

## **Annex 1 – proposed modifications the standard licence conditions of the electricity transmission licence**

### **SECTION A: INTERPRETATION, APPLICATION AND PAYMENTS**

#### **Condition A1: Definitions and interpretation**

1. In the standard conditions unless the context otherwise requires:

“financial year”	<del>means subject to standard E3 (Change of financial year) (where applicable)</del> a period of 12 months beginning on 1 <sup>st</sup> April of each year and ending on 31 <sup>st</sup> March of the following calendar year
<u>“generator build tender exercise”</u>	<u>has the meaning given to it in the tender regulations currently in force</u>
“investment grade”	means in relation to any issuer credit rating or instrument credit rating unless otherwise specified
	(a) unless sub-paragraph (b) below applies:
	(i) a rating of not less than BBB- by standard & Poor’s Ratings Group or any of its subsidiaries;
	(ii) a rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries;
	(iii) a rating of not less than BBB-by

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Fitch Ratings Ltd or any of its subsidiaries;

(iv) ~~in relation to issuer credit ratings only~~, a rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or

(v) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (i), (ii), (iii) and (iv) issued by:

(aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii), (iii) or (iv) or

(bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America;

(b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.

“instrument credit rating”

means

(a) a Long-Term Issuer Credit

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Rating by Standard & Poor's Ratings Group or any of its subsidiaries;

(b) a Long-Term Corporate Obligation Rating by Moody's Investors Services Inc. or any of its subsidiaries;

(c) a rating on the Structured, Project & Public Finance Obligations Long Term Ratings Scale by Fitch Ratings Ltd or any of its subsidiaries;

(d) a long-term credit rating from DBRS Ratings Limited or any of its affiliates

(e) ~~(d)~~ a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b), ~~or~~ (c) or (d) and issued by:

(i) any of the credit rating agencies as referred to in sub-paragraphs (a), (b), ~~or~~ (c); or (d)

(ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in

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writing to the licensee,  
has comparable standing  
in both the United  
Kingdom and the United  
States of America.

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**Condition B1: Regulatory Accounts**

**[Amend the definition of UK Listing Authority as follows]**

**UK Listing Authority** has the same meaning, as the FCA, as defined in given in section 72 of the Financial Services and Markets Act ~~2000~~ 2012 ~~and refers to the Financial Services Authority when it acts in its capacity as the competent authority for the purposes of that section.~~

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## **Condition B18: Offshore Transmission Owner of Last Resort**

### **[amend paragraph 2 as follows]**

2. The Authority may, following consultation with the licensee and any other authorised electricity operator directly affected thereby, give a Section E (offshore transmission owner of last resort) Direction to provide transmission services for a period not exceeding five years where a Section E (offshore transmission owner of last resort) Direction previously given to an offshore transmission owner regarding those assets has expired or is due to expire, or:

(a) if the Authority, following a transitional or generator build tender exercise undertaken in accordance with the tender regulations:

(i) has not been able to determine a person to be granted an offshore transmission licence for the transmission assets to which the transitional or generator build tender exercise related; and

(ii) has taken all reasonable steps to identify from offshore transmission owners an offshore transmission owner to operate the transmission assets; or

(b) if the Authority intends to revoke the transmission licence of an offshore transmission owner; or

(c) if the Authority intends to revoke a Section E (offshore transmission owner of last resort) Direction given to another transmission licensee;

and were the Section E (offshore transmission owner of last resort) Direction not given, it would significantly increase the likelihood that the generating station that is, or is expected to be, connected to the transmission assets would be unreasonably delayed or stranded.

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## **Condition E2: Regulatory Accounts**

### **Part A: ~~Application and purpose~~ Introduction**

1. This condition applies to the regulatory accounts prepared for the financial years commencing on or after 1 April 2016 for the purpose of ensuring that the licensee:
  - (a) ~~the licensee~~ prepares and publishes regulatory accounts within the meaning of ~~paragraph 3 (b) Part A below~~; and
  - (b) ~~that the licensee~~ maintains (and ~~secures~~ ensures that any affiliate or related undertaking of the licensee maintains) such accounting records, other records and reporting arrangements for the ~~consolidated transmission~~ business of the licensee stated in paragraph 2 as are necessary to enable the licensee to comply with that obligation.

### **Part B: ~~Preparation of accounts~~ Part A: Preparation of regulatory accounts**

2. For the purposes of this condition, but without prejudice to ~~paragraph 6~~ the requirements of Part C below, the licensee ~~shall~~ must prepare regulatory accounts for each financial year ~~ending on 31 March~~ for each of the following businesses of the licensee, where applicable:-
  - (a) the consolidated transmission business;
  - (b) any de minimus business within the meaning of paragraph 4 of the Standard Condition E7 (Restriction of activity and financial ring-fencing);
  - (c) other activities to which this licence relates and to which the Authority has given its consent in accordance with paragraph 3(d) of Standard Condition E7 (Restriction of activity and financial ring-fencing); and

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- (d) the whole business to which this licence relates, as represented by the consolidation of the businesses and activities referred to within sub-paragraphs (a) to (c), where applicable.
3. Where this condition enters into force during the period 1 January to 31 March of the year in which the licence was granted, the licensee may either:
- (a) prepare its accounts for the period from licence grant to 31 March of that year, or
- (b) when submitting its accounts for the next financial year, prepare its accounts for a period of up to 15 months to include those months from licence grant that fall in the previous financial year.
4. Except and so far as the Authority otherwise consents, the regulatory accounts should be prepared under the same applicable accounting framework as the most recent or concurrent statutory accounts of the licensee.
5. Except and so far as the Authority otherwise consents, the licensee must comply with the obligations imposed by the following paragraphs of this Part A in relation to the preparation of regulatory accounts.
6. ~~3. Unless the Authority otherwise consents, t~~The licensee ~~shall:~~must (a) keep or cause to be kept, for a period approved by the Authority, but not less than the period referred to in section ~~222(5)(b)~~ 388(4)(b) of the Companies Act ~~1985~~ 2006 and in the manner referred to in that section, such accounting records and other records as are necessary ~~so~~ to ensure that all the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable to, each of the businesses or activities identified in paragraph 2 ~~the consolidated transmission business~~ are separately identifiable in the accounting records of the licensee (and ~~of~~ any affiliate or related undertaking of the licensee) from those of any other business of the licensee, ~~including a separate balance sheet and a separate profit and loss account (or, as appropriate, an income statement) for the consolidated transmission business and any other business of the licensee;~~ and

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7. The regulatory accounts are to be prepared on a consistent basis b) prepare, on a consistent basis from such from the accounting records and other records referred to in paragraph 6 in respect of each financial year, and must comprise:
- (a) the matters set out in paragraph 8; supported by
  - (b) the matters mentioned in paragraph 9; and
  - (c) the statement required by paragraph 10.
8. The matters to which paragraph 7(a) refers are:
- (a) an income statement and a statement of comprehensive income (or, as appropriate, a profit and loss account and, as appropriate, a statement of total recognised gains and losses);
  - (b) a statement of changes in equity, if appropriate;
  - (c) a statement of financial position (or, as appropriate, a balance sheet);
- ~~3 (b) in respect of each financial year, regulatory accounts (including notes thereto and statements of the accounting policies adopted) of the licensee comprising:~~
- ~~(i) a profit and loss account (or, as appropriate, an income statement);~~
  - ~~(ii) a statement of total recognised gains and losses (or, as appropriate, a statement of changes in equity and if appropriate a statement of recognised income and expense);~~
  - ~~(iii) a balance sheet;~~
  - ~~(iv) a cash flow statement;~~
- (d) a statement of cash flows (or, as appropriate, a cash flow statement);
  - (e) a corporate governance statement in respect of the consolidated transmission business whole business to which this licence relates;

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(f) a directors' report in respect of the consolidated transmission business whole business to which this licence relates; and

(g) a business review in respect of the whole business to which this licence relates.

~~(i) an operating and financial review in respect of the consolidated transmission business; and~~

~~(ii) a statement showing separately in respect of the consolidated transmission business and in appropriate detail the amounts of any revenue (including, where applicable, revenue from the ownership of the transmission network), cost, asset, liability, reserve or provision which has either been:~~

~~(aa) charged from any ultimate controller of the licensee, together with any subsidiary of such ultimate controller (other than the licensee or its subsidiaries) in relation to the provision of goods or services to the licensee;~~

~~(bb) charged from the licensee together with any subsidiary of the licensee in relation to the provision of goods or services to any ultimate controller of the licensee together with any subsidiaries of such ultimate controller (other than the licensee or its subsidiaries); or~~

~~(cc) determined by apportionment or allocation to the consolidated transmission business or between any other business of the licensee or affiliate or related undertaking together with a description of the basis of the apportionment or allocation;~~

~~provided that the obligations in (aa), (bb) and (cc) above shall only apply to goods and services received or supplied for the purposes of the consolidated transmission business.~~

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9. The matters to which paragraph 7(b) refers are set out in explanatory notes to the regulatory accounts that:
- (a) provide a summary of the accounting policies adopted by the licensee for the purpose of producing regulatory accounts;
  - (b) comply with the requirements applicable for preparing annual accounts in Chapter 4 of Part 15 of the Companies Act 2006 and of the reporting requirements of the applicable accounting framework.

**Part B: Bases of charge or apportionment**

10. Subject to paragraph 11, the licensee must include within its regulatory accounts a statement in respect of the consolidated transmission business that shows separately and in appropriate detail the amount of any revenue, cost, asset, liability, reserve, or provision which has been:
- (a) charged from any ultimate controller of the licensee, or from any subsidiary of such ultimate controller (other than the licensee or its subsidiaries), in relation to the provision of goods or services to the licensee; or
  - (b) charged from the licensee, or from any subsidiary of the licensee, in relation to the provision of goods or services to any ultimate controller of the licensee, or to any subsidiaries of such ultimate controller (other than the licensee or its subsidiaries); or
  - (c) determined by apportionment or allocation between the consolidated transmission business and any other business of the licensee or affiliate or related undertaking (and, where this sub-paragraph applies, the statement must include a description of the basis of the apportionment or allocation).
11. The requirements of paragraph 10 apply only in respect of goods and services received or supplied for the purposes of the consolidated transmission business.
12. ~~4.~~ Unless the Authority so specifies in directions issued for the purposes of this condition, or with the Authority's prior written ~~approval~~ consent, the

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licensee must not in relation to the regulatory accounts in respect of a financial year change the bases of charge, ~~or~~ apportionment or allocation referred to in paragraph ~~3(b)(viii)~~ 10 from those applied in respect of the immediately preceding previous financial year.

13. ~~5.~~ Where, ~~in relation to the regulatory accounts in respect of a financial year,~~ the licensee has, in accordance with paragraph ~~4~~ 12 above, changed ~~such its~~ bases of charge, ~~or~~ apportionment or allocation or changed any of its accounting policies or manner of their application ~~of those accounting policies~~ from those adopted for the immediately preceding financial year, the licensee ~~shall~~ must, if so directed by the Authority, ~~in writing,~~ in addition to preparing regulatory accounts on ~~those the changed~~ bases ~~which that~~ it has adopted, also prepare such regulatory accounts ~~on by reference to~~ the bases, ~~and the~~ accounting policies and ~~the manner of~~ application ~~of its accounting policies which that~~ applied in respect of that immediately preceding financial year.

#### **Part C: Consistency with statutory accounts**

14. ~~6.~~ Regulatory accounts and information ~~in respect of a financial year prepared under paragraph 3(b) shall,~~ prepared under Parts A and B above must, so far as reasonably practicable and ~~unless otherwise approved by expect so far as the Authority otherwise consents,~~ the Authority having regard to the purposes of this condition~~;~~:
- (a) have the same content and format as the most recent or concurrent statutory accounts of the licensee prepared under ~~section 226 and 226A or, where appropriate, section 226B~~ Part 15 of the Companies Act ~~1985~~ 2006; and
  - (b) shall comply with all relevant accounting and reporting standards currently in force ~~which have been issued or adopted by the Accounting Standards Board or, where appropriate, by the International Accounting Standards Board~~ under the applicable accounting framework as set out in Part 15 of the Companies Act 2006.

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~~6A. The accounting records kept or caused to be kept by the licensee under paragraph 3(a) shall include as applicable:~~

~~(c) separate accounting records for each business of the licensee related to electricity transmission activities and electricity distribution activities;~~

~~(d) accounting records, which may be consolidated, for each business of the licensee related to electricity activities other than electricity transmission activities and electricity distribution activities; and~~

~~(e) unless otherwise approved by the Authority having regard to the purposes of this condition, consolidated accounts for each business of the licensee not related to electricity activities.~~

#### **Part 6D: Audit and delivery of regulatory accounts**

15. ~~7. Unless Except and so far as~~ the Authority otherwise consents, the licensee ~~must shall~~ :

(a) ~~procure, in relation to its regulatory accounts:~~ (i) an audit by an appropriate auditor of such parts of ~~those~~ its regulatory accounts and the directors' report and ~~operating and financial~~ business review as are is specified in the Companies Act ~~1985~~ 2006 as being required to be so audited as if the licensee were a quoted company and ~~they~~ those accounts were the statutory accounts of the licensee prepared under sections 226 and 226A or, as appropriate, section 226B of the Companies Act 1985 drawn up to 31 March each financial year and prepared under sections 226 and 226A or, as appropriate, section 226B of the Part 15 Companies Act ~~1985~~ 2006; and

(b) procure (ii) a report by ~~that~~ an appropriate auditor, addressed to the Authority, stating that states whether in the auditor's opinion those accounts fairly present the financial position, financial performance and cash flows of or reasonably attributable to ~~the consolidated transmission~~ each of the businesses referred to in paragraph 2 in accordance with the requirements of this condition; and

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- (c) deliver ~~to the Authority~~ those accounts and the auditor's reports ~~referred to in sub-paragraph (a)(ii) and paragraph 8~~required under paragraph 15 (b) of this licence condition to the Authority as soon as is reasonably practicable, and in any event ~~prior to their~~ before publication of such accounts under Part ~~D~~ G below and not later than 31 July following the end of the financial year to which the regulatory accounts relate.

~~8. The licensee shall take all appropriate steps within its power to procure, in relation to its regulatory accounts:~~

~~(a) that the audit referred to in paragraph 7(a)(i) verifies whether the obligation to avoid discrimination and cross-subsidies specified in Article 31 of the Electricity Directive has been respected by the licensee; and~~

~~(b) that the appropriate auditor reports separately on that matter from his report under paragraph 7(a)(ii) addressed to the Authority.~~

#### **Part E: Terms of appointment of the appropriate auditor**

16. ~~9.~~ For the purposes of ~~paragraphs 7 and 8~~ Part D above, the licensee must, at its own expense, enter into a contract of appointment with an appropriate auditor which includes a term requiring that the audit of the licensee's regulatory accounts ~~of the licensee~~ must be conducted by that appropriate auditor in accordance with all such relevant auditing standards in force on the last day of the financial year to which the audit relates as would be appropriate for accounts prepared in accordance with ~~either section 226A or 226B~~ the provision of Part 15 of the Companies Act ~~1985~~ 2006.

#### **Part F: Agreed upon procedures for the appropriate auditor**

17. The licensee must at its own expense enter into a contract of appointment with an appropriate auditor for the completion of agreed upon procedures that are to apply for the purposes of enabling that Auditor to review

(a) the licensee's compliance with its obligations in respect of the prohibition of cross-subsidy and discrimination generally and, in particular, to the extent that they apply to the licensee, under standard conditions E6 (Prohibition of cross subsidies) and E19

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(prohibition on engaging in preferential discriminatory behaviour), of this licence, and

- (b) the statement that by virtue of Part B above is required to be included in the regulatory accounts concerning bases of charge, apportionment, and allocation applied by the licensee in relation to those accounts.
18. The contract of appointment must require that the agreed upon procedures are conducted in relation to each financial year and that the licensee will arrange for the appropriate auditor to address a report to the Authority by 31 July following the end of each such year which:
- (a) states that he has, in a manner consistent with the relevant auditing standards, completed the agreed upon procedures issued by the Authority in respect of the financial year under report; and
  - (b) sets out his findings.
19. If the Authority is satisfied that the appropriate auditor's report submitted under this Part F demonstrates that the licensee has complied with the obligations to avoid discrimination and cross-subsidies that are imposed on the licensee, the report is to be deemed to represent the results of an audit of those obligations.

**Part ~~DG~~: Publication and provision of regulatory accounts**

20. ~~10.~~ Unless the Authority ~~otherwise directs~~, after consulting the licensee, otherwise directs, the licensee ~~shall~~ must publish its regulatory accounts (excluding the statement required to be included in them by virtue of Part B above and any other information agreed by the Authority to be confidential): with the exception of the part of such regulatory accounts which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively required under paragraph 3(b)(viii), and any other information agreed by the Authority in writing to be confidential:
- (a) as a stand-alone document in accordance with this condition;
  - (b) by 31 July ~~following~~ after the end of the financial year to which the accounts relate;
  - (c) ~~on a website used by the licensee in its ordinary course of business (where the regulatory accounts should be reasonably accessible to any person requiring them);~~ and in a way that is accessible from, its

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website or that of an affiliate or ultimate controller of the licensee provided that link is both clear and readily accessible; and

(d) in any other manner which, in the opinion of the licensee, is necessary to secure adequate publicity for the accounts.

21. ~~11.~~ A copy of the regulatory accounts must be provided free of charge:

(a) to ~~Citizens Advice and Citizens Advice Scotland~~ the National Consumer Council (or any successor entity), no later than the date on which the regulatory accounts are published; and

(b) to any person requesting a copy.

### **Part ~~EH~~: Interpretation and definitions**

~~12. References in this condition to sections of the Companies Act 1985 are references to those provisions as amended, substituted or inserted by the relevant provisions of the Companies Act 1989, and if such provisions of the Companies Act 1989 are not in force at the date on which this condition takes effect, it must be construed as if such provisions were in force at such date.~~

~~13. A consent under paragraph 3 or directions under paragraphs 4 or 5 may be given in relation to some or all of the requirements of the relevant paragraph and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.~~

22. Any consent or direction by the Authority given in relation to a provision of this condition may be given in relation to some or all of the requirements of the relevant provision and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.

23. The requirement under paragraph 8 of this condition for the licensee to include a business review, a corporate governance statement, and a directors' report in its regulatory accounts is to be read as if the requirement applied to the licensee as a quoted company, whether or not it is such a company, such that:

(a) the business review has the coverage and content of the business review that a quoted company is required to prepare under section 417 of the Companies Act 2006;

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- (b) the corporate governance statement has the coverage and content of a corporate governance statement that a quoted company is required to prepare under the UK Corporate Governance Code issued under the UK Listing Authority's listing rules and interpretations on corporate governance; and
  - (c) the directors' report has the coverage and content of the directors' report that a quoted company is required to prepare under sections 415, 416, 417, 418(2), and 419(3) and (4) of the Companies Act 2006.
24. For the avoidance of doubt, the licensee should prepare regulatory accounts for the financial year commencing on or after 1 April 2015 in accordance with the licence condition in force as at 31 March 2015.
25. ~~14. In~~ For the purposes of this condition:

**agreed upon procedures**

means procedures from time to time agreed between the Authority, the appropriate auditor, and the licensee for the purpose of enabling the appropriate auditor to review and report to the Authority on matters relating to the requirements referred to at paragraph 17 of this condition.

**applicable accounting framework**

means:

- (a) in accordance with section 396 of the Companies Act 2006 ("Companies Act individual accounts"), or in accordance with international accounting standards ("IAS individual accounts") or
- (b) in accordance with section 403 Companies Act group accounts, or IAS group accounts.

**appropriate auditor**

means:

- (a) in the case of a licensee that is a company within the meaning of section 1 of the Companies Act 2006, a person appointed as auditor under Chapter 2 of Part 16 of that Act;
- (b) in the case of any other licensee that is required by the law of a country or territory within the European Economic Area to appoint an auditor under provisions analogous to those of Chapter 2 of Part 16 of that Act, a person so appointed; and
- (c) in any other case, a person who is

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eligible for appointment as a company auditor under Part 42 of that Act.

**quoted company**

has the meaning given to that term in section 385 of the Companies Act 2006;

**UK Listing Authority**

has the same meaning, as the FCA, as defined in given in section 72 of the Financial Services and Markets Act 2000 2012 and refers to the Financial Services Authority when it acts in its capacity as the competent authority for the purposes of that section.

- ~~(a) — “corporate governance statement” means a statement which describes how the principles of good corporate governance have been applied to the licensee and which a quoted company is required to prepare pursuant to the Combined Code on Corporate Governance issued under the Financial Services Authority’s listing rules and interpretations on corporate governance (and, for the purposes of this condition, the requirement for a quoted company to prepare such a statement is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).~~
- ~~(b) — “directors’ report” means a report having the coverage and content of the directors’ report which a quoted company is required to prepare pursuant to sections 234, 234ZZA and 234ZZB of the Companies Act 1985 (and, for the purposes of this condition, the requirement for a quoted company to prepare such a report is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).~~
- ~~(c) — “operating and financial review” means a review having the coverage and content of the operating and financial review which a quoted company is required to prepare pursuant to section 234AA of the Companies Act 1985 and in accordance with Schedule 7ZA thereof (and, for the purposes of this condition, the requirement for a quoted company to prepare such a review is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).~~
- ~~(d) — “quoted company” has the meaning attributed to it by the Companies Act 1985.~~

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**Condition E3: ~~Change of Financial Year~~ Not Used**

- ~~1.—The definition of “financial year” in standard condition A1 (Definitions and Interpretation) shall, for the purpose only of the statutory accounts of the licensee, cease to apply to the licensee from the date at which the licensee sends a notice to the Authority for that purpose.~~
- ~~2.—Such notice shall:
  - ~~(a)—specify the date from which, for the purpose set out at paragraph 1, the current and subsequent financial years of the licensee shall run; and~~
  - ~~(b)—continue in effect until revoked by the licensee issuing a further notice.~~~~
- ~~3.—The licensee may, for the purpose only of its statutory accounts, change its financial year from that previously notified by sending to the Authority a new notice pursuant to paragraph 1 which specifies the licensee’s new financial year end.~~
- ~~4.—Where the licensee sends the Authority a new notice, the previous notice shall be revoked, as provided by paragraph 2(b), and the licensee’s financial year end shall change with effect from the date specified in the new notice.~~
- ~~5.—The provisions of this condition shall not:
  - ~~(a)—apply to the financial year of the licensee as defined in standard condition A1 (Definitions and Interpretation) for the purpose of accounts or other information produced in compliance with standard condition E2 (Regulatory Accounts); or~~
  - ~~(b)—affect the licensee’s obligations in respect of the payment of licence fees under standard condition A4 (Payments to the Authority).~~~~

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### **Condition E8: Availability of Resources**

#### **[amend paragraphs 3 and 7, as follows]**

3. Where a certificate under paragraph 2 is to be submitted within 7 days of the date that this condition comes into effect, paragraphs 2(a), 2(b) and 2(c) have effect in relation to the licensee as if, for the reference to “from the date of its last published statutory regulatory accounts” in each of those sub-paragraphs there were substituted a reference to “from the date that condition E8 (Availability of resources) comes into effect in that licence”.
  
7. Where a certificate under paragraph 6 is to be submitted within 7 days of the date that this condition comes into effect, paragraphs 6(a), 6(b) and 6(c) have effect in relation to that licence holder as if, for the reference to “from the date of its last published statutory regulatory accounts” in each of those sub-paragraphs there were substituted a reference to “from the date that condition E8 (Availability of resources) comes into effect in that licence”.

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## **Condition E10: Indebtedness**

### **[amend paragraphs 1 and 6, as follows]**

1. In addition to the requirements of standard condition E4 (Disposal of relevant assets), the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
  - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee or any obligation otherwise than:
    - (i) on an arm's length basis;
    - (ii) on normal commercial terms;
    - (iii) or a permitted purpose; and
    - (iv) (if the transaction is within the ambit of standard condition E4 (Disposal of relevant assets) in accordance with that condition);
  - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any associate of the licensee otherwise than by way of:
    - (i) a dividend or other distribution out of distributable reserves;
    - (ii) repayment of capital;
    - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
    - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and made in compliance with the payment condition referred to in paragraph 2;
    - (v) repayment of or payment of interest on a loan not prohibited by sub-paragraph (a);

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- (vi) payments for group corporation tax relief or for the surrender thereof calculated on a basis not exceeding the value of the benefit received; or
- (vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition E7 (Restriction on Activity and Financial Ring Fencing) made on an arm's length basis and on normal commercial terms,

~~(e)~~ provided however, that the provisions of paragraph 3 or, as applicable, paragraph 9 below shall prevail in any of the circumstances described or referred to therein;

- (c) ~~(d)~~ enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (d) ~~(e)~~ continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting on the date this condition comes into effect in the licensee's transmission licence save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous;

provided however that the provisions of sub-paragraphs 1(c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

- 6. The circumstance described by this paragraph is that any issuer credit rating, or instrument credit rating relied upon by the licensee in respect of compliance with the requirement set out at paragraph 1(b) of standard condition E11 (Credit Rating of Licensee), held by the licensee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. or any of their subsidiaries or BBB (low) by DBRS Ratings Ltd ~~(in the case of issuer credit ratings only)~~ or any of its affiliates

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(or such higher issuer credit rating or instrument credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade issuer credit rating), or is an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of standard condition E11 (Credit Rating of Licensee) and:

- (a) is on review for possible downgrade; or
- (b) is on Credit Watch or Rating Watch with a negative designation; or, where neither (a) nor (b) applies:
- (c) the rating outlook of the licensee as specified by any credit rating agency referred to in paragraph 6 which at the relevant time has assigned the lower or lowest investment grade issuer credit rating or instrument credit rating held by the licensee has been changed from stable or positive to negative.

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### **Condition E11: Credit Rating of Licensee**

1. The licensee shall use all reasonable endeavours to ensure that the licensee maintains at all times:
  - (a) an investment grade issuer credit rating;
  - (b) investment grade instrument credit ratings for debt instruments that it has issued and whose aggregate nominal value is either: at least
    - (i) for the period between the commencement of this condition and the publication of the first statutory accounts, at least 75% of a figure equating to the licensee's total assets minus total liabilities as shown in its most recent statutory accounts; the total actual or expected development and construction costs of the offshore transmission system; or
    - (ii) following the publication of statutory accounts, at least 75% of a figure equating to the value of the licensee's total assets minus total liabilities as shown in its most recent statutory accounts; or
  - (c) such alternative financial arrangements to which the Authority has given its consent in writing.
2. The licensee may propose to the Authority alternative financial arrangements which may include, but are not limited to, providing a security, for example in the form of a deposit or an unconditional irrevocable letter of credit, the latter being exercisable under English law within GB drawn on a bank with a credit rating equivalent to at least "A-" with a credit rating agency recognised by Ofgem (ie Standard & Poor's, Moodys, Fitch, or DBRS) residing in a country with a credit rating of at least "A" to a value equal to twelve months gross operating expenditure. Such a proposal by the licensee shall contain sufficient information to enable the Authority to consider whether the proposed alternative financial arrangements demonstrate sufficient financial standing.

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3. The Authority may consent to alternative financial arrangements proposed by the licensee under paragraph 2, subject to any conditions that the Authority considers to be appropriate.

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## **Condition E21: Offshore Transmission Owner of Last Resort**

### **[amend paragraph 2, as follows]**

2. The Authority may, following consultation with the licensee and any other authorised electricity operator directly affected thereby, give a Section E (offshore transmission owner of last resort) Direction to provide transmission services for a period not exceeding five years where a Section E (offshore transmission owner of last resort) Direction previously given to an offshore transmission owner regarding those assets has expired or is due to expire, or:

- (a) if the Authority, following a transitional or generator build tender exercise undertaken in accordance with the tender regulations has not been able to determine a person to be granted an offshore transmission licence for the transmission assets to which the transitional or generator build tender exercise related; or
- (b) if the Authority intends to revoke the transmission licence of an offshore transmission owner; or
- (c) if the Authority intends to revoke a Section E (offshore transmission owner of last resort) Direction given to another transmission licensee;

and were the Section E (offshore transmission owner of last resort) Direction not given, it would significantly increase the likelihood that the generating station that is, or is expected to be, connected to the transmission assets would be unreasonably delayed or stranded.

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