

## **Annex 2. EU Exit – Notice of proposed licence modifications to the licence conditions of the Electricity Interconnector Licence**

**To: All holders of an Electricity Interconnector Licence**

### **Electricity Act 1989**

#### **Section 11A(2)**

### **Notice of statutory consultation on a proposal to modify the standard conditions of all Electricity Interconnector Licences and the special conditions of Nemo Link Limited and National Grid North Sea Link Limited Licences.**

1. The Gas and Electricity Markets Authority (the Authority) proposes to modify the standard conditions of all Electricity Interconnector Licences granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 by amending Standard Licence Conditions under section 11A(1)(b):
  - SLC1 (Definitions and interpretation)
  - SLC5 (Information regarding technical rules, operation and co-ordinated development)
  - SLC10 (Charging methodology to apply to third party access to the licensee’s interconnector)
  - SLC11A (Approval of terms for access to the licensee’s interconnector)
  - SLC12 (Application of licence conditions 9, 10, and 11: Exemption orders)
  - SLC22 (Notification of changes that may affect eligibility for certification)
  - SLC23 (Regional Cooperation)

set out in Annex 2.1.a and 2.1.b to this Notice.

2. Further, the Authority proposes to modify the special conditions of Nemo Link Limited Licence granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 by amending special conditions under section 11A(1)(a):
  - 1 (Definitions and Interpretation)
  - 2 (Cap Level and Floor Level)
  - 4 (Interconnector Availability Incentive)
  - 5 (Assessed Revenue)
  - 6 (Within Period Adjustment)
  - 7 (Non-Controllable Costs)
  - 8 (Process for determining the value of the Post Construction Adjustment terms)
  - 9 (Process for determining the value of the Opex Reassessment Adjustment terms)

set out in Annex 2.2.a and 2.2.b to this Notice.

3. Further, the Authority proposes to modify the special conditions of National Grid North Sea Link Limited Licence granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 by amending special conditions under section 11A(1)(a):

- 5 (Assessed Revenue)

set out in Annex 2.3.a and 2.3.b to this Notice.

4. The modifications we propose to make are to reflect the changes in the legislative framework that will be implemented in the event that the United Kingdom (UK) leaves the European Union (EU) without a deal.
5. The effect of these proposed modifications is to ensure that the references in the licence to EU law (e.g. Directives, Regulations and Commission decisions) shall be read as references to such EU law as it had effect immediately before exit day subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. As far as possible, the modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy positions as reflected in the licence conditions.
6. The proposed modifications and the reasons why they are proposed are stated in Annex 2.1.a to 2.3.b to this Notice. The effect of the proposed changes is set out in paragraph 5 of this Notice. Further information concerning the proposed modifications is contained in the letter entitled 'Preparing for EU Exit: statutory consultation on consequential licence modifications in the event the UK leaves the EU without a deal' which can be found at [www.ofgem.gov.uk](http://www.ofgem.gov.uk).
7. Any representations with respect to the proposed licence modifications must be made on or before 15 February 2019 to: Heather Stewart, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to [EUExit@ofgem.gov.uk](mailto:EUExit@ofgem.gov.uk).
8. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
9. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

**Cathryn Scott**  
**Director, Wholesale Markets & Commercial**

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

**14 January 2019**

## Annex 2.1.a Electricity Interconnector Standard Conditions Modification Table

Standard Licence Condition	Current wording	Proposed change	Reasons for change
1	the “Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC	the “Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC <u>as it has effect immediately before Exit Day as read with the modifications set out in the Act</u>	The licence refers to the Directive in a number of conditions. This proposal will ensure that the references to the Directive are to be interpreted on the basis of the Directive as it has effect immediately before Exit Day as read with the modifications inserted into section 5B of the Electricity Act 1989 by regulation 39 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 <sup>1</sup> (the “Regulations”).
1	New definition	<u>“Exit Day” has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018</u>	This new definition is required to give effect to the revised definition of “Directive”

<sup>1</sup>The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations- 2019 were published in draft on 17<sup>th</sup> December 2018 (<https://assets.publishing.service.gov.uk/media/5c17d12140f0b60c70c4ba79/Regulations.pdf>) and have been laid in draft before the sifting committees of both Houses of Parliament. The modifications that are proposed to the licence are on the assumption that the draft Regulations will be made and come into force in their published format before any proposed licence modification is to take effect. Cross references to the Regulations reflect the numbering in the published draft as at the date of this notice.

Standard Licence Condition	Current wording	Proposed change	Reasons for change
1	New definition	<p><u>“legally binding decision of the European Commission and/or Agency” means any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law</u></p>	<p>Post EU exit, future decisions of the Commission and the Agency will no longer have any legal effect in the UK.</p> <p>However, decisions made prior to Exit Day will continue to have effect. The introduction of this new definition will achieve this.</p> <p>The terminology is consistent with the amendment made by draft regulation 41 to section 3E of the Electricity Act.</p>
1	New definition	<p><u>“Northern Ireland Authority for Utility Regulation” means the body corporate established under Article 3 of the Energy (Northern Ireland) Order 2003</u></p>	<p>New defined term required to give effect to the revised definition of “regulatory authority”</p>
1	<p>“regulatory authority” means any body (other than the Authority) designated by a Member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence</p>	<p>“regulatory authority” means any body (other than the Authority) designated by a Member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence, <u>and where appropriate the Northern Ireland Authority for Utility Regulation</u></p>	<p>The word "Member" has been amended to "member" to align with the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			<p>A reference to NIAUR has been added for the purposes of “regulatory authority” to ensure NIAUR remains included.</p>
1	<p>“related undertaking” has the meaning given to it in Article 2 of the Directive</p>	<p>“related undertaking” <u>means an “affiliated undertaking” and / or an “associated undertaking” both as defined in Article 2 of Directive 2013/34/EU (on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings) as it has effect immediately before Exit Day and / or an undertaking which belongs to the same shareholders</u>  <del>has the meaning given to it in Article 2 of the Directive</del></p>	<p>The definition will be amended to remove cross reference to Article 2 of the Electricity Directive. Article 2 referred to definitions of affiliated and associated undertakings contained in Directive 83/349, which was repealed in 2013.</p> <p>The proposed definition incorporates the references to “affiliated undertaking” and “associated undertaking” as defined in Directive 2013/34.</p> <p>The old Article 2 definition also referenced “an undertaking which belongs to the same</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			shareholders” and we kept the reference to it.
1	New definition	<u>“Retained EU Law” has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018</u>	This definition is required to give effect to the new definitions that include reference to “Retained EU Law”.
5(1)	<p>In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority the licensee shall:</p> <p>(a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and</p> <p>(b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.</p>	<p>In order to promote effective competition and the efficient functioning of the <del>internal</del> <u>electricity market in Great Britain</u>, if so directed by the Authority the licensee shall:</p> <p>(a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and</p> <p>(b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.</p>	<p>The references to “internal market” in this licence have been deleted as the UK will no longer be part of the EU internal energy market. These references “internal market” are now replaced with “electricity market in Great Britain” that Ofgem regulates and in respect of which this licence has been issued.</p>
10(5)(a)	<p>Prior to submitting the charging methodology to the Authority for approval the licensee shall:</p> <p>(a) take all reasonable steps to ensure that all persons including those in other Member States who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to</p>	<p>Prior to submitting the charging methodology to the Authority for approval the licensee shall:</p> <p>(a) take all reasonable steps to ensure that all persons including those in <del>other</del> <u>Member</u> States who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to</p>	<p>The word "Member" has been amended to "member" to align with the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
	make written representations; and	make written representations; and	<p>The word “other” has been deleted as the UK will no longer be a member State post EU exit.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
10(11)(a)	<p>Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons, including those in other Member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p>	<p>Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons, including those in <del>other</del> <u>M</u>ember States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p>	<p>The word "Member" has been amended to "member" to align with the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.</p> <p>The word “other” has been deleted as the UK will no longer be a member State post EU exit. The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
10(24)	<p>A notice given under subparagraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the licensee’s interconnector is connected;</li> <li>(b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee’s interconnector;</li> <li>(c) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;</li> <li>(d) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;</li> <li>(e) there is a material change to the contract terms which</li> </ul>	<p>A notice given under subparagraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the <u>electricity market in Great Britain</u> <del>internal electricity market</del>, or the efficient functioning of the regulated system to which the licensee’s interconnector is connected;</li> <li>(b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee’s interconnector;</li> <li><del>(e) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;</del></li> <li><u>(c)</u> there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;</li> <li><u>(d)</u> there is a material change to the contract terms which has not be approved by the Authority;</li> <li><u>(e)</u> the contract is extended beyond its initial term;</li> </ul>	<p>The references to “internal market” in this licence have been deleted as the UK will no longer be part of the EU internal energy market. These references “internal market” are now replaced with “electricity market in Great Britain” that Ofgem regulates and in respect of which this licence has been issued.</p> <p>The point (c) has been deleted because post exit day the European Commission will not have powers to issue the relevant request. As a consequence, the subsequent paragraphs have their numbering changed from (d) to (g) to (c) to (f).</p>



Standard Licence Condition	Current wording	Proposed change	Reasons for change
	<p>has not be approved by the Authority;</p> <p>(f) the contract is extended beyond its initial term;</p> <p>(g) the licensee:</p> <p style="padding-left: 20px;">(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or</p> <p style="padding-left: 20px;">(ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.</p>	<p><u>(f)</u> the licensee:</p> <p style="padding-left: 20px;">(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or</p> <p style="padding-left: 20px;">(ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.</p>	
11A(3)	<p>The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:</p> <p style="padding-left: 20px;">(a) arrangements for maximising the available interconnector capacity, including: the methodology for</p>	<p>The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:</p> <p style="padding-left: 20px;">(a) arrangements for maximising the available interconnector capacity, including: the methodology for</p>	Proposed editing change to correct spelling error.

Standard Licence Condition	Current wording	Proposed change	Reasons for change
	<p>the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise corss-border trade;</p>	<p>the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise <del>corss</del> <u>cross</u>-border trade;</p>	
11A(5)(a)	<p>Prior to submitting the Access Rules to the Authority for approval the licensee shall: (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and</p>	<p>Prior to submitting the Access Rules to the Authority for approval the licensee shall: (a) take all reasonable steps to ensure that all persons, including those in <del>other M</del> member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and</p>	<p>The word "Member" has been amended to "member" to align with the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.</p> <p>The word "other" has been deleted as the UK will no longer be a member State post EU exit.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
11A(10)	<p>Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p>	<p>Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:</p> <p>(a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in <del>other Member</del> Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and</p>	<p>The word "Member" has been amended to "member" to align with the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.</p> <p>The word "other" has been deleted as the UK will no longer be a member State post EU exit.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
12(5)	<p>An exemption order issued under paragraph 2 may be revoked in accordance with its provisions and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 17 of the Regulation.</p>	<p>An exemption order issued under paragraph 2 may be revoked in accordance with its provisions. <del>and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 17 of the Regulation.</del></p>	<p>Second part of the sentence is deleted because the referred EU law is not part of the Retained EU Law.</p>
22(1)	<p>Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification</p>	<p>Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its <del>final</del> certification</p>	<p>Changed to align with proposed amendments to s10D of the Electricity Act 1989 made by</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
	<p>decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.</p>	<p>decision under section 10D(<del>7</del><u>74</u>) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.</p>	<p>regulation 46 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, which will update the certification process to remove the role of the European Commission.</p>
22(3)	<p>If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.</p>	<p>If at any time <del>from 3 March 2013</del> the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a <del>third</del> country <u>outside the United Kingdom</u>, or that a person from a <del>third</del> country <u>outside the United Kingdom</u> has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.</p>	<p>Regulation 43(a) of the draft Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 removes reference to “on or after 3<sup>rd</sup> March” in section 10B of the Electricity Act, so corresponding change is being made.</p> <p>The text has been also amended to align with proposed amendments to certification provisions (in sections 10B to 10O) of the Electricity Act made by the Electricity and Gas etc. (Amendment</p>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			etc.) (EU Exit) Regulations 2019 to replace the term “person from a third country” with “person from a country outside the UK”. This is to reflect the fact that post EU Exit, the UK will become a “third country”.
22(5)(b)	Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and	Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a <del>third</del> <u>country outside the United Kingdom</u> , or that a person from a <del>third</del> <u>country outside the United Kingdom</u> has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified <del>providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and</del>	Changed to align with proposed amendments to certification provisions (in sections 10B to 100) of the Electricity Act made by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 to replace the term “person from a third country” with “person from a country outside the UK”. This is to reflect the fact that post EU Exit, the UK will become a “third country”. Regulation 43(a) of the Electricity and Gas etc. (Amendment etc.) (EU Exit)

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			Regulations 2019 removes reference to “on or after 3 <sup>rd</sup> March” in section 10B of the Electricity Act, so corresponding change made.
22(6)	“person from a third country” has the same meaning as in section 10O of the Act	“person from a <del>third</del> <u>country outside the United Kingdom</u> ” has the same meaning as in section 10O of the Act	Changed to align with proposed amendments to certification provisions (in sections 10B to 10O) of the Electricity Act made by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 to replace the term “person from a third country” with “person from a country outside the UK”. This is to reflect the fact that post EU Exit, the UK will become a “third country”.
23.1	If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation and pursuant to Article 6 of the Directive and Article 12 of the Regulation.	If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation <u>with member States and pursuant to Article 6 of the Directive and Article 12 of the Regulation.</u>	Proposed deletion of reference to Article 6 of the Directive as in our view, the reference to Article 6 will not operate

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			<p>effectively post EU Exit.</p> <p>Regulation 150 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 amends the Electricity Regulation by omitting Article 12. This amendment reflects that omission.</p>
23.3	<p>In this condition: “vertically integrated undertaking” shall have the meaning given in Article 2 of the Directive.</p>	<p>In this condition: “vertically integrated undertaking” shall have the meaning given <u>in the Act</u> <del>Article 2 of the Directive.</del></p>	<p>Proposed deletion of Article 2 of the Directive on the basis that section 10A of the Electricity Act 1989 contains a definition of “vertically integrated undertaking”.</p>

## Annex 2.1.b Electricity Interconnector Standard Conditions Change Marked Licence Text

We have included the sections of the licence conditions we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

### Condition 1. Definitions and interpretation

1. In these licence conditions unless the context otherwise requires:

the “Directive”	means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC <u>as it has effect immediately before Exit Day as read with the modifications set out in the Act and Gas (Amendment) (EU Exit) Regulations 2019</u>
<u>“Exit Day”</u>	<u>has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018</u>
<u>“legally binding decision of the European Commission and/or Agency”</u>	<u>means any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not, Retained EU Law</u>
<u>“Northern Ireland Authority for Utility Regulation”</u>	<u>means the body corporate established under Article 3 of the Energy (Northern Ireland) Order 2003</u>
“regulatory authority”	means any body (other than the Authority) designated by a <del>M</del> member State whose responsibilities include the oversight or regulation of any of the activities or matters covered by this licence, <u>and where appropriate the Northern Ireland Authority for Utility Regulation</u>



“related undertaking”

means an “affiliated undertaking” and / or an “associated undertaking” both as defined in Article 2 of Directive 2013/34/EU (on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings) as it has effect immediately before Exit Day and / or an undertaking which belongs to the same shareholders  
~~has the meaning given to it in Article 2 of the Directive~~

“Retained EU Law”

has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018

#### **Condition 5. Information regarding technical rules, operation and co-ordinated development**

1. In order to promote effective competition and the efficient of the ~~internal~~ energy market in Great Britain, if so directed by the Authority the licensee shall:
  - (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and
  - (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.
2. To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system, information concerning the operation and technical specifications of the licensee’s interconnector in such manner and at such times as may reasonably:
  - (a) be required by a relevant transmission licensee or relevant distribution licensee to enable it to comply with its obligations under its own licence or applicable industry codes;
  - (b) be specified in directions issued from time to time by the Authority to the licensee for the purpose of sub-paragraph (a) above, having taken into consideration any representations made

to the Authority by the licensee and any relevant transmission licensee or relevant distribution licensee, and in accordance with any conditions contained in such directions; or

(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system and its coordinated development and interoperability with the licensee’s interconnector.

3. The licensee shall be entitled to refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c) on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the licensee unless and until the Authority, by notice in writing given to the licensee, directs it to provide that item of information on the ground that provision thereof is necessary or expedient for the purpose mentioned in paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).
4. This condition shall not require the licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.
5. Sub-paragraph 2(a) and 2(c) shall not apply in respect of any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system which has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition is not communicated, directly or indirectly, to any electricity generator or electricity supplier.
6. In this condition:

“relevant distribution licensee”	means any distribution licensee to whose system the licensee’s interconnector is connected
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“relevant transmission licensee”	means any transmission licensee to whose system the licensee’s interconnector is connected or with whom the licensee interfaces as a relevant system operator
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### **Condition 10. Charging methodology to apply to third party access to the licensee's interconnector**

1. Unless otherwise determined by the Authority, the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority.

#### **Initial approval of charging methodology**

2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee's interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.
3. The charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made for access to (including use of), the interconnector, including:
  - (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
    - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
    - (ii) any charges for the provision (including the provision to any relevant system operator) of ancillary services, including but not limited to balancing services;
  - (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and
  - (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.
4. The charges and the application of the underlying charging methodology shall be objective, transparent, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency (collectively, the 'relevant charging methodology objectives').
5. Prior to submitting the charging methodology to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons including those in other Member States who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and
  - (b) furnish to the Authority a report setting out:
    - (i) the terms originally proposed in the charging methodology;
    - (ii) the representations, if any, made by interested persons; and
    - (iii) any change in the terms of the methodology intended as a consequence of such representations.
6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval, and the provisions of paragraph 7 shall apply.
7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

### **Provisional Charging Methodology**

8. If the Authority does not approve the charging methodology submitted by the licensee, or the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.

### **Review of the charging methodology by the licensee**

9. The licensee shall review its charging methodology at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of ensuring that the charging methodology better achieves the relevant charging methodology objectives.
10. The licensee shall also review its charging methodology where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's charging methodology. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the charging methodology as may be requisite for the purpose of better achieving the relevant charging methodology objectives.

### **Modification of charging methodology**

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the charging methodology unless the licensee has:
  - (a) taken all reasonable steps to ensure that all persons, including those in ~~other M~~member States, who may have a direct interest in the charging methodology, including the Authority, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
  - (b) furnished the Authority with a report setting out:
    - (i) the terms originally proposed for the modification;
    - (ii) the representations, if any, made by interested persons to the licensee;
    - (iii) any change in the terms of the modification intended in consequence of such representations;
    - (iv) how the intended modification better achieves the relevant charging methodology objectives; and
    - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.

12. The licensee shall not propose a modification to the charging methodology more than once a year unless the Authority consents otherwise.
13. The licensee shall comply with any direction from the Authority to amend its proposed modification charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.
14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.

#### **Publication of charging methodology statement**

15. The licensee shall publish (at least on its website) a charging methodology statement that sets out the prevailing charges for access to the licensee's interconnector and how the charges have been derived in accordance with its charging methodology, as soon as practicable after the charging methodology has been approved by the Authority, or, where the charging methodology has been modified, in accordance with any modified charging methodology. Unless the Authority directs otherwise, the charging methodology statement shall be published 28 days prior to it coming into effect.

#### **Provision of charging methodology or charging methodology statement to any person**

16. The licensee shall send a copy of its: charging methodology; charging methodology statement; and/or any proposed modification to the charging methodology proposed under paragraph 11, to

any person who requests such charging methodology, charging methodology statement or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of a charging methodology, charging methodology statement or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

**Where tariffs, and/or a tariff or charging methodology has been established or approved by a regulatory authority other than the Authority**

17. Where the licensee's interconnector either:

- (a) forms part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives; or
- (b) does not form part of an integrated transmission system and the tariffs and/or the tariff or charging methodology that applies to access to the licensee's interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meet the relevant charging methodology objectives,

the Authority may issue a notice to the licensee that the establishment or approval by that regulatory authority meets the requirements of this licence condition. Such notice will constitute approval of a charging methodology for the purposes of this licence condition.

18. A notice issued under paragraph 17 will expire on the earlier of:

- (a) the date, if any, provided for expiry in the notice, or
- (b) the withdrawal of the notice by the Authority, such withdrawal being effective from the date specified by the Authority, such date being not less than four months after the Authority has informed the licensee that the notice will be withdrawn.

19. Where the Authority has issued a notice to the licensee under paragraph 17 and the tariffs, and/or tariff or charging methodology that have or has been established or approved by the regulatory authority have or has been modified, or is or are to be modified, the licensee shall furnish the Authority with a report setting out:

- (a) the terms originally proposed for the modification;
- (b) the representations, if any, made by any interested person to the licensee;
- (c) any change in the terms of the modification intended in consequence of the representations;
- (d) how the intended modification better achieves the relevant charging methodology objectives; and
- (e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.

20. Where the Authority has issued a notice to the licensee under paragraph 17, until that notice expires or is withdrawn by the Authority, paragraphs 2 and 5 to 15 of this condition do not apply to the licensee.

**Agreements entered into before 1 July 2004 on the basis of a charging methodology that was approved by either the Authority or the European Commission**

21. Paragraphs 2 and 5 to 15 of this licence condition do not apply to a contract for access to the licensee's interconnector that was entered into before 1 July 2004 and which:

- (a) was entered into on the basis of a charging methodology that had been approved by either the Authority or the European Commission; and
- (b) subject to paragraph 24, the Authority has given notice to the licensee that paragraphs 2 and 5 to 15 of this licence condition do not apply to such contract.

22. The licensee shall inform the Authority in writing of any proposed material changes to a contract which is the subject of a notice given under sub-paragraph 21(b). This information shall be furnished to the Authority at least 28 days before the proposed contractual variation becomes effective.

23. A notice given under sub-paragraph 21(b) may be given unconditionally or subject to such conditions as the Authority considers appropriate.

24. A notice given under sub-paragraph 21(b) may be withdrawn or revoked by the Authority in any of the following circumstances:

- (a) the Authority considers that such contract is operating in a manner which is detrimental to competition or the effective functioning of the electricity market in Great Britain ~~internal~~



~~electricity market~~, or the efficient functioning of the regulated system to which the licensee's interconnector is connected;

(b) the licensee is found to be in breach of any national or European competition laws, such breach relating to the licensee's interconnector;

~~(c) the European Commission requests that such contract is subject to approved tariffs and/or charging methodologies;~~

~~(d)~~ (c) there is merger or acquisition activity in relation to or by the licensee that is detrimental to competition;

~~(e)~~ (d) there is a material change to the contract terms which has not be approved by the Authority;

~~(f)~~ (e) the contract is extended beyond its initial term;

~~(g)~~ (f) the licensee:

(i) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or

(ii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it.

### **Provision of information to Authority in relation to the charging methodology**

25. The licensee shall comply with any direction given by the Authority to furnish it with a statement showing, so far as is reasonably practicable, the methods by which, and the principles upon which, its charging methodology has been derived.

### **Condition 11A. Approval of terms for access to the licensee's interconnector**

#### **Initial approval of access rules**

1. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Access Rules. The licensee may, subject to the approval of the Authority, submit a statement which includes both the charging methodology and Access Rules.

2. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.
3. The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:
  - (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise ~~cross~~-border trade;
  - (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating power flows against the capacity;
  - (c) arrangements for the management of congestion, including procedures for the licensee to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
  - (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
  - (e) arrangements for any ancillary services, such as balancing arrangements, including where users may offer ancillary services to assist with relevant system operator balancing; and
  - (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.
4. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively 'the relevant access rules objectives').
5. Prior to submitting the Access Rules to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons, including those in ~~other~~ Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and
  - (b) furnish to the Authority a report setting out:
    - (i) the terms originally proposed in the Access Rules;
    - (ii) the representations, if any, made by interested persons; and
    - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.
6. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 7 shall apply.
7. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules for the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

#### **Review of the Access Rules by the licensee**

8. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
9. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 10 to

13, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

### **Modification of Access Rules**

10. Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:
- (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in ~~other~~ Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
  - (b) furnished the Authority with a report setting out:
    - (i) the terms originally proposed for the modification;
    - (ii) the representations, if any, made by interested persons to the licensee;
    - (iii) any change in the terms of the modification intended in consequence of such representations;
    - (iv) how the intended modification better achieves the relevant access rules objectives; and
    - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 13 expires.
11. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.
12. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

13. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

### **Publication of Access Rules**

14. The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

### **Provision of Access Rules to any person**

15. The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 10, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.

### **Condition 12. Application of licence conditions 9, 10 and 11: Exemption orders**

1. In accordance with this licence condition, licence conditions 9, 10 and 11 ('the relevant conditions') may:
  - (a) not have effect in this licence;
  - (b) be suspended from operation in this licence;
  - (c) be brought into, (where the licence condition did not have effect) or back into operation (where the licence condition was suspended from operation), in this licence.
2. On the application of the licensee in accordance with paragraph 3, the Authority must (either before, at the same time, or after this licence has been granted to the licensee) issue an exemption

order providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Authority is satisfied that it has complied with the requirements placed on the Authority by Article 17 of the Regulation and in the issuing of the exemption order is otherwise compliant with that Article.

3. A licensee may make a request in writing to the Authority for the Authority to issue an exemption order such that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Authority to determine whether such an exemption order should be issued given the matters of which the Authority must be satisfied before issuing an exemption order, as set out in paragraph 1 of Article 17 of the Regulation. The request shall include the Access Rules for approval by the Authority in accordance with paragraph 9 below, which Access Rules shall comply with paragraphs 3 and 4 of licence condition 11A, and prior to submitting the Access Rules for approval, the licensee shall comply with paragraph 5 of licence condition 11A.
4. An exemption order shall be in writing and may be expressed:
  - (a) so as to have effect or for a period specified in, or determined under the exemption;
  - (b) subject to such conditions as the Authority considers appropriate including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates;
  - (a) so as to have effect in relation to the whole or any part of, as the case may be:
    - (i) the capacity of the new interconnector;
    - (ii) the significant increase in the capacity of the licensee's interconnector.
5. An exemption order issued under paragraph 2 may be revoked in accordance with its provisions. ~~and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 17 of the Regulation.~~
6. An application made under paragraph 3 may relate to a new interconnector or to a part of an interconnector in so far as that part represents a significant increase of capacity to that interconnector.
7. An exemption order will not be made until the Authority has approved the Access Rules.

8. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 9 shall apply.
9. The Access Rules shall not be approved for the purposes of paragraph 7 unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.
10. The requirements of this paragraph are that the Authority considers that the Access Rules:
  - (a) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;
  - (b) will not restrict reselling of rights to have electricity transmitted through the exempt infrastructure.
11. In this licence condition:
 

“new interconnector”	means an interconnector not completed by 4 August 2003.
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**Condition 22. Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its ~~final~~ certification decision under section 10D(74) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing

of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
3. If at any time ~~from 3 March 2013~~ the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a ~~third~~ country outside the United Kingdom, or that a person from a ~~third~~ country outside the United Kingdom has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.
4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.
5. Where the licensee has been certified, by 31 July of each year flowing certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:
  - (a) Whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
  - b) Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a ~~third~~ country outside the United Kingdom, or that a person from a ~~third~~ country outside the United Kingdom has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified. ~~providing that the licensee is only~~



~~required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and~~

- (c) Whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act

“control” has the same meaning as in section 10O of the Act

“person from a ~~third~~ country outside the United Kingdom” has the same meaning as in section 10O of the Act

“relevant date” has the same meaning as in section 10M of the Act

“shareholder right” has the same meaning as in section 10O of the Act

**Condition 23. Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation with member States. and pursuant to Article 6 of the Directive and Article 12 of the Regulation.
2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.
3. In this condition:
 

“vertically integrated undertaking” shall have the meaning given in the Act. Article 2 of the Directive.

## Annex 2.2.a Nemo Link Limited Special Conditions Modification Table

Special Condition	Current wording	Proposed change	Reasons for change
1(5)	“Belgian National Regulatory Authority” means the National Regulatory Authority (as that term is referred to in Article 35(1) of Directive 2009/72/EC) for Belgium	“Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del> ”  means the <u>regulatory authority</u> <del>National Regulatory Authority</del> (as that term is referred to in <del>Article 35(1) of Directive 2009/72/EC</del> ) for Belgium	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p>
1(5)	“Exceptional Event” means: (a) an event or circumstance that results in or causes the Actual Availability of licensee’s Interconnector to fall below the Minimum Availability Target in any Relevant Year; and (b) in the Authority’s opinion, (following consultation with the Belgian National	“Exceptional Event” means: (a) an event or circumstance that results in or causes the Actual Availability of licensee’s Interconnector to fall below the Minimum Availability Target in any Relevant Year; and (b) in the Authority’s opinion, (following consultation with the Belgian <u>regulatory</u>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined</p>

Special Condition	Current wording	Proposed change	Reasons for change
	<p>Regulatory Authority) the event or circumstance:</p> <p>i. constitutes a Force Majeure event under the special conditions of this licence;</p> <p>ii. has been appropriately mitigated and managed by the licensee including responding to the event in line with Good Industry Practice; and</p> <p>iii. the Authority is satisfied that the licensee has met the requirements of Part A of special condition 4 of this licence</p>	<p><del>authority National Regulatory Authority</del>) the event or circumstance:</p> <p>i. constitutes a Force Majeure event under the special conditions of this licence;</p> <p>ii. has been appropriately mitigated and managed by the licensee including responding to the event in line with Good Industry Practice; and</p> <p>iii. the Authority is satisfied that the licensee has met the requirements of Part A of special condition 4 of this licence</p>	<p>term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
1(5)	<p>“Floor Start Date” means the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian National Regulatory Authority</p>	<p>“Floor Start Date” means the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian <del>regulatory authority National Regulatory Authority</del></p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
1(5)	<p>“Opex Reassessment Adjustment” (ORA)</p> <p>means the adjustments to the Cap Level and Floor Level following determination by the Authority (after consultation with the Belgian National Regulatory Authority) in accordance with Part D of special condition 2 of this licence</p>	<p>“Opex Reassessment Adjustment” (ORA)</p> <p>means the adjustments to the Cap Level and Floor Level following determination by the Authority (after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) in accordance with Part D of special condition 2 of this licence</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
1(5)	<p>“Post Construction Adjustment” (PCA)</p> <p>means the adjustments to the Cap Level and Floor Level following a determination by the Authority (after consultation with the Belgian National Regulatory Authority) in accordance with Part C of special condition 2 of this licence</p>	<p>“Post Construction Adjustment” (PCA)</p> <p>means the adjustments to the Cap Level and Floor Level following a determination by the Authority (after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) in accordance with Part C of special condition 2 of this licence</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
1(5)	<p>“Regime Start Date” means either:</p> <ul style="list-style-type: none"> <li>(a) the Floor Start Date or a date up to 12 months after the Target Completion Date, whichever occurs earlier; or</li> <li>(b) if the Full Commissioning Date has, in the Authority’s opinion, been delayed by a Force Majeure event, such later date as the Authority may (following consultation with the Belgian National Regulatory Authority, the licensee and such persons as it considers desirable) specify in writing to the</li> </ul>	<p>“Regime Start Date” means either:</p> <ul style="list-style-type: none"> <li>(a) the Floor Start Date or a date up to 12 months after the Target Completion Date, whichever occurs earlier; or</li> <li>(b) if the Full Commissioning Date has, in the Authority’s opinion, been delayed by a Force Majeure event, such later date as the Authority may (following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, the licensee and such persons as it considers desirable)</li> </ul>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which</p>

Special Condition	Current wording	Proposed change	Reasons for change
	licensee	specify in writing to the licensee	<p>can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
1(5)	<p>“Within Period Adjustment” means the revenue adjustment determined by the Authority, following consultation with the Belgian National Regulatory Authority, in accordance with special condition 6 of this licence.</p>	<p>“Within Period Adjustment” means the revenue adjustment determined by the Authority, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, in accordance with special condition 6 of this licence.</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
2(5)(b)	<p>The derived levels shall come into force as follows:</p> <ul style="list-style-type: none"> <li>(a) The Cap Level shall come in force on the Regime Start Date;</li> <li>(b) The Floor Level shall come into force on the Floor Start Date which shall be the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian National Regulatory Authority,</li> </ul> <p>and shall, subject to any adjustments specified in this condition and Part C (Determination of the Decommissioning Cost Adjustment term) of special condition 7 of this licence, remain fixed for the Regime Duration.</p>	<p>The derived levels shall come into force as follows:</p> <ul style="list-style-type: none"> <li>(a) The Cap Level shall come in force on the Regime Start Date;</li> <li>(b) The Floor Level shall come into force on the Floor Start Date which shall be the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>,</li> </ul> <p>and shall, subject to any adjustments specified in this condition and Part C</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as</p>



Special Condition	Current wording	Proposed change	Reasons for change
		<p>(Determination of the Decommissioning Cost Adjustment term) of special condition 7 of this licence, remain fixed for the Regime Duration.</p>	<p>described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
2(10)	<p>Unless the Authority has already specified an earlier Floor Start Date under paragraph 5(b) of this condition, the Authority shall, at the request of the licensee and after consultation with the Belgian National Regulatory Authority:</p> <ul style="list-style-type: none"> <li>(a) confirm whether or not it considers the criteria specified in paragraph 7 of this condition have been satisfied; and</li> <li>(b) if so, direct the date on which the Full Commissioning Date falls (such date being the Floor Start Date).</li> </ul>	<p>Unless the Authority has already specified an earlier Floor Start Date under paragraph 5(b) of this condition, the Authority shall, at the request of the licensee and after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>:</p> <ul style="list-style-type: none"> <li>(a) confirm whether or not it considers the criteria specified in paragraph 7 of this condition have been satisfied; and</li> <li>(b) if so, direct the date on which the Full Commissioning Date falls (such date being the Floor Start Date).</li> </ul>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
2(12)	<p>The value of the PCAC term and the value of the PCAF term:</p> <p>(a) shall be determined by the Authority, following consultation with the Belgian National Regulatory Authority, in accordance with the process set out in special condition 8 (Process for determining the value of the Post Construction Adjustment terms);</p>	<p>The value of the PCAC term and the value of the PCAF term:</p> <p>(a) shall be determined by the Authority, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, in accordance with the process set out in special condition 8 (Process for determining the value of the Post Construction Adjustment terms);</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
2(13)	<p>For the purposes of paragraph 12(a) to 12(d) of this condition, the Authority shall, following consultation with the Belgian National Regulatory Authority, determine a value that represents the difference between:</p> <ul style="list-style-type: none"> <li>(a) the Authority’s estimate, assumed in the Preliminary Cap Level and Preliminary Floor Level, of the costs associated with developing, constructing, operating, maintaining and decommissioning of the licensee’s Interconnector; and</li> <li>(b) the Authority’s assessment, at the Post Construction Review stage, of the economic and efficient costs associated with developing, constructing, operating, maintaining and decommissioning</li> </ul>	<p>For the purposes of paragraph 12(a) to 12(d) of this condition, the Authority shall, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, determine a value that represents the difference between:</p> <ul style="list-style-type: none"> <li>(a) the Authority’s estimate, assumed in the Preliminary Cap Level and Preliminary Floor Level, of the costs associated with developing, constructing, operating, maintaining and decommissioning of the licensee’s Interconnector; and</li> <li>(b) the Authority’s assessment, at the Post Construction Review stage, of the economic and efficient costs associated with developing, constructing, operating, maintaining and</li> </ul>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in</p>

Special Condition	Current wording	Proposed change	Reasons for change
	of the licensee’s Interconnector.	decommissioning of the licensee’s Interconnector.	member States is to be retained and maintains the current position.
2(14)(a)	<p>The value the ORAC term and the value of the ORAF term:</p> <p>(a) shall be determined by the Authority, following consultation with the Belgian National Regulatory Authority, in accordance with the process set out in special condition 9 (Process for determining the value of the Opex Reassessment Adjustment terms);</p>	<p>The value the ORAC term and the value of the ORAF term:</p> <p>(a) shall be determined by the Authority, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, in accordance with the process set out in special condition 9 (Process for determining the value of the Opex Reassessment Adjustment terms);</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and</p>

Special Condition	Current wording	Proposed change	Reasons for change
			maintains the current position.
2(15)	<p>For the purposes of paragraphs 14(a) to 14(d) of this condition, the Authority shall, following consultation with the Belgian National Regulatory Authority, determine a value that represents the difference between:</p> <ul style="list-style-type: none"> <li>(a) the Authority’s assessment, at the Post Construction Review stage, of the economic and efficient costs associated with operating and maintaining the licensee’s Interconnector; and</li> <li>(b) the Authority’s reassessment, at the Opex Reassessment stage, of the economic and efficient costs associated with operating and maintaining the licensee’s Interconnector.</li> </ul>	<p>For the purposes of paragraphs 14(a) to 14(d) of this condition, the Authority shall, following consultation with the Belgian <del>regulatory authority</del> <u>National Regulatory Authority</u>, determine a value that represents the difference between:</p> <ul style="list-style-type: none"> <li>a. the Authority’s assessment, at the Post Construction Review stage, of the economic and efficient costs associated with operating and maintaining the licensee’s Interconnector; and</li> <li>b. the Authority’s reassessment, at the Opex Reassessment stage, of the economic and efficient costs associated with operating and maintaining the licensee’s Interconnector.</li> </ul>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>

Special Condition	Current wording	Proposed change	Reasons for change
2(19)	The formula specified in paragraph 18 shall be reviewed by the Authority (following consultation with the Belgian National Regulatory Authority, the licensee and such persons as it considers desirable) at the Post Construction Review stage.	The formula specified in paragraph 18 shall be reviewed by the Authority (following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del> , the licensee and such persons as it considers desirable) at the Post Construction Review stage.	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
4(23)	Where the licensee has submitted a request to the Authority under paragraph 21 of this condition, the Authority	Where the licensee has submitted a request to the Authority under paragraph 21 of this condition, the Authority	The concept of “National Regulatory Authority” has not

Special Condition	Current wording	Proposed change	Reasons for change
	<p>may, following consultation with the Belgian National Regulatory Authority, issue a direction specifying:</p> <ul style="list-style-type: none"> <li>(a) whether any or all of the Interconnector Outage(s) specified in a request pursuant to paragraph 21 of this condition were caused or saved by an Exceptional Event; and</li> <li>(b) if so, whether in the Authority’s opinion, the Exceptional Event with respect to which the licensee has submitted request under paragraph 21 of this condition, has been appropriately mitigated and managed by the licensee (consistent with the requirements of paragraph 3 of this condition) and whether the Authority accepts the proposed Availability Reduction Value specified by the licensee in its request under paragraph 22(a) and if not specify an alternative Availability Reduction Value.</li> </ul>	<p>may, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, issue a direction specifying:</p> <ul style="list-style-type: none"> <li>(a) whether any or all of the Interconnector Outage(s) specified in a request pursuant to paragraph 21 of this condition were caused or saved by an Exceptional Event; and</li> <li>(b) if so, whether in the Authority’s opinion, the Exceptional Event with respect to which the licensee has submitted request under paragraph 21 of this condition, has been appropriately mitigated and managed by the licensee (consistent with the requirements of paragraph 3 of this condition) and whether the Authority accepts the proposed Availability Reduction Value specified by the licensee in its request under paragraph 22(a) and if not specify an alternative Availability Reduction Value.</li> </ul>	<p>been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>

Special Condition	Current wording	Proposed change	Reasons for change
4(32)	<p>“Allowed Outage” means an Interconnector Outage (in MWh) that:</p> <p>(a) was caused by the de-energisation (whether partial or whole), disconnection or curtailment of the licensee’s Interconnector by the GB System Operator or the Belgian System Operator; and</p> <p>(b) is specified in writing by the Authority (after consultation with the Belgian National Regulatory Authority) as being an Allowed Outage</p>	<p>“Allowed Outage” means an Interconnector Outage (in MWh) that:</p> <p>(a) was caused by the de-energisation (whether partial or whole), disconnection or curtailment of the licensee’s Interconnector by the GB System Operator or the Belgian System Operator; and</p> <p>(b) is specified in writing by the Authority (after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) as being an Allowed Outage</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
5(13)	<p>For the purposes of this condition, any source of Interconnector Revenue shall only be considered an</p>	<p>For the purposes of this condition, any source of Interconnector Revenue shall only be considered an</p>	<p>The concept of “National Regulatory Authority” has not</p>



Special Condition	Current wording	Proposed change	Reasons for change
	<p>Additional Revenue Source if the Authority, after consultation with the Belgian National Regulatory Authority , has directed in writing to the licensee that it is an Additional Revenue Source.</p>	<p>Additional Revenue Source if the Authority, after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, has directed in writing to the licensee that it is an Additional Revenue Source.</p>	<p>been included in the Retained EU Law. However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
5(15)	<p>“Firmness” has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management and Commission Regulation (EU) 2016/1719 of 26</p>	<p><del>“Firmness” has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management and Commission Regulation (EU) 2016/1719 of 26</del></p>	<p>The text of definition of “Firmness” as appearing in Commission Regulation (EU) 2015/1222 (which is no longer part of the Retained</p>

Special Condition	Current wording	Proposed change	Reasons for change
	September 2016 establishing a guideline on forward capacity allocation	<del>September 2016 establishing a guideline on forward capacity allocation</del> <u>means a guarantee that cross-zonal capacity rights will remain unchanged and that compensation is paid if they are nevertheless changed</u>	EU Law) has been added for legal certainty purposes.  Both Regulation 2015/1222 and Commission Regulation (EU) 2016/1719 are revoked by regulation 5 of the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 and will not form part of Retained EU Law.
6 (12)	The Authority shall determine a Within Period Adjustment request (after consultation with the licensee, the Belgian National Regulatory Authority and such other persons as it considers desirable) and issue a direction specifying: [...]	The Authority shall determine a Within Period Adjustment request (after consultation with the licensee, the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del> and such other persons as it considers desirable) and issue a direction specifying: [...]	The concept of “National Regulatory Authority” has not been included in the Retained EU Law.  However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.  We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated

Special Condition	Current wording	Proposed change	Reasons for change
			<p>to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
7(23)	<p>The Authority will determine, after consultation with the Belgian National Regulatory Authority, the licensee and such other persons as it considers desirable: [..]</p>	<p>The Authority will determine, after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, the licensee and such other persons as it considers desirable: [..]</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
7(33)	<p>Where the licensee has submitted a request in accordance with paragraphs 29 to 32 of this condition and has provided all relevant information in accordance with this Part E of this condition, the Authority shall issue a direction determining:</p> <p>(a) whether there has been a relevant change in legislative requirements and whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 29 of this condition were caused by the change in legislative requirements; and</p> <p>(b) if so, the periods, if any, over which the adjustment term <math>DCC_t</math> and <math>DCF_t</math> terms determined by the Authority (after consultation with the Belgian National</p>	<p>Where the licensee has submitted a request in accordance with paragraphs 29 to 32 of this condition and has provided all relevant information in accordance with this Part E of this condition, the Authority shall issue a direction determining:</p> <p>(a) whether there has been a relevant change in legislative requirements and whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 29 of this condition were caused by the change in legislative requirements; and</p> <p>(b) if so, the periods, if any, over which the adjustment term <math>DCC_t</math> and <math>DCF_t</math> terms determined by the Authority (after consultation with the Belgian</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as</p>

Special Condition	Current wording	Proposed change	Reasons for change
	Regulatory Authority) should apply.	<u>regulatory authority</u> <del>National Regulatory Authority</del> ) should apply.	described in the standard conditions above.  The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.
7(37)	<p>In the event that:</p> <p>(a) monies have been paid to the licensee by the GB System Operator for the purposes of decommissioning the licensee’s Interconnector (i.e. below Floor Level payments have included allowances for costs and/or expenses in relation to the licensee’s obligations with respect to decommissioning of the licensee’s Interconnector); and/or</p> <p>(b) monies have been retained by the licensee for the purposes of decommissioning the licensee’s interconnector that would otherwise have been paid by the licensee to the GB System Operator (i.e. above Cap Level payments</p>	<p>In the event that:</p> <p>(a) monies have been paid to the licensee by the GB System Operator for the purposes of decommissioning the licensee’s Interconnector (i.e. below Floor Level payments have included allowances for costs and/or expenses in relation to the licensee’s obligations with respect to decommissioning of the licensee’s Interconnector); and/or</p> <p>(b) monies have been retained by the licensee for the purposes of decommissioning the licensee’s interconnector that would otherwise have been paid by the licensee to the GB System Operator (i.e. above Cap Level payments</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p>

Special Condition	Current wording	Proposed change	Reasons for change
	<p>have been reduced to account for allowances for costs and/or expenses in relation to the licensee’s obligations with respect to decommissioning of the licensee’s Interconnector); and</p> <p>(c) such monies are not required for the purposes of decommissioning the licensee’s Interconnector at the end of the Regime Duration,</p> <p>then the Authority shall determine, after consultation with the licensee, the Belgian National Regulatory Authority and other such persons as it considers desirable, appropriate treatment of such monies in light of future plans for the operation of the licensee’s Interconnector after the Regime Duration.</p>	<p>have been reduced to account for allowances for costs and/or expenses in relation to the licensee’s obligations with respect to decommissioning of the licensee’s Interconnector); and</p> <p>(c) such monies are not required for the purposes of decommissioning the licensee’s Interconnector at the end of the Regime Duration,</p> <p>then the Authority shall determine, after consultation with the licensee, the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del> and other such persons as it considers desirable, appropriate treatment of such monies in light of future plans for the operation of the licensee’s Interconnector after the Regime Duration.</p>	<p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
7(38)	<p>“Network And Property Rates” means:</p> <p>(a) in England and Wales, the rates payable by the licensee in respect of hereditaments on the Central Rating Lists (England and Wales) compiled under section 52 of the Local Government Finance Act 1988 and hereditaments on the Local Rating Lists compiled under</p>	<p>“Network And Property Rates” means:</p> <p>(a) in England and Wales, the rates payable by the licensee in respect of hereditaments on the Central Rating Lists (England and Wales) compiled under section 52 of the Local Government Finance Act 1988 and hereditaments on the Local Rating Lists compiled under</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy</p>

Special Condition	Current wording	Proposed change	Reasons for change
	<p>sections 41 and 41A of the Local Government Finance Act 1988 (or any legislation amending or replacing those enactments);</p> <p>(b) in Scotland, the rates payable by the licensee in respect of any land and heritages on the Valuation Rolls compiled under the Local Government Scotland Act 1975, the Local Government etc (Scotland) Act 1994;</p> <p>(c) in Belgium, any network rates payable by the licensee as specified by the Authority in writing (after consultation with the Belgian National Regulatory Authority) as being a Belgian network rate; and</p> <p>such costs not falling under points (a) to (c) as the Authority specifies in writing as being costs that constitute property rates payable by the licensee in respect of the licensee’s Interconnector.</p>	<p>sections 41 and 41A of the Local Government Finance Act 1988 (or any legislation amending or replacing those enactments);</p> <p>(b) in Scotland, the rates payable by the licensee in respect of any land and heritages on the Valuation Rolls compiled under the Local Government Scotland Act 1975, the Local Government etc (Scotland) Act 1994;</p> <p>(c) in Belgium, any network rates payable by the licensee as specified by the Authority in writing (after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) as being a Belgian network rate; and</p> <p>such costs not falling under points (a) to (c) as the Authority specifies in writing as being costs that constitute property rates payable by the licensee in respect of the licensee’s Interconnector.</p>	<p>regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above. The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
8(13)	<p>Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and after consultation with the Belgian National Regulatory Authority, determine whether the licensee’s proposed values for the PCA terms is acceptable and, if not, specify the values of the PCA terms.</p>	<p>Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, determine whether the licensee’s proposed values for the PCA terms is acceptable and, if not, specify the values of the PCA terms.</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
8(16)	<p>Prior to completing its determination under paragraph 13 of this condition, the Authority shall consult with the licensee, the Belgian National Regulatory Authority, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period.</p>	<p>Prior to completing its determination under paragraph 13 of this condition, the Authority shall consult with the licensee, the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period.</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian</p>



Special Condition	Current wording	Proposed change	Reasons for change
			<p>regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
9(2)	<p>The value of the ORA terms shall be determined by the Authority, following consultation with the Belgian National Regulatory Authority, not less than 10 years following the Regime Start Date, if either:</p> <ul style="list-style-type: none"> <li>(a) such determination is requested by the licensee in accordance with paragraph 4 of this condition; or</li> <li>(b) the Authority has notified the licensee, in accordance with paragraph 5 of this condition, that it considers such a determination to be appropriate, and in any case no more than once.</li> </ul>	<p>The value of the ORA terms shall be determined by the Authority, following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, not less than 10 years following the Regime Start Date, if either:</p> <ul style="list-style-type: none"> <li>(a) such determination is requested by the licensee in accordance with paragraph 4 of this condition; or</li> <li>(b) the Authority has notified the licensee, in accordance with paragraph 5 of this condition, that it considers such a determination to be appropriate, and in any case no more than once.</li> </ul>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
9(13)	<p>Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and following consultation with the National Regulatory Authority, determine the values of the ORA terms under paragraph 2(a) or paragraph 2(b) of this condition.</p>	<p>Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, determine the values of the ORA terms under paragraph 2(a) or paragraph 2(b) of this condition.</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p>

Special Condition	Current wording	Proposed change	Reasons for change
			<p>The definition of “regulatory authority” has been amended as described in the standard conditions above.</p> <p>The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.</p>
9(17)	<p>Prior to completing its determination under paragraph 2(a) or paragraph 2(b) of this condition, the Authority shall consult with the licensee, the Belgian National Regulatory Authority, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period.</p>	<p>Prior to completing its determination under paragraph 2(a) or paragraph 2(b) of this condition, the Authority shall consult with the licensee, the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period.</p>	<p>The concept of “National Regulatory Authority” has not been included in the Retained EU Law.</p> <p>However, we needed a defined term for the Belgian energy regulator (CREG) that is relevant for the NEMO licence.</p> <p>We believe that a short and simple term of “Belgian regulatory authority”, which can be abbreviated to BRA, is the optimal option.</p> <p>The definition of “regulatory authority” has been amended as</p>

<b>Special Condition</b>	<b>Current wording</b>	<b>Proposed change</b>	<b>Reasons for change</b>
			described in the standard conditions above. The obligation on the licensee to consult with relevant entities in member States is to be retained and maintains the current position.

## Annex 2.2.b Nemo Link Limited Special Conditions Change Marked Licence Text

We have included the sections of the special conditions we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

### Special Condition 1: Definitions and Interpretation

#### Definitions in alphabetical order

1. In these special conditions unless the context otherwise requires:

- |   |  |
|---|--|
| <p>“Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>”</p> | <p>means the <u>regulatory authority</u> <del>National Regulatory Authority</del> (as that term is referred to in Article 35(1) of Directive 2009/72/EC) for Belgium</p>   |
| <p>“Exceptional Event”</p>  | <p>means:</p> <ul style="list-style-type: none"> <li>(a) an event or circumstance that results in or causes the Actual Availability of licensee’s Interconnector to fall below the Minimum Availability Target in any Relevant Year; and</li> <li>(b) in the Authority’s opinion, (following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) the event or circumstance: <ul style="list-style-type: none"> <li>i. constitutes a Force Majeure event under the special conditions of this licence;</li> <li>ii. has been appropriately mitigated and managed by the licensee including responding to the event in line with Good Industry Practice; and</li> <li>iii. the Authority is satisfied that the licensee has met the requirements of Part A of special condition 4 of this licence</li> </ul> </li> </ul> |
| <p>“Floor Start Date”</p>   | <p>means the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del></p>   |
| <p>“Opex Reassessment Adjustment”(ORA)”</p>   | <p>means the adjustments to the Cap Level and Floor Level following determination by the Authority (after consultation with the Belgian <u>regulatory authority</u> <del>National Regulatory Authority</del>) in accordance with Part D of special condition 2 of</p>  |

	this licence
“Post Construction Adjustment” (PCA)”	means the adjustments to the Cap Level and Floor Level following a determination by the Authority (after consultation with the Belgian <u>regulatory authority National Regulatory Authority</u> ) in accordance with Part C of special condition 2 of this licence
“Regime Start Date”	means either: <ol style="list-style-type: none"> <li>(a) the Floor Start Date or a date up to 12 months after the Target Completion Date, whichever occurs earlier; or</li> <li>(b) if the Full Commissioning Date has, in the Authority’s opinion, been delayed by a Force Majeure event, such later date as the Authority may (following consultation with the Belgian <u>regulatory authority National Regulatory Authority</u>, the licensee and such persons as it considers desirable) specify in writing to the licensee</li> </ol>
“Within Period Adjustment”	means the revenue adjustment determined by the Authority, following consultation with the Belgian <u>regulatory authority National Regulatory Authority</u> , in accordance with special condition 6 of this licence.

## Special Condition 2: Cap Level and Floor Level

1. The purpose of this condition is to calculate the value of the Cap Level term and the Floor Level term, against which the licensee’s Assessed Revenue is assessed, in accordance with special condition 3 (Cap and Floor Assessment), at the end of each of Relevant Assessment Period of the Regime Duration.
2. This condition also provides for the calculation of various adjustments to the Cap Level and Floor Level.

### Structure of this condition

3. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation and entry into force of the Cap Level term (CL<sub>t</sub>) and Floor Level term (FL<sub>t</sub>);
  - (b) Part B of this condition sets out the Preliminary Cap Level (PCL) and Preliminary Floor Level (PFL);
  - (c) Part C of this condition sets out the calculation of the Post Construction Adjustment At Cap term (PCAC) and the Post Construction Adjustment At Floor term (PCAF);
  - (d) Part D of this conditions sets out the calculation of the Opex Reassessment Adjustment At Cap term (ORAC) and the Opex Reassessment Adjustment At Floor term (ORAF);
  - (e) Part E of this condition sets out the calculation of the Availability Incentive Adjustment At Cap term (AIC<sub>t</sub>) and the Availability Incentive Adjustment At Floor term (AIF<sub>t</sub>);

- (f) Part F of this condition sets out the calculation of the Purchasing Power Parity Index term (PPPI<sub>t</sub>); and
- (g) Part G sets out the calculation of the Partial Year Cap Adjustment Factor term (PYC<sub>t</sub>) and the Partial Year Floor Adjustment Factor term (PYF<sub>t</sub>).

Part A: Calculation and entry into force of the Cap Level term (CL<sub>t</sub>) and Floor Level term (FL<sub>t</sub>)

4. The Cap Level and Floor Level for any Relevant Year are calculated in accordance with the following formulae:

(a)  $CL_t = PYC_t \times (PCL + PCAC + ORAC) \times AIC_t \times PPPI_t$

(b)  $FL_t = PYF_t \times (PFL + PCAF + ORAF) \times AIF_t \times PPPI_t$

Where:

AIC <sub>t</sub>	means the Availability Incentive Adjustment At Cap term for Relevant Year <i>t</i> and is determined in accordance with Part B of special condition 4 (Interconnector Availability Incentive) of this licence and shall have a value in the range specified in paragraph 16 of this condition
AIF <sub>t</sub>	means the Availability Incentive Adjustment At Floor term for Relevant Year <i>t</i> and is determined in accordance with Part C of special condition 4 of this licence and shall have a value specified in paragraph 17 of this condition
CL <sub>t</sub>	means the Cap Level for Relevant Year <i>t</i> and is calculated in accordance with the formula in paragraph 4(a) of this condition except where the Authority has issued a direction under paragraph 33 of special condition 7 (Non-Controllable Costs) of this licence, in which case it shall be calculated in accordance with paragraph 36(a) of special condition 7 of this licence
FL <sub>t</sub>	means the Floor Level in Relevant Year <i>t</i> and is calculated in accordance with the formula in paragraph 4(b) of this condition except where the Authority has issued a direction under paragraph 33 of special condition 7, in which case it shall be calculated in accordance with paragraph 36(b) of special condition 7 of this licence
PCAC	means the Post Construction Adjustment At Cap term and is determined in accordance with Part C of this condition
PCAF	means the Post Construction Adjustment At Floor term and is determined in accordance with Part C of this condition
PCL	means the Preliminary Cap Level specified in paragraph 11(a) of this condition
PFL	means the Preliminary Floor Level specified in paragraph 11(b) of this condition
PPPI <sub>t</sub>	means the Purchasing Power Parity Index term for Relevant Year <i>t</i> and is calculated in accordance with Part F of this condition

PYC <sub>t</sub>	means the Partial Year Cap Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with Part G of this condition
PYF <sub>t</sub>	means the Partial Year Floor Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with Part G of this condition
ORAC	means the Opex Reassessment Adjustment At Cap term and is determined in accordance with Part D of this condition
ORAF	means the Opex Reassessment Adjustment At Floor term and is determined in accordance with Part D of this condition

5. The derived levels shall come into force as follows:

- (a) The Cap Level shall come in force on the Regime Start Date;
- (b) The Floor Level shall come into force on the Floor Start Date which shall be the Full Commissioning Date or such earlier date as may be specified in writing by the Authority following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~,

and shall, subject to any adjustments specified in this condition and Part C (Determination of the Decommissioning Cost Adjustment term) of special condition 7 of this licence, remain fixed for the Regime Duration.

6. For the avoidance of doubt, the Floor Start Date shall not precede the Regime Start Date.

7. For the purposes of paragraph 5 of this condition, the Full Commissioning Date means the date:

- (a) that falls after the successful completion of such procedures and tests in relation to the licensee's Interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that such an interconnector is available for the use of conveyance of electricity at the Rated Capacity; and
- (b) that falls before the successful completion of 60 days of continuous operation (at the Rated Capacity) of the licensee's Interconnector provided that:
  - i. the period of time in which the events or circumstances specified in paragraph 8(a) to 8(c) of this condition shall be discounted subject to Authority direction in accordance with paragraph 10 of this condition; and
  - ii. should the licensee consider that any of the events or circumstances specified in paragraph 8(a) to 8(c) have occurred, the licensee provides sufficient information to the Authority to demonstrate this.

8. The events or circumstances referred to in paragraph 7 of this condition are as follows:

- (a) de minimis periods of one hour or less of non-operation of the licensee's Interconnector that do not indicate an on-going construction defect with the licensee's Interconnector;
- (b) Exceptional Events; and



- (c) non-operation of the licensee's Interconnector as a result of insufficient price differential making electricity flow commercially non-viable.
9. For the purposes of paragraph 7(b)(i) of this condition, "shall be discounted" shall have the meaning: the 60 days continuous operation shall be paused on the date and time of the start of the event or circumstance and shall resume on the date and time that normal operation recommences.
10. Unless the Authority has already specified an earlier Floor Start Date under paragraph 5(b) of this condition, the Authority shall, at the request of the licensee and after consultation with the Belgian regulatory authority ~~National Regulatory Authority~~:
- (a) confirm whether or not it considers the criteria specified in paragraph 7 of this condition have been satisfied; and
  - (b) if so, direct the date on which the Full Commissioning Date falls (such date being the Floor Start Date).

#### Part B: Preliminary Cap Level and Preliminary Floor Level

11. The Preliminary Cap Level and Preliminary Floor Level set by the Authority for the licensee's Interconnector are as follows:
- (a) the Preliminary Cap Level is set to £83,806,402 per year, expressed in real 2013/14 Sterling prices; and
  - (b) the Preliminary Floor Level is set to £48,807,317 per year, expressed in real 2013/14 Sterling prices.

#### Part C: Calculation of the Post Construction Adjustment At Cap term and Post Construction Adjustment at Floor term (PCAC and PCAF)

12. The value of the PCAC term and the value of the PCAF term:
- (a) shall be determined by the Authority, following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, in accordance with the process set out in special condition 8 (Process for determining the value of the Post Construction Adjustment terms);
  - (b) shall represent the difference between sub-paragraphs (a) and (b) of paragraph 13 of this condition;
  - (c) shall be expressed in real 2013/14 Sterling prices; and
  - (d) shall, from the date on which the PCAC and PCAF terms take effect, remain fixed for the remainder of the Regime Duration; or
  - (e) unless and until such determination under paragraphs 12(a) to 12(d) of this condition is made, shall have the value zero.
13. For the purposes of paragraph 12(a) to 12(d) of this condition, the Authority shall, following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, determine a value that represents the difference between:
- (a) the Authority's estimate, assumed in the Preliminary Cap Level and Preliminary Floor Level, of the costs associated with developing, constructing, operating, maintaining and

- decommissioning of the licensee's Interconnector; and
- (b) the Authority's assessment, at the Post Construction Review stage, of the economic and efficient costs associated with developing, constructing, operating, maintaining and decommissioning of the licensee's Interconnector.

Part D: Calculation of the Opex Reassessment Adjustment At Cap term and Opex Reassessment Adjustment At Floor term (ORAC and ORAF)

14. The value the ORAC term and the value of the ORAF term:
- (a) shall be determined by the Authority, following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, in accordance with the process set out in special condition 9 (Process for determining the value of the Opex Reassessment Adjustment terms);
- (b) shall represent the difference between sub-paragraphs (a) and (b) of paragraph 15 of this condition;
- (c) shall be expressed in real 2013/14 Sterling prices; and
- (d) shall, from the date on which the ORAC and ORAF terms takes effect, remain fixed for the remainder of the Regime Duration; or
- (e) in the absence of a determination under paragraphs 14(a) to 14(d) of this condition, shall have the value zero.
15. For the purposes of paragraphs 14(a) to 14(d) of this condition, the Authority shall, following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, determine a value that represents the difference between:
- (a) the Authority's assessment, at the Post Construction Review stage, of the economic and efficient costs associated with operating and maintaining the licensee's Interconnector; and
- (b) the Authority's reassessment, at the Opex Reassessment stage, of the economic and efficient costs associated with operating and maintaining the licensee's Interconnector.

Part E: Calculation of the Availability Incentive Adjustment At Cap term (AIC<sub>t</sub>) and Availability Incentive Adjustment At Floor term (AIF<sub>t</sub>)

16. The value of the AIC<sub>t</sub> term is determined in accordance with Part B of special condition 4 (Interconnector Availability Incentive) of this licence and shall have a value between 0.98 and 1.02.
17. The value of the AIF<sub>t</sub> term is determined in accordance with Part C of special condition 4 of this licence and shall have a value of either zero or 1.00.

Part F: Calculation of the Purchasing Power Parity Index term (PPPI<sub>t</sub>)

18. Subject to paragraphs 19 and 20 of this condition, the value of the PPPI<sub>t</sub> term is calculated in accordance with the following formula:

$$PPPI_t = 0.5 \times \left( \frac{UK RPI index_t}{UK RPI index_{2013/14}} \right) + 0.5 \times \frac{\left( \frac{Belgium CPI index_t}{Belgium CPI index_{2013/14}} \right)}{\left( \frac{GBP_t/EUR_t}{GBP_{2013/14}/EUR_{2013/14}} \right)}$$

19. The formula specified in paragraph 18 shall be reviewed by the Authority (following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, the licensee and such persons as it considers desirable) at the Post Construction Review stage.
20. Following the review specified in paragraph 19 of this condition, the Authority may issue a direction that amends the formula specified in paragraph 18 of this condition for calculating the value of the  $PPPI_t$  term. Such direction may also specify parameters for further review over the Regime Duration.

Where:

Belgian CPI index $_t$	<p>means:</p> <p>(a) for the first Relevant Year of the Regime Duration, with respect to each of the 12 months in the calendar year in which the first Relevant Year falls, the 12 month arithmetic average of the monthly index number of consumer prices for Belgium, as identified by Statistics Belgium, where the index in 2004 equals 100;</p> <p>(b) for the last Relevant Year of the Regime Duration, with respect to each of the 12 months in the period 1<sup>st</sup> January to 31<sup>st</sup> December which fall in the last Relevant Year, the 12 month arithmetic average of the monthly index number of consumer prices for Belgium, as identified by Statistics Belgium, where the index in 2004 equals 100; or</p> <p>(c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year <math>t</math>, the 12 month arithmetic average of the monthly index number of consumer prices for Belgium, as identified by Statistics Belgium, where the index in 2004 equals 100</p>
Belgian CPI index $_{2013/14}$	<p>means, with respect to each of the 12 months from 1 April 2013 to 31 March 2014, the 12 month arithmetic average of the monthly index number of consumer prices for Belgium, as identified by Statistics Belgium where the index in 2004 equals 100, and has the value of 122.702</p>
GBP $_t$ / EUR $_t$	<p>means:</p> <p>(a) for the first Relevant Year of the Regime Duration, with respect to each of the 12 months in the calendar year in which the first Relevant Year falls, the 12 month arithmetic average of the monthly exchange rate XUMAERS for Euro to Sterling conversions as identified by the Bank of England;</p> <p>(b) for the last Relevant Year of the Regime Duration, with respect to each of the 12 months in the period 1<sup>st</sup> January to 31<sup>st</sup> December which fall in the last Relevant Year, the 12 month arithmetic average</p>

	<p>of the monthly exchange rate XUMAERS for Euro to Sterling conversions as identified by the Bank of England; or</p> <p>(c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year <math>t</math>, the 12 month arithmetic average of the monthly exchange rate XUMAERS for Euro to Sterling conversions as identified by the Bank of England</p>
GBP <sub>2013/14</sub> / EUR <sub>2013/14</sub>	means, with respect to each of the 12 months from 1 April 2013 to 31 March 2014, the 12 month arithmetic average of the monthly exchange rate XUMAERS for Euro to Sterling conversions, as identified by the Bank of England, and has the value of 1.186
PPPI <sub><math>t</math></sub>	means the Purchasing Power Parity Index term for Relevant Year $t$ and is calculated in accordance with paragraph 18 of this condition, except where an alternative formula has been specified by the Authority in a direction issued under paragraph 20 of this condition, in which case it shall be calculated in accordance with such direction
UK RPI index <sub><math>t</math></sub>	<p>means:</p> <p>(a) for the first Relevant Year of the Regime Duration, with respect to each of the 12 months in the calendar year in which the first Relevant Year falls, the 12 month arithmetic average of the monthly index number of retail prices, as identified by the Office of National Statistics in the CHAW series, where the index on 13 January 1987 equals 100;</p> <p>(b) for the last Relevant Year of the Regime Duration, with respect to each of the 12 months in the period 1<sup>st</sup> January to 31<sup>st</sup> December which fall in the last Relevant Year, the 12 month arithmetic average of the monthly index number of retail prices, as identified by the Office of National Statistics in the CHAW series, where the index on 13 January 1987 equals 100; or</p> <p>(c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year <math>t</math>, the 12 month arithmetic average of the monthly index number of retail prices, as identified by the Office of National Statistics in the CHAW series, where the index on 13 January 1987 equals 100</p>
UK RPI index 2013/14	means, with respect to each of the 12 months from 1 April 2013 to 31 March 2014, the 12 month arithmetic average of the monthly index number of retail prices, as identified by the Office of National Statistics in the CHAW series, where the index on 13 January 1987 equals 100, and has the value of 251.733

Part G: Calculation of the Partial Year Cap Adjustment Factor term and Partial Year Floor Adjustment Factor term (PYC <sub>$t$</sub>  and PYF <sub>$t$</sub> )

21. The PYC <sub>$t$</sub>  term and PYF <sub>$t$</sub>  term adjust the Cap Level and Floor Level to account for partial years in

respect of the first and last Relevant Year of the Regime Duration.

22. The  $PYC_t$  shall take the value 1 in all Relevant Years, except:

- (a) in respect of the period before the Regime Start Date, where the  $PYC_t$  term shall take the value zero.
- (b) in respect of the first Relevant Year of the Regime Duration (in which the Cap Level term comes into force under paragraph 5(a) of this condition), the value of the  $PYC_{t1}$  term shall be calculated in accordance with the following formula:

$$PYC_{t1} = \frac{NDC}{365.25}$$

- (c) in respect of the last Relevant Year of the Regime Duration, where the value of the  $PYC_{t25}$  term shall be calculated in accordance with the following formula:

$$PYC_{t25} = 1 + \frac{365.25 - NDC}{365.25}$$

- (d) in all Relevant Years subsequent to the last Relevant Year of the Regime Duration, where the  $PYC_t$  term shall take the value zero.

23. The  $PYF_t$  shall take the value 1 in all Relevant Years, except:

- (a) in respect of the period before the Floor Level comes into force, where the  $PYF_t$  term shall take the value zero.
- (b) in respect of the first Relevant Year of the Regime Duration in which the Floor Level term comes into force under paragraph 5(b) of this condition, the value of the  $PYF_{t1}$  term shall be calculated in accordance with the following formula:

$$PYF_{t1} = \frac{NDF}{365.25}$$

- (c) in respect of the last Relevant Year of the Regime Duration and subject to the Floor Level being in force under paragraph 5(b) of this condition, where the value of the  $PYF_{t25}$  term shall be equal to the value of the  $PYC_{t25}$  term.
- (d) in all Relevant Years subsequent to the last Relevant Year of the Regime Duration, where the  $PYF_t$  term shall take the value zero.

Where:

NDC	means the Number Of Days Of Cap term and is equal to the number of calendar days from (and including) the day in which the Cap Level comes into force up to (and including) the 31 December of the same calendar year in which the Cap Level came into force
NDF	means the Number Of Days Of Floor term and is equal to the number of calendar days from (and including) the day in which the Floor Level comes into force up to (and including) the 31 December of the same calendar year in which the Floor Level came into force

PYC <sub>t</sub>	means the Partial Year Cap Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with paragraph 20 of this condition
PYC <sub>t1</sub>	means the Partial Year Cap Adjustment Factor term for the first Relevant Year of the Regime Duration and similar expressions shall be construed accordingly
PYF <sub>t</sub>	means the Partial Year Floor Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with paragraph 21 of this condition
PYF <sub>t1</sub>	means the Partial Year Floor Adjustment Factor term for the first Relevant Year of the Regime Duration and similar expressions shall be construed accordingly

#### Special Condition 4: Interconnector Availability Incentive

1. The purpose of this condition is to provide for adjustments to the Cap Level and Floor Level in relation to the licensee's Interconnector availability performance in any Relevant Year.

##### Structure of this condition

2. This condition is structured as follows:
  - (a) Part A of this condition sets out the obligations on the licensee in the event that the licensee's Interconnector experiences an Interconnector Outage;
  - (b) Part B of this condition sets out the Availability Target and the calculation of the associated Availability Incentive Adjustment At Cap term (AIC<sub>t</sub>), which applies to the licensee's Interconnector for the Regime Duration;
  - (c) Part C of this condition sets out the Minimum Availability Target and the calculation of the associated Availability Incentive Adjustment At Floor term (AIF<sub>t</sub>), which applies to the licensee's Interconnector for the Regime Duration;
  - (d) Part D of this condition sets out the calculation of the Actual Availability term (AA<sub>t</sub>);
  - (e) Part E of this condition sets out the process to be followed in the event that the Minimum Availability Target is not met;
  - (f) Part F sets out the adjustments to the Availability Target and the Minimum Availability Target to account for partial years; and
  - (g) Part G sets out meanings of defined terms used only in this condition.

##### Part A: Obligations in the event of an Interconnector Outage

3. The licensee shall use reasonable endeavours to make Interconnector Capacity available in accordance with the standard conditions of its licence and take reasonable steps consistent with Good Industry Practice to minimise the effect and duration of any Interconnector Outage.
4. Where an Interconnector Outage applies to the licensee's Interconnector and the licensee reasonably expects the duration of such an Interconnector Outage will apply for a period of more

than 21 days, then the licensee shall, within 7 days of the Interconnector Outage starting, notify the Authority in writing of the Interconnector Outage, including:

- (a) details of the Interconnector Outage, including the cause of the Interconnector Outage and the impacts on its users and whether, in the licensee’s opinion, the Interconnector Outage has been caused (in whole or in part) by an Exceptional Event;
  - (b) any interim work or other actions which are being undertaken to minimise the effect of the Interconnector Outage; and
  - (c) an indication of the timescale in which the licensee reasonably considers that the Interconnector Outage will be resolved, including (without limitation) any service restoration agreement with the GB System Operator and/or the Belgian System Operator.
5. All availability related calculations are applied to the Rated Capacity of the licensee’s Interconnector, which is equal to 1,000 megawatts (MW).

**Part B: Availability Target and calculation of the Availability Incentive Adjustment At Cap term (AIC<sub>t</sub>)**

6. Subject to Part F (Adjustments to account for partial years) of this condition, the Availability Target for the licensee’s Interconnector is to achieve 8,507,403 megawatt hours (MWh) of Interconnector Availability in any Relevant Year.
7. The number 8,507,403 is calculated in accordance with the following formula:

$$8\ 507\ 403 = 8766 \times RC \times 97.05\%$$

Where:

8766	means the number of hours in each Relevant Year and is calculated in accordance with the formula in paragraph 19 of this condition
97.05%	means 97.05 per cent
RC	means the Rated Capacity of the licensee’s Interconnector and has the value given to that term in paragraph 5 of this condition (1,000 MW)

8. For each Relevant Year, the Actual Availability of the licensee’s Interconnector will be compared to the Availability Target.
9. For each Relevant Year, the Actual Availability is assessed against the Availability Target in accordance with the following formula to calculate the Availability Performance at Cap (APC<sub>t</sub>) term:

$$APC_t = \frac{AA_t}{AT}$$

10. The value of the AIC<sub>t</sub> term is determined as follows:
  - (a) if the value of the APC<sub>t</sub> term is greater than or equal to 1.02, then the value of the AIC<sub>t</sub> term is 1.02;
  - (b) if the value of the APC<sub>t</sub> term is less than or equal to 0.98, then the value of AIC<sub>t</sub> term is 0.98; and



- (c) if the value of the  $APC_t$  term is greater than 0.98 and less than 1.02, then the value of the  $AIC_t$  term is equal to the value of the  $APC_t$  term.

Where:

$AA_t$	means the Actual Availability term for Relevant Year $t$ (in MWh) and is calculated in accordance with paragraph 18 of this condition
$AIC_t$	means the Availability Incentive Adjustment At Cap term for Relevant Year $t$ and is determined in accordance with paragraph 10 of this condition
$APC_t$	means the Availability Performance At Cap term for Relevant Year $t$ and is calculated in accordance with paragraph 9 of this condition
AT	means the Availability Target term and has the meaning given to that term in paragraph 6 of this condition

11. The licensee's Assessed Revenue is assessed against the Cap Level as adjusted by the  $AIC_t$  term for each Relevant Year over the Regime Duration in accordance with special condition 3 (Cap and Floor Assessment).

Part C: Minimum Availability Target and calculation of the Availability Incentive Adjustment At Floor term ( $AIF_t$ )

12. Subject to Part F (Adjustments to account for partial years) of this condition, the Minimum Availability Target is to achieve 7,012,800 MWh in any Relevant Year.
13. The number 7,012,800 is calculated in accordance with the following formula:

$$7\ 012\ 800 = 8766 \times RC \times 80\%$$

Where:

8766	means the number of hours in each Relevant Year and is calculated in accordance with the formula in paragraph 19 of this condition
80%	means 80 per cent
RC	means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 5 of this condition (1,000 MW)

14. Subject to paragraph 27(a) of this condition, the licensee shall not be eligible for an upwards adjustment of Interconnector Revenue through the  $CFA_{ap}$  term for any Relevant Year  $t$  in which the Actual Availability falls below the Minimum Availability Target.
15. For each Relevant Year, the Actual Availability of the licensee's Interconnector is assessed against the Minimum Availability Target in accordance with the following formula to calculate the Availability Performance at Floor ( $APF_t$ ) term:

$$APF_t = \frac{AA_t}{MAT}$$



16. The value of the AIF<sub>t</sub> term is determined as follows:
- (a) if the value of the APF<sub>t</sub> term is greater than or equal to 1.00, then the value of the AIF<sub>t</sub> term is 1.00; and
  - (b) if the value of the APF<sub>t</sub> term is less than 1.00, then the value of the AIF<sub>t</sub> term is zero.

Where:

AA <sub>t</sub>	means the Actual Availability term for Relevant Year <i>t</i> (in MWh) and is determined in accordance with paragraph 18 of this condition
AIF <sub>t</sub>	means the Availability Incentive Adjustment At Floor term for Relevant Year <i>t</i> and is determined in accordance with paragraph 16 of this condition
APF <sub>t</sub>	means the Availability Performance At Floor term for Relevant Year <i>t</i> and is calculated in accordance with paragraph 15 of this condition
MAT	means the Minimum Availability Target term and has the meaning given to that term in paragraph 12 of this condition

17. The licensee's Assessed Revenue is assessed against the Floor Level as adjusted by the AIF<sub>t</sub> term for each Relevant Year over the Regime Duration in accordance with special condition 3 of this licence.

Part D: Calculation of Actual Availability term (AA<sub>t</sub>)

18. Subject to Part E (Process to be followed when the Minimum Availability Target is not met) and Part F (Adjustments to account for partial years) of this condition, the value of the Actual Availability term is calculated in accordance with the following formula:

$$AA_t = MPA - \sum IO_t$$

Where:

8766	means the number of hours in each Relevant Year and is calculated in accordance with the formula in paragraph 19 of this condition
AA <sub>t</sub>	means the Actual Availability of the licensee's Interconnector for Relevant Year <i>t</i> and is calculated in accordance with paragraph 18 of this condition
$\sum IO_t$	means the total Interconnector Outage (in MWh), after the deduction of Allowed Outage (in MWh), for Relevant Year <i>t</i> reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>
MPA	means the Maximum Possible Availability term and has the value 8,766,000 MWh (calculated from RC × 8766) except where it has been adjusted to account for partial years in accordance with Part F of this condition, in which case it shall have an alternative value determined in accordance with the said Part F

RC	means the Rated Capacity of the licensee's Interconnector and has the value given to that term in paragraph 5 of this condition (1,000 MW)
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19. The number 8766 is calculated in accordance with the following formula and for the purposes of this condition is the number of hours in each Relevant Year:

$$8766 = 365.25 \times 24$$

Part E: Process to be followed where the Minimum Availability Target is not met

20. Where the Actual Availability of the licensee's Interconnector is below the Minimum Availability Target in any Relevant Year, the licensee shall provide a written statement to the Authority, from an authorised director of the licensee, within 3 months of the end of Relevant Year *t*, explaining how the steps that the licensee has taken have discharged the obligations under paragraph 3 of this condition including but not limited to the cause(s) of the Interconnector Outage(s) and the impacts on its users.
21. The licensee may submit a request to the Authority for consideration of an Exceptional Event(s) under the following circumstances:
- (a) the licensee considers its Assessed Revenue for Relevant Year *t* calculated in accordance with paragraph 4 of special condition 5 of this licence is less than the value of the following: the Floor Level for Relevant Year *t* calculated in accordance with paragraph 4(b) of special condition 2 of this licence with the additional requirement that the Availability Incentive at Floor term be treated as if the Minimum Availability Target had been met;
  - (b) the licensee considers the Interconnector Outage(s) was caused (in whole or in part) by an Exceptional Event(s); and
  - (c) the licensee considers that, with the exclusion of the Interconnector Outage caused by the Exceptional Event(s), the licensee has met the Minimum Availability Target.
22. Where the licensee has submitted a request to the Authority under paragraph 21 of this condition it shall, along with that request:
- (a) specify the Availability Reduction Value proposed by the licensee, in MWh, of any Interconnector Outage caused by the Exceptional Event(s);
  - (b) provide such information as may be necessary to demonstrate that the proposed Availability Reduction Value was caused by an Exceptional Event; and
  - (c) provide such information as may be necessary to demonstrate that when the proposed Availability Reduction Value is excluded from the calculation of the licensee's Actual Availability, the licensee has met the Minimum Availability Target.
23. Where the licensee has submitted a request to the Authority under paragraph 21 of this condition, the Authority may, following consultation with the ~~Belgian National Regulatory Authority~~ regulatory authority, issue a direction specifying:
- (c) whether any or all of the Interconnector Outage(s) specified in a request pursuant to

paragraph 21 of this condition were caused or saved by an Exceptional Event; and

- (d) if so, whether in the Authority’s opinion, the Exceptional Event with respect to which the licensee has submitted request under paragraph 21 of this condition, has been appropriately mitigated and managed by the licensee (consistent with the requirements of paragraph 3 of this condition) and whether the Authority accepts the proposed Availability Reduction Value specified by the licensee in its request under paragraph 22(a) and if not specify an alternative Availability Reduction Value.
24. A direction under paragraph 23 of this condition shall not have effect unless, before it is made, the Authority has given notice to the licensee:
- (a) stating the reasons, having regard to the information provided by the licensee and Good Industry Practice, why it proposes to issue the direction; and
  - (b) 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.
25. The licensee may request that a direction issued by the Authority pursuant to paragraph 23 of this condition 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 Relevant Year to which it relates.
26. The calculation of the licensee’s Actual Availability for Relevant Year  $t$  in accordance with Part D of this condition shall be adjusted as follows:
- (a) where the Authority has issued a direction under paragraph 23 of this condition (including where modified) specifying the Availability Reduction Value, then the calculation of the Actual Availability shall be adjusted to deem the licensee’s Interconnector available for such Availability Reduction Value; or
  - (b) under all other circumstances, no adjustment shall be made to the calculation of the licensee’s Actual Availability.

Part F: Adjustments to account for partial years

27. In certain Relevant Years of the Regime Duration, the following terms shall be adjusted to account for partial years:
- (a) the Availability Target (AT) term;
  - (b) the Minimum Availability Target (MAT) term; and
  - (c) the Maximum Possible Availability (MPA) term.
28. The following terms shall be adjusted according to the rules specified in paragraph 29 of this condition:
- (a) the AT term; and

- (b) the MPA term for the purposes of comparison to the AT term.
29. The rules referred to in paragraph 28 are as follows:
- (a) in respect of the first Relevant Year of the Regime Duration (in which the Cap Level comes in to force under paragraph 5(a) of special condition 2 of this licence), the relevant terms shall be adjusted by the Partial Year Cap Adjustment Factor (PYC<sub>t1</sub>) term specified in paragraph 22(b) of special condition 2 (Cap Level and Floor Level) of this licence;
  - (b) in respect of the last Relevant Year of the Regime Duration, the relevant terms shall be adjusted by multiplying by the PYC<sub>t25</sub> term specified in paragraph 22(c) of special condition 2 of this licence; and
  - (c) in respect of all other Relevant Years of the Regime Duration, the relevant terms shall not be adjusted.
30. The following terms shall be adjusted according to the rules specified in paragraph 31 of this condition:
- (a) the MAT term; and
  - (b) the MPA term for the purposes of comparison to the MAT term.
31. The rules referred to in paragraph 30 are as follows:
- (a) in respect of the first Relevant Year of the Regime Duration in which the Floor Level comes in to force under paragraph 5(b) of special condition 2 of this licence, the relevant terms shall be adjusted by multiplying by the Partial Year Floor Adjustment Factor (PYF<sub>t1</sub>) term specified in paragraph 23(b) of special condition 2 of this licence;
  - (b) in respect of the last Relevant Year of the Regime Duration and subject to the Floor Level being in force under paragraph 5(b) of special condition 2 of this licence, the relevant terms shall be adjusted by multiplying by the PYF<sub>t25</sub> term specified in paragraph 23(c) of special condition 2 of this licence; and
  - (c) in respect of all other Relevant Years of the Regime Duration, the relevant terms shall not be adjusted.

### Part G: Interpretation

32. For the purposes of this condition:

“Allowed Outage”

means an Interconnector Outage (in MWh) that:

- (a) was caused by the de-energisation (whether partial or whole), disconnection or curtailment of the licensee’s Interconnector by the GB System Operator or the Belgian System Operator; and
- (b) is specified in writing by the Authority (after consultation with the Belgian ~~National Regulatory Authority~~ regulatory authority) as being an Allowed Outage

“Availability Reduction Value”	means the value, in MWh, of any Interconnector Outage caused by an Exceptional Event specified by the Authority in a direction under paragraph 23(b) of this condition
“Availability Target”	means the target amount of availability of the licensee’s Interconnector in any Relevant Year and has the value of 8,507,403 MWh (subject to adjustments to account for partial years in accordance with Part F of this condition)
“Interconnector Outage”	means any reduction in MWh of Maximum Possible Availability of the licensee’s Interconnector
“Interconnector Availability”	means the availability of Interconnector Capacity over the licensee’s Interconnector.

### Special Condition 5: Assessed Revenue

1. The purpose of this special condition is to calculate the licensee’s Assessed Revenue, which is assessed against the Cap Level and Floor Level in accordance with special condition 3 (Cap and Floor Assessment) for each Relevant Assessment Period of the Regime Duration.

#### Structure of this condition

2. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation of the Assessed Revenue term ( $AR_t$ );
  - (b) Part B of this condition sets out the calculation of the Gross Congestion Revenue term ( $GCR_t$ );
  - (c) Part C of this condition sets out the calculation of the Market Related Costs term ( $MRC_t$ );
  - (d) Part D of this condition sets out the calculation of the Additional Revenue term ( $ADR_t$ ); and
  - (e) Part E of this condition sets out the definitions of defined terms used only in this condition.

#### Part A: Calculation of the Assessed Revenue term ( $AR_t$ )

3. Subject to Part D (Determination of the Income Adjusting Event term) of special condition 7 (Non-Controllable Costs), for each Relevant Year, the value of the Notional Assessed Revenue ( $NAR_t$ ) term is calculated in accordance with the following formula:

$$NAR_t = GCR_t - MRC_t$$

4. The value of the Assessed Revenue ( $AR_t$ ) term is determined as follows:
  - (a) if the value of the  $NAR_t$  term is greater than or equal to zero, then the value of the  $AR_t$  term is equal to the value of the  $NAR_t$  term; or

- (b) if the value of the  $NAR_t$  term is less than zero, then the value of the  $AR_t$  term is zero.

Where:

$AR_t$	means the Assessed Revenue term for Relevant Year $t$ and is determined in accordance with paragraph 4 of this condition
$GCR_t$	means the Gross Congestion Revenue term for Relevant Year $t$ and is calculated in accordance with Part B of this condition
$MRC_t$	means the Market Related Costs term for Relevant Year $t$ and is calculated in accordance with Part C of this condition
$NAR_t$	Means the Notional Assessed Revenue term for Relevant Year $t$ and is calculated in accordance with paragraph 3 of this condition

5. Without prejudice to any part of this condition, the Authority may, where it considers the information reported by the licensee in its Annual Cap and Floor RIGs Submission with respect to any component of the Assessed Revenue to be insufficient, request such information to be supplemented with any additional information or supporting evidence that the Authority considers appropriate.

Part B: Calculation of the Gross Congestion Revenue term ( $GCR_t$ )

6. For each Relevant Year, the value of the  $GCR_t$  term (in Sterling) is calculated in accordance with the following formula:

$$GCR_t = CAR_t + ASRGB_t + ASRB_t + CMR_t + RI_t + CPGB_t + CPB_t + ADR_t$$

7. Where components of  $GCR_t$  are denominated in Euro, such components shall be converted to Sterling using the  $GBP_t / EUR_t$  exchange rate.

Where:

$ADR_t$	means the Additional Revenue term for Relevant Year $t$ and is determined in accordance with Part D of this condition
$ASRB_t$	means the Ancillary Services Revenue (Belgium) term for Relevant Year $t$ and is: <ul style="list-style-type: none"> <li>(a) equal to all revenue that is derived from providing a Belgian Ancillary Service for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></li> </ul>
$ASRGB_t$	means the Ancillary Services Revenue (GB) term for Relevant Year $t$ and is: <ul style="list-style-type: none"> <li>(a) equal to all revenue that is derived from providing a GB Ancillary Service for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs</li> </ul>

	Submission for Relevant Year $t$
$CAR_t$	<p>means the Capacity Allocation Revenue term for Relevant Year <math>t</math> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to all revenue received as a result of interconnector capacity allocation for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></li> </ul>
$CMR_t$	<p>means the Capacity Market Revenue term for Relevant Year <math>t</math> and is equal to whichever is the greater of:</p> <ul style="list-style-type: none"> <li>(a) all revenue (after deduction of any Capacity Provider Penalty Charges) that is derived from the licensee's participation in the GB Capacity Market for Relevant Year <math>t</math>; and</li> <li>(b) zero,</li> </ul> <p>and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></p>
$CPB_t$	<p>means the Constraint Payments (Belgium) term for Relevant Year <math>t</math> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to the sum of any payments received by the licensee from the Belgian System Operator as a result of the (partial or whole) de-energisation, disconnection or curtailment of the licensee's interconnector by the GB System Operator or Belgian System Operator for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></li> </ul>
$CPGB_t$	<p>means the Constraint Payments (GB) term for Relevant Year <math>t</math> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to the sum of any payments received by the licensee from the GB System Operator as a result of the (partial or whole) de-energisation, disconnection or curtailment of the licensee's Interconnector by the GB System Operator or Belgian System Operator for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></li> </ul>
$GBP_t / EUR_t$	<p>has the meaning given that term in Part F of special condition 2 (Cap Level and Floor Level) of this licence</p>
$RI_t$	<p>means the Receipts from Insurance term for insurance claims related to the compensation of lost revenue (such as business interruption insurance) for Relevant Year <math>t</math> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to the sum of any payments received by the licensee as a result of such insurance claim(s) for Relevant Year <math>t</math>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs</li> </ul>



	Submission for Relevant Year <i>t</i>
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Part C: Calculation of the Market Related Costs term ( $MRC_t$ )

8. For each Relevant Year, the value of the  $MRC_t$  term (in Sterling) is calculated in accordance with the following formula:

$$MRC_t = EAC_t + FC_t + TCC_t$$

9. Where components of  $MRC_t$  are denominated in Euro, such components shall be converted to Sterling using the  $GBP_t/EUR_t$  exchange rate.
10. The licensee shall use reasonable endeavours to minimise its  $MRC_t$ .

Where:

$EAC_t$	<p>means the Error Accounting Costs term for Relevant Year <i>t</i> and is equal to the sum of the costs, whether positive or negative, incurred by the licensee in settling any energy imbalance due to any difference in metered volume between the physical flow on the interconnector and the aggregate position of all interconnector users as notified, in accordance with:</p> <ul style="list-style-type: none"> <li>(a) the BSC, to the Balancing and Settlement Code Company by the GB Interconnector Administrator for Relevant Year <i>t</i>; and</li> <li>(b) the relevant arrangements in Belgium, by the Belgian Interconnector Administrator for Relevant Year <i>t</i>,</li> </ul> <p>and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></p>
$FC_t$	<p>means the Firmness Costs term for Relevant Year <i>t</i> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to costs, whether positive or negative, incurred by the licensee from payments made to users under the Firmness arrangements for Relevant Year <i>t</i>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></li> </ul>
$MRC_t$	<p>means the Market Related Costs term for Relevant Year <i>t</i> and is determined in accordance with paragraph 8 of this condition</p>
$TCC_t$	<p>means Trip Contract Costs for Relevant Year <i>t</i> and is:</p> <ul style="list-style-type: none"> <li>(a) equal to costs, whether positive or negative, incurred by the licensee under a Trip Contract agreement for Relevant Year <i>t</i>; and</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></li> </ul>



GBP <sub>t</sub> / EUR <sub>t</sub>	has the meaning given that term in Part F of special condition 2 (Cap Level and Floor Level) of this licence
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#### Part D: Calculation of the Additional Revenue term (ADR<sub>t</sub>)

11. For each Relevant Year, the value of the Additional Revenue term (ADR<sub>t</sub>) is calculated in accordance with the following formula:

$$ADR_t = \sum(ADRS)_t$$

12. Where components of ADR<sub>t</sub> are denominated in Euro, such components shall be converted to Sterling using the GBP<sub>t</sub>/EUR<sub>t</sub> exchange rate.

Where:

ADR <sub>t</sub>	means the Additional Revenue term for Relevant Year <i>t</i> and is determined in accordance with paragraph 11 of this condition
$\sum(ADRS)_t$	means the sum of any Interconnector Revenue for Relevant Year <i>t</i> (after deduction of any relevant costs of sale specified by the Authority), that is derived from a source that is specified by the Authority under paragraph 13 of this condition as being an Additional Revenue Source
GBP <sub>t</sub> / EUR <sub>t</sub>	has the meaning given that term in Part F of special condition 2 (Cap Level and Floor Level) of this licence

13. For the purposes of this condition, any source of Interconnector Revenue shall only be considered an Additional Revenue Source if the Authority, after consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, has directed in writing to the licensee that it is an Additional Revenue Source.
14. Where the licensee considers that a source of Interconnector Revenue may qualify as an Additional Revenue Source, it must notify the Authority in writing as soon as practicably possible.

#### Part E: Interpretation

15. For the purposes of this condition:

“Belgian Ancillary Services”	means:
	(a) such services as the licensee may be required to have available pursuant to the Belgian Federal Grid Code (Technisch Reglement Royal Decree of 19 <sup>th</sup> December 2002); and/or
	(b) such services as the licensee may have agreed to have available as being ancillary services pursuant to any agreement made with the Belgian System Operator and

which may be offered for purchase by the Belgian System Operator for the purpose of securing stability of operation of the national electricity transmission systems in Belgium and the distribution system of any authorised electricity operator or any system linked to the national electricity transmission systems in Belgium by the licensee’s Interconnector

“Belgian Interconnector Administrator”	means the body responsible for the notification of the metered flow over the licensee’s Interconnector for the purposes of balancing and settlement on the high-voltage electricity transmission system in Belgium
“Capacity Provider Penalty Charges”	has the meaning given to that term in The Electricity Capacity Regulations 2014 (SI 2014/ 2043) as amended
“Firmness”	<p><del>has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management</del></p> <p><del>and Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation</del></p> <p><u>means a guarantee that cross-zonal capacity rights will remain unchanged and that compensation is paid if they are nevertheless changed</u></p>
“GB Ancillary Services”	<p>means:</p> <p>(a) such services as the licensee may be required to have available pursuant to the Grid Code; and/or</p> <p>(b) such services as the licensee may have agreed to have available as being ancillary services pursuant to any agreement made with the GB System Operator and which may be offered for purchase by the GB System Operator for the purpose of securing stability of operation of the national electricity transmission system in GB and the distribution system of any authorised electricity operator or any system linked to the national electricity transmission system in GB by the licensee’s Interconnector</p>
“GB Interconnector Administrator”	has the meaning given to the term “Interconnector Administrator” in the BSC
“GB Capacity Market”	has the meaning given to the term “Capacity Market” in The Electricity Capacity Regulations 2014 (SI 2014/2043) as

amended

“Trip Contract” means:

- (a) contracts; and/or
- (b) other forms of agreement specified in writing by the Authority following consultation with the Belgian National Regulatory Authority,

providing for energy sales and/or purchases on the intraday markets or other contracts with a third party to deliver/off-take power in the market for the purposes of managing trip events.

### Special Condition 6: Within Period Adjustment

1. The purpose of this condition is to set out the process for determining the value of the Within Period Adjustment term ( $WPA_{pap}$ ) for each Relevant Partial Assessment Period.
2. The  $WPA_{pap}$  term is a revenue adjustment component that provides for the adjustment (whether upwards or downwards) of the licensee’s Interconnector Revenue outside of the five-yearly assessment of the licensee’s Assessed Revenue against the Cap Level and Floor Level set out in special condition 3 (Cap and Floor Assessment) of this licence.
3. This condition sets out the process:
  - (a) that must be followed by the licensee in requesting a Within Period Adjustment; and
  - (b) for determining the value of the Within Period Adjustment.

#### Structure of this condition

4. This condition is structured as follows:
  - (a) Part A of this condition sets out the process for requesting a Within Period Adjustment; and
  - (b) Part B of this condition sets out the process for determining the value of the Within Period Adjustment.

#### Part A: Process for requesting a Within Period Adjustment

5. Where the licensee has:
  - (a) a cumulative net present value shortfall of Assessed Revenue against the Floor Level for the Relevant Partial Assessed Period *pap* (including taking in to account any previous Within Period Adjustment in the Relevant Partial Assessment Period); or
  - (b) a cumulative net present value excess of Assessed Revenue against the Cap Level for the Relevant Partial Assessed Period *pap* (including taking in to account any previous Within Period Adjustment in the Relevant Partial Assessment Period); and
  - (c) the licensee considers a Within Period Adjustment to be required on grounds of:

- (i) financeability; and/ or
- (ii) pre-empting a material Cap and Floor Adjustment (CFA<sub>ap</sub>) at the end of the Relevant Assessment Period,

then the licensee may submit a request to the Authority for a Within Period Adjustment.

6. A request by the licensee for a Within Period Adjustment under paragraph 5 of this condition may be:
  - (a) where the requirements of paragraph 5(a) are met, a request for an upwards adjustment of the licensee's Interconnector Revenue (positive value); or
  - (b) where the requirements of paragraph 5(b) are met, a request for a downwards adjustment of the licensee's Interconnector Revenue (negative value).
7. Any request under paragraph 5 of this condition shall be submitted by the licensee:
  - (a) not earlier than three months before the end of the Relevant Partial Assessment Period to which the request relates; and
  - (b) not later than three months after the end of the Relevant Partial Assessment Period to which the request relates.
8. Any request under paragraph 5 shall also specify the licensee's proposed value of the Within Period Adjustment term (WPA<sub>pap</sub>). Such value shall:
  - (a) be calculated in accordance with the methodology established in special condition 3 of this licence (with relevant adjustments to reflect the reduced time period in the Relevant Partial Assessment Period compared to the Relevant Assessment Period); and
  - (b) shall not exceed in size:
    - (i) the cumulative net present value shortfall described in paragraph 5(a) of this condition; or
    - (ii) the cumulative net present value excess described in paragraph 5(b) of this condition.
9. Any request submitted under paragraph 5 of this condition shall include:
  - (a) such supporting information and evidence as may be necessary to demonstrate that a Within Period Adjustment meets the criteria specified in paragraph 5 of this condition;
  - (b) details of how the proposed values of the WPA<sub>pap</sub> term specified by the licensee pursuant to paragraph 8 of this condition has been calculated, including (where relevant) how elements have been forecasted; and
  - (c) any other analysis or information as may be necessary to enable the Authority to make a determination under paragraph 12 of this condition.
10. The Authority may, in addition to the information provided under paragraph 9 of this condition,

request that the licensee provide such supplementary information or supporting evidence that the Authority considers appropriate.

### Part B: Process for determining the value of any Within Period Adjustment

11. The Authority shall only determine a Within Period Adjustment request that has been submitted by the licensee in accordance with Part A of this condition.
12. The Authority shall determine a Within Period Adjustment request (after consultation with the licensee, the Belgian regulatory authority ~~National Regulatory Authority~~ and such other persons as it considers desirable) and issue a direction specifying:
  - (a) whether it considers the licensee to have sufficiently demonstrated that a Within Period Adjustment is required on the grounds specified in paragraph 5 of this condition; and
  - (b) if so, whether it accepts the value of the  $WPA_{pap}$  term proposed by the licensee in its request under paragraph 8 of this condition and if not, specify the value of the  $WPA_{pap}$  term.
13. Subject to paragraph 15 of this condition, the Authority shall complete its determination under paragraph 12 of this condition within a period of three months after receipt of the request and complete information under Part A of this condition.
14. Where the Authority has requested further information under paragraph 10 of this condition the licensee shall provide such information to the Authority within one month of the Authority requesting such information.
15. The three month period specified in paragraph 13 of this condition shall be paused on the date the Authority requests additional information from the licensee under paragraph 10 of this condition and shall resume on the date that the last item of the requested additional information is received by the Authority.

### **Special Condition 7: Non-Controllable Costs**

1. The purpose of this condition is to:
  - (a) calculate the Pass Through Adjustment for the licensee's Non-Controllable Operational Costs ( $PTA_{ap}$ );
  - (b) establish the process for determining the Income Adjusting Event Adjustment term ( $IAT_t$ ); and
  - (c) establish the process for determining the Decommissioning Costs Adjustment At Cap and Decommissioning Costs Adjustment At Floor terms ( $DCC_t$  and  $DCF_t$ ).
2. The  $PTA_{ap}$  term is a revenue adjustment component that provides for the adjustment (whether upwards or downwards) of the licensee's Interconnector Revenue as a consequence of changes in the licensee's Non-Controllable Operational Costs.
3. The  $IAT_t$  term is an adjustment (whether upwards or downwards) to the calculation of the licensee's Assessed Revenue as a consequence of an Income Adjusting Event.
4. The  $DCC_t$  and  $DCF_t$  terms are adjustments (whether upwards or downwards) to the calculation of

the Cap Level and the Floor Level respectively in special condition 2 of this licence as a consequence of changes in legislative requirements for decommissioning the licensee's Interconnector.

### Structure of this condition

5. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation of the Pass Through Adjustment term ( $PTA_{ap}$ );
  - (b) Parts B and C of this condition set out the calculation of components used in the calculations set out in Part A;
  - (c) Part D of this condition sets out the determination of the Income Adjusting Event Adjustment term ( $IAT_t$ );
  - (d) Part E of this condition sets out the determination of the Decommissioning Cost Adjustment At Cap and Decommissioning Cost Adjustment At Floor terms ( $DCC_t$  and  $DCF_t$ ); and
  - (e) Part F of this condition sets out the definitions of defined terms used only in this condition.

### Part A: Calculation of Pass Through Adjustment term ( $PTA_{ap}$ )

6. For each Relevant Assessment Period, the value of the  $PTA_{ap}$  term is calculated in accordance with the following formula:

$$PTA_{ap} = (NCOC_{t1} \times UF_{t1}) + (NCOC_{t2} \times UF_{t2}) + \dots (NCOC_{t5} \times UF_{t5})$$

Where:

$NCOC_t$	means the Non-Controllable Operating Costs Adjustment term for Relevant Year $t$ and is calculated in accordance with Part B of this condition
$PTA_{ap}$	means the Pass Through Adjustment term for Assessment Period $ap$ and is calculated in accordance with paragraph 6 of this condition
$UF_t$	means the Uplift Factor term for Relevant Year $t$ and is calculated in accordance with Part I of special condition 3 (Cap and Floor Assessment) of this licence

### Part B: Calculation of Non-Controllable Operating Costs Adjustment term ( $NCOC_t$ )

7. For each Relevant Year, Baseline Non-Controllable Operational Costs ( $BNCOC_t$ ) is assessed against Outturn Non-Controllable Operational Costs ( $ONCOC_t$ ) in accordance with the following formula to calculate the Difference in Non-Controllable Operational Costs ( $DNCOC_t$ ) term:

$$DNCOC_t = ONCOC_t - BNCOC_t$$

8. Without prejudice to paragraph 12 of this condition, the Authority will determine and specify in writing not later than six months after the end of the Relevant Year, that:

- (a) it is satisfied that the  $ONCOC_t$  has been economically and efficiently incurred and the  $NCOC_t$  value, whether positive or negative, equals the  $DNCOC_t$  value; or
  - (b) it considers the  $ONCOC_t$  has not been economically and efficiently incurred and the  $NCOC_t$  value does not equal the  $DNCOC_t$  value.
9. Where a determination is made by the Authority under paragraph 8(b) of this condition, the Authority will specify the value of the  $NCOC_t$  which may be a positive or negative value.
  10. The licensee shall use reasonable endeavours to minimise its  $ONCOC_t$ .
  11. Where the licensee's  $ONCOC_t$  is greater than the  $BNCOC_t$ , the licensee shall, alongside its Annual Cap and Floor RIGs submission, provide evidence as may be necessary to support the Authority's determination under paragraph 8 of this condition.
  12. The Authority may, in addition to the information provided under paragraph 11 of this condition, request that the licensee provide such supplementary information or supporting evidence that the Authority considers appropriate and the timescale noted in paragraph 8 of this condition will be suspended accordingly until such time when such information has been provided to the Authority.

Where:

$BNCOC_t$	means the Baseline Non-Controllable Operational Costs for Relevant Year $t$ and is calculated in accordance with Part C of this condition
$DNCOC_t$	means the Difference In Non-Controllable Operational Costs term for Relevant Year $t$ and is calculated in accordance with paragraph 7 of this condition
$GBP_t / EUR_t$	has the meaning given that term in Part F of special condition 2 (Cap Level and Floor Level) of this licence
$NCOC_t$	means the Non-Controllable Operational Costs Adjustment term for Relevant Year $t$ and is determined in accordance with paragraph 8 and paragraph 9 of this condition
$ONCOC_t$	means the Outturn Non-Controllable Operational Costs for Relevant Year $t$ and is: <ul style="list-style-type: none"> <li>(a) equal to costs incurred by the licensee for the Non-Controllable Operational Cost Items (as specified in paragraph 15 of this condition) for Relevant Year <math>t</math>;</li> <li>(b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math>;</li> <li>(c) if denominated in Euro, converted to Sterling using the <math>GBP_t / EUR_t</math> exchange rate; and</li> <li>(d) supplemented with any other analysis or information which the licensee considers sufficient to enable the Authority to fully assess the reasons for any difference(s) between the value of the <math>ONCOC_t</math> term and the value of the <math>BNCOC_t</math> term</li> </ul>



Part C: Calculation of the Baseline Non-Controllable Operational Costs term (BNCOC<sub>t</sub>)

13. The value of the Baseline Non-Controllable Operational Costs term is determined in accordance with the following formula:

$$BNCOC_t = BNCOA \times PPPI_t$$

Where:

BNCOC <sub>t</sub>	means the Baseline Non-Controllable Operational Costs for Relevant Year <i>t</i> and is calculated in accordance with paragraph 13 of this condition
BNCOA	means the Baseline Non-Controllable Operational Costs Allowance term expressed in real 2013/14 Sterling prices and is determined in accordance with paragraph 14 of this condition
PPPI <sub>t</sub>	means the Purchasing Power Parity Index term for Relevant Year <i>t</i> and is calculated in accordance with Part F of special condition 2 (Cap Level and Floor Level) of this licence

14. The value of the Baseline Non-Controllable Operational Costs Allowance term (BNCOA) shall be determined by the Authority at the Post Construction Review and notified to the licensee in writing. The value of the BNCOA term shall be equal to Authority's assessment of the economic and efficient costs for items listed in paragraph 15 of this condition.
15. The Non-Controllable Operational Cost Items are defined as the following:
- Crown Estate Lease Fees;
  - Network And Property Rates; and
  - Licence Fees.

Part D: Determination of the Income Adjusting Event term (IAT<sub>t</sub>)

16. For any Relevant Year *t* 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, the licensee may give written notice of this Income Adjusting Event to the Authority.
17. For the purposes of this condition, an Income Adjusting Event means an event or circumstance:
- which in the Authority's opinion constitutes a Force Majeure event under the special conditions of this licence; and
  - as a consequence of which there are costs and/or expenses incurred by the licensee which exceed 5 per cent of the Floor Level for Relevant Year *t* calculated in accordance with paragraph 4(b) of special condition 2 of this licence with the additional requirement that the Availability Incentive at Floor (AIF<sub>t</sub>) term be treated as if the Minimum Availability Target has been met.
18. A notice received by the Authority under paragraph 16 of this condition 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;
  - (c) the proposed value of the  $IAT_t$  term as a consequence of that event or circumstance and how the proposed value of the  $IAT_t$  term has been calculated;
  - (d) evidence to show that the proposed value of the  $IAT_t$  term is economic and efficient; and
  - (e) 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.
19. If the Authority considers that the analysis or information received under paragraph 18 of this condition is insufficient to enable the Authority to assess whether an Income Adjusting Event has occurred and/or whether the value of the  $IAT_t$  term should 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.
20. A notice of an Income Adjusting Event referred to in paragraph 16 of this condition 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 or such later date as the Authority may notify to the licensee.
21. The Authority may make public, excluding any confidential information, any notice of an Income Adjusting Event following its receipt.
22. Any notice received by the Authority under paragraph 16 of this condition 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 22(a) of this condition is necessary for the purposes of enabling relevant parties (if any) to fully assess the event to which the notice relates.
23. The Authority will determine, after consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, 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 16 of this condition were caused or saved by an Income Adjusting Event; and
  - (b) if so, whether in the Authority's opinion, the Incoming Adjusting Event with respect to which the licensee has given notice under paragraph 16 of this condition, has been appropriately mitigated and managed by the licensee and whether the Authority accepts the proposed value of the  $IAT_t$  term and if not specify the value of the  $IAT_t$  term.
24. In relation to the Relevant Year  $t$ , the Income Adjusting Event adjustment ( $IAT_t$ ) shall be:

- (a) the value determined by the Authority under paragraph 23 of this condition; or
  - (b) if the Authority has not requested additional information under paragraph 19 of this condition and the Authority has not made a determination under paragraph 23 of this condition within three months of the date on which notice of an Income Adjusting Event was received by the Authority, the value of the  $IAT_t$  term proposed as a consequence of the event in the notice given to the Authority under paragraph 16 of this condition; or
  - (c) if the Authority requests additional information under paragraph 19 of this condition and the Authority has not made a determination under paragraph 23 of this condition within three months of receiving all additional information requested, the value of the  $IAT_t$  term proposed by the licensee in the notice given to the Authority under paragraph 16 of the condition; or
  - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 23 of this condition within three months of the date on which the notice was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 19, 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 18 and/or 19 is insufficient to enable the Authority to assess whether an Income Adjusting Event has occurred and/or the value of the  $IAT_t$  term.
25. 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 published.
26. The Authority may revoke an approval of an Income Adjusting Event and the value of the  $IAT_t$  term with the consent of the licensee, following consultation with the licensee and relevant parties, and any such revocation of any Income Adjusting Event and the value of the  $IAT_t$  term shall be in writing, shall be copied to the licensee and shall be published.
27. Where a value for the  $IAT_t$  term has been determined under paragraph 23 or 24 of this condition, the formula for calculating the value of the  $NAR_t$  term specified in paragraph 3 of special condition 5 (Assessed Revenue) of this licence shall be replaced by the following formula:

$$NAR_t = GCR_t - MRC_t - IAT_t$$

Where:

$NAR_t$	means the Notional Assessed Revenue term for Relevant Year $t$ and is calculated in accordance with paragraph 3 of special condition 5, except where the value of the $IAT_t$ term has been determined under paragraph 23 or 24 of this condition, in which case it is calculated in accordance with paragraph 27 of this condition
$GCR_t$	means the Gross Congestion Revenue term for Relevant Year $t$ and is calculated in accordance with Part B of special condition 3 of this licence
$MRC_t$	means the Market Related Costs term for Relevant Year $t$ and is calculated in accordance with Part C of special condition 3 of this licence
$IAT_t$	means the Income Adjusting Event term for Relevant Year $t$ and is determined in under paragraphs 23 or 24 of this condition

Part E: Determination of the Decommissioning Cost Adjustment At Cap and Determination of the Decommissioning Cost Adjustment At Floor terms (DCC<sub>t</sub> and DCF<sub>t</sub>)

28. The DCC<sub>t</sub> and DCF<sub>t</sub> terms are adjustments (whether upwards or downwards), expressed in 2013/14 Sterling prices, of the Cap Level and Floor Level respectively to account for the difference between:
  - (a) the Authority's assessment, at the Post Construction Review stage, of the legislative requirements relating to the decommissioning of the licensee's Interconnector and the economic and efficient costs associated with such requirements; and
  - (b) the Authority's re-assessment, at the request of the licensee at any point over the Regime Duration, of any subsequent changes in legislative requirements relating to the decommissioning of the licensee's Interconnector and the changes in economic and efficient costs associated with such changes in requirements.
29. Where the licensee considers, and can provide supporting evidence, that there will be a reduction or increase in costs and/or expenses in relation to the licensee's obligations with respect to decommissioning of the licensee's Interconnector that have arisen due to a change in legislative requirements at any point over the Regime Duration, then the licensee shall give written notice to the Authority.
30. Any notice received by the Authority under paragraph 29 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 reduced or additional costs and/or expenses in complying with those obligations, and demonstrate that such costs and/or expenses are not included within the Cap Level and the Floor Level (or are included in the Cap Level and Floor Level but no longer should be);
  - (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 proposed value of the adjustment to the Cap Level and the Floor Level (the proposed value of the DCC<sub>t</sub> and DCF<sub>t</sub> terms) and the proposed duration over which such adjustment should apply (such duration not exceeding the Regime Duration);
  - (d) how such adjustment has been calculated, with supporting information and in accordance with the Nemo Link Cap And Floor Financial Model Protocol;
  - (e) 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.
31. If the Authority considers that the analysis or information received under paragraph 30 is insufficient to enable the Authority to assess whether a change in decommissioning requirements has occurred, 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.
32. A notice referred to in paragraph 29 of this condition 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.

33. Where the licensee has submitted a request in accordance with paragraphs 29 to 32 of this condition and has provided all relevant information in accordance with this Part E of this condition, the Authority shall issue a direction determining:
- whether there has been a relevant change in legislative requirements and whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 29 of this condition were caused by the change in legislative requirements; and
  - if so, the periods, if any, over which the adjustment term  $DCC_t$  and  $DCF_t$  terms determined by the Authority (after consultation with the ~~Belgian regulatory authority National Regulatory Authority~~) should apply.
34. The Authority's determination under paragraph 33 shall be in writing, shall be copied to the licensee and shall be published.
35. Unless and until such determination is made, the  $DCC_t$  and  $DCF_t$  terms shall have the value zero.
36. Where the Authority has issued a direction under paragraph 33 of this condition, the formulae for calculating the Cap Level and the Floor Level specified in paragraph 4(a) and 4(b) of special condition 2 of this licence shall be replaced by the following formulae:
- $CL_t = PYC_t \times (PCL + PCAC + ORAC + DCC_t) \times AIC_t \times PPPI_t$
  - $FL_t = PYF_t \times (PFL + PCAF + ORAF + DCF_t) \times AIF_t \times PPPI_t$

Where:

$AIC_t$	means the Availability Incentive Adjustment At Cap term for Relevant Year $t$ and is determined in accordance with Part C of special condition 4 (Interconnector Availability Incentive) of this licence and shall have a value in the range specified in paragraph 16 of special condition 2 of this licence
$AIF_t$	means the Availability Incentive Adjustment At Floor term for Relevant Year $t$ and is determined in accordance with Part C of special condition 4 and shall have a value specified in paragraph 17 of special condition 2
$CL_t$	means the Cap Level for Relevant Year $t$ and is calculated in accordance with the formula in paragraph 4(a) of special condition 2 of this licence, except where the Authority has issued a direction under paragraph 33 of this condition, in which case it shall be calculated in accordance with paragraph 36(a) of this condition
$DCC_t$	means the Decommissioning Cost Adjustment At Cap term for Relevant Year $t$ and is determined in accordance with paragraph 33 of this condition
$DCF_t$	means the Decommissioning Cost Adjustment At Floor term for Relevant Year $t$ and is determined in accordance with paragraph 33 of this condition

FL <sub>t</sub>	means the Floor Level in Relevant Year <i>t</i> and is calculated in accordance with the formula in paragraph 4(b) of special condition 2, except where the Authority has issued a direction under paragraph 33 of this condition, in which case it shall be calculated in accordance with paragraph 36(b) of this condition
PCAC	means the Post Construction Adjustment At Cap term and is determined in accordance with Part C of special condition 2 of this licence
PCAF	means the Post Construction Adjustment At Floor term and is determined in accordance with Part C of special condition 2 of this licence
PCL	means the Preliminary Cap Level specified in paragraph 11(a) of special condition 2 of this licence
PFL	means the Preliminary Floor Level specified in paragraph 11(b) of special condition 2 of this licence
PPPI <sub>t</sub>	means the Purchasing Power Parity Index term for Relevant Year <i>t</i> and is calculated in accordance with Part F of special condition 2 of this licence
PYC <sub>t</sub>	means the Partial Year Cap Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with Part G of special condition 2 of this licence
PYF <sub>t</sub>	means the Partial Year Floor Adjustment Factor term for Relevant Year <i>t</i> and is calculated in accordance with Part G of special condition 2 of this licence
ORAC	means the Opex Reassessment Adjustment At Cap term and is determined in accordance with Part D of special condition 2 of this licence
ORAF	means the Opex Reassessment Adjustment At Floor term and is determined in accordance with Part D of special condition 2 of this licence

37. In the event that:

- (a) monies have been paid to the licensee by the GB System Operator for the purposes of decommissioning the licensee's Interconnector (i.e. below Floor Level payments have included allowances for costs and/or expenses in relation to the licensee's obligations with respect to decommissioning of the licensee's Interconnector); and/or
- (b) monies have been retained by the licensee for the purposes of decommissioning the licensee's interconnector that would otherwise have been paid by the licensee to the GB System Operator (i.e. above Cap Level payments have been reduced to account for allowances for costs and/or expenses in relation to the licensee's obligations with respect to decommissioning of the licensee's Interconnector); and
- (c) such monies are not required for the purposes of decommissioning the licensee's

Interconnector at the end of the Regime Duration,  
then the Authority shall determine, after consultation with the licensee, the Belgian regulatory authority ~~National Regulatory Authority~~ and other such persons as it considers desirable, appropriate treatment of such monies in light of future plans for the operation of the licensee's Interconnector after the Regime Duration.

## Part F: Interpretation

38. For the purposes of this condition:

“Confidential Information”	means any information relating to or deriving from the management or operation of the licensee's Interconnector business that is not published or otherwise legitimately in the public domain
“Crown Estate Lease”	means any lease, licence, or agreement between the licensee and the Crown Estate relating to the use of Crown Estate property to enable the operation of the licensee's Interconnector
“Crown Estate Lease Fees”	means costs paid in accordance with the licensee's obligations set out in its Crown Estate Lease in respect of the annual rent of the seabed
“Income Adjusting Event”	has the meaning set out in paragraph 17 of this condition
“Licence Fees”	means costs paid in accordance with the licensee's obligations under standard condition 2 (Payments by the licensee to the Authority) of this licence
“Network And Property Rates”	means: <ul style="list-style-type: none"> <li>(a) in England and Wales, the rates payable by the licensee in respect of hereditaments on the Central Rating Lists (England and Wales) compiled under section 52 of the Local Government Finance Act 1988 and hereditaments on the Local Rating Lists compiled under sections 41 and 41A of the Local Government Finance Act 1988 (or any legislation amending or replacing those enactments);</li> <li>(b) in Scotland, the rates payable by the licensee in respect of any land and heritages on the Valuation Rolls compiled under the Local Government Scotland Act 1975, the Local Government etc (Scotland) Act 1994;</li> <li>(c) in Belgium, any network rates payable by the licensee as specified by the Authority in writing (after consultation with the <u>Belgian regulatory authority</u> <del>National Regulatory Authority</del>) as being a Belgian network rate; and</li> <li>(d) such costs not falling under points (a) to (c) as the Authority</li> </ul>



specifies in writing as being costs that constitute property rates payable by the licensee in respect of the licensee's Interconnector.

### **Special Condition 8: Process for determining the value of the Post Construction Adjustment terms**

1. The purpose of this condition is to establish the process for determining the values of the Post Construction Adjustment (PCA) terms (the Post Construction Adjustment At Cap term (PCAC) and the Post Construction Adjustment At Floor term (PCAF)).
2. The PCA terms are the adjustment (whether upwards or downwards) of the Cap Level and the Floor Level proposed by the licensee as a consequence of the difference between:
  - (a) the Authority's estimate, assumed in the Preliminary Cap Level and Preliminary Floor Level, of the costs associated with developing, constructing, operating, maintaining and decommissioning of the licensee's Interconnector; and
  - (b) the Authority's assessment, at the Post Construction Review stage, of the economic and efficient costs associated with developing, constructing, operating, maintaining and decommissioning of the licensee's Interconnector.
3. The licensee shall submit, at a date on which between 85 per cent and 95 per cent of development and capital expenditure, excluding interest during construction (and any snagging retention) has been committed to the development and construction of the licensee's Interconnector, a request to the Authority setting out the proposed value for the PCA terms with supporting information and in accordance with the Nemo Link Cap And Floor Financial Model Protocol.
4. Where an earlier determination (within the limits specified in paragraph 3 of this condition) is requested by the licensee, any risks associated with contingency and unspent costs or future variations shall reside with the licensee.
5. The licensee shall give the Authority no less than 6 months' notice that it intends to submit a proposed value for the PCA terms for determination by the Authority under this condition.
6. The licensee shall ensure that a request under paragraph 3 of this condition includes:
  - (a) the licensee's proposed values for the PCA terms;
  - (b) details of how the licensee's proposed PCA terms have been calculated; and
  - (c) any other relevant information as may be specified by the Authority to facilitate its determination of the licensee's proposed values for the PCA terms.
7. For the purpose of paragraph 6(c), the Authority may issue guidance specifying the relevant information to be provided by the licensee. Such guidance may contain appropriate provisions and / or requirements in respect of the format and content of submission to be made by the licensee to the Authority under this condition, including the areas to be covered and the type of information and evidence to be provided.
8. The Authority will review the information submitted by the licensee under paragraph 6 of this condition and notify the licensee in writing within three months that:

- (a) it has received all the information required to make a determination under paragraph 13 of this condition; or
  - (b) it has not received all the information required and specify what further information is required.
9. The Authority will, following a review of any further information submitted by the licensee pursuant to paragraph 8(b) of this condition, confirm in writing to the licensee that it has received all the information required by sending a notification to the licensee under paragraph 8(a) of this condition and, if not, specify what information remains outstanding.
  10. Where the Authority, at any time after sending a notification to the licensee under paragraph 8(a) of this condition, concludes that the information provided by the licensee is not sufficient for the purposes of making a determination under paragraph 13 of this condition, the Authority shall specify in writing what additional information is required in order for the Authority to issue a further notification under 8(a) of this condition.
  11. The Authority will not commence its determination of the licensee's proposed value for the PCA terms until and unless, in its opinion, the licensee's submission meets the requirements of guidance issued (if any) under paragraph 7 of this condition.
  12. Where the Authority has requested further information under paragraph 8(b), paragraph 9 or paragraph 10 of this condition, the licensee shall provide such information to the Authority within one month of the Authority requesting such information.
  13. Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and after consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, determine whether the licensee's proposed values for the PCA terms is acceptable and, if not, specify the values of the PCA terms.
  14. The 12 month period specified in paragraph 13 of this condition shall be paused on the date the Authority requests further information from the licensee under paragraph 10 of this condition and shall resume on the date the Authority issues a further notification under paragraph 8(a) pursuant to paragraph 10 of this condition.
  15. As soon as reasonably practicable after completing its determination under paragraph 13 of this condition, the Authority shall direct in writing the values of the PCA terms. The values of the PCA terms specified in such a direction shall take effect from the date stated in the direction, such date not being earlier than the date on which the direction is issued.
  16. Prior to completing its determination under paragraph 13 of this condition, the Authority shall consult with the licensee, the Belgian regulatory authority ~~National Regulatory Authority~~, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period.

### **Special Condition 9: Process for determining the value of the Opex Reassessment Adjustment terms**

1. The purpose of this condition is to establish the process for determining the value of the Opex Reassessment Adjustment (ORA) terms (the Opex Reassessment Adjustment At Cap term (ORAC) and the Opex Reassessment Adjustment At Floor term (ORAF)). The ORA terms are



the adjustment (whether upwards or downwards) of the Cap Level and Floor Level to account for the difference between:

- (a) the Authority's assessment at the Post Construction Review stage of the economic costs associated with operating and maintaining the licensee's Interconnector; and
  - (b) the Authority's reassessment, at the Opex Reassessment stage, of the economic and efficient costs associated with operating and maintaining the licensee's Interconnector.
2. The value of the ORA terms shall be determined by the Authority, following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, not less than 10 years following the Regime Start Date, if either:
    - (a) such determination is requested by the licensee in accordance with paragraph 4 of this condition; or
    - (b) the Authority has notified the licensee, in accordance with paragraph 5 of this condition, that it considers such a determination to be appropriate,
 and in any case no more than once.
  3. Until and unless such a determination is made, the ORA terms shall have the value zero.
  4. Where such a determination is considered necessary, the licensee must submit a request to the Authority setting out the proposed values for the ORA terms with supporting information and in accordance with the Nemo Link Cap And Floor Financial Model Protocol. The licensee must include all relevant and up to date cost information that the Authority may require to complete its reassessment.
  5. The Authority may notify the licensee that it considers it appropriate to determine the values of the ORA terms. Such notification shall:
    - (a) be made in writing to the licensee; and
    - (b) set out the information that the licensee is required to provide to the Authority to complete its reassessment.
  6. The licensee shall provide the information required under paragraph 5(b) of this condition within 3 months from the date of the Authority's notification.
  7. The licensee shall ensure that all relevant information as may be specified by the Authority in accordance with paragraph 4 or paragraph 5(b) is submitted to the Authority to facilitate its reassessment and determination of the values of the ORA terms.
  8. The Authority shall review the information submitted by the licensee pursuant to paragraph 4 or paragraph 5(b) of this condition and notify the licensee in writing within three months that:
    - (a) it has received all the information required to allow it to make its determination under

paragraph 2(a) or paragraph 2(b) of this condition; or

(b) it has not received all the information required and specify what further information is required.

9. The Authority will, following a review of any further information submitted by the licensee pursuant to paragraph 8(b) of this condition, confirm in writing to the licensee, whether it has received all the information required by sending a notification to the licensee under paragraph 8(a) of this condition and, if not, specify what information remains outstanding.
10. Where the Authority, at any time after sending a notification to the licensee under paragraph 8(a) of this condition, concludes that the information provided by the licensee is not sufficient for the purposes of making a determination under paragraph 2(a) or paragraph 2(b) of this condition, the Authority shall specify in writing what further information is required in order for the Authority to issue a further notification under paragraph 8(a) of this condition.
11. The Authority will not commence its determination of the values of the ORA terms until the requirements of paragraph 7 of this condition have been met.
12. Where the Authority has requested further information under paragraph 8(b), paragraph 9 or paragraph 10 of this condition, the licensee shall provide such information to the Authority within one month of the Authority requesting such information.
13. Subject to paragraph 14 of this condition, the Authority shall, within 12 months from the date of any notification under paragraph 8(a) of this condition, and following consultation with the Belgian regulatory authority ~~National Regulatory Authority~~, determine the values of the ORA terms under paragraph 2(a) or paragraph 2(b) of this condition.
14. The 12 month period specified in paragraph 13 of this condition shall be paused on the date the Authority requests further information from the licensee under paragraph 10 of this condition and shall resume on the date that the further notification under paragraph 8(a) of this condition is given to the licensee pursuant to paragraph 10 of this condition.
15. As soon as reasonably practicable after completing any determination under paragraph 2(a) or paragraph 2(b) of this condition, the Authority shall direct in writing the values of the ORA terms. The values of the ORA terms specified in such a direction shall take effect from the date stated in the direction, such date not being earlier than the date on which the direction is issued.
16. Changes to decommissioning costs will not be considered at the reassessment of Operating Costs.
17. Prior to completing its determination under paragraph 2(a) or paragraph 2(b) of this condition, the Authority shall consult with the licensee, the Belgian regulatory authority ~~National Regulatory~~

~~Authority~~, and any other relevant parties for a period of at least 28 days and consider any representations duly received within that period

### Annex 2.3.a National Grid North Sea Link Limited Special Conditions Modification Table

Special Condition	Current wording	Proposed change	Reasons for change
5(13)	<p>“Firmness” has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management and Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation</p>	<p><del>“Firmness” has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management and Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation</del> <u>means a guarantee that cross-zonal capacity rights will remain unchanged and that a compensation is paid if they are nevertheless changed</u></p>	<p>The text of definition of “Firmness” as appearing in Commission Regulation (EU) 2015/1222 (which is no longer part of the Retained EU Law) has been added for legal certainty purposes.</p> <p>Both Regulation 2015/1222 and Commission Regulation (EU) 2016/1719 are revoked by regulation 5 of the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 and will not form part of Retained EU Law.</p>

**Annex 2.3.b National Grid North Sea Link Limited Special Conditions Change Marked Licence Text**

We have included the sections of the special conditions we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

**Special Condition 5: Assessed Revenue**

1. The purpose of this special condition is to calculate the licensee’s Assessed Revenue, which is assessed against the Cap Level and Floor Level in accordance with special condition 3 (Cap and Floor Assessment) for each Relevant Assessment Period of the Regime Duration.

Structure of this condition

2. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation of the Assessed Revenue term ( $AR_t$ );
  - (b) Part B of this condition sets out the calculation of the Gross Revenue term ( $GR_t$ );
  - (c) Part C of this condition sets out the calculation of the Market Related Costs term ( $MRC_t$ );
  - (d) Part D of this condition sets out the calculation of the Additional Revenue term ( $ADR_t$ ); and
  - (e) Part E of this condition sets out the definitions of defined terms used only in this condition.

**Part A: Calculation of the Assessed Revenue term ( $AR_t$ )**

3. Subject to Part D (Determination of the Income Adjusting Event term) of special condition 7 (Non-Controllable Costs), for each Relevant Year, the value of the Notional Assessed Revenue ( $NAR_t$ ) term is calculated in accordance with the following formula:

$$NAR_t = GR_t - MRC_t$$

4. The value of the Assessed Revenue ( $AR_t$ ) term is determined as follows:
  - (a) if the value of the  $NAR_t$  term is greater than or equal to zero, then the value of the  $AR_t$  term is equal to the value of the  $NAR_t$  term; or
  - (b) if the value of the  $NAR_t$  term is less than zero, then the value of the  $AR_t$  term is zero.

Where:

$AR_t$	means the Assessed Revenue term for Relevant Year $t$ and is determined in accordance with paragraph 4 of this condition
$GR_t$	means the Gross Revenue term for Relevant Year $t$ and is calculated in

	accordance with Part B of this condition
MRC <sub>t</sub>	means the Market Related Costs term for Relevant Year <i>t</i> and is calculated in accordance with Part C of this condition
NAR <sub>t</sub>	Means the Notional Assessed Revenue term for Relevant Year <i>t</i> and is calculated in accordance with paragraph 3 of this condition

5. Without prejudice to any part of this condition, the Authority may, where it considers the information reported by the licensee in its Annual Cap and Floor RIGs Submission with respect to any component of the Assessed Revenue to be insufficient, request such information to be supplemented with any additional information or supporting evidence that the Authority considers appropriate.

**Part B: Calculation of the Gross Revenue term (GR<sub>t</sub>)**

6. For each Relevant Year, the value of the GR<sub>t</sub> term (in Sterling) is calculated in accordance with the following formula:

$$GR_t = CAR_t + ASRGB_t + ASRN_t + CMR_t + RI_t + CPGB_t + CPN_t + ADR_t$$

Where:

ADR <sub>t</sub>	means the Additional Revenue term for Relevant Year <i>t</i> and is determined in accordance with Part D of this condition
ASRN <sub>t</sub>	means the Ancillary Services Revenue (Norway) term for Relevant Year <i>t</i> and is:  (c) equal to all revenue that is derived from providing a Norwegian Ancillary Service for Relevant Year <i>t</i> ; and  (d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>
ASRGB <sub>t</sub>	means the Ancillary Services Revenue (GB) term for Relevant Year <i>t</i> and is:  (c) equal to all revenue that is derived from providing a GB Ancillary Service for Relevant Year <i>t</i> ; and  (d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>
CAR <sub>t</sub>	means the Capacity Allocation Revenue term for Relevant Year <i>t</i> and is:  (c) equal to all revenue received as a result of interconnector capacity allocation for Relevant Year <i>t</i> ; and  (d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i>

<p>CMR<sub>t</sub></p>	<p>means the Capacity Market Revenue term for Relevant Year <i>t</i> and is equal to whichever is the greater of:</p> <p>(c) all revenue (after deduction of any Capacity Provider Penalty Charges) that is derived from the licensee’s participation in the GB Capacity Market for Relevant Year <i>t</i>; and</p> <p>(d) zero,</p> <p>and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></p>
<p>CPN<sub>t</sub></p>	<p>means the Constraint Payments (Norway) term for Relevant Year <i>t</i> and is:</p> <p>(c) equal to the sum of any payments received by the licensee from the Norwegian System Operator as a result of the (partial or whole) de-energisation, disconnection or curtailment of the licensee’s interconnector by the GB System Operator or Norwegian System Operator for Relevant Year <i>t</i>; and</p> <p>(d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></p>
<p>CPGB<sub>t</sub></p>	<p>means the Constraint Payments (GB) term for Relevant Year <i>t</i> and is:</p> <p>(c) equal to the sum of any payments received by the licensee from the GB System Operator as a result of the (partial or whole) de-energisation, disconnection or curtailment of the licensee’s Interconnector by the GB System Operator or Norwegian System Operator for Relevant Year <i>t</i>; and</p> <p>(d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></p>
<p>RI<sub>t</sub></p>	<p>means the Receipts from Insurance term for insurance claims related to the compensation of lost revenue (such as business interruption insurance) for Relevant Year <i>t</i> and is:</p> <p>(c) equal to the sum of any payments received by the licensee as a result of such insurance claim(s) for Relevant Year <i>t</i>; and</p> <p>(d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <i>t</i></p>

**Part C: Calculation of the Market Related Costs term (MRC<sub>t</sub>)**

7. For each Relevant Year, the value of the MRC<sub>t</sub> term (in Sterling) is calculated in accordance with the following formula:

$$MRC_t = EAC_t + FC_t + TCC_t$$

8. The licensee shall use reasonable endeavours to minimise its  $MRC_t$ .

Where:

$EAC_t$	<p>means the Error Accounting Costs term for Relevant Year <math>t</math> and is equal to the sum of the costs, whether positive or negative, incurred by the licensee in settling any energy imbalance due to any difference in metered volume between the physical flow on the interconnector and the aggregate position of all interconnector users as notified, in accordance with:</p> <p>(c) the BSC, to the Balancing and Settlement Code Company by the GB Interconnector Administrator for Relevant Year <math>t</math>; and</p> <p>(d) the relevant arrangements in Norway for Relevant Year <math>t</math>, and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></p>
$FC_t$	<p>means the Firmness Costs term for Relevant Year <math>t</math> and is:</p> <p>(c) equal to costs, whether positive or negative, incurred by the licensee from payments made to users under the Firmness arrangements for Relevant Year <math>t</math>; and</p> <p>(d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></p>
$MRC_t$	<p>means the Market Related Costs term for Relevant Year <math>t</math> and is:</p> <p>(a) 50% of all market related costs incurred in the operation of the licensee's interconnector (which represents the share of the total market related costs incurred by NGNSL as licensee); and</p> <p>(b) determined in accordance with paragraph 8 of this condition</p>
$TCC_t$	<p>means Trip Contract Costs for Relevant Year <math>t</math> and is:</p> <p>(c) equal to costs, whether positive or negative, incurred by the licensee under a Trip Contract agreement for Relevant Year <math>t</math>; and</p> <p>(d) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year <math>t</math></p>

**Part D: Calculation of the Additional Revenue term ( $ADR_t$ )**

9. For each Relevant Year, the value of the Additional Revenue term ( $ADR_t$ ) is calculated in accordance with the following formula:

$$ADR_t = \sum(ADRS)_t$$



Where:

$ADR_t$	means the Additional Revenue term for Relevant Year $t$ and is determined in accordance with paragraph 10 of this condition
$\sum(ADRS)_t$	means the sum of any Interconnector Revenue for Relevant Year $t$ (after deduction of any development and associated costs directed by the Authority under paragraph 11), that is derived from a source that is specified by the Authority under paragraph 10 of this condition as being an Additional Revenue Source

10. For the purposes of this condition, any source of Interconnector Revenue shall only be considered an Additional Revenue Source if the Authority has directed in writing to the licensee that it is an Additional Revenue Source.
11. For the purposes of this condition, development and associated costs related to Additional Revenue shall only be deducted if the Authority has directed in writing to the licensee that such costs are deductible.
12. Where the licensee considers that a source of Interconnector Revenue may qualify as an Additional Revenue Source, it must notify the Authority in writing as soon as practicably possible.

#### Part E: Interpretation

13. For the purposes of this condition:

“Norwegian Ancillary Services”	<p>means:</p> <p>(a) such services as the licensee may be required to have available pursuant to the relevant Norwegian legislation and/or industry codes as applicable, and/or</p> <p>(b) such services as the licensee may have agreed to have available as being ancillary services pursuant to any agreement made with the Norwegian System Operator and which may be offered for purchase by the Norwegian System Operator for the purpose of securing stability of operation of the national electricity transmission systems in Norway and the distribution system of any authorised electricity operator or any system linked to the national electricity transmission systems in Norway by the licensee’s Interconnector</p>
“Capacity Provider Penalty Charges”	has the meaning given to that term in The Electricity Capacity Regulations 2014 (SI 2014/ 2043) as amended

“Firmness”	<p>“Firmness” <del>has the meaning given to that term in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management and Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation</del> <u>means a guarantee that cross-zonal capacity rights will remain unchanged and that a compensation is paid if they are nevertheless changed</u></p>
“GB Ancillary Services”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) such services as the licensee may be required to have available pursuant to the Grid Code; and/or</li> <li>(b) such services as the licensee may have agreed to have available as being ancillary services pursuant to any agreement made with the GB System Operator and which may be offered for purchase by the GB System Operator for the purpose of securing stability of operation of the national electricity transmission system in GB and the distribution system of any authorised electricity operator or any system linked to the national electricity transmission system in GB by the licensee’s Interconnector</li> </ul>
“GB Interconnector Administrator”	has the meaning given to the term “Interconnector Administrator” in the BSC
“GB Capacity Market”	has the meaning given to the term “Capacity Market” in The Electricity Capacity Regulations 2014 (SI 2014/2043) as amended
“Trip Contract”	<p>means:</p> <ul style="list-style-type: none"> <li>(a) contracts; and/or</li> <li>(b) other forms of agreement specified in writing by the Authority,</li> </ul> <p>providing for energy sales and/or purchases on the intraday markets or other contracts with a third party to deliver/off-take power in the market for the purposes of managing trip events.</p>