

**To: Diamond Transmission Partners Hornsea One Limited**

**Electricity Act 1989  
Section 11A(2)**

**Notice of statutory consultation on a proposal to modify the offshore electricity transmission licence held by the licensee named above**

1. The Gas and Electricity Markets Authority (the **Authority**) proposes to modify the offshore electricity transmission licence (the **Licence**) held by the licensee named above, granted or treated as granted under section 6(1)(b) of the Electricity Act 1989 by modifying:

- a. ASC E12-A1: Definitions and Interpretation;
- b. ASC E12-J3: Restriction of Transmission Revenue: Allowed Pass-through Items; and
- c. ASC E12-J4: Restriction of Transmission Revenue: Annual Revenue Adjustments.

2. The proposed licence modifications are set out in the schedule attached to this Notice. Deletions are shown in strikethrough, and new text is double underlined.

**PROPOSED MODIFICATIONS TO THE ASC E12-A1: DEFINITIONS AND INTERPRETATION**

3. In January 2019, Ofgem gave notice of its intention to modify a number of licences to ensure that the licences reflected amendments to UK law at the end of the transition period following the UK's exit from the European Union. In February 2021, Ofgem made a decision to make those modifications.

4. Four OFTO licences, including the Licence, were granted in the period between Ofgem giving notice of its intent to modify the Licence and publishing its decision. As such the Authority is proposing to amend ASC E12-A1 in the Licence (as set out in part 1 of the schedule to this Notice) to ensure it also reflects those amendments to UK law.

**PROPOSED MODIFICATIONS TO ASC E12-J3: RESTRICTION OF TRANSMISSION REVENUE: ALLOWED PASS-THROUGH ITEMS**

Health Reviews and Investment Works

5. The Authority has decided that all offshore transmission owners (the **Licensees**) should be able to claim for costs which have been economically and efficiently incurred as a direct result of carrying out a review of the condition of their transmission assets (a **Health Review**) – the scope and timing of which must be approved by the Authority in writing in advance.

6. The Authority has also decided that all Licensees should be able to claim for costs which have been economically and efficiently incurred as a direct result of carrying out

the works identified during the Health Review that are needed to extend the lifetime of the transmission assets (the **Investment Works**) – which must be approved by the Authority in writing in advance.

7. The Authority is proposing therefore to amend ASC E12-J3: Restriction of transmission revenue: Allowed pass-through items in the Licence (as set out in part 2 of the schedule to this Notice) to allow the licensee to submit claims for the cost of the Health Review and thereafter, if applicable, Investment Works to the Authority for consideration. In each case, the licensee will be required to submit written evidence to the Authority of the costs incurred in carrying out either the Health Review or the Investment Works (as appropriate). The Authority may seek further information from the licensee in support of any claim, will consult with relevant parties and determine whether the Health Review or Investment Works (as applicable) were carried out in accordance with guidance and any directions issued by the Authority.

## **PROPOSED MODIFICATIONS TO ASC E12-J4: RESTRICTION OF TRANSMISSION REVENUE: ANNUAL REVENUE ADJUSTMENTS**

### Availability losses

8. The Authority has decided that all licensees should be able to claim for availability lost as a direct result of carrying out Health Reviews, and for availability lost as a direct result of undertaking the Investment Works, if applicable, identified during the Health Review.

9. The Authority is therefore proposing to modify ASC E12-J4: Restriction of Transmission Revenue: Annual Revenue Adjustments of the Licence (as set out in part 3 of the schedule to this Notice) to enable the licensee to reclaim lost availability for cumulative outages of up to 7 calendar days as a result of carrying out the Health Reviews and/or undertaking the Investment Works, without the need to obtain approval of the Authority.

10. The Authority is proposing that for both Health Reviews and Investment Works, where cumulative outages of more than 7 days have occurred, the licensee should be required to submit claims for lost availability to the Authority for consideration. These arrangements would allow the Authority to require the licensee to provide details of the reduction in availability, the duration of the outage, and the reasons why in each case (either in respect of the Health Review or the Investment Works) the outage has (or cumulative total of the outages have) exceeded 7 days. The licensee would also be required to provide the Authority with any additional information or analysis that we may require in order to assess the claim.

### Incremental Capacity Incentive Adjustment

11. ASC E12-J4 Part C provides a mechanism to compensate licensees for any additional costs incurred as a result of the licensee entering into an agreement under Standard Licence Condition E17: obligations in relation to connection.

12. The Authority is proposing to modify ASC E12-J4 Part C in the Licence (as set out in part 3 of the schedule to this Notice) to make it clear that the licensee can seek to recover costs where it has entered into an agreement with the system operator under SLC E17 and the licensee incurs costs as a result of that agreement.

## Next Steps

13. Further details on the reasons for, and effect of, each of these modifications can be found in the cover letter accompanying this Notice.

14. A copy of the proposed modifications and other documents referred to in this Notice has also been published on our website. Alternatively, they are available from [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk). Any representations with respect to the proposed licence modifications must be made by e-mail on or before 09 December 2022 to [offshorelicensing@ofgem.gov.uk](mailto:offshorelicensing@ofgem.gov.uk).

15. We are not issuing hard copies of the modification documents, nor do we expect consultation responses by post. If, however, you do wish to receive the documents and respond by post, we are able to organise this for you. Please contact us at the email address above, or on 020 7901 7295, to request hard copies of the relevant documents and postal address for responses.

16. We normally publish all responses on our website. However, if you do not wish your response to be made public, then please clearly mark it as not for publication. We prefer to receive responses in an electronic format so they can be placed easily on our website.

17. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.



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**Stuart Borland**  
**Deputy Director, Offshore Network Regulation**

**Duly authorised on behalf of the**  
**Gas and Electricity Markets Authority**

**11 November 2022**

**This is the schedule to the foregoing Notice addressed to Diamond Transmission Partners Hornsea One Limited**

**Schedule part 1**

**Proposed modifications to ASC E12-A1: Definitions and Interpretation**

**Definitions in alphabetical order**

6. In these amended standard conditions unless the context otherwise requires:

"Competent Authority"	means the Secretary of State, the Authority, the Compliance Officer, the Stock Exchange, the Panel on Takeovers and Mergers, or any local or national agency, regulatory body, authority, department, inspectorate, minister (including Scottish and Welsh Ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom, the United States of America or the European <u>Union</u> <del>Community</del> .
"Exceptional Event"	means an event or circumstance that is beyond the reasonable control of the licensee and which results in or causes a Transmission Service Reduction and includes (without limitation) an act of God, an act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, fire (not related to weather), governmental restraint, Act of Parliament, any other legislation, or bye law, or directive (not being any order, regulation or direction under section 32, 33, 34 and 35 of the Act) or decision of a Court of Competent Authority <del>or the European Commission</del> or any other body having jurisdiction over the activities of the licensee provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of the licensee. For the avoidance of doubt, weather conditions which are reasonably expected to occur at the location of the event or circumstance are not considered to be beyond the reasonable control of the licensee.

## **Schedule part 2**

### **Proposed modification to ASC E12-J3: Restriction of Transmission Revenue: Allowed Pass-through Items**

1. The purpose of this condition is to provide for revenue adjustments to reflect certain costs that can be passed through to consumers as part of Allowed Transmission Owner Revenue (OFTO<sub>t</sub>).
2. For the purposes of paragraph 4 of amended standard condition E12-J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) the pass-through revenue adjustment term (PT<sub>t</sub>) is derived from the following formula

$$PT_t = \frac{LF_t + RB_t + CEL_t + DC_t + IAT_t + TPD_t + TCA_t + MCA_t + CEA_t - RFG_t}{+ HR_t + IW_t} \quad (8)$$

where:

- LF<sub>t</sub> means the licence fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 3.
- RB<sub>t</sub> means the network rates cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 4 and 5.
- CEL<sub>t</sub> means the Crown Estate Lease cost adjustment term, whether of a positive or negative value, and shall be determined in accordance with paragraph 6.
- DC<sub>t</sub> means the decommissioning cost adjustment term and shall be determined in accordance with paragraphs 7 to 13.
- IAT<sub>t</sub> means the Income Adjusting Event revenue adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 14 to 24.
- TPD<sub>t</sub> means the temporary physical disconnection payment term and shall be determined in accordance with paragraph 25.
- TCA<sub>t</sub> means the tender fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 26.
- MCA<sub>t</sub> means the Marine and Coastal Access Act 2009 cost adjustment term and shall be determined in accordance with paragraphs 27 to 33.
- CEA<sub>t</sub> means the Contingent Event revenue adjustment term and shall be determined in accordance with paragraphs 34 to 45.
- RFG<sub>t</sub> means the Refinancing Gain Share determined in accordance with paragraphs 46 to 63.
- HR<sub>t</sub> means the Health Review revenue adjustment term which shall be determined in accordance with paragraphs 64 to 74A.
- IW<sub>t</sub> means the Investment Works revenue adjustment term which shall be determined in accordance with paragraphs 75 to 86.

**Formula for the Licence Fee Cost Adjustment ( $LF_t$ )**

3. For the purposes of paragraph 2,  $LF_t$  is an amount in respect of licence fee payments and means the amount equal to the payments made by the licensee, in the Relevant Year  $t$ , in accordance with its obligations set out in standard condition A4 (Payments by the Licensee to the Authority).

**Formula for the Network Rates Cost Adjustment ( $RB_t$ )**

4. For the purposes of paragraph 2,  $RB_t$  is an amount in respect of Networks Rates payments and means, subject to paragraph 5 of this condition, the amount equal to the rates payments made by the licensee in the Relevant Year  $t$ .
5. The licensee shall at the time of Network Rates Revaluation use reasonable endeavours to minimise the costs that it will incur in respect of Network Rates.

**Formula for the Crown Estate Lease Cost Adjustment ( $CEL_t$ )**

6. For the purposes of paragraph 2,  $CEL_t$  is an amount equal to the payments made by the licensee to the Crown Estate, in the Relevant Year  $t$ , in accordance with its obligations set out in its Crown Estate Lease in respect of the:
  - (a) annual rent of the seabed; and
  - (b) legal expenses of the Crown Estate for the preparation, negotiation and completion of the Crown Estate Lease.

**Formula for the Decommissioning Cost Adjustment ( $DC_t$ )**

7. Where the licensee considers, and can provide supporting evidence, that there will be additional costs and/or expenses in relation to the licensee's obligations with respect to decommissioning of the Licensee's Transmission System that have arisen due to a change in legislative requirements, then the licensee shall give written notice of this change to the Authority.
8. A notice received by the Authority under paragraph 7 shall give particulars of:
  - (a) the change in legislative requirements to which the notice relates and the reason(s) why the licensee considers that it will face additional costs and/or expenses in complying with those obligations, and demonstrate that such costs and/or expenses are not included within the Allowed Transmission Owner Revenue ( $OFTO_t$ );
  - (b) the expected amount of any change in costs and/or expenses that can be demonstrated by the licensee to be caused by the change in decommissioning requirements and how the amount of these costs and/or expenses has been calculated;
  - (c) the amount of any allowed revenue adjustment, proposed as a consequence of the change in decommissioning requirements and how this allowed revenue adjustment has been calculated; and
  - (d) any other analysis or information, which the licensee considers sufficient to enable the Authority to fully assess the change in legislative requirements to which the notice relates.
9. If the Authority considers that the analysis or information received under paragraph 8 is insufficient to enable the Authority to assess whether a change in decommissioning requirements has occurred and/or the amount of any revenue adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with

any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall give such information to the Authority within one month of the Authority requesting such information.

10. A notice referred to in paragraph 7 shall be given as soon as is reasonably practicable after the occurrence of the change in legislative requirements, and, in any case, not later than three months after the end of the Relevant Year in which the change in requirements occurs.
11. The Authority shall determine:
  - (a) whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 7 were caused by the change in legislative requirements;
  - (b) if so, whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that change in legislative decommissioning requirements had not taken place, and if not, the Authority shall determine what revenue adjustment would secure that effect; and
  - (c) the periods, if any, over which the revenue adjustment determined by the Authority should apply.
12. In relation to the Relevant Year  $t$ , the decommissioning cost adjustment term ( $DC_t$ ) shall be:
  - (a) the value determined by the Authority under paragraph 11 above; or
  - (b) if the Authority has not requested additional information under paragraph 9 and the Authority has not made a determination under paragraph 11 above within three months of the date on which the notice given by the licensee was received by the Authority, the amount of the allowed revenue adjustment proposed by the licensee in that notice given to the Authority; or
  - (c) if the Authority requests additional information under paragraph 9 and the Authority has not made a determination under paragraph 11 above within three months of receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority; or
  - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 11 above within three months of the date on which the notice given by the licensee was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 9, and the Authority has, before the end of the appropriate three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 8 and/or 9 is insufficient to enable the Authority to assess whether additional costs and/or expenses have occurred and/or the amount of any allowed revenue adjustment.
13. The Authority's decision in relation to any notice given under paragraph 7 shall be in writing, shall be copied to the licensee and shall be published.

**Formula for the Income Adjusting Event Revenue Adjustment ( $IAT_t$ )**

14. Where the licensee considers, and can provide supporting evidence that, in respect of



Relevant Year t, there have been costs and/or expenses that have been incurred or saved by an Income Adjusting Event, then the licensee shall give written notice of this Income Adjusting Event to the Authority.

15. An Income Adjusting Event in Relevant Year t may arise from any of the following:

- (a) an event or circumstance constituting Force Majeure;
- (b) an event or circumstance resulting from an amendment to the STC not allowed for when the Allowed Transmission Owner Revenue (OFTO<sub>t</sub>) of the licensee was determined for the Relevant Year t; and
- (c) an event or circumstance other than listed above which, in the opinion of the Authority, is an Income Adjusting Event and is approved by it as such in accordance with paragraph 21 of this licence condition,

where the event or circumstance has, for Relevant Year t, increased or decreased costs and/ or expenses by more than £4,000,000 (the "threshold amount").

16. A notice received by the Authority under paragraph 14 shall give particulars of:

- (a) the event or circumstance to which the notice relates and the reason(s) why the licensee considers this event or circumstance to be an Income Adjusting Event;
- (b) the amount of any change in costs and/or expenses that can be demonstrated by the licensee to have been caused or saved by the event or circumstance and how the amount of these costs and/or expenses has been calculated, including the extent to which the licensee has claimed or intends to claim under other routes of recourse for any costs and/or expenses arising out of or relating to the event or circumstance;
- (c) the amount of any allowed revenue adjustment proposed as a consequence of that event or circumstance and how this allowed revenue adjustment has been calculated; and
- (d) any other analysis or information, which the licensee considers sufficient to enable the Authority and the relevant parties to fully assess the event or circumstance to which the notice relates.

17. If the Authority considers that the analysis or information received under paragraph 16 is insufficient to enable both the Authority and the relevant parties to assess whether an Income Adjusting Event has occurred and/or the amount of any revenue adjustment that might be approved, the Authority can make a request or requests that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall give such information to the Authority within one (1) month of the Authority requesting such information or within such extended time as permitted by the Authority.

18. A notice of an Income Adjusting Event referred to in paragraph 14 shall be given as soon as is reasonably practicable after the occurrence of the Income Adjusting Event, and, in any case, not later than three months after the end of the Relevant Year in which it occurs.

19. The Authority will make public, excluding any confidential information, any notice of an Income Adjusting Event as soon as is reasonably practicable following its receipt.

20. Any notice received by the Authority under paragraph 14 above should clearly identify



whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:

- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
- (b) the extent to which the disclosure of the information mentioned in sub-paragraph 20(a) is necessary for the purposes of enabling the relevant parties to fully assess the event to which the notice relates.

21. The Authority shall determine (after consultation with the licensee and such other persons as it considers desirable):

- (a) whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 14 were caused or saved by an Income Adjusting Event;
- (b) whether the event or circumstance has increased or decreased the costs and/or expenses given in the notice pursuant to paragraph 14 by more than the threshold amount; and
- (c) if so:
  - i. subject to sub-paragraph (iii), whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that Income Adjusting Event had not taken place, and if not, the Authority shall determine what revenue adjustment would secure that effect. Such adjustment shall be:
    - a. where the Income Adjusting Event relates to an Uninsurable event or circumstance, reduced by:
      - i. if the licence was granted on or before 28 November 2018, the amount of the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the Tender Regulations; or
      - ii. if the licence was granted after 28 November 2018, either £5 million or the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the Tender Regulations, whichever is greater; and
    - b. for the avoidance of doubt, reduced by costs and/or expenses caused by the Income Adjusting Event that are recovered by other routes of recourse available to the licensee, including, but not limited to, commercial arrangements;unless, and to the extent that, the Authority has already applied such reductions to a previous revenue adjustment related to the same event or circumstance as that set out in the notice pursuant to paragraph 14;
  - ii. subject to sub-paragraph (iii), the periods, if any, over which the revenue adjustment determined by the Authority should apply; and
  - iii. where it is not yet possible to make a final determination under sub-

paragraphs (c)(i) and (c)(ii) above, the Authority may direct a partial amount of revenue adjustment, if any, pending the final determination of amount, such final determination to be made as soon as is reasonably practicable.

22. In relation to the Relevant Year  $t$ , the income adjusting event revenue adjustment ( $IAT_t$ ) shall be:
- (a) the value, or relevant proportion of the value, determined by the Authority under paragraph 21 above; or
  - (b) if the Authority has not requested additional information under paragraph 17 and the Authority has not made a determination under paragraph 21 above within three (3) months (excluding the duration of any consultation under paragraph 21) of the date on which notice of an Income Adjusting Event was received by the Authority, the amount of the allowed revenue adjustment proposed as a consequence of the event in the notice given to the Authority under paragraph 14; or
  - (c) if the Authority requests additional information under paragraph 17 and the Authority has not made a determination under paragraph 21 above within three (3) months (excluding the duration of any consultation under paragraph 21) of receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority under paragraph 14; or
  - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 21 above within three (3) months (excluding the duration of any consultation under paragraph 21) of the date on which the notice was received by the Authority, or within three months (excluding the duration of any consultation under paragraph 21) of the date on which the Authority received additional information if requested under paragraph 17, and the Authority has, before the end of that relevant period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 16 and/or 17 is insufficient to enable the Authority to assess whether an Income Adjusting Event has occurred and/or the amount of any allowed revenue adjustment.
23. The Authority's decision in relation to any notice given under paragraph 14 shall be in writing, shall be copied to the licensee and shall be published.
24. The Authority may amend or revoke an approval of an Income Adjusting Event and revenue adjustment with the consent of the licensee, following consultation with the licensee and relevant parties, and any such amendment or revocation of any Income Adjusting Event and revenue adjustment shall be in writing, shall be copied to the licensee and shall be published.

**Formula for the Temporary Physical Disconnection Payment (TPD<sub>t</sub>)**

25. For the purposes of paragraph 2,  $TPD_t$  shall be an amount equal to the interruption payments made by the System Operator in the licensee's Transmission System Area and charged by the System Operator to the Transmission Licensee in accordance with the STC within each respective Relevant Year. Such costs shall include any financing or other costs such as to ensure that the financial position and performance of the licensee is, insofar as is reasonably practicable, the same as if those costs had not been incurred.

**Formula for the Tender Fee Cost Adjustment ( $TCA_t$ )**

26. For the purposes of paragraph 2,  $TCA_t$  shall be an amount, whether of a positive or of a negative value, representing:
- (a) the payments made by the licensee to the Authority in accordance with the Tender Regulations with respect to the to the recovery of the Authority's tender costs. Where the payments have been made in relation to an application for the grant of more than one licence, the licensee shall attribute an appropriate proportion of the relevant payment made to the Authority; and
  - (b) any re-payments made by the Authority to the licensee in accordance with the Tender Regulations as a result of the payments collected by the Authority exceeding its tender costs. Where the re-payments have been made in relation to an application for the grant of more than one licence, the licensee shall be attributed an appropriate proportion of the relevant re-payment made by the Authority.

**Formula for the Marine and Coastal Act 2009 Cost Adjustment ( $MCA_t$ )**

27. Where the licensee considers, and can provide supporting evidence, that there will be additional costs and/or expenses in relation to additional obligations imposed on the licensee with respect to the introduction of the Marine and Coastal Access Act 2009, then the licensee may give written notice of these changes to the Authority.
28. A notice received by the Authority under paragraph 27 shall give particulars of:
- (a) the additional obligations to which the notice relates and the reason(s) why the licensee considers that it will face additional costs and/or expenses in complying with those additional obligations, and demonstrate that such costs and/or expenses are not included within the Allowed Transmission Owner Revenue ( $OFTO_t$ );
  - (b) the expected amount of any change in costs and/or expenses that can be demonstrated by the licensee to be caused by the introduction of those new obligations under the Marine and Coastal Access Act 2009 and how the amount of these costs and/or expenses has been calculated;
  - (c) the amount of any allowed revenue adjustment proposed as a consequence of the licensee incurring additional obligations in relation to the Marine and Coastal Access Act 2009 requirements and how this allowed revenue adjustment has been calculated; and
  - (d) any other analysis or information, which the licensee considers sufficient to enable the Authority to fully assess the additional obligations to which the notice relates.
29. If the Authority considers that the analysis or information received under paragraph 28 above is insufficient to enable the Authority to assess whether additional obligations have been imposed on the licensee and/or the amount of any revenue adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall give such information to the Authority within one month of the Authority requesting such information.
30. A notice referred to in paragraph 27 shall be given as soon as is reasonably practicable after the new obligations imposed by the Marine and Coastal Access Act 2009 take effect, and, in any event, not later than three months after the end of the Relevant Year in which they take effect.

31. The Authority shall determine:
- (a) whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 27 were caused by the introduction of new obligations as a consequence of the Marine and Coastal Access Act 2009 requirements and not already incorporated within Allowed Transmission Owner Revenue (OFTO<sub>t</sub>);
  - (b) if so, whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if the additional obligations had not been implemented, and if not, the Authority shall determine what revenue adjustment would secure that effect; and
  - (c) the periods, if any, over which the revenue adjustment determined by the Authority should apply.
32. In relation to the Relevant Year *t*, the Marine and Coastal Act 2009 cost adjustment term (MCA<sub>t</sub>) shall be:
- (a) the value determined by the Authority under paragraph 31 above; or
  - (b) if the Authority has not requested additional information under paragraph 29 and the Authority has not made a determination under paragraph 31 above within three months of the date on which the notice was received by the Authority under paragraph 27, the amount of the allowed revenue adjustment proposed by the licensee in that notice given to the Authority; or
  - (c) if the Authority requests additional information under paragraph 29 and the Authority has not made a determination under paragraph 31 above within three months after receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority under paragraph 27; or
  - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 31 above within three months of the date on which the notice given by the licensee was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 29, and the Authority has, before the end of the appropriate three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 28 and/or 29 is insufficient to enable the Authority to assess whether additional costs and/or expenses have occurred and/or the amount of any allowed revenue adjustment.
33. The Authority's decision in relation to any notice given under paragraph 27 shall be in writing, shall be copied to the licensee and shall be published.

**Formula for the Contingent Event Revenue Adjustment (CEAt)**

34. Where the licensee considers, and can provide supporting evidence that, in respect of Relevant Year *t*, there have been costs and/or expenses that have been incurred by the licensee in respect of a Contingent Event, then the licensee shall give written notice of this Contingent Event to the Authority (in respect of which, the licensee shall not also be entitled to serve a notice in respect of such costs and/or expenses under paragraph 14 of this amended standard condition).
35. A notice provided to the Authority under paragraph 34 shall give particulars of:

- (a) the Contingent Event to which the notice relates;
  - (b) the extent to which, if at all, the licensee has mitigated or can mitigate any losses arising out of or relating to the Contingent Event, including but not limited to commercial solutions available to it;
  - (c) the amount of any change in costs and/or expenses that can be demonstrated by the licensee to have been caused by the Contingent Event and how the amount of these costs and/or expenses has been calculated;
  - (d) the amount of any allowed revenue adjustment proposed as a consequence of the Contingent Event and how this allowed revenue adjustment has been calculated; and
  - (e) any other analysis or information, which the licensee considers sufficient to enable the Authority and the relevant parties to fully assess the Contingent Event to which the notice relates.
36. If the Authority considers that the analysis or information provided under paragraph 35 above is insufficient to enable both the Authority and the relevant parties to assess whether a Contingent Event has occurred and/or the amount of any allowed revenue adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall provide such information to the Authority within one (1) month of the Authority requesting the information, or within the period otherwise directed by the Authority.
37. A notice of a Contingent Event shall be provided as soon as is reasonably practicable after the occurrence of the Contingent Event, and, in any case, not later than three (3) months after the end of the Relevant Year in which it occurs.
38. The Authority will make public, excluding any confidential information, any notice of a Contingent Event as soon as is reasonably practicable following its receipt.
39. Any notice provided to the Authority under paragraph 34 should clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:
- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
  - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 39(a) is necessary for the purposes of enabling the relevant parties fully to assess the Contingent Event to which the notice relates.
40. The Authority shall determine (after consultation with the licensee and such other persons as it considers desirable) whether a Contingent Event has occurred and, if so, determine the following in order to calculate the value of the Contingent Event revenue adjustment:
- (a) whether any or all of the costs and/or expenses given in a notice under paragraph 34 were caused by the Contingent Event;
  - (b) whether the costs and/or expenses were incurred economically and efficiently;
  - (c) whether the costs and/or expenses are net of all reasonable mitigation of the costs

and/or expenses that the licensee has available to it, including but not limited to commercial recovery;

- (d) if so, whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if the Contingent Event had not taken place (save for any deductions under sub-paragraphs 40(b) and 40(c)), and if not, the Authority shall determine what revenue adjustment shall secure that effect; and
  - (e) the periods, if any, over which the revenue adjustment determined by the Authority shall apply.
41. The allowed revenue adjustment (CEA<sub>(t)</sub>) for Relevant Year t shall be:
- (a) the value determined by the Authority under paragraph 40; or
  - (b) the value zero where the Authority determines that a Contingent Event has not occurred; or
  - (c) the value proposed by the licensee in the notice provided to the Authority under paragraph 34 where the Authority has not requested additional information under paragraph 36 and the Authority has not made a determination under paragraph 40 within three (3) months, or such other period that the Authority notifies to the licensee, of the date on which notice of a Contingent Event was provided to the Authority; or
  - (d) the value proposed by the licensee in the notice provided to the Authority under paragraph 34 where the Authority requests additional information under paragraph 36 and the Authority has not made a determination under paragraph 40 within three (3) months, or such other period that the Authority notifies to the licensee, after receiving the additional information requested; or
  - (e) the value zero in situations where the licensee fails to provide, within the relevant time period, additional analysis or information requested by the Authority under paragraph 36; or
  - (f) the value zero in all other cases, including situations where the Authority has not made a determination under paragraph 40 within three (3) months of the date on which the notice under paragraph 34 was provided to the Authority or within three (3) months of the date on which the Authority received the additional information requested under paragraph 36 and the Authority has, before the end of the relevant three (3) month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 35 and/or 36 is insufficient to enable the Authority to assess whether the Contingent Event occurred and/or the amount of any allowed revenue adjustment.
42. The Authority's decision in relation to any notice provided under paragraph 34, shall be in writing, shall be copied to the licensee and shall be published (excluding any confidential information).
43. The Authority may revoke an approval of a Contingent Event and allowed revenue adjustment with the consent of the licensee, following consultation with the licensee and relevant parties, and any such revocation of any Contingent Event and allowed revenue adjustment shall be in writing, shall be copied to the licensee and shall be published.
44. Where the Authority directs a revenue adjustment under paragraph 41 and it



subsequently transpires that all costs and/or expenses allowed for under that revenue adjustment have not been incurred in full, the Authority may retrospectively vary the allowed revenue adjustment following a further assessment of the costs and/or expenses incurred, including an assessment of whether these were economically and efficiently incurred. Any such change to the allowed revenue adjustment shall be in writing and shall follow consultation with the licensee and such other persons as the Authority considers desirable.

45. In this condition:

“Contingent Event”

means circumstances under which the licensee has been required by the Secretary of State to increase the size of its security in respect of its decommissioning plan to account for the payment of VAT;

“Decommissioning Plan”

means the plan for the decommissioning of the transmission assets of the licensee as provided to Ofgem under Section 6 of the licensee’s ITT submission for the Hornsea One project and reflected in the ITT financial model submitted by the licensee for the Hornsea One project.

### **Formula for the Refinancing Gain Share (RFG<sub>i</sub>)**

#### **Part A: Introduction**

46. The refinancing of External Debt in each of the forms described below shall be a “Refinancing” for the purpose of determining a Refinancing Gain Share:
- (a) any amendment, variation, novation, supplement or replacement of any External Debt financing agreement;
  - (b) the exercise of any right, or the grant of any waiver or consent, under any External Debt financing agreement;
  - (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the External Debt financing agreements or the creation or granting of any other form of benefit or interest in either the External Debt financing agreements or the contracts, revenues or assets of the licensee whether by way of security or otherwise; and
  - (d) any other arrangement put in place by the licensee or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the licensee’s ability to carry out any of (a)–(c) above.

#### **Part B: Notification of a Qualifying Refinancing**

47. A Qualifying Refinancing is a Refinancing, other than an Exempt Refinancing, that will give rise to a Refinancing Gain greater than zero.
48. Where the licensee intends to undertake a Refinancing that may qualify as a Qualifying Refinancing it shall give written notification of such to the Authority including the terms of the Refinancing, no later than three months prior to when the Refinancing is expected to take place.
49. Following receipt of a notification under paragraph 48 the Authority may request



additional information including, but not limited to:

- (a) full details of the terms of the Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it;
- (b) the proposed value of any financial gain realised from the Refinancing as calculated in accordance with paragraphs 52 to 54 (inclusive) (“Proposed Refinancing Gain”) and evidence of how it was calculated;
- (c) the proposed value of the Refinancing Gain Share (RFG<sub>i</sub>) (“Proposed Refinancing Gain Share”) as calculated in accordance with paragraph 55 including the relevant year(s) in which it would apply and evidence of how it was calculated; and
- (d) any other analysis or information, that would assist the Authority to fully assess the Refinancing to which the notice relates;

and the licensee must provide such information within two weeks of the Authority’s request.

- 50. If the Authority considers that the analysis or information received under paragraph 48 is insufficient to enable the Authority to determine if the Refinancing will be a Qualifying Refinancing or to determine the value of the Refinancing Gain and the Refinancing Gain Share (RFG<sub>i</sub>) or the period(s), if any, over which the Refinancing Gain Share (RFG<sub>i</sub>) will apply, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority’s request.
- 51. For the avoidance of doubt, where a Refinancing will not give rise to a Refinancing Gain greater than zero, the licensee does not need to give written notification of the Refinancing to the Authority under paragraph 48.

**Part C: Calculation of the Refinancing Gain and the Refinancing Gain Share (RFG<sub>i</sub>)**

- 52. The licensee shall calculate the Proposed Refinancing Gain that it must give to the Authority under sub-paragraph 49(b) as an amount equal to the greater of zero and (A - B), where:  
  
A = the Net Present Value of the Distributions to be made to each Relevant Person (without double counting) following the Refinancing projected immediately after the Qualifying Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated so as to be current immediately prior to the Refinancing);  
  
B = the Net Present Value of the Distributions to be made to each Relevant Person (without double counting) following the Refinancing projected immediately prior to the Refinancing (without taking into account the effect of the Refinancing but using the Financial Model as updated so as to be current immediately prior to the Refinancing).
- 53. The discount rate used to calculate the Net Present Values A and B for the purposes of paragraph 52, shall be equal to the blended internal rate of return to the Relevant Persons over the expected lifetime of the licence as set out in the Financial Model (“Equity IRR”).
- 54. For the purposes of paragraph 52, the value of the Refinancing Gain is net of any reasonable and proper breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that the licensee will directly

incur in relation to the Qualifying Refinancing (without double counting).

55. The licensee shall calculate the Proposed Refinancing Gain Share (RFG<sub>t</sub>) as the amount, which, when summed over the Relevant Years to which it applies, shall represent 50 per cent of the Refinancing Gain realised by the licensee in a Qualifying Refinancing.

**Part D: Determination of the Refinancing Gain and the Refinancing Gain Share (RFG<sub>t</sub>)**

56. Where the Authority determines that the Refinancing is a Qualifying Refinancing, the Authority shall determine, subject to paragraph 57, the value of the Refinancing Gain and the Refinancing Gain Share (RFG<sub>t</sub>) and the period(s), if any, over which the Refinancing Gain Share (RFG<sub>t</sub>) will apply. The Refinancing Gain and the Refinancing Gain Share (RFG<sub>t</sub>) shall be determined in accordance with the principles set out in paragraphs 52 to 55 (inclusive). The Refinancing Gain Share (RFG<sub>t</sub>) may be:
- (a) a lump sum amount, applicable for one Relevant Year; or
  - (b) an ongoing amount applicable over more than one Relevant Year;
57. In relation to the Relevant Year *t*, the Refinancing Gain and the Refinancing Gain Share Mechanism (RFG<sub>t</sub>) shall be:
- (a) the values determined by the Authority under paragraph 56; or
  - (b) if the Authority has not requested additional information under paragraph 50 and the Authority has not made a determination under paragraph 56 within three months of the date on which the notice was received by the Authority under paragraph 48 and the Refinancing referred to in the notice has taken place, the Proposed Refinancing Gain and the Proposed Refinancing Gain Share given by the licensee to the Authority under paragraph 49; or
  - (c) if the Authority has requested additional information under paragraph 50 and the Authority has not made a determination under paragraph 56 within three months of receiving all additional information requested and the Refinancing referred to in the notice has taken place, the Proposed Refinancing Gain and the Proposed Refinancing Gain Share given by the licensee to the Authority under paragraph 49; or
  - (d) in all other cases, zero, including situations where the Authority receives a notice from the licensee under paragraph 48 but the Refinancing referred to in the notice does not subsequently take place.

**Part E: Exemptions to the Refinancing Gain Share (RFG<sub>t</sub>)**

58. A Refinancing will be exempt for the purposes of determining a Refinancing Gain Share where it is undertaken to remove a licensee from Financial Distress irrespective of whether it will give rise to a Refinancing Gain greater than zero (“Exempt Refinancing”).
59. Where the licensee intends to undertake a Refinancing that may qualify as an Exempt Refinancing it must give written notification to the Authority, and use best endeavours to provide this no later than three months prior to when the Refinancing is expected to take place, detailing:
- (a) full details of the terms of the Exempt Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it; and

- (b) any other analysis or information, that would assist the Authority to determine if the Refinancing is an Exempt Refinancing to which the notice relates.
60. If the Authority considers that the analysis or information provided under paragraph 59 is insufficient to enable it to determine whether the Refinancing is an Exempt Refinancing, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority's request.
  61. The Authority shall determine whether the Refinancing detailed in the notice received under paragraph 59 is an Exempt Refinancing, within three months of the later of:
    - (a) the date the notice was received by the Authority under paragraph 59; or
    - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 60.
  62. If the Authority has not made a determination under paragraph 61 within three months of the later of:
    - (a) the date the notice was provided to the Authority under paragraph 59; or
    - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 60.

the Refinancing detailed in the notice provided under paragraph 59 shall be deemed to be an Exempt Refinancing.
  63. The Authority's determinations in relation to any notices given under paragraphs 48 or 59 shall be in writing, shall be copied to the licensee and shall be published.

**Formula for a Health Review cost adjustment (HR<sub>t</sub>)**

64. Where the licensee considers that in respect of the Relevant Year t, there have been costs and/or expenses that have been directly incurred by the licensee in undertaking a Health Review, the licensee shall give written notice of this to the Authority (a "Health Review Notice").
65. A Health Review Notice provided under paragraph 64 shall give particulars (including supporting evidence) of:
  - (a) the amount of any costs and/or expenses that the licensee can demonstrate have been directly incurred as a result of undertaking the Health Review and how these costs and/or expenses have been calculated;
  - (b) the amount of any revenue adjustment proposed as a consequence of undertaking the Health Review and how this proposed revenue adjustment has been calculated; and
  - (c) any other analysis or information, which the licensee considers necessary to enable the Authority to fully assess the proposed revenue adjustment.
66. If the Authority considers that the analysis or information provided in sub-paragraphs 65(a) to 65(c) above is insufficient to enable it to assess the amount of any proposed revenue adjustment, the Authority may request that the supporting evidence be supplemented with additional information that it considers appropriate. If the Authority requests additional information, the licensee shall provide such information to the Authority within one (1) month of the Authority's request, or within such other period

as directed by the Authority.

67. Unless otherwise agreed in writing with the Authority, a Health Review Notice shall be given as soon as is reasonably practicable after completion of the Health Review and, in any case, not later than three (3) months after the end of the Relevant Year in which the Health Review is completed.
68. The Authority shall make public, excluding any confidential information, the Health Review Notice as soon as reasonably practicable following its receipt.
69. Any Health Review Notice should clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:
- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
  - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 69(a) is necessary for the purposes of enabling the relevant parties to fully assess the Health Review to which the notice relates.
70. The Authority shall determine (after consultation with the licensee and relevant parties) whether:
- (a) any or all of the costs and/or expenses set out in the Health Review Notice can be directly attributed to undertaking the Health Review;
  - (b) such costs and/or expenses were incurred economically and efficiently; and
  - (c) the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if the Health Review had not been undertaken and if not, the Authority shall determine what revenue adjustment shall secure that effect (subject always to any deductions made under sub-paragraphs 70(a) and 70(b)).
71. In relation to any Relevant Year  $t$ , the allowed revenue adjustment ( $HR_t$ ) shall be:
- (a) the value determined by the Authority under paragraph 70 above or as modified under paragraph 74; or
  - (b) the amount of the proposed revenue adjustment as set out in the Health Review Notice where:
    - (i) the Authority has not requested additional information under paragraph 66 and the Authority has not made a determination under paragraph 70 above within three (3) months of the date of receipt of the Health Review Notice by the Authority; or
    - (ii) the Authority has requested additional information pursuant to paragraph 66 and has not made a determination within three (3) months, or such other period that the Authority notifies the licensee, of the date on which the additional information requested was received by the Authority; or
  - (c) in all other cases zero, including where:
    - (i) the licensee has failed to provide additional information requested by

the Authority in accordance with paragraph 66; or

(ii) the Authority has not made a determination under paragraph 70 above within three (3) months of the date on which the Health Review Notice was provided to the Authority, or if additional information has been requested by the Authority under paragraph 66, within (3) months from the date of receipt by the Authority of the additional information, and where in either case, the Authority has, before the end of the relevant three (3) month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraph 65 or the additional information provided in response to a request by the Authority under paragraph 66 is insufficient to enable the Authority to assess the amount of any allowed revenue adjustment.

72. The allowed revenue adjustment in relation to a Health Review Notice, as determined by the Authority under paragraph 70 shall be set out in writing, shall be copied to the licensee and shall be in the public domain.

73. The licensee shall inform the Authority in writing of any change in circumstance which has a material impact on the determination under paragraph 70.

74. The Authority may modify or revoke a determination made under paragraph 70, following consultation with the licensee and relevant parties, and any such modification or revocation shall be in writing, shall be copied to the licensee and shall be in the public domain.

74A In this condition:

“Health Review” means a review of the condition of the Offshore Transmission Assets to be carried out by the licensee, the scope and timing of which shall be approved in writing in advance with the Authority in accordance with guidance issued by the Authority (as amended from time to time).

**Formula for an Investment Works cost adjustment ( $IW_t$ )**

75. Where the licensee considers that in respect of the Relevant Year  $t$ , there have been costs and/or expenses that have been directly incurred by the licensee as a result of carrying out Investment Works, the licensee shall give written notice of this to the Authority (an “Investment Works Notice”).

76. An Investment Works Notice provided under paragraph 75 shall give particulars (including supporting evidence) of:

- (a) the amount of any costs and/or expenses that the licensee can demonstrate have been directly incurred as a result of carrying out the Investment Works and how these costs and/or expenses have been calculated;
- (b) the amount of any revenue adjustment proposed as a consequence of the Investment Works and how this proposed revenue adjustment has been calculated; and
- (c) any other analysis or information, which the licensee considers necessary to enable the Authority to fully assess the proposed revenue adjustment.

77. If the Authority considers that the analysis or information provided in sub-paragraphs 76(a) to 76(c) above is insufficient to enable it to assess the amount of any proposed

- revenue adjustment, the Authority may request that the supporting evidence be supplemented with additional information that it considers appropriate. If the Authority requests additional information, the licensee shall provide such information to the Authority within one (1) month of the Authority's request, or within such other period as directed by the Authority.
78. Unless otherwise agreed in writing with the Authority, an Investment Works Notice shall be given as soon as is reasonably practicable after practical completion of the Investment Works and, in any case, not later than three (3) months after the end of the Relevant Year in which practical completion of the Investment Works is achieved.
79. The Authority shall make public, excluding any confidential information, the Investment Works Notice as soon as reasonably practicable following its receipt.
80. Any Investment Works Notice should clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:
- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
  - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 80(a) is necessary for the purposes of enabling the relevant parties to fully assess the Investment Works to which the notice relates.
81. The Authority shall determine (after consultation with the licensee and relevant parties) whether:
- (a) any or all of the costs and/or expenses set out in the Investment Works Notice can be directly attributed to the Investment Works;
  - (b) such costs and/or expenses were incurred economically and efficiently; and
  - (c) the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if the Investment Works had not been carried out and if not, the Authority shall determine what revenue adjustment shall secure that effect (subject always to any deductions made under sub-paragraphs 81(a) and 81(b)).
82. In relation to any Relevant Year  $t$ , the allowed revenue adjustment ( $IW_t$ ) shall be:
- (a) the value determined by the Authority under paragraph 81 above or as modified under paragraph 85; or
  - (b) the amount of the proposed revenue adjustment as set out in the Investment Works Notice where:
    - (i) the Authority has not requested additional information under paragraph 77 and the Authority has not made a determination under paragraph 81 above within three (3) months of the date of receipt of the Investment Works Notice by the Authority; or
    - (ii) the Authority has requested additional information pursuant to paragraph 77 and has not made a determination within three (3) months, or such other period that the Authority notifies the licensee, of the date on which the additional information requested was received by



the Authority; or

(c) in all other cases zero, including where:

(i) the licensee has failed to provide additional information requested by the Authority in accordance with paragraph 77 above; or

(ii) the Authority has not made a determination under paragraph 81 above within three (3) months of the date on which the Investment Works Notice was provided to the Authority, or if additional information has been requested by the Authority under paragraph 77, within (3) months from the date of receipt by the Authority of the additional information, and where in either case, the Authority has, before the end of the relevant three (3) month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraph 76 or the additional information provided in response to a request by the Authority under paragraph 77 is insufficient to enable the Authority to assess the amount of any allowed revenue adjustment.

83. The allowed revenue adjustment in relation to an Investment Works Notice, as determined by the Authority under paragraph 81 shall be set out in writing, shall be copied to the licensee and shall be in the public domain.

84. The licensee shall inform the Authority in writing of any change in circumstance which has a material impact on the determination under paragraph 81.

85. The Authority may modify or revoke a determination made under paragraph 81, following consultation with the licensee and relevant parties, and any such modification or revocation shall be in writing, shall be copied to the licensee and shall be in the public domain.

86. In this condition:

“Investment Works” means the works required to be undertaken by the licensee on the Offshore Transmission Assets as identified by the Health Review, and approved by the Authority in writing in advance, in accordance with the guidance issued by the Authority (as amended from time to time) to ensure that the Offshore Transmission Assets can continue to operate for such additional period as determined by the Authority.



### **Schedule part 3**

#### **Amended Standard Condition E12–J4: Restriction of Transmission Revenue: Annual Revenue Adjustments**

1. The purpose of this condition is to provide for adjustments to Allowed Transmission Owner Revenue (OFTO<sub>t</sub>) in relation to the Licensee's Transmission System performance and this condition shall not take effect until the transmission system to which this licence relates has been transferred to the licensee.
2. For the purposes of paragraph 4 of amended standard condition E12– J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services), the performance availability revenue adjustment term (PA<sub>t</sub>) is derived from the following formula:

$$PA_t = AI_t + ICA_t \quad (9)$$

where:

AI<sub>t</sub> means the Transmission System Availability Incentive, whether of a positive or of a negative value, as derived from the formula set out in paragraph 6;

ICA<sub>t</sub> means the Incremental Capacity Incentive Adjustment term as derived from the formula set out in paragraph 18.

#### **Part A: Transmission System Availability Incentive**

3. The licensee shall, in providing Transmission Owner Services, use reasonable endeavours to make its transmission system available to the System Operator in accordance with standard condition E15 (Obligation to provide transmission services) and Good Industry Practice to minimise the effect and duration of any Transmission Service Reduction.
4. Where a Transmission Service Reduction applies to a part of the Licensee's Transmission System and the licensee reasonably expects that the duration of such a Transmission Service Reduction will apply for a period of more than 21 days then the licensee shall within 7 days of the Transmission Service Reduction occurring notify the Authority in writing of the Transmission Service Reduction including:
  - (a) details of the Transmission Service Reduction on the Transmission Services the licensee provides to the System Operator;
  - (b) the cause of the Transmission Service Reduction and whether, in the licensee's opinion, the Transmission Service Reduction has been caused (in whole or in part) by an Exceptional Event;
  - (c) any interim work or other actions which are being undertaken to minimise the effect of the Transmission Service Reduction; and
  - (d) indicate the timescale in which the licensee reasonably considers that the Transmission Service Reduction will be resolved together with supporting information that shall include (without limitation) any Service Restoration Proposal agreed with the System Operator in accordance with the STC.
5. Where, in the Incentive Period y, the total effect and duration of all Transmission Service Reductions, excluding those caused (in whole or in part) by an Exceptional Event:
  - (a) results in transmission system availability being, on average, below 80 per cent in that incentive period; or
  - (b) results in transmission system availability being, on average, below 85 per cent when considering the 24 month period of the Incentive Period y and the Incentive Period y-

1;

then the licensee shall provide a written statement to the Authority, from an authorised director of the licensee, within three months of the end of Incentive Period y, explaining how the steps the licensee has taken have discharged the obligations in paragraph 3.

6. For the purposes of paragraph 2, the term  $AI_t$  is derived from the following formula for all Relevant Years:

$$AI_t = (BR_{t-1} + ICA_{t-1}) \times AF_y \quad (10)$$

where  $y = t$

except in cases where Asset Transfer occurs between 1<sup>st</sup> January and 31<sup>st</sup> March (inclusive), where:

in Relevant Year  $t = 2$ ,  $AI_2 = 0$ ; and (11)

in Relevant Year  $t = 28$  it is derived from the following formula:

$$AI_{28} = \left( \frac{BR_{26}}{PR_{26}} \times PR_1 \right) \times AF_{28} \quad (12)$$

where:

- $BR_t$  means the Base Transmission Revenue calculated in accordance with the formula specified in paragraph 4 of amended standard condition E12-J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services); and
- $PR_t$  means the proportion of revenue calculated in accordance with the formula specified in paragraph 4 of amended standard condition E12-J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services); and
- $ICA_t$  means the Incremental Capacity Incentive Adjustment term calculated in accordance with the formula specified in paragraph 18 of amended standard condition E12-J4 (Restriction of Transmission Revenue: Annual Revenue Adjustments); and
- $AF_y$  means the transmission system availability factor, which in any Relevant Year before the Commencement Relevant Year shall take the value zero and in each subsequent Relevant Year is the revenue adjustment factor based on the licensee's performance against the transmission system availability incentive during Incentive Period y. This converts percentage unavailability to percentage revenue impact, and is derived from the following formula:

$$AF_y = (CCAP_y - PO_y) \times \frac{RCAP}{PCAP_y} \quad (13)$$

where:

- $CCAP_y$  means the annual credit availability cap. This is the maximum unavailability of the system in percentage terms that can cause a positive impact on Base Transmission Revenue ( $BR_t$ ) in any given year. This is calculated for all incentive periods as:

$$CCAP_y = 2\% \times PR_{t-1} \quad (14)$$

where  $t = y$

except in cases where Asset Transfer occurs between 1<sup>st</sup> January and 31<sup>st</sup> March (inclusive), where in Incentive Period  $y=28$  it is derived from the following formula:

$$CCAP_y = 2\% \times PR_1 \quad (15)$$

$PO_y$  means the paid out unavailability. This is the total unavailability in Incentive Period  $y$  that affects the Allowed Transmission Owner Revenue in Relevant Year  $t$  and is calculated as:

$$PO_y = \text{minimum} \begin{cases} CCAP_y + PCAP_y \\ BF_y + AU_y \end{cases} \quad (16)$$

where:

$BF_y$  means the brought forward unavailability which takes the value of zero in the first year. In subsequent years, it is calculated in accordance with the formula below

$$BF_y = CF_{y-1} \quad (17)$$

where:

$CF_y$  means the carried forward unavailability. This is the total unavailability earned in previous years but not yet paid out and is calculated as:

$$CF_y = AU_y + BF_y - PO_y \quad (18)$$

$RCAP$  means the annual revenue impact cap. This is set at 10 per cent.

$PCAP_y$  means the annual penalty availability cap. This is the maximum unavailability of the system below the Target Availability in percentage point terms that can cause a negative impact on Allowed Transmission Owner Revenue in any given year. This is calculated for all incentive periods as

$$PCAP_y = 4\% \times PR_{t-1} \quad (19)$$

where  $t = y$

except in cases where Asset Transfer occurs between 1<sup>st</sup> January and 31<sup>st</sup> March (inclusive), where in Incentive Period  $y = 28$  it is derived from the following formula:

$$PCAP_{28} = 4\% \times PR_1 \quad (20)$$

7. For the purposes of paragraph 6, the accrued unavailability ( $AU_y$ ) shall be calculated in accordance with the following formula:

$$AU_y = \text{minimum} \begin{cases} \text{TCAP}_y - \text{BF}_y \\ \text{TU}_y \end{cases} \quad (21)$$

where:

**TCAP<sub>y</sub>** means the total unavailability cap in percentage terms. This is the total annual unavailability that can affect Allowed Transmission Owner Revenue over five years. This is calculated as:

$$\text{TCAP}_y = \text{CCAP}_y + \sum_y^{y+4} \text{PCAP}_y \quad (22)$$

**TU<sub>y</sub>** means the total unavailability of the Licensee's Transmission System in Incentive Period y in percentage terms and is calculated as:

$$\text{TU}_y = \frac{\text{WU}_y}{\text{MA}_y} \quad (23)$$

where:

**MA<sub>y</sub>** is the maximum seasonally weighted annual availability in megawatt hours (MWh) and is calculated as:

$$\text{MA}_y = \sum_{i=1}^{12} (\text{TC}_{i,y} \times \text{W}_{i,y}) \quad (24)$$

where:

**TC<sub>i,y</sub>** means the maximum transmission system availability in month i of Incentive Period y that is required to be delivered being the minimum of:

- (i) the aggregate Transmission Entry Capacity; and
- (ii) the maximum system availability in month i of Incentive Period y that is capable of being delivered by the licensee by providing Transmission Services to the Normal Capability Limits;

both expressed as number of MWh that could be achieved if the available capacity were fully utilised.

**W<sub>i,y</sub>** is the monthly seasonal weighting term, expressed in percentage terms, the monthly values of which are given as performance incentive parameters in Annex A of Amended Standard Condition E12–J4 (Restriction of Transmission Revenue: Annual Revenue Adjustments)

**WU<sub>y</sub>** means the weighted annual unavailability expressed in MWh and is calculated as:

$$\text{WU}_y = \sum_{i=1}^{12} \text{MWU}_{i,y} \quad (25)$$

where:

**MWU<sub>i,y</sub>** means the monthly weighted unavailability and is calculated as:

$$\text{MWU}_{i,y} = \text{RWU}_{i,y} \times \text{W}_{i,y} \quad (26)$$

where:

$RWU_{i,y}$  is the monthly capacity weighted unavailability in MWh and is calculated as:

$$RWU_{i,y} = \sum_x WEO_{x,i} \quad (27)$$

where:

$WEO_{x,i}$  means the weighted energy outage in MWh of a specific Transmission Service Reduction, x, in month i of Incentive Period y and is calculated as:

$$WEO_{x,i} = WCR_{x,i} \times D_{x,i} \times \text{minimum} \begin{cases} TEC \\ NCL \end{cases} \quad (28)$$

where:

$WCR_{x,i}$  means the weighted capacity reduction in MWh of a specific Transmission Service Reduction, x, in month i of Incentive Period y and is calculated as:

$$WCR_{x,i} = a(C_{x,i})^b \quad (29)$$

where:

a shall be 1 in this licence

$C_{x,i}$  is the capacity of the outage measured as a percentage of the capacity that could not be delivered relative to the minimum of:

- (i) the aggregate Transmission Entry Capacity; and
- (ii) the Normal Capability Limits;

both expressed as number of MW that could be achieved if the available capacity were fully utilised.

b shall be 1.3 in this licence

$D_{x,i}$  means the duration in hours of a specific Transmission Service Reduction, x, in month i of Incentive Period y

TEC means the Transmission Entry Capacity

NCL means the Normal Capability Limits

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8. For the purposes of this amended standard condition, any Transmission Service Reduction (calculated as  $C_{x,i} \times D_{x,i} \times \text{minimum}(TEC, NCL)$ ) shall be excluded from the calculation of

the Transmission System Availability Incentive (AI<sub>t</sub>) in the following circumstances:

- (a) any reduction in transmission system availability resulting from a de-energisation or disconnection of a user's equipment under an event of default as defined in the CUSC;
- (b) any reduction in transmission system availability resulting from a user's request for disconnection in accordance with the Grid Code;
- (c) any reduction in transmission system availability resulting from emergency de-energisation by a user as defined in the CUSC;
- (d) any reduction in transmission system availability resulting from an emergency de-energisation or disconnection of a user's equipment necessary to ensure compliance with the Electricity Safety, Quality and Continuity Regulations 2002, as amended from time to time, or to otherwise ensure public safety;
- (e) any reduction in transmission system availability directly resulting from undertaking the Health Review (as defined in paragraph 74A of amended standard condition E12-J3 (Restriction of transmission revenue: Allowed pass-through items)), provided that the cumulative total of such period or periods of reduction does not exceed 7 calendar days and subject to the licensee acting in compliance with any directions given by the Authority and guidance issued in relation to the Health Review to manage the impact of the Health Review on the availability of services provided to the System Operator, including using its best endeavours to co-ordinate any reduction in transmission system availability as a result of undertaking the Health Review with any planned outages;
- (f) any reduction in transmission system availability required as a result of Investment Works (as defined in paragraph 86 of amended standard condition E12-J3 (Restriction of transmission revenue: Allowed pass-through items)), provided that the cumulative total of such period or periods of reduction does not exceed 7 calendar days and subject to the licensee acting in compliance with any directions given by the Authority and guidance issued in relation to the Investment Works to manage the impact of the Investment Works on the availability of services provided to the System Operator, including using its best endeavours to co-ordinate any reduction in transmission system availability as a result of undertaking the Investment Works with any planned outages; and
- (g) any reduction in transmission system availability directly resulting from undertaking a Health Review or Investment Works which exceeds a cumulative total of 7 calendar days in either case, provided that:
  - (i) the licensee provides details to the Authority of the reduction in transmission system availability, the reasons why the reduction has exceeded a total of 7 calendar days and the duration of the reduction in transmission system availability;
  - (ii) the licensee provides to the Authority any additional information or analysis the Authority requests; and
  - (iii) the extent of the exclusion shall be directed by the Authority and shall be based on the extent to which the Authority is satisfied that the licensee has acted in accordance with Good Industry Practice, any directions given by the Authority and guidance issued in relation to the Health Review and/or Investment Works, to manage the impact of the Health Review and/or Investment Works on the availability of services provided to the System Operator, including using its best endeavours to co-ordinate any reduction in transmission system availability as a

result of undertaking the Health Review and/or Investment Works with any planned outages.

9. The Authority shall, by written notice to the licensee, direct that, for the purpose of calculating the monthly capacity weighted unavailability ( $RWU_{i,y}$ ) the value of the monthly capacity weighted unavailability ( $RWU_{i,y}$ ) shall be adjusted to the extent specified in that direction to offset the impact of an Exceptional Event, where:
  - (a) the licensee considers that any event on the Licensee's Transmission System that causes a Transmission Service Reduction has been wholly or partially caused by an Exceptional Event;
  - (b) the licensee has notified the Authority of such an event within 14 days of its occurrence;
  - (c) the licensee has provided details of the reduction in system availability that the licensee considers resulted from the Exceptional Event (including the anticipated duration of any reduction in availability) and such further information, if any, as the Authority may require in relation to such an Exceptional Event; and
  - (d) the Authority is satisfied that the event notified to it under sub-paragraph (b) is an Exceptional Event
10. For the purpose of paragraph 9, the adjustment directed by the Authority shall be based on the extent to which the Authority is satisfied that the licensee had taken reasonable steps, consistent with Good Industry Practice, to manage the impact of the event on the availability of services provided to the System Operator in accordance with standard condition E15 (Obligation to provide transmission services) (both in anticipation of the event and after the event has occurred).
11. A direction under paragraph 9 shall not have effect unless, before it is made, the Authority has given notice to the licensee:
  - (a) setting out the terms of the proposed direction, including the extent to which the value of the monthly capacity weighted unavailability ( $RWU_{i,y}$ ) for month  $i$ , and each subsequent month, should be decreased to offset the impact of the Exceptional Event;
  - (b) stating the reasons, having regard to the information provided by the licensee and Good Industry Practice, why it proposes to issue the direction; and
  - (c) specifying the period (not being less than 14 days from the date of the notice) within which the licensee may make representations or objectionsand the Authority has considered such representations or objections and given reasons for its decision.
12. The licensee may request that a direction issued by the Authority pursuant to paragraph 9 be modified, where the licensee considers that:
  - (a) there has been a material change to the information previously provided by the licensee in relation to the Exceptional Event specified in the previous direction; and
  - (b) it has notified the Authority of the material change, no later than 3 months after the end of the incentive period to which it relates.

**Part B: Transmission System Availability Incentive: Supplementary Provisions**

13. The licensee shall, by no later than 14 days after the end of each three month period (being the three months ending either 31 March, 30 June, 30 September and 31 December),



submit to the Authority a report setting out the monthly capacity weighted unavailability ( $RWU_{i,y}$ ) for each of the months within the three month period and the report should include the calculation of  $RWU_{i,y}$  and provide a commentary in relation to those months where monthly availability ( $TC_{i,y} - \sum_x (C_{x,i} \times D_{x,i} \times \text{minimum}(TEC, NCL))$ ) has fallen below the monthly incentive target (Target Availability  $\times TC_{i,y}$ ).

14. The licensee shall, by no later than twenty-one (21) years after this condition comes into force, procure, to the satisfaction of the Authority, Financial Security for the purposes of covering future financial liabilities up to and including the Closing Relevant Year.
15. For the purposes of paragraph 14, the licensee shall, by no later than three (3) months before the date that is twenty-one (21) years after this condition comes into force, provide to the Authority a notice specifying:
  - (a) the amount of Financial Security that the licensee intends to procure, being no less than 50 per cent of Base Transmission Revenue ( $BR_t$ );
  - (b) the form of the Financial Security that the licensee intends to procure;
  - (c) the independent financial institution with which the Financial Security is to be lodged which must, unless the Authority consents otherwise, hold a credit rating equivalent to at least an “A-” with a credit rating agency recognised by Ofgem and reside in a country with a credit rating of at least “A”; and
  - (d) the detailed terms on which the security can be called upon to meet the financial liabilities in respect of the Transmission System Availability Incentive ( $AI_t$ ).
16. For the avoidance of doubt, the amount of Financial Security procured under paragraph 15(a) shall be:
  - (a) for Relevant Year  $t=22$  (by no later than twenty-one (21) years after this condition comes into force), no less than  $0.5 \times BR_{22}$
  - (b) for Relevant Year  $t=23$ , no less than  $0.5 \times BR_{23}$
  - (c) for Relevant Year  $t=24$ , no less than  $0.5 \times BR_{24}$
  - (d) for Relevant Year  $t=25$ , no less than  $0.5 \times BR_{25}$
  - (e) for Relevant Year  $t=26$ , no less than  $0.5 \times BR_{26} / PR_{26}$
17. The Authority shall, within two (2) months of receiving the notice specified in paragraph 15, indicate to the licensee whether the proposed arrangements for Financial Security (as specified in the notice) would be satisfactory. Where the Authority considers that the Financial Security arrangements proposed by the licensee are not satisfactory, the Authority shall set out in writing to the licensee the reasons why the proposed Financial Security arrangements are not satisfactory and those areas where modifications would be required. The Authority shall also set out the timescales within which the licensee is required to provide its amended proposal.

### **Part C: Incremental Capacity Incentive Adjustment**

18. For the purposes of paragraph 2, the Incremental Capacity Incentive Adjustment term ( $ICA_t$ ) is derived from the following formula:

$$ICA_t = ACA_t \times RIT_t \quad (30)$$

where:

$ACA_t$  means the ~~additional capacity~~ incremental investment adjustment, which for the purposes of this licence shall take the value zero, but may be changed in accordance with paragraph 19.

- RIT<sub>t</sub> means the revenue indexation adjustment term calculated in accordance with the formula specified in paragraph 4 of amended standard condition E12–J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services).
19. For the purposes of paragraph 18, the ~~additional capacity~~ incremental investment adjustment term (ACA<sub>t</sub>) shall be determined by the Authority in accordance with paragraphs 20 to 22 and shall otherwise take the value zero.
  20. Where the licensee has entered into an agreement with the System Operator in accordance with standard condition E17 (Obligations in relation to offers for connection etc) ~~to provide additional capacity~~ it shall:
    - (a) submit a notice in writing to the Authority, together with supporting evidence, setting out the revenue adjustment that it considers is required to remunerate the costs that it will incur in ~~providing that additional capacity~~ complying with that agreement which shall include (without limitation):
      - (i) the amount of additional capacity (if any) that the licensee is contractually required to make available to the System Operator;
      - (ii) the capital costs that it expects to incur in ~~providing the additional capacity~~ complying with that agreement, demonstrating that such costs are not more than 20 per cent of the original investment cost incurred by the licensee in respect of the Licensee's Transmission System in the Commencement-Relevant Year;
      - (iii) the anticipated additional costs of operation and maintenance- that are expected to be incurred as a consequence of ~~providing the additional capacity~~ entering into that agreement; and
      - (iv) the costs of financing the additional investment in the Licensee's Transmission System.
    - (b) provide such additional information as the Authority may require to make a determination of the appropriate revenue adjustment in accordance with paragraph 22.
  21. A notice referred to in paragraph 20 shall be given as soon as is reasonably practicable after the licensee has entered an agreement with the System Operator in accordance with standard condition E17 (Obligations in relation to offers for connection etc), and, in any case, not later than three months after the end of the Relevant Year in which it occurs.
  22. The Authority shall determine :
    - (a) the revenue adjustment (ACA<sub>t</sub>) that would be required to remunerate the efficient costs that the Authority considers to have been reasonably incurred by the licensee;
    - (b) the Relevant Year from which the revenue adjustment shall apply.
  23. For the purposes of paragraph 22, in determining an appropriate adjustment:
    - (a) the Authority may request that the licensee provide such information that it reasonably requires for the purposes of making its determination. The licensee is required to provide such information within the timescales set out by the Authority;
    - (b) the Authority shall, following consultation with interested parties, notify the licensee in writing of its proposed determination of the ~~additional capacity~~ incremental investment adjustment (ACA<sub>t</sub>);
    - (c) the licensee<sub>2</sub> shall have 28 days, or such extended time as permitted by the Authority, within which to make representations to the Authority's proposed determination that has been notified to it pursuant to sub-paragraph (b);

- (d) the Authority, having regard to any representations made by the licensee and not withdrawn, shall propose a modification to the ACA<sub>t</sub> pursuant to sections 11A to 11F of the Act. The proposed modification shall only take effect where made by the Authority in accordance with sections 11A to 11F of the Act.