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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **SEMO** | **28 November 2018** | | **Standard** | | **Mod\_35\_18** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Katia Compagnoni** | |  | | **katia.compagnoni@sem-o.com** | |
| **Modification Proposal Title** | | | | | |
| **Clarifications to Dispute Process** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC Part B** | | **B.19.3 and E.3.8** | | **Version 20** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| Concerns were raised during the resolution of Pricing Disputes after following I-SEM go live and the MO has identified 3 areas where clarifications and changes have been proposed on this Modification form.   1. Paragraph B.19.2.2 currently gives the Disputing Party the same length of time to refer the Dispute to the DRB, as the time to negotiate the resolution to said Dispute i.e. 5WD. This means that if the negotiations between MO and Disputing Party happen on the last available day, the Disputing Party only has until COB on the same day for the referral. It is therefore appropriate for the Disputing Party to have 1 additional WD after the end of the negotiating period to complete the necessary administrative steps for a referral to the DRB. This proposal change it to 6 WD after the submission date of the Notice of Dispute. 2. Paragraph B.19.3, specifically refers to decisions of Dispute Resolution Board and how the resolution is subject to Settlement Recalculation Threshold and Price Materiality Thresholds. The intent of the Code would be to apply such limits to all Disputes and Queries being resolved, without distinction to those being decided upon by a Dispute Resolution Board or as part of the standard amicable process. It is also to be applied to material error being identified by the MO under section E.3.8. This is in line with the intent of the Code to strike a balance between correcting errors having a significant impact to the Market and provide as much stability to the Imbalance Price and Settlement as possible. It also reaffirms consistency between all Dispute types and resolution of other Market issues raised in Settlement Queries. Section B.19.3 has been renamed to avoid confusion with the defined term ‘General Dispute’; these provisions can apply to all Dispute type (specified within each paragraph) not just General Disputes. 3. Paragraph E.3.8.1 which relates to MO identifying material errors that could result in a recalculation of the Imbalance Settlement Price. The concept was introduced to facilitate the resolution of issues that were identified by the MO as being clearly incorrect before any PTs would have had an opportunity to query or dispute the issue. However, without the specification added to the legal drafting as part of this Mod, it appears that the MO will not have an opportunity to declare manifest error as part of a dispute resolution because paragraph E.3.8.1 bounds it to 5 Working Days (WD) after the publication of Imbalance Settlement Price. In reality a Dispute could be raised by PTs within 5 WD and the resolution must happen within further 5WD. This additional timeline should also be taken into consideration so that the MO has sufficient time to investigate the issue raised once it has become aware of it. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| Changes to Main Body of the T&SC:   1. * 1. Reasonable Endeavours Obligations   ….   * + - 1. In the case of a Pricing Dispute:          1. the Disputing Party and the Market Operator shall negotiate in good faith and use reasonable endeavours to resolve the Pricing Dispute within five Working Days of the issue of the Notice of Dispute; and          2. unless the Market Operator determines that a manifest error has occurred under paragraph E.3.8.1, a Disputing Party may refer the Pricing Dispute to a Dispute Resolution Board by issuing a Referral Notice as soon as practicable, and in any case within 6 Working Days of the issue of the Notice of Dispute, otherwise the Dispute will be deemed to be withdrawn.     1. General Provisions for Disputes        1. All decisions in relation to the resolution of a Dispute or a material error identified by the Market Operator as per paragraph E.3.8.1 are subject to the Settlement Recalculation Threshold and a Price Materiality Threshold determined as follows:           1. a Settlement Recalculation Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Settlement Recalculation Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later; and           2. a Price Materiality Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Price Materiality Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later.  1. * 1. Changes to Published Imbalance Prices         1. If the Market Operator identifies a manifest error in a published Imbalance Settlement Price:            1. within 5 Working Days of its publication (whether or not as a result of a Settlement Query or a Pricing Dispute); or            2. as part of the resolution of a Pricing Dispute as per paragraph B.19.2.2 (a);   the Market Operator shall correct the manifest error and shall publish the corrected Imbalance Settlement Price as soon as possible and within 1 Working Day of making the correction. | | | | | |

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| 1. Procedural Steps    1. **Raising a Dispute**  | Step | Step Description | Timing | Method | From / By | To | | --- | --- | --- | --- | --- | --- |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | 13 | Unless the Market Operator determines that a manifest error has occurred under paragraph E.3.8.1 of the Code, a Disputing Party may send a Referral Notice to the Market Operator with a copy to the Regulatory Authorities, continue to step 17.  If the Dispute is not referred to the DRB by way of a Referral Notice, the Dispute is deemed to be withdrawn, end process. | Within 6 WD of the issue of the Notice of Dispute | Email / Facsimile | Any Disputing Party | Market Operator and Regulatory Authorities | |

Changes to Agreed Procedure 14 “Disputes”:

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| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | |
| This modification clarifies the dispute process where a strict interpretation may result in inconsistencies in the Dispute resolution process. It would also not adhere to the objectives of such process set out in paragraph B.19.5 as it would likely result in more instances of Disputes referred to the DRB particularly in cases where the MO would not have enough time to identify a manifest error. It is also unfair to Disputing Parties in circumstance where they would have insufficient time to refer a Dispute to a DRB. | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of Part A and/or Section A.2.1.4 of Part B of the T&SC for Code Objectives)* | |
| These objectives are furthered by this Modification:  A.2.1.4 The aim of this Code is to facilitate the achievement of the following objectives:   * + - * 1. to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;         2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;         3. to provide transparency in the operation of the Single Electricity Market; | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | |
| SEMO considers that leaving the T&SC unchanged would lead to misinterpretation of the paragraphs identified above in the legal drafting, in inconsistencies in the resolution of Disputes and in potential additional costs to the Market as referring Disputes to the DRB would be more frequent if MO would not have sufficient time to investigate the issue once it is made aware of. It could also leave PT with insufficient time to refer a Dispute to DRB. | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures; also indicate impacts on any other Market Code such as Capacity Marker Code, Grid Code, Exchange Rules etc.)* |
| N/A | N/A |
| ***Please return this form to Secretariat by email to*** [balancingmodifications@sem-o.com](mailto:balancingmodifications@sem-o.com) | |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in either Part A or Part B Appendix D “List of Agreed Procedures”. The Proposer will need to specify whether the Agreed Procedure to modify refers to Part A, Part B or both.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market. The Proposer will also need to specify whether all Part A, Part B, Part C of the Code or a subset of these, are affected by the proposed Modification;**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of Part A or Chapter B of Part B of the Code (and Part A Agreed Procedure 12 or Part B Agreed Procedure 12) , which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
  2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
  3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**