

**To: TC Dudgeon OFTO plc**

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

**Modification of the amended standard conditions of the offshore electricity  
transmission licence held by TC Dudgeon OFTO plc**

1. TC Dudgeon OFTO plc is the holder of an offshore electricity transmission licence ('the Licence') which has been 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 25 August 2020 ('the Notice') that we proposed to modify the following amended standard conditions ('ASC') of the Licence:
  - a. ASC E12-A1: Definitions and Interpretation; and
  - b. ASC E12-J3: Restriction of Transmission Revenue: Allowed Pass-through Items
3. We stated that any representations to the modification proposal must be made on or before 24 September 2020.
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. In total, the Authority issued seven notices proposing similar modifications to all existing offshore transmission ('OFTO') Licences (including that held by TC Dudgeon OFTO plc) on 25 August 2020. We received 11 responses to the notices, 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 Decision Letter.
6. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown in yellow highlight in the accompanying Schedule 1. The reasons for the differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to address minor issues raised in consultation responses, including the placement of the definition of 'Uninsurable', and to ensure consistency in the Licence drafting. These differences are addressed in further detail in the Decision Letter and do not change the reason for, or effect of, the modifications as set out in the Notice.
7. We are making these Licence modifications for the reasons set out in the Notice, and the effect of the modifications will be as described in the Notice.
8. Where an application for permission to appeal our decision is made to the Competition and Markets Authority ('CMA') under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules<sup>2</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

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

<sup>2</sup> CMA70 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655601/energy-licence-modification-appeals-rules.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf)

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 the amended standard licence conditions for the offshore electricity transmission Licence held by TC Dudgeon OFTO plc in the manner specified in the attached Schedule 1. This decision will take effect from 14 January 2021.

This document with the accompanying Decision Letter is notice of the reasons for the decision to modify the offshore electricity transmission licence held by TC Dudgeon OFTO plc as required by section 49A(2) of the Act.

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**Jourdan Edwards**  
**Head of the OFTO Regime, Networks**

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

**17 November 2020**

## **Schedule 1: Licence Modification**

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.

### **Amended Standard Condition E12–A1: Definitions and Interpretation**

*Insert the following definitions in amended standard condition E12-A1:*

*A. after the definition of "Financial Security" and before the definition of "Funding Return":*

‘ "Force Majeure"                      means any event or circumstance which is beyond the reasonable control of the licensee including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under sections 32, 33, 34 and 35 of the Act) and provided, for the avoidance of doubt, that weather conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee.’

*and*

*B. after the definition of "Transmission System Availability Incentive" or "AI<sub>t</sub>":*

‘ "Uninsurable"                      means that the Authority determines either that:

(a) Insurance is not available to the licensee in respect of all or part of its Transmission Assets in the Worldwide Offshore Transmission Asset Insurance Market with reputable insurers of good standing in respect of a Risk; or

(b) the Insurance premium payable for insuring that Risk is at such a level that the Risk is deemed as not being insurable in the Worldwide Offshore Transmission Asset Insurance market with reputable insurers of good standing.

Where:

(c) a "Risk" means the physical loss or damage requiring replacement or rectification of Transmission Assets, which is caused by a Latent Defect resulting from material workmanship design plan or specification;

- (d) “Insurance” means the indemnity which would normally be covered by an Operational All Risk insurance policy with a LEG3/06 exclusion, or equivalent, which includes indemnity for the full cost of replacement or rectification of the Offshore Transmission Assets (but not improvement) rendered necessary by damage which is the consequence of a Latent Defect;
- (e) a “Latent Defect” means a flaw in Offshore Transmission Assets, which:
- i. is an actual defect in material workmanship design plan or specification, not the damage resulting from the defect; and
  - ii. existed but which would not have been apparent to an efficient licensee in the position of the licensee at the time the Offshore Transmission Assets were transferred to it;
- (f) “LEG 3/06” means the London Engineering Group Unique Market Reference for the Model “Improvement” Defects Wording;
- (g) “Worldwide Offshore Transmission Asset Insurance Market” means all insurers who, after an exhaustive search, would reasonably be understood by an efficient licensee, in the position of the licensee, to be participating in the business of insuring offshore transmission assets (to be determined by the Authority); and
- (h) “Offshore Transmission Asset/s” means the transmission system to which the licensee’s Offshore Transmission Owner licence relates as set out in Annex B to amended standard condition E12-B1 (Transmission System Area) in the licensee’s Offshore Transmission Owner Licence.

**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 (OFTO<sub>t</sub>).
2. For the purposes of paragraph 4 of amended standard condition E12–J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) the pass-through revenue adjustment term (PT<sub>t</sub>) is derived from the following formula

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

where:

- LF<sub>t</sub> means the licence fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 3.
- RB<sub>t</sub> means the network rates cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 4 and 5.
- CEL<sub>t</sub> means the Crown Estate Lease cost adjustment term, whether of a positive or negative value, and shall be determined in accordance with paragraph 6.
- DC<sub>t</sub> means the decommissioning cost adjustment term and shall be determined in accordance with paragraphs 7 to 13.
- IAT<sub>t</sub> means the income adjusting event revenue adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 14 to 24.
- TPD<sub>t</sub> means the temporary physical disconnection payment term and shall be determined in accordance with paragraph 25.
- TCA<sub>t</sub> means the tender fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 26.
- MCA<sub>t</sub> means the Marine and Coastal Access Act 2009 cost adjustment term and shall be determined in accordance with paragraphs 27 to 33.
- CEA<sub>t</sub> means the contingent event revenue adjustment term and shall be determined in accordance with paragraphs 34 to 45.
- RFG<sub>t</sub> means the Refinancing Gain Share determined in accordance with paragraphs 46 to 63.

**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 by the Licensee to the Authority).

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

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

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

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

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

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

relates.

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

made a determination under paragraph 11 above within three months of the date on which the notice given by the licensee was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 9, and the Authority has, before the end of the appropriate three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 8 and/or 9 is insufficient to enable the Authority to assess whether additional costs and/or expenses have occurred and/or the amount of any allowed revenue adjustment.

13. The Authority's decision in relation to any notice given under paragraph 7 shall be in writing, shall be copied to the licensee and shall be published.

**Formula for the Income Adjusting Event Revenue Adjustment (IAT<sub>t</sub>)**

14. Where the licensee considers, and can provide supporting evidence that, in respect of Relevant Year t, there have been costs and/or expenses that have been incurred or saved by an Income Adjusting Event, then the licensee shall give written notice of this Income Adjusting event to the Authority.
15. An Income Adjusting Event in Relevant Year t may arise from any of the following:
  - (a) an event or circumstance constituting ~~Force majeure~~ under the STC;
  - (b) an event or circumstance resulting from an amendment to the STC not allowed for when the Allowed Transmission Owner Revenue (OFTO<sub>t</sub>) of the licensee was determined for the Relevant Year t; and
  - (c) an event or circumstance other than listed above which, in the opinion of the Authority, is an Income Adjusting Event and is approved by it as such in accordance with paragraph 21 of this licence condition,

where the event or circumstance has, for Relevant Year t, increased or decreased costs and/ or expenses by more than £1,000,000 (the "threshold amount").

16. A notice received by the Authority under paragraph 14 shall give particulars of:
  - (a) the event or circumstance to which the notice relates and the reason(s) why the licensee considers this event to be an Income Adjusting Event;
  - (b) the amount of any change in costs and/or expenses that can be demonstrated by the licensee to have been caused or saved by the event or circumstance and how the amount of these costs and/or expenses has been calculated, including the extent to which the licensee has claimed or intends to claim under other routes of recourse for any costs and/or expenses arising out of or relating to the event or circumstance;
  - (c) the amount of any allowed revenue adjustment proposed as a consequence of that event or circumstance and how this allowed revenue adjustment has been calculated; and

- (d) any other analysis or information, which the licensee considers sufficient to enable the Authority and the relevant parties to fully assess the event or circumstance to which the notice relates.
17. If the Authority considers that the analysis or information received under paragraph 16 is insufficient to enable both the Authority and the relevant parties to assess whether an Income Adjusting Event has occurred and/or the amount of any revenue adjustment that might be approved, the Authority can make a request or requests that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall give such information to the Authority within one month of the Authority requesting such information or within such extended time as permitted by the Authority.
18. A notice of an Income Adjusting Event referred to in paragraph 14 shall be given as soon as is reasonably practicable after the occurrence of the Income Adjusting Event, and, in any case, not later than three months after the end of the Relevant Year in which it occurs.
19. The Authority will make public, excluding any confidential information, any notice of an Income Adjusting Event as soon as is reasonably practicable following its receipt.
20. Any notice received by the Authority under paragraph 14 above should clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:
- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
  - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 20(a) is necessary for the purposes of enabling the relevant parties to fully assess the event to which the notice relates.
21. The Authority shall determine (after consultation with the licensee and such other persons as it considers desirable):
- (a) whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 14 were caused or saved by an Income Adjusting Event;
  - (b) whether the event or circumstance has increased or decreased the costs and/or expenses given in the notice pursuant to paragraph 14 by more than the threshold amount; and
  - (c) if so:-
    - i. subject to sub-paragraph (iii), whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee

are, insofar as is reasonably practicable, the same as if that Income Adjusting Event had not taken place, and if not, the Authority shall determine what revenue adjustment would secure that effect. Such adjustment shall be:

- a. where the Income Adjusting Event relates to an Uninsurable event or circumstance, reduced by:
  - i. if the licence was granted on or before 28 November 2018, the amount of the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the tender regulations ; or
  - ii. if the licence was granted after 28 November 2018, either £5 million or the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the tender regulations, whichever is greater; and
- b. for the avoidance of doubt, reduced by costs and/or expenses caused by the Income Adjusting Event that are recovered by other routes of recourse available to the licensee, including, but not limited to, commercial arrangements;

unless, and to the extent that, the Authority has already applied such reductions to a previous revenue adjustment related to the same event or circumstance as that set out in the notice pursuant to paragraph 14;

- ii. ~~(d)~~ subject to sub-paragraph (iii), the periods, if any, over which the revenue adjustment determined by the Authority should apply.
- iii. where it is not yet possible to make a final determination under sub-paragraphs (c)(i) and (c)(ii) above, the Authority may direct a partial amount of revenue adjustment, if any, pending the final determination of amount, such final determination to be made as soon as is reasonably practicable.

22. In relation to the Relevant Year t, the income adjusting event revenue adjustment ( $IAT_t$ ) shall be:

- (a) the value, or relevant proportion of the value, determined by the Authority under paragraph 21 above; or
- (b) if the Authority has not requested additional information under paragraph 17 and the Authority has not made a determination under paragraph 21 above within three months (excluding the duration of any consultation under paragraph 21) of the date on which notice of an Income Adjusting Event was received by the Authority, the amount of the allowed revenue adjustment proposed as a consequence of the event in the notice given to the Authority under paragraph 14; or
- (c) if the Authority requests additional information under paragraph 17 and the Authority has not made a determination under paragraph 21 above within three months

(excluding the duration of any consultation under paragraph 21) of receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority; or

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

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

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

26. For the purposes of paragraph 2, TCA<sub>t</sub> shall be an amount, whether of a positive or of a negative value, representing:
- (a) the payments made by the licensee to the Authority in accordance with the Tender Regulations with respect to the to the recovery of the Authority's tender costs. Where the payments have been made in relation to an application for the grant of more than one licence, the licensee shall attribute an appropriate proportion of the relevant payment made to the Authority; and
- (b) any re-payments made by the Authority to the licensee in accordance with the Tender Regulations as a result of the payments collected by the Authority

exceeding its tender costs. Where the re-payments have been made in relation to an application for the grant of more than one licence, the licensee shall be attributed an appropriate proportion of the relevant re-payment made by the Authority.

**Formula for the Marine and Coastal Act 2009 Cost Adjustment (MCA<sub>t</sub>)**

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

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

**Formula for a revenue adjustment in respect of a Contingent Event Revenue Adjustment Term (CEAt)**

34. Where the licensee considers, and can provide supporting evidence that, in respect of Relevant Year t, there have been costs and/or expenses that have been incurred by the licensee in respect of a contingent event, then the licensee shall give written notice of this contingent event to the Authority (in respect of which, the licensee shall not also be entitled to serve a notice in respect of such costs and/or expenses under paragraph 14 of this amended standard condition).
35. A notice provided to the Authority under paragraph 34 shall give particulars of:
- (a) the contingent event to which the notice relates;
  - (b) the extent to which, if at all, the licensee has mitigated or can mitigate any losses arising out of or relating to the contingent event, including but not limited to commercial solutions available to it;
  - (c) the amount of any change in costs and/or expenses that can be demonstrated by the licensee to have been caused by the contingent event and how the amount of these costs and/or expenses has been calculated;
  - (d) the amount of any allowed revenue adjustment proposed as a consequence of the contingent event and how this allowed revenue adjustment has been calculated; and
  - (e) any other analysis or information, which the licensee considers sufficient to enable the Authority and the relevant parties to fully assess the contingent event to which the notice relates.
36. If the Authority considers that the analysis or information provided under paragraph 35 above is insufficient to enable both the Authority and the relevant parties to assess whether a contingent event has occurred and/or the amount of any allowed revenue adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall provide such information to the Authority within one month of the Authority requesting the information, or within the period otherwise directed by the Authority.
37. A notice of a contingent event shall be provided as soon as is reasonably practicable after the occurrence of the contingent event, and, in any case, not later than three months after the end of the Relevant Year in which it occurs.
38. The Authority will make public, excluding any confidential information, any notice of a contingent event following its receipt.
39. Any notice provided to the Authority under paragraph 34 should clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality having regard to:

- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of a person to which it relates; and
  - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 39(a) is necessary for the purposes of enabling the relevant parties fully to assess the contingent event to which the notice relates.
40. The Authority shall determine (after consultation with the licensee and such other persons as it considers desirable) whether a contingent event has occurred and, if so, determine the following in order to calculate the value of the contingent event revenue adjustment:
- (a) whether any or all of the costs and/or expenses given in a notice under paragraph 34 were caused by the contingent event;
  - (b) whether the costs and/or expenses were incurred economically and efficiently;
  - (c) whether the costs and/or expenses are net of all reasonable mitigation of the costs and/or expenses that the licensee has available to it, including but not limited to commercial recovery;
  - (d) if so, whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if the contingent event had not taken place (save for any deductions under sub-paragraphs 40(b) and 40(c)), and if not, the Authority shall determine what revenue adjustment shall secure that effect; and
  - (e) the periods, if any, over which the revenue adjustment determined by the Authority shall apply.
41. The allowed revenue adjustment (CEA<sub>(t)</sub>) for Relevant Year t shall be:
- (a) the value determined by the Authority under paragraph 40; or
  - (b) the value zero where the Authority determines that a contingent event has not occurred; or
  - (c) the value proposed by the licensee in the notice provided to the Authority under paragraph 34 where the Authority has not requested additional information under paragraph 36 and the Authority has not made a determination under paragraph 40 within three months, or such other period that the Authority notifies to the licensee, of the date on which notice of a contingent event was provided to the Authority; or
  - (d) the value proposed by the licensee in the notice provided to the Authority under paragraph 34 where the Authority requests additional information under paragraph 36 and the Authority has not made a determination paragraph 40 within three months, or such other period that the Authority notifies to the licensee, after receiving the additional information requested; or

- (e) the value zero in situations where the licensee fails to provide, within the relevant time period, additional analysis or information requested by the Authority under paragraph 36; or
  - (f) the value zero in all other cases, including situations where the Authority has not made a determination under paragraph 40 within three months of the date on which the notice under paragraph 34 was provided to the Authority or within three months of the date on which the Authority received the additional information requested under paragraph 36 and the Authority has, before the end of the relevant three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 35 and/or 36 is insufficient to enable the Authority to assess whether the contingent event occurred and/or the amount of any allowed revenue adjustment.
42. The Authority's decision in relation to any notice provided under paragraph 34, shall be in writing, shall be copied to the licensee and shall be published (excluding any confidential information).
43. The Authority may revoke an approval of a contingent event and allowed revenue adjustment with the consent of the licensee, following consultation with the licensee and relevant parties, and any such revocation of any contingent event and allowed revenue adjustment shall be in writing, shall be copied to the licensee and shall be published.
44. Where the Authority directs a revenue adjustment under paragraph 41 and it subsequently transpires that all costs and/or expenses allowed for under that revenue adjustment have not been incurred in full, the Authority may retrospectively vary the allowed revenue adjustment following a further assessment of the costs and/or expenses incurred, including an assessment of whether these were economically and efficiently incurred. Any such change to the allowed revenue adjustment shall be in writing and shall follow consultation with the licensee and such other persons as the Authority considers desirable.
45. In this condition:
- |                    |   |
|--------------------|---|
| “contingent event” | means where the licensee has been required by the Secretary of State to increase the size of its security in respect of its decommissioning plan to account for the payment of VAT and/or the disallowance of scrap value allowed for under the decommissioning plan and reflected in the TRS bid at ITT; |
|--------------------|---|

“scrap value”	means the value allowed for the sale of scrap materials, including metal, to be recovered through the decommissioning plan;
“decommissioning plan”	means the plan for the decommissioning of the transmission assets of the licensee as provided to Ofgem under Section 5 of the licensee’s ITT submission for Dudgeon project and reflected in the ITT financial model submitted by the licensee for the Dudgeon project

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

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

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

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

47. A Qualifying Refinancing is a Refinancing, other than an Exempt Refinancing, that will give rise to a Refinancing Gain greater than zero.
48. Where the licensee intends to undertake a Refinancing that may qualify as a Qualifying Refinancing it shall give written notification of such to the Authority including the terms

of the Refinancing, no later than three months prior to when the Refinancing is expected to take place.

49. Following receipt of a notification under paragraph 48 the Authority may request additional information including, but not limited to:
- (a) full details of the terms of the Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it;
  - (b) the proposed value of any financial gain realised from the Refinancing as calculated in accordance with paragraphs 52 to 54 (inclusive) (“Proposed Refinancing Gain”) and evidence of how it was calculated;
  - (c) the proposed value of the Refinancing Gain Share ( $RFG_t$ ) (“Proposed Refinancing Gain Share”) as calculated in accordance with paragraph 55 including the relevant year(s) in which it would apply and evidence of how it was calculated; and
  - (d) any other analysis or information, that would assist the Authority to fully assess the Refinancing to which the notice relates;

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

50. If the Authority considers that the analysis or information received under paragraph 49 is insufficient to enable the Authority to determine if the Refinancing will be a Qualifying Refinancing or to determine the value of the Refinancing Gain and the Refinancing Gain Share ( $RFG_t$ ) or the period(s), if any, over which the Refinancing Gain Share ( $RFG_t$ ) will apply, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority’s request.
51. For the avoidance of doubt, where a Refinancing will not give rise to a Refinancing Gain greater than zero, the licensee does not need to give written notification of the Refinancing to the Authority under paragraph 48.

**Part C: Calculation of the Refinancing Gain and the Refinancing Gain Share ( $RFG_t$ )**

52. The licensee shall calculate the Proposed Refinancing Gain that it must give to the Authority under sub-paragraph 49(b) as an amount equal to the greater of zero and (A - B), where:

A = the Net Present Value of the Distributions to be made to each Relevant Person (without double counting) following the Refinancing projected immediately after the Qualifying Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated so as to be current immediately prior to the Refinancing);

B = the Net Present Value of the Distributions to be made to each Relevant Person (without double counting) following the Refinancing projected immediately prior to the Refinancing (without taking into account the effect of the Refinancing but using the

Financial Model as updated so as to be current immediately prior to the Refinancing).

53. The discount rate used to calculate the Net Present Values A and B for the purposes of paragraph 52, shall be equal to the blended internal rate of return to the Relevant Persons over the expected lifetime of the licence as set out in the Financial Model (“Equity IRR”).
54. For the purposes of paragraph 52, the value of the Refinancing Gain is net of any reasonable and proper breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that the licensee will directly incur in relation to the Qualifying Refinancing (without double counting).
55. The licensee shall calculate the Proposed Refinancing Gain Share ( $RFG_t$ ) as the amount, which, when summed over the Relevant Years to which it applies, shall represent 50 per cent of the Refinancing Gain realised by the licensee in a Qualifying Refinancing.

**Part D: Determination of the Refinancing Gain and the Refinancing Gain Share ( $RFG_t$ )**

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

from the licensee under paragraph 48 but the Refinancing referred to in the notice does not subsequently take place.

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

58. A Refinancing will be exempt for the purposes of determining a Refinancing Gain Share where it is undertaken to remove a licensee from Financial Distress irrespective of whether it will give rise to a Refinancing Gain greater than zero (“Exempt Refinancing”).
59. Where the licensee intends to undertake a Refinancing that may qualify as an Exempt Refinancing it must give written notification to the Authority, and use best endeavours to provide this no later than three months prior to when the Refinancing is expected to take place, detailing:
  - (a) full details of the terms of the Exempt Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it; and
  - (b) any other analysis or information, that would assist the Authority to determine if the Refinancing is an Exempt Refinancing to which the notice relates.
60. If the Authority considers that the analysis or information provided under paragraph 59 is insufficient to enable it to determine whether the Refinancing is an Exempt Refinancing, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority’s request.
61. The Authority shall determine whether the Refinancing detailed in the notice received under paragraph 59 is an Exempt Refinancing, within three months of the later of:
  - (a) the date the notice was received by the Authority under paragraph 59; or
  - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 60.
62. If the Authority has not made a determination under paragraph 61 within three months of the later of:
  - (a) the date the notice was provided to the Authority under paragraph 59; or
  - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 60.the Refinancing detailed in the notice provided under paragraph 59 shall be deemed to be an Exempt Refinancing.
63. The Authority’s determinations in relation to any notices given under paragraphs 48 or 59 shall be in writing, shall be copied to the licensee and shall be published.

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

Blue Transmission London Array Limited

Blue Transmission Sheringham Shoal Limited

Blue Transmission Walney 1 Limited

Blue Transmission Walney 2 Limited

Greater Gabbard OFTO plc

TC Ormonde OFTO Limited

Thanet OFTO Limited

TC Barrow OFTO Limited

TC Gunfleet Sands OFTO Limited

TC Robin Rigg OFTO Limited

Diamond Transmission Partners BBE Limited

Diamond Transmission Partners Galloper Limited

Diamond Transmission Partners RB Limited

Diamond Transmission Partners Walney Extension Limited

TC Dudgeon OFTO plc

Humber Gateway OFTO Limited

TC Westernmost Rough OFTO Limited

Gwynt y Mor OFTO plc

TC Lincs OFTO Limited

WoDS Transmission plc