

**To: TC Gunfleet Sands OFTO Limited**

**Electricity Act 1989  
Section 11A(1)(a)**

**Modification of the amended standard conditions of the offshore  
electricity transmission licence held by TC Gunfleet Sands OFTO Limited**

1. TC Gunfleet Sands OFTO Limited is the holder of an offshore electricity transmission licence (the **Licence**) granted or treated as granted under section 6(1)(b) of the Electricity Act 1989 (the **Act**).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority (the **Authority**)<sup>1</sup> gave notice on 11 November 2022 (the **Notice**) that we proposed to modify the following amended standard conditions (**ASC**) of the Licence:
  - a) **ASC E12-J3**: Restriction of Transmission Revenue: Allowed Pass-through Items; and
  - b) **Part A of ASC E12-J4**: Restriction of Transmission Revenue: Annual Revenue Adjustments.
3. We stated that any representations to the modifications proposed must be made on or before 9 December 2022.
4. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the changes should not be made.
5. We received seventeen responses (representing thirty-three Licensees/ Interested Parties) to the Notice, which we have carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying letter.
6. We are making licence changes to allow all Offshore Transmission Owners (**OFTOs**) to claim for the economic and efficient costs directly incurred in carrying out Health Reviews of their transmission assets and any Investment Works needed to extend the lifetime of those assets and approved by the Authority, and to claim for the availability lost as a direct result of carrying out the Health Reviews and Investment Works.

---

<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

7. We are also making licence modifications to allow OFTOs licensed in tender rounds 1 to 3 to recover costs or expenses incurred in the event that VAT is applied to decommissioning costs and/or as a result of the disallowance of scrap value from the decommissioning security. This will bring those licences into line with those issued in later tender rounds.
8. The Authority published a separate decision notice on 28 June 2023<sup>2</sup> in relation to the licence modifications proposed in the Notice to Part C of ASC E12-J4. These modifications are highlighted in green in the accompanying Schedule 1 and do not form part of this decision notice.
9. This notice addresses all licence modifications proposed in the Notice other than those set out in the decision notice of 28 June 2023.
10. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (the **CMA**) under section 11C of the Act, Rule 5.6 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules<sup>3</sup> requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 2 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(a) of the Act, we hereby modify ASC E12-J3 and Part A of ASC E12-J4 for the offshore electricity transmission licence held by TC Gunfleet Sands OFTO Limited in the manner specified in the attached Schedule 1. This decision will take effect from 22 September 2023.

This document is notice of the reasons for the decision to modify the offshore electricity transmission licence held by TC Gunfleet Sands OFTO Limited as required by section 49A(2) of the Act.



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

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

**28 July 2023**

---

<sup>2</sup> [Decision on proposed modifications to offshore electricity transmission licences](#)

<sup>3</sup> [CMA70 Energy Licence Modification Appeals: Competition and Markets Authority Rules](#)

## **Schedule 1**

We have included the sections of the amended standard licence conditions we have decided to remove or amend below. Deletions are shown in strike through and new text is double underlined. The licence modifications highlighted in green are the subject of a separate decision notice published by the Authority on 28 June 2023 and do not form part of this decision notice.

### **Amended Standard Condition 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.
2. For the purposes of paragraph 4 of amended standard condition E12 - J2 (Restriction of transmission revenue: revenue from transmission owner services)  $PT_t$  is derived from the following formula:

$$PT_t = LF_t + RB_t + CEL_t + DC_t + IAT_t + TPD_t + TCA_t + MCA_t + CEA_t + HR_t + IW_t$$

(9)

where

$LF_t$  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.

$RB_t$  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.

$CEL_t$  means the Crown Estate Lease cost adjustment term, whether of a positive or negative value, and shall be determined in accordance with paragraph 6.

$DC_t$  means the decommissioning cost adjustment term and shall be determined in accordance with paragraphs 7 to 13A.

$IAT_t$  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.

$TPD_t$  means the temporary physical disconnection payment term and shall be determined in accordance with paragraph 25.

$TCA_t$  means the tender fee cost adjustment term and shall be determined in accordance with paragraph 26.

$MCA_t$  means the Marine and Coastal Act 2009 cost adjustment term and shall be determined in accordance with paragraphs 27 to 33.

$CEA_t$  means the contingent event revenue adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 34 to 45.

$HR_t$  means the Health Review revenue adjustment term which shall be determined in accordance with paragraphs 46 to 56A.

IW<sub>t</sub> means the Investment Works revenue adjustment term which shall be determined in accordance with paragraphs 57 to 68.

**Formula for the Licence Fee Cost Adjustment (LF<sub>t</sub>)**

3. For the purposes of paragraph 2, LF<sub>t</sub> 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 to the Authority);

**Formula for the Network Rates Cost Adjustment (RB<sub>t</sub>)**

4. For the purposes of paragraph 2, RB<sub>t</sub> 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 Crown Estate Lease Cost adjustment (CEL<sub>t</sub>)**

6. For the purposes of paragraph 2, CEL<sub>t</sub> 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 Decommissioning cost adjustment (DC<sub>t</sub>)**

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 transmission system that has arisen due to a change in legislative requirements ("decommissioning legislative requirements") or a Decommissioning Event, then the licensee shall give written notice of this change to the Authority.
8. A notice provided to the Authority under paragraph 7 shall give particulars of:
- (a) the change in decommissioning legislative requirements and/or the Decommissioning Event to which the notice relates and the reason(s) why the licensee considers that it will face additional costs or expenses in complying with those obligations and shall demonstrate that such costs and expenses are not included within the allowed transmission owner income;
  - (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 legislative requirements and/or the Decommissioning Event and how the amount of these costs and/or expenses has been calculated;
  - (c) the proposed amount of any allowed revenue adjustment proposed as a consequence of the change in decommissioning legislative requirements and/or the Decommissioning Event 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 decommissioning legislative requirements and/or the Decommissioning Event to which the notice relates.
9. If the Authority considers that the analysis or information provided in sub-paragraphs 8(a) to 8(d) above is insufficient to enable the Authority to assess whether a change in decommissioning legislative requirements and/or a Decommissioning Event has occurred and/or the amount of any allowed income adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with 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 not more than one month of the Authority requesting such information or within such other period as permitted by the Authority.
10. A notice referred to in paragraph 7 shall be given as soon as is reasonably practicable after the occurrence of the change in decommissioning legislative requirements and/or the Decommissioning Event, and, in any event, not later than three months after the end of the relevant year in which it 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 decommissioning legislative requirements and/or the Decommissioning Event;
  - (b) if so, whether the amount of the proposed income 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 legislative requirements and/or Decommissioning Event had not taken place, and if not, what allowed income adjustment would secure that effect; and
  - (c) the periods, if any, over which the amounts 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 made a determination under paragraph 11 above within three months of the date on which notice given by the licensee was provided to the Authority, the amount of the allowed income adjustment proposed by the licensee in that notice given to the Authority; or
  - (c) 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 notice given by the licensee provided to the Authority and the Authority has, before the end of that three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with sub-paragraphs 8(a) to 8(d) ~~and/or 8(b)~~ is insufficient to enable the Authority to assess whether additional costs or expenses has

occurred and/or the amount of any allowed income adjustment, and if the Authority requests additional information, the Authority shall determine the amount of the allowed income adjustment within three months after receiving the additional information requested.

13. The Authority's decision in relation to any notice given under paragraph 8 shall be in writing, shall be copied to the licensee and shall be in the public domain.

13A In this condition:

"Decommissioning Event" means where the licensee has been required by the appropriate Minister to increase the size of its security in respect of its decommissioning plan to account for the disallowance of scrap value allowed for under the decommissioning plan and reflected in TRS<sub>t</sub>;

"scrap value" means the value allowed for the sale of scrap materials, including metal, to be recovered through the decommissioning plan; and

"decommissioning plan" means the plan for the decommissioning of the Offshore Transmission Assets as provided to the Authority as part of the licensee's ITT submission for the Gunfleet Sands project and reflected in the ITT financial model submitted by the licensee for the Gunfleet Sands project.

**Formula for a revenue adjustment in respect of an Income Adjusting Event**  
**Revenue Adjustment Term (IAT<sub>t</sub>)**

14. 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 allowed transmission owner revenues of the licensee were 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 £500,000 (the "threshold amount") provided that the licensee has not given and will not give notice of the event or circumstance as a contingent event under paragraph 35. For the purpose of this paragraph 14, an event or circumstance cannot be both an income adjusting event and a contingent event.
15. 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 event to the Authority.
16. A notice provided to the Authority under paragraph 15 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 income adjustment proposed as a consequence of that event or circumstance and how this allowed income 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 provided in sub-paragraphs 16(a) to 16 (d) above 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 allowed income adjustment that should be approved, the Authority can make a request or requests that the supporting evidence be supplemented with 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 or within such extended time as permitted by the Authority.
18. A notice of an income adjusting event shall be given as soon as is reasonably practicable after the occurrence of the income adjusting event, and, in any event, 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 submitted to the Authority under paragraph 15 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 15 were caused or saved by an income adjusting event;
  - (b) whether the event or circumstance has increased or decreased the relevant costs and/or expenses pursuant to paragraph 14 by more than the threshold amount;
  - (c) if so,



- i. subject to sub-paragraph (iii), whether the amount of the proposed income 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, what allowed income adjustment would secure that effect. Such adjustment shall be:

- (a) where the income adjusting event relates to an Uninsurable event of 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 income 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 amounts 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 income 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 allowed income 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 made a determination under paragraph 21 above within three months (excluding the duration of any consultation under paragraph 21) of the date on which notice of an income adjusting event was provided to the Authority, the amount of the allowed income adjustment proposed as a consequence of the event in the notice given to the Authority under sub-paragraph



15; 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 months (excluding the duration of any consultation under paragraph 21) after receiving the additional information by the licensee in the notice given to the Authority; or
  - (d) in all other cases zero, including situations where the Authority has not made a determination under paragraph 21 above within three months (excluding the duration of any consultation under paragraph 21) of the date on which notice of an income adjusting event, provided under paragraph 15, was provided to 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 income adjustment.
23. The Authority's decision in relation to any notice given under paragraph 16 shall be in writing, shall be copied to the licensee and shall be in the public domain.
24. The Authority may amend or revoke an approval of an income adjusting event and allowed income 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 allowed income adjustment shall be in writing, shall be copied to the licensee and shall be in the public domain.

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

25. For the purposes of paragraph 2, TPD<sub>t</sub> 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 Term (TCA<sub>t</sub>)**

26. For the purposes of paragraph 2, TCA<sub>t</sub> shall be an amount representing the payments made to the Authority in accordance with The Electricity (Competitive Tender for Offshore Transmission Licences) Regulations 2010 with respect 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.

**Formula for the Marine and Coastal Act cost adjustment (MCA<sub>t</sub>)**

27. Where the licensee considers 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 requirements then the

licensee may give notice of these changes to the Authority.

28. A notice provided to the Authority under paragraph 27 shall give particulars of:
- (a) any supporting evidence, including the reason(s) why the licensee considers that it will face additional costs or expenses in complying with those additional obligations and demonstrate that such costs or expenses are not included within allowed transmission owner income;
  - (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 proposed 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 provided in sub-paragraphs 28(a) to 28(d) above is insufficient to enable the Authority to assess the amount of any allowed income 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 not more than 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 occur.
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;
  - (b) if so, whether the amount of the proposed income adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that the additional obligations had not been implemented, and if not, what allowed income adjustment would secure that effect; and
  - (c) the periods, if any, over which the amounts should apply.
32. In relation to the relevant year  $t$ , the Marine and Coastal Act adjustment ( $MCA_t$ ) shall be:

- (a) the value determined by the Authority under paragraph 31 above; or
  - (b) if the Authority has not made a determination under paragraph 31 above within three months of the date on which notice given by the licensee was provided to the Authority, the amount of the allowed income adjustment proposed by the licensee in that notice given to the Authority; or
  - (c) 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 notice given by the licensee provided to the Authority and the Authority has, before the end of that three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 28(a) and/or 28(b) is insufficient to enable the Authority to assess whether additional costs or expenses has occurred and/or the amount of any allowed income adjustment. If the Authority requests additional information, then the Authority shall determine the amount of the allowed income adjustment within three months after receiving the additional information requested.
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 in the public domain.

**Formula for a revenue adjustment in respect of a Contingent Event Adjustment Term (CEA<sub>t</sub>)**

34. A contingent event occurs when either:
- (a) a notification is given by the Crown Estate requiring the licensee to deposit additional sums in respect of the payment for VAT for decommissioning costs under the Crown Estate lease, that were not allowed for when allowed transmission owner revenues of the licensee were determined for the relevant year t; and/or
  - (b) an event or circumstance arises out of the design fault in the grout connection of the Gunfleet Sands offshore substation platform, in respect of which
    - (aa) costs and expenses will be incurred by the licensee which were not allowed for when the allowed transmission owner revenues were determined; and/or
    - (bb) revenue losses will be incurred by the licensee pursuant to amended standard condition E12 – J4 (Restriction of transmission revenue: Annual revenue adjustments)

where:

- (A) the licensee demonstrates to the Authority's reasonable satisfaction that the event or circumstance has, or is expected to:
  - (aa) materially increase the costs and/or expenses incurred by the licensee in respect of the relevant year t; and/or
  - (bb) materially increase the costs and/or expenses incurred by the licensee in aggregate over a number of relevant years; and/or

- (cc) result in revenue losses under the performance incentive under amended standard condition E12 – J4 (Restriction of transmission revenue: Annual revenue adjustments);
  - (B) the licensee demonstrates to the Authority’s satisfaction that it is using all reasonable endeavours to pursue other routes of recourse available to it to remunerate, in whole or in part, the costs, expenses and/or revenue losses that it has or expects to incur.
  - (C) for the purposes of sub-paragraph (B) and paragraph 35(b), that other routes of recourse shall include, but are not limited to, any commercial solutions (including warranties, indemnities and any reserves/guarantees available to it) and/or insurance claims.
  - (D) for the purpose of this paragraph 34, an event or circumstance cannot be both an income adjusting event and a contingent event.
35. Where the licensee considers, and can provide supporting evidence, that in respect of the relevant year t, there have been costs, expenses and/or revenue losses that have been incurred, or are expected to be incurred, as a result of a contingent event, it shall give written notice of this to the Authority giving particulars (including supporting evidence) of:
- (a) the contingent event to which the notice relates and the reason(s) why the licensee considers this event or circumstance to be a contingent event;
  - (b) the extent to which the licensee has claimed or intends to claim for any costs, expenses or revenue losses under other routes of recourse available to it.
  - (c) the amount of any costs and/or expenses that the licensee can demonstrate have been incurred or will be incurred due to the event or circumstance and how the amount of these costs and/or expenses has been calculated;
  - (d) the amount of any proposed revenue and/or performance adjustment as a consequence of that event or circumstance, and how this proposed revenue and/or performance adjustment has been calculated; and
  - (e) any other analysis or information, which the licensee considers necessary to enable the Authority and the relevant parties to fully assess the event or circumstance to which the notice relates.
36. If the Authority considers that the analysis or information provided in sub-paragraphs 35(a) to 35(e) 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 proposed revenue or performance adjustment that should be allowed, the Authority may request that the supporting evidence be supplemented with additional information that it considers appropriate.
37. Unless otherwise agreed with the Authority, where the licensee considers that a contingent event has occurred in accordance with paragraph 34(a) the licensee shall give notice no later than 3 months after notification is received from the Crown Estate.
38. Unless otherwise agreed with the Authority, where the licensee considers that a

contingent event has occurred in accordance with paragraph 34(b) the licensee shall give notice of a contingent event as soon as is reasonably practicable following the date upon which the licensee became aware, or could reasonably be expected to have become aware, of the event or within 3 months of the end of the relevant year in which the licensee became aware, or could reasonably have been expected to have become aware of the event (whichever is earlier).

39. The Authority shall make public, excluding any confidential information, any notice of a contingent event following its receipt.

40. Any notice submitted to the Authority under paragraph 35 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 40(a) is necessary for the purposes of enabling the relevant parties to fully assess the event or circumstance to which the notice relates.

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

- (a) whether a contingent event has occurred;
- (b) whether that contingent event has materially increased, or is expected to materially increase costs and/or expenses incurred by the licensee or result in revenue losses pursuant to amended standard condition E12 – J4 (Restriction of transmission revenue: Annual revenue adjustments);
- (c) if so, whether the amount of the proposed revenue and/or performance adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that contingent event had not occurred, and if not, what allowed revenue adjustment and, where appropriate, performance adjustment would secure that effect;
- (d) whether the amount of the proposed revenue adjustment accounts for the extent to which the licensee has claimed or intends to claim for any costs or expenses under other routes of recourse available to it, including but not limited to:
  - (i) commercial solutions, including warranties, indemnities and any reserves/guarantees available to it; and/or
  - (ii) insurance claims; and
- (e) the periods, if any, over which the amounts should apply.

42. In relation to any relevant year  $t$ , the allowed revenue adjustment ( $CEA_t$ ) shall be:

- (a) the value determined by the Authority under paragraph 41 above or as modified under paragraph 45, in which case the value may be positive or

negative; or

- (b) if the Authority has not made a determination under paragraph 41 above within three months of the date on which notice of a contingent event was provided to the Authority, the amount of the proposed revenue adjustment as a consequence of the event or circumstance in the notice given to the Authority under paragraph 35; or
  - (c) in all other cases zero, including situations where the Authority has not made a determination under paragraph 41 above within three months of the date on which notice of a contingent event, provided under paragraph 35, was provided to the Authority and the Authority has, before the end of that three 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 a contingent event has occurred and/or the amount of any allowed revenue adjustment.
43. The Authority's decision in relation to any notice given under paragraph 35 shall be in writing, shall be copied to the licensee and shall be in the public domain.
44. The licensee shall inform the Authority in writing of any change in circumstance which has a material impact on the determination under paragraph 41.
45. The Authority may modify a determination made under paragraph 41, following consultation with the licensee and relevant parties, and any such modification shall be in writing, shall be copied to the licensee and shall be in the public domain.

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

46. 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").
47. A Health Review Notice provided under paragraph 46 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.
48. If the Authority considers that the analysis or information provided in sub-paragraphs 47(a) to 47(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.

49. 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.
50. The Authority shall make public, excluding any confidential information, the Health Review Notice as soon as reasonably practicable following its receipt.
51. 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 51(a) is necessary for the purposes of enabling the relevant parties to fully assess the Health Review to which the notice relates.
52. 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 52(a) and 52(b)).
53. In relation to any relevant year t, the allowed revenue adjustment (HR<sub>t</sub>) shall be:
- (a) the value determined by the Authority under paragraph 52 above or as modified under paragraph 56; 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 48 and the Authority has not made a determination under paragraph 52 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 48 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 48; or
  - (ii) the Authority has not made a determination under paragraph 52 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 48, 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 47 or the additional information provided in response to a request by the Authority under paragraph 48 is insufficient to enable the Authority to assess the amount of any allowed revenue adjustment.
54. The allowed revenue adjustment in relation to a Health Review Notice, as determined by the Authority under paragraph 52 shall be set out in writing, shall be copied to the licensee and shall be in the public domain.
55. The licensee shall inform the Authority in writing of any change in circumstance which has a material impact on the determination under paragraph 52.
56. The Authority may modify or revoke a determination made under paragraph 52, 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.
- 56A 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 ( $IW_t$ )**

57. 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”).
58. An Investment Works Notice provided under paragraph 57 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.

59. If the Authority considers that the analysis or information provided in sub-paragraphs 58(a) to 58(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.
60. 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.
61. The Authority shall make public, excluding any confidential information, the Investment Works Notice as soon as reasonably practicable following its receipt.
62. 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 62(a) is necessary for the purposes of enabling the relevant parties to fully assess the Investment Works to which the notice relates.
63. 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 63(a) and 63(b)).
64. In relation to any relevant year t, the allowed revenue adjustment ( $IW_t$ ) shall be:
- (a) the value determined by the Authority under paragraph 63 above or as modified under paragraph 67; 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 59 and the Authority has not made a determination under paragraph 63

- 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 59 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 59 above; or
- (ii) the Authority has not made a determination under paragraph 63 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 59, 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 58 or the additional information provided in response to a request by the Authority under paragraph 59 is insufficient to enable the Authority to assess the amount of any allowed revenue adjustment.
65. The allowed revenue adjustment in relation to an Investment Works Notice, as determined by the Authority under paragraph 63 shall be set out in writing, shall be copied to the licensee and shall be in the public domain.
66. The licensee shall inform the Authority in writing of any change in circumstance which has a material impact on the determination under paragraph 63.
67. The Authority may modify or revoke a determination made under paragraph 63 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.
68. 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.

**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 revenue 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),  $PA_t$  is derived from the following formula:

$$PA_t = TSAI_t + TSAP_t + ICA_t \quad (10)$$

where:

$TSAI_t$  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;

$TSAP_t$  means the transmission system availability payment for the value of performance credits from the last 5 years of the revenue period, as determined in accordance with paragraph 21; and

$ICA_t$  means the incremental capacity incentive adjustment term as derived from the formula set out in paragraph 22.

**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 licence 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 75 per cent in that incentive period; or

- (b) results in transmission system availability being, on average, below 80 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  $TSAl_t$  is derived from the following formula:

$$TSAl_t = \left( \frac{BR_{t-1}}{PR_{t-1}} \times TSAC_y \times PR_{t-6} \right) - BR_{t-1} \times TSAF_y \quad (11)$$

where  $t=y$

where:

$BR_t$  means base 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

$TSAC_y$  means the transmission system availability credit factor, which in any relevant year before the commencement relevant year shall take the value zero and in each subsequent relevant year is the percentage credit revenue adjustment factor based on the licensee's performance against the transmission system availability incentive during incentive period  $y$ , and is derived from the following formula:

$$TSAC_y = TSIF \times \left( \frac{PAPC_y}{AVCOL_{y-5}} \right) \quad (12)$$

where:

$TSIF$  means the transmission system incentive factor and shall in each incentive period  $y$  take the value of 10 per cent.

$PAPC_y$  means the performance availability payout credits, after being held in the performance balance for 5 incentive periods and offsetting any penalties in that period, available to be cashed in incentive period  $y$  as set out in paragraph 8.

$AVCOL_y$  means the annual value of the collar and is derived from the following formula:

$$AVCOL_y = \sum_{i=1}^{12} MVCOL_{i,y} \quad (13)$$

Where:

$MVCOL_{i,y}$  means the monthly value of the collar and is derived from the following formula:

$$MVCOL_{i,y} = MTSA_i \times COL \quad (14)$$

where:

$COL$  means the maximum penalty collar for the availability incentive of 4 per cent.

$MTSA_i$  means the maximum transmission system availability in month  $i$  that is required to be delivered being the minimum of:

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

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

$TSAF_y$  means the transmission system availability penalty factor, which in any relevant year before the commencement relevant year shall take the value zero and in each subsequent relevant year is the percentage penalty revenue adjustment factor based on the licensee's performance against the transmission system availability incentive during incentive period  $y$  and, subject to paragraphs 14 to 16, is derived from the following formula:

$$TSAF_y = TSIF \times \left( \frac{-PPRO_y}{AVCOL_y} \right) \quad (15)$$

where:

$PPRO_y$  means the performance penalty revenue offset representing the number of penalty permits that are offset against revenues in incentive period  $y$  as set out in paragraph 7.

7. For the purposes of paragraph 6, the performance penalty revenue offset ( $PPRO_y$ ) shall be calculated in accordance with the following formula:

If  $TPAPE_y < 0$  then (16)

If  $TPAPE_y < -AVCOL_y$  then

$$PPRO_y = -AVCOL_y$$

If  $TPAPE_y \geq -AVCOL_y$  then

$$PPRO_y = TPAPE_y$$

If  $TPAPE_y \geq 0$  then

$$PPRO_y = 0$$

where:

$TPAPE_y$  means the total performance availability permits earned representing the cumulative value of penalties and credits earned up to and including incentive period  $y$  along with those credits and penalties up to period  $y$  that have effected revenue, being calculated as follows:

$$TPAPE_y = TPAPE_{y-1} + TSPP_y + TSPC_y - 5YPL_y - PPRO_{y-1} - PAPC_{y-1} \quad (17)$$

Where:

$TSPP_y$  means the transmission system performance penalties incurred in each month  $i$  of incentive period  $y$ , being calculated as follows:

$$TSPP_y = \sum_{i=1}^{i=12} APE_{i,y} \quad (18)$$

Where:

$APE_{i,y}$  means the availability penalties earned in each month  $i$  of incentive period  $y$  being calculated as follows:

If  $APAPE_{i,y} < 0$  then (19)

$$APE_{i,y} = APAPE_{i,y}$$

If  $APAPE_{i,y} \geq 0$  then

$$APE_{i,y} = 0$$

$APAPE_{i,t}$  means the adjusted performance availability permits earned in each month  $i$  of incentive period  $y$ , being calculated as follows:

$$APAPE_{i,y} = (RSIP_{i,y} - (TSIT_i \times MTSA_i)) \times TSIR_i \quad (20)$$

Where:

$TSIT_i$  means the base transmission system incentive target, in percentage terms, for month  $i$  as set out in Annex A.

$RSIP_{i,y}$  means the reported system incentive performance (expressed as the number of MW hours the system was capable of delivering) in respect of month  $i$  in incentive period  $y$  derived in accordance with paragraph 9 to 13.

$TSIR_i$  means the transmission system incentive rate as set out against the table in Annex A to this condition.

$TSPC_y$  means the transmission system performance credits earned in each month  $i$  of incentive period  $y$ , being calculated as follows:

$$TSPC_y = \sum_{i=1}^{i=12} ACE_{i,y} \quad (21)$$

where:

$ACE_{i,y}$  means the availability credits earned in each month  $i$  of incentive period  $y$  being calculated as follows:

If  $APAPE_{i,y} > 0$  then (22)

$$ACE_{i,y} = APAPE_{i,y}$$

If  $APAPE_{i,y} \leq 0$  then

$$ACE_{i,y} = 0$$

$5YPL_y$  means the 5 year penalty limit, which limits the effect of large outages to only 5 years of OFTO revenue, taking the value zero until incentive period  $y=6$  and is then calculated as follows:

If  $TSP_{y-5} + AVCOL_{y-5} < 0$  and if  $5YPB_y < 0$  then (23)

$$5YPL_y = 5YPB_y$$

If  $TSP_{y-5} + AVCOL_{y-5} \geq 0$  or  $5YPB_y \geq 0$  then

$$5YPL_y = 0$$



Where:

$5YPB_y$  means the 5 year penalty balance being calculated as follows:

$$5YPB_y = 5YPB_{y-1} + TSPP_{y-5} + TSPC_{y-1} - PPRO_{y-1} - 5YPL_{y-1} - PAPC_{y-1} \quad (24)$$

8. For the purposes of paragraph 6 the performance availability payout credits ( $PAPC_y$ ), represent those credits to effect revenue after being held in the performance balance (through the  $5YCM_y$  mechanism) for 5 years from the incentive period  $y$  and offsetting any penalties in the intervening period, is determined in accordance with the following formula:

If  $5YCM_y > 0$  then (25)

$$PAPC_y = 5YCM_y$$

If  $5YCM_y \leq 0$  then

$$PAPC_y = 0$$

where:

$5YCM_y$  means the 5 year credit mechanism, which holds all credits in the performance balance for 5 years, using them to offset any penalties in the intervening period, before those credits can be cashed, taking the value zero until incentive period  $y=6$  and is then being calculated as:

$$5YCM_y = 5YCM_{y-1} + TSPC_{y-5} + TSPP_y - PPRO_{y-1} - 5YPL_{y-1} - PAPC_{y-1} \quad (26)$$

9. For the purposes of this amended standard condition “reported system incentive performance ( $RSIP_{i,y}$ )” shall mean, in month  $i$  of incentive period  $y$ , the extent to which the licensee made transmission services available to the System Operator for the purposes of conveying, or affecting the flow of, electricity and reported system incentive performance ( $RSIP_{i,y}$ ) shall be calculated as the maximum transmission system availability in month  $i$  ( $MTSA_i$ ) less the effect, also in month  $i$ , of any transmission service reduction that applied to licensee’s transmission system, subject to the following exclusions:
- (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; ~~and~~
  - (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 56A 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 68 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.

10. The Authority shall, by written notice to the licensee, direct that, for the purpose of calculating the reported system incentive performance ( $RSIP_{i,y}$ ) that the value of reported system incentive performance ( $RSIP_{i,y}$ ) shall be adjusted to the extent specified in that direction to offset the impact of the 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
11. For the purpose of paragraph 10, 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).
12. A direction under paragraph 10 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 reported system availability performance for month  $i$ , and each subsequent month, should be increased 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 objections

and the Authority has considered such representations or objections and given reasons for its decision.

13. The licensee may request that a direction issued by the Authority pursuant to paragraph 10 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.
14. For the purposes of paragraph 6, the licensee may request that the transmission system availability penalty factor ( $TSAF_y$ ) in respect of the incentive period  $y$ , take a value:

$$TSAF_y > \left[ TSIF \times \left( \frac{-PPRO_y}{AVCOL_y} \right) \right] \quad (27)$$

being an amount between 10 and 50 per cent, with the purpose of bringing forward future long term penalties.

15. In making a request pursuant to paragraph 14, the licensee shall set out:
- (a) its reasons for making the request;
  - (b) its calculations and supporting information in support of the proposed value of  $TSAF_y$  in incentive period  $y$ ; and
  - (c) its proposals for future restrictions on the value of  $TSAF_{y+1}, \dots, TSAF_{y+4}$  that the licensee considers would be necessary to maintain revenue neutrality with

respect to the penalty liabilities incurred in respect of incentive period  $y$ .

16. The proposed value of  $TSAF_y$  and proposed restrictions on  $TSAF_{y+1}, \dots, TSAF_{y+4}$  set out in the requested pursuant to paragraph 14 shall only apply if, following consultation with interested parties, the Authority gives its consent, in writing, to the licensee; and the Authority's consent shall not be unreasonably withheld.

**Part B: Transmission System Availability Incentive: supplementary provisions**

17. 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 reported system incentive performance ( $RSIP_{i,y}$ ) for each of the months within the three month period and the report should include the calculation of  $RSIP_{i,y}$  and provide a commentary in relation to those months where reported system incentive performance ( $RSIP_{i,y}$ ) has fallen below the monthly incentive target ( $TSIT_i \times MTSA_i$ ).
18. The licensee shall, by no later than sixteen 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.
19. For the purposes of paragraph 18, the licensee shall, by no later than 3 months before the date that is sixteen 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;
  - (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; and
  - (d) the detailed terms on which the security can be called upon in the closing relevant year to meet the financial payments that have been incurred by the licensee in respect of the Transmission System Availability Incentive.
20. The Authority shall, within 2 months of receiving the notice specified in paragraph 19, indicate to the licensee whether the proposed arrangements for financial security (as specified in the notice) would be satisfactory. In the event that 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.
21. For the purposes of paragraph 2,  $TSAP_t$  shall take the value zero except in the relevant year following the closing relevant year, where it shall be calculated in accordance with the following formula which uses the incentive periods 23 to 27 to calculate the value of the final credit payouts:

$$TSAP = \sum_{y=23}^{y=27} \frac{BR_{21}}{PR_{21}} \times TSAC_y \times PR_{t-6} \quad (28)$$

where  $t=y$

### Part C: Incremental capacity incentive adjustment

22. For the purposes of paragraph 2, the incremental capacity incentive adjustment term ( $ICA_t$ ) is derived from the following formula:

$$ICA_t = ICUA_t + (ACA_t \times RIT_t) \quad (29)$$

Where:

$ICUA_t$  means the incremental capacity utilisation adjustment, as derived from the formula set out in paragraph 23; and

$ACA_t$  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 24.

$RIT_t$  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).

23. For the purposes of paragraph 22, the incremental capacity utilisation adjustment term ( $ICUA_t$ ) shall be derived in accordance with the following formula:

$$ICUA_t = \max(0, ICRD_t \times ICU_t) \quad (30)$$

where:

$ICRD_t$  means the incremental capacity revenue driver (in £/kW) and shall take the value as defined by the formula:

$$ICRD_t = \frac{BR_t}{CCR \times PF} \times RCF \quad (31)$$

Where:

$CCR$  means the composite circuit rating based on the thermal rating of the offshore transmission cable circuit and shall take the value 182,000 kVA.

$PF$  means the power factor (kW to kVA ratio) associated with the offshore transmission cable circuit and shall take the value of 0.95 kW/KVA.

$RCF$  means the risk compensation factor and shall take the value 0.31.

$ICU_t$  means the incremental capacity utilisation term (expressed in kW) representing the amount of capacity that the licensee has agreed to make and has made available to the System Operator in accordance with standard condition E17.

24. For the purposes of paragraph 22, the **additional capacity incremental** investment adjustment term ( $ACA_t$ ) shall be determined by the Authority in accordance with paragraphs 25 to 27 and shall otherwise take the value zero.
25. 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 27.
26. A notice referred to in paragraph 25 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 event, not later than three months after the end of the relevant year in which it occurs.
27. The Authority shall determine:
- (a) the revenue adjustment ( $ACA_t$ ) 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 adjustment shall apply.
28. For the purposes of paragraph 27, 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 ~~incremental investment~~ adjustment to allowed transmission owner revenue ( $ACA_t$ );
  - (c) the licensee 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  $ACA_t$  pursuant to section 11 ~~A to~~

11F of the Act. The proposed modification shall only take effect where made by the Authority;

(i) in accordance with section 11 A to 11F of the Act, with the consent of the licensee; or

(ii) in the form originally proposed by the Authority following a reference to the Competition Commission under section 12 of the Act on the proposed modification of the condition; or

(iii) in such modified form as the Competition Commission may specify following a reference to the Competition Commission under section 12 of the Act on the proposed modification of the condition.

29. In this condition:

“financial security”	means a deposit of money, a performance bond or bank guarantee, an insurance policy or a letter of credit.
----------------------	--

“Good Industry Practice”	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.
--------------------------	--

“normal capability limits”	means the technical limits that would normally apply to the provision of its transmission services in accordance with the STC as at the date this condition comes into force.
----------------------------	---

“service restoration proposal”	means a transmission owner’s proposal, in accordance with the STC as at the date this condition comes into force, in reasonable but not excessive detail for, as appropriate:
--------------------------------	---

- (a) any interim works or other actions which are able to be undertaken by such transmission owner to minimise the effect of the services reduction or services reduction risk and including, where relevant, any revised operational capability limits that would apply during the



period of such services  
reduction or services  
reduction risk;

- (b) restoring the transmission services such that they are provided in accordance with their services capability specification (and to their normal capability limits); and
- (c) otherwise removing, mitigating or dealing with a services reduction risk,

including, in the case of subparagraphs (b) and (c), where necessary and appropriate, by proposing to amend the content of its services capability specification (including any normal capability limits).

“Transmission Entry Capacity” means the figure specified as such for a connection site in a transmission owner construction agreement in accordance with the STC as at the date this condition comes into force.

## **Schedule 2: Relevant licence holders**

TC Barrow OFTO Limited
TC Beatrice OFTO Limited
Diamond Transmission Partners BBE Limited
TC Dudgeon OFTO plc
Diamond Transmission Partners Galloper Limited
Greater Gabbard OFTO plc
TC Gunfleet Sands OFTO Limited
Gwynt y Môr OFTO plc
Diamond Transmission Partners Hornsea One Limited
Humber Gateway OFTO Limited
TC Lincs OFTO Limited
Blue Transmission London Array Limited
TC Ormonde OFTO Limited
Diamond Transmission Partners RB Limited
TC Rampion OFTO Limited
TC Robin Rigg OFTO Limited
Blue Transmission Sheringham Shoal Limited
Thanet OFTO Limited
Blue Transmission Walney 1 Limited
Blue Transmission Walney 2 Limited
Diamond Transmission Partners Walney Extension Limited
TC Westernmost Rough OFTO Limited
WoDS Transmission plc