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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)* |
| **CRU and Utility Regulator** | **28 November 2019** | **Urgent** | **Mod\_23\_19v2** |
| **Contact Details for Modification Proposal Originator** |
| **Name** | **Telephone number** | **Email address** |
| **CRU and Utility Regulator** |  | **gkelly@cru.ie****,** **Karen.Shiels@uregni.gov.uk** |
| **Modification Proposal Title** |
| Modification to allow the Market Operator to seek relief from an obligation under Section E.3 of the TSC in exceptional circumstances (until 1 January 2021). |
| **Documents affected***(delete as appropriate)* | **Section(s) Affected** | **Version number of T&SC or AP used in Drafting** |
| **T&SC Part B****Appendix B** | **H.6, B.14, E.3** | **Version from 12 April 2019** |
| **Explanation of Proposed Change***(mandatory by originator)* |
| This Modification proposes a temporary amendment to Section B.14 of the Trading and Settlement Code (to be added via Section H ‘Interim Arrangements’) in order to allow for the Market Operator to seek a derogation in respect of a specific obligation under Section E.3.8 of the Code for a limited period from the RAs if a number of requirements are met and if deemed appropriate by the RAs. This provision could only be used in certain exceptional circumstances and until 1 January 2021.It is proposed that this Modification would include a temporary amendment to Section B.14 of the Trading and Settlement Code in relation to Obligations on Parties. Where the Market Operator is unable to meet a particular obligation under Section E.3.8 of the Code, the Market Operator could write to the RAs to seek a derogation in respect of any obligation(s) placed on it under Section E.3 of the Code where the Market Operator: (a) has been, is or reasonably expects to be unable to meet such obligation(s) under the Code; and (b) can show that meeting such obligation(s) would place an undue burden on its operations and in each case, can show that compliance with such obligation(s) would have a material detrimental impact on the achievement of the Code Objectives.The following would be required as part of the submission;1. The request for relief from a particular obligation under Section E.3.8 of the Trading and Settlement Code.
2. The rationale for the requested derogation including clear supporting evidence demonstrating how the above criteria are met.
3. The requested period of derogation from a specific obligation, which may not be more than 12 months.
4. A detailed plan and implementation timeline to rectify the issue.
5. An assessment of the consequences of granting and not granting the derogation on the SEM.

Based on the submission and following consultation with the Modifications Committee (for any future submissions), the Regulatory Authorities would then decide whether or not to accept the request and would publish the Market Operator’s submission and a decision letter setting the reasons for granting, amending or rejecting the derogation. If a temporary derogation from meeting the obligation under Section E.3.8 was granted by the Regulatory Authorities, the Market Operator would be required to report on at least a monthly basis, on progress towards rectifying the issue. The Regulatory Authorities would be entitled to publish these reports.In terms of the context for this Modification, the RAs recently consulted on a number of options for repricing being carried out by SEMO (SEM-19-042) (Under the Trading and Settlement Code, if as part of an upheld Pricing Dispute it is determined that there is a manifest error in the pricing calculation which leads to a change in price greater than a certain Price Materiality Threshold, the price is recalculated and included in resettlement). This Consultation was prompted by the fact that 72,000 Imbalance Pricing Periods (5-minute prices) and 12,000 Imbalance Settlement Periods (30-minute prices) for the period from 1 October 2018 to 11 June 2019 are subject to an upheld dispute and require repricing under Section E.3.8 of the Trading and Settlement Code. The commencement of any repricing by SEMO is dependent on successful testing of SEMO’s repricing solution. Furthermore, this repricing solution cannot apply the Price Materiality Threshold as approved by the SEM Committee in SEM-17-046 and SEMO has notified the RAs that this would need to be carried out manually until a revised solution is implemented, most likely in Q4 2020. This would involve a significant further delay to repricing.The Consultation Paper considered four options for repricing in the context of providing certainty for market participants for the period in question and the overall effect of a number of manifest errors in the pricing system on accuracy of prices. The first two options were based on the application of a 5% or 0% Price Materiality Threshold (Option 1 and 2), while the second two options were based on variants of an option for repricing not to be carried out for a defined time period (Option 3 and 4). Based on a review of the responses received to the Consultation Paper and SEMO’s engagement with market participants over the last number of months, the SEM Committee set out in its Decision Paper its view that repricing should not be carried out for the period between 1 October 2018 and 11 June 2019. In order to give effect to this Decision, the Modification introduces a temporary mechanism to the Trading and Settlement Code, in order to provide a transparent process for SEMO to seek relief, in very limited circumstances, from its obligations under Section E.3.8 of the Code on a temporary basis. This Modification is being raised following consultation and under a particular set of circumstances and should not be taken as a precedent for any derogations from obligations under the Code in future. |
| **Legal Drafting Change***(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* |
| Section B.14 of the Code details the Obligations on parties and is drafted as follows;**B.14** **OBLIGATIONS ON PARTIES**B.14.1.1 Each Party shall comply with the Code and the Framework Agreement in exercising its rights and powers and performing its functions and obligations under the Code. B.14.1.2 Without prejudice to the generality of paragraph B.14.1.1, no Party shall, either directly or indirectly, on its own or in conjunction with any other Party or person, obstruct the proper functioning of the SEM in accordance with the Code. B.14.1.3 Each Party agrees that the Market Operator shall have the right, as agent and trustee for and on behalf of each Party, to sue any other Party to recover any Shortfall or Unsecured Bad Debt under the Code. B.14.1.4 Where the performance of any obligation arising under or in relation to this Code requires the prior approval or action by the Regulatory Authorities, such obligation shall be subject to such prior approval or action by the Regulatory Authorities. B.14.1.5 Without prejudice to any other provision of the Code or the Framework Agreement, each Party: (a) shall perform all its rights, functions and obligations under the Code with the degree of care and to the standard expected of a Prudent Industry Operator and in accordance with Prudent Electric Utility Practice; (b) shall at all times comply with and maintain, and shall at all times procure compliance with and maintenance of, all consents, permissions, licences and Licences (and the conditions attaching to any exemptions) required to be obtained and maintained to participate in the SEM or to be a Party to the Code for each capacity in which it acts as a Party or Participant under the Code; (c) shall pay all fees, levies, charges and other payments arising under the Code as they become due; (d) shall ensure that, save as expressly permitted otherwise, any information or data it is required to submit to the Market Operator, Market Auditor or any other person, or to maintain, as required by virtue of being a Party or Participant, shall, to the best of its knowledge and belief, be true, valid, correct, complete and accurate at the time it is given and, save as expressly provided otherwise, while it is maintained and, where appropriate, it shall keep the Market Operator informed in a timely way of any mistakes or omissions in, and corrections or updates to any information or data which it has submitted to the Market Operator, the Market Auditor or any other person under the Code; (e) shall ensure that any information or data it is required to submit to the Market Operator, Market Auditor or any person as required by virtue of being a Party or Participant will be submitted in a timely manner to enable the Market Operator, Market Auditor or such other person to perform their obligations and functions arising pursuant to the Code; and (f) shall co-operate with and provide all reasonable assistance to the Market Operator on request for the purposes of the Market Operator performing its functions and obligations under the Code.This Modification proposes to add a temporary amendment to Section B.14 through the introduction of a new Interim Provision to Section H of the Code with the legal drafting changes below;**H.6** **INTERIM PROVISIONS**H.6.1.1 Each of the Interim Provisions set out in the following paragraphs shall have effect until the date specified in the Interim Provision or, if no date is so specified, the relevant Modification Deployment Date and each Interim Provision which replaces a provision of the Code shall have effect in place of the specified provision until that date, from which time the replaced provision shall commence and apply. Once the Modification Deployment Date has passed the text of the relevant Interim Provision shall be replaced with “Intentionally blank”:**H.13 Provision for the Market Operator to seek temporary relief from an obligation under Section E.3 of the Code in exceptional circumstances (until 1 January 2021).**H.13.1 Until 1 January 2021, the following additional paragraphs shall be added to Section B.14 of the Code;B.14.1.6 Until January 2021, The Market Operator may seek a derogation from the Regulatory Authorities in respect of any obligation(s) placed on it under Section E.3.8 of the Code (in accordance with the remaining provisions of this Section B.14), where the Market Operator: (a) has been, is or reasonably expects to be unable to meet such obligation(s) under the Code; and (b) can show that meeting such obligation(s) would place an undue burden on their operations and in each case, can show that compliance with such obligation(s) would have a material detrimental impact on the achievement of the Code Objectives.B.14.1.7 Any request for a derogation must be submitted by the Market Operator to the Regulatory Authorities for review and approval and must set out;(a) the obligation(s) in Section E.3.8 from which a derogation is requested;(b) the rationale for the requested derogation including clear supporting evidence demonstrating how the criteria in B.14.1.6 are met;(c) the requested period of derogation from a specific obligation, from the date on which any non-compliance first arose or is expected to arise. A derogation may not be granted for a period greater than 12 months; (d) a detailed plan and implementation timeline to rectify the issue (unless otherwise agreed with the Regulatory Authorities); and(e) an assessment of the consequences of granting and not granting the derogation on the SEM.B.14.1.8 The Regulatory Authorities shall, following consultation with the Modifications Committee, confirm that they:(a) approve the derogation requested, or (b) approve an amended version of the derogation, or (c) reject the derogation requested.The Market Operator’s submission will be published along with the Regulatory Authorities decision letter setting out the reasons for granting, amending or rejecting the derogation.B.14.1.9 If a derogation from meeting the Market Operator’s obligation(s) under Section E.3.8 of the Code is granted by the Regulatory Authorities, the Market Operator shall report to the Regulatory Authorities on a monthly basis on progress towards rectifying the issue and the Regulatory Authorities shall be entitled to publish all such reports. |
| **Modification Proposal Justification***(Clearly state the reason for the Modification)* |
| The SEM Committee’s recent Consultation regarding the issue of repricing has demonstrated that the Code as currently drafted does not explicitly account for exceptional issues that may arise associated with the operation of the new market, where there is an issue with the Market Operator’s ability to meet its obligations under the Code which impact on the wider market. In addressing this issue, it is the SEM Committee’s view that a change to the rules and obligations for Parties under the TSC is not required, however the drafting of the Code in terms of publication of corrected Imbalance Settlement Prices for a period did not contemplate the current situation in terms of the volume of corrections required and the unmanageable delays which have impacted on timelines for repricing. This Modification aims to provide a mechanism to address this issue.  |
| **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)* |
| *(a)* *to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences.*As discussed, the context for this Modification is related to the SEM Committee’s recent decision in relation to repricing. Granting a derogation to SEMO from its obligations under Section E.3.8 for a limited time period in this instance will allow for the efficient discharge of the Market Operator’s other obligations under the Code given the time burden associated with carrying out repricing and applying the price materiality threshold manually for this period.*(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner.*This Modification will facilitate the administration and development of the SEM by allowing for the development of the market following initial issues experienced since go-live.*(e) to provide transparency in the operation of the Single Electricity Market*This Modification aims to provide a transparent mechanism for implementation of the SEM Committee Decision in relation to the issue of repricing.  |
| **Implication of not implementing the Modification Proposal***(State the possible outcomes should the Modification Proposal not be implemented)* |
| If this Modification is not implemented, the RAs will not be able to grant a derogation to the Market Operator from particular obligations under Section E.3.8 of the Code in exceptional circumstances which may impact on the overall market and on the Code Objectives. |
| **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 Market Code, Grid Code, Exchange Rules etc.)* |
|  | No |
| ***Please return this form to Secretariat by email to*** 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:**

**1.1** **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**

**1.2** **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;**

**1.3** **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.**