

**Schedule 3A – Proposed modifications to the special conditions of the electricity interconnector licence held by Nemo Link Limited**

[Note: Text shown in blue double underline are proposed additions and text shown in ~~red strikethrough~~ are proposed deletions]

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## **Special Condition 1: Definitions and Interpretation**

1. This condition sets out particular defined words and expressions that are used in the special conditions and gives their meaning.
2. However:
  - (a) where words and expressions are used in only one special condition, their definitions are set out in that condition; and
  - (b) where words and expressions used in the special conditions are defined in the standard conditions, they have the same meaning in the special conditions as given to them in the standard conditions, unless the context otherwise requires.
3. All defined words and expressions used in the special conditions have initial capital letters, including those defined in the standard conditions where they are written with lower case.
4. Any reference in these special conditions to:
  - (a) a provision thereof;
  - (b) a provision of the standard conditions of electricity transmission licences;
  - (c) a provision of the standard conditions of electricity interconnector licences,shall, if these or the standard conditions in question come to be modified, be construed, so far as the context permits, as a reference to the corresponding provision of these or the standard conditions in question as modified.

### Definitions in alphabetical order

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

“Annual Cap and Floor RIGs Submission”	means the submission by the licensee, on an annual basis, as specified in the Cap and Floor RIGs, of information that it is required to collect and provide to the Authority under standard condition 25 (Cap and Floor Regulatory Instructions and Guidance) of this licence
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“Assessed Revenue”	means revenue earned by the licensee for Relevant Year t and calculated in accordance with Part A of special condition 5 (Assessed Revenue) of this licence
“Availability Incentive Adjustment At Cap” (AIC <sub>t</sub> )	means the adjustment to the Cap Level determined in accordance with Part B of special condition 4 (Interconnector Availability Incentive) of this licence
“Availability Incentive Adjustment At Floor” (AIF <sub>t</sub> )	means the adjustment to the Floor Level determined in accordance with Part C of special condition 4 of this licence
“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 System Operator”	means the operator of the high-voltage electricity transmission system in Belgium
“Cap Level”(CL <sub>t</sub> )	means the level of Assessed Revenue for any Relevant Year that: <ul style="list-style-type: none"> <li>(a) is determined in accordance with the formula in paragraph 4(a) of special condition 2 (Cap Level and Floor Level) of this licence; and</li> <li>(b) above which, at the end of each Relevant Assessment Period, Assessed Revenue is paid to the GB System Operator and the Belgian System Operator</li> </ul>
“End Of Period Cap And Floor Adjustment” (CFA <sub>ap</sub> )	means the revenue adjustment component calculated in accordance with paragraph 4 of special condition 3 (Cap and Floor Assessment) of this licence
“Exceptional Event”	means: <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</li> </ul>

below the Minimum Availability Target in any Relevant Year; and

- (b) in the Authority’s opinion, (following consultation with the Belgian National Regulatory Authority) the event or circumstance:
  - i. constitutes a Force Majeure event under the special conditions of this licence;
  - ii. has been appropriately mitigated and managed by the licensee including responding to the event in line with Good Industry Practice; and
  - iii. the Authority is satisfied that the licensee has met the requirements of Part A of special condition 4 of this licence

“Floor Level”(FL<sub>t</sub>) means the level of Assessed Revenue for any Relevant Year that:

- (a) is determined in accordance with the formula in paragraph 4(b) of special condition 2 of this licence; and
- (b) below which level the licensee is eligible for a top up of Assessed Revenue from the GB System Operator and the Belgian System Operator

“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

“Force Majeure” means an event or circumstance which is beyond the reasonable control of the licensee, including act of God, act of the public enemy, war declared or undeclared, threat of war, terrorist act (or threat of), blockade, revolution, riot, insurrection, civil

commotion, public demonstration, sabotage, act of vandalism, governmental restraint, provided that lack of funds of the licensee or performance or non-performance by an electricity transmission licensee or equivalent entity shall not be interpreted as a cause beyond the reasonable control of the licensee and provided that weather and ground conditions which are reasonably to be expected at the location of the event or circumstance are also excluded as not being beyond the reasonable control of the licensee

“Full Commissioning Date”

means the date on which the licensee’s Interconnector is deemed to be fully commissioned in accordance with the criteria set out in paragraph 7 of special condition 2 of this licence

“Good Industry Practice”

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

“Interconnector Revenue”

means the total revenue derived by the licensee, for Relevant Year  $t$ , from participating in the operation of the licensee’s Interconnector

“Minimum Availability Target”

means the minimum amount of availability that is required over the licensee’s Interconnector in any Relevant Year, and has the value 7,012,800 megawatt hours (MWh), subject to adjustments to account for partial years in accordance with Part F of special condition 4 of this licence

~~“Nemo Link Cap And Floor Financial Model Protocol”(NLCFFMP)~~

~~means the document described in special condition 11(Nemo Link Cap And Floor Financial Model Protocol) of this licence that sets out, amongst other things, how the licensee effects adjustments to the Cap Level, the Floor Level and the licensee’s Interconnector Revenue in accordance with the special conditions of this licence~~

“Nemo Link Cap And Floor means the model of that name that:

Financial Model 2”

(NLCFFM2)

(a) was published with the Authority’s “Decision on Nemo Link’s Post Construction Review” dated xx 2019;

(b) is represented by a workbook in Microsoft Excel ® format maintained under that name on the Authority’s Website;

(c) is used by the Authority to facilitate:

- (i) Authority’s assessment of the licensee’s Interconnector Revenue in accordance with special condition 3 of this licence;
- (ii) Authority’s assessment of the licensee’s non-controllable operating expenditure in accordance with special condition 7 of this licence; and
- (iii) Authority’s adjustments to the Cap Level and Floor Level over the Regime Duration in accordance with the provisions and processes set out in this licence.

“Opex Reassessment” means the process for determining the value of the Opex Reassessment Adjustment terms set out in special condition 9 (Process for determining the value of the Opex Reassessment Adjustment terms)

“Opex Reassessment Adjustment”(ORA) 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

“Preliminary Cap Level” (PCL) means the value specified in paragraph 11(a) of special condition 2 of this licence (£83,806,402 per year, expressed in real 2013/14 Sterling prices)

“Preliminary Floor means the value specified in paragraph 11(b) of special

Level” (PFL)	condition 2 of this licence (£48,807,317 per year, expressed in real 2013/14 Sterling prices)
“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 National Regulatory Authority) in accordance with Part C of special condition 2 of this licence
“Post Construction Review”	means the process for determining the value of the Post Construction Adjustment terms set out in special condition 8 (Process for determining the value of the Post Construction Adjustment terms)
“Rated Capacity”	means the maximum of the licensee’s Interconnector Capacity and is equal to 1,000 megawatts (MW)
“Regime Duration”	means a period of 25 Relevant Years commencing on the Regime Start Date
“Regime Start Date”	<p><del>means either:</del></p> <p><del>(a) — the Floor Start Date or a date up to 12 months after the Target Completion Date, whichever occurs earlier; or</del></p> <p><del>(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 licensee</del></p> <p><u>means 31 January 2019</u></p>
“Relevant Assessment Period”	means any of the Relevant Assessment Periods specified in Part J of special condition 3 of this licence
“Relevant Assessment Period <i>ap</i> ”	means that Relevant Assessment Period for the purposes of which any calculation falls to be made
“Relevant Partial Assessment Period”	<p>means a period that:</p> <p>(a) commences on the first day of the first Relevant Year of</p>



	the Relevant Assessment Period;
	(b) is comprised of whole Relevant Year(s) only; and
	(c) runs for whole consecutive years up to and including, but not exceeding, the fourth Relevant Year of a Relevant Assessment Period
“Relevant Partial Assessment Period <i>pap</i> ”	means that Relevant Partial Assessment Period for the purposes of which any calculation falls to be made
“Relevant Year”	means:
	(a) in all Relevant Years except for the first Relevant Year and the last Relevant Year of the Regime Duration, a period of 12 months beginning on 1 January and ending on 31 December of the same calendar year; and
	(b) in the first Relevant Year and the last Relevant Year of the Regime Duration, a different period of time as specified in Part J of special condition 3 of this licence
“Relevant Year <i>t</i> ”	means that Relevant Year for the purposes of which any calculation falls to be made
“Target Completion Date”	means 31 January 2019
“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.

## **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 ( $CL_t$ ) and Floor Level term ( $FL_t$ );
  - (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 ( $AIC_t$ ) and the Availability Incentive Adjustment At Floor term ( $AIF_t$ );
  - (f) Part F of this condition sets out the calculation of the Purchasing Power Parity Index term ( $PPPI_t$ ); and
  - (g) Part G sets out the calculation of the Partial Year Cap Adjustment Factor term ( $PYC_t$ ) and the Partial Year Floor Adjustment Factor term ( $PYF_t$ ).

### Part A: Calculation and entry into force of the Cap Level term ( $CL_t$ ) and Floor Level term ( $FL_t$ )

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:

- $AIC_t$  means the Availability Incentive Adjustment At Cap term for Relevant Year  $t$  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
- $AIF_t$  means the Availability Incentive Adjustment At Floor term for Relevant Year  $t$  and is determined in accordance with Part C of special condition 4 of this licence and shall have a value specified in paragraph 17 of this condition
- $CL_t$  means the Cap Level for Relevant Year  $t$  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
- $FL_t$  means the Floor Level in Relevant Year  $t$  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 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 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 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 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

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 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 ( $AIC_t$ ) and Availability Incentive Adjustment At Floor term ( $AIF_t$ )

16. The value of the  $AIC_t$  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  $AIF_t$  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 ( $PPPI_t$ )

18. Subject to paragraphs 19 and 20 of this condition, the value of the  $PPPI_t$  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 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 means:

index  $t$

- (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;
- (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
- (c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year  $t$ , 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

Belgian CPI

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 consumer prices for Belgium, as identified by Statistics



Belgium where the index in 2004 equals 100, and has the value of 122.702

GBP<sub>t</sub> / EUR<sub>t</sub> means:

- (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;
- (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 exchange rate XUMAERS for Euro to Sterling conversions as identified by the Bank of England; or
- (c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year *t*, the 12 month arithmetic average of the monthly exchange rate XUMAERS for Euro to Sterling conversions as identified by the Bank of England

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>t</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>t</sub> means:

- (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;

- (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
- (c) for all other Relevant Years over the Regime Duration, with respect to each of the 12 months in Relevant Year *t*, 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

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<sub>t</sub> shall take the value 1 in all Relevant Years, except:
  - (a) in respect of the period before the Regime Start Date, where the PYC<sub>t</sub> 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<sub>t1</sub> 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

**$PYC_t$**  means the Partial Year Cap Adjustment Factor term for Relevant

Year  $t$  and is calculated in accordance with paragraph ~~20~~ 22 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  $t$  and is calculated in accordance with paragraph ~~21~~ 23 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 3: Cap and Floor Assessment

1. The purpose of this condition is to calculate the value of the End of Period Cap And Floor Revenue Adjustment term ( $CFA_{ap}$ ).
2. The  $CFA_{ap}$  term is a component that provides for the adjustment (whether upwards or downwards) of the licensee's Interconnector Revenue as a consequence of the assessment of the licensee's Assessed Revenue against the Cap Level and Floor Level for each Relevant Assessment Period.

#### Structure of this condition

3. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation of the End Of Period Cap And Floor Revenue Adjustment term ( $CFA_{ap}$ );
  - (b) Parts B to I of this condition set out the calculation of the various components used in the calculations set out in Part A of this condition; and
  - (c) Part J of this condition specifies the number, duration and start dates of Relevant Assessment Periods over the course of the Regime Duration.

#### Part A: Calculation of the End of Period Cap And Floor Revenue Adjustment term ( $CFA_{ap}$ )

4. For each Relevant Assessment Period, the value of the  $CFA_{ap}$  term is calculated in accordance with the following:
  - (a) if the value of the  $REC_{ap}$  term is not equal to zero, then the value of the  $CFA_{ap}$  term is calculated in accordance with the following formula:

$$CFA_{ap} = -REC_{ap} - WPAN_{ap}$$

- (b) if the value of the  $RSF_{ap}$  term is not equal to zero, then the value of the  $CFA_{ap}$  term is calculated in accordance with the following formula:

$$CFA_{ap} = RSF_{ap} - WPAN_{ap}$$

- (c) if the values of both the  $REC_{ap}$  and  $RSF_{ap}$  terms are equal to zero and the value of the  $WPAN_{ap}$  term is not equal to zero, then the value of the  $CFA_{ap}$  term is calculated in accordance with the following formula:

$$CFA_{ap} = -WPAN_{ap}$$

- (d) if the values of the  $REC_{ap}$ ,  $RSF_{ap}$  and  $WPAN_{ap}$  terms are all equal to zero then the value of the  $CFA_{ap}$  term is zero.

Where:

- $CFA_{ap}$  means the End Of Period Cap And Floor Revenue Adjustment term for Relevant Assessment Period  $ap$  and is determined in accordance with paragraph 4 of this condition
- $REC_{ap}$  means the Revenue Excess At Cap term for Relevant Assessment Period  $ap$  and is determined in accordance with Part B of this condition
- $RSF_{ap}$  means the Revenue Shortfall At Floor term for Relevant Assessment Period  $ap$  and is determined in accordance with Part C of this condition
- $WPAN_{ap}$  means the Within Period Adjustment Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with Part G of this condition

Part B: Calculation of the Revenue Excess At Cap term ( $REC_{ap}$ )

5. For each Relevant Assessment Period, the value of the Relevant Revenue At Cap ( $RRAC_{ap}$ ) term is calculated in accordance with the following formula:

$$RRAC_{ap} = ARN_{ap} - CLN_{ap}$$

6. The value of the Revenue Excess At Cap ( $REC_{ap}$ ) term is determined as follows:
- (a) if the value of the  $RRAC_{ap}$  term is greater than zero (positive value) then the value of the  $REC_{ap}$  term shall be equal to the value of the  $RRAC_{ap}$  term; or
- (b) if the value of the  $RRAC_{ap}$  term is less than zero (negative value) or equal to zero then the value of the  $REC_{ap}$  term shall be zero.

Where:

- $ARN_{ap}$  means the Assessed Revenue Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with Part D of this condition

- $CLN_{ap}$  means the Cap Level Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with Part E of this condition
- $REC_{ap}$  means the Revenue Excess At Cap term for Relevant Assessment Period  $ap$  and is determined in accordance with paragraph 6 of this condition
- $RRAC_{ap}$  means the Relevant Revenue At Cap term for Relevant Assessment Period  $ap$  and is calculated in accordance with paragraph 5 of this condition

Part C: Calculation of the Revenue Shortfall At Floor term ( $RSF_{ap}$ )

7. For each Relevant Assessment Period, the value of the Relevant Revenue At Floor term is calculated in accordance with the following formula:

$$RRAF_{ap} = FLN_{ap} - ARN_{ap}$$

8. The value of the Revenue Shortfall At Floor ( $RSF_{ap}$ ) term is determined as follows:
- (a) if the value of the  $RRAF_{ap}$  term is greater than zero (positive value) then the value of the  $RSF_{ap}$  term shall be equal to the value of the  $RRAF_{ap}$  term; or
  - (b) if the value of the  $RRAF_{ap}$  term is less than zero (negative value) or equal to zero then the value of the  $RSF_{ap}$  term shall be zero.

Where:

- $ARN_{ap}$  means the Assessed Revenue Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with Part D of this condition
- $FLN_{ap}$  means the Floor Level Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with Part F of this condition
- $RRAF_{ap}$  means the Relevant Revenue At Floor term for Relevant Assessment Period  $ap$  and is calculated in accordance with paragraph 7 of this condition

$RSF_{ap}$  means the Revenue Shortfall At Floor term for Relevant Assessment Period  $ap$  and is determined in accordance with paragraph 8 of this condition

Part D: Calculation of the Assessed Revenue Net Present Value term ( $ARN_{ap}$ )

9. Subject to paragraph 10 of this condition, the value of the  $ARN_{ap}$  term is calculated in accordance with the following formula:

$$ARN_{ap} = (AR_{t1} \times UF_{t1}) + (AR_{t2} \times UF_{t2}) + \dots (AR_{t5} \times UF_{t5})$$

10. If, in any Relevant Year  $t$ , the value of the  $FL_t$  term is equal to zero then the formula in paragraph 9 of this condition shall be amended as follows:

- (a) for the calculation of the of the  $RSF_{ap}$  term, the  $AR_t$  term shall be replaced with the  $SAR_t$  term for that Relevant Year  $t$ ; and
- (b) for the calculation of the  $REC_{ap}$  term, no amendment to the formula in paragraph 9 shall be made.

Where:

$AR_t$  means the Assessed Revenue term for Relevant Year  $t$  and is determined in accordance with Part A of special condition 5 (Assessed Revenue) of this licence

$AR_{t1}$  means the Assessed Revenue term for the first Relevant Year of the Relevant Assessment Period and similar expressions shall be construed accordingly

$ARN_{ap}$  means the Assessed Revenue Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with paragraph 9 of this condition except where the calculation has been amended in accordance with paragraph 10 of this condition, in which case it is calculated in accordance with any such amendment(s)

$FL_t$  means the Floor Level term for Relevant Year  $t$  and is calculated in accordance with paragraph 4(b) of special condition 2 of this licence

$NFL_t$  means the Notional Floor Level term for Relevant Year  $t$  and is equal to the Floor Level term 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

REC<sub>ap</sub> means the Revenue Excess At Cap term for Relevant Assessment Period *ap* and is calculated in accordance with Part B of this condition

RSF<sub>ap</sub> means the Revenue Shortfall At Floor term for Relevant Assessment Period *ap* and is calculated in accordance with Part C of this condition

SAR<sub>t</sub> means the Surplus Assessed Revenue term for Relevant Year *t* and is determined in accordance with Part H of this condition

UF<sub>t</sub> means the Uplift Factor term for Relevant Year *t* and is calculated in accordance with Part I of this condition

Part E: Calculation of the Cap Level Net Present Value term (CLN<sub>ap</sub>)

11. The value of the CLN<sub>ap</sub> term is calculated in accordance with the following formula:

$$CLN_{ap} = (CL_{t1} \times UF_{t1}) + (CL_{t2} \times UF_{t2}) + \dots (CL_{t5} \times UF_{t5})$$

Where:

CL<sub>t</sub> means the Cap Level term for Relevant Year *t* and is calculated in accordance with paragraph 4(a) of special condition 2 of this licence

CL<sub>t1</sub> means the Cap Level term for the first Relevant Year of the Relevant Assessment Period and similar expressions shall be construed accordingly

CLN<sub>ap</sub> means the Cap Level Net Present Value term for Relevant Assessment Period *ap* and is calculated in accordance with paragraph 11 of this condition

UF<sub>t</sub> means the Uplift Factor term for Relevant Year *t* and is calculated in accordance with Part I of this condition

Part F: Calculation of the Floor Level Net Present Value term (FLN<sub>ap</sub>)

12. The value of the  $FLN_{ap}$  term is calculated in accordance with the following formula:

$$FLN_{ap} = (FL_{t1} \times UF_{t1}) + (FL_{t2} \times UF_{t2}) + \dots (FL_{t5} \times UF_{t5})$$

Where:

- $FL_t$  means the Floor Level term for Relevant Year  $t$  and is calculated in accordance with paragraph 4(b) of special condition 2 of this licence
- $FL_{t1}$  means the Floor Level term for the first Relevant Year of the Relevant Assessment Period and similar expressions shall be construed accordingly
- $FLN_{ap}$  means the Floor Level Net Present Value term for Relevant Assessment Period  $ap$  and is calculated in accordance with paragraph 12 of this condition
- $UF_t$  means the Uplift Factor term for Relevant Year  $t$  and is calculated in accordance with Part I of this condition

Part G: Calculation of the Within Period Adjustment Net Present Value term ( $WPAN_{ap}$ )

13. The value of the  $WPAN_{ap}$  term is calculated in accordance with the following formula:

$$WPAN_{ap} = (WPA_{t1} \times UF_{t1}) + (WPA_{t2} \times UF_{t2}) + \dots (WPA_{t5} \times UF_{t5})$$

Where:

- $UF_t$  means the Uplift Factor term for Relevant Year  $t$  and is calculated in accordance with Part I of this condition
- $UF_{t1}$  means the Uplift Factor term for the first Relevant Year of the Relevant Assessment Period and similar expressions shall be construed accordingly
- $WPA_t$  means the Within Period Adjustment term for Relevant Partial Assessment Period  $pap$  determined in accordance with the process set out in special condition 6 (Within Period Adjustment) of this licence, with Relevant Year  $t$  indicating the most recent Relevant Year of the Relevant Partial Assessment Period to which the relevant  $WPA_{pap}$  term relates

WPAN<sub>ap</sub> means the Within Period Adjustment Net Present Value term for Relevant Assessment Period *ap* and is calculated in accordance with paragraph 13 of this condition

Part H: Calculation of the Surplus Assessed Revenue term (SAR<sub>t</sub>)

14. Where paragraphs 10 and paragraph 11 of this condition apply, the value of the Notional Surplus Assessed Revenue (NSAR<sub>t</sub>) term for Relevant Year *t* is calculated in accordance with the following formula:

$$NSAR_t = AR_t - NFL_t$$

15. The value of the SAR<sub>t</sub> term is determined as follows:

- (a) where the value of the NSAR<sub>t</sub> term is greater than zero, the value of the SAR<sub>t</sub> term shall equal the value of the NSAR<sub>t</sub> term; or
- (b) where the value of the NSAR<sub>t</sub> is less than or equal to zero, the value of the SAR<sub>t</sub> term shall be zero.

Where:

AR<sub>t</sub> means the Assessed Revenue term for Relevant Year *t* and is calculated in accordance with Part A of special condition 5 of this licence

NFL<sub>t</sub> means the Notional Floor Level term for Relevant Year *t* and is equal to the Floor Level term 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

NSAR<sub>t</sub> means the Notional Surplus Assessed Revenue term for Relevant Year *t* and is calculated in accordance with paragraph 14 of this condition

SAR<sub>t</sub> means the Surplus Assessed Revenue term for Relevant Year *t* and is determined in accordance with paragraph 15 of this condition

Part I: Calculation of the Uplift Factor term (UF<sub>t</sub>)

16. The value of the  $UF_t$  term for Relevant Year  $t$  is calculated in accordance with the following formulae:

(a)  $UF_{t1} = (1+NODR_{t2}) \times (1+NODR_{t3}) \times (1+NODR_{t4}) \times (1+NODR_{t5})$

(b)  $UF_{t2} = (1+NODR_{t3}) \times (1+NODR_{t4}) \times (1+NODR_{t5})$

(c)  $UF_{t3} = (1+NODR_{t4}) \times (1+NODR_{t5})$

(d)  $UF_{t4} = (1+NODR_{t5})$

(e)  $UF_{t5} = 1$

17. The value of the Nominal Operational Discount Factor term ( $NODR_t$ ) for Relevant Year  $t$  is calculated in accordance with the following formula:

$$NODR_t = (1 + ODR) \times (1 + CPPPI_t) - 1$$

18. The value of the Change in Purchasing Power Parity Index term ( $CPPPI_t$ ) for Relevant Year  $t$  is calculated in accordance with the following formula:

$$CPPPI_t = \frac{PPPI_t}{PPPI_{t-1}} - 1$$

Where:

$CPPPI_t$  means the Change In Purchasing Power Parity Index term for Relevant Year  $t$  and is calculated in accordance with paragraph 18 of this condition

$NODR_t$  means the Nominal Operational Discount Rate term for Relevant Year  $t$  and is calculated in accordance with paragraph 17 of this condition

$ODR$  means the Operational Discount Rate term and is equal to 3.88%

$PPPI_t$  means the Purchasing Power Parity Index term for Relevant Year  $t$  and is calculated in accordance with Part F of special condition 2 of this licence

$UF_t$  means the Uplift Factor term for Relevant Year  $t$  and is calculated in accordance with paragraph 16 of this condition

UF<sub>t1</sub> means the Uplift Factor term for the first Relevant Year of the Relevant Assessment Period and similar expressions shall be construed accordingly

Part J: Relevant Years and Relevant Assessment Periods over the Regime Duration

19. There shall be a total of 25 Relevant Years over the Regime Duration.
20. Each Relevant Year over the Regime Duration shall commence on 1<sup>st</sup> January and end on 31<sup>st</sup> December of the same calendar year, except for the following:
  - (a) the first Relevant Year of the Regime Duration shall commence on the Regime Start Date and end on 31<sup>st</sup> December of the same calendar year; and
  - (b) the last Relevant Year of the Regime Duration shall extend beyond 31<sup>st</sup> December by such number of months (or part thereof), by which the first Relevant Year was reduced under paragraph 20(a) of this condition.
21. Following the first Relevant Year, subsequent Relevant Years shall run consecutively.
22. There shall be a total of five Relevant Assessment Periods. Each of the Relevant Assessment Periods shall be five consecutive Relevant Years in duration.
23. The first Relevant Assessment Period shall commence on the Regime Start Date. Subsequent Relevant Assessment Periods shall run consecutively.
24. The last Relevant Assessment Period shall commence on the date falling 15 years and one day after the end date of the first Relevant Assessment Period.
25. Assessment of the licensee's Assessed Revenue against the Cap Level and Floor Level (subject to these levels coming into force under paragraph 5 of special condition 2 of this licence) will occur at the end of every Relevant Assessment Period over the course of the Regime Duration.

## **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 ( $AIC_t$ ), 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 ( $AIF_t$ ), 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 ( $AA_t$ );
  - (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 ( $APC_t$ ) term:

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

10. The value of the  $AIC_t$  term is determined as follows:
- (a) if the value of the  $APC_t$  term is greater than or equal to 1.02, then the value of the  $AIC_t$  term is 1.02;
  - (b) if the value of the  $APC_t$  term is less than or equal to 0.98, then the value of  $AIC_t$  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  $AIF_t$  term is determined as follows:
- (a) if the value of the  $APF_t$  term is greater than or equal to 1.00, then the value of the  $AIF_t$  term is 1.00; and
  - (b) if the value of the  $APF_t$  term is less than 1.00, then the value of the  $AIF_t$  term is zero.

Where:

$AA_t$  means the Actual Availability term for Relevant Year  $t$  (in MWh) and is determined in accordance with paragraph 18 of this condition

$AIF_t$  means the Availability Incentive Adjustment At Floor term for Relevant Year  $t$  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 *t* 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 *t* 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 *t* reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year *t*

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)

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, issue a direction specifying:
  - (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
  - (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.
- 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 ( $PYC_{t1}$ ) 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  $PYC_{t25}$  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 ( $PYF_{t1}$ ) 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  $PYF_{t25}$  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) 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<sub>t</sub> means the Assessed Revenue term for Relevant Year *t* and is determined in accordance with paragraph 4 of this condition
- GCR<sub>t</sub> means the Gross Congestion 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 *t* and is calculated in accordance with Part C of this condition
- NAR<sub>t</sub> 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<sub>t</sub>)

6. For each Relevant Year, the value of the GCR<sub>t</sub> 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<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 *t* and is determined in accordance with Part D of this condition
- ASRB<sub>t</sub> means the Ancillary Services Revenue (Belgium) term for Relevant Year *t* and is:
- (a) equal to all revenue that is derived from providing a Belgian Ancillary Service for Relevant Year *t*; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year *t*

- $ASR_{GB,t}$  means the Ancillary Services Revenue (GB) term for Relevant Year  $t$  and is:
- (a) equal to all revenue that is derived from providing a GB Ancillary Service for Relevant Year  $t$ ; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$
- $CAR_t$  means the Capacity Allocation Revenue term for Relevant Year  $t$  and is:
- (a) equal to all revenue received as a result of interconnector capacity allocation for Relevant Year  $t$ ; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$
- $CMR_t$  means the Capacity Market Revenue term for Relevant Year  $t$  and is equal to whichever is the greater of:
- (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  $t$ ; and
  - (b) zero,
- and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$
- $CPB_t$  means the Constraint Payments (Belgium) term for Relevant Year  $t$  and is:
- (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  $t$ ; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$

- CPGB<sub>t</sub>** means the Constraint Payments (GB) term for Relevant Year *t* and is:
- (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 *t*; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year *t*
- 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
- RI<sub>t</sub>** means the Receipts from Insurance term for insurance claims related to the compensation of lost revenue (such as business interruption insurance) for Relevant Year *t* and is:
- (a) equal to the sum of any payments received by the licensee as a result of such insurance claim(s) for Relevant Year *t*; and
  - (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year *t*

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

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

$$MRC_t = EAC_t + FC_t + TCC_t$$

9. Where components of MRC<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.
10. The licensee shall use reasonable endeavours to minimise its MRC<sub>t</sub>.

Where:

- EAC<sub>t</sub>** means the Error Accounting Costs term for Relevant Year *t* 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:

- (a) the BSC, to the Balancing and Settlement Code Company by the GB Interconnector Administrator for Relevant Year  $t$ ; and
- (b) the relevant arrangements in Belgium, by the Belgian Interconnector Administrator for Relevant Year  $t$ ,

and is reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$

$FC_t$  means the Firmness Costs term for Relevant Year  $t$  and is:

- (a) equal to costs, whether positive or negative, incurred by the licensee from payments made to users under the Firmness arrangements for Relevant Year  $t$ ; and
- (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$

$MRC_t$  means the Market Related Costs term for Relevant Year  $t$  and is determined in accordance with paragraph 8 of this condition

$TCC_t$  means Trip Contract Costs for Relevant Year  $t$  and is:

- (a) equal to costs, whether positive or negative, incurred by the licensee under a Trip Contract agreement for Relevant Year  $t$ ; and
- (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$

$GBP_t / EUR_t$  has the meaning given that term in Part F of special condition 2 (Cap Level and Floor Level) of this licence

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

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

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

12. Where components of  $ADR_t$  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 paragraph 11 of this condition
- $\sum(ADRS)_t$  means the sum of any Interconnector Revenue for Relevant Year  $t$  (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
- $GBP_t / EUR_t$  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 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”	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
“GB Ancillary Services”	means: <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”	means: <ul style="list-style-type: none"> <li>(a) contracts; and/or</li> <li>(b) other forms of agreement specified in writing by the Authority following consultation with the Belgian National Regulatory Authority,</li> </ul> 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  $WPA_{pap}$  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 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<sub>ap</sub>)

6. For each Relevant Assessment Period, the value of the PTA<sub>ap</sub> 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<sub>t</sub> means the Non-Controllable Operating Costs Adjustment term for Relevant Year *t* and is calculated in accordance with Part B of this condition

PTA<sub>ap</sub> means the Pass Through Adjustment term for Assessment Period *ap* and is calculated in accordance with paragraph 6 of this condition

UF<sub>t</sub> 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<sub>t</sub>)

7. For each Relevant Year, Baseline Non-Controllable Operational Costs (BNCOC<sub>t</sub>) is assessed against Outturn Non-Controllable Operational Costs (ONCOC<sub>t</sub>) in accordance with the following formula to calculate the Difference in Non-Controllable Operational Costs (DNCOC<sub>t</sub>) 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<sub>t</sub> has been economically and efficiently incurred and the NCOC<sub>t</sub> value, whether positive or negative, equals the DNCOC<sub>t</sub> value; or
  - (b) it considers the ONCOC<sub>t</sub> has not been economically and efficiently incurred and the NCOC<sub>t</sub> value does not equal the DNCOC<sub>t</sub> 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<sub>t</sub> 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:

- (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  $t$ ;
- (b) reported by the licensee in its Annual Cap and Floor RIGs Submission for Relevant Year  $t$ ;
- (c) if denominated in Euro, converted to Sterling using the  $GBP_t / EUR_t$  exchange rate; and

- (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  $ONCOC_t$  term and the value of the  $BNCOC_t$  term

Part C: Calculation of the Baseline Non-Controllable Operational Costs term ( $BNCOC_t$ )

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:

$BNCOC_t$  means the Baseline Non-Controllable Operational Costs for Relevant Year  $t$  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

$PPPI_t$  means the Purchasing Power Parity Index term for Relevant Year  $t$  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:
- (a) Crown Estate Lease Fees;
  - (b) Network And Property Rates; and
  - (c) 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:
  - (a) which in the Authority's opinion constitutes a Force Majeure event under the special conditions of this licence; and
  - (b) 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<sub>t</sub> term as a consequence of that event or circumstance and how the proposed value of the IAT<sub>t</sub> term has been calculated;
  - (d) evidence to show that the proposed value of the IAT<sub>t</sub> 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<sub>t</sub> 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 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 ( $DCC_t$  and  $DCF_t$ )

28. The  $DCC_t$  and  $DCF_t$  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  $DCC_t$  and  $DCF_t$  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 [2 \(NLCFFM2\) 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:
  - (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
  - (b) 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 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:
  - (a)  $CL_t = PYC_t \times (PCL + PCAC + ORAC + DCC_t) \times AIC_t \times PPPI_t$
  - (b)  $FL_t = PYF_t \times (PFL + PCAF + ORAF + DCF_t) \times AIF_t \times PPPI_t$

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<sub>t</sub> 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<sub>t</sub> 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<sub>t</sub> means the Decommissioning Cost Adjustment At Cap term for Relevant Year *t* and is determined in accordance with paragraph 33 of this condition
- DCF<sub>t</sub> 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 *t* 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 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: (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);



- (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;
- (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
- (d) 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.

## **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 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 Regime Start Date. ~~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 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 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 [2](#) [\(NLCFFM2\) 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 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 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 10: Calculation of adjustments to the licensee's Interconnector Revenue (GB share)**

1. The purpose of this condition is to calculate the value of the Interconnector Cap And Floor Revenue Adjustment term ( $ICF_t$ ).
2. The  $ICF_t$  term provides for the adjustment (whether upwards or downwards) of the licensee's Interconnector Revenue as a consequence of:
  - (a) the assessment of the licensee's Assessed Revenue against the Cap Level and Floor Level for each Relevant Assessment Period in accordance with special condition 3 (Cap and Floor Assessment) of this licence;
  - (b) the determination by the Authority of any Within Period Adjustment for each Relevant Partial Assessment Period in accordance with special condition 6 (Within Period Adjustment) of this licence;
  - (c) the determination of any Pass Through Adjustment for each Relevant Assessment Period in accordance with Part A of special condition 7 (Non-Controllable Costs) of this licence;
  - (d) the uplift applied taking account of the timescales of payment;
  - (e) the 50/50 sharing factor between GB and Belgium; and
  - (f) the trueing-up of the licensee's Interconnector Revenue as a consequence of any forecasting and/or reporting errors in previous Relevant Years.

Structure of this condition

3. This condition is structured as follows:
  - (a) Part A of this condition sets out the calculation of the Interconnector Cap And Floor Revenue Adjustment terms for each Relevant Assessment Period and each Relevant Partial Assessment Period ( $ICF_{ap}$  and  $ICF_{pap}$ );
  - (b) Part B of this condition sets out the calculation of the true-up term ( $TRU_t$ ); and
  - (c) Part C of this condition sets out the calculation of the Interconnector Cap And Floor Revenue Adjustment term for each Relevant Year ( $ICF_t$ ) and sets out the obligations on the licensee to set out an appropriate methodology for the



calculation of this term.

Part A: Calculation of the Interconnector Cap And Floor Revenue Adjustment terms for each Relevant Assessment Period and each Relevant Partial Assessment Period (ICF<sub>ap</sub> and ICF<sub>pap</sub>)

4. For each Relevant Assessment Period, the value of the ICF<sub>ap</sub> term shall be calculated in accordance with the following formula:

$$ICF_{ap} = 0.5 \times (CFA_{ap} + PTA_{ap}) + TRU_t$$

5. For each Relevant Partial Assessment Period (for any Within Period Adjustment), the value of the ICF<sub>pap</sub> term shall be calculated in accordance with the following formula:

$$ICF_{pap} = 0.5 \times WPA_{pap} + TRU_t$$

Where:

0.5	represents the 50/50 sharing factor between GB and Belgium
CFA <sub>ap</sub>	means the Cap and Floor Adjustment term for Relevant Assessment Period <i>ap</i> and is calculated in accordance with Part A of special condition 3 of this licence
ICF <sub>ap</sub> and ICF <sub>pap</sub>	means the Interconnector Cap And Floor Revenue Adjustment term for Relevant Assessment Period <i>ap</i> or Relevant Partial Assessment Period <i>pap</i> and is determined in accordance with paragraph 4 or paragraph 5 of this condition (as appropriate)
PTA <sub>ap</sub>	means the Pass Through Adjustment term for Relevant Assessment Period <i>ap</i> and is calculated in accordance with Part A of special condition 7 of this licence
TRU <sub>t</sub>	means the True-up term for Relevant Year <i>t</i> and is calculated in accordance with Part B of this condition
WPA <sub>pap</sub>	means the Within Period Adjustment term for Relevant Partial Assessment Period <i>pap</i> and is determined in accordance with the process set out in special condition 6 of this licence

Part B: Calculation of the True-up term (TRU<sub>t</sub>)

6. In the event that forecasting or reporting errors occur with respect to the value of the ICF<sub>t</sub> term for Relevant Year *t-1* calculated in accordance with Part C of this condition,

the licensee shall submit, for approval by the Authority, a proposed value for the  $TRU_t$  term for Relevant Year  $t$  to reconcile such errors.

7. Any submission under paragraph 6 shall include:
  - (a) the licensee's proposed value of the  $TRU_t$  term;
  - (b) details of how the value of licensee's proposed  $TRU_t$  term has been calculated; and
  - (c) details of the forecasting and/or reporting errors identified by the licensee together with such information as may be necessary to demonstrate that the licensee's proposed  $TRU_t$  term accurately reconciles such errors.
8. The Authority may either approve the licensee's proposed value of the  $TRU_t$  term or specify an alternative value.
9. Any submission under paragraph 6 must be made by a date no later than 15 months after the end of Relevant Year  $t-1$  and in any case shall be submitted to the Authority at the same time as the licensee's Annual Cap and Floor RIGs Submission for Relevant Year  $t$ . Where the licensee cannot make its submission within that timescale, it may request the Authority to grant a timescale extension.
10. The timescale for submission specified in paragraph 9 shall only be extended where the Authority has agreed in writing to the licensee's request for a timescale extension.

Part C: Calculation of the Interconnector Cap And Floor Revenue Adjustment term for Relevant Year  $t$  ( $ICF_t$ )

11. The  $ICF_t$  term is the term notified to the GB System Operator in accordance with Standard Condition 26 of this licence.
12. The value of the  $ICF_t$  term shall be calculated in accordance with the methodology established under paragraphs 13 and 14 of this condition.
13. The licensee shall, as soon as practicable, establish and maintain the  $ICF_t$  Methodology in a form approved by the Authority.
14. The  $ICF_t$  Methodology shall set out, as a minimum, the licensee's methodology for calculating the proposed value of the  $ICF_t$  term taking in to account:
  - (a) the relevant payment timescales prescribed in the CUSC; and
  - (b) the Operation Discount Rate specified in Part I of special condition 3 (Cap and

Floor Assessment) of this licence as applied to the relevant payment timescales.

15. The licensee shall notify the GB System Operator of the  $ICF_t$  term in accordance with Standard Condition 26 of this licence.
16. The value of the  $ICF_t$  term shall be paid by the licensee to the GB System Operator or the GB System Operator to the licensee in accordance with the following:
  - (a) if the value of the  $ICF_t$  term is greater than zero (positive value), then the licensee's Interconnector Revenue shall be adjusted upwards and accordingly, a sum equal to the magnitude of the  $ICF_t$  term shall be paid by the GB System Operator to the licensee in accordance with applicable requirements in the CUSC;
  - (b) if the value of the  $ICF_t$  term is less than zero (negative value), then the licensee's Interconnector Revenue shall be adjusted downwards and accordingly, a sum equal to the magnitude of the  $ICF_t$  term shall be paid by the licensee to the GB System Operator in accordance with applicable requirements in the CUSC; or
  - (c) if the value of the  $ICF_t$  term is equal to zero then the licensee's Interconnector Revenue shall not be adjusted and accordingly, no associated payment shall be required to be made by the licensee or the GB System Operator.

**Special Condition 11: Nemo Link Cap and Floor Financial Model Protocol**

1. ~~The licensee shall, as soon as practicable, establish and maintain the Nemo Link Cap And Floor Financial Model Protocol (the “NLCFFMP”) in a form approved by the Authority.~~
2. ~~The NLCFFMP shall set out as a minimum:~~
  - (a) ~~the processes and timescales by which the licensee effects adjustments to the Cap Level and Floor Level in accordance with the special conditions of this licence;~~
  - (b) ~~the processes and timescales by which the licensee effects adjustments to the licensee’s Interconnector Revenue in accordance with the special conditions of this licence;~~
  - (c) ~~the governance arrangements for changes to the NLCFFMP;~~
  - (d) ~~the governance arrangements for changes to the Nemo Link Cap And Floor Financial Model (NLCFFM);~~
  - (e) ~~the arrangements for external audit of the NLCFFM; and~~
  - (f) ~~all other relevant matters and procedures.~~
3. ~~For the purposes of this condition:~~

~~“Nemo Link Cap  
And Floor  
Financial Model”  
(NLCFFM)~~

~~means the model of that name that is:~~

- (a) ~~represented by a workbook in Microsoft Excel ® format and used by the licensee to facilitate the process by which the licensee effects adjustments to the Cap Level, the Floor Level and the licensee’s Interconnector Revenue in accordance with the special conditions of this licence; and~~
- (a) ~~maintained by the licensee and which may be modified from time to time in accordance with the NLCFFMP.~~

## Special Condition 11: Nemo Link Cap And Floor Financial Model Governance

1. This condition sets out the governance provisions for the Nemo Link Cap And Floor Financial Models (NLCFFMs), including the process for introducing amendments to the NLCFFMs.
2. The NLCFFMs are comprised of the following:
  - (a) the Nemo Link Cap And Floor Financial Model 1 (NLCFFM1), which is used by the Authority to facilitate:
    - (i) Authority's determination of the Post Construction Adjustment (PCA) terms under special condition 8 of this licence; and
    - (ii) the calculation of the Cap Level and Floor Level under special condition 2 of this licence; and
  - (b) the Nemo Link Cap And Floor Financial Model 2 (NLCFFM2), which is used to facilitate:
    - (i) Authority's assessment of the licensee's Interconnector Revenue in accordance with special condition 3 of this licence;
    - (ii) Authority's assessment of the licensee's non-controllable operating expenditure in accordance with special condition 7 of this licence; and
    - (iii) Authority's adjustments to the Cap Level and Floor Level over the Regime Duration in accordance with the provisions and processes set out in this licence

### Part A: General governance provisions

3. The NLCFFMs do not form part of this licence.
4. In the event of any conflict between the provisions of this licence and the NLCFFMs, the provisions of this licence shall prevail.
5. If the licensee becomes aware of any conflict between the provisions of this licence and the NLCFFMs, the licensee shall give written notice of such conflict to the Authority as soon as reasonably practicable.
6. Where the Authority identifies a conflict between the provisions of this licence and the NLCFFMs or is notified of any such conflict by the licensee in accordance with

paragraph 5 of this condition, the Authority may take such actions as it considers appropriate to resolve such conflict, including:

- (a) directing amendments to the provisions of this licence in accordance with the relevant statutory licence modification process pursuant to section 11A of the Act;  
or
- (b) directing amendments to the NLCFFMs, in accordance with provisions of Part B of this condition.

7. The NLCFFMs may only be modified by the Authority in accordance with the provisions of Part B of this condition.

8. Changes to the NLCFFMs made by the Authority as part of the normal process by which the Authority carries out the assessment of the Assessed Revenue, in accordance with the special conditions of this licence, will not be considered a modification of the NLCFFMs.

#### Part B: Modification of the NLCFFMs

9. The NLCFFMs may be modified by the Authority in the following circumstances:

- (a) to address any conflict between the provisions of this licence and the NLCFFMs, as described in paragraph 6 of this condition; or
- (b) where the Authority deems any such modifications to be necessary to ensure that the NLCFFMs are fit for purpose as described in paragraph 2 of this condition; or
- (c) where the Authority deems any such modifications to be necessary to correct an error of functionality discovered within the NLCFFMs.

10. Without prejudice to paragraph 12, the Authority may issue a direction to modify the NLCFFMs - in such manner, and to such extent, that it considers necessary to address the issues described in paragraph 9 of this condition.

11. Any direction issued under paragraph 10 of this condition shall not have effect unless, before it is made, the Authority:

- (a) has given notice to the licensee

- (i) stating that it proposes to modify the NLCFFMs;
- (ii) specifying the date on which it proposes that the provisions of the modified NLCFFMs should take effect;
- (iii) setting out the detail of, and reasons for, the Authority’s proposed modifications to the NLCFFMs;
- (iv) specifying the time (which must not be less than a period of 28 days from the date of the notice) within which representations may be made;

(b) considered any representations by any relevant stakeholder, in response to the notice that are duly made and not withdrawn; and

(c) published any notice issued under this paragraph on the Authority’s Website.

12. Where the Authority and the licensee agree that a modification to the NLCFFMs is required and immaterial in nature, then the Authority may, without following the process described in paragraph 11, modify the NLCFFMs after a bilateral consultation with the licensee.

Part C: Availability and updating of NLCFFMs

13. In relation to the publication and availability of the NLCFFMs, the Authority will:

- (a) ensure that any relevant modifications made pursuant to paragraph 10 or 12 of this condition are promptly incorporated into the version of the NLCFFMs maintained on the Authority’s Website; and
- (b) maintain and publish an up-to-date schedule of any modifications made under this session of this condition.

Part D: Interpretation

14. For the purposes of this condition:

<u>“Authority’s website”</u>	<u>means <a href="http://www.ofgem.gov.uk">www.ofgem.gov.uk</a>.</u>
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<p><u>“Nemo Link Cap And Floor Financial Models” (NLCFFMs)</u></p>	<p><u>means the financial models defined in this licence as “Nemo Link Cap And Floor Financial Model 1” (NLCFFM1) and “Nemo Link Cap And Floor Financial Model 2” (NLCFFM2)</u></p>
<p><u>“Nemo Link Cap And Floor Financial Model 1” (NLCFFM1)</u></p>	<p><u>means the model of that name that:</u></p> <p><u>(a) was published with the Authority’s “Decision on Nemo Link’s Post Construction Review” dated xx 2019</u></p> <p><u>(b) is represented by a workbook in Microsoft Excel ® format maintained under that name on the Authority’s Website;</u></p> <p><u>(c) is used by the Authority to facilitate:</u></p> <ul style="list-style-type: none"> <li><u>(i) Authority’s determination of the Post Construction Adjustment (PCA) terms under special condition 8 of this licence; and</u></li> <li><u>(ii) the calculation of the Cap Level and Floor Level under special condition 2 of this licence</u></li> </ul>
<p><u>“Nemo Link Cap And Floor Financial Model 2” (NLCFFM2)</u></p>	<p><u>has the meaning given to that term in special condition 1 of this licence.</u></p>