

APPENDIX C

To:

**Diamond Transmission Partners BBE Limited
Diamond Transmission Partners Galloper Limited
Diamond Transmission Partners RB Limited
Diamond Transmission Partners Walney Extension Limited
TC Dudgeon OFTO plc**

Electricity Act 1989 Section 11A(2)

Notice of statutory consultation on a proposal to modify amended standard conditions E12-A1 and E12-J3 of the offshore electricity transmission licences held by the licensees named above

1. The Gas and Electricity Markets Authority (the 'Authority') proposes to modify amended standard conditions ('ASC') of the offshore electricity transmission licences held by the licensees named above, granted or treated as granted under section 6(1)(b) of the Electricity Act 1989 (the 'OFTO licence') by modifying:
 - a. ASC E12-A1: Definitions and Interpretation; and
 - b. ASC E12-J3: Restriction of Transmission Revenue: Allowed Pass-through Items.
2. Below we set out each of the proposed modifications, including why it is proposed and its effect. For the avoidance of doubt, the headings given to each of the modifications in this Notice are for reference purposes only.
3. The proposed licence modifications are set out in the schedule attached to this Notice.

Proposed modifications

Deductible

4. The Authority intends to apply a deductible to the relevant revenue adjustment for any successful income adjusting event ('IAE') claims in respect of an uninsurable latest defect. We consider that applying the relevant deductible is consistent with an insurance response as set out in the Decision Document published on 28 November 2018.¹
5. In order not to change the risk profile for offshore transmission owners ('OFTOs') licenced prior to 28 November 2018, the amount of the deductible will be the level of that set out in their invitation to tender questionnaire submitted in the tender in respect of the relevant licensee's licence.

¹ The Policy Decision – Income Adjusting Events in Offshore Transmission Owner Licences (the 'Decision Document') is available at: <https://www.ofgem.gov.uk/ofgem-publications/143553>.

6. In December 2017, Bidders in tender round 5 were instructed under the tender process to assume that a deductible of £5m or 30% of the claim (whichever is higher) would be imposed on event claims relating to uninsurable latent defects, and submitted bids on this basis. In our Decision Document published on 28 November 2018 we clarified our intent to set the IAE deductible at £5m or the level of the insurance deductible set out in the Licensee's ITT bid, whichever is higher. We therefore consider that Licensees granted a licence after 28 November 2018 are in a position to incorporate a stated deductible into their financial models and set their reserve accounts and financial response strategies accordingly. The amount of the deductible for those OFTOs is therefore proposed to be £5m or the deductible set out in the Licensee's ITT Bid, whichever is the higher.
7. The Authority is proposing to modify ASC E12-J3 to state that any revenue adjustment award will be reduced by the deductible where an IAE claim relates to an uninsurable event. The term 'uninsurable' will be included in ASC E12-A1 and defined in guidance issued by the Authority alongside this Notice.
8. Further detail on the reasons for, and effect of, this amendment can be found in our Decision Document published on 28 November 2018.²

Force Majeure

9. Under sub-paragraph 15(a) of ASC E12-J3, an IAE may arise in circumstances constituting force majeure under the System Operator Transmission Owner Code ('STC').³
10. The Authority is proposing to modify sub-paragraph 15(a) to make the definition independent from the STC and enable it to become a stand-alone provision. It is unusual to have a situation where modification to a subordinate document would result in amendments to a previously issued licence.
11. We therefore propose to remove the present reference to the STC at sub-paragraph 15(a) of ASC E12-J3 and insert a definition of force majeure into ASC E12-A1. The inserted definition of force majeure will parallel that in the STC with two exceptions. The inserted definition will exclude:
 - a. the requirement not to be able to perform an obligation under the STC; and
 - b. reference to 'fault of failure of Plant and Apparatus (which could not have been prevented by Good Industry Practice)'
12. Further detail on the reasons for, and effect of, this amendment can be found in our Decision Document published on 28 November 2018.⁴

² The Policy Decision – Income Adjusting Events in Offshore Transmission Owner Licences (the 'Decision Document') is available at: <https://www.ofgem.gov.uk/ofgem-publications/143553>.

³ The System Operator Transmission Owner Code ('STC') is available at: <https://www.nationalgrideso.com/industry-information/codes/system-operator-transmission-owner-code-stc>.

⁴ The Policy Decision – Income Adjusting Events in Offshore Transmission Owner Licences (the 'Decision Document') is available at: <https://www.ofgem.gov.uk/ofgem-publications/143553>.

Information requests

13. Paragraph 17 of the ASC E12-J3 allows the Authority to request additional information from an OFTO that it considers appropriate in connection with an IAE claim.
14. For the avoidance of doubt, we propose to modify paragraph 17 to make it clear that the Authority may make more than one request for additional information where necessary.
15. Paragraph 17 also requires OFTOs to provide the additional information requested by the Authority within one month. We also propose to amend paragraph 17, to make it clear for the avoidance of doubt, that the Authority may extend the one month deadline where appropriate.

Commercial recourse

16. Paragraph 21(c) of the ASC E12-J3 requires the Authority to set any award at an amount that restores the OFTO to the financial position it would have been in, had the failure event not taken place. We consider that OFTOs have a responsibility to pursue commercial recourse wherever possible, and that any IAE awards should be offset by the amount of recourse recovered by the OFTO.
17. For this reason, we propose to modify paragraph 21(c) to make it clear that the value of commercial recourse will be deducted from the amount of any IAE award, and to make clear that a partial revenue adjustment may be awarded by the Authority where an event or circumstance is determined as an IAE and while the process of recourse is ongoing.

Timing of determinations

18. Paragraph 22 of ASC E12-J3 requires the Authority to make determinations within three months from the date on which we receive all information necessary to consider a claim. This period currently includes the time needed for consultation under paragraph 21 of the same condition, which therefore constrains both the time needed for our determination and the time consultees have to respond to any consultation.
19. We therefore propose to amend paragraph 22 to provide that the three-month deadline does not include the time needed for consultation.
20. Further detail on the reasons for, and effect of, the proposed 'information request', 'commercial recourse' and 'timing of determination' modifications can be found in the cover letter accompanying this Notice.

Event or circumstance

21. Paragraph 16 of ASC E12-J3 sets out the requirements of the notice under paragraph 14, including the particulars of the event.
22. Given that an IAE, as defined in paragraph 15, may arise from an 'event or circumstance', we consider that the words 'or circumstance' have been unintentionally omitted from paragraph 16 in requesting the particulars of the claim.

23. For clarity, we therefore propose to amend sub-paragraphs (a) to (d) to include the words 'or circumstance'. We do not consider that this proposed modification will effect the interpretation of the condition.

Publication of IAE notice

24. Paragraph 19 of ASC E12-J3 requires the Authority to make public, excluding any confidential information, any IAE notice following its receipt. As the content of IAE notices can contain a significant amount of confidential information, this often requires a dialogue between the Authority and licensee to determine what parts of the relevant notice need to be redacted prior to publication.
25. For clarity, and for the avoidance of doubt, we therefore propose to include the words 'as soon as is reasonably practicable', to allow the Authority time to determine the confidential content of the notice and make the required redactions prior to publication.

Amendment of revenue adjustment

26. Paragraph 24 of ASC E12-J3 provides the Authority the ability to revoke an approval of an IAE and revenue adjustment with the consent of the licensee.
27. Given the complex nature of IAE claims, and the proposed modification to make clear that partial revenue adjustments may be awarded where an event has been determined to be an IAE, we consider that providing a power to amend an IAE and revenue adjustment is helpful and efficient particularly where revocation would not be the appropriate action. For the avoidance of doubt, this is not removing the requirement for the licensee's consent, nor the requirement to consult with the licensee and relevant parties, prior to any amendment or revocation.

Next Steps

28. A copy of the proposed modifications and other documents referred to in this notice has also been published on our website (www.ofgem.gov.uk). Alternatively, they are available from foi@ofgem.gov.uk.
29. Any representations with respect to the proposed licence modifications must be made by e-mail on or before **24 September 2020** to Stephen.Taylor@ofgem.gov.uk.
30. Due to the circumstances surrounding COVID-19, we are not issuing hard copies of the modification documents, nor do we expect consultation responses by post. If, however, you do wish to receive the documents and respond by post, we are able to organise this for you. Please contact us at the email address above, or on 020 3263 9936 to request hard copies of the relevant documents and postal address for responses.
31. We normally publish all responses on our website. However, if you do not wish your response to be made public, then please clearly mark it as not for publication. We prefer to receive responses in an electronic format so they can be placed easily on our website.
32. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Jourdan Edwards
Head of the OFTO Regime, Networks

25 August 2020

Duly authorised on behalf of the
Gas and Electricity Markets Authority

Schedule

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

Amended Standard Condition E12–A1: Definitions and Interpretation

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

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

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

B. after the definition of "Transmission System Availability Incentive" or "AI_t":

‘ <u>"Uninsurable"</u>	<u>for the purposes of amended standard condition E12-J3 (Restriction of Transmission Revenue: Allowed Pass-through Items), has the meaning set out in the Guidance on the Definition of Uninsurable, being a document of that name issued by the Authority and updated by the Authority from time to time, following consultation;</u> ’
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Amended Standard Condition E12–J3: Restriction of Transmission Revenue: Allowed Pass-through Items

1. The purpose of this condition is to provide for revenue adjustments to reflect certain costs that can be passed through to consumers as part of Allowed Transmission Owner Revenue (OFTO_t).
2. For the purposes of paragraph 4 of amended standard condition E12–J2 (Restriction of Transmission Revenue: Revenue from Transmission Owner Services) the pass-through revenue adjustment term (PT_t) is derived from the following formula

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

where:

- LF_t means the licence fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 3.
- RB_t means the network rates cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 4 and 5.
- CEL_t means the Crown Estate Lease cost adjustment term, whether of a positive or negative value, and shall be determined in accordance with paragraph 6.
- DC_t means the decommissioning cost adjustment term and shall be determined in accordance with paragraphs 7 to 13.
- IAT_t means the income adjusting event revenue adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraphs 14 to 24.
- TPD_t means the temporary physical disconnection payment term and shall be determined in accordance with paragraph 25.
- TCA_t means the tender fee cost adjustment term, whether of a positive or of a negative value, and shall be determined in accordance with paragraph 26.
- MCA_t means the Marine and Coastal Access Act 2009 cost adjustment term and shall be determined in accordance with paragraphs 27 to 33.
- RFG_t means the Refinancing Gain Share determined in accordance with paragraphs 34 to 51.

Formula for the Licence Fee Cost Adjustment (LF_t)

3. For the purposes of paragraph 2, LF_t is an amount in respect of licence fee payments and means the amount equal to the payments made by the licensee, in the relevant year t, in accordance with its obligations set out in standard condition A4 (Payments by the Licensee to the Authority).

Formula for the Network Rates Cost Adjustment (RB_t)

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

Formula for the Crown Estate Lease Cost Adjustment (CEL_t)

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

- (b) legal expenses of the Crown Estate for the preparation, negotiation and completion of the Crown Estate Lease.

Formula for the Decommissioning Cost Adjustment (DC_t)

7. Where the licensee considers, and can provide supporting evidence, that there will be additional costs and/or expenses in relation to the licensee's obligations with respect to decommissioning of the Licensee's Transmission System that have arisen due to a change in legislative requirements, then the licensee shall give written notice of this change to the Authority.
8. A notice received by the Authority under paragraph 7 shall give particulars of:
 - (a) the change in legislative requirements to which the notice relates and the reason(s) why the licensee considers that it will face additional costs and/or expenses in complying with those obligations, and demonstrate that such costs and/or expenses are not included within the Allowed Transmission Owner Revenue ($OFTO_t$);
 - (b) the expected amount of any change in costs and/or expenses that can be demonstrated by the licensee to be caused by the change in decommissioning requirements and how the amount of these costs and/or expenses has been calculated;
 - (c) the amount of any allowed revenue adjustment, proposed as a consequence of the change in decommissioning requirements and how this allowed revenue adjustment has been calculated; and
 - (d) any other analysis or information, which the licensee considers sufficient to enable the Authority to fully assess the change in legislative requirements to which the notice relates.
9. If the Authority considers that the analysis or information received under paragraph 8 is insufficient to enable the Authority to assess whether a change in decommissioning requirements has occurred and/or the amount of any revenue adjustment that might be approved, the Authority can request that the supporting evidence be supplemented with any additional information that it considers appropriate. If the Authority requests that the supporting evidence be supplemented with additional information, the licensee shall give such information to the Authority within one month of the Authority requesting such information.
10. A notice referred to in paragraph 7 shall be given as soon as is reasonably practicable after the occurrence of the change in legislative requirements, and, in any case, not later than three months after the end of the Relevant Year in which the change in requirements occurs.
11. The Authority shall determine:
 - (a) whether any or all of the costs and/or expenses given in a notice pursuant to paragraph 7 were caused by the change in legislative requirements;
 - (b) if so, whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that change in legislative decommissioning requirements had not taken place, and if not, the Authority shall determine what revenue adjustment would secure that effect; and

- (c) the periods, if any, over which the revenue adjustment determined by the Authority should apply.
12. In relation to the Relevant Year t , the decommissioning cost adjustment term (DC_t) shall be:
- (a) the value determined by the Authority under paragraph 11 above; or
 - (b) if the Authority has not requested additional information under paragraph 9 and the Authority has not made a determination under paragraph 11 above within three months of the date on which the notice given by the licensee was received by the Authority, the amount of the allowed revenue adjustment proposed by the licensee in that notice given to the Authority; or
 - (c) if the Authority requests additional information under paragraph 9 and the Authority has not made a determination under paragraph 11 above within three months of receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority; or
 - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 11 above within three months of the date on which the notice given by the licensee was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 9, and the Authority has, before the end of the appropriate three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 8 and/or 9 is insufficient to enable the Authority to assess whether additional costs and/or expenses have occurred and/or the amount of any allowed revenue adjustment.
13. The Authority's decision in relation to any notice given under paragraph 7 shall be in writing, shall be copied to the licensee and shall be published.

Formula for the Income Adjusting Event Revenue Adjustment (IAT_t)

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

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

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

expenses given in the notice pursuant to paragraph 14 by more than the threshold amount; and

(c) if so;

- i. subject to sub-paragraph (iii), whether the amount of the proposed revenue adjustment ensures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that Income Adjusting Event had not taken place, and if not, the Authority shall determine what revenue adjustment would secure that effect. Such adjustment shall be:
 - a. where the Income Adjusting Event relates to an Uninsurable event or circumstance, reduced by:
 - i. if the licence was granted on or before 28 November 2018, the amount of the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the tender regulations ; or
 - ii. if the licence was granted after 28 November 2018, either £5 million or the insurance deductible set out in the invitation to tender questionnaire submitted in respect of this licence pursuant to the tender regulations, whichever is greater; and
 - b. for the avoidance of doubt, reduced by costs and/or expenses caused by the Income Adjusting Event that are recovered by other routes of recourse available to the licensee, including, but not limited to, commercial arrangements;

unless, and to the extent that, the Authority has already applied such reductions to a previous revenue adjustment related to the same event or circumstance as that set out in the notice pursuant to paragraph 14;
- ii. subject to sub-paragraph (iii), the periods, if any, over which the revenue adjustment determined by the Authority should apply; and
- iii. where it is not yet possible to make a final determination under sub-paragraphs (c)(i) and (c)(ii) above, the Authority may direct a partial amount of revenue adjustment, if any, pending the final determination of amount, such final determination to be made as soon as is reasonably practicable.

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

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

Adjusting Event was received by the Authority; or

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

Formula for the Temporary Physical Disconnection Payment (TPD_t)

25. For the purposes of paragraph 2, TPD_t shall be an amount equal to the interruption payments made by the System Operator in the licensee's Transmission System Area and charged by the System Operator to the Transmission Licensee in accordance with the STC within each respective Relevant Year. Such costs shall include any financing or other costs such as to ensure that the financial position and performance of the licensee is, insofar as is reasonably practicable, the same as if those costs had not been incurred.

Formula for the Tender Fee Cost Adjustment (TCA_t)

26. For the purposes of paragraph 2, TCA_t shall be an amount, whether of a positive or of a negative value, representing:
- (a) the payments made by the licensee to the Authority in accordance with the Tender Regulations with respect to the to the recovery of the Authority's tender costs. Where the payments have been made in relation to an application for the grant of more than one licence, the licensee shall attribute an appropriate proportion of the relevant payment made to the Authority; and
 - (b) any re-payments made by the Authority to the licensee in accordance with the Tender Regulations as a result of the payments collected by the Authority exceeding its tender costs. Where the re-payments have been made in relation to an application for the grant of more than one licence, the licensee shall be

attributed an appropriate proportion of the relevant re-payment made by the Authority.

Formula for the Marine and Coastal Act 2009 Cost Adjustment (MCA_t)

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

not, the Authority shall determine what revenue adjustment would secure that effect; and

- (c) the periods, if any, over which the revenue adjustment determined by the Authority should apply.
32. In relation to the Relevant Year t , the Marine and Coastal Act 2009 cost adjustment term (MCA_t) shall be:
- (a) the value determined by the Authority under paragraph 31 above; or
 - (b) if the Authority has not requested additional information under paragraph 29 and the Authority has not made a determination under paragraph 31 above within three months of the date on which the notice was received by the Authority under paragraph 27, the amount of the allowed revenue adjustment proposed by the licensee in that notice given to the Authority; or
 - (c) if the Authority requests additional information under paragraph 29 and the Authority has not made a determination under paragraph 31 above within three months after receiving all additional information requested, the amount of the allowed revenue adjustment proposed by the licensee in the notice given to the Authority under paragraph 27; or
 - (d) in all other cases the value zero, including situations where the Authority has not made a determination under paragraph 31 above within three months of the date on which the notice given by the licensee was received by the Authority, or within three months of the date on which the Authority received additional information if requested under paragraph 29, and the Authority has, before the end of the appropriate three month period, informed the licensee that the Authority considers that the analysis or information provided in accordance with paragraphs 28 and/or 29 is insufficient to enable the Authority to assess whether additional costs and/or expenses have occurred and/or the amount of any allowed revenue adjustment.
33. The Authority's decision in relation to any notice given under paragraph 27 shall be in writing, shall be copied to the licensee and shall be published.

Formula for the Refinancing Gain Share (RFG_t)

Part A: Introduction

34. The refinancing of External Debt in each of the forms described below shall be a "Refinancing" for the purpose of determining a Refinancing Gain Share:
- (a) any amendment, variation, novation, supplement or replacement of any External Debt financing agreement;
 - (b) the exercise of any right, or the grant of any waiver or consent, under any External Debt financing agreement;
 - (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the External Debt financing agreements or the creation or granting of any other form of benefit or interest in either the External Debt financing agreements or the contracts, revenues or assets of the licensee whether by way of security or otherwise; and

- (d) any other arrangement put in place by the licensee or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the licensee's ability to carry out any of (a)-(c) above.

Part B: Notification of a Qualifying Refinancing

35. A Qualifying Refinancing is a Refinancing, other than an Exempt Refinancing, that will give rise to a Refinancing Gain greater than zero.
36. Where the licensee intends to undertake a Refinancing that may qualify as a Qualifying Refinancing it shall give written notification of such to the Authority including the terms of the Refinancing, no later than three months prior to when the Refinancing is expected to take place.
37. Following receipt of a notification under paragraph 36 the Authority may request additional information including, but not limited to:
- (a) full details of the terms of the Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it;
 - (b) the proposed value of any financial gain realised from the Refinancing as calculated in accordance with paragraphs 40 to 42 (inclusive) ("Proposed Refinancing Gain") and evidence of how it was calculated;
 - (c) the proposed value of the Refinancing Gain Share (RFG_i) ("Proposed Refinancing Gain Share") as calculated in accordance with paragraph 43 including the relevant year(s) in which it would apply and evidence of how it was calculated; and
 - (d) any other analysis or information, that would assist the Authority to fully assess the Refinancing to which the notice relates;

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

38. If the Authority considers that the analysis or information received under paragraph 36 is insufficient to enable the Authority to determine if the Refinancing will be a Qualifying Refinancing or to determine the value of the Refinancing Gain and the Refinancing Gain Share (RFG_i) or the period(s), if any, over which the Refinancing Gain Share (RFG_i) will apply, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority's request.
39. For the avoidance of doubt, where a Refinancing will not give rise to a Refinancing Gain greater than zero, the licensee does not need to give written notification of the Refinancing to the Authority under paragraph 36.

Part C: Calculation of the Refinancing Gain and the Refinancing Gain Share (RFG_i)

40. The licensee shall calculate the Proposed Refinancing Gain that it must give to the Authority under sub-paragraph 37(b) as an amount equal to the greater of zero and (A - B), where:

A = the Net Present Value of the Distributions to be made to each Relevant Person (without double counting) following the Refinancing projected immediately after the

Qualifying Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated so as to be current immediately prior to the Refinancing);

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

41. The discount rate used to calculate the Net Present Values A and B for the purposes of paragraph 40, shall be equal to the blended internal rate of return to the Relevant Persons over the expected lifetime of the licence as set out in the Financial Model (“Equity IRR”).
42. For the purposes of paragraph 40, the value of the Refinancing Gain is net of any reasonable and proper breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that the licensee will directly incur in relation to the Qualifying Refinancing (without double counting).
43. The licensee shall calculate the Proposed Refinancing Gain Share (RFG_t) as the amount, which, when summed over the Relevant Years to which it applies, shall represent 50 per cent of the Refinancing Gain realised by the licensee in a Qualifying Refinancing.

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

44. Where the Authority determines that the Refinancing is a Qualifying Refinancing, the Authority shall determine, subject to paragraph 45, the value of the Refinancing Gain and the Refinancing Gain Share (RFG_t) and the period(s), if any, over which the Refinancing Gain Share (RFG_t) will apply. The Refinancing Gain and the Refinancing Gain Share (RFG_t) shall be determined in accordance with the principles set out in paragraphs 40 to 43 (inclusive). The Refinancing Gain Share (RFG_t) may be:
 - (a) a lump sum amount, applicable for one Relevant Year; or
 - (b) an ongoing amount applicable over more than one Relevant Year;
45. In relation to the Relevant Year t, the Refinancing Gain and the Refinancing Gain Share Mechanism (RFG_t) shall be:
 - (a) the values determined by the Authority under paragraph 44; or
 - (b) if the Authority has not requested additional information under paragraph 38 and the Authority has not made a determination under paragraph 44 within three months of the date on which the notice was received by the Authority under paragraph 36 and the Refinancing referred to in the notice has taken place, the Proposed Refinancing Gain and the Proposed Refinancing Gain Share given by the licensee to the Authority under paragraph 37; or
 - (c) if the Authority has requested additional information under paragraph 38 and the Authority has not made a determination under paragraph 44 within three months of receiving all additional information requested and the Refinancing referred to in the notice has taken place, the Proposed Refinancing Gain and the Proposed Refinancing Gain Share given by the licensee to the Authority under paragraph 37; or
 - (d) in all other cases, zero, including situations where the Authority receives a notice from the licensee under paragraph 36 but the Refinancing referred to in the notice

does not subsequently take place.

Part E: Exemptions to the Refinancing Gain Share (RFG_I)

46. A Refinancing will be exempt for the purposes of determining a Refinancing Gain Share where it is undertaken to remove a licensee from Financial Distress irrespective of whether it will give rise to a Refinancing Gain greater than zero (“Exempt Refinancing”).
47. Where the licensee intends to undertake a Refinancing that may qualify as an Exempt Refinancing it must give written notification to the Authority, and use best endeavours to provide this no later than three months prior to when the Refinancing is expected to take place, detailing:
 - (a) full details of the terms of the Exempt Refinancing, including a copy of the proposed model (based on the Financial Model) relating to it; and
 - (b) any other analysis or information, that would assist the Authority to determine if the Refinancing is an Exempt Refinancing to which the notice relates.
48. If the Authority considers that the analysis or information provided under paragraph 47 is insufficient to enable it to determine whether the Refinancing is an Exempt Refinancing, the Authority may request any additional information that it considers appropriate. If the Authority requests additional information, the licensee shall give such information to the Authority within one month of the Authority’s request.
49. The Authority shall determine whether the Refinancing detailed in the notice received under paragraph 47 is an Exempt Refinancing, within three months of the later of:
 - (a) the date the notice was received by the Authority under paragraph 47; or
 - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 48.
50. If the Authority has not made a determination under paragraph 49 within three months of the later of:
 - (a) the date the notice was provided to the Authority under paragraph 47; or
 - (b) where applicable, the date the Authority received from the licensee all additional information requested under paragraph 48.the Refinancing detailed in the notice provided under paragraph 47 shall be deemed to be an Exempt Refinancing.
51. The Authority’s determinations in relation to any notices given under paragraphs 36 or 47 shall be in writing, shall be copied to the licensee and shall be published.