



## TRANSMISSION INTERFACE ARRANGEMENTS

### PROPOSED AMENDMENT REPORT

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Proposer:	SONI
Capacity of Proposer	Party
Date of Proposal(s):	1 July 2020

## Table of Contents

Introduction .....	1
Proposed Amendments .....	2

## Introduction

SONI and NIE Networks (the “Licensees”) have carried out a joint review of the application of the Transmission Interface Arrangements (“TIA”). NIE Networks will submit an amendment report in relation to changes proposed to provide clarity on the working arrangements particularly for pre-construction activities. This amendment report is submitted by SONI in relation to proposed changes in respect of the unlimited indemnity within paragraph 8.3 of Section B.

Part A provides the proposer’s (SONI) description of the issues the proposed amendments seek to address and a description of the proposed amendments. It also provides additional information required by Section P (Governance) of the TIA.

Part B provides the Other Party’s (NIE Networks) views and recommendations regarding the proposed amendments.

## Proposed Amendments

### Part A – To be Completed by the Proposer

#### 1 Proposer

The Proposer is SONI.

#### 2 Description of the Issues the Proposed Amendment seeks to Address

Paragraph 8.3 of Section B of the TIA currently provides that:

8.3 SONI shall, under the terms the Construction Agreement entered into between SONI and NIE Networks in relation to the relevant New Connection, indemnify and keep indemnified NIE Networks, its officers, employees and agents, from and against all loss or liability suffered by reason of a failure by any **User** that enters into a **Contestable Offer** to comply with any **Contestable Offer Specific Requirements** unless such losses or liabilities are recoverable by NIE Networks pursuant to the terms of a **Standard Adoption Agreement** entered into by NIE Networks with the relevant **User**.

The extent of the obligations created by this text would create a barrier to SONI issuing contestable offer, and would become a barrier to ICPs entering the market, if passed on to connecting parties by SONI.

#### 3 Description of the Proposed Amendments and Proposed Text Changes to the TIA

##### Proposed amendment to Section B Paragraph 8.3

Paragraph 8.3 of Section B should be updated as set out below.

Amended Section B Paragraph 8.3 with changes tracked:-

SONI shall, under the terms the Construction Agreement entered into between SONI and NIE Networks in relation to the relevant New Connection until such time as NIE Networks has **Adopted** the Contestable Works, indemnify and keep indemnified NIE Networks, ~~its officers, employees and agents,~~ from and against all direct loss or liability suffered by reason of a failure by any **User** that enters into a **Contestable Offer** to comply with any **Contestable Offer Specific Requirements** ~~unless such losses or liabilities are recoverable by NIE Networks pursuant to the terms of a **Standard Adoption Agreement** entered into by NIE Networks with the relevant **User**.~~ PROVIDED ALWAYS that SONI's liability under this paragraph 8.3 shall be subject to sub-paragraph 5.3 of Section O of this TIA and that SONI's liability under this paragraph 8.3 shall not exceed £10 million per incident or series of incidents.

NIE Networks agrees to provide any information reasonably requested by SONI or its insurers in connection with any claim under this paragraph 8.3, including evidencing any costs for which NIE Networks is seeking recovery.

Amended Section B Paragraph 8.3 with changes accepted:-

SONI shall, under the terms the Construction Agreement entered into between SONI and NIE Networks in relation to the relevant New Connection until such time as NIE Networks has **Adopted** the Contestable Works, indemnify and keep indemnified NIE Networks from and against all direct loss or liability suffered by reason of a failure by any **User** that enters into a **Contestable Offer** to comply with any **Contestable Offer Specific Requirements** PROVIDED ALWAYS that SONI's liability under this paragraph 8.3 shall be subject to sub-paragraph 5.3 of Section O of this **TIA** and that SONI's

liability under this paragraph 8.3 shall not exceed £10 million per incident or series of incidents.

NIE Networks agrees to provide any information reasonably requested by SONI or its insurers in connection with any claim under this paragraph 8.3, including evidencing any costs for which NIE Networks is seeking recovery.

#### **Proposed amendment to the definition of Adoption in Section U to include definition of Adopted**

It is proposed to update the definition of the term “Adoption” in Section U.

Adoption is currently defined as “the ownership transfer of the Contestable Works from the User, or the User’s ICP, as appropriate, to NIE Networks”;

Amended Definition of Adoption with changes tracked:-

**Adoption** “the ownership transfer of the Contestable Works from the User, or the User’s ICP, as appropriate, to NIE Networks, with full title guarantee in accordance with the Contestable Offer Specific Requirements and the terms of the Standard Adoption Agreement (and **Adopt**, **Adopted** and cognate expressions shall be construed accordingly)”

Amended Definition of Adoption with changes accepted:-

**Adoption** “the ownership transfer of the Contestable Works from the User, or the User’s ICP, as appropriate, to NIE Networks, with full title guarantee in accordance with the Contestable Offer Specific Requirements and the terms of the Standard Adoption Agreement (and **Adopt**, **Adopted** and cognate expressions shall be construed accordingly).”

#### **4 The Proposer's Justification of the Proposed Amendments**

The current unlimited indemnity presents a serious solvency challenge for SONI and its parent company should such a failure arise. An unlimited liability of this nature is not commercially tenable from a company and corporate governance perspective.

#### **5 Impact of the Proposed Amendments on the Proposer's Licensable Activities**

Although SONI has not yet been asked to provide any contestable offers, the Transmission Connection Charging Statement makes provision for this type of offer. SONI is keen to ensure that no inappropriate barriers to entry are imposed on connecting customers.

Whilst the SONI liability to NIE Networks is proposed to be capped at £10 million there is a remaining potential impact albeit unlikely, in so far as any loss which SONI incur and which cannot be recovered from the User will have to be paid to NIE Networks. SONI has raised these concerns with the UR and NIE Networks.

The UR has indicated that it is content to discuss further with parties what measures might be undertaken to mitigate the risk of a liability arising, while noting that it would however be important to ensure any such actions are reasonable, efficient and undertaken by the appropriate party concerned i.e. on-site construction inspections of assets in the field, would be more pertinent for the asset owner.

SONI will continue to engage with the UR and NIE Networks to ensure that these residual risks are mitigated appropriately.

#### **6 Impact of the Proposed Amendments on Other Industry Documents, TIA Subsidiary Documents and contents of any Construction Agreement or Transmission Project Agreement and any Changes Required**

SONI does not currently anticipate any impact on any other industry documents.

#### **7 Mechanism and Likely Timescales for making any Changes identified in Paragraph 6**

Not applicable.

#### **8 Changes or Developments Required to Computer Systems and Processes Used in Connection with the Operation of Arrangements Established Under any other Industry Documents**

None

#### **9 Mechanism and Likely Timescales for making any Changes identified in Paragraph 8**

Not applicable

#### **10 Estimate of any Costs Associated with Implementing the Proposed Amendments**

None

**11 Proposed Implementation Date**

Immediate

**12 The Proposer's Recommendation**

SONI recommends that these proposed amendments should be implemented for the reasons set out in paragraph 4 above.

**13 List of Attachments, if any**

None

## **Part B – To be Completed by the Other Party**

### **1 The Other Party**

The Other Party is NIE Networks.

### **2 Impact of the Proposed Amendment on the Other Party's Licensable Activities**

There is a potential impact in so far as any loss which NIE Networks incurs but which can not be recovered from SONI, due to the scope of the indemnity being limited (to direct loss incurred prior to adoption which is less than £10m) rather than unlimited (as is the current position), will have to be paid for by NIE Networks. The risk of such an event would be considered to be a very low. However, under such circumstances, NIE Networks would consider submitting a request to the UR to recover of any such loss through the price control, and therefore remuneration of such losses would be decided on a case-by-case basis by UR.

### **3 The Other Party's Recommendation**

NIE Networks recommends that the proposed amendment is implemented.

### **4 List of Attachments, if any**

None.