEMPS/DCCS compliance process. NGET fails to comply with its LEEMPS/DCCS compliance assessment obligations in the Grid Code resulting in physical damage to the embedded generator's plant and apparatus.*

- The affected generator is not party to the Grid Code and has no direct contractual claim against NGET. Under the proposed changes to the DCUSA it will have waived its rights to claim otherwise (i.e. in tort) against NGET.
- There will be a new provision in the Distribution Code making it explicit that a breach by NGET of its obligations under the Grid Code will be a breach by the relevant DNO under the Distribution Code of its obligation to ensure compliance by NGET with those sections of the Grid Code.
- The affected generator can therefore claim against the relevant DNO under the Distribution Code/DCUSA for the damage caused to its plant and apparatus by NGET's failure to comply with the Grid Code. Such claim would be subject to the £1 million cap in the DCUSA for such claims.
- The DNO would be entitled to claim against NGET under the third party loss limb of the physical damage provisions in the CUSC for the loss it had suffered as a result of the claim by the affected generator.

*Example 2: A CUSC Party suffers physical damage as a result of an embedded generator failing to comply with its obligations under the Distribution Code in respect of its LEEMPS/DCCS.*

- The CUSC Party is not party to the Distribution Code and has no direct contractual claim against the embedded generator. Under the proposed changes to the CUSC the CUSC Party will have waived its rights to claim otherwise (i.e. in tort) against the embedded generator.
- There will be a new provision in the Grid Code making it explicit that a breach by an embedded generator of its obligations under the Distribution Code will be a breach by the relevant DNO under the Grid Code of its obligation to ensure compliance by the embedded generator with those sections of the Distribution Code.
- The CUSC Party will then be entitled to claim against the relevant DNO under the Grid Code/CUSC for the damage caused to its plant and apparatus by the embedded generator's failure to comply with the Distribution Code.
- Such claim by a CUSC Party would be subject to a £1 million cap instead of the usual £5 million cap pursuant to the new provision introduced to the CUSC specifically to ensure that the DNO is not liable to a CUSC Party for more than it can recover from the embedded generator under the DCUSA.
- The DNO would be entitled to claim against the embedded generator under the third party loss limb of the physical damage provisions in the DCUSA for the loss it had suffered as a result of the claim by the CUSC Party up to the £1 million cap in the DCUSA.



- The advantage for embedded generators is that whereas previously a CUSC Party could have claimed in tort for an unlimited amount, now any claim by a CUSC Party is routed contractually through the DNO and is subject to the cap in the DCUSA.

*Example 3: A third party not party to the CUSC suffers physical damage as a result of an embedded generator failing to comply with its obligations under the Distribution Code in respect of its LEEMPS/DCCS.*

- Now dealing with the third party not party to the CUSC – it can either claim in tort against the embedded generator for an unlimited amount, as is currently the case, or may instead or additionally decide to claim against the DNO or a CUSC Party.
- A claim against either the DNO or a CUSC Party by such third party would again be in tort and would not be limited by any contractual cap. However, in such an example both the DNO and the CUSC Party may be entitled to claim contractually against the embedded generator through the DCUSA and/or CUSC/DCUSA as appropriate if the third party has successfully sued them.
- Given that under the CUSC the DNO could be liable to another CUSC Party for up to £5 million in respect of any claim such CUSC Party has received from a third party using the damage to third parties limb in the limitation of liability provisions therein. The DCUSA will be changed to allow the DNO in this scenario to recover up to £5 million from the relevant embedded generator.
- This approach has the advantage of ensuring that the DNO is not in a position where it is liable under the CUSC to another CUSC Party in respect of damage to third party property for more than it can recover from the relevant embedded generator under the DCUSA.
- From an embedded generator's perspective, in respect of claims from a third party not party to the CUSC the position of the embedded generator remains overall unchanged. It could always be sued for an unlimited amount by such third party in tort. Under the new proposals it is just that a proportion of the claim may now be routed contractually through the DNO.
- The overall amount that the third party can recover is unchanged as it can never recover more than its actual loss whichever route or combination of routes it chooses.

## **ANNEX 3 – Proposed CUSC and DCUSA PROVISIONS**

In summary, the proposed CUSC and DCUSA drafting changes outlined below operate, in tandem, so that:

- (a) CUSC Parties (including NGET) waive, under the CUSC, their rights to claim howsoever (and importantly in tort) against LEEMPS/DCCS owners for any breach by them of their obligations under the Distribution Code.
- (b) LEEMPS/DCCS owners waive, under the DCUSA, their rights to claim howsoever (and importantly in tort) against NGET for any breach by it of its obligations under the Grid Code.
- (c) The respective waivers contained in both the CUSC and DCUSA can be contractually enforced by the relevant party by utilising the Contracts (Rights of Third Parties) Act and each of the CUSC and DCUSA is amended explicitly to reflect that.
- (d) NGET or a CUSC Party would instead pursue any claim it had resulting from a breach by LEEMPS/DCCS owners of obligations under the Distribution Code contractually by claiming against the relevant DNO in whose system such LEEMPS/DCCS is connected under the CUSC who would in turn claim contractually against the relevant LEEMPS/DCCS owner under the DCUSA, using the damage to third parties limb in the limitation of liability provisions.
- (e) Likewise, LEEMPS/DCCS owners would pursue any claim they had resulting from a breach by NGET of its obligations under the Grid Code contractually by claiming against the DNO under the DCUSA who would in turn claim contractually against the NGET under the CUSC, using the damage to third parties limb in the limitation of liability provisions.

### **CUSC PROVISIONS**

#### **Relevant Grid Code change**

The proposed Grid Code changes make it explicit that a breach by a LEEMPS/DCCS owner of its obligations under the Distribution Code will be a breach by the relevant DNO under the Grid Code of its obligation to ensure compliance by the LEEMPS/DCCS owner with those sections of the Distribution Code.

#### **CUSC - New paragraph 6.12.3A inserted after paragraph 6.12.3**

CUSC Parties (including NGET) will waive their rights to claim directly against LEEMPS/LEEMDCCS owners as follows:

- 6.12.3A **Waiver:** In consideration of the rights conferred upon each **CUSC Party** under the **CUSC**, the right of such **CUSC Party** to claim in negligence, other tort, or otherwise howsoever against a **Generator** or **DC Converter Station** owner in respect of **LEEMPS/LEEMDCCS** in relation to any act or omission of such **Generator** or **DC Converter Station** owner in respect of **LEEMPS/LEEMDCCS** in relation to the subject matter of the **Distribution Code** is hereby excluded and each **CUSC Party** agrees not to pursue any such claim provided that nothing in this paragraph 6.12.3A shall restrict the ability of such **CUSC Party** to claim in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of such **Generator** or **DC Converter Station** owner in respect of **LEEMPS/LEEMDCCS** and such exclusion and agreement shall only apply to the extent that the **DCUSA** contains an **Equivalent**

**Waiver.** The provisions of this Paragraph 6.12.3A shall in no way affect the rights that a **Public Distribution System Operator** may have in respect of a **Generator** or **DC Converter Station** owner connected to its **Distribution System** under the **DCUSA**.

#### **CUSC - New paragraph 6.12.3B to reflect the cap of £1 million in the DCUSA**

In order to reflect that the DNO will not be liable under the CUSC in respect of breaches of the Distribution Code by LEEMPS/LEEMDCCS owners for more than it can recover from such LEEMPS/LEEMDCCS owner under the DCUSA, new paragraph 6.12.3B of the CUSC will need to be inserted.

6.12.3B **Cap on DNO liability:** Notwithstanding Paragraph 6.12.1, the liability of any **Public Distribution System Operator** in respect of any claim in respect of physical damage to the property of a **CUSC Party** resulting from the failure by such **Public Distribution System Operator** to ensure compliance by **Generators** or **DC Converter Station** owners in respect of **LEEMPS/LEEMDCCS** with the relevant sections of its **Distribution Code** as required by the **Grid Code** or the liability of **The Company** in respect of any claim by a **CUSC Party** connected to such claim shall not exceed £1 million per incident or series of related incidents.

*Nb: Also need to add new paragraph 6.12.3B to the list of paragraphs to which paragraph 6.12.1 is subject.*

#### **CUSC - New paragraph 6.22.1 to replace existing paragraph 6.22.1**

6.22.1 **Reliance on waiver:** Subject to the remainder of this Paragraph 6.22, a **Relevant Transmission Licensee** may rely upon and enforce the terms of Paragraph 6.12.3, against a **CUSC Party** (other than **The Company**) and a **Generator** or **DC Converter Station** owner in respect of **LEEMPS/LEEMDCCS** may rely upon and enforce the terms of Paragraph 6.12.3A, against a **CUSC Party**, in each case as specified therein.

#### **CUSC - New Definitions**

<b>DCUSA</b>	The Distribution Connection and Use of System Agreement approved by the <b>Authority</b> and required to be maintained in force by each <b>Electricity Distribution Licence</b> holder.
<b>Equivalent Waiver</b>	An undertaking by <b>Generators</b> or <b>DC Converter Station</b> owners in respect of <b>LEEMPS/LEEMDCCS</b> not to bring any claim in negligence, other tort, or otherwise howsoever against <b>The Company</b> in respect of any act or omission of <b>The Company</b> in relation to the subject matter of the <b>Grid Code</b> , save in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of <b>The Company</b> .
<b>LEEMPS/LEEMDCCS</b>	As defined in the <b>Grid Code</b> .

## **DCUSA PROVISIONS**

### **Relevant Distribution Code change**

It will be necessary to make it explicit in the Distribution Code that a breach by NGET of its obligations under the Grid Code will be a breach by the relevant DNO under the Distribution Code of its obligation to ensure compliance by NGET with those sections of the Grid Code.

See new paragraph DPC7.5.10 in Annex 1.

### **DCUSA - New Clause 53.2A inserted after paragraph 53.2**

LEEMPS/DCCS owners will waive their rights to claim directly against NGET as follows:

- 53.2A **Waiver:** In consideration of the rights conferred upon each DG Party in respect of its Medium Power Stations under this Agreement, the right of such DG Party to claim in negligence, other tort, or otherwise howsoever against the GB System Operator in respect of any act or omission of the GB System Operator in relation to the subject matter of the Grid Code is hereby excluded and each such DG Party agrees not to pursue any such claim provided that nothing in this Clause 53.2A shall restrict the ability of such DG Party to claim in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the GB System Operator and such exclusion and agreement shall only apply to the extent that the CUSC contains an Equivalent Waiver.

### **DCUSA - New paragraph to reflect the cap of £5 million in the CUSC for third party claims**

Generally under the DCUSA liability is limited to £1 million per event or series of related events and this has been reflected in the new £1 million cap introduced into the CUSC for claims relating to breach by embedded generators. However, under the CUSC, the DNO could still be liable for up to £5 million to another CUSC Party in respect of physical damage to a third party's property. In order to ensure that the DNO is not liable to other CUSC Parties in respect of damage to third party property for more than it can recover from the relevant LEEMPS/DCCS under the DCUSA, new paragraph 52.3B of the DCUSA will need to be inserted.

- 53.2B Notwithstanding Clause 53.1, the liability of any DG Party to any DNO Party in respect of any claim by such DNO Party in respect of physical damage to the property of another person resulting from the failure by such DG Party to comply with the relevant sections of its Distribution Code shall not exceed £5 million per incident or series of related incidents.

*Nb. Also need to add new Clause 53.2B to the list of Clauses to which Clause 53.1 is subject.*

**DCUSA - Clauses 60.8 and 60.9 replaced with the following**

## 60.8

- (a) **Reliance on waiver:** Subject to the remainder of this Clause 60.8 and Clause 60.9, the GB System Operator may rely upon and enforce the terms of Clause 53.2A, against a Party and as specified therein.
- (b) **Limitation to C(RTP)A:** The third party rights referred to in Clause 60.8(a) (and any other terms of this Agreement which expressly provide that a third party may in his own right enforce a term of the Agreement) 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 Agreement.
- (c) **Amendments:** Notwithstanding any other provisions of this Agreement, the Parties may (pursuant to section 1C), amend this Agreement without recourse to 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 this Agreement would have an impact on the rights of third parties conferred under Clause 60.8(a), then [DCUSA Limited] shall bring such impact to the attention of the Parties and third persons to the extent that such impact is not already brought to their attention in a Change Proposal by the Proposer.

60.9 **Third Party Rights:** Except as provided in Clause 60.8(a) (or insofar as this Agreement otherwise expressly provides that a third party may in its own right enforce a term of the Agreement), a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**DCUSA - New Definitions**

<b>Equivalent Waiver</b>	an undertaking by the GB System Operator not to bring any claim in negligence, other tort, or otherwise howsoever against a DG Party in respect of any act or omission of such DG Party in relation to the subject matter of the Distribution Code, save in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of such DG Party.
<b>Medium Power Station</b>	Has the meaning given in the Distribution Code.