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MP076 ‘Pursuing Non-Payment in Events of Default’

Legal text – version 0.1

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

These changes have been drafted against SEC Version 6.12.

Section J 'Charges'

Amend Section J2.6 as follows:

J2 PAYMENT DEFAULT AND DISPUTES

Notification of Payment Failure

J2.1 Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, then the DCC shall, on the Working Day following the Due Date, issue a notice to that Party:

- (a) setting out the unpaid amount; and
- (b) referring to the matters set out in Sections J2.2, J2.4, J2.5, J3.16 (where applicable), and M8.1(c) (Events of Default).

Default Interest

J2.2 Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, then that Party shall pay interest on that amount at the Default Interest Rate calculated from day-to-day from the Due Date to (but excluding) the date on which payment is made (compounded monthly).

Notification of Payment Disputes

J2.3 Where a Party wishes to dispute any amount set out in an Invoice addressed to it, then that Party shall nevertheless pay the full amount set out in the Invoice by the Due Date, and shall give notice to the DCC of the disputed amount and the reason for the dispute. A Party may not give notice under this Section J2.3 (or otherwise dispute an amount set out in an Invoice) more than 12 months after the Due Date for that Invoice.

Resolution of Payment Disputes

J2.4 Where a Party disputes, in accordance with Section J2.3, any amount set out in an Invoice addressed to it, then:

- (a) such Party and the DCC shall each in good faith negotiate to resolve the dispute amicably and as soon as reasonably practicable after it arises;
- (b) the DCC shall provide all such evidence in support of its position as the disputing Party may reasonably request, and the DCC shall provide such evidence within 5 Working Days after such request;
- (c) no earlier than 1 Working Day after receipt from the DCC of the information requested under Section J2.4(b) (or, where the DCC does not comply with such request, on the expiry of the period referred to in that Section), the disputing Party may refer the dispute to the Panel, in which case each of the DCC and the disputing Party shall be entitled to provide written submissions in support of its position;
- (d) where a dispute is referred to the Panel in accordance with Section J2.4(c), the Panel shall convene a meeting and determine the dispute within 10 Working Days of the reference being made (to which meeting representatives of the disputing Party and the DCC may be invited in accordance with Section C (Governance)); and
- (e) where the Panel determines that there has been an overpayment to the DCC, the DCC shall include an adjustment in accordance with Section J1.9(c) to address such overpayment (or comply with any direction of the Panel to repay the relevant amount together with interest at the rate that would have applied had the adjustment been made in accordance with Section J1.9(c)).

J2.5 Section J2.4, and any determination by the Panel pursuant thereto, are without prejudice to the following rights of the Parties:

- (a) where the amount set out in an Invoice addressed to a Party is disputed on the grounds of whether or not the Charges were calculated and levied in accordance with the Charging Methodology and the Charging Statement, then either of that Party or the DCC may refer the matter to the Authority for determination pursuant to Condition 20 of the DCC Licence; or

- (b) where the amount set out in an Invoice addressed to a Party is disputed on any other grounds, then either of that Party or the DCC may refer the matter to arbitration in accordance with Section M7 (Dispute Resolution).

Pursuing Non-Payment

J2.6 Where the DCC has served a notice in accordance with Section J2.1 in respect of Charges payable by a Party, and such Charges have not been paid within three (3) Working Days following that notice, the DCC shall:

- (a) as required by Section M8.2 (Notification of Events of Default), notify the Panel that an Event of Default has occurred in respect of that Party under Section M8.1(c); and
- (b) the DCC shall take all reasonable steps and proceedings (in ~~consultation~~ with accordance with any and all instructions given by the Panel) to pursue and recover the unpaid amount (together with interest), and shall continue with such steps and proceedings unless and until the Panel (whether on the application of the DCC or otherwise) determines that it would not be worthwhile to do so in the circumstances (having regard to, amongst other things, the DCC's duties under part D of Condition 11 of the DCC Licence).

J2.7 Any Party may appeal the decision of the Panel under Section J2.6 to the Authority, and the DCC shall comply with any decision of the Authority in respect of such matter (which shall be final and binding, but without prejudice to the Panel's ability to make a further decision under Section J2.6 following a material change in circumstances).

Records

J2.8 Without prejudice to any other requirements under Laws or Directives, the DCC shall maintain records of each Invoice (together with reasonable supporting evidence for the Charges levied in the Invoice) for a period of at least 18 months following the date of the Invoice.