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No.	Electricity or Gas and NIC or NIA	Chapter Name	Page/Paragraph Ref	Comments	Suggested alternative drafting
1	Governance Document Chapter 9	Intellectual Property	9.12	<p>Paragraph 9.12 defines 'Relevant Foreground IPR' as Foreground IP that other Licenses will need to utilise in order to implement the Method(s) being trialled in the project. It limits the Relevant Foreground IP to the Foreground IPR that is not within 'Commercial Products' where those commercial products will be available for use after the project.</p> <p>We believe that it would be helpful to differentiate between:</p> <ul style="list-style-type: none"> • 'Application' IP: which is the Intellectual Property that describes the application of a Method to a network and the benefits that can accrue from that Method. If the Method utilises an artefact (e.g. a Product) then the Application IP would describe how to connect the artefact to the network, how to operate the artefact and the resulting outcomes for the network. In other words how to apply a "black box" with defined characteristics to achieve a required outcome, but without knowledge of how the "black box" achieves those defined characteristics; and • 'Product' IP: which is the Intellectual Property that describes how an artefact which is used to implement a Method achieves its required functionality. <p>Both 'Application' and 'Product' IP can be either informal (e.g. know-how) or formal (e.g. registered)</p> <p>In order for a Network Licensee to use a method it would need 'Application' IPR but would not need 'Product' IPR provided that the Network Licensee can purchase the 'Product' at a reasonable commercial rate.</p>	<p>Reword para 9.12 as follows (or split into 2 or more new paras):</p> <p>Foreground IPR that other Licensees will need to utilise in order to implement the Method(s) being trialled in the Project is classed as Relevant Foreground IPR. This will be identified in the Project Progress Information in sufficient detail to enable others to identify whether they wish to licence that IPR. For clarification it is not expected that the confidential details of IPR would be disclosed in the Project Progress Report, only sufficient information to enable others to identify whether the IPR is of use to them. Where Background IPR is required to use the Relevant Foreground IPR, this must also be clearly stated.</p> <p>For the avoidance of doubt, Foreground IPR which is produced by the project could comprise:</p> <ul style="list-style-type: none"> • 'Application' IP: which is the Intellectual Property that describes the application of a Method to a network and the benefits that can accrue from that Method. If the Method utilises an artefact (e.g. a Product) then the Application IP would describe how to connect the artefact to the network, how to operate the artefact and the resulting outcomes for the network. In other words how to apply a "black box" with defined characteristics to achieve a required outcome, but without knowledge of how the "black box" achieves those defined characteristics; and • 'Product' IP: which is the Intellectual Property that describes how an artefact which is used to implement a Method achieves its required functionality. <p>Both 'Application' IP and 'Product' IP can be either informal (e.g. know-how) or formal (e.g. registered)</p>

1	Continued			<p>If the 'Product' IPR was not made commercially available then it would become 'Relevant Foreground IPR'.</p>	<p>In order for a Network Licensee to implement a method it would need 'Application' IPR but would not need 'Product' IPR provided that the Network Licensee can purchase the 'Product' at a reasonable commercial rate. Foreground IPR Within Commercial Products where those products will be available for use by other licensees after the end of the Project is not deemed Relevant Foreground IPR.</p>
2	Governance Document Chapter 9	Intellectual Property	Footnote referenced in para 9.12	<p>The draft states "Foreground IPR within Commercial Products where those products will be available for use by other licensees after the end of the Project is not deemed Relevant Foreground IPR".</p> <p>Whilst this is sensible, the footnote states that "We are proposing to define Commercial Products as: Products which have registered Background IPR assigned to them prior to the commencement of the Project".</p> <p>We do not consider that this is a sensible definition, because many commercial products do not have registered IPR. If registered background IPR is restricted to patents then companies with technology innovations which cannot be (or have not been) patented are likely not to engage with NIC projects because of a fear of losing their background IPR. It is generally accepted that much of the value of Smart alternatives to network reinforcement will depend upon better communication, data analysis and control. Technology innovations delivering better communications, data analysis and control will have a substantial software component and in the UK it is notoriously difficult to patent innovations which have a substantial software component.</p> <p>An alternative means of registering IPR is to register a trademark or register a design. However, it is not necessary to have developed anything before registering a trademark or design and hence with the proposed definition it would be possible to create "commercial products" without any technical development prior to the NIC project.</p>	<p>Insert additional Paragraphs between existing 9.12 and 9.13</p> <p>A commercial product is defined as an article that within {years} of the end of an NIC project is transferred in an arms-length commercial transaction to another party, including a sale, lease, let on hire or sale on hire purchase, or incorporated in another article which is sold or otherwise supplied at a price which is included in the price of the other article.</p> <p>For avoidance of doubt the Foreground IPR in any article which is identified during a NIC project as a commercial product, but that within {years} of the end of an NIC project is not transferred in an arms-length commercial transaction to another party, will become Relevant Foreground IPR and the Foreground IP which is embodied in the article must be made publically available.</p>

2	Continued			<p>An alternative, workable solution is to define a commercial product as a product that is sold within a defined period after the end of a NIC project.</p> <p>There must be protection for customers against innovations, which are funded by customer's money, not becoming commercially available at a reasonable price. This can be achieved by requiring all Foreground IP which is created using funding from an NIC project to be published if a product is not sold within the defined period. It would be necessary for a project partner to price products, which are improved in a NIC project, at a reasonable commercial rate to attract sales or risk losing its IPR.</p> <p>This should be a relatively "light touch", straightforward and easy to administer mechanism.</p> <p>If it is feared that project partners will not publish Relevant Foreground IP then DNOs could be required, within the project direction, to place the relevant IP in ESCROW for {years}.</p>	
3	Governance Document Chapter 9	Intellectual Property	Para 9.22	<p>The first bullet of this paragraph states that Participants must seek and maintain registered protection. There would be a cost to the Participant, which could be incurred for many years, potentially without any concomitant income from its Relevant Foreground IPR (because this must be freely disseminated to License holders and could be published by academic Participants).</p> <p>It is better to allow Participants to make a reasoned commercial judgement on the relative benefits, costs and risks from seeking registered protection, or alternatively creating trade secrets and seeking to protect the IPR through confidentiality agreements.</p>	<p>Replace the first bullet point of Para 9.22 by the following two bullet points.</p> <ul style="list-style-type: none"> • A Participant will make a reasoned commercial judgement on the relative benefits from seeking registered protection against other means of protecting its IPR. • Where a Participant believes that registered protection should be filed, they must seek registered protection where that is available and maintain such registered protection for as long as the subject matter of that Relevant Foreground IPR is licensed and used by the other Participants,

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