

CMP376

WACM8

The legal text for WACM8 is the same as the legal text for the original CMP376 apart from the following changes shown **in red and strikethrough** below to the new CUSC Section 16 specifically changes to Paragraph 16.4 (Project Milestone Communications).

16.4 **Project Milestone Communications**

16.4.1 As soon as practicable and in any event by the due date for meeting a **User Progression Milestone**, the **User** shall document and provide the evidence in accordance with the table above of progress on a **User Progression Milestone** to prove to **The Company's** reasonable satisfaction that that **User Progression Milestone** has been met.

16.4.2 The **User** will notify **The Company** and the **Relevant Transmission Licensee**, at the earliest opportunity, as soon as it becomes aware of any issues that could impact on the **User's** ability to meet any of the **User Progression Milestones** and specifically of any that the **User** believes could fall under 16.5 below. Where the **User** believes that an issue could fall under 16.5 below evidence supporting this shall be provided to **The Company**.

16.4.3 **The Company** will upon receipt of evidence provided in accordance with 16.4.1 above, advise the **User** within 10 **Business Days** as to whether it is satisfied that the **User Progression Milestone** has been met and whether the status of the **User's** project is categorised by **The Company** as "On Track" or "Termination".

16.4.4 If no evidence is provided in accordance with 16.4.1 above, or the evidence provided is considered insufficient to demonstrate that the milestone has been met, and as a consequence the status of the **User's** project is categorised as "Termination" **The Company** will notify the **User** that the **User's** project is categorised as "Termination" and that the **Project Milestone Remedy Period** has started.

16.4.5 If during the **Project Milestone Remedy Period** the **User's** project progresses such that it achieves the **User Progression Milestone** against which it was categorised as "Termination", the **User's** project

shall be re-categorised by **The Company** as being “On Track” by reference to that **User Progression Milestone** and the **User** notified accordingly.

16.4.6 **Conditional Progression Milestones**

Where at the end of the **Project Milestone Remedy Period** for a **Conditional Progression Milestone** the status of the **User’s** project is still categorised as “Termination”, **The Company** shall terminate the **Construction Agreement**. ~~Where at the end of the **Project Milestone Remedy Period** for a **Construction Progression Milestone** the status of the **User’s** project is still categorised as “Termination”, **The Company** may terminate the **Construction Agreement**.~~

16.4.7 **Construction Progression Milestones**

16.4.7.1 ~~Except as provided for in Paragraph 16.4.7.2 below, where at the end of the **Project Milestone Remedy Period** for a **Construction Progression Milestone** the status of the **User’s** project is still categorised as “Termination”, **The Company** may terminate the **Construction Agreement**.~~

16.4.7.2 Where a **User** has met (and continues to meet) the **Conditional Progression Milestones** and makes a **Modification Application** requesting an adjustment to a particular **Construction Progression Milestone** (and which may include a corresponding adjustment to all subsequent **Construction Progression Milestone** and/or a later **Completion Date**):

(a) prior to the **Project Milestone Remedy Period** because it has reason to believe that it will not be able to meet that **Construction Progression Milestone**; or

(b) when it is in and before the end of a **Project Milestone Remedy Period** for that **Construction Progression Milestone**

then (and provided that a **User** does not make more than three **Modification Applications** requesting a delay to any of the **Construction Progression Milestones** for the **User’s** project) **The Company** may only terminate the **Construction Agreement** in accordance with Paragraph 16.4.7.1 if the **Modification Offer** is not accepted.

16.4.7.3 **Modification Offer**

In considering the **Modification Application** for the requested delay to the **Completion Date** (and associated **Construction Progression Milestones**) the position of the **User** in the “connections queue” shall be assessed in the standard way but also applying the following principles to assess any revised ordering of the **User’s** project in the connections queue:

- (a) the **User’s** project will be moved down the connections queue so that it is not ahead of any other user in the connections queue who has met the **Construction Progression Milestone** that the **User** has or will miss and which is the subject of the **Modification Application** (ie if the **User** has made a **Modification Application** because it has or believes it will miss milestone M6, the **User’s** project will be moved down the connections queue to sit behind all the other users that have completed milestone M6); and
- (b) any movement of the **User’s** project in the connections queue does adversely affect any other user’s project.

16.4.7.4 **The Company** shall be entitled (at its discretion and having first notified the **User** in writing to this effect) to assume (until the **Modification Offer** is accepted) that the **Completion Date** for the purposes of this **Construction Agreement** is the date as specified by the **User** in the **Modification Application** and the obligations of **The Company** to provide a connection under the **Construction Agreement** shall be construed accordingly.

16.4.7.8 Whether or not any of the **User Progression Milestones** have been achieved and/or what constitutes progress towards achieving them is a matter for the sole discretion of **The Company**.

16.4.8.9 **The Company**, the **Relevant Transmission Licensee** and the **User** shall constructively engage as required during the **Milestone Remedy Period** to understand whether the relevant **User Progression Milestone** can or is likely to be met and whether the issues in achieving the **User Progression Milestone** fall or are likely to fall under 16.5 below.

16.4.9.10 **Ongoing compliance with the Conditional Progression Milestones**

16.4.9.10.1 Having achieved a **Conditional Progression Milestone** the **User** shall notify **The Company** (or respond to **The Company’s** request for confirmation on this point) at the earliest opportunity in the event that it

no longer meets or has reason to believe it will not continue to meet the requirements set out for that **Conditional Progression Milestone**.

16.4.910.2 In the event that the ongoing requirements of a **Conditional Progression Milestone** are no longer met, **The Company** will notify the **User** that the **User's** project is categorised as "Termination" and the provisions of 16.4.5 to 16.4.89 shall apply.

- (i) Changes to Paragraph 16.5 (Exceptional Issues on User Progression Milestones)

16.5 Exceptional Issues on **User Progression Milestones**

There may be a small number of exceptional issues outwith the **User's** control which may lead to **User** project delay and a **User** not being able to meet a **User Progression Milestone**.

The Exceptional issues which apply in the context of the **Queue Management Process** are as follows:

- Where the **User** is delayed in carrying out the **User's Works** which entitles the **User** to fix a later date or dates under Clause 3.2 of the **Construction Agreement** (Delays and Force Majeure) and that delay is the reason that a **User Progression Milestone** is not met;
- Where the **User** is not able to meet a **User Progression Milestone** due to an event of **Force Majeure**;
- Where delays caused by a party (other than the **User**, **The Company** or a **Relevant Transmission Licensee**) can be demonstrated to have an impact upon the **User** meeting a **User Progression Milestone** and which delays the **User** could not have avoided these delays or their impact by the exercise of **Good Industry Practice**
- Where a **User** is not able to meet a **User Progression Milestone** due to Planning appeals and third-party challenges in relation to the **User's Consents**;
- Any delay in the achievement of a milestone by the **User** which is caused by **Relevant Transmission Licensee** or **The Company**

Where the **User** believes an exceptional issue applies it shall provide written evidence to this effect supported by confirmation from the **User's** board of directors or equivalent body for **The Company's** consideration.

Where a **User's** project is not able or is considered unlikely to meet a **User Progression Milestone**, as a result of an exceptional issue under the headings here, and providing the **User** notifies **The Company** and the **Relevant Transmission Licensee** of the delay and reasons for the delay at the earliest

opportunity and provides reasonable evidence to justify this and satisfies **The Company** that the specific delay falls under this 16..5, such delay will not result in the **User's** project being categorised as "termination" in relation to the relevant **User Progression Milestone** or **User Progression Milestones**. In such circumstances **The Company** will consequently issue a new milestone date for the missed milestone.

Whether or not the exceptional issues as listed here apply and the period of any extension, is a matter for the sole discretion of **The Company**.

Where a **Modification Application** has been made by a **User** as envisioned at Paragraph 16.4.7.2 above but the **Modification Offer** is not accepted, then the **User** cannot claim that an exceptional issue has arisen in respect of the specific **Construction Progression Milestone** which has or is to be missed and which was the reason for that **Modification Application**.