

Draft 5:
12
January
2017

I-SEM
Capacity
Market Code

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A. INTRODUCTION AND INTERPRETATION

A.1 INTRODUCTION AND CODE OBJECTIVES

A.1.1 Introduction

A.1.1.1 Under their respective Transmission System Operator Licences, EirGrid and SONI are required to enter into and at all times administer and maintain in force a code which makes provision for arrangements to secure generation adequacy and capacity to meet the demands of consumers including (without limitation) rules and procedures for the application for, and allocation of, agreements to remunerate the provision of electricity capacity (whether through the provision of generation, electricity supplied via interconnectors, reduction in demand or otherwise) across the island of Ireland. Under the Transmission System Operator Licences, the arrangements for calculation and settlement of such remuneration are to be dealt with under the provisions of the Trading and Settlement Code.

A.1.1.2 This Code has been designated as the Capacity Market Code by the Regulatory Authorities for the purposes of the Capacity Market condition of the respective Transmission System Operator Licences.

A.1.1.3 This Capacity Market Code forms part of the legal and regulatory framework that governs the trading arrangements for the Single Electricity Market.

A.1.1.4 The SEM comprises a number of separate but interacting facilitated trading arrangements that includes:

- (a) the Capacity Market in accordance with this Code;
- (b) day-ahead and intraday markets; and
- (c) a Balancing Market in accordance with the Trading and Settlement Code.

A.1.1.5 The successful operation of the SEM relies on the effective interaction and co-ordination between the trading arrangements described in paragraph A.1.1.4.

A.1.2 Capacity Market Code Objectives

A.1.2.1 This Code is designed to facilitate achievement of the following objectives (the “**Capacity Market Code Objectives**”):

- (a) to facilitate the efficient discharge by EirGrid and SONI of the obligations imposed by their respective Transmission System Operator Licences in relation to the Capacity Market;
- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;
- (c) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of electricity capacity in the Capacity Market;
- (d) to promote competition in the provision of electricity capacity to the SEM;
- (e) to provide transparency in the operation of the SEM;
- (f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and
- (g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price,

quality, reliability, and security of supply of electricity across the Island of Ireland.

A.1.3 Effect of Section

- A.1.3.1 This section A.1 is for information only and, without prejudice to the rights, duties and obligations set out in the Licences and legislation referred to therein, is not intended of itself and shall not be construed so as to create legally binding obligations as between or impose rights and duties on the Parties, provided that the Modification Process shall be guided by the Capacity Market Code Objectives in accordance with section B.12 and any Capacity Market Dispute Resolution Board shall be required to have regard to those objectives in accordance with section B.14.

A.2 APPENDICES AND AGREED PROCEDURES

- A.2.1.1 The Appendices and the Agreed Procedures, as may be amended or modified from time to time, shall be construed as and form part of this Code and shall be subject to the terms of this Code. The Agreed Procedures set out the detail of procedures to be followed by Parties in performing obligations and functions under this Code.
- A.2.1.2 Appendix A “List of Agreed Procedures” describes and sets out the scope of each of the Agreed Procedures.

A.3 INTERPRETATION

A.3.1 General Interpretation

- A.3.1.1 In this Code, the following interpretations shall apply unless the context requires otherwise:
- (a) the Table of Contents, and any index and headings in this Code, are for ease of reference only and do not form part of the contents of this Code and do not and shall not affect its interpretation;
 - (b) words in the singular shall include the plural and vice versa and the masculine gender shall include the feminine and neuter;
 - (c) the word “including” and its variations are to be construed without limitation, and a reference to a range of paragraphs (eg, A.3.1.1(a) – (n)) includes both paragraphs referred to, as well as all those between;
 - (d) any reference to any legislation, primary or secondary, in this Code includes any statutory interpretation, amendment, modification, replacement, re-enactment or consolidation of any such legislation and any regulations or orders made thereunder and any general reference to any legislation includes any regulations or orders made thereunder;
 - (e) any references to Parts, Chapters, sections, paragraphs, Appendices and Agreed Procedures are references to Parts, Chapters, sections, paragraphs, Appendices and Agreed Procedures of this Code as amended or modified from time to time in accordance with the provisions of this Code (unless expressly stated otherwise);
 - (f) any reference to another agreement, code or document, or any licence, deed or other instrument is to be construed as a reference to that other agreement, code or document, deed, licence or other instrument as

lawfully amended, modified, supplemented, substituted, assigned or novated from time to time;

- (g) any reference to a day is to be construed as a reference to a calendar day except where provided otherwise, and any reference to a year is to be construed as a reference to a period of 12 months;
- (h) any reference to a time is to be construed as a reference to the time prevailing in Belfast;
- (i) where any obligation is imposed on any Party pursuant to this Code and is expressed to require performance within a specified time limit that obligation shall, where appropriate, continue to be binding and enforceable after that time limit if the Party fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against that person by reason of that person's failure to perform that obligation within the time limit);
- (j) capitalised words, phrases, acronyms and abbreviations have the meaning given to them in the Glossary;
- (k) where a specified number of days is expressed to elapse or expire from or after the giving of a notice or the issue or making available of a document before an action may be taken or by which an action is required to be taken then, unless explicitly stated otherwise, the day on which the notice is given or issued or the document is made available shall not be counted in the reckoning of the period;
- (l) a reference to a "person" includes any individual, partnership, firm, company, corporation (statutory or otherwise), joint venture, trust, association, organisation or other entity, whether or not having separate legal personality;
- (m) a reference to a Participant shall be construed as a reference to the relevant Party as the person registered in respect of the relevant Units;
- (n) a reference to a Participant's Units, means the Units registered in respect of that Participant under this Code;
- (o) where this Code requires the System Operators to publish data, it shall be made publicly available (which, for the avoidance of doubt means available to all members of the public and not only to Parties) in a format that readily lends itself to processing by standard computer and analysis tools, through an easily accessible public interface and the terms "publish", "publication" and "published" shall be construed accordingly;
- (p) where this Code requires the System Operators to publish information and no timeline is specified for such publication, they are required to publish such information as soon as is reasonably practicable;
- (q) differences of language between provisions of this Code may be explicable by reference to changes of drafting practice or provisions of this Code being drafted by different authors and do not necessarily imply a difference of meaning;
- (r) where this Code contemplates that the System Operators will prescribe or publish the form of a notice or determine the format for a document or other information to be submitted to the System Operators, and the Trading and Settlement Code contemplates the Market Operator prescribing or

publishing the form of a similar notice or determining the format of a similar document or item of information, the System Operators may:

- (i) prescribe or publish the same form or determine the same format for the purposes of this Code; or
 - (ii) in conjunction with the Market Operator, prescribe or publish a common form or determine a common format that applies under both this Code and the Trading and Settlement Code; and
- (s) where no timeframe for performance is specified in respect of any obligation to be performed by a Party, then such obligation shall be performed within a reasonable time.

A.3.1.2 Where any provision of this Code contemplates that the Regulatory Authorities shall provide, determine or approve a value which is required for the performance of calculations under this Code and which applies for a specific period, and on expiry of such period no replacement value has been determined by the Regulatory Authorities, or the Regulatory Authorities have not communicated their determination to the System Operators, then the value applicable immediately prior to the expiry of the relevant period shall continue to apply until the Regulatory Authorities have provided, determined or approved a new value and this has been communicated to the System Operators in accordance with this Code.

A.3.2 **Calculations**

A.3.2.1 In this Code, the following interpretations shall apply unless the context requires otherwise:

- (a) all values that relate to power (MW) or energy (MWh) being input into the SEM are positive values;
- (b) all values that relate to power (MW) or energy (MWh) being taken from the SEM are negative values;
- (c) all values for power (MW) or energy (MWh) that relate to imports into the SEM in relation to an Interconnector shall be treated for the purposes of the calculations set out in this Code as having positive or zero values;
- (d) all values for power (MW) or energy (MWh) that relate to exports from the SEM in relation to an Interconnector shall be treated for the purposes of the calculations set out in this Code as having negative or zero values;
- (e) all values that relate to amounts (in € or £) due to a Participant or in respect of a unit from the System Operators or the Market Operator under the Trading and Settlement Code are to be treated for the purposes of the calculations set out in this Code as having positive values;
- (f) all values that relate to amounts (in € or £) due from a Participant or in respect of a unit to the System Operators or the Market Operator under the Trading and Settlement Code are to be treated for the purposes of the calculations set out in this Code as having negative values;
- (g) all values for power (MW), ramp rates (MW/min) or energy (MWh) and which are not Loss-Adjusted in relation to an Interconnector shall be those applicable at the Interconnector Data Submission Point;
- (h) the value zero shall be treated as a positive whole number; and
- (i) in the event of any conflict between algebraic formulae and English language text, the algebraic formula shall apply, save in the case of manifest error in the algebraic formula.

B. LEGAL AND GOVERNANCE

B.1 PURPOSE

- B.1.1.1 This Chapter B sets out provisions relating to the governance and administration of this Code.

B.2 GOVERNING LAW AND JURISDICTION

- B.2.1.1 This Code and any disputes arising under, out of, or in relation to this Code shall be interpreted, construed and governed in accordance with the laws of Northern Ireland.
- B.2.1.2 Subject to the provisions relating to the Dispute Resolution Process, the Parties hereby submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising under, out of, or in relation to this Code.

B.3 TERM

- B.3.1.1 This Code shall commence on the Capacity Market Commencement Date and shall have no fixed duration.

B.4 PRIORITY

- B.4.1.1 In the event of any conflict between any Party's obligation pursuant to any Legal Requirements and this Code, such conflict shall be resolved according to the following order of priority:
- (a) requirements under Applicable Laws;
 - (b) any applicable requirement, direction, determination, decision, instruction or rule of any Competent Authority;
 - (c) the applicable Licence;
 - (d) the Grid Code applicable to the relevant Unit concerned;
 - (e) the Metering Code applicable to the relevant Unit concerned; and
 - (f) this Capacity Market Code (subject to paragraphs B.4.1.6 and B.4.1.7 below).
- B.4.1.2 If and for so long as a Party complies with the relevant Legal Requirements set out in paragraphs B.4.1.1(a) to B.4.1.1(f), it shall be relieved of its obligations under this Code in accordance with section B.16 to the extent that and for so long as the performance of such obligations is in conflict with any of the relevant Legal Requirements taking priority over this Code, provided that:
- (a) such conflict does not arise as a result of a failure of the relevant Party to procure, comply with or maintain any consent, permission, licence, authorisation or Licence in accordance with paragraph B.8.1.5(b); and
 - (b) a Party claiming to be relieved of its obligations under this Code in reliance on this paragraph B.4.1.2 complies promptly with all applicable requirements of paragraph B.16.2.3 and with the procedural and substantive requirements of any resulting Modification Process or Disputes process.

- B.4.1.3 A Party shall only be relieved of its obligations pursuant to paragraph B.4.1.2 for so long as and to the extent that resolution of the conflict is not within the reasonable control of the relevant Party.
- B.4.1.4 Until such time as such conflict is resolved through the Modification Process or otherwise, the applicable obligations under the Legal Requirements set out in paragraphs B.4.1.1(a) to B.4.1.1(f) shall prevail over the provisions of this Code for each Party or Unit in relation to which they are in conflict.
- B.4.1.5 Notwithstanding paragraph B.4.1.1 and B.4.1.2, where a term or expression is given a particular meaning in the Glossary and is also defined for the purposes of any of the instruments higher in the order of priority set out in paragraph B.4.1.1, then in this Code it shall have the meaning given in the Glossary.
- B.4.1.6 It is not intended that there be any inconsistency or conflict between any provision of any of the Chapters, sections, Appendices or Agreed Procedures of this Code. However, in the event of any inconsistency or conflict, such inconsistency or conflict shall be resolved in the following order of priority:
- (a) Chapter M (Interim Arrangements);
 - (b) the remaining Chapters;
 - (c) the Glossary;
 - (d) the Appendices; and
 - (e) the Agreed Procedures.
- B.4.1.7 The provisions of paragraph B.4.1.6 shall be subject to any express provision to the contrary in this Code.

B.5 PARTIES, ACCESSION PROCESS AND PARTICIPANTS

B.5.1 Parties and Accession Process

- B.5.1.1 A person may only become a Party to this Code in accordance with the terms of this Code and the Capacity Market Framework Agreement.
- B.5.1.2 Any person that is at the relevant time an adhering party to the Capacity Market Framework Agreement shall be a Party to this Code.
- B.5.1.3 In order to become a Party, a person shall complete and execute an application form in accordance with Agreed Procedure 1 “Registration” and shall submit it to the System Operators. The application form specifies all conditions which the person must meet to become a Party, which include that the person shall:
- (a) pay the Accession Fee to the System Operators; and
 - (b) when provided, execute the Accession Agreement to adhere to the Capacity Market Framework Agreement and this Code.
- B.5.1.4 The Accession Fee shall be non-refundable.
- B.5.1.5 Where the System Operators receive an application, they may, in accordance with Agreed Procedure 1 “Registration”, if they consider that further information or clarification is required in order to complete the application, send a notice to the person submitting the application form identifying the further information or clarification required.
- B.5.1.6 If the System Operators do not receive the further information or clarification required in accordance with Agreed Procedure 1 “Registration”, the person submitting the application form shall be deemed to have withdrawn the application.

The person may request additional time to provide any clarification or additional information and the System Operators shall not unreasonably withhold consent to any such request.

- B.5.1.7 On receipt of a completed application form and any clarification or further information requested by the System Operators and provided that the Applicant fulfils the conditions for accession specified in the application form, the System Operators shall within 10 Working Days of final receipt of all required information and clarifications provide the Applicant with an Accession Agreement. The Applicant shall submit to the System Operators an executed Accession Agreement within 20 Working Days of receipt. An Applicant may request additional time to submit an executed Accession Agreement and the System Operators shall not unreasonably withhold consent to any such request, provided that the date of receipt of the executed Accession Agreement shall be earlier than the effective date specified in the Accession Agreement.
- B.5.1.8 Following receipt by the System Operators of an executed Accession Agreement in accordance with paragraph B.5.1.7, the Applicant shall become a Party on the date specified in the Accession Agreement unless the System Operators and the Applicant agree on a different date separately in writing.

B.5.2 Participants

- B.5.2.1 In order for a Party to participate in any of the arrangements under this Code, it shall have registered, or be taken to have registered, or have provisionally registered, a Candidate Unit in accordance with this section B.5.2.
- B.5.2.2 Subject to paragraph B.5.2.3, a Party which has registered:
- (a) a Generator Unit under the Trading and Settlement Code is taken to have also registered that Generator Unit as a Candidate Unit under this Code; and
 - (b) an Interconnector under the Trading and Settlement Code (being the Interconnector Owner for the purposes of that Code) is taken to have also registered that Interconnector as a Candidate Unit under this Code.
- B.5.2.3 Paragraph B.5.2.2 does not apply to the following types of Generator Units: Assetless Units, Trading Site Units, Interconnector Error Units and Interconnector Residual Capacity Units (all within the meaning of the Trading and Settlement Code).
- B.5.2.4 A Party that has registered a Supplier Unit under the Trading and Settlement Code is deemed to have registered a corresponding Supplier Unit under this Code.
- B.5.2.5 If a Party (or Applicant, as applicable) intends registering a proposed Generator Unit or Interconnector under the Trading and Settlement Code, the Party may apply to provisionally register the proposed Generator Unit or proposed Interconnector as a Candidate Unit under this Code by submitting a Participation Notice to the System Operators.
- B.5.2.6 A Participation Notice shall include the following information:
- (a) the name, address and contact details (including email and e-fax) of the Party to which the proposed Candidate Unit is to be registered;
 - (b) details of the proposed Generator Unit or proposed Interconnector; and
 - (c) the first Capacity Auction in which the Party (or Applicant, as applicable) intends to participate in respect of that Candidate Unit.

- B.5.2.7 Where the System Operators receive a Participation Notice from a Party (or an Applicant, as applicable) they may within 10 Working Days of receiving the Participation Notice, if they consider that further information or clarification is required in order to complete the Participation Notice send a notice to the Party (or Applicant, as applicable) submitting the Participation Notice identifying the further information or clarification required.
- B.5.2.8 If the System Operators do not receive the clarification or the further information required from the Party (or the Applicant, as applicable) within 20 Working Days of having been informed by the System Operators of the need for such clarification or additional information, the Party (or the Applicant, as applicable) shall be deemed to have withdrawn the Participation Notice and the System Operators shall, to the extent that it has been paid by the Party (or the Applicant, as applicable), refund the Participation Fees in accordance with paragraph B.5.3.3. A Party (or an Applicant, as applicable) may request additional time to submit any clarification or additional information and the System Operators shall not unreasonably withhold consent to any such request.
- B.5.2.9 On receipt of a Participation Notice, the Participation Fees and any further information or clarification requested by the System Operators from a Party (or an Applicant, as applicable) within the timelines provided for in paragraph B.5.2.8 (as extended in accordance with that paragraph), the System Operators shall send a notice to the Party (or the Applicant, as applicable) as to whether or not the provisional registration of the Candidate Unit has been approved, approved subject to conditions or rejected.
- B.5.2.10 The provisional registration of a Candidate Unit which is a proposed Generator Unit or proposed Interconnector ceases to be provisional (and becomes fully registered under this Code) upon the proposed Generator Unit or proposed Interconnector being Qualified as, or as part of, a Capacity Market Unit under Chapter E or registered under the Trading and Settlement Code (whichever occurs first).
- B.5.2.11 A Candidate Unit or a Supplier Unit ceases to be registered under this Code when it ceases to be registered under the Trading and Settlement Code. The de-registration of a Candidate Unit under this paragraph does not affect the registration of a Capacity Market Unit under this Code.
- B.5.2.12 A Candidate Unit which has been provisionally registered under this Code ceases to be provisionally registered either when it becomes fully registered under paragraph B.5.2.10 or the Participant notifies the System Operator that it wishes to cancel the Candidate Unit's provisional registration.
- B.5.2.13 A Party becomes a Participant in respect of a Candidate Unit when the Candidate Unit has been registered, or is taken to be registered, or has been provisionally registered, under this Code.
- B.5.2.14 When the Capacity Market Unit has been Qualified to participate in a Capacity Auction for the first time:
- (a) the System Operators shall register the Capacity Market Unit for the purposes of this Code and the Trading and Settlement Code; and
 - (b) the relevant Party becomes a Participant in respect of that Capacity Market Unit.
- B.5.2.15 The System Operators may provide a copy of any Participation Notice submitted under this Code to the Market Operator.

B.5.3 Accession and Participation Fee

- B.5.3.1 The System Operators shall publish details of the Accession Fee and Participation Fee which shall be expressed both in Euro and in Sterling.
- B.5.3.2 A Party (or an Applicant as applicable) shall pay the required Participation Fee upon submission of the Participation Notice to the System Operators. The System Operators shall specify the components of the Participation Fee that will apply in respect of each Participation Notice.
- B.5.3.3 If a Participation Notice is withdrawn or rejected (including where it is deemed to be withdrawn in accordance with paragraph B.5.2.8), the System Operators shall refund those components (or part thereof) of the Participation Fee for which they have not incurred any costs.
- B.5.3.4 The System Operators shall specify the bank account into which payment of Accession Fees and Participation Fees must be made, which, to avoid doubt, may be an account in the name of the Market Operator at the SEM Bank.

B.5.4 Participants and Units

- B.5.4.1 The System Operators shall maintain and publish from time to time a current list of Parties and Participants.
- B.5.4.2 The list shall include for each Participant the following details:
 - (a) each of its Candidate Units;
 - (b) each of its Capacity Market Units (as determined during the Qualification Process); and
 - (c) a mapping between Candidate Units and Capacity Market Units.

B.5.5 Intermediaries

- B.5.5.1 Where an Intermediary:
 - (a) has registered a Generator Unit in accordance with the Trading and Settlement Code; and
 - (b) submitted a Form of Authority to the Market Operator under the Trading and Settlement Code, executed by the Intermediary and the Unit Owner,then:
 - (c) if required by the Regulatory Authorities, the Intermediary shall submit a Form of Authority to the System Operators under this Code (in the form approved by the Regulatory Authorities), executed by the Intermediary and the Unit Owner; and
 - (d) after it does so, the Intermediary shall, for the purposes of this Code, be the Participant for the Generator Unit in accordance with this Code until its authority under the Form of Authority has expired or been revoked. **[Note: requirements for Intermediaries being considered by the Regulatory Authorities]**
- B.5.5.2 Where in respect of a Generator Unit:
 - (a) the Intermediary's authority under the applicable Form of Authority is due to expire or has been or will be revoked in accordance with applicable Legal Requirements or otherwise; or
 - (b) the Intermediary receives notice from the Unit Owner of its intention to revoke the Intermediary's authority,

then the Intermediary shall:

- (c) notify the System Operators before the expiry or as soon as reasonably practicable of the revocation (as applicable) and the effective date or proposed effective date of such expiry or revocation; and
- (d) apply to Deregister the Generator Unit under section B.5.6.

B.5.5.3 If the System Operators receive notice from an Intermediary under paragraph B.5.5.2(c) that the Intermediary's authority to act in respect of any Generator Unit will expire or has been or will be revoked on a particular date, the System Operators shall Deregister the relevant Generator Units on the date of expiry or revocation of the Intermediary's authority, or where notice is received following any such expiry or revocation, shall immediately on receipt of such notice, Deregister the relevant Generator Units with effect from the next Trading Day.

B.5.5.4 During the 60 day period immediately prior to the expiry of an Intermediary's authority in respect of any Generator Unit under the Form of Authority, or, where the System Operators have been notified in advance of the proposed revocation of an Intermediary's authority in respect of any Generator Unit in accordance with paragraph B.5.5.3, then at any time following such notification, the System Operators shall accept a Participation Notice for the registration of the relevant Generator Unit to a new Participant prior to Deregistration of the Generator Units from the Intermediary, provided that any new registration shall be subject to the provisions of section B.5 and shall not take effect prior to the Deregistration of the Generator Units from the Intermediary.

B.5.6 **Deregistration of Capacity Market Units**

B.5.6.1 A Participant ("**Deregistration Applicant**") may apply at any time to Deregister any Capacity Market Unit registered in its name, pursuant to this section B.5.6 and Agreed Procedure 1 "Registration".

B.5.6.2 A Deregistration Applicant shall notify the System Operators and the Regulatory Authorities of its intention to deregister any Capacity Market Unit at least 60 days in advance of its intended date of Deregistration, using the designated form for Deregistration set out in Agreed Procedure 1 "Registration".

B.5.6.3 Where the Deregistration Applicant complies with the procedures set out in Agreed Procedure 1 "Registration", the System Operators shall issue a Deregistration Consent Order, permitting the Deregistration of the relevant Capacity Market Unit, provided that:

- (a) the System Operators are satisfied that all the Deregistration Applicant's obligations under this Code and the Trading and Settlement Code in respect of the relevant Capacity Market Unit up to and including the date of Deregistration have been satisfied in full or the System Operators are satisfied that appropriate provision has otherwise been made for those obligations to be performed; and
- (b) either:
 - (i) there is no Awarded Capacity in respect of the Capacity Market Unit in respect of any future period; or
 - (ii) If there is Awarded Capacity in respect of the Capacity Market Unit in respect of any future period, the System Operators are satisfied as to all of the following matters:
 - (A) another Party ("**Other Party**") will become:

- i. the Participant in respect of the Capacity Market Unit for the purposes of this Code; and
- ii. the Participant for the purposes of the Trading and Settlement Code in respect of each Unit under the Trading and Settlement Code comprising the Capacity Market Unit,

in each case from the intended date of the Deregistration;

- (B) the Other Party has executed a deed in form and substance reasonably satisfactory to the System Operators under which the Other Party assumes responsibility for providing the Awarded Capacity and becomes bound to perform the Deregistration Applicant's obligations under this Code, the Trading and Settlement Code and any Implementation Plan in respect of the Capacity Market Unit from the intended date of the Deregistration;
- (C) the Other Party demonstrates that it has the legal, financial, human and technical resources and capability to undertake the Deregistration Applicant's obligations under this Code, the Trading and Settlement Code and any Implementation Plan in respect of the Capacity Market Unit; and
- (D) the Other Party has any necessary registrations, consents and approvals to:
 - i. own, operate and maintain the Capacity Market Unit; and
 - ii. undertake the Deregistration Applicant's obligations under this Code, the Trading and Settlement Code and any Implementation Plan in respect of the Capacity Market Unit,

or shall do so by the intended date of the Deregistration.

- B.5.6.4 Subject to paragraph B.5.6.3, where the System Operators have received a notice that a Participant wishes to Deregister a Capacity Market Unit in accordance with this section B.5.6, the System Operators shall, during the notice period provided for in that paragraph, accept a Participation Notice from a Party (or Applicant, as applicable) to become the new Participant in respect of that Capacity Market Unit and any such new registration shall be subject to the requirements of section B.5.

B.6 SYSTEM OPERATORS

B.6.1 Joint Administration of this Code and Capacity Market

- B.6.1.1 EirGrid and SONI are obliged under their respective Transmission System Operator Licences, in conjunction with each other, to:

- (a) at all times administer this Code; and
- (b) ensure that persons who are a Party or who wish to become a Party have, to the extent that is reasonably practicable, a single point of contact when participating in the Capacity Market.

- B.6.1.2 Accordingly, unless the context otherwise requires:

- (a) a reference in this Code to the "System Operators" is a reference to both EirGrid and SONI in their joint role of administering this Code;

- (b) EirGrid and SONI shall perform that role together and in a co-ordinated way; and
 - (c) each of EirGrid and SONI shall be jointly and severally liable in performing the role of, and performing the obligations of, the “System Operators” under this Code.
- B.6.1.3 The System Operators are authorised by all Parties to exercise and perform the rights, obligations and functions granted to them under this Code to the extent required under, and in accordance with, this Code.
- B.6.1.4 Without prejudice to the obligations of Parties to comply with this Code, where any other Party owes an obligation or liability to the System Operators, if that Party discharges that obligation or liability to either EirGrid or SONI, then the Party shall be taken to have discharged the obligation or liability to the System Operators.
- B.6.1.5 Subject to the necessary amendments being made to the Transmission System Operator Licences, the Regulatory Authorities shall be entitled to direct a Modification to this Code to change the person or persons responsible for administering this Code and the Capacity Market and no other person shall be entitled to request such a Modification.
- B.6.2 No Undue Discrimination**
- B.6.2.1 The System Operators shall not unduly discriminate between any Parties in exercising their rights and powers and performing their functions and obligations under this Code.
- B.6.3 Delegation and Subcontracting**
- B.6.3.1 The System Operators may not assign any of their obligations, functions or powers under this Code to any person.
- B.6.3.2 The System Operators may not, without the prior written consent of the Regulatory Authorities, enter into any agreement to subcontract or delegate any of their obligations, functions or powers under this Code where:
 - (a) the relevant agreement, if it relates to the supply of goods or services, has a cumulative or aggregate value equal to or exceeding the then current threshold under Article 15 of the Utilities Directive applicable to contracts for supplies and services; or
 - (b) the relevant agreement, if it relates to the performance of works, has a cumulative or aggregate value equal to or exceeding the then current threshold under Article 15 of the Utilities Directive applicable to contracts for works; or
 - (c) the obligations, functions or powers in question are of material importance to the role of the System Operators, and/or the proper functioning of the arrangements, under this Code.
- B.6.4 Reports**
- B.6.4.1 The System Operators shall report to the Regulatory Authorities in writing at such intervals as the Regulatory Authorities may reasonably request and in such manner and to such an extent as reasonably specified by the Regulatory Authorities.
- B.6.4.2 The System Operators shall publish reports under paragraph B.6.4.1 to the extent directed by the Regulatory Authorities.

B.6.4.3 Reports under paragraph B.6.4.1 shall set out in reasonable detail information about:

- (a) the performance by the System Operators of their rights, powers, functions and obligations under this Code; and
- (b) factual information relating to the exercise of rights and the carrying out of functions by Parties under this Code.

B.7 SYSTEM OPERATOR FEES

B.7.1 System Operator Charges

B.7.1.1 The System Operator Charges shall comprise:

- (a) a Qualification Charge applicable to Participants which submit an Application for Qualification under section E.4;
- (b) a Fixed System Operator Charge applicable to Participants in respect of their Capacity Market Units; and
- (c) a Variable System Operator Charge applicable to all Participants in respect of their Supplier Units as appropriate.

B.7.1.2 The Qualification Charge shall be a charge applied in respect of each Candidate Unit the subject of the Application for Qualification under section E.4.

B.7.1.3 The Fixed System Operator Charge shall be a charge applied in respect of each Capacity Market Unit.

B.7.1.4 The Variable System Operator Charge shall be a charge in respect of each unit of Loss-Adjusted Metered Quantity in respect of a Supplier Unit, and is based on a Variable System Operator Charge expressed in Euro/MWh.

B.7.1.5 The purpose of the Qualification Charge is to recover the costs and expenses of the System Operators in carrying out the Qualification Process in accordance with this Code.

B.7.1.6 The purpose of the Fixed System Operator Charge and the Variable System Operator Charge is to recover the costs and expenses of the System Operators (including capital and operating costs and expenses recovered over an appropriate period) in performing their roles, responsibilities and obligations under this Code to the extent not recovered by way of Qualification Charges.

B.7.1.7 The System Operators shall report to the Regulatory Authorities from time to time, proposing rates for the Accession Fee, Participation Fee, Qualification Charge, Fixed System Operator Charge and Variable System Operator Charge to apply for a Capacity Year.

B.7.1.8 The System Operators shall publish the approved rate for the Accession Fee, Participation Fee, Qualification Charge, Fixed System Operator Charge and Variable System Operator Charge within 5 Working Days of receiving the Regulatory Authorities' determination.

B.7.1.9 If the Regulatory Authorities do not determine the value for any or all of the fees and charges applicable for a Capacity Year in accordance with this section prior to the start of the Capacity Year, then:

- (a) the rate for any such fee or charge for the previous Capacity Year shall continue to apply until they do so;
- (b) in relation to the System Operator Charged, there will be an appropriate reconciliation adjustment once the Regulatory Authorities have approved

the rate for any such charge so that the System Operators are put in the position they would have been in had the rate for the charge or charges been determined at the start of the capacity Year; and

- (c) the System Operators shall be entitled to invoice, and each Party (or Participant, as applicable) shall pay, any such adjustment fee, within 5 Working Days of the date of issue of the invoice from the System Operators.

B.7.1.10 The rate for a fee or charge under this Code may vary according to the person, the Unit, the type of Unit and/ or the time period to which it applies.

B.7.2 System Operator Bank Account

B.7.2.1 The System Operators shall establish and maintain with the SEM Bank within the relevant Jurisdiction a Euro bank account at a branch of the SEM Bank in Ireland and a Sterling bank account at a branch of the SEM Bank in Northern Ireland in its name and each called “the System Operator Charge Account”. Participants shall make all payments due in relation to System Operator Charges into the relevant System Operator Charge Account according to the Currency Zone of its registered Units. Each System Operator Charge Account shall be an interest-bearing account.

B.7.2.2 Each Participant shall pay System Operator Charges together with the appropriate amount of VAT, where applicable, within 5 Working Days of the date of issue of the invoice from the System Operators.

B.7.2.3 The System Operators may set off any amount due for payment by a Participant to the System Operators under this Code against any amount due for payment by the System Operators or either of them (and whether under any code or agreement and in any capacity) to the Participant.

B.7.3 Interest

B.7.3.1 Where any payment under this Code is overdue, Default Interest shall accrue from the relevant due date until the date of actual payment in full of the overdue amount by remittances for full value, such Default Interest to accrue daily and both before and after any judgment.

B.8 OBLIGATIONS ON PARTIES

B.8.1 Compliance with Code

B.8.1.1 Each Party shall comply with this Code and the Capacity Market Framework Agreement.

B.8.1.2 Without prejudice to the generality of paragraph B.8.1.1, no Party shall, either directly or indirectly, on its own or in conjunction with any other Party or person, obstruct the proper functioning of the Capacity Market in accordance with this Code and the Trading and Settlement Code.

B.8.1.3 Each Party agrees that the System Operators shall have the right, as agent and trustee for and on behalf of each Party, to sue any other Party to recover any amount due under this Code.

B.8.1.4 Where the performance of any obligation arising under or in relation to this Code requires the prior approval or action by the Regulatory Authorities, such obligation shall be subject to such prior approval or action by the Regulatory Authorities.

B.8.1.5 Without prejudice to any other provision of this Code or the Capacity Market Framework Agreement, each Party:

- (a) shall perform all its rights, functions and obligations under this Code with the degree of care and to the standard expected of a Prudent Industry Operator and in accordance with Prudent Electric Utility Practice;
- (b) shall at all times comply with and maintain, and shall at all times procure compliance with and maintenance of, all consents, permissions, licences, authorisations and Licences (and the conditions attaching to any exemptions under the foregoing) required to be obtained and maintained to participate in the SEM or to be a Party to this Code for each capacity in which it acts as a Party or Participant under this Code;
- (c) shall pay all fees, levies, charges and other payments arising under this Code as they become due;
- (d) shall ensure that, save as expressly provided otherwise under this Code, any information or data it is required to submit to the System Operators, Capacity Market Monitor, Capacity Market Auditor or any other person, or to maintain, as required by virtue of being a Party or Participant (including under section B.8.2), shall, to the best of its knowledge and belief, be true, valid, correct, complete and accurate, and not misleading, at the time it is given and, save as expressly provided otherwise under this Code, while it is maintained and, where appropriate, it shall keep the System Operators informed as soon as reasonably practicable of any mistakes or omissions in, and corrections or updates to any information or data which it has submitted to the System Operators, Capacity Market Monitor, Capacity Market Auditor or any other person under this Code;
- (e) shall ensure that any information or data it is required to submit to the System Operators, Capacity Market Monitor, Capacity Market Auditor or any person as required by virtue of being a Party or Participant will be submitted as soon as reasonably practicable to enable the System Operators, Capacity Market Monitor, Capacity Market Auditor or such other person to perform their obligations and functions arising pursuant to this Code or a Regulatory Reporting Requirement; and
- (f) shall co-operate with and provide all reasonable assistance to the System Operators, Capacity Market Monitor and Capacity Market Auditor on request for the purposes of the System Operators, Capacity Market Monitor or Capacity Market Auditor (as applicable) performing their functions and obligations under this Code or a Regulatory Reporting Requirement.

B.8.2 **Regulatory Requirements**

B.8.2.1 If the System Operators are required to compile, collect and/or submit any information or data, or report any conduct or any thing, relating to the Capacity Market or its operation to the Regulatory Authorities or another Competent Authority under any Applicable Law (a “**Regulatory Reporting Requirement**”), then each Participant:

- (a) shall provide such information, data and reports as the System Operators reasonably request of the Participant in accordance with the timeframes requested to enable the System Operators to comply with or fulfil the Regulatory Reporting Requirement (or procure that is provided);

- (b) shall co-operate with the System Operators and take such steps as the System Operators reasonably request as are necessary or desirable to enable the System Operators to comply with or fulfill the Regulatory Reporting Requirement; and
 - (c) consents to the System Operators providing information, data or reports to the Regulatory Authorities or another Competent Authority in accordance with the Regulatory Reporting Requirement (or procures that any necessary consents are provided).
- B.8.2.2 Subject to Applicable Laws, each Party shall allow the Regulatory Authorities, on reasonable notice and at reasonable times, access to inspect and copy any records relating to the Party's activities, conduct, obligations and functions under this Code and, where applicable, its participation in the SEM.

B.9 PROHIBITION ON MARKET MANIPULATION

B.9.1.1 Participants shall not engage in Market Manipulation within the meaning of paragraph B.9.1.2.

B.9.1.2 **"Market Manipulation"** means:

- (a) submitting bids or offers, or an Opt-Out Notification or other information to the System Operators or any other person or taking any action, or refraining from taking any action, in each case which:
 - (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of capacity traded through a Capacity Auction or Secondary Trade Auction;
 - (ii) secures, or attempts to secure, by a person, or persons acting in collaboration, the Auction Clearing Price of a Capacity Auction or value of a trade in a Capacity Auction or Secondary Trade Auction at an artificial level unless the person concerned establishes that its reasons for doing so are legitimate and that the transaction or order concerned conforms to accepted market practices; or
 - (iii) employs, or attempts to employ, a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, or demand for, capacity traded through a Capacity Auction or Secondary Trade Auction or the Auction Clearing Price of a Capacity Auction or value of a trade in a Capacity Auction or Secondary Trade Auction; or
- (b) disseminating information through any media which gives, or is likely to give, false or misleading signals as to the supply of, or demand for, or likely Auction Clearing Price of a Capacity Auction or value of a trade in a Capacity Auction or Secondary Trade Auction where the person doing this knows or ought to have known the information to be false or misleading;
- (c) any other act, omission, concerted practice or agreement, which has as its object or effect the prevention, restriction or distortion of competition in any Capacity Auction or Secondary Trade Auction;
- (d) doing anything which would constitute a breach of any law intended to prohibit or restrict anti-competitive practices relevant to participation in the Capacity Auction; or
- (e) any other action or omission which from time to time is prescribed by any Applicable Law as constituting market manipulation.

- B.9.1.3 So far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this section B.9 in relation to Market Manipulation shall be dealt with in a manner which is consistent with the treatment of corresponding questions arising under REMIT.
- B.9.1.4 Any breach of this provision shall be deemed to be a material breach of this Code which is not capable of being remedied.

B.10 CAPACITY AUCTION MONITORING

B.10.1 Capacity Auction Monitor

- B.10.1.1 The Regulatory Authorities shall appoint a person or firm as Capacity Auction Monitor every three years for a three year term, with the appointment to take effect from the date specified by the Regulatory Authorities.
- B.10.1.2 Where the appointment is terminated or the Capacity Auction Monitor resigns before the expiry of the three year term, the Regulatory Authorities may appoint a person or firm to fulfil the role of Capacity Auction Monitor on a temporary basis, pending the appointment under paragraph B.10.1.1 of a person or firm as Capacity Auction Monitor for a three year term. The three year term of the person or firm next so appointed as Capacity Auction Monitor shall commence from their date of appointment.
- B.10.1.3 When selecting a person or firm to act as Capacity Auction Monitor, the Regulatory Authorities shall endeavour to ensure that the Capacity Auction Monitor is of good repute and has the appropriate experience to enable it to carry out the role with the appropriate level of expertise, care, skill and diligence and is independent of the System Operators and Participants.
- B.10.1.4 The Regulatory Authorities shall conduct a tender process for the purposes of selecting the Capacity Auction Monitor.
- B.10.1.5 The Regulatory Authorities shall ensure that the terms of engagement for the Capacity Auction Monitor require the Capacity Auction Monitor to:
- (a) conduct its functions in accordance with this Code and the terms of reference for the Capacity Auction Monitor determined by the Regulatory Authorities;
 - (b) comply with any provisions of this Code that contemplate the Capacity Auction Monitor doing or not doing any matter of thing;
 - (c) have personnel on site with the System Operators when the System Operators are conducting a Qualification Process or a Capacity Auction;
 - (d) deliver to the Regulatory Authorities a report on the Qualification Process for each Capacity Auction in accordance with paragraph B.10.3 and each Capacity Auction in accordance with paragraph B.10.4;
 - (e) comply with the provisions of section B.23 as if the Capacity Auction Monitor was a Recipient Party and any information which comes into its possession in its role as Capacity Auction Monitor is Confidential Information of the System Operators;
 - (f) report to the Regulatory Authorities from time to time on any specific issue in relation to a Qualification Process or a Capacity Auction; and
 - (g) meet with the Regulatory Authorities at the request of the Regulatory Authorities at any time during the Capacity Auction Monitor's engagement.

Nominated representatives of the System Operators shall be entitled to attend such meeting.

B.10.1.6 The fees and costs of the Capacity Auction Monitor shall be paid by the System Operators.

B.10.2 Role of Capacity Auction Monitor

B.10.2.1 The Capacity Auction Monitor shall monitor the processes and procedures followed by the System Operators in carrying out the Qualification Process, conducting Capacity Auctions and related activities under this Code, in accordance with the terms of reference determined by the Regulatory Authorities.

B.10.2.2 The terms of reference for the Capacity Auction Monitor shall be determined from time to time by the Regulatory Authorities after consultation with Parties.

B.10.2.3 The Regulatory Authorities shall provide the terms of reference for the Capacity Auction Monitor to the System Operators and the System Operators shall publish to the extent directed by the Regulatory Authorities the terms of reference promptly after receiving them from the Regulatory Authorities.

B.10.2.4 Each of the System Operators and the Capacity Auction Monitor shall promptly notify the other if they become aware of a potential or suspected non-compliance with this Code or any other potential or suspected irregularity with respect to the conduct of a Capacity Auction.

B.10.2.5 The System Operators may request that the Capacity Auction Monitor give its opinion as to the most appropriate course of action regarding any potential or suspected non-compliance with this Code or other potential or suspected irregularity with respect to the conduct of a Capacity Auction.

B.10.2.6 The System Operators shall allow the Capacity Auction Monitor access to its premises to the extent reasonably necessary to enable the Capacity Auction Monitor to carry out its functions under paragraph B.10.2.1.

B.10.2.7 The System Operators shall ensure that the Capacity Auction Monitor has full read-only access to:

- (a) Applications for Qualification and decisions of the System Operators in respect of the Qualification Process;
- (b) the Capacity Market Platform in order to monitor Capacity Auctions, including the ability to view all Capacity Auction Offers as they are submitted and all communications during the Capacity Auction between the System Operators and the Participants participating in the Capacity Auction; and
- (c) the Capacity and Trade Register in accordance with paragraph G.2.1.5.

B.10.2.8 When on the premises of the System Operators, and when accessing information as contemplated under paragraph B.10.2.7, the Capacity Auction Monitor shall comply with the System Operators' reasonable requirements concerning safety and security.

B.10.2.9 The Capacity Market Monitor shall comply with any direction given to it by the Regulatory Authorities.

B.10.3 Report on Qualification Process

B.10.3.1 Within two Working Days after the System Operators have submitted the Provisional Qualification Decisions in relation to a Qualification Process to the

Regulatory Authorities under paragraph E.9.2.1, the Capacity Auction Monitor shall provide a report to the Regulatory Authorities and the System Operators that:

- (a) confirms the list of Capacity Market Units that have been Qualified;
- (b) states whether or not the Capacity Auction Monitor considers that the Qualification Process was conducted in accordance with this Code; and
- (c) where applicable, identifies any actual or potential non-compliance with this Code or other actual or potential irregularity in the conduct of the Qualification Process together with the Capacity Auction Monitor's assessment as to the likely consequences of the actual or potential non-compliance or irregularity.

B.10.4 Report on Capacity Auction

B.10.4.1 Within two Working Days after the System Operators have submitted the provisional Auction Results of a Capacity Auction to the Regulatory Authorities under paragraph F.9.2.1, the Capacity Auction Monitor shall provide a report to the Regulatory Authorities and the System Operators that:

- (a) confirms the list of Participants with Capacity Market Units that have been allocated Awarded Capacity;
- (b) states whether or not the Capacity Auction Monitor considers that the Capacity Auction was conducted in accordance with this Code; and
- (c) where applicable, identifies any actual or potential non-compliance with this Code or other actual or potential irregularity in the conduct of the Capacity Auction together with the Capacity Auction Monitor's assessment as to the likely consequences of the actual or potential non-compliance or irregularity.

B.10.4.2 The System Operators shall prepare and publish a version of the Capacity Auction Monitor's report under paragraph B.10.4.1 which does not contain any confidential information and does not identify any Participant.

B.11 CAPACITY MARKET AUDITOR

B.11.1 Appointment of Capacity Market Auditor

B.11.1.1 The Regulatory Authorities shall appoint a person or firm as Capacity Market Auditor every three years for a three year term, with the appointment to take effect from the date specified by the Regulatory Authorities.

B.11.1.2 Where the appointment is terminated or the Capacity Market Auditor resigns before the expiry of the three year term, the Regulatory Authorities may appoint a person or firm to fulfil the role of Capacity Market Auditor on a temporary basis pending the appointment under paragraph B.11.1.1 of a person or firm as Capacity Market Auditor for a three year term. The three year term of the person or firm next so appointed as Capacity Market Auditor shall commence from their date of appointment.

B.11.1.3 The Capacity Market Auditor shall be of good repute with the appropriate experience to enable it to carry out the audit with the appropriate level of expertise, care, skill and diligence and shall be independent of the System Operators and Participants.

B.11.1.4 The Regulatory Authorities shall conduct a tender process for the purpose of selecting the Capacity Market Auditor.

B.11.1.5 The same person may be:

- (a) both the Capacity Auction Monitor and the Capacity Market Auditor; and
- (b) both the Capacity Market Auditor and the Market Auditor under the Trading and Settlement Code.

B.11.1.6 The Regulatory Authorities shall ensure that the terms of engagement for the Capacity Market Auditor requires the Capacity Market Auditor to:

- (a) consult with the System Operators;
- (b) conduct the audit in accordance with this Code and the terms of reference for the Capacity Market Auditor determined by the Regulatory Authorities;
- (c) comply with the provisions of section B.23 as if the Capacity Market Auditor was a Recipient Party and any information which comes into its possession in its role as Capacity Market Auditor is Confidential Information of the System Operators;
- (d) report to the Regulatory Authorities at such reasonable intervals as the Regulatory Authorities shall specify in the terms of reference during the course of the audit;
- (e) deliver its Audit Report to the Regulatory Authorities in draft form prior to it being finalised;
- (f) deliver its Audit Report in final form to the Regulatory Authorities within 4 weeks of delivering its draft audit; and
- (g) meet with the Regulatory Authorities at the request of the Regulatory Authorities at any time during the Capacity Market Auditor's engagement. The Regulatory Authorities shall, in any event, require the Capacity Market Auditor to attend a meeting with it within 6 weeks of its delivery of the Audit Report in final form. Nominated representatives of the System Operators shall be entitled to attend any such meeting.

B.11.1.7 The fees and costs of the Capacity Market Auditor shall be paid by the System Operators.

B.11.2 Role of Capacity Market Auditor

B.11.2.1 The Capacity Market Auditor shall conduct an audit of the operation and implementation of the arrangements, procedures and processes under this Code at least once a Year, in accordance with the terms of reference determined by the Regulatory Authorities.

B.11.2.2 The annual period covered by the audit shall be 1 January to 31 December unless the terms of reference specify a different period.

B.11.2.3 The Regulatory Authorities shall consult with Parties on the terms of reference for the next audit following the publication of the Audit Report.

B.11.2.4 The Regulatory Authorities shall specify the precise terms of reference for an audit following the consultation process under paragraph B.11.2.3 and in sufficient time to enable the Market Auditor to complete the work in a timely manner.

B.11.2.5 The Regulatory Authorities shall provide the terms of reference for an audit to the System Operators and the System Operators shall publish to the extent directed by the Regulatory Authorities the terms of reference promptly after receiving them from the Regulatory Authorities.

- B.11.2.6 The System Operators shall arrange for the publication of the Audit Report in final form upon its delivery in accordance with paragraph B.11.1.6(f) subject to any confidentiality obligations under section B.23 and to the extent directed by the Regulatory Authorities.
- B.11.2.7 The Capacity Market Auditor shall be entitled to make recommendations in its Audit Report. The Regulatory Authorities shall consult with the System Operators on any recommendations. The Regulatory Authorities may direct that a recommendation of the Capacity Market Auditor be implemented by way of an amendment of this Code, and if they do so, the recommendation shall be taken to be a Modification Proposal under paragraph B.12.4 and shall be published accordingly by the System Operators.
- B.11.2.8 The Capacity Market Auditor shall comply with any direction given to it by the Regulatory Authorities.

B.11.3 Information

- B.11.3.1 Each Party shall provide without charge to the Capacity Market Auditor in a timely manner such information or assistance as is reasonably required by the Capacity Market Auditor to enable the Capacity Market Auditor to comply with its functions and obligations and terms of reference. This is subject to any obligations of confidentiality which the relevant Party claims are owed to any third parties which prevent disclosure of any such information required. In such circumstances, the relevant Party shall be obliged to explain the nature of the obligations of confidentiality, the information to which they apply and to demonstrate to the satisfaction of the Regulatory Authorities that it has used its best endeavours to obtain a clearance from the third party to whom the obligation of confidentiality is owed to release the information required to the Capacity Market Auditor.
- B.11.3.2 Each Party shall keep complete, accurate and up to date records whilst a Party to this Code and, where applicable, of its participation in the SEM for a minimum period of three years from the date of creation of such records.
- B.11.3.3 Subject to any confidentiality provisions under section B.23, where information is provided by any Party to the Capacity Market Auditor pursuant to this Code, the Capacity Market Auditor shall have the right, without charge, to use, make available, copy, adapt and deal with such data or other information for the purposes of performing its role under this Code and its terms of reference, but for no other reason.

B.12 MODIFICATIONS

B.12.1 Objectives

- B.12.1.1 Modifications shall be processed in accordance with this section B.12.
- B.12.1.2 The objective of the Modifications process is to progress Modification Proposals with a view to better facilitating the achievement by this Code of the Capacity Market Code Objectives.
- B.12.1.3 The process in relation to a Modification Proposal that relates solely to one or more Agreed Procedures differs from that for Modification Proposals that relate to other parts of this Code, as set out in section B.12.12, and the remaining provisions of this section B.12 shall be read subject to section B.12.12.

B.12.2 Functions of the System Operators in relation to Modifications

B.12.2.1 The functions of the System Operators in relation to Modifications are to facilitate the Modification Process by:

- (a) co-ordinating with the Parties to facilitate the development and processing of a Modification Proposal;
- (b) organising workshops for Parties to discuss Modification Proposals;
- (c) assessing the impact of Modification Proposals for the Capacity Market having regard to the Capacity Market Code Objectives;
- (d) further developing Modification Proposals which are not rejected as being spurious in accordance with paragraph B.12.6;
- (e) working up the detail of Modification Proposals;
- (f) compiling reports and making recommendations on Modification Proposals to the Regulatory Authorities; and
- (g) proposing any appropriate changes to Agreed Procedures arising out of Modification Proposals to other parts of this Code.

B.12.3 Deadline for Approval of Modification Proposals

B.12.3.1 The Regulatory Authorities may determine from time to time the last date ("**Modification Finalisation Date**") by which Modifications Proposals must be made for them to have effect in respect of a Capacity Auction.

B.12.3.2 On receipt of any determination by Regulatory Authorities under paragraph B.12.3.1, the System Operators shall publish the determination, indicating the date from which it takes effect.

B.12.3.3 A Modification Proposal approved after the Modification Finalisation Date shall not take effect until after the Capacity Auction results for that auction have been finalised.

B.12.4 Proposal of Modifications to this Code

B.12.4.1 A proposal to modify, vary or amend this Code (including, without limitation, an Agreed Procedure) ("**Modification Proposal**") may be put forward by any Party (including the System Operators), the Regulatory Authorities or the Market Operator.

B.12.4.2 Any Modification Proposal put forward by a person other than the System Operators shall be submitted to the System Operators using the form published by the System Operators under paragraph B.12.13.6 and following the instructions on the form. When putting forward a Modification Proposal, the System Operators shall also use that form and follow those instructions.

B.12.4.3 The Proposer, or the System Operators acting on behalf of the Proposer, may, with the agreement of the Regulatory Authorities, withdraw a Modification Proposal at any stage prior to a decision by the Regulatory Authorities on the Modifications Proposal.

B.12.4.4 Any Proposer shall ensure that their Modification Proposal is clear and substantiated with sufficient detail, including how it furthers the Capacity Market Code Objectives, to enable it to be considered by the Regulatory Authorities.

B.12.4.5 Each Modification Proposal shall include draft text of the relevant provision of this Code as amended by the Modification Proposal.

- B.12.4.6 Where the System Operators receive a Modification Proposal, they may if they consider that further information or clarification is required in order to consider the Modification Proposal, send a notice to the Proposer identifying the further information or clarification required and the period within which it is to be provided.
- B.12.4.7 If the System Operators do not receive the further information or clarification required within the period specified in the notice under paragraph B.12.4.6, the Proposer shall be deemed to have withdrawn the Modification Proposal. The Proposer may request additional time to provide any clarification or additional information and the System Operators shall not unreasonably withhold consent to any such request.
- B.12.5 Procedure for Developing Proposals**
- B.12.5.1 The System Operators shall, as soon as practicable (and in any event within five Working Days) after receipt of a Modification Proposal and any clarification or further information requested by the System Operators, forward the Modification Proposal to the Regulatory Authorities and the Market Operator and publish the Modification Proposal.
- B.12.5.2 If the System Operators put forward a Modification Proposal, the System Operators shall forward the Modification Proposal to the Regulatory Authorities and the Market Operator and publish the Modification Proposal.
- B.12.5.3 Within five Working Days of receiving a Modification Proposal, the Regulatory Authorities shall first determine whether the Modification Proposal is spurious in accordance with paragraph B.12.6.
- B.12.5.4 The System Operators shall organise a Workshop to consider a Modification Proposal (unless it has been rejected as spurious in accordance with paragraph B.12.6).
- B.12.5.5 The Regulatory Authorities may decide to modify or combine Modification Proposals. Modified or combined Modification Proposals shall reference the original Modification Proposals.
- B.12.5.6 Within ten Working Days of the Workshop at which a Modification Proposal is first discussed, the Regulatory Authorities shall publish a timetable for consideration, consultation and decision relating to that Modification Proposal. The Regulatory Authorities may publish an amended timetable at any time.
- B.12.5.7 The Regulatory Authorities may specifically invite appropriate persons, such as Participants, the System Operators, the Market Operator, industry groups, customer representatives or other persons who may have an interest in the Modification Proposal to express their opinions on any Modification Proposal.
- B.12.5.8 Parties invited to assist the Regulatory Authorities under paragraph B.12.5.7 shall make available reasonable resources to respond to such request by the Regulatory Authorities.
- B.12.5.9 If the timetable published under paragraph B.12.5.6 contemplates a second Workshop to consider the Modification Proposal, then the System Operators shall organise the second Workshop.
- B.12.5.10 Prior to the second Workshop, the System Operators shall submit to the Regulatory Authorities draft changes to this Code (including any affected Agreed Procedures) and an impact assessment in respect of each Modification Proposal to be discussed at that Workshop. If the draft change relates to, or impacts on, settlement of the Capacity Market, the System Operator shall consult with the Market Operator when preparing the impact assessment.

B.12.5.11 The Regulatory Authorities shall hold a public consultation in relation to the applicable Modification Proposal.

B.12.5.12 In working up the detail of a Modification Proposal, the System Operators and the Regulatory Authorities shall have regard to comments and submissions received during the consultation process, including the Workshops.

B.12.5.13 The Regulatory Authorities may contract consultants, experts or advisers at reasonable cost to advise the Regulatory Authorities regarding any Modification Proposal, including the preparation of an impact analysis report. Any reasonable costs incurred by the Regulatory Authorities in connection with this shall be recovered from Participants through System Operator Charges under section B.7.

B.12.6 Spurious Proposals

B.12.6.1 A Modification Proposal shall be taken to be spurious if, inter alia, it is clearly contrary to the Capacity Market Code Objectives or does not further any of those objectives. If the Regulatory Authorities reasonably consider a Modification Proposal to be spurious, they shall reject the Modification Proposal.

B.12.6.2 Any decision of the Regulatory Authorities under paragraph B.12.6.1 to reject a Modification Proposal shall set out the reasons for the decision in writing and in reasonably sufficient detail and the Regulatory Authorities shall provide the reasons to the Proposer and the Parties.

B.12.7 Workshops

B.12.7.1 Subject to paragraph B.12.9.6, the following provisions apply to a Workshop to consider a Modification Proposal under this section B.12:

- (a) the System Operators shall invite the Regulatory Authorities, the Market Operator and all Parties to attend the Workshop;
- (b) the System Operators may invite any other person to attend the Workshop, including representatives of industry groups, customer representatives or other persons;
- (c) non-attendance by any person invited to attend the Workshop does not invalidate the Workshop;
- (d) the System Operators shall give at least 20 Working Days' notice of a Workshop, except in the case of an emergency Workshop under paragraph B.12.9.4;
- (e) there is no quorum requirement for a Workshop;
- (f) the System Operators shall circulate an agenda to participants at least 10 Working Days in advance of the Workshop;
- (g) the System Operators may schedule more than one Modification Proposal for consideration at a Workshop;
- (h) the Proposer or its representative shall be entitled to present the Modification Proposal at the Workshop at which it is to be initially considered;
- (i) the Workshop shall be chaired by a representative of the Regulatory Authorities (or if the Regulatory Authorities request, a representative of the System Operators) who may adopt such procedures for conducting the Workshop as he or she thinks fit, and may terminate the Workshop whenever he or she thinks fit; and

- (j) the System Operators shall prepare a report of the discussions which took place at the Workshop and provide it to the Regulatory Authorities.
- B.12.7.2 Substantial compliance with the provisions in paragraph B.12.7.1 is sufficient.
- B.12.8 Consultation**
- B.12.8.1 Subject to paragraph B.12.9.6, the following provisions apply to a public consultation process in relation to a Modification Proposal under this section B.12:
 - (a) the Regulatory Authorities shall give a notice to all Parties and the Market Operator giving details of the matter under consultation, including a copy of the proposed Modification;
 - (b) the notice shall invite interested Parties and the Market Operator to make written submissions concerning the proposed Modification. To be valid, a submission must be received not later than the date specified in the notice (not to be less than 20 Working Days after the notice referred to in paragraph (a) is given);
 - (c) the Regulatory Authorities shall consider all valid submissions received; and
 - (d) if , after having considered all valid submissions, the Regulatory Authorities conclude that it is desirable or necessary to hold a further Workshop, then they may ask the System Operators to convene a further Workshop.
- B.12.8.2 Substantial compliance with the provisions in paragraph B.12.8.1 is sufficient.
- B.12.9 Urgent Modifications**
- B.12.9.1 A Proposer may mark a Modification Proposal as “Urgent”. A Proposer submitting a Modification Proposal marked “Urgent” shall submit the Modification Proposal to the System Operators and to the Regulatory Authorities.
- B.12.9.2 The System Operators shall, as soon as possible on receipt of a Modification Proposal which is marked “Urgent”, contact the Regulatory Authorities which shall determine in accordance with paragraph B.12.9.3 whether or not the Modification Proposal shall be treated as Urgent.
- B.12.9.3 A Modification Proposal shall be determined to be Urgent by the Regulatory Authorities where, in their opinion:
 - (a) the matter raised in the Modification Proposal is required before the next Capacity Auction or Secondary Trade Auction and could not otherwise be dealt with in time to be for the next such auction; or
 - (b) either:
 - (i) the Modification Proposal has been proposed to deal with a matter that could reasonably be anticipated would imminently:
 - (A) threaten or prejudice safety, security or reliability of supply of electricity; or
 - (B) unduly interfere with, disrupt or threaten the operation of the SEM; or
 - (C) unduly interfere with, disrupt, or threaten the proper operation of the Capacity Market or this Code; or
 - (ii) the Modification with which the Modification Proposal is concerned is required to correct:

- (A) a material error or inconsistency in this Code;
- (B) a material inconsistency between this Code and another Market Code; or
- (C) a conflict between the provisions of this Code and one or more Legal Requirements.

B.12.9.4 If the Regulatory Authorities determine that a Modification Proposal is Urgent, the System Operators shall convene an emergency Workshop.

B.12.9.5 If the System Operators consider that any of the criteria in paragraph B.12.9.3 apply in respect of any Modification Proposal that has not been marked “Urgent” by the Proposer, the System Operators shall promptly submit the Modification Proposal to the Regulatory Authorities for consideration as to whether or not the Modification Proposal should be determined to be Urgent in accordance with paragraph B.12.9.3.

B.12.9.6 In the event that a Modification Proposal is determined by the Regulatory Authorities to be Urgent, the Regulatory Authorities shall propose the procedure and timetable to be followed in making a recommendation in respect of the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal.

B.12.10 Alternative Proposals

B.12.10.1 If any person does not agree with a Modification Proposal, it may propose an alternative Modification Proposal using the form published by the System Operators under paragraph B.12.13.6 and following the instructions on the form, which if received in sufficient time to be considered within the Regulatory Authorities’ plans for progressing the initial original Modification Proposal may be considered in conjunction with the initial Modification Proposal.

B.12.11 Decision of the Regulatory Authorities

B.12.11.1 Following the public consultation under paragraph B.12.8 in relation to a Modifications Proposal, the Regulatory Authorities shall decide whether to:

- (a) make a Modification;
- (b) not make a Modification; or
- (c) undertake further consideration in relation to the matters raised in the Modifications Proposal.

B.12.11.2 The Regulatory Authorities may only make a Modification if they are satisfied that the Modification will or is likely to contribute to the achievement of the Capacity Market Code Objectives.

B.12.11.3 For the purposes of the paragraph B.12.11.2, the Regulatory Authorities may give such weight to any aspect of the Capacity Market Code Objectives as they consider appropriate in all the circumstances.

B.12.11.4 The Regulatory Authorities may make a Modification that is different (including one that is materially different) from that proposed in a Modification Proposal, Workshop or consultation paper if the Regulatory Authorities are satisfied that, having regard to the issue or issues that were raised by the Modification Proposal, that the different Modification will or is likely to better contribute to the achievement of the Capacity Market Code Objectives.

- B.12.11.5 The Regulatory Authorities may also make a Modification that is necessary or consequential or that corresponds to a Modification they make as a result of a Modification Proposal.
- B.12.11.6 The Regulatory Authorities shall make their decision in relation to a Modification Proposal as soon as reasonably practicable following the conclusion of the public consultation under paragraph B.12.8.
- B.12.11.7 Following their decision on a Modification Proposal, the Regulatory Authorities shall publish a report, available to all Parties and the Market Operator, setting out:
- (a) the conclusions of the Regulatory Authorities;
 - (b) the decision of the Regulatory Authorities; and
 - (c) reasons for those conclusions and that decision.
- B.12.11.8 Subject to paragraph B.12.3.3, a Modification shall become effective on the date specified by the Regulatory Authorities in their decision. In deciding upon the date on which a Modification takes effect, the Regulatory Authorities shall have due regard for the System Operators' impact assessment and the time to make the necessary changes to systems and processes to implement the Modification.
- B.12.11.9 Once any Modification has been made, the System Operators and other Parties shall be required to implement the Modification, including making the necessary changes to systems and processes, with effect from the date specified by the Regulatory Authorities in their decision.

B.12.12 Modifications to Agreed Procedures

- B.12.12.1 The provisions of this section B.12 apply to an AP Modification Proposal with the following amendments:
- (a) references to the Regulatory Authorities in paragraphs B.12.4.3, B.12.4.4, B.12.5.3, B.12.5.5, B.12.5.7, B.12.5.8, B.12.5.13, B.12.6.1, B.12.6.2, B.12.8.1, B.12.9.3, B.12.9.6, B.12.10.1, B.12.11.2 to B.12.11.6, B.12.11.9, B.12.13.5 and B.12.15.1 shall be read as references to the System Operators; and
 - (b) sections B.12.2 and B.12.11 and paragraphs B.12.5.4, B.12.5.6, B.12.5.9, B.12.5.10, B.12.5.11, B.12.5.12, B.12.8.1(d), B.12.9.1, B.12.9.2, B.12.9.4, B.12.9.5, B.12.11.1, B.12.11.7 and B.12.11.8 shall not apply in the case of an AP Modifications Proposal.
- B.12.12.2 The functions of the System Operators in relation to AP Modifications Proposals are to facilitate the Modification Process by:
- (a) co-ordinating with the Parties to facilitate the development and processing of an AP Modification Proposal;
 - (b) assessing the impact of AP Modification Proposals for the Capacity Market having regard to the Capacity Market Code Objectives;
 - (c) further developing AP Modification Proposals which are not rejected as being spurious in accordance with paragraph B.12.6 (as amended in accordance with paragraph B.12.12.1);
 - (d) working up the detail of AP Modification Proposals; and
 - (e) making a decision in relation to AP Modification Proposals under paragraph B.12.12.6.

B.12.12.3 Within ten Working Days of receiving or putting forward an AP Modification Proposal, the System Operators shall publish a timetable for consideration, consultation and decision relating to that AP Modification Proposal. The System Operators may publish an amended timetable at any time.

B.12.12.4 The System Operators may organise a Workshop to consider an AP Modification Proposal (unless it has been rejected as spurious in accordance with paragraph B.12.6.1 (as amended in accordance with paragraph B.12.12.1)), and shall do so if requested to in writing by the Regulatory Authorities.

B.12.12.5 If:

- (a) after having considered all valid submissions received on an AP Modification Proposal during a consultation process under paragraph B.12.8.1 (as amended in accordance with paragraph B.12.12.1), the System Operators conclude that it is desirable or necessary to hold a further Workshop on the AP Modification Proposal; or
- (b) the Regulatory Authorities request the System Operators hold a further Workshop on the AP Modification Proposal in writing,

then the System Operators shall convene a further Workshop.

B.12.12.6 Following the public consultation under paragraph B.12.8 (as amended in accordance with paragraph B.12.12.1) in relation to an AP Modifications Proposal, the System Operators shall decide whether to:

- (a) make a Modification to the Agreed Procedure;
- (b) not make a Modification to the Agreed Procedure; or
- (c) undertake further consideration in relation to the matters raised in the AP Modifications Proposal.

B.12.12.7 If the System Operators decide to make a Modification to an Agreed Procedure under paragraph B.12.12.6(a), then they shall submit the Modification to the Regulatory Authorities, together with a report setting out their reasons for making the Modification. The System Operators shall publish the submission and report on the Modifications Website.

B.12.12.8 If the System Operators decide to not make a Modification to an Agreed Procedure under paragraph B.12.12.6(b), then they shall submit to the Regulatory Authorities a report setting out their reasons for not making the Modification. The System Operators shall publish the submission and report on the Modifications Website.

B.12.12.9 The Regulatory Authorities shall have the right to veto any Modification to an Agreed Procedure made under paragraph B.12.12.6(a) within two Working Days of the System Operators submitting the Modification to the Regulatory Authorities under paragraph B.12.12.7, by written notice to the System Operators.

B.12.12.10 Subject to paragraph B.12.3.3, a Modification to an Agreed Procedure made under paragraph B.12.12.6(a) takes effect on the later of:

- (a) the expiration of two Working Days after the System Operators submit the Modification to the Regulatory Authorities under paragraph B.12.12.7; and
- (b) the date specified by the System Operators,

unless the Regulatory Authorities veto the Modification under paragraph B.12.12.9.

B.12.12.11 In deciding upon the date on which a Modification to an Agreed Procedure takes effect, the System Operators shall have due regard for the time to make the necessary changes to systems and processes to implement the Modification.

B.12.13 Publications

B.12.13.1 The System Operators shall publish information relating to the Modification Process and the status of each Modification Proposal subject to the confidentiality provisions set out in section B.23.

B.12.13.2 The System Operators shall establish a website location or other similar means of publication ("**Modifications Website**") to disseminate information for the purposes of the Modification Process.

B.12.13.3 The System Operators shall publish on the Modifications Website notices provided to them by the Regulatory Authorities under this section B.12 as soon as practicable after receiving the notice and in any event within five Working Days after receiving them.

B.12.13.4 The System Operators shall submit a quarterly report to the Regulatory Authorities including the progress and status of Modification Proposals. If the Regulatory Authorities have determined a Modification Finalisation Date under paragraph B.12.3.1, then the timing of these reports shall be scheduled such that a report is submitted not less than one month prior to that date. These reports shall be published by the System Operators as soon as reasonably practicable after they are submitted to the Regulatory Authorities.

B.12.13.5 The System Operators shall publish the decision of the Regulatory Authorities in relation to a Modification Proposal within two Working Days after the decision has been made and provided to the System Operators and, where a Modification Proposal has been made, include the text of the Modification in the notice of the decision.

B.12.13.6 The System Operators shall publish a form for Modification Proposals on the Modifications Website and may amend that form from time to time.

B.12.14 Intellectual Property

B.12.14.1 Each Party submitting a Modification Proposal shall be deemed to have granted under this Code to each other Party, the System Operators and the Regulatory Authorities an irrevocable worldwide royalty-free licence to any Intellectual Property Rights or other rights to, and to have waived any moral rights in, the content, form or other aspect of the Modification Proposal and such licence and waiver shall be a precondition to the valid submission of a Modification Proposal.

B.12.14.2 Each Proposer who is not a Party shall be required to grant to each Party, the System Operators and the Regulatory Authorities an irrevocable worldwide royalty-free licence to any Intellectual Property Rights or other rights to and waive any moral rights in the content, form or other aspect of the Modification Proposal and such licence and waiver shall be a precondition to the acceptance of a Modification Proposal.

B.12.14.3 The form for Modification Proposals published by the System Operators under paragraph B.12.13.6 shall include a worldwide royalty-free licence of Intellectual Property Rights, and waiver of moral rights in respect of the content, format or other aspects of the relevant Modification Proposal.

B.12.15 No Retrospective Effect

B.12.15.1 For the avoidance of doubt, a Modification shall have effect as and from the date specified by the Regulatory Authorities and in no event shall that date be earlier than the date on which the Modification is made by the Regulatory Authorities. To the maximum extent permissible under Applicable Laws, under no circumstances shall Modifications have retrospective effect.

B.13 DEFAULT, SUSPENSION AND TERMINATION

B.13.1 Concepts

B.13.1.1 The following sections on default, suspension and termination shall apply in respect of Default by any Party other than the System Operators.

B.13.1.2 Agreed Procedure 2 “Default and Suspension” sets out the detailed processes for dealing with default, suspension and termination.

B.13.2 Default

B.13.2.1 A Party shall be in Default where it is in material breach of any provision of this Code or the Capacity Market Framework Agreement.

B.13.2.2 A Party shall notify the System Operators as soon as reasonably practicable upon becoming aware of any circumstance that will give rise to a Default or of any of the events listed in paragraph B.13.3.1 or B.13.3.2, and upon the occurrence of a Default.

B.13.2.3 On becoming aware of a Default in relation to a Party, whether through a notification under paragraph B.13.2.2 or otherwise, the System Operators shall issue to the Defaulting Party a Default Notice specifying the Default.

B.13.2.4 The System Operators shall specify in a Default Notice:

- (a) the nature of the Default;
- (b) if the Default is capable of remedy, the time from the date of the Default Notice within which the Defaulting Party is required to remedy the Default; and
- (c) any other action which the System Operators may reasonably require the Defaulting Party to take in respect of the Default.

B.13.2.5 The Defaulting Party shall comply with the Default Notice.

B.13.3 Suspension

B.13.3.1 The System Operators may, with the prior written approval of the Regulatory Authorities, issue a Suspension Order in respect of all or any of a Party's Capacity Market Units where:

- (a) it becomes unlawful for the Party to comply with any of its obligations under this Code;
- (b) a Legal Requirement necessary to enable the Party to fulfil its obligations and functions under this Code is amended or revoked in whole or in part so as to prevent the Party from fulfilling its obligations and functions under this Code;
- (c) the Party suspends or ceases to carry on its business, or any part of its business which is relevant to its activities under this Code;

- (d) Awarded New Capacity of a Participant of the Party has been terminated under section J.6;
 - (e) an Insolvency Event occurs in relation to the Party;
 - (f) the Party which is required to be licensed in respect of any or all of its roles under this Code has its Licence revoked in whole or in part or amended, so as to prevent the Party from fulfilling its obligations and functions under this Code;
 - (g) the System Operators have issued a Default Notice to the Party under paragraph B.13.2.3, and the Party has failed to remedy the Default and/ or comply with the terms of the Default Notice within the period of 20 days (or such longer period as may be set out in the relevant Default Notice) following the Default Notice being issued; or
 - (h) the Party has been suspended under the Trading and Settlement Code or under the NEMO Rules.
- B.13.3.2 In the event that the Participant of a Party fails at any time to provide Performance Security as required under this Code, then, notwithstanding paragraph B.13.3.1, the System Operators shall issue a Suspension Order in respect of all of the relevant Party's Capacity Market Units.
- B.13.3.3 Where the System Operators issue a Suspension Order, the System Operators shall at the same time send a copy of the Suspension Order to the Regulatory Authorities and the Market Operator in accordance with Agreed Procedure 2 "Default and Suspension" and shall publish the Suspension Order.
- B.13.3.4 Where the System Operators have issued a Suspension Order in respect of any of a Party's Capacity Market Units, no further Suspension Order shall be issued in respect of such units until the previously issued Suspension Order is withdrawn or has lapsed.
- B.13.4 Timing of Suspension**
- B.13.4.1 A Suspension Order issued under paragraph B.13.3 shall have immediate effect.
- B.13.4.2 The System Operators shall lift the Suspension Order if the relevant Party remedies the matter or matters giving rise to the Suspension Order, or the circumstances giving rise to the Suspension Order no longer apply and there are no other circumstances in existence which would entitle the System Operators to issue a Suspension Order.
- B.13.4.3 The System Operators may amend a Suspension Order by written notice to the relevant Party.
- B.13.4.4 Where any Suspension Order is amended or lifted by the System Operators, the System Operators shall notify the Regulatory Authorities and the Market Operator in accordance with Agreed Procedure 2 "Default and Suspension" and shall publish a notice that the Suspension Order has been amended or lifted (as the case may be).
- B.13.5 Effect of Suspension Order**
- B.13.5.1 Where the System Operators issue a Suspension Order, the Suspension Order shall specify the Capacity Market Units to which the Suspension Order applies, the date and time from which the suspension will take effect and the terms of the suspension.

- B.13.5.2 When a Suspension Order takes effect, the Capacity Market Units to which the Suspension Order applies shall be suspended from participation in Capacity Auctions and Secondary Trade Auctions to the extent and subject to such restrictions as the System Operators specify in the Suspension Order, until such time as the System Operators publish a notice stating that:
- (a) the Suspension Order has either been lifted or will be lifted (specifying the date and time); or
 - (b) the participation of the relevant Party in the Capacity Market has been Terminated, or the relevant Capacity Market Units have been Deregistered, in each case in accordance with this Code.
- B.13.5.3 The participation of suspended Capacity Market Units in Capacity Auctions and Secondary Trade Auctions may continue or resume if and to the extent permitted by the terms of the Suspension Order, but only in accordance with such restrictions as are specified in the Suspension Order.
- B.13.5.4 For the avoidance of doubt:
- (a) a Party shall remain liable for all debts and obligations accrued under any Market Code while a Suspension Order is in place; and
 - (b) a Suspension Order does not affect the continuing obligations of the relevant Party under this Code or the Trading and Settlement Code in relation to Awarded Capacity in respect of the affected Capacity Market Unit, including, where applicable, to maintain the required Performance Security.
- B.13.5.5 Without prejudice to the generality of paragraphs B.13.5.2 to B.13.5.4, a Suspension Order may suspend or restrict any or all of a Party's Capacity Market Units.
- B.13.5.6 The System Operators shall, while a Suspension Order is in place, be entitled to do (or refrain from doing) any act, matter or thing to give effect to the Suspension Order including, without limitation:
- (a) rejecting any Capacity Auction Offers, Secondary Auction Bids or Secondary Auction Offers submitted by the relevant Party;
 - (b) calling on the Performance Security (if any); or
 - (c) requesting the Regulatory Authorities or any other person to take such measures as the System Operators, acting reasonably, decide are appropriate to give effect to the Suspension Order.
- B.13.5.7 The Participant that has registered the Capacity Market Units to which a Suspension Order applies shall comply with the terms of the Suspension Order and remedy the Default or Defaults giving rise to the Suspension Order.
- B.13.6 Termination and Deregistration**
- B.13.6.1 The System Operators may with the prior written approval of the Regulatory Authorities issue a Termination Order to a Party where the Party:
- (a) is in breach of a Suspension Order;
 - (b) has not remedied the Default or Defaults giving rise to the Suspension Order;
 - (c) has not taken such action as required by the System Operators within the timeframe specified in the Suspension Order;

- (d) has been issued a corresponding order or notice under the NEMO Rules; or
 - (e) has been issued a corresponding order or notice, or has voluntarily terminated its participation, under the Trading and Settlement Code.
- B.13.6.2 A Termination Order may direct the Deregistration of any or all of a Party's Capacity Market Units or the Termination of a Party as a party to this Code. Termination of a Party as a party to this Code shall have the effect of Deregistration of all of the Party's Capacity Market Units.
- B.13.7 Effect of Termination Order**
 - B.13.7.1 Where the System Operators issue a Termination Order, the Termination Order shall specify the time and date from which the Termination or Deregistration will take effect and the terms of the Termination or Deregistration.
 - B.13.7.2 Where the System Operators issue a Termination Order, the System Operators shall at the same time send a copy of the Termination Order to the Regulatory Authorities and the Market Operator in accordance with Agreed Procedure 2 "Default and Suspension" and shall publish the Termination Order.
- B.13.8 Voluntary Termination of a Party**
 - B.13.8.1 Subject to paragraph B.13.8.2, a Party may apply to the System Operators to cease to be a Party.
 - B.13.8.2 A Party shall give at least 90 Working Days' notice in writing to the System Operators (with a copy to the Regulatory Authorities) of its intention to cease being a Party and shall specify the time and date upon which it wishes the Termination to take effect. Voluntary Termination shall have the effect of Deregistration of all of a Party's Capacity Market Units.
 - B.13.8.3 Following receipt of a request for Voluntary Termination, the System Operators shall issue a Voluntary Termination Consent Order if the relevant Party has complied with all of the following conditions:
 - (a) the relevant Party has no continuing obligations under the Trading and Settlement Code (including that all amounts due and payable by the relevant Party pursuant to the Trading and Settlement Code have been paid in full) and, if it was a party to the Framework Agreement (as defined in the Trading and Settlement Code), it has ceased to be a party to that agreement or will cease to be a party to that agreement at the time it ceases to be a Party;
 - (b) any outstanding Default by the relevant Party of this Code which is capable of remedy has been remedied;
 - (c) the relevant Party has no continuing obligations under this Code and, if it was a party to the Capacity Market Framework Agreement, it has ceased to be a party to that agreement or will cease to be a party to that agreement at the time it ceases to be a Party;
 - (d) the written consent of the Regulatory Authorities has been obtained; and
 - (e) at the time the Termination is to take effect, there is no Awarded Capacity in respect of any of the Party's Capacity Market Units in respect of any period following the date the Termination is to take effect or the System Operators are satisfied that another Party has or will assume responsibility for providing that Awarded Capacity in that period.

B.13.8.4 The Voluntary Termination shall take effect at the end of the Trading Day specified by the System Operators in the Voluntary Termination Consent Order so long as, at that time, the relevant Party remains in compliance with the conditions set out in paragraph B.13.8.3.

B.13.8.5 The System Operators shall not be permitted to terminate their being parties to this Code except where so required by the Regulatory Authorities (including under paragraph B.6.1.5).

B.13.9 Consequences of Termination of a Party

B.13.9.1 When a Party is Terminated, then:

- (a) the System Operators shall Deregister all of that Party's Capacity Market Units; and
- (b) the Party shall cease all trading in the SEM in respect of all of its Capacity Market Units at the time and date specified in the Termination Order or the Termination Consent Order.

B.13.9.2 Any Termination of a Party will not affect the accrued rights or obligations of any Party under this Code or the Trading and Settlement Code which arose out of or which relate to any act or omission prior to the date of such Termination and including:

- (a) payment of any amount which was or becomes payable under this Code or the Trading and Settlement Code in respect of any period before the date of the Termination of the Party (including in relation to any Dispute regarding an event before the Termination of the Party even if the Notice of Dispute is given after the date of Termination of the Party); and
- (b) any outstanding breach by it of this Code or the Capacity Market Framework Agreement.

B.13.9.3 A Party shall continue to be liable after its Termination in respect of any obligation under this Code for a period of six years or any longer period specified under any Applicable Law.

B.13.9.4 Any provisions of this Code which expressly, or by implication are intended to, commence or continue in effect on or after Termination of a Party shall continue to bind a Terminated Party.

B.13.9.5 For the avoidance of doubt, a Terminated Party shall continue to be bound by the Dispute Resolution Process in respect of any Disputes arising following its Termination but which relate to the period prior to Termination.

B.13.10 Consequences of Deregistration

B.13.10.1 Where any of a Participant's Capacity Market Units is Deregistered in accordance with the provisions of this Code, whether voluntarily or otherwise, the Participant shall cease all trading in the SEM in respect of the relevant Capacity Market Units at the time and date specified in the Termination Order or the date specified in the Deregistration Consent Order.

B.13.10.2 Where the System Operators, in the circumstances provided for under this Code, accept a new Participation Notice from a Party or Applicant to register a Capacity Market Unit which is at that time registered to another Participant, prior to the Deregistration of that Capacity Market Unit from the existing Participant, then the acceptance of the new Participation Notice shall, unless expressly provided otherwise, be without prejudice to the process for Deregistration of the Capacity Market Unit from the existing Participant in accordance with the timelines set out in

this Code and the new registration of that Capacity Market Unit shall not take effect until such Deregistration process has been completed.

B.14 DISPUTE RESOLUTION

B.14.1 Kinds of Dispute and the Dispute Process Timetable

B.14.1.1 Subject to paragraph B.14.1.2, a “**Dispute**” means any claim, dispute or difference of whatever nature between any of the Parties howsoever arising under, out of or in relation to this Code or the Capacity Market Framework Agreement (including the existence or validity of the same).

B.14.1.2 The legality, validity or enforceability of a decision (including a decision to approve or reject any matter or thing) or determination of the Regulatory Authorities under this Code or contemplated by this Code cannot be the subject of a Dispute under this section B.14.

B.14.1.3 There are the following categories of Dispute under this Code:

- (a) a **Qualification Dispute**: being a Dispute relating to the Qualification Process;
- (b) a **Capacity Auction Dispute**: being a Dispute relating to the operation of the Capacity Auction process;
- (c) a **Secondary Trade Dispute**: being a Dispute in respect of Secondary Trade Auctions;
- (d) an **Implementation Dispute**: being a Dispute relating to an Implementation Plan;
- (e) a **Conflict Dispute**: being a Dispute in relation to a claimed conflict between this Code and other relevant Legal Requirements; and
- (f) a **General Dispute**: being a Dispute which does not fall within any of the preceding categories in this paragraph B.14.1.3.

B.14.1.4 Disputes in relation to settlement of Capacity Payments and Capacity Charges, and Difference Payments and Difference Charges, other amount payable under the Trading and Settlement Code in respect of the Capacity Market and related matters shall be dealt with in accordance with the Trading and Settlement Code, and not in accordance with the provisions of this section B.14.

B.14.1.5 The “**Dispute Process Timetable**” in relation to each category of Dispute will be the process and timetable determined from time to time by the Regulatory Authorities and notified to the System Operators, and, amongst other things, will specify deadlines and timeframes for the taking of action under this section B.14 in relation to a Dispute in each category.

B.14.1.6 On receipt of any determination by the Regulatory Authorities under paragraph B.14.1.5, the System Operators shall publish the determination, indicating the date from which it takes effect.

B.14.1.7 A determination by the Regulatory Authorities as to the Dispute Process Timetable, which amends an existing determination in this regard, shall not:

- (a) take effect until the expiry of a period of 10 Working Days following the amending determination, or such longer period as may be specified by the Regulatory Authorities; and
- (b) affect any Dispute which is the subject of a Notice of Dispute that has already been served.

B.14.1.8 A reference in this section B.14 to a “**prescribed deadline**” or a “**prescribed timeframe**” for the taking of some action in relation to a Dispute means the deadline or timeframe specified for the taking of that action in respect of the applicable category of Dispute in the Dispute Process Timetable.

B.14.2 Notice of Dispute and Good Faith Negotiations

B.14.2.1 A Dispute is deemed to exist when one Party notifies another Party or Parties in writing of the Dispute by way of a Notice of Dispute before the prescribed deadline.

B.14.2.2 A Notice of Dispute may be served on any number of Parties. Where the System Operators reasonably determine that the resolution of a Dispute will impact a third Party who has not been served a Notice of Dispute, the System Operators shall inform that third Party of the existence, nature and progress of the Dispute, while maintaining the confidentiality of the Disputing Parties.

B.14.2.3 The Notice of Dispute shall briefly set out the nature of the Dispute (including the event or events the subject of the Dispute and the category of Dispute) and the issues involved and shall be in the form published from time to time by the System Operators. A copy of the Notice of Dispute shall be sent to the System Operators and, where the System Operators are a party to the Dispute, to the Regulatory Authorities.

B.14.2.4 Where a Notice of Dispute has been served, a representative of each of the Disputing Parties, each with authority to resolve the Dispute, shall meet within the prescribed timeframe of the date of the Notice of Dispute to seek in good faith to resolve the Dispute. The Disputing Parties shall negotiate in good faith and use their respective reasonable endeavours to agree a resolution and resolve the Dispute.

B.14.2.5 Where the System Operators are not a Disputing Party, and the Disputing Parties agree a resolution to the Dispute, they shall advise the System Operators.

B.14.2.6 The provisions set out in this Dispute Resolution Process shall not prejudice or restrict any Party’s entitlement to seek interim or interlocutory relief directly from the appropriate Court or Courts having competent jurisdiction.

B.14.2.7 The obligations of the Parties under this Code shall not be affected by reason of the existence of a Dispute, save as provided for in any decision of a Capacity Market Dispute Resolution Board or a Court having competent jurisdiction. Disputing Parties shall continue to perform all of their obligations and functions as required by this Code and the Trading and Settlement Code including, for the avoidance of doubt, fulfilling all payment obligations as payment falls due.

B.14.3 Objectives of the Dispute Resolution Process

B.14.3.1 It is intended that the Dispute Resolution Process set out in or implemented in compliance with this Code and described in detail in the following paragraphs of this section B.14 to the extent possible:

- (a) be simple, quick and inexpensive;
- (b) preserve or enhance the relationship between the Disputing Parties;
- (c) resolve and allow for the continuing and proper operation of this Code having regard to the Capacity Market Code Objectives;
- (d) resolve Disputes on an equitable basis in accordance with the provisions of this Code having regard to the Capacity Market Code Objectives;

- (e) take account of the skills and knowledge that are required for the relevant Dispute; and
- (f) encourage resolution of Disputes without formal legal representation or reliance on legal procedures.

B.14.4 **Panel**

- B.14.4.1 The System Operators shall establish and maintain a panel ("**the Panel**") consisting of members which have been approved by the Regulatory Authorities.
- B.14.4.2 The Panel shall include suitably qualified experts from relevant disciplines who:
 - (a) are experienced in and familiar with alternative dispute resolution procedures which do not involve litigation; and/or
 - (b) have an understanding of the electricity industry or have the ability quickly to acquire such an understanding.
- B.14.4.3 The System Operators shall review the membership of the Panel, confirming the continued willingness and availability of members to be included at least once every year. The System Operators shall publish the name and brief curriculum vitae for each Panel member.
- B.14.4.4 A person may be appointed as a member of any two or more of the Panel, the equivalent panel established and maintained under the corresponding provision in the Trading and Settlement Code and the equivalent panel established and maintained under the corresponding provision in the NEMO Rules.
- B.14.4.5 The Panel shall consist of no less than 10 members subject to any vacancies which may arise from time to time which shall be filled as soon as practicable. Any vacancies arising from time to time shall not invalidate the Panel.
- B.14.4.6 The Regulatory Authorities shall from time to time nominate a member of the Panel to act as chairperson of the Panel. The Regulatory Authorities shall appoint a replacement chairperson immediately on the position of chairperson being vacated on a permanent basis for any reason.
- B.14.4.7 The identity of the members of the Panel and the Panel Chairperson shall be published by the System Operators.
- B.14.4.8 The Panel Chairperson shall, with the prior agreement of the Regulatory Authorities, nominate a vice-chairperson from the members of the Panel, from time to time to perform the Panel Chairperson's functions in the event of the latter's unavailability or in the event of the Panel Chairperson's position being temporarily vacant.
- B.14.4.9 The Panel Chairperson and the vice-chairperson shall be retained under contract to the Regulatory Authorities. Where appropriate and at the sole discretion of the Regulatory Authorities, the contract may include provision for payment of a stipend to the Panel Chairperson and vice-chairperson in order to cover the reasonable expenses incurred by that person in connection with carrying out his or her duties under this Code. The System Operators shall indemnify the Regulatory Authorities for any payments made under any such contract.
- B.14.4.10 The System Operators shall with the prior approval of the Regulatory Authorities nominate further members to the Panel from time to time as may be necessary to fill any vacancies and to maintain the membership of the panel at a minimum of 10 members.
- B.14.4.11 Subject to paragraph B.14.4.2, there shall be no restriction on the ability or entitlement of the Panel Chairperson or vice-chairperson to act as a member of a

CMDRB by virtue of holding those positions except where a dispute arises between the Disputing Parties in respect of the number of Members or the identity of Members of the CMDRB in relation to the Dispute concerned in which case the Panel Chairperson and vice-chairperson shall be proscribed from appointing himself or herself to the CMDRB.

- B.14.4.12 No Party to this Code shall hold (or seek to hold) the Panel Chairperson or vice-chairperson liable for any claims for anything done or omitted in the discharge or purported discharge of the Panel Chairperson's or vice-chairperson's functions under this Code, unless the act or omission is shown to be in bad faith. The Disputing Parties shall jointly and severally indemnify and hold the Panel Chairperson or vice-chairperson (as applicable) harmless from and against claims made by any Party or any other person against the Panel Chairperson or vice-chairperson (as applicable) in connection with their discharge or purported discharge of the Panel Chairperson's or vice-chairperson's (as applicable) functions under this Code, unless the claim is in connection with an act or omission shown to be in bad faith.

B.14.5 Capacity Market Dispute Resolution Board

- B.14.5.1 If, having met in accordance with paragraph B.14.2.4, the Disputing Parties are unable to reach agreement within the prescribed timeframe of meeting in accordance with paragraph B.14.2.4, the Dispute may be referred by any Disputing Party to a Capacity Market Dispute Resolution Board ("**CMDRB**") by way of notice in writing to the other Disputing Party or Parties ("**Referral Notice**") within the prescribed timeframe for this action unless expressly provided otherwise in this Code. A Referral Notice shall be in the form published from time to time by the System Operators. The Disputing Party shall immediately send a copy of the Referral Notice to the System Operators (or to the Regulatory Authorities where the System Operators are a Disputing Party), and the System Operators shall forward the Referral Notice to the Panel Chairperson.
- B.14.5.2 The Disputing Parties may mutually agree in writing with the written consent of the System Operators (or the Regulatory Authorities where the System Operators are a Disputing Party) to extend the period for negotiation or any other time period set out in the Dispute Resolution Process.
- B.14.5.3 Referral of a Dispute to a CMDRB in accordance with the Dispute Resolution Process and compliance with the provisions set out in sections B.14.1 to B.14.10 is a pre-condition to the entitlement to refer a Dispute to Court.
- B.14.5.4 The CMDRB shall be comprised of either a sole member or three members and shall be appointed from the Panel.
- B.14.5.5 Where there are no more than two Disputing Parties, the Disputing Parties may agree within the prescribed timeframe after the date of receipt by the receiving Party of the Referral Notice to establish a sole member CMDRB or a three member CMDRB. If the Disputing Parties to a Dispute agree to establish a sole member CMDRB, they shall agree to appoint the sole CMDRB member within the further prescribed timeframe for doing so. If the Disputing Parties agree on a three member CMDRB, then each Disputing Party shall within the prescribed timeframe nominate one member of the Panel to the CMDRB and the two members so nominated shall appoint the third member within the prescribed timeframe. Each Disputing Party shall promptly notify the Panel Chairperson of the identity of any member of the CMDRB that it has agreed with the other Disputing Party and/ or nominated.

B.14.5.6 In the event the Disputing Parties do not within the relevant period notify the Panel Chairperson of their agreement on:

- (a) the number of members of the CMDRB; or
 - (b) having agreed a sole member CMDRB, the identity of the sole member,
- then, the Panel Chairperson shall within the prescribed timeframe determine the number of members of the CMDRB and appoint the appropriate number from the Panel, or in the case of the appointment of a sole member CMDRB, appoint the sole member from the Panel. In making any such determination and appointment, the Panel Chairperson shall take account of the complexity of the Dispute as set out in the Notice of Dispute and the range of issues which may be relevant to the applicable Dispute.

B.14.5.7 In the event that the Disputing Parties agree upon a three member CMDRB but a Disputing Party does not notify the Panel Chairperson of its nomination from the Panel, then the Panel Chairperson shall make the necessary nomination from the Panel within the prescribed timeframe of the end of the relevant period.

B.14.5.8 Where there are more than two Disputing Parties to any Dispute, then the CMDRB shall be appointed by the Panel Chairperson unless all Disputing Parties have, within the prescribed timeframe after the date of receipt by the counterparties of the Referral Notice, notified the Panel Chairperson as to both the number of members of the CMDRB which shall be either one or three and as to the identity of member(s) to be selected from the Panel. In the absence of such notification, the Panel Chairperson shall:

- (a) determine whether a sole member or three member CMDRB is appropriate; and
- (b) appoint the member or members of the CMDRB from the Panel, and shall notify the Disputing Parties.

In making any such determination and appointment, the Panel Chairperson shall take account of the complexity of the Dispute as set out in the Notice of Dispute and the range of issues which may be relevant.

B.14.5.9 If the Panel Chairperson (or, where applicable, the vice-chairperson of the Panel) makes a determination or appointment under paragraph B.14.5.6, B.14.5.7, B.14.5.8 or B.14.6.1 in relation to a Dispute, then the Panel Chairperson (or, where applicable, the vice-chairperson of the Panel) shall promptly notify the Disputing Parties.

B.14.5.10 The Disputing Parties and either the sole member CMDRB or each of the three members of a three member CMDRB shall enter into an agreement for the member or members of the CMDRB to hear and determine the Dispute on the terms and conditions contained in Appendix B “Template for Dispute Resolution Agreement”, with such amendments as are agreed between all of them.

B.14.5.11 The members of the CMDRB so appointed shall be independent of any Disputing Party to any dispute on which they shall be called to deliberate.

B.14.6 Changes in CMDRB Members

B.14.6.1 If any member of a CMDRB declines to act or is unable to act as a result of death, disability, incapacity, resignation or termination of appointment, then the Panel Chairperson (or, where the Panel Chairperson is the member affected, the vice-chairperson of the Panel) shall appoint a replacement within 5 Working Days of first being notified of the event. Such appointment shall be final and binding.

B.14.6.2 The appointment of any member of the CMDRB may be terminated by unanimous agreement of the Disputing Parties. Should this occur, the Disputing Parties shall notify the Panel Chairperson (or, where the Panel Chairperson is the member affected, the vice-chairperson of the Panel) and paragraph B.14.6.1 shall apply.

B.14.7 Costs

B.14.7.1 Subject to paragraph B.14.7.2, each Disputing Party shall be responsible for paying an equal share of the costs of the CMDRB in respect of the Dispute involving them and shall bear its own costs of the CMDRB procedure.

B.14.7.2 The CMDRB may make a decision as to the award of costs in any Dispute which decision shall be binding on the Disputing Parties.

B.14.8 CMDRB Procedures

B.14.8.1 For the purposes of this section B.14.8, a Dispute is deemed to be referred to the CMDRB as of the date of the receipt or issue of the Referral Notice by the System Operators.

B.14.8.2 Disputing Parties shall promptly make available to the CMDRB all such additional information as they consider appropriate or as the CMDRB may require for the purposes of making a decision on a Dispute. The CMDRB may request any information it considers relevant.

B.14.8.3 The CMDRB shall be entitled to determine the applicable procedure including the manner and the timing of any written submissions and any oral hearings. In determining the applicable procedure, the CMDRB shall have regard to the considerations set out in paragraph B.14.3.1 above as well as the number of Disputing Parties. The CMDRB shall not act as arbitrator and neither the Arbitration Act 2010 (Ireland) or the Arbitration Act 1996 (United Kingdom) shall apply.

B.14.8.4 The CMDRB shall give its decision within:

- (a) the prescribed timeframe after the appointment of the CMDRB; or
- (b) such other period as may be proposed by the CMDRB and approved by the Disputing Parties.

B.14.8.5 The CMDRB's decision shall be in writing providing reasons. Subject to paragraphs B.14.8.6 to B.14.11.1 below, the decision shall be binding on all Disputing Parties, who shall promptly give effect to it unless or until it shall be revised in an amicable settlement pursuant to paragraph B.14.10.1. The Parties shall continue to comply with this Code in all respects during any CMDRB process under this section B.14.

B.14.8.6 If any Disputing Party is dissatisfied with the CMDRB's decision, then that Party may, within 15 Working Days after receiving the decision, give notice to the other Disputing Party or Parties and the CMDRB in writing of its dissatisfaction. If the CMDRB fails to give its decision within the relevant period under paragraph B.14.8.4, then any Disputing Party may, within 15 Working Days after such period has expired, give notice to the other Disputing Party or Parties and the CMDRB in writing of its dissatisfaction.

B.14.8.7 A notice of dissatisfaction referred to in paragraph B.14.8.6 shall state that it is given under that paragraph, shall set out the Dispute and the reason(s) for dissatisfaction. Except as stated in paragraphs B.14.2.6 and B.14.11, no Disputing Party shall be entitled to commence any Court proceedings of whatever nature in

relation to or in connection with a Dispute unless a notice of dissatisfaction has been given in accordance with paragraph B.14.8.6.

- B.14.8.8 If the CMDRB has given its decision on a Dispute to the Disputing Parties and no notice of dissatisfaction has been given by any Disputing Party within 15 Working Days after the date of the CMDRB's decision, then the decision shall be final and binding upon all Disputing Parties.

B.14.9 CMDRB Decisions

- B.14.9.1 CMDRB decisions may:

- (a) declare that:
 - (i) the Dispute has been wholly or partially upheld; or
 - (ii) the Dispute has not been upheld;
- (b) declare the correct application or interpretation of a provision of this Code;
- (c) advise any other form of relief that may be appropriate in the circumstances; or
- (d) recommend that a Disputing Party take a specified action within a specified timeframe.

- B.14.9.2 The System Operators shall update any register under this Code or any notice given, or document or item of information published, under this Code to the extent they consider necessary to reflect a decision of the CMDRB under this Code or the DRB under the Trading and Settlement Code or a Court having competent jurisdiction.

B.14.10 Amicable Dispute Settlement

- B.14.10.1 Where notice of dissatisfaction has been given, the Disputing Parties shall attempt to settle the dispute amicably before the commencement of any Court proceedings may take place. However, unless all of the Disputing Parties agree otherwise, proceedings may be commenced in a Court having competent jurisdiction on or after the 21st Working Day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

B.14.11 Court Proceedings

- B.14.11.1 Unless settled amicably, any Dispute in respect of which a notice of dissatisfaction has been issued may only be finally settled by proceedings in a Court having competent jurisdiction.

- B.14.11.2 A Disputing Party may, in the proceedings before any Court having jurisdiction, adduce evidence or raise arguments not previously put before the CMDRB in the course of its consideration of the Dispute or included in the notice of dissatisfaction given by that Party. Any decision of the CMDRB shall be admissible as evidence in any Court proceedings.

B.14.12 Failure to Comply with CMDRB Decision

- B.14.12.1 In the event that:

- (a) no Disputing Party has given a notice of dissatisfaction within the period stated in paragraph B.14.8.7; and
- (b) the CMDRB's related decision (if any) has become final and binding; and
- (c) a Disputing Party fails to comply with this decision,

then any other Disputing Party may take such action as it deems necessary, including the commencement of Court proceedings, to enforce the relevant CMDRB decision. There shall be no mandatory reference to the CMDRB or requirement to refer the matter to amicable settlement in respect of such a reference.

B.15 LIMITATION OF LIABILITY

- B.15.1.1 No Party shall be liable to any other Party for loss arising from any breach of this Code or the Capacity Market Framework Agreement other than for loss resulting directly from such breach (but without prejudice to any other provision of this Code which excludes or limits liability in respect of any breach for loss directly resulting from such breach) and which was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
- (a) physical damage to the property of any such other Party or its officers, employees, or agents; and/or
 - (b) the liability (in law) of any other such Party to any other person for loss in respect of physical damage to the property of such other person.
- B.15.1.2 No Party shall in any circumstances be liable to any other Party in respect of any breach of this Code or the Capacity Market Framework Agreement for:
- (a) loss of profits, loss of income, loss of contract, loss of anticipated savings, loss of investment return, loss of goodwill, loss of use, or loss of reputation; or
 - (b) any indirect or consequential loss or any incidental or special damages (including punitive damages); or
 - (c) loss resulting from the liability of any other Party to any other person however and whenever arising save as provided in paragraphs B.15.1.1(b) and B.15.1.4.
- B.15.1.3 The limitations of liability set out in paragraph B.15.1.1 and B.15.1.2 are without prejudice to any provision of this Code or the Capacity Market Framework Agreement which provides for an indemnity and shall not relieve any Party of an obligation to pay any amounts due pursuant to this Code.
- B.15.1.4 Nothing in this Code or the Capacity Market Framework Agreement shall limit or exclude the liability of any Party for:
- (a) death or personal injury resulting from the negligence of such Party;
 - (b) a breach of section B.9;
 - (c) fraud or fraudulent misrepresentation;
 - (d) any other liability which cannot be limited or excluded under Applicable Laws.
- B.15.1.5 All terms, conditions, warranties and representations implied pursuant to Sections 13 to 15 of the Sale of Goods Act, 1893 and Section 39 of the Sale of Goods and Supply of Services Act, 1980 (Ireland) and Sections 13 to 15 of the Sale of Goods Act, 1979 (United Kingdom) and Sections 2 to 5 and 7 to 10 of the Supply of Goods and Services Act, 1982 (United Kingdom) are excluded to the fullest extent permitted by law.
- B.15.1.6 The rights and remedies of the Parties pursuant to this Code and the Capacity Market Framework Agreement as set out therein are, save as expressly provided otherwise, cumulative and are in exclusion of all other substantive (but not

procedural) rights or remedies express or implied and whether provided by common law, statute, tort, in equity or otherwise by law. Without prejudice to the foregoing and section B.17, each Party to the fullest extent permitted by law:

- (a) waives any rights or remedies; and
- (b) releases each other Party from any duties, liabilities, responsibilities or obligations,

arising or provided by common law, statute, tort, in equity or otherwise by law in respect of this Code.

- B.15.1.7 Without prejudice to the preceding paragraph B.15.1.6, where any provision of this Code or decision of the CMDRB provides for any amount to be payable by a Party upon or in respect of that Party's breach of this Code or the Capacity Market Framework Agreement, each Party agrees and acknowledges that the remedy conferred by such provision or decision is exclusive of and is in substitution for any remedy in damages in respect of such Default or the event or circumstance giving rise thereto.
- B.15.1.8 Nothing in this Code or the Capacity Market Framework Agreement relating to limitation of liability shall prevent or restrict any Party from enforcing any obligation owed to it under or pursuant to this Code in accordance with the provisions of this Code subject to any applicable limitation of liability.
- B.15.1.9 Save as expressly provided otherwise in this Code or the Capacity Market Framework Agreement, nothing in paragraphs B.15.1.1 to B.15.1.7 shall apply to or restrict the exercise or enforcement of any rights or remedies which one Party may have against another Party or person pursuant to any other agreement other than this Code and the Capacity Market Framework Agreement.
- B.15.1.10 For the purposes of paragraphs B.15.1.1, B.15.1.2 and B.15.1.4, references to a "Party" includes any of its Participants, officers, employees or agents, and each Party shall hold the benefit of those paragraphs for itself and as trustee and agent for its officers, employees and agents.
- B.15.1.11 Each of paragraphs B.15.1.1 to B.15.1.10 shall be construed as a separate and severable contract term, and shall remain in full force and effect and shall continue to bind the Parties even if a Party ceases to be a Party to this Code or this Code is terminated.
- B.15.1.12 Any specific limitation of liability in another provision of this Code applies in addition to this section B.15, so as to further limit liability in the circumstances in which they apply, and without affecting, limiting or restricting this section B.15.

B.16 FORCE MAJEURE

B.16.1 Concept

- B.16.1.1 For the purposes of this Code, "**Force Majeure**" means any event that satisfies all of the following criteria:
 - (a) the event is beyond the reasonable control of a Party and could not have been reasonably prevented or the consequences of which could not have been prevented by Prudent Electric Utility Practice;
 - (b) the event is not due to the act, error, omission, breach, default or negligence of the Party, its employees, agents or contractors; and
 - (c) the event has the effect of preventing the Party from complying with its obligations under this Code,

and includes, without limitation:

- (d) acts of terrorism;
- (e) war (declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (f) sabotage or acts of vandalism or criminal damage;
- (g) natural disasters and phenomena, including extreme weather or environmental conditions, fire, meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion, including nuclear explosion, radioactive or chemical contamination or ionising radiation;
- (h) compliance with relevant Legal Requirements as contemplated in paragraph B.4.1.2; or
- (i) nationwide or industry wide strikes, lockouts or other industrial actions or labour disputes provided that such occurrence is not limited to the Party and/or its suppliers, contractors, agents or employees,

but shall not include:

- (j) any inability (however caused) of a Party to pay any amounts owing under this Code and/or a lack of funds or Performance Security;
- (k) mechanical or electrical breakdown or failure of machinery, plant or systems owned or operated by the Party; or
- (l) the failure or inability of the Party's IT systems or manual processes to perform any function necessary for that Party to comply with this Code,

other than where such events arise as a result of the circumstances in sub-paragraphs (d) – (i) above.

B.16.2 Occurrence and Procedures

B.16.2.1 In the event of a Party other than the System Operators being unable to perform all or any of their obligations under this Code by reason of Force Majeure:

- (a) the Affected Party shall notify the System Operators of the Force Majeure event, giving full details of the circumstances, including identifying the nature of the event, how it satisfies the criteria in section B.16.1, its expected duration, the particular obligation(s) affected and mitigation measures taken;
- (b) the System Operators shall inform all Parties and the Regulatory Authorities that the Affected Party has notified the System Operators that it is subject to Force Majeure. The notice from the System Operators shall include any information provided by the Affected Party under sub-paragraph (a);
- (c) the Affected Party shall furnish reports at such intervals as the System Operators may reasonably request in respect of the Force Majeure event during the period of Force Majeure, giving full details of the circumstances including the matters listed in sub-paragraph (a);
- (d) the System Operators shall inform all Parties and the Regulatory Authorities, as soon as practicable, of the details provided in reports provided by the Affected Party under sub-paragraph (c);

- (e) no obligations of any Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of Force Majeure;
 - (f) on the occurrence of the Force Majeure, the Affected Party shall consult with the System Operators as to how best to give effect to the obligations of the Affected Party under this Code so far as is reasonably practicable during the period of Force Majeure;
 - (g) the Affected Party shall use all reasonable efforts to remedy and mitigate the consequences of any Force Majeure to enable it to resume full performance of its obligations under this Code insofar as such is practicable during any Force Majeure;
 - (h) the Affected Party shall resume full performance of its obligations under this Code as soon as reasonably practicable after cessation of any Force Majeure and shall provide the System Operators with written notice to that effect without delay; and
 - (i) the System Operators shall inform all Parties and the Regulatory Authorities that the Affected Party has notified the System Operators that it has resumed performance of its obligations under this Code.
- B.16.2.2 Where the System Operators have specified a format for providing notices or reports for the purposes of paragraph B.16.2.1, an Affected Party shall follow that format and method in giving the relevant notices or reports.
- B.16.2.3 Where the Affected Party has notified the System Operators that the nature of the Force Majeure event is that there is a conflict between this Code and relevant Legal Requirements, it shall if so requested by the System Operators or the Regulatory Authorities either submit a Modification Proposal in accordance with paragraph B.12.4.1 addressing the purported conflict, and mark it as "Urgent" in accordance with paragraph B.12.9.1, or serve a Notice of Dispute in respect of the issue in accordance with section B.14.2, within five Working Days of the request by the System Operator or the Regulatory Authorities.
- B.16.3 Consequences**
- B.16.3.1 Where the System Operators are affected by Force Majeure, the System Operators shall immediately inform the Regulatory Authorities. Where the System Operators are affected by an event of Force Majeure:
- (a) no obligations of any Party that arose before the Force Majeure and which can reasonably be expected to be performed are suspended as a result of such Force Majeure;
 - (b) the System Operators in consultation with, and where required by, the Regulatory Authorities, shall do all acts to mitigate the consequences of the Force Majeure to enable it to resume the full performance of their functions and obligations under this Code;
 - (c) the System Operators shall resume full performance of their obligations under this Code as soon as reasonably practicable after cessation of any Force Majeure and shall inform the Regulatory Authorities of this; and
 - (d) the System Operators shall be relieved of their obligations only for so long as and to the extent that the occurrence of the Force Majeure and/or its effects could not be overcome by measures which the System Operators might reasonably be expected to take acting prudently with a view to continuing or resuming performance of their obligations as appropriate.

- B.16.3.2 When a Party is rendered wholly or partially unable to perform all or any of its obligations under this Code by reason of Force Majeure, the Party's relevant obligations under this Code shall be suspended and the Party shall be relieved from liability, subject to paragraph B.16.3.3, in respect of such obligations provided that such liability and suspension shall be of no greater scope and of no longer duration than is required by the Force Majeure.
- B.16.3.3 The Party shall be relieved from liability only for so long as and to the extent that the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the Party might reasonably be expected to take as a Prudent Industry Operator with a view to continuing or resuming performance of its obligations as appropriate.
- B.16.3.4 Notwithstanding the foregoing, Force Majeure shall not relieve any Affected Party from any liability to pay any fees, payments or charges due under this Code or the Trading and Settlement Code in respect of the Capacity Market (including without limitation to pay Difference Charges, Difference Payments, Capacity Charges or Capacity Payments), even if the payment or charge is incurred in whole or in part as a result of the Force Majeure event save to the extent that any failure to pay is caused by Force Majeure affecting all reasonable means of payment in which event on the cessation of the Force Majeure event, the Affected Party shall pay Interest on any amounts due from the Payment Due Date to the actual date of payment.

B.17 WAIVER

- B.17.1.1 No failure to exercise, nor any delay in exercising, on the part of any Party any right or remedy under this Code or the Capacity Market Framework Agreement operates as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy under this Code or the Framework Agreement.

B.18 SEVERANCE

- B.18.1.1 Each of the provisions of this Code and the Capacity Market Framework Agreement is severable. If at any time any provision or part of a provision of this Code or the Framework Agreement is or becomes illegal, invalid or unenforceable in any respect for the purposes of any Applicable Law or by the decision of any Competent Authority, it shall be deemed severed from this Code and the legality, validity or enforceability of the remaining provisions (in whole or in part) of this Code or the Capacity Market Framework Agreement shall not in any way be affected or impaired thereby.

B.19 THIRD PARTY BENEFICIARIES

- B.19.1.1 Subject to paragraph B.19.1.2, a person who is not a Party shall not have the right (whether under the Contracts (Rights of Third Parties) Act 1999 (United Kingdom), or otherwise) to enforce any provision of this Code or the Capacity Market Framework Agreement, and this Code and the Capacity Market Framework Agreement shall not be construed as granting rights to or imposing any duty or liability on or to, or any duty of care with reference to, any person who is not a Party.
- B.19.1.2 Where rights are granted to the Regulatory Authorities, the Capacity Auction Monitor or the Capacity Market Auditor pursuant to this Code or the Capacity Market Framework Agreement, the Parties confirm and acknowledge that the Regulatory Authorities, the Capacity Auction Monitor or the Capacity Market

Auditor, as applicable, shall be entitled to enforce the rights granted to them under this Code as against any other Party to this Code by virtue of the Contracts (Rights of Third Parties) Act, 1999 (United Kingdom).

- B.19.1.3 Subject to any express rights which the Regulatory Authorities have under this Code and to any rights, powers or functions of the Regulatory Authorities under Applicable Laws, where a person who is not a party to this Code has a right to enforce any provisions of this Code pursuant to paragraph B.19.1.2, the Parties may vary or terminate this Code in accordance with its provisions and without requiring the consent of that person.

B.20 NO ASSOCIATION

- B.20.1.1 Except where expressly provided, this Code and the Framework Agreement shall not be interpreted or construed as creating an association, agency, joint venture or partnership between the Parties. Further, except where expressly provided, nothing in this Code or the Framework Agreement shall give any Party the right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise to bind, any other Party.

B.21 ASSIGNMENT

- B.21.1.1 A Party shall not Transfer or purport to Transfer:
- (a) all or any of its rights or obligations under this Code or the Capacity Market Framework Agreement; or
 - (b) any Awarded Capacity in respect of any of its Capacity Market Units, except as contemplated under Chapter H,
- in either case without the prior written consent of the Regulatory Authorities or as otherwise expressly provided in this Code.
- B.21.1.2 Any request to Transfer all or any of a Party's rights under this Code or the Capacity Market Framework Agreement shall be notified to the System Operators and shall be subject to the prior consent of the Regulatory Authorities but not of any other Party. In giving consent under this paragraph B.21.1.2, the Regulatory Authorities may impose such conditions as they determine are necessary for the purposes of the proper functioning of the SEM.
- B.21.1.3 A Party (the "**Transferor**") may not Transfer a Generator Unit or Interconnector that is, or forms part of, a Capacity Market Unit unless the proposed transferee ("**Transferee**"):
- (a) is a Party to this Code and the Capacity Market Framework Agreement;
 - (b) will become the Participant in respect of the Generator Unit or Interconnector for the purposes of this Code and the Trading and Settlement Code from the time of the Transfer;
 - (c) has executed a deed in form and substance reasonably satisfactory to the System Operators under which the Transferee assumes responsibility for providing any Awarded Capacity in respect of the Capacity Market Unit and becomes bound to perform the Transferor's obligations under this Code, the Capacity Market Framework Agreement, the Trading and Settlement Code and any Implementation Plan relating to the Generator Unit or Interconnector;

- (d) is, in the reasonable opinion of the System Operators, capable legally, financially and technically of undertaking the Transferor's obligations under this Code, the Capacity Market Framework Agreement, the Trading and Settlement Code and any Implementation Plan relating to the Generator Unit or Interconnector; and
- (e) has the necessary registrations, consents and approvals to:
 - (i) own, operate and maintain the Generator Unit or Interconnector; and
 - (ii) undertake the Transferor's obligations under this Code, the Capacity Market Framework Agreement, the Trading and Settlement Code and any Implementation Plan relating to the Generator Unit or Interconnector,
 or will do so by the time of the Transfer.

B.21.1.4 A Party shall not charge, purport to charge, grant or purport to grant any kind of security interest or encumbrance or grant or purport to grant a security assignment over all or any of its rights or obligations under this Code or the Capacity Market Framework Agreement, without the prior written consent of the System Operators.

B.22 PUBLICATION OF CODE

- B.22.1.1 The System Operators shall publish the current, effective version of this Code no less frequently than twice yearly in line with the Scheduled Release (unless there has been no change from the previous version). The published version of this Code shall be amended to reflect any Modifications as soon as practical. The date of publication of the complete amended version of this Code shall not affect the date of coming into effect of the relevant Modification.
- B.22.1.2 The System Operators shall also publish at all times a list of effective Modifications which have been approved but have not yet been incorporated into the current baseline version of this Code.
- B.22.1.3 The System Operators shall not be obliged to publish any material that they reasonably believe may be of an obscene or libellous or similar nature.

B.23 CONFIDENTIAL INFORMATION

- B.23.1.1 Confidential Information means, in relation to any Party, information which is designated in writing by that Party as "confidential information", or which would be considered as being confidential by its nature, and which is disclosed in connection with this Code, the Capacity Market Framework Agreement or the disclosing Party's activities in connection with this Code. Confidential Information shall not include:
 - (a) the existence of and terms of this Code or the Capacity Market Framework Agreement; and
 - (b) Data Records or items which are at the relevant time required to be published in accordance with this Code.
- B.23.1.2 For the purpose of this section, a "**Recipient Party**" is any Party which receives, acquires possession or control of, or otherwise becomes aware of Confidential Information of another Party. A "**Disclosing Party**" is any Party by whom the Confidential Information is disclosed.
- B.23.1.3 Each Recipient Party shall keep confidential any Confidential Information relating to any Disclosing Party and shall:

- (a) use the Confidential Information only for the purpose of performing its obligations under this Code and for no other purpose whatsoever;
- (b) not at any time disclose, reveal, or otherwise disseminate the Confidential Information to any person or Party whatsoever or to permit any person or Party any form of access to the Confidential Information without the prior written consent of the Disclosing Party;
- (c) treat and safeguard as private and confidential all Confidential Information received at any time keeping it and treating it with the same care as any Prudent Industry Operator would be expected to exercise;
- (d) not use the Confidential Information, or permit or assist a third party to use the Confidential Information, to procure a commercial advantage over, or an advantage which is in any way likely to be prejudicial, whether directly or indirectly to, the Disclosing Party or to its business, goodwill or reputation; and
- (e) not use the Confidential Information or permit or assist a third party to use the Confidential Information to attract management, employees, advisors, agents, representatives, consultants, contractors, sub-contractors or customers away from the Disclosing Party.

B.23.2 Exceptions

B.23.2.1 The obligations set out in paragraph B.23.1.3 do not apply to:

- (a) information which at the time of disclosure to the Receiving Party is within the public domain;
- (b) information which comes into the public domain other than by reason of a breach of this Code or of any Legal Requirement by the Recipient Party; or
- (c) information which was lawfully within the possession of the Recipient Party prior to its being furnished to it by or on behalf of the Disclosing Party as evidenced by the written records of the Recipient Party or the sworn evidence of an officer of the Recipient Party, provided that the source of such information was not bound by a confidentiality agreement or any other obligation of secrecy in respect thereof.

B.23.3 Permitted Disclosures

B.23.3.1 Nothing in paragraph B.23.1.3 shall prevent the disclosure of Confidential Information by a Recipient Party:

- (a) to any lending or other financial institution proposing to provide or arrange the provision of finance or Performance Security to the Recipient Party, where and to the extent that the disclosure of such Confidential Information is reasonably required for the purposes of the provision or arrangement of such finance or Performance Security, and provided that the person to whom the Confidential Information is disclosed is bound by confidentiality provisions which are at least equivalent to those in paragraph B.23.1.3;
- (b) as may be required by the regulations of any recognised stock exchange on which the share capital of the Recipient Party (or any parent or affiliated undertaking of the Recipient Party) is or is proposed to be from time to time listed or dealt in, and the Recipient Party shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the Disclosing Party with a copy of such disclosure or statement and details of the persons to whom the

Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the Disclosing Party may give comments on that disclosure or statement to the Recipient Party;

- (c) as may be required to comply with Legal Requirements of the Recipient Party;
- (d) contemplated by a Market Code or the NEMO Rules;
- (e) to the Regulatory Authorities, the System Operators, the Market Operator, the Capacity Auction Monitor or the Capacity Market Auditor;
- (f) as may be necessary in relation to an application by any person for a connection to or use of the Transmission System or Distribution System in accordance with Section 34 of the Energy Regulation Act, 1999 (Ireland) or with the Northern Ireland Grid Code;
- (g) as may be required by the CMDRB or a Court having competent jurisdiction or Competent Authority; or
- (h) as may be otherwise agreed in writing by the Disclosing Party prior to disclosure by the Recipient Party.

B.23.3.2 The confidentiality obligations set out in this section B.23 shall continue to apply without limit in time to any Terminated Party in respect of Confidential Information which came into its possession while it was a Party.

B.24 FREEDOM OF INFORMATION ACTS

B.24.1.1 All Parties confirm and acknowledge that although they may inform (in a notice or statement) the System Operators and/or the Regulatory Authorities in writing that specific data submitted under this Code may be classified as Confidential Information or commercially sensitive, such information may be subject to disclosure in accordance with the provisions of the Freedom of Information Acts as applicable. All Parties acknowledge that any statement or notification from a Party to the System Operators and/ or the Regulatory Authorities does not bind any System Operator or the Regulatory Authorities or guarantee that any such described information in such a notice or statement will not be subject to disclosure under the Freedom of Information Acts.

B.25 DATA PROTECTION

B.25.1.1 Without prejudice to the generality of any other provision of this Code, each Party shall comply with applicable requirements of Data Protection Legislation in respect of any Personal Data which it Processes in the course of its activities in connection with this Code. All Parties shall use their reasonable endeavours to enter into any contract necessary to legitimise the Processing of Personal Data under Data Protection Legislation.

B.25.1.2 Each Party ("**Indemnifying Party**") shall indemnify each other Party and the Regulatory Authorities in respect of any loss or liability howsoever arising incurred by that Party, or the Regulatory Authorities, as appropriate, as a result of a breach of paragraph B.25.1.1 by the Indemnifying Party.

B.26 NOTICES

B.26.1.1 This section B.26 applies to Notices which shall, for the avoidance of doubt, include:

- (a) Default Notices;
- (b) Suspension Orders;
- (c) Termination Orders;
- (d) Notice of Dispute and the current status of each;
- (e) notices of dissatisfaction under paragraph B.14.8.6;
- (f) Referral Notices;
- (g) notification of Force Majeure;
- (h) Notice of revocation of an Intermediary's authority under paragraph B.5.5.1; and
- (i) other Notices required for the purposes of section B.14.

B.26.2 Notice to Other Parties

- B.26.2.1 Any Notices required to be given for the purposes of this Code shall be given in writing unless otherwise specified in the Code.
- B.26.2.2 Any Notice required to be given in writing, other than a notice listed in paragraph B.26.1.1, or a communication for which a prescribed form is otherwise required in this Code, may also be given by email.
- B.26.2.3 Notices in writing shall be addressed and sent to the receiving Party at the address, e-fax or email address specified by the receiving Party for the purposes of the receipt of Notices under this Code or such other address, e-fax or email address as the receiving Party may from time to time specify by notice given in writing in accordance with this Chapter B to the Party giving the notice.
- B.26.2.4 Notices shall be marked for the attention of the representative of the receiving Party specified for the purpose of receipt of Notices or such other person as may be notified by the receiving Party to the Sending Party in accordance with the provisions of this Chapter B.
- B.26.2.5 Any Notice given by e-fax or email shall be confirmed by forwarding a copy of the same by pre-paid registered post provided that failure to receive such confirmation shall not prejudice effective receipt of the notice under paragraph B.26.2.6.
- B.26.2.6 Any Notice in writing shall be deemed to have been received:
 - (a) in the case of delivery by hand, when delivered;
 - (b) in the case of prepaid post, on the second Working Day following the day of posting or, if sent from another jurisdiction other than Northern Ireland or Ireland, on the fifth Working Day following the day of posting; or
 - (c) in the case of e-fax or email when the e-fax or email enters the receiving Party's IT system.
- B.26.2.7 Each Party shall, on registration, specify at least one postal address, e-fax number, and email address and one representative for the service of Notices in writing and may amend such details by notifying the relevant representative of the System Operators in writing.
- B.26.2.8 A Party may specify different addresses (including e-fax or email addresses) and representatives for the purposes of Notices of different kinds or relating to different matters.

B.26.3 Notice to the Regulatory Authorities

B.26.3.1 Any Notice to the Regulatory Authorities shall be in writing (which for the purposes of this paragraph shall not include email) and shall be addressed:

- (a) in respect of matters relating to a particular Unit or Participant, to the relevant Regulatory Authority at such address or number and marked for the attention of such person as that Regulatory Authority may publish; and
- (b) in respect of other matters, to each Regulatory Authority, or to such single address as may be published by the Regulatory Authorities for the purposes of the joint receipt of notifications under the SEM.

B.26.3.2 Notices to the Regulatory Authorities shall be effective upon actual receipt.

B.26.4 System Operators Notices

Notices which are required to be published by the System Operators shall be published on their website within any applicable timeframes set out in this Code.

C. DE-RATING AND CAPACITY CONCEPTS

C.1 PURPOSE OF CHAPTER

C.1.1.1 This Chapter describes and defines a number of the key concepts used in determining de-rated capacity values.

C.1.1.2 Key concepts used in the Capacity Market include:

- (a) *existing capacity*, which is the available capacity of a Generator, Generating Unit or Interconnector (or a Capacity Market Unit that comprises those units) that has been commissioned at a given time;
- (b) *new capacity*, which is the potential increase in capacity of a Generator, Generating Unit or Interconnector (or a Capacity Market Unit that comprises those units) where that capacity is yet to be commissioned at a given time;
- (c) *technology classes*, which will be determined by the Regulatory Authorities. Generators, Generator Units and Interconnectors will be associated, based on technology, with a Technology Class;
- (d) *initial capacity* is a measure of the capacity available from a Generator, Generating Unit or Interconnector (or a Capacity Market Unit that comprises those units) without applying any de-rating factor. Initial capacity (existing) relates to existing capacity and initial capacity (total) relates to the combination of existing capacity and new capacity. It is determined in accordance with section C.2;
- (e) the *SEM security standard* is a standard determined by the Regulatory Authorities which is based on hours of loss of load expectation per annum;
- (f) a *de-rating factor* is a factor between 0 and 1, which serves to lower the capacity available from a Generator, Generator Unit or Interconnector so that in aggregate all Generators, Generator Units and Interconnectors have enough capacity beyond their de-rated level to allow the SEM security standard to be achieved even allowing for some Generators, Generator Units or Interconnectors being unavailable. A de-rating factor may also be applied to a firm network access capacity quantities as if it is an initial capacity value for the purpose of identifying de-rated capacity that can be delivered on a firm basis;
- (g) a *de-rating curve* is specific to a technology class and defines the de-rating factor applicable to a specific value of initial capacity. The de-rating curves are determined by the Regulatory Authorities; and
- (h) a *capacity requirement* reflects the quantity of de-rated capacity required to satisfy the SEM security standard, and is determined by the Regulatory Authorities.

C.1.1.3 Each of the concepts described in paragraph C.1.1.2 is defined in the Glossary or elsewhere in this Code. Paragraph C.1.1.2 is for information only, is not intended of itself and shall not be construed so as to affect the meaning of terms defined in the Glossary or elsewhere in the Code.

C.2 LOCAL CAPACITY CONSTRAINTS

C.2.1 Concepts

- C.2.1.1 The System Operators may define one or more local capacity constraints in accordance with this section C.2 for the purposes of a Capacity Year with a view to ensuring that a minimum capacity is cleared in the Capacity Auctions for that Capacity Year in one or more specific areas of the SEM for the purposes of system security.
- C.2.1.2 For the avoidance of doubt, notwithstanding paragraph C.2.1.1, the System Operators shall have no liability to any person under this Code or otherwise if and to the extent that such minimum capacity is not cleared in the Capacity Auction.
- C.2.1.3 As Local Capacity Constraints are defined for future time periods they are based on the System Operators' expectation of future conditions and limits, which may or may not turn out to be the case.

C.2.2 Form of Local Capacity Constraints

- C.2.2.1 There is no requirement that any given area of the SEM must necessarily be subject to a Local Capacity Constraint.
- C.2.2.2 If they define a Local Capacity Constraint, the System Operators shall also define the following features of the Local Capacity Constraint:
 - (a) an identifier;
 - (b) the area to which the Local Capacity Constraint applies, defined by reference to nodes on the Transmission System (and Distribution System, as applicable);
 - (c) a MW minimum de-rated capacity quantity that is to be cleared in a Capacity Auction for that area; and
 - (d) the nesting level of the Local Capacity Constraint determined in accordance with paragraph C.2.2.3 and, in the case of a Level 2 Local Capacity Constraint, the Level 1 Local Capacity Constraint the Level 2 Local Capacity Constraint falls within.
- C.2.2.3 The System Operators shall determine the nesting level of a Local Capacity Constraint (which shall be either Level 1 or Level 2) applying the following rules:
 - (a) an area to which a Level 1 Local Capacity Constraint applies must not overlap an area to which any other Level 1 Local Capacity Constraint;
 - (b) an area to which a Level 2 Local Capacity Constraint applies shall be entirely within an area to which a Level 1 Local Capacity Constraint applies; and
 - (c) an area to which a Level 2 Local Capacity Constraint applies shall not overlap an area to which any other Level 2 Local Capacity Constraint applies.

C.2.3 Timing of Determination of Local Capacity Constraints for a Capacity Year

- C.2.3.1 The System Operators shall determine the Local Capacity Constraints applicable to Capacity Auctions for a Capacity Year for the first time, and shall submit these to the Regulatory Authorities for approval, by not later than the date specified in the Capacity Auction Timetable for the first Capacity Auction for that Capacity Year (or such later date as specified by the Regulatory Authorities by written notice to the System Operators).

- C.2.3.2 The System Operators shall review the Local Capacity Constraints applicable to a Capacity Year not less than annually, and may submit any updated Local Capacity Constraints to the Regulatory Authorities for approval.
- C.2.3.3 When submitting a proposed Local Capacity Constraint or updated Local Capacity Constraint, the System Operators shall provide the Regulatory Authorities with a description of the methodology they used in determining the proposed Local Capacity Constraint or updated Local Capacity Constraint.
- C.2.3.4 The Regulatory Authorities may by written notice to the System Operators request more information from the System Operators when considering whether or not to approve a Local Capacity Constraint or update submitted by the System Operators and the System Operators shall use reasonable endeavours to comply with the request.
- C.2.3.5 The Regulatory Authorities may by written notice to the System Operators approve or reject one or more proposed Local Capacity Constraints (or updated Local Capacity Constraint) submitted by the System Operators under paragraph C.2.3.1 or C.2.3.2 and shall in the notice give reasons in the case of rejection.

C.3 INITIAL CAPACITY

C.3.1 Initial Capacity and Qualification Process

- C.3.1.1 A Participant submitting an Application for Qualification shall include in the application a MW value for the Initial Capacity (Existing) and Initial Capacity (Total) of the Candidate Unit, calculated using the approach set out in section C.3.2 or C.3.3 (as applicable).
- C.3.1.2 During the Qualification Process, in the circumstances set out in paragraph E.8.1.1, the System Operators are required to determine the values for the Initial Capacity (Existing) and Initial Capacity (Total) of a Candidate Unit. In doing so, the System Operators shall also use the approach set out in section C.3.2 and C.3.3 (as applicable), but as modified in accordance with section C.3.5.

C.3.2 Initial Capacity (Existing)

- C.3.2.1 For a Generator Unit (other than an Aggregated Generator Unit), the Initial Capacity (Existing) for a Capacity Year shall be:
 - (a) in the case of a Generator Unit that is not an Autoproducer Unit and is not a Demand Side Unit and that is:
 - (i) the only Generator Unit Connected at a single Connection Point, the lesser of the Registered Capacity of the Generator Unit and the Maximum Export Capacity specified in the relevant Connection Agreement; or
 - (ii) one of multiple Generator Units Connected at a single Connection Point, a value specified by the Participant for the Generator Unit which value:
 - (A) does not exceed the Generator Unit's Registered Capacity; and
 - (B) when summed with the equivalent value across all Generator Units Connected at that Connection Point is equal to the lesser of:
 - i. the lesser of the total Registered Capacity of all the Generator Units Connected at that Connection Point; and

- ii. the Maximum Export Capacity specified in the relevant Connection Agreement; and
 - (b) in the case of an Autoproducer Unit that is:
 - (i) the only Generator Unit Connected at a single Connection Point, the Maximum Export Capacity specified in the relevant Connection Agreement; or
 - (ii) one of multiple Generator Units Connected at a single Connection Point, a value specified by the Participant for the Generator Unit which value:
 - (A) does not exceed the Generator Unit's Registered Capacity; and
 - (B) when summed with the equivalent value across all Generator Units Connected at that Connection Point equals the Maximum Export Capacity specified in the relevant Connection Agreement; and
 - (c) in the case of a Demand Side Unit, its DSU MW Capacity.
- C.3.2.2 For an Interconnector, the Initial Capacity (Existing) for a Capacity Year shall be its Aggregate Import Capacity.
- C.3.2.3 For a Generator that is part of an Aggregated Generator Unit, the Initial Capacity (Existing) for a Capacity Year shall be its contribution to the Registered Capacity of the Aggregated Generator Unit.
- C.3.2.4 For an Aggregated Generator Unit, the Initial Capacity (Existing) for a Capacity Year shall be the sum of the Initial Capacity (Existing) of the Generators that comprise the Aggregated Generator Unit.
- C.3.3 Initial Capacity (Total)**
- C.3.3.1 Except where paragraph C.3.3.5 applies, the Initial Capacity (Total) of a Generator Unit (other than an Aggregated Generator Unit) for a Capacity Year shall be:
- (a) in the case of a Generator Unit that is not an Autoproducer Unit and is not a Demand Side Unit and that is:
 - (i) the only Generator Unit Connected at a single Connection Point, the lesser of:
 - (A) the Participant's expected Registered Capacity of the Generator Unit; and
 - (B) the Maximum Export Capacity specified in the relevant Connection Agreement and/ or Connection Offer applicable to the combination of Existing Capacity and New Capacity,
 in respect of the Capacity Year for which the Initial Capacity (Total) is to be determined; or
 - (ii) one of multiple Generator Units Connected at a single Connection Point, a value specified by the Participant for the Generator Unit which value:
 - (A) does not exceed the Generator Unit's expected Registered Capacity; and
 - (B) when summed with the equivalent value across all Generator Units Connected at that Connection Point equals the lesser of:

- i. the total expected Registered Capacity of all Generator Units Connected at that Connection Point; and
 - ii. the Maximum Export Capacity specified in the relevant Connection Agreement and/ or Connection Offer applicable to the combination of Existing Capacity and New Capacity,

in respect of the Capacity Year for which the Initial Capacity (Total) is to be determined;
 - (b) in the case of an Autoproducer Unit that is:
 - (i) the only Generator Unit Connected at a single Connection Point, the Maximum Export Capacity specified in the relevant Connection Agreement and/ or Connection Offer applicable to the combination of Existing Capacity and New Capacity

in respect of the Capacity Year for which the Initial Capacity (Total) is to be determined; or
 - (ii) one of multiple Generator Units Connected at a single Connection Point, a value specified by the Participant for the Generator Unit which value:
 - (A) does not exceed the Participant's expectation of the Generator Unit's Registered Capacity; and
 - (B) when summed with the equivalent value across all Generator Units Connected at that Connection Point equals the Maximum Export Capacity specified in the relevant Connection Agreement and/ or Connection Offer applicable to the combination of Existing Capacity and New Capacity in respect of the Capacity Year for which the Initial Capacity (Total) is to be determined; and
 - (c) in the case of a Demand Side Unit, the Participant's expectation of the unit's DSU MW Capacity applicable to the combination of Existing Capacity and New Capacity in respect of the Capacity Year for which the Initial Capacity (Total) is to be determined.
- C.3.3.2 Except where paragraph C.3.3.5 applies, the Initial Capacity (Total) of an Interconnector for a Capacity Year, shall be the Participant's expectation of the Aggregate Import Capacity for that Interconnector applicable to the combination of Existing Capacity and New Capacity in respect of that Capacity Year.
- C.3.3.3 Except where paragraph C.3.3.5 applies, the Initial Capacity (Total) of a Generator that is part of, or is proposed to be part of, an Aggregated Generator Unit for a Capacity Year shall be its expected contribution to the Registered Capacity of the Aggregated Generator Unit in respect of that Capacity Year.
- C.3.3.4 Except where paragraph C.3.3.5 applies, the Initial Capacity (Total) of an Aggregated Generator Unit for a Capacity Year shall equal the sum of the Initial Capacity (Total) of each of the Generators that comprise it in respect of that Capacity Year.
- C.3.3.5 The Initial Capacity (Total) of a Generator, Generator Unit or Interconnector that has no New Capacity for a Capacity Year shall equal the Initial Capacity (Existing) in respect of that Capacity Year.

C.3.4 Connection Agreements and Offers

- C.3.4.1 If every Generator Unit Connected at a single Connection Point has not been registered by the same Participant, then an Application for Qualification which relates to any of those Generator Units must include confirmation from each person that is party to the Connection Agreement (other than a System Operator or, if applicable, a Distribution System Operator) in respect of that Connection Point of the allocation of the Maximum Export Capacity at that Connection Point between those Generator Units such that the allocated Maximum Export Capacity is not exceeded across all of those Generator Units.

C.3.5 System Operator Determining Substitute Values

- C.3.5.1 Where the System Operators are required to determine the values of Initial Capacity (Existing) and Initial Capacity (Total) under paragraph E.8.1.1, they shall do so using the approach set out in sections C.3.2 and C.3.3, subject to the following modifications:

- (a) a reference to the Participant's expectation as to a matter or thing will be read as a reference to the System Operators' expectation as to that matter or thing;
- (b) the Initial Capacity (Existing) in the case of a Generator Unit that is not an Autoproducer Unit and is not a Demand Side Unit but is one of multiple Generator Units Connected at a single Connection Point shall be the lesser of:
 - (i) the total Registered Capacity of all Generator Units Connected at that Connection Point; and
 - (ii) the Maximum Export Capacity specified in the relevant Connection Agreement,
pro-rated between all the Generator Units Connected at that Connection Point based on their Registered Capacity;
- (c) the Initial Capacity (Existing) in the case of a Generator Unit that is an Autoproducer Unit and is one of multiple Generator Units Connected at a single Connection Point shall be the lesser of its Registered Capacity and the "capacity limit" pro-rated between all the Generator Units Connected at that Connection Point based on their Registered Capacity. For these purposes, the "capacity limit" is the Maximum Export Capacity specified in the relevant Connection Agreement; and
- (d) the Initial Capacity (Total) for a Capacity Year shall be equal to Initial Capacity (Existing) if there is no Awarded New Capacity for the Generator, Generating Unit or Interconnector for the Capacity Year, otherwise Initial Capacity (Total) shall be the value which the System Operators determine would produce a de-rated contribution of New Capacity equal to the Awarded New Capacity.

- C.3.5.2 Notwithstanding paragraph E.6.1.2, in determining values or substitute values under this section, the System Operators shall have regard to any information they have available, whether or not included in the relevant Application for Qualification.

C.3.6 Dual Rated Units

- C.3.6.1 When determining the Initial Capacity (Existing) and Initial Capacity (Total) of a Generator Unit that can generate using different fuels, and has a different

Registered Capacity or expected Registered Capacity depending on which fuel it is using, then the value of Registered Capacity or expected Registered Capacity (as applicable) to be used is the maximum value of Registered Capacity or expected Registered Capacity for any of those fuels.

D. PRE CAPACITY AUCTION PROCESSES

D.1 THE CAPACITY YEAR

- D.1.1.1 A Capacity Year is a period commencing at the start of the Trading Day beginning on 30 September and ending at the end of the Trading Day ending on 30 September in the following year.

D.2 CAPACITY AUCTIONS AND TIMETABLES

- D.2.1.1 The System Operators shall conduct a T-4 Auction for each Capacity Year.
- D.2.1.2 The Regulatory Authorities may instruct the System Operators to conduct other Capacity Auctions for a Capacity Year in addition to the T-4 Auction (which, depending on the timing, may be a T-3 Auction, a T-2 Auction or a T-1 Auction), if the Regulatory Authorities consider:
- (a) it necessary to do so to preserve system security; or
 - (b) in the case of a T-3 Auction or a T-2 Auction, to do so would provide a lower overall cost than securing the capacity only by way of a T-1 Auction or only one T-1 Auction.
- D.2.1.3 In determining whether to instruct the System Operators to conduct an additional Capacity Auction, the Regulatory Authorities shall take account of the appropriate timeframes required to complete activities required under this Code in relation to the auction.
- D.2.1.4 The System Operators shall prepare a proposed Capacity Auction Timetable for each Capacity Auction in accordance with Appendix C "Capacity Auction Timetable" no later than ten months prior to the proposed Auction Date.
- D.2.1.5 The Auction Date included in the Capacity Auction Timetable will:
- (a) for a T-1 Auction, fall no less than two and no more than thirteen months prior to the start of the relevant Capacity Year;
 - (b) for a T-2 Auction, fall in the period no less than fourteen and no more than twenty-eight months prior to the start of the relevant Capacity Year;
 - (c) for a T-3 Auction, fall in the period no less than twenty-nine and no more than forty-one months prior to the start of the relevant Capacity Year; and
 - (d) for a T-4 Auction, fall in the period no less than forty-two and no more than fifty-four months prior to the start of the relevant Capacity Year.
- D.2.1.6 The System Operators shall submit the proposed Capacity Auction Timetable for a Capacity Auction to the Regulatory Authorities for approval.
- D.2.1.7 The Regulatory Authorities may by written notice to the System Operators approve or reject the proposed Capacity Auction Timetable for a Capacity Auction submitted by the System Operators under paragraph D.2.1.6 and shall in the notice give reasons in case of rejection.
- D.2.1.8 If the Regulatory Authorities reject the proposed Capacity Auction Timetable for a Capacity Auction submitted by the System Operators, then the Regulatory Authorities may by written notice to the System Operators determine an alternative Capacity Auction Timetable in accordance with Appendix C "Capacity Auction Timetable" in substitution for that submitted by the System Operators.
- D.2.1.9 In preparing, reviewing, determining or amending a Capacity Auction Timetable for a Capacity Auction, the System Operators and the Regulatory Authorities shall

take account of the appropriate timeframes required to complete activities required under this Code in relation to the Capacity Auction by the Regulatory Authorities, System Operators and Participants.

- D.2.1.10 The System Operators may amend the Capacity Auction Timetable for a Capacity Auction with the prior approval of the Regulatory Authorities.
- D.2.1.11 The System Operators shall publish the Capacity Auction Timetable or an amended Capacity Auction Timetable for a Capacity Auction within two Working Days of it being approved or determined by the Regulatory Authorities under this section D.2.
- D.2.1.12 Not later than five Working Days prior to Capacity Auction Submission Commencement date specified in relation to a Capacity Auction in the applicable Capacity Auction Timetable, the Regulatory Authorities may instruct the System Operators to:
- (a) delay or postpone the Capacity Auction;
 - (b) cancel the Capacity Auction, if they consider sufficient capacity has already been procured for the Capacity Year; or
 - (c) bring forward the Capacity Auction, in this last case provided that the new Capacity Auction Submission Commencement date specified in relation to the brought forward Capacity Auction shall be not less than five Working Days after the later of the date of the Regulatory Authorities' instruction to the System Operators and the completion of the Qualification Process for the Capacity Auction.
- D.2.1.13 If the Regulatory Authorities cancel a Capacity Auction or change the timing of events in a Capacity Auction Timetable, then the System Operators shall update and re-publish, or revoke, the Capacity Auction Timetable, as necessary to reflect the decision of the Regulatory Authorities.

D.3 CAPACITY AUCTION INFORMATION PACK

- D.3.1.1 The System Operators shall publish the Capacity Auction Information Pack for a Capacity Auction by the later of:
- (a) the Capacity Auction Information Pack Date specified in the applicable Capacity Auction Timetable; and
 - (b) the date two Working Days after the Regulatory Authorities have provided the System Operators with the last of all parameters required to be included in the Capacity Auction Information Pack under paragraph D.3.1.3.
- D.3.1.2 The Capacity Auction Information Pack for a Capacity Auction will set out:
- (a) De-Rating Curves, defining De-Rating Factors by unit Initial Capacity and by Technology Class (including for Interconnectors);
 - (b) the Capacity Requirement for the Capacity Year;
 - (c) an indicative Demand Curve for the Capacity Auction;
 - (d) for each Local Capacity Constraint to apply for the Capacity Year, the nodes on the Transmission System (and the Distribution System, as applicable) to which the Local Capacity Constraint applies;
 - (e) how much Awarded Capacity has already been procured for the relevant Capacity Year;

- (f) the Auction Price Cap;
- (g) the Existing Capacity Price Cap;
- (h) the €/MW rate of the New Capacity Investment Rate Threshold;
- (i) the Annual Stop-Loss Limit Factor applicable to the Capacity Year;
- (j) the Billing Period Stop-Loss Limit Factor applicable to the Capacity Year;
- (k) the indicative Annual Capacity Payment Exchange Rate ;
- (l) the allowed Increase Tolerances and Decrease Tolerances that may be applied by a Participant in its Application for Qualification to Capacity Market Unit de-ratings;
- (m) in respect of Performance Securities:
 - (i) the Performance Security Posting Dates/ Events; and
 - (ii) for each Performance Security Posting Date/ Event, the €/MW rate to be applied to Awarded Capacity in setting Performance Securities;
- (n) the €/MW fee rates for calculating Termination Charges;
- (o) indicative values for the Full Administered Scarcity Price and the Reserve Scarcity Price Curve applicable to the Capacity Year;
- (p) indicative values for the parameters listed in paragraph F.16.1.1 of the Trading and Settlement Code to be applied in determining the Strike Price in accordance with the Trading and Settlement Code for the Capacity Year; and
- (q) the Capacity Auction Timetable (at least for events after the publication of the Capacity Auction Information Pack).

D.3.1.3 The Regulatory Authorities shall determine the following parameters for each Capacity Auction and provide them to the System Operators for inclusion in the applicable Capacity Auction Information Pack:

- (a) De-Rating Curves, defining De-Rating Factors by unit Initial Capacity and by Technology Class (including for Interconnectors);
- (b) the Capacity Requirement for the Capacity Year;
- (c) an indicative Demand Curve for the Capacity Auction;
- (d) the allowed Increase Tolerances and Decrease Tolerances;
- (e) the Auction Price Cap;
- (f) the Existing Capacity Price Cap;
- (g) the €/MW rate of the New Capacity Investment Rate Threshold;
- (h) the Annual Stop-Loss Limit Factor applicable to the Capacity Year;
- (i) the Billing Period Stop-Loss Limit Factor applicable to the Capacity Year;
- (j) in respect of Performance Securities:
 - (i) the Performance Security Posting Dates/ Events; and
 - (ii) for each Performance Security Posting Date/ Event, the €/MW rate to be applied to Awarded Capacity in setting Performance Securities;

- (k) the €/MW fee rates for calculating Termination Charges;
 - (l) indicative values for the Full Administered Scarcity Price and the Reserve Scarcity Price Curve applicable to the Capacity Year.
- D.3.1.4 Where an indicative curve or value is included in a Capacity Auction Information Pack, it is included for information only, and may change. Before acting in reliance of an indicative curve or value in a Capacity Auction Information Pack, a Participant should conduct their own analysis and form their own views as to the matter.

E. QUALIFICATION

E.1 PURPOSE OF QUALIFICATION PROCESS

E.1.1.1 The System Operators and Participants shall follow the process ("**Qualification Process**") set out in this Chapter E to determine:

- (a) whether a particular Generator Unit (or a group of Generator Units), or an Interconnector, satisfies the requirements in this Chapter E and therefore Qualifies as a Capacity Market Unit for a Capacity Auction and a Secondary Trade Auction; and
- (b) for each Capacity Market Unit:
 - (i) whether the capacity of the Capacity Market Unit is Existing Capacity, New Capacity, or a combination of both;
 - (ii) the Initial Capacity (Existing) and Initial Capacity (Total);
 - (iii) the Gross De-Rated Capacity (Existing), Gross De-Rated Capacity (New), and Gross De-Rated Capacity (Total);
 - (iv) the Net De-Rated Capacity (Existing) and Net De-Rated Capacity (New) that limit the quantity that can be offered into the Capacity Auction (after allowing for Awarded Capacity for the Capacity Year from prior Capacity Market Auctions);
 - (v) the Firm Offer Requirement, which sets the minimum quantity that must be offered into a Capacity Auction in respect of the Capacity Market Unit;
 - (vi) the Maximum Capacity Duration allowed in respect of each of New Capacity and Existing Capacity of the Capacity Market Unit;
 - (vii) the Implementation Plan for developing any New Capacity of the Capacity Market Unit; and
 - (viii) the caps on Auction offer prices applicable to each of the Existing Capacity and New Capacity of the Capacity Market Unit.

E.1.1.2 In carrying out their functions and obligations under this Chapter E, the System Operators and Participants shall comply with Agreed Procedure 3 "Qualification and Auction Process"

E.2 REQUIREMENT TO APPLY FOR QUALIFICATION OF CANDIDATE UNITS

E.2.1.1 Subject to section E.2.1.3, a Participant with a Candidate Unit that is:

- (a) a Dispatchable Generator Unit having a Registered Capacity (or, in the case of a Demand Side Unit, a DSU MW Capacity) greater than or equal to the De-Minimis Threshold;
- (b) not a Demand Side Unit and is a proposed Dispatchable Generator or an existing Dispatchable Generator Unit in respect of which the Participant intends to commission an increase in capacity, that in either case the Participant expects to have a Registered Capacity exceeding the De-Minimis Threshold prior to the start of the Capacity Year;
- (c) an existing Interconnector; or

- (d) a proposed Interconnector which the Participant intends to commission prior to the start of the Capacity Year,

shall apply for the Candidate Unit to be Qualified to participate in each Capacity Auction for the Capacity Year.

E.2.1.2 A Participant with a Candidate Unit that is:

- (a) a proposed Demand Side Unit which the Participant intends to commission prior to the start of the relevant Capacity Year;
- (b) a Variable Generator Unit or a proposed Variable Generator Unit which the Participant intends to commission prior to the start of the relevant Capacity Year;
- (c) a Generator Unit, or a proposed Generator Unit which the Participant intends to commission prior to the start of the relevant Capacity Year, which is not Dispatchable; or
- (d) a Dispatchable Generator Unit or proposed Generator Unit having, or expected to have prior to the start of the Capacity Year, a Registered Capacity less than the De-Minimis Threshold,

may apply for the Candidate Unit to be Qualified to participate in a Capacity Auction.

E.2.1.3 A Participant is not required to apply for a Candidate Unit to be Qualified to participate in a Capacity Auction if the Candidate Unit is to Close prior to the end of the relevant Capacity Year or the Regulatory Authorities determine that it is not necessary for the Candidate Unit to do so in the circumstances contemplated in paragraph E.3.1.1(b). If a Participant is not required to apply for a Candidate Unit to be Qualified under this paragraph E.2.1.3, then it must submit to the System Operators an Opt-out Notification in respect of that Candidate Unit in accordance with section E.3.

E.3 OPT-OUT NOTIFICATIONS

E.3.1.1 A Participant may submit an Opt-out Notification to the System Operators for a Candidate Unit for which an Application for Qualification would otherwise be required under section E.2 no later than the Opt-out Notification Date in the Capacity Auction Timetable if:

- (a) the Candidate Unit will be closed down, decommissioned or otherwise rendered non-operational ("**Closed**") by the end of the Capacity Year to which the Capacity Auction relates; or
- (b) the Regulatory Authorities determine that it is not necessary for the Candidate Unit to be the subject of an Application for Qualification for a Capacity Auction because the Candidate Unit:
 - (i) will be undertaking a Planned Outage that results in it not being available for more than 12 months; or
 - (ii) will be mothballed,

during the Capacity Year to which the Capacity Auction relates.

E.3.1.2 A Participant may apply to the Regulatory Authorities for a determination for the purposes of paragraph E.3.1.1(b). A Participant seeking approval under this paragraph shall provide supporting evidence.

- E.3.1.3 A Participant shall not submit an Opt-out Notification in respect of a Candidate Unit for which an Application for Qualification is voluntary as described in paragraph E.2.1.2.
- E.3.1.4 An Opt-out Notification shall set out:
- (a) the identity of the Participant;
 - (b) the identity of the Candidate Unit to which the Opt-out Notification relates;
 - (c) the start date of the Capacity Year to which the Opt-out Notification relates;
 - (d) a statement that the Candidate Unit has not previously been allocated Awarded Capacity in respect of the Capacity Year to which the Opt-out Notification relates;
 - (e) if applicable, confirmation that the Candidate Unit will be Closed by the end of the Capacity Year to which the Opt-out Notification relates, and, where required by the System Operators, evidence of any Regulatory Authority or Grid Code notification of the Closure;
 - (f) if applicable, a copy of the determination of the Regulatory Authorities under paragraph E.3.1.1(b); and
 - (g) a certificate signed on behalf of the Participant by a director or officer of the Participant that, having made due and careful enquiry and to the best of their knowledge, information and belief:
 - (i) all information in the Opt-out Notification and any other information provided to the Regulatory Authorities and the System Operators in relation to it is true and correct; and
 - (ii) the Opt-out Notification is not for the purposes of, or connected with, Market Manipulation by the Participant or any of its Associates.
- E.3.1.5 The System Operators shall reject an Opt-out Notification if:
- (a) it is incomplete or is submitted after the Opt-out Notification Date specified in the applicable Capacity Auction Timetable; or
 - (b) the notification relates to a Dispatchable Generator Unit with a Registered Capacity (or in the case of a Demand Side Unit, a DSU MW Capacity) above the De Minimis Threshold, or an existing Interconnector, and:
 - (i) the Opt-out Notification indicates that the Generator Unit or Interconnector will remain operational during the Capacity Year to which the Capacity Auction relates;
 - (ii) where the Opt-Out Notification has been submitted on the basis that the Generator Unit or Interconnector will Close, no notification of such Closure has been provided to the relevant System Operator as required under the applicable Grid Code; or
 - (iii) where the Opt-Out Notification has been submitted on the basis that the Regulatory Authorities have made a determination under paragraph E.3.1.1(b), a copy of the determination has not been provided.
- E.3.1.6 An Opt-Out Notification shall apply to the Qualification Process only for a specific Capacity Auction and does not:
- (a) limit the ability of the relevant Participant; or

- (b) remove the obligation of the relevant Participant, to apply for the relevant Generator Unit or Interconnector to be Qualified to participate in other Capacity Auctions for the same or other Capacity Years.
- E.3.1.7 The Participant shall keep a copy of any information included in, or supporting, or relevant to the preparation of, an Opt-Out Notification for a period of three years from the Qualification Application Date.

E.4 APPLICATION FOR QUALIFICATION

- E.4.1.1 Where a Participant is required to or may apply for a Candidate Unit to be Qualified to participate in a Capacity Auction under paragraph E.2.1.1 or E.2.1.2 (as applicable), it shall make the application by submitting to the System Operators an Application for Qualification for that Candidate Unit (or a combination of units including that Candidate Unit) before the Qualification Application Date specified in the applicable Capacity Auction Timetable.
- E.4.1.2 Subject to paragraph E.4.1.3, an Application for Qualification shall contain the Qualification Data and be submitted in the format specified by the System Operators.
- E.4.1.3 Where a Participant has previously submitted an Application for Qualification in respect of a Candidate Unit (whether in respect of the same or another Capacity Year):
 - (a) the Participant shall review the Qualification Data previously submitted and shall update it as appropriate in the new Application for Qualification; and
 - (b) the System Operators are entitled to use and rely on any item of Qualification Data previously submitted which has not been updated in the new Application for Qualification.
- E.4.1.4 Unless a valid Opt-out Notification is received by the System Operators, a Participant must ensure that Qualification Data is complete and current in respect of each of its Candidate Units which it is seeking to be Qualified as at the Qualification Application Date specified in the Capacity Auction Timetable.
- E.4.1.5 Upon receiving an Application for Qualification in relation to a proposed Capacity Market Unit which does not already have a Capacity Market Unit Identifier, the System Operators shall assign a Capacity Market Unit Identifier to the proposed Capacity Market Unit and shall notify the Participant submitting the Application for Qualification of the assigned Capacity Market Unit Identifier.
- E.4.1.6 A Participant who submits an Application for Qualification must retain all information included in, or supporting, or relevant to the preparation of, an Application for Qualification for a period of six years after the later of:
 - (a) the Qualification Application Date; and
 - (b) if Awarded Capacity is allocated in respect of the Capacity Market Unit that is the subject of the Application for Qualification, the date on which its obligations under this Code in respect of that Awarded Capacity have ended.
- E.4.1.7 An Application for Qualification (whether or not the relevant Candidate Units is Qualified) does not create any obligation or liability on the part of the System Operators or the Market Operator to accept any Capacity Market Offer, allocate any Awarded Capacity, make any payment or pay any compensation to the Participant.

E.5 EXCEPTION APPLICATIONS

E.5.1.1 A Participant seeking the approval of the Regulatory Authorities:

- (a) to bid for New Capacity with a duration of more than one and up to 10 years; or
- (b) for a Unit Specific Price Cap,

shall apply to the Regulatory Authorities for such approval prior to the Exception Application Date specified in the Capacity Auction Timetable.

E.5.1.2 A Participant seeking approval to bid for New Capacity with a duration of more than one and up to 10 years shall provide the following information in its application to the Regulatory Authorities:

- (a) identification of the capacity for which recovery is being sought including the Candidate Unit(s) and the Connection Point;
- (b) details of the proposed New Capacity, including the expected Registered Capacity (or in the case of a Demand Side Unit, the DSU MW Capacity), the type of unit and, as applicable, the demand-side, generation or transmission technology to be employed;
- (c) details of the total forecast investment cost of each Candidate Unit, and evidence:
 - (i) of the costs comprising that forecast; and
 - (ii) that the investment is directly attributable to bringing into operation all or part of the equipment that is essential to the delivery of capacity by the Candidate Unit; and
- (d) evidence of the level by which the capacity of each Candidate Unit will be increased.

E.5.1.3 A Participant seeking a Unit Specific Price Cap in respect of Existing Capacity shall provide the following information in its application to the Regulatory Authorities:

- (a) details of the Candidate Unit and the capacity for which the Unit Specific Price Cap is being sought;
- (b) the following evidence:
 - (i) except where sub-paragraph (ii) or (iii) applies, evidence that the Net Going Forward Costs of the Existing Capacity will be higher than the Existing Capacity Price Cap;
 - (ii) in the case of a Candidate Unit to which paragraph C.3.6.1 applies, and for which operation using the fuel which gives its maximum Registered Capacity is not its normal operating mode, evidence of the costs of switching fuel to provide its highest Registered Capacity on any fuel; or
 - (iii) in the case of a Candidate Unit which is an Autoproducer, evidence of the costs of reducing the underlying consumption (ie turning off non-electricity generating processes, eg alumina processing); and
- (c) the Unit Specific Price Cap that the Participant is seeking, which shall be more than the Existing Capacity Price Cap and less than or equal to the Auction Price Cap.

E.5.1.4 For the purposes of this section:

- (a) a proposed threshold or price cap in an application to the Regulatory Authorities shall be specified in the currency of the Currency Zone in which the Candidate Unit is located; and
- (b) the applicable exchange rate shall be the indicative Annual Capacity Payment Exchange Rate specified in the most recent Capacity Auction Information Pack for the Capacity Year, or such other value as may be specified by the Regulatory Authorities for these purposes.

E.6 PROCESSING OF APPLICATIONS FOR QUALIFICATION

E.6.1 Assessment of Applications for Qualification

E.6.1.1 The System Operators shall assess Applications for Qualification to determine:

- (a) whether a Candidate Unit is Qualified to be, or in the case of a Generator Unit be part of, a Capacity Market Unit;
- (b) if the Capacity Market Unit comprises more than one Generator Unit, which Generator Units it comprises;
- (c) for each Candidate Unit that is Qualified, its Gross De-Rated Capacity (Existing), its Gross De-Rated Capacity (New) and its Gross De-Rated Capacity (Total); and
- (d) for each Capacity Market Unit, the following Qualification Results:
 - (i) the Gross De-Rated Capacity (Existing), the Gross De-Rated Capacity (New) and the Gross De-Rated Capacity (Total);
 - (ii) the Net De-Rated Capacity (Existing) and Net De-Rated Capacity (New) that is Qualified to participate in the Capacity Auction;
 - (iii) the Firm Offer Requirement;
 - (iv) the applicable Offer Price Cap for each of the Existing Capacity and the New Capacity; and
 - (v) the applicable Maximum Capacity Duration for each of the Existing Capacity and the New Capacity.

E.6.1.2 The System Operators shall conduct their assessments based on information provided in Applications for Qualification except to the extent that this Code allows them to use other information.

E.7 REQUIREMENTS FOR QUALIFICATION

E.7.1 General

E.7.1.1 The System Operators shall accept an Application for Qualification and determine that the relevant Candidate Unit is Qualified to be a Capacity Market Unit, or part of a Capacity Market Unit, under section E.6, except in the circumstances set out in section E.7.

E.7.1.2 In applying the following provisions of this section E.7, the System Operators shall act reasonably and exercise the judgement reasonably expected of a Prudent Industry Operator performing a similar role in similar circumstances.

E.7.2 Administrative Considerations

E.7.2.1 The System Operators may reject an Application for Qualification for a Capacity Year in respect of a Candidate Unit or combination of Candidate Units where:

- (a) the Application for Qualification was submitted after the Qualification Application Date specified in the applicable Capacity Auction Timetable;
- (b) they consider that the information contained in the Application for Qualification is materially deficient or incorrect;
- (c) they consider that the Participant is in Default under this Code or is in Default under the Trading and Settlement Code (and in the case of the latter, the term "Default" is given the meaning given in the Trading and Settlement Code);
- (d) the Generator Unit or Interconnector comprising each Candidate Unit is registered under the Trading and Settlement Code to a Participant other than the one submitting the Application for Qualification;
- (e) they consider the delivery of a part or all of any New Capacity proposed in the Application for Qualification is not feasible (either technically or in the time frame); or
- (f) in respect only of the next Capacity Year to begin, the Application for Qualification relates to New Capacity to be supplied from a Capacity Market Unit which has had Awarded New Capacity for that Capacity Year terminated under paragraph J.6.1.6 based on progress reported in a T-1 Implementation Progress Report.

E.7.3 Trading and Settlement Code Requirements

E.7.3.1 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of a Candidate Unit or a combination of Candidate Units unless:

- (a) the relevant Participant satisfies, or demonstrates to the reasonable satisfaction of the System Operators that it will be in a position to satisfy, all applicable requirements to participate in the Balancing Market under the Trading and Settlement Code in respect of the Candidate Unit or each Candidate Unit (as applicable); and
- (b) the Generator Unit or Interconnector comprising each Candidate Unit is, or is intended to be, connected to a Transmission System or a Distribution System in a Jurisdiction.

E.7.4 Requirements for Aggregated Generator Units

E.7.4.1 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of Existing Capacity for an Aggregated Generator Unit unless the relevant Participant has provided evidence that it is able to control and deliver the output of each Generator comprising the Aggregated Generator Unit during that Capacity Year (for example by submitting a copy of a power purchase agreement relating to that Generator).

E.7.5 Requirements for New Capacity

E.7.5.1 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of New Capacity for a Generator Unit or Interconnector comprising a Candidate Unit unless they consider that:

- (a) where New Capacity is under development, the information provided reflects an accurate view of the state of that development;
- (b) the Implementation Plan dates are achievable;

- (c) Substantial Completion of the Generator Unit or Interconnector can be achieved prior to the start of the relevant Capacity Year; and
 - (d) all required evidence is provided and accurate.
- E.7.5.2 Where an Application for Qualification for a Capacity Year is in respect of New Capacity that has already been allocated Awarded Capacity in a prior Capacity Auction and that Awarded Capacity has not been terminated under section J.6, the System Operators:
 - (a) shall not reject the Application for Qualification under paragraph E.7.5.1 in respect of the Awarded New Capacity (including that part of the Initial Capacity which gives rise to it given the applicable De-Rating Factor); though
 - (b) may reject the Application for Qualification in respect of any additional de-rated capacity beyond that Awarded New Capacity.
- E.7.5.3 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of New Capacity for a Candidate Unit or a combination of Candidate Units if the Participant is seeking to bid for a duration of more than one year but has not provided evidence that the Regulatory Authorities have approved the Participant's application to do so.
- E.7.6 **Unit Specific Price Cap**
- E.7.6.1 If a Participant is seeking a Unit Specific Price Cap in respect of Existing Capacity for a Candidate Unit, but has not provided evidence that the Regulatory Authorities have approved the Unit Specific Price Cap in the Application for Qualification, the System Operators shall apply the Existing Capacity Price Cap for that Existing Capacity.
- E.7.7 **Requirements for Combining Candidate Units into a Capacity Market Unit**
- E.7.7.1 The System Operators shall reject an Application for Qualification for a Capacity Year for a proposed Capacity Market Unit comprising a combination of individual Candidate Units unless:
 - (a) each of the Candidate Units is a Generator Unit or a proposed Generator Unit;
 - (b) all the Candidate Units are registered or provisionally registered to the same Participant;
 - (c) all the Candidate Units are separately registered under the Trading and Settlement Code, or in the case of New Capacity, are intended to be separately registered under the Trading and Settlement Code;
 - (d) all the Candidate Units are in the same Currency Zone;
 - (e) the Regulatory Authorities have not approved a Unit Specific Price Cap for any of the Candidate Units in respect of the Capacity Auction;
 - (f) none of the Candidate Units are proposed to be included in any other proposed Capacity Market Unit for which an Application for Qualification in respect of the same Capacity Auction has been made;
 - (g) none of the Candidate Units are Capacity Market Units in their own right, or part of another Capacity Market Unit, allocated Awarded Capacity for the Capacity Year in a prior Capacity Auction;

- (h) the Capacity Market Unit includes all of the individual Candidate Units that it included in any prior Capacity Auction in which it has already been allocated Awarded Capacity for the Capacity Year (though it may include additional Candidate Units);
- (i) each of the Candidate Units is either:
 - (i) a unit with a Registered Capacity (or in the case of a Demand Side Unit, a DSU MW Capacity), whether based on Existing Capacity or a combined Existing and New Capacity, below the De Minimis Threshold; or
 - (ii) a Variable Generator Unit;
- (j) if any of the Candidate Units proposed to be aggregated into the Capacity Market Unit is a Demand Side Unit, then all the Candidate Units proposed to be aggregated are Demand Side Units;
- (k) if any of the Candidate Units proposed to be aggregated into the Capacity Market Unit is intended to provide New Capacity, then the same Maximum Capacity Duration applies to all of the Candidate Units proposed to be aggregated; and
- (l) none of the Candidate Units are Autoproducer Units.

E.7.7.2 Where:

- (a) a proposed Capacity Market Unit comprises an aggregation of individual Candidate Units; and
- (b) one or more of the Candidate Units does not satisfy the requirements set out in paragraph E.7.7.1, but others do,

then the System Operators shall continue to follow the Qualification Process in relation to a proposed Capacity Market Unit comprising the Candidate Unit or Candidate Units that do satisfy those requirements.

E.7.8 The Alternative Qualification Process

E.7.8.1 Where:

- (a) a Participant is required to apply for a Candidate Unit to be Qualified to participate in a Capacity Auction under section E.2;
- (b) the Participant has not submitted an Opt-out Notification in relation to the Candidate Unit for the relevant Capacity Year, or has submitted an Opt-out Notification in relation to the Candidate Unit and it has been rejected under paragraph E.3.1.5;
- (c) the Participant either fails to submit an Application for Qualification in relation to the Candidate Unit for the relevant Capacity Year or its Application for Qualification is rejected due to deficient or incorrect information; and
- (d) the System Operators are not aware of any reason why the Candidate Unit should not be Qualified,

the System Operators shall determine Qualification Decisions for that Candidate Unit in accordance with paragraph E.7.8.2.

E.7.8.2 Where the System Operators are required to determine Qualification Decisions for a Candidate Unit using the Alternative Qualification Process, they shall do so by applying the following principles:

- (a) the System Operators shall identify the Technology Class of the Candidate Unit;
- (b) the Candidate Unit shall be a Capacity Market Unit and the System Operators shall not aggregate the Candidate Unit with other units;
- (c) the System Operators shall only Qualify the Capacity Market Unit in respect of its:
 - (i) Existing Capacity; and
 - (ii) New Capacity to the extent that it is Awarded New Capacity in a prior Capacity Auction;
- (d) in determining the Gross De-Rated Capacity (Existing) of the Capacity Market Unit, the System Operators shall use the methodology set out in sections E.8.2 and E.8.3 except that in substitution for the value(s) of Gross De-Rated Capacity (Existing) nominated in the Application for Qualification they shall use:
 - (i) in the case of Generator Units that are Variable Generator Units, zero MW; and
 - (ii) in all other cases the product of:
 - (A) the applicable Initial Capacity (Existing) as determined under section E.8.1; and
 - (B) the De-Rating Factor applicable to that Initial Capacity (Existing) (without applying any tolerance);
- (e) in determining the Gross De-Rated Capacity (New) of the Capacity Market Unit, the System Operators shall use the methodology set out in sections E.8.2 and E.8.3 except that in substitution for the value(s) of the Gross De-Rated Capacity (Existing) nominated in the Application for Qualification they shall use the value determined under paragraph (d) and in substitution for the value of Gross De-Rated Capacity (New) nominated in the Application for Qualification they shall use:
 - (i) in the case of Generator Units that are Variable Generator Units, zero MW; and
 - (ii) in all other cases the product of:
 - (A) the applicable Initial Capacity (Total) as determined under section E.8.1; and
 - (B) the De-Rating Factor applicable to that Initial Capacity (Total) (without applying any tolerance),
 less the Gross De-Rated Capacity (Existing) determined under (d).
- (f) the Maximum Capacity Duration shall be 1 year;
- (g) the Offer Price Cap to apply for Existing Capacity shall be the Existing Capacity Price Cap; and
- (h) in determining the Firm Offer Requirement, the System Operators shall use the methodology set out in section E.8.4 except that they shall use their own assessment of the unit's Firm Network Access Capacity.

E.8 QUALIFICATION CALCULATIONS

E.8.1 Determination of Initial Capacity

E.8.1.1 Subject to paragraph E.8.1.2, the System Operators shall determine that, the value of the Initial Capacity (Existing) and the value of the Initial Capacity (Total) for a Generator Unit or Interconnector (or a Generator contributing to an Aggregated Generator Unit) shall be the corresponding value submitted in the relevant Application for Qualification with respect to that Generator Unit or Interconnector (or Generator contributing to an Aggregated Generator Unit).

E.8.1.2 If the System Operators:

- (a) consider that a value determined under paragraph E.8.1.1 is inconsistent with the applicable Connection Agreement(s) or Connection Offer(s);
- (b) consider that a value determined under paragraph E.8.1.1 in respect of Existing Capacity is inconsistent with the Registered Capacity, DSU MW Capacity or Effective Import Capacity of the relevant Generator Unit or Interconnector (or Generator contributing to an Aggregated Generator Unit) (as applicable); or
- (c) are applying the Alternative Qualification Process,
then:
- (d) the System Operators shall determine the value of the Initial Capacity (Existing) and the Initial Capacity (Total) for the relevant Generator Unit or Interconnector (or a Generator contributing to an Aggregated Generator Unit) using the approach set out in section C.3 (as applicable) (but as modified in accordance with section C.3.5); and
- (e) the values so determined shall be used for the purposes of all calculations under this Code.

E.8.1.3 If the System Operators consider that the Technology Class specified for a Candidate Unit or Generator in an Application for Qualification is not appropriate, then they shall use the correct Technology Class when making the determinations under the following sections.

E.8.2 Determination of Gross De-Rated Capacity of Generator Units and Interconnectors

E.8.2.1 The Gross De-Rated Capacity (Existing) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is not a Variable Unit shall be determined in accordance with the following formula:

$$\text{GDRCE} = \text{MIN}[\text{DRFE} \times \text{ICE} \times (1 + \text{INCTOL}), \text{MAX}[\text{DRFE} \times \text{ICE} \times (1 - \text{DECTOL}), \text{NDRVE}]]$$

E.8.2.2 The Gross De-Rated Capacity (Existing) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is a Variable Unit shall be determined in accordance with the following formula:

$$\text{GDRCE} = \text{MIN}[\text{DRFE} \times \text{ICE} \times (1 + \text{INCTOL}), \text{NDRVE}]$$

E.8.2.3 For the purposes of paragraphs E.8.2.1 and E.8.2.2:

- (a) GRDCE is Gross De-Rated Capacity (Existing);
- (b) MIN[X,Y] is the lesser of the values X and Y;
- (c) MAX[X,Y] is the greater of the values X and Y;

- (d) DRFE is the De-Rating Factor applicable to the Technology Class and Initial Capacity (Existing) of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack;
 - (e) ICE is the Initial Capacity (Existing) of the Generator Unit or Interconnector;
 - (f) INCTOL is the percentage Increase Tolerance applicable to the Technology Class of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack;
 - (g) DECTOL is the percentage Decrease Tolerance applicable to the Technology Class of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack; and
 - (h) NDRVE is the Gross De-Rated Capacity (Existing) nominated in the Application for Qualification in respect of Existing Capacity, or such substitute value as the System Operators determine under the Alternative Qualification Process.
- E.8.2.4 The Gross De-Rated Capacity (New) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is not a Variable Unit shall be determined in accordance with the following formula:
- $$\text{GDRCN} = \text{MAX}[0, \text{MIN}[\text{DRFT} \times \text{ICT} \times (1 + \text{IncTol}), \text{MAX}[\text{DRFT} \times \text{ICT} \times (1 - \text{DECTOL}), \text{NDRVE} + \text{NDRVN}]] - \text{GDRCE}]$$
- E.8.2.5 The Gross De-Rated Capacity (New) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is a Variable Unit shall be determined in accordance with the following formula:
- $$\text{GDRCN} = \text{MAX}[0, \text{MIN}[\text{DRFT} \times \text{ICT} \times (1 + \text{INCTOL}), \text{NDRVE} + \text{NDRVN}]] - \text{GDRCE}]$$
- E.8.2.6 For the purposes of paragraphs E.8.2.4 and E.8.2.5:
- (a) GRDCN is Gross De-Rated Capacity (New);
 - (b) GRDCE is Gross De-Rated Capacity (Existing);
 - (c) MIN[X,Y] is the lesser of the values X and Y;
 - (d) MAX[X,Y] is the greater of the values X and Y;
 - (e) DRFT is the De-Rating Factor applicable to the Technology Class and Initial Capacity (Total) of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack;
 - (f) ICT is the Initial Capacity (Total) of the Generator Unit or Interconnector;
 - (g) INCTOL is the percentage Increase Tolerance applicable to the Technology Class of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack;
 - (h) DECTOL is the percentage Decrease Tolerance applicable to the Technology Class of the Generator Unit or Interconnector as specified in the relevant Capacity Auction Information Pack;
 - (i) NDRVE is the Gross De-Rated Capacity (Existing) nominated in the Application for Qualification in respect of Existing Capacity, or such substitute value as the System Operators determine under the Alternative Qualification Process; and
 - (j) NDRVN is the Gross De-Rated Capacity (New) nominated in the Application for Qualification in respect of New Capacity or such substitute

value as the System Operators determine under the Alternative Qualification Process.

E.8.2.7 The Gross De-Rated Capacity (Existing) of an Aggregated Generator Unit is determined in accordance with the following formula:

$$\begin{aligned} \text{GDRCE} = & \sum_{i \neq \text{VU}} \text{MIN}[(\text{DRFE}_i \times \text{ICE}_i \times (1 + \text{INCTOL}_i), \text{MAX}[\text{DRFE}_i \times \text{ICE}_i \times (1 - \text{DECTOL}_i), \\ & \text{NDRVE}_i] \\ & + \sum_{i = \text{VU}} \text{MIN}[(\text{DRFE}_i \times \text{ICE}_i \times (1 + \text{INCTOL}_i), \text{NDRVE}_i] \end{aligned}$$

where:

- (a) GRDCE is Gross De-Rated Capacity (Existing) of the Aggregated Generator Unit;
- (b) $\text{MIN}[X, Y]$ is the lesser of the values X and Y;
- (c) $\text{MAX}[X, Y]$ is the greater of the values X and Y;
- (d) i denotes a Generator contributing to the Aggregated Generator Unit;
- (e) $i = \text{VU}$ denotes those Generators that are Variable Units;
- (f) $i \neq \text{VU}$ denotes those Generators that are not Variable Units;
- (g) DRFE_i is the De-Rating Factor applicable to the Technology Class and Initial Capacity (Existing) of Generator i as specified in the relevant Capacity Auction Information Pack;
- (h) ICE_i is the Initial Capacity (Existing) of Generator i;
- (i) INCTOL_i is the percentage Increase Tolerance applicable to the Technology Class of Generator i as specified in the relevant Capacity Auction Information Pack;
- (j) DECTOL_i is the percentage Decrease Tolerance applicable to the Technology Class of Generator i as specified in the relevant Capacity Auction Information Pack; and
- (k) NDRVE_i is the Gross De-Rated Capacity (Existing) nominated in the Application for Qualification in respect of Existing Capacity, or such substitute value as the System Operators determine under the Alternative Qualification Process, for Generator i.

E.8.2.8 The Gross De-Rated Capacity (New) of an Aggregated Generator Unit is determined in accordance with the following formula:

$$\begin{aligned} \text{GDRCN} = & \text{MAX}[0, \\ & \sum_{i \neq \text{VU}} \text{MIN}[\text{DRFT}_i \times \text{ICT}_i \times (1 + \text{INCTOL}_i), \text{MAX}[\text{DRFT}_i \times \text{ICT}_i \times (1 - \text{DECTOL}_i), \\ & \text{NDRVE}_i + \text{NDRVN}_i] \\ & + \sum_{i = \text{VU}} \text{MIN}[(\text{DRFE}_i \times \text{ICE}_i \times (1 + \text{INCTOL}_i), \text{NDRVE}_i + \text{NDRVN}_i] - \text{GDRCE}] \end{aligned}$$

where:

- (a) GRDCN is Gross De-Rated Capacity (New) of the Aggregated Generator Unit;
- (b) GRDCE is Gross De-Rated Capacity (Existing) of the Aggregated Generator Unit;
- (c) $\text{MIN}[X, Y]$ is the lesser of the values X and Y;
- (d) $\text{MAX}[X, Y]$ is the greater of the values X and Y;

- (e) i denotes a Generator contributing to the Aggregated Generator Unit;
- (f) $i=VU$ denotes those Generators that are Variable Units;
- (g) $i \neq VU$ denotes those Generators that are not Variable Units;
- (h) $DRFT_i$ is the De-Rating Factor applicable to the Technology Class and Initial Capacity (Total) of Generator i as specified in the relevant Capacity Auction Information Pack;
- (i) ICT_i is the Initial Capacity (Total) of Generator i ;
- (j) $INCTOL_i$ is the percentage Increase Tolerance applicable to the Technology Class of Generator i as specified in the relevant Capacity Auction Information Pack;
- (k) $DECTOL_i$ is the percentage Decrease Tolerance applicable to the Technology Class of Generator i as specified in the relevant Capacity Auction Information Pack;
- (l) $NDRVE_i$ is the Gross De-Rated Capacity (Existing) nominated in the Application for Qualification in respect of Existing Capacity, or such substitute value as the System Operators determine under the Alternative Qualification Process, for Generator i ; and
- (m) $NDRVN_i$ is the Gross De-Rated Capacity (New) nominated in the Application for Qualification in respect of New Capacity, or such substitute value as the System Operators determine under the Alternative Qualification Process, for Generator i ;
- (n) $DRFE_i$ is the De-Rating Factor applicable to the Technology Class and Initial Capacity (Existing) of Generator i as specified in the relevant Capacity Auction Information Pack; and
- (o) ICE_i is the Initial Capacity (Existing) of Generator i .

E.8.3 Determination of Gross De-Rated Capacity and Net-De-Rated Capacity of Capacity Market Units

E.8.3.1 Subject to paragraph E.8.3.2, for each Capacity Market Unit:

- (a) the Gross De-Rated Capacity (Existing) is the sum of the Gross De-Rated Capacity (Existing) of each Generator Unit or the Interconnector comprising that Capacity Market Unit;
- (b) the Gross De-Rated Capacity (New) is the sum of the Gross De-Rated Capacity (New) of each Generator Unit or the Interconnector comprising that Capacity Market Unit;
- (c) the Gross De-Rated Capacity (Total) is the sum of the Gross De-Rated Capacity (Existing) and Gross De-Rated Capacity (New);
- (d) the Net De-Rated Capacity (Existing) that is Qualified to participate in the Capacity Auction is the greater of zero and the Gross De-Rated Capacity (Existing) less Awarded Capacity from prior Capacity Auctions in respect of Existing Capacity; and
- (e) the Net De-Rated Capacity (New) that is Qualified to participate in the Capacity Auction is the greater of zero and the Gross De-Rated Capacity (New) less Awarded Capacity from prior Capacity Auctions in respect of New Capacity.

E.8.3.2 If a Capacity Market Unit [already] has Awarded Capacity for a Capacity Year when Qualifying for a Capacity Auction for that Capacity Year, then its Gross De-Rated Capacity (Existing) shall be the greater of the value determined under paragraph E.8.3.1(a) and the volume of Awarded Capacity while its Gross De-Rated Capacity (Total) is to be the greater of the value determined under paragraph E.8.3.1(c) and the volume of Awarded Capacity.

E.8.4 Firm Offer Requirement

E.8.4.1 For each Capacity Market Unit, the System Operators shall determine the Firm Offer Requirement as the lesser of:

- (a) the sum of the Capacity Market Unit's Net De-Rated Capacity (Existing) and Net De-Rated Capacity (New) Qualified to participate in the Capacity Auction; and
- (b) the greater of zero and the Capacity Market Unit's De-Rated Firm Network Access Capacity determined in accordance with paragraph E.8.4.2 less the quantity of Awarded Capacity for that Capacity Market Unit for the Capacity Year allocated in previous Capacity Auctions.

E.8.4.2 For each Capacity Market Unit, the De-Rated Firm Network Access Capacity shall be:

- (a) in the case of an Aggregated Generator Unit, the sum, for all of the Generators that form part of that Aggregated Generator Unit, of the Firm Network Access Capacity of the Generator multiplied by the De-Rating Factor applicable to a unit of the Technology Class of that Generator with an Initial Capacity equal to the Firm Network Access Capacity of that Generator; and
- (b) in all other cases, the Firm Network Access Capacity of the Generator Unit or Interconnector multiplied by the De-Rating Factor applicable to a unit of the Technology Class of that Generator Unit or Interconnector and with an Initial Capacity equal to the Firm Network Access Capacity of that Generator Unit or Interconnector.

E.8.5 Maximum Capacity Duration

E.8.5.1 Subject to paragraph E.8.5.2, New Capacity which is Qualified as satisfying the New Capacity Investment Rate Threshold shall have a Maximum Capacity Duration of 10 Capacity Years.

E.8.5.2 Where Awarded New Capacity has been allocated in respect of a Capacity Market Unit in a Capacity Auction, and the relevant Participant offers that New Capacity into a subsequent Capacity Auction, the Maximum Capacity Duration for the New Capacity resulting from the subsequent Capacity Auction shall be only one Capacity Year.

E.8.5.3 For all other Qualified capacity, the Maximum Capacity Duration shall be one Capacity Year.

E.8.6 Offer Price Cap

E.8.6.1 The Offer Price Cap in respect of:

- (a) New Capacity, shall be the Auction Price Cap; and
- (b) Existing Capacity, shall be either:

- (i) if the Participant has provided evidence of the approval by the Regulatory Authorities of an application for a Unit Specific Price Cap made under paragraph E.5.1.3, the approved Unit Specific Price Cap; or
- (ii) otherwise, the Existing Capacity Price Cap.

E.8.7 Capacity Market Unit Capacity and De-Rating

E.8.7.1 Where a Generator Unit (other than an Aggregated Generator Unit) or Interconnector is Qualified as a Capacity Market Unit in its own right, then:

- (a) the Capacity Market Unit shall have the same Initial Capacity (Existing) and Initial Capacity (Total) as the Generator Unit or Interconnector;
- (b) the Gross De-Rating Factor for the Existing Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Existing) to its Initial Capacity (Existing); and
- (c) the Gross De-Rating Factor for the sum of the Existing Capacity and the New Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Total) to its Initial Capacity (Total).

E.8.7.2 Where an Aggregated Generator Unit is Qualified as a Capacity Market Unit in its own right, then:

- (a) the Initial Capacity (Existing) of the Aggregated Generator Unit shall equal the sum of the Initial Capacity (Existing) of each of the Generators that comprise it;
- (b) the Initial Capacity (Total) of the Aggregated Generator Unit shall equal the sum of the Initial Capacity (Total) of each of the Generators that comprise it;
- (c) the Capacity Market Unit has the same Initial Capacity (Existing) and Initial Capacity (Total) as the Aggregated Generator Unit;
- (d) the Gross De-Rating Factor for the Existing Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Existing) to its Initial Capacity (Existing); and
- (e) the Gross De-Rating Factor for the sum of the Existing Capacity and the New Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Total) to its Initial Capacity (Total).

E.8.7.3 Where a number of Generator Units comprise one Capacity Market Unit:

- (a) the Initial Capacity (Existing) of the Capacity Market Unit shall equal the sum of the Initial Capacity (Existing) of the Generator Units that comprise it;
- (b) the Initial Capacity (Total) of the Capacity Market Unit shall equal the sum of the Initial Capacity (Total) of the Generator Units that comprise it;
- (c) the Gross De-Rating Factor for the Existing Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Existing) to its Initial Capacity (Existing); and
- (d) the Gross De-Rating Factor for the sum of the Existing Capacity and the New Capacity of the Capacity Market Unit shall be the ratio of its Gross De-Rated Capacity (Total) to its Initial Capacity (Total).

- E.8.7.4 In the event that Awarded New Capacity is partially terminated under paragraph J.6, then the values determined under the preceding provisions of this section E.8.7 shall be recalculated accordingly.

E.9 NOTIFICATION OF QUALIFICATION DECISIONS

E.9.1 Qualification Decisions

E.9.1.1 The following are “**Qualification Decisions**” in respect of a Capacity Market Unit:

- (a) the identity of the Capacity Market Unit;
- (b) whether or not the Capacity Market Unit is Clean;
- (c) the Firm Offer Requirement (as applicable);
- (d) the Local Capacity Constraints (if any) which the Capacity Market Unit is expected to contribute to satisfying;
- (e) whether the Capacity Market Unit provides Existing Capacity that the Capacity Market Unit and, if so:
 - (i) the Initial Capacity (Existing);
 - (ii) the Gross De-Rated Capacity (Existing);
 - (iii) the Net De-Rated Capacity (Existing) that is Qualified to participate in the Capacity Auction;
 - (iv) the applicable Offer Price Cap;
 - (v) the applicable Maximum Capacity Duration; and
 - (vi) the Awarded Capacity for the Capacity Year for that Capacity Market Unit allocated as a result of prior Capacity Auctions;
- (f) whether the Capacity Market Unit provides New Capacity and, if so:
 - (i) the Initial Capacity (New);
 - (ii) the Gross De-Rated Capacity (New);
 - (iii) the Net De-Rated Capacity (New) that is Qualified to participate in the Capacity Auction;
 - (iv) the applicable Offer Price Cap;
 - (v) the applicable Maximum Capacity Duration; and
 - (vi) the Awarded Capacity for the Capacity Year for that Capacity Market Unit allocated as a result of prior Capacity Auctions;
- (g) in respect of each Candidate Unit proposed for inclusion in the Capacity Market Unit:
 - (i) the identity of the Generator Unit or Interconnector;
 - (ii) whether the Generator Unit or Interconnector is Qualified;
 - (iii) the Firm Network Access Capacity;
 - (iv) whether the Alternative Qualification Process was applied;
 - (v) in respect of Existing Capacity (and as applicable):
 - (A) the Initial Capacity (Existing) determined by the System Operators; and

- (B) the Gross De-Rated Capacity (Existing) determined by the System Operators; and
- (vi) in respect of New Capacity (and as applicable):
 - (A) the Initial Capacity (New) determined by the System Operators; and
 - (B) the Gross De-Rated Capacity (New) determined by the System Operators;
- (h) where the System Operators have used a different Technology Class to that specified for a Candidate Unit or Generator in an Application for Qualification when making the determinations in accordance with paragraph E.8.1.3, details of which Technology Class they have used and the reason or reasons for making that determination; and
- (i) where the Alternative Qualification Process was applied, the reason or reasons why.

E.9.2 Provisional Qualification Decisions

- E.9.2.1 The System Operators shall submit to the Regulatory Authorities for approval the System Operator's Provisional Qualification Decisions in relation to the Qualification Process in respect of a Capacity Auction, being:
- (a) in the case of each Capacity Market Unit proposed to be Qualified in the Qualification Process, the provisional Qualification Decisions; and
 - (b) in the case of each Application for Qualification that is not accepted in the Qualification Process, the requirements under section E.7 that the Application for Qualification failed to satisfy.
- E.9.2.2 The System Operators shall use reasonable endeavours to submit the Provisional Qualification Decisions in accordance with paragraph E.9.2.1 on or before the Provisional Qualification Submission Date specified in the applicable Capacity Auction Timetable.
- E.9.2.3 The Regulatory Authorities may approve or reject one or more Provisional Qualification Decisions submitted by the System Operators under paragraph E.9.2.1 by written notice to the System Operators (giving reasons in the case of rejection).
- E.9.2.4 If the Regulatory Authorities reject a Provisional Qualification Decision submitted by the System Operators under paragraph E.9.2.1, then they may by written notice to the System Operators determine an alternative decision in substitution for that of the System Operators.
- E.9.2.5 If the Regulatory Authorities do not notify the System Operators that they reject a Provisional Qualification Decision within five Working Days after the System Operators have submitted that decision under paragraph E.9.2.1, then they will be taken to have approved the decision submitted by the System Operators.
- E.9.2.6 The System Operators shall notify a Participant of the approved Provisional Qualification Decisions in respect of each Application for Qualification submitted by that Participant.
- E.9.2.7 The System Operators shall use reasonable endeavours to give a notification under paragraph E.9.2.6 by the later of the Provisional Qualification Results Date specified in the applicable Capacity Auction Timetable and a date being two Working Days after the Regulatory Authorities have approved the Provisional

- Qualification Decisions (or are taken to have approved pursuant to paragraph E.9.2.5).
- E.9.2.8 The System Operators shall include in the notification under paragraph E.9.2.6 the Provisional Qualification Decisions in respect of the Capacity Market Unit.
- E.9.3 Final Qualification Decisions**
- E.9.3.1 Where there is any material difference between the Provisional Qualification Decisions approved (or taken to have been approved) by the Regulatory Authorities in accordance with section E.9.2, and the Final Qualification Decisions, in relation to a Qualification Process in respect of a Capacity Auction, the System Operators shall submit the Final Qualification Decisions to the Regulatory Authorities for approval.
- E.9.3.2 The System Operators shall use reasonable endeavours to submit the Final Qualification Decisions in accordance with paragraph E.9.3.1 on or before the Final Qualification Submission Date specified in the applicable Capacity Auction Timetable.
- E.9.3.3 If a reconsideration of a Reviewable Decision under paragraph E.10, or a Dispute under section B.14, relates to or affects one or more of the System Operators' Provisional Qualification Decisions in relation to a Qualification Process, and the outcome of the reconsideration or the Dispute is known by the Final Qualification Submission Date, then the System Operators shall reflect that outcome in its Final Qualification Decisions in relation to that Qualification Process.
- E.9.3.4 The Regulatory Authorities may approve or reject one or more Final Qualification Decisions submitted by the System Operators under paragraph E.9.3.1 by written notice to the System Operators (giving reasons in the case of rejection).
- E.9.3.5 If the Regulatory Authorities reject a Final Qualification Decision submitted by the System Operators under paragraph E.9.3.1, then the Regulatory Authorities may by written notice to the System Operators determine an alternative decision in substitution for that of the System Operators.
- E.9.3.6 If the Regulatory Authorities do not notify the System Operators that they reject a Final Qualification Decision within five Working Days after the System Operators have submitted that decision under paragraph E.9.3.1, then they will be taken to have approved the decision submitted by the System Operators.
- E.9.3.7 The System Operators must notify a Participant of the approved Final Qualification Decisions in respect of each Application for Qualification submitted by that Participant.
- E.9.3.8 The System Operators shall use reasonable endeavours to give a notification under paragraph E.9.3.7 by the Final Qualification Results Date specified in the applicable Capacity Auction Timetable (or, if the Final Qualification Decisions have been submitted to the Regulatory Authorities for approval in accordance with paragraph E.9.3.1, the later of that Final Qualification Results Date and a date being two Working Days after the Regulatory Authorities have approved (or are taken to have been approved pursuant to paragraph E.9.3.6) the Final Qualification Decisions).
- E.9.3.9 The System Operators must include in the notification under paragraph E.9.3.7:
- (a) the final Qualification Decisions in respect of the Capacity Market Unit; and
 - (b) where the decision or information has changed relative to the relevant provisional Qualification Decision, both the preliminary and final decision or value, so as to identify to the Participant what has changed.

E.9.4 **Publication of Qualification Results**

E.9.4.1 The System Operators shall use reasonable endeavours to publish the following information on or before the Qualification Results Publication Date specified in the applicable Capacity Auction Timetable:

(a) for Existing Capacity:

- (i) the total Gross De-Rated Capacity (Total) Qualified for the Capacity Year for each Technology Class and for each unit type;
- (ii) the total Awarded Capacity for the Capacity Year for each Technology Class and for each unit type;
- (iii) the total Net De-Rated Capacity (Existing) Qualified for the Capacity Year for each Technology Class and for each unit type;

(b) for New Capacity:

- (i) the total Gross De-Rated Capacity (Total) Qualified for the Capacity Year for each Technology Class and for each unit type;
- (ii) the total Awarded Capacity for the Capacity Year for each Technology Class and for each unit type; and
- (iii) the total Net De-Rated Capacity (Existing) Qualified for the Capacity Year for each Technology Class and for each unit type.

E.9.4.2 For the purposes of paragraph E.9.4.1, each of the following are a “**unit type**”: Variable Generator Units, Demand Side Units, Interconnectors, Autoproducer Units, Aggregated Generator Units, other Dispatchable Generator Units, other Generator Units which are not Dispatchable.

E.10 **REVIEW OF QUALIFICATION DECISIONS**

E.10.1 **General**

E.10.1.1 This provision relates to both Provisional Qualification Decisions and Final Qualification Decisions.

E.10.2 **Reviewable Decisions**

E.10.2.1 A Participant:

- (a) that has had an Application for Qualification rejected by the System Operators and the System Operators have not determined Qualification Decisions in respect of the relevant Candidate Unit using the Alternative Qualification Process; or
- (b) who disagrees with a Qualification Decision in respect of its Capacity Market Unit, Generator Unit and/ or Interconnector (as applicable), as notified to the Participant by the System Operators under paragraph E.9.2.6 or E.9.3.7 (as applicable),

may request the System Operators to review the rejection or Qualification Decision (“**Reviewable Decision**”) by lodging an Application for Review with the System Operators within three Working Days of being notified of the Reviewable Decision.

E.10.2.2 An Application for Review must contain:

- (a) a concise statement identifying the Reviewable Decision concerned;

- (b) a concise statement of the reasons, explaining how the Participant believes the System Operators have not followed the process under the Code in rejecting the application or making the Qualification Decision; and
 - (c) a copy of any relevant documents which the Participant believes support its position.
- E.10.2.3 The System Operators shall, within two Working Days after receiving an Application for Review which does not comply with paragraph E.10.2.2, give notice to the Participant lodging the Application for Review that the application is rejected as not complying with that paragraph, and give the reasons why.
- E.10.2.4 If the System Operators request further information from a Participant lodging an Application for Review in order to reconsider the Reviewable Decision the subject of the Application for Review, then the Participant shall provide that information within two Working Days of the request.
- E.10.3 Reconsideration of Reviewable Decision**
- E.10.3.1 The System Operators shall reconsider the Reviewable Decision the subject of an Application for Review and shall within five Working Days of receiving the Application for Review inform the Participant lodging the application of the outcome of the reconsideration.
- E.10.3.2 The System Operators must consult with the Regulatory Authorities when reconsidering a Reviewable Decision.
- E.10.3.3 The System Operators shall:
 - (a) include in their response under paragraph E.10.3.1 their reasons for the outcome of the reconsideration;
 - (b) if the outcome of their reconsideration is a change to the Reviewable Decision (whether in whole or in part), update the Qualification Decision by issuing a replacement notification under paragraph E.9.2.6 or E.9.3.7 (as applicable); and
 - (c) make any amendment to the Qualification Capacity Register required by, or as a consequence of, the reconsideration.
- E.10.3.4 If the System Operators reject an Application for Review in whole or in part, then the applicant may dispute the rejection of the Application for Review in accordance with section B.14.1.3(a).
- E.10.3.5 Subject to paragraph E.10.3.4, the reconsidered decision is final and shall be treated as a Final Qualification Decision for future purposes.
- E.10.3.6 Where as a result of a reconsideration or a Dispute, a decision of the System Operators is found to be incorrect or in error:
 - (a) after the relevant Capacity Auction, the results of the Capacity Auction are not invalidated and do not change; and
 - (b) within ten Working Days before the scheduled start of the relevant Capacity Auction, the Capacity Auction will proceed on the basis of the original decision and the results of the Capacity Auction are valid and cannot be overturned.

E.11 EXTENDED QUALIFICATION FOR SECONDARY TRADE

E.11.1 Early Start

E.11.1.1 Where Existing Capacity has been Qualified in respect of a Capacity Year (in this section called the “**Qualified Year**”) in accordance with this Chapter and is commissioned prior to the commencement of the Qualified Year, a Participant may apply to the System Operators for permission to participate in Secondary Trade Auctions in respect of the relevant Capacity Market Unit from a specified date (in this section called the “**Start Date**”) in the prior Capacity Year (in this paragraph called the “**Prior Year**”).

E.11.1.2 If a Participant makes an application under paragraph E.11.1 and:

- (a) the relevant Capacity Market Unit has been Qualified in respect of Existing Capacity for the Qualified Year but has not previously been so Qualified for the Prior Year;
- (b) the Existing Capacity was New Capacity at the time the Capacity Market Unit last Qualified for the Qualified Year; and
- (c) as at the Start Date, the relevant Capacity Market Unit will have been commissioned to a level which would allow it to participate in Secondary Trade Auctions,

then the System Operators shall:

- (d) approve the application;
- (e) determine that the Qualified values with respect to the Capacity Market Unit that apply in the Qualified Year shall also apply in the Prior Year from the Start Date;
- (f) notify the Participant accordingly; and
- (g) publish a notice identifying the Capacity Market Unit and specifying the new Start Date from which it is Qualified.

E.11.2 Extended Duration

E.11.2.1 Where Existing Capacity has been Qualified in respect of a Capacity Year (in this paragraph called the “**Qualified Year**”) in accordance with this Chapter, and the relevant Participant intends to Close the relevant Capacity Market Unit during the following Capacity Year, the Participant may apply to the System Operators for permission to participate in Secondary Trade Auctions in respect of the relevant Capacity Market Unit until a specified date (in this section called the “**Closing Date**”) in the following Capacity Year (in this section called the “**Following Year**”).

E.11.2.2 If a Participant makes an application under paragraph E.11.2.1 and:

- (a) the relevant Capacity Market Unit has been Qualified in respect of the Existing Capacity for the Qualified Year but has not previously been so Qualified for the Following Year; and
- (b) the Participant undertakes in the application not to participate in Secondary Trade Auctions with respect to that Capacity Market Unit after the Closing Date,

then the System Operators shall:

- (c) approve the application;

- (d) determine that the Qualified values for the Capacity Market Unit that apply in the Qualified Year shall continue to apply in the Following Year until the Closing date;
- (e) notify the Participant accordingly; and
- (f) publish a notice identifying the Capacity Market Unit and the Closing Date.

E.11.3 Consequences of Extension

- E.11.3.1 For the purpose of Secondary Trade Auctions, an extension under this section E.11 shall be treated as if the Capacity Market Unit had Qualified for that part of the Prior Year falling on or before the Start Date, or that part of the Following Year falling on or before the Closing Date, as applicable.
- E.11.3.2 Any extension of to the period for which a Capacity Market Unit is Qualified to apply in the Prior Year or Following Year under this section E.11 shall allow participation of that Capacity Market Unit in Secondary Trade Auctions but shall not allow participation in any Capacity Auction.

F. CAPACITY AUCTIONS

F.1 GENERAL

F.1.1 Purpose of Capacity Auction

F.1.1.1 This section describes the operation and conduct of each Capacity Auction for a Capacity Year to be conducted on an Auction Date specified in the Capacity Auction Timetable. The purpose of the Capacity Auction is to:

- (a) procure capacity from Capacity Market Units on a competitive basis;
- (b) allow Participants in the Capacity Auction to specify the price they wish to be paid for Awarded Capacity and to establish the duration of Awarded Capacity;
- (c) limit the Awarded Capacity to the Net De-Rated Capacity of a Capacity Market Unit in respect of each of the Existing Capacity and the New Capacity associated with that Capacity Market Unit;
- (d) limit the duration of Awarded Capacity to the Maximum Capacity Duration in respect of each of the Existing Capacity and the New Capacity associated with a Capacity Market Unit; and
- (e) determine the prices to be paid for Awarded Capacity.

F.1.2 Role of System Operators

F.1.2.1 The System Operators must do all things necessary to operate and administer Capacity Auctions in accordance with this Chapter including:

- (a) providing facilities for the receipt and processing of Capacity Auction Offers;
- (b) validating Capacity Auction Offers;
- (c) providing and managing the Capacity Market Platform for the purpose of conducting Capacity Auctions; and
- (d) determining and publishing Capacity Auction outcomes, including Awarded Capacity and prices.

F.1.2.2 In carrying out their functions and obligations under this Chapter F, the System Operators and Participants shall comply with Agreed Procedure 3 "Qualification and Auction Process".

F.2 CAPACITY AUCTION PARTICIPATION

F.2.1.1 If a Participant's Capacity Market Unit has Qualified for a Capacity Auction, then the Participant:

- (a) shall offer into the Capacity Auction the Net De-Rated Capacity that has been Qualified to participate in the Capacity Auction in respect of Existing Capacity; and
- (b) may offer into the Capacity Auction the Net De-Rated Capacity that has been Qualified to participate in the Capacity Auction in respect of New Capacity,

by submitting appropriate Capacity Auction Offers in accordance with sections F.6 and F.7 in relation to the Capacity Market Unit, provided that the aggregate

quantity offered in relation to the Capacity Market Unit is not less than its Firm Offer Requirement.

F.3 DEMAND CURVE

F.3.1.1 The Regulatory Authorities shall determine the Demand Curve to be employed in a Capacity Auction, and shall provide it to the System Operators.

F.3.1.2 The Demand Curve shall:

- (a) be consistent with the SEM Security Standard applicable to the Capacity Year;
- (b) reflect an economically efficient trade-off between the price of a capacity and value of extra reliability;
- (c) reduce the susceptibility of the Capacity Auction to the abuse of market power (in conjunction with other market power controls);
- (d) limit price volatility due to small variations in market conditions and administrative parameters, including lumpy investment decisions, and demand forecast changes;
- (e) limit the frequency of outcomes at the Auction Price Cap; and
- (f) perform well under a range of market conditions, including changes in administrative parameters and administrative estimation errors.

F.3.1.3 The Regulatory Authorities shall determine the appropriate weight to give to each of the principles referred to in paragraph F.3.1.2 in determining the Demand Curve for a Capacity Auction.

F.3.1.4 The Demand Curve for a Capacity Auction shall include within its range the adjusted Capacity Requirement determined by the Regulatory Authorities, being the Capacity Requirement, modified by:

- (a) existing Awarded Capacity in respect of the relevant Capacity Year;
- (b) an allowance for changes in forecast capacity requirements (as considered appropriate by the Regulatory Authorities);
- (c) an allowance for capacity to be procured in later auctions for the Capacity Year (as considered appropriate by the Regulatory Authorities); and
- (d) an allowance for the de-rated value of capacity that is expected to be operational during the Capacity Year but which is not required to participate in the Capacity Auction (as considered appropriate by the Regulatory Authorities).

F.3.1.5 The Demand Curve shall comprise not less than two and not more than ten price-quantity points where:

- (a) the quantity (Q_i) associated with each point i is an aggregated capacity, not the change in capacity between points;
- (b) the quantity (Q_i) does not decrease with increasing i ;
- (c) there may be no more than two values of i with the same quantity (Q_i), and where there are two values of i with the same quantity (Q_i), the values of i must be adjacent and the value for price (P_i) for the lower value of i must exceed the value of price (P_i) for the higher value of i ;
- (d) except as contemplated by paragraph (c), the price (P_i) associated with point i must strictly decrease as the quantity (and i) increases;

- (e) the highest priced point ($i=1$) must have a price equal to the Auction Price Cap;
 - (f) the lowest priced point must have a price equal to zero;
 - (g) the demand curve price P_x for any quantity $Q_x > 0$ is:
 - (i) for all quantities Q_x between 0 and Q_i for $i=1$, P_x is the Auction Price Cap;
 - (ii) for all quantities Q_x lying between adjacent price-quantity points $i=A > 1$ and $i=B > A$, $P_x = P_A + \{(P_B - P_A) \times (Q_x - Q_A) / (Q_B - Q_A)\}$;
 - (iii) for a quantity Q_x for which there are two values of i for which $Q_i = Q_x$, then the price $P_x = P_i$ for the lower value of i ; and
 - (iv) for all quantities Q_x beyond the greatest quantity specified in price-quantity points, $P_x = 0$; and
 - (h) all quantities included in the Demand Curve reflect a quantity of de-rated capacity.
- F.3.1.6 The Regulatory Authorities shall periodically consult on the methodology they will use to determine the Demand Curve, including how they will determine volumes to be withheld in any given Capacity Auction.
- F.3.1.7 If the Regulatory Authorities have not provided the Demand Curve to be used in a Capacity Auction to the System Operators five Working Days prior to the date of the Capacity Auction specified in the applicable Capacity Auction Timetable, then the System Operators shall cancel the Capacity Auction and publish a notice to this effect.

F.4 DETERMINATION OF LOCAL CAPACITY CONSTRAINTS FOR A CAPACITY AUCTION

- F.4.1.1 For each Local Capacity Constraint, the System Operators shall:
- (a) determine the Capacity Market Units that in their reasonable opinion are expected to contribute to satisfying the constraint; and
 - (b) assess the constraint to test whether it can be satisfied:
 - (i) using Capacity Market Units; and
 - (ii) separately, using Existing Capacity provided by Capacity Market Units,
- F.4.1.2 A Capacity Market Unit that has only been Qualified for the purposes of Secondary Trade Auctions under section E.11 shall not be taken into account in the determination and assessment under paragraph F.4.1.1.
- F.4.1.3 The System Operators shall make a determination and assessment under paragraph F.4.1.1 prior to submitting Provisional Qualification Decisions and Final Qualification Decisions in respect of a Capacity Auction to the Regulatory Authorities, and at such other times as they consider appropriate. If a determination and assessment is made under paragraph F.4.1.1 prior to the conclusion of the Qualification Process in respect of a Capacity Auction, a reference to Capacity Market Units in this section F.4 shall be treated as including Capacity Market Units that are in the System Operator's reasonable opinion likely to be Qualified as a result of the Qualification Process.
- F.4.1.4 In making a determination under paragraph F.4.1.1(a), the System Operators shall apply the following rules:

- (a) for a Capacity Market Unit to contribute to satisfying a Local Capacity Constraint, all of the Generators, Generator Units and Interconnectors (as applicable) comprising it shall be connected to the Transmission System or Distribution System at Connection Points falling within the area to which the Local Capacity Constraint applies; and
 - (b) a specific Capacity Market Unit may only be associated with a single Level 1 Local Capacity Constraint or with a single Level 2 Local Capacity Constraint (and, in the latter case it must also be associated with the Level 1 Local Capacity Constraint containing that Level 2 Local Capacity Constraint).
- F.4.1.5 Where as a result of an assessment under paragraph F.4.1.1, the System Operators determine that a Local Capacity Constraint is not expected to be satisfied by Existing Capacity or New Capacity from a Capacity Market Unit or a combination of Capacity Market Units, then the System Operators shall propose a reduction in the MW minimum de-rated capacity quantity for the area to which that Local Capacity Constraint applies to the level that they determine can be satisfied.
- F.4.1.6 If, as a result of an assessment under paragraph F.4.1.1, the System Operators determine that it may not be possible to satisfy a Local Capacity Constraint, they shall notify the Regulatory Authorities as soon as practical.
- F.4.1.7 The System Operators shall submit to the Regulatory Authorities for approval any proposed reduction in the MW minimum de-rated capacity quantity for the area subject to a Local Capacity Constraint under paragraph F.4.1.5.
- F.4.1.8 The System Operators shall provide the Regulatory Authorities with a detailed report of the outcome of the assessments under paragraph F.4.1.1 in respect of a Capacity Auction, the reasons for the outcome and any reduction in the MW minimum de-rated capacity quantity for an area to which a Local Capacity Constraint applies proposed.
- F.4.1.9 The Regulatory Authorities may by written notice to the System Operators request more information from the System Operators when considering whether or not to approve a proposed reduction in the MW minimum de-rated capacity quantity for an area to which a Local Capacity Constraint applies submitted by the System Operators under paragraph F.4.1.7 and the System Operators shall use reasonable endeavours to comply with the request.
- F.4.1.10 The Regulatory Authorities may by written notice to the System Operators approve or reject a proposed reduction in the MW minimum de-rated capacity quantity for an area to which a Local Capacity Constraint applies submitted by the System Operators under paragraph F.4.1.7 and shall in the notice give reasons in case of rejection.
- F.4.1.11 The Regulatory Authorities may by written notice to the System Operators require the MW minimum de-rated capacity quantity for all or specified Local Capacity Constraints to be set to zero and shall in the notice give reasons.
- F.4.1.12 If the Regulatory Authorities do not notify the System Operators that they reject a proposed reduction in the MW minimum de-rated capacity quantity for a Local Capacity Constraint submitted by the System Operators under paragraph F.4.1.7 within five Working Days after the System Operators have submitted the proposal, then they will be taken to have approved the proposed reduction submitted by the System Operators.
- F.4.1.13 The Regulatory Authorities may by written notice to the System Operators exempt one or more Capacity Market Units from the application of paragraph F.8.4.3 if the

Regulatory Authorities consider doing so will reduce the risk of not satisfying a Local Capacity Constraint in the Capacity Auction.

F.5 PUBLICATION OF FINAL AUCTION PARAMETERS

F.5.1.1 The System Operators shall use reasonable endeavours to publish the Final Auction Parameters for a Capacity Auction by the later of:

- (a) the Final Auction Parameter Date specified in the applicable Capacity Auction Timetable; and
- (b) two Working Days after the last of:
 - (i) the date the Regulatory Authorities provide the Demand Curve for the Capacity Auction to the System Operators; and
 - (ii) the date the Regulatory Authorities approve or reject the last of the proposed Local Capacity Constraints, updates or reductions submitted by the System Operators under sections C.2.3 or F.4 in respect of the Capacity Auction.

F.5.1.2 The Final Auction Parameters for a Capacity Auction shall comprise:

- (a) the Demand Curve for the Capacity Auction;
- (b) for each Local Capacity Constraint applicable to the Capacity Auction:
 - (i) the Local Capacity Constraint Information; and
 - (ii) the Capacity Market Units that have Qualified for the Capacity Auction and that are in the System Operators' reasonable opinion expected to contribute to satisfying the constraint;
- (c) the Capacity Auction Timetable for the Capacity Auction updated to include only future events;
- (d) details of what is required of Participants participating in the Capacity Auction in order to submit Capacity Auction Offers;
- (e) the Allowed Timeframe; and
- (f) the Annual Capacity Payment Exchange Rate applicable to Awarded Capacity in the Capacity Auction.

F.6 CAPACITY AUCTION SUBMISSIONS

F.6.1 Communication codes/ instructions

F.6.1.1 The System Operators shall issue authenticated communication codes and/ or instructions necessary for the submission of Capacity Auction Offers to all Participants with Capacity Market Units Qualified for a Capacity Auction, no later than ten Working Days prior to the Capacity Auction Submission Commencement date.

F.6.2 Submission of Capacity Auction Offers

F.6.2.1 The System Operators shall allow Participants to submit Capacity Auction Offers in respect of Capacity Market Units only:

- (a) from the Capacity Auction Submission Commencement date and time as indicated in the Capacity Auction Timetable; and
- (b) until the Capacity Auction Submission End date and time as indicated in the Capacity Auction Timetable.

- F.6.2.2 A Participant is responsible for ensuring that each Capacity Auction Offer that the Participant submits is received by the System Operators, complies with the requirements of this Code and that the information contained in it is correct and complete and reflects the Participant's intentions.
- F.6.2.3 The System Operators shall assess each Capacity Auction Offer submitted and shall notify the Participant submitting it whether or not the offer complies with the requirements of this Code and is therefore a valid Capacity Auction Offer.
- F.6.2.4 The System Operators have no obligation to follow up any Participant that has not submitted a valid Capacity Auction Offer and shall have no liability in respect of any Capacity Auction Offer they have not received or that contains information that is incorrect or incomplete or does not reflect the Participant's intentions.
- F.6.2.5 The System Operators shall only use the most recent valid Capacity Auction Offer submitted by a Participant prior to the Capacity Auction Submission End date and time as indicated in the Capacity Auction Timetable.

F.7 CAPACITY AUCTION OFFERS

- F.7.1.1 A capacity auction offer ("**Capacity Auction Offer**") shall relate to a single Capacity Market Unit and shall comply with the following requirements:
 - (a) it shall comprise between 1 and 5 price-quantity pairs, with:
 - (i) no two price-quantity pairs having the same price;
 - (ii) quantities in each price-quantity pair being incremental quantities, such that the aggregate de-rated capacity offered across all price-quantity pairs submitted increases monotonically with increasing price;
 - (b) prices shall be in the currency of the Currency Zone in which the Capacity Market Unit is Connected and shall be expressed in £/MW per year or €/MW per year and shall be applicable for the entirety of the Capacity Year (without requiring any indexation of that price);
 - (c) each price-quantity pair will have a flag indicating whether it is Flexible or Inflexible:
 - (i) if Inflexible, then for the purposes of determining auction outcomes it must be entirely accepted or not accepted at all;
 - (ii) if Flexible, then for the purpose of determining auction outcomes it may be accepted in its entirety or in part;
 - (d) while some price-quantity pairs may be Flexible and some may be Inflexible, if any price-quantity pair is Flexible, then all higher priced price-quantity pairs must also be Flexible;
 - (e) price-quantity pairs shall be structured so that the capacity of a single price quantity pair is associated in its entirety with only one of:
 - (i) Existing Capacity;
 - (ii) New Capacity with a 1-year Maximum Capacity Duration;
 - (iii) New Capacity with a 10-year Maximum Capacity Duration;
 - (f) the maximum price in any price-quantity pair shall be the Offer Price Cap set in the Qualification Process for the capacity associated with that price-quantity pair;

- (g) the cumulative quantity offered in respect of Existing Capacity shall be no less than the lesser of:
 - (i) the Net De-Rated Capacity (Existing Capacity) of that Capacity Market Unit; and
 - (ii) the Firm Offer Requirement for that Capacity Market Unit;
 - (h) the cumulative quantity offered in respect of New Capacity must be no less than the lesser of:
 - (i) the Net De-Rated Capacity (New) of that Capacity Market Unit; and
 - (ii) the Firm Offer Requirement of that Capacity Market Unit, less the Net De-Rated Capacity (Existing) of that Capacity Market Unit;
 - (i) the offered capacity duration in any price-quantity pair shall be a whole number of Capacity Years between one and the Maximum Capacity Duration set in the Qualification Process for the capacity associated with that price-quantity pair;
 - (j) the minimum price in any price-quantity pair shall be zero;
 - (k) the lowest price in any price-quantity pair relating to New Capacity shall exceed the highest price in any price-quantity pair relating to Existing Capacity;
 - (l) the minimum quantity in a price-quantity pair shall be 0 MW;
 - (m) the quantity in a price-quantity pair shall be expressed to an accuracy of 0.1 MW; and
 - (n) the price in a price-quantity pair shall be expressed to an accuracy of €0.01/MW or £0.01/MW as applicable.
- F.7.1.2 Where a Participant submits any price or other value for a monetary amount as part of a Capacity Auction Offer in Sterling, the System Operators shall, for the purposes of all calculations under this Code, convert the value to Euro in accordance with the Annual Capacity Exchange Rate specified in the applicable Final Auction Parameters.
- F.7.1.3 If a Participant does not submit a valid set of price-quantity pairs in respect of a Capacity Market Unit with a non-zero Firm Offer Requirement, then the System Operators must determine a set of price-quantity pairs for that Capacity Market Unit comprising:
- (a) if the Capacity Market Unit includes a non-zero Net De-Rated Capacity for Existing Capacity eligible to participate in the Capacity Auction, a single step with:
 - (i) a quantity being the lesser of:
 - (A) the Net De-Rated Capacity for Existing Capacity of that Capacity Market Unit; and
 - (B) the Firm Offer Requirement of the Capacity Market Unit;
 - (ii) a price equal to the Offer Price Cap applicable to the Existing Capacity;
 - (iii) a flag indicating that the step is Flexible; and
 - (iv) a duration of 1 year.

- (b) if the Capacity Market Unit includes a non-zero Net De-Rated Capacity for New Capacity eligible to participate in the Capacity Auction, then no step shall be determined for it and that New Capacity will be excluded from the Capacity Auction.

F.8 CONDUCT OF A CAPACITY AUCTION

F.8.1 Conducting the Capacity Auction

F.8.1.1 The System Operators shall:

- (a) conduct each Capacity Auction in accordance with the applicable Capacity Auction Timetable; and
- (b) for each Capacity Auction, determine an Auction Clearing Price and the cleared price-quantity pairs of Capacity Market Units the subject of Capacity Auction Offers,

in accordance with this section F.8.

F.8.2 Inputs for the Capacity Auction

F.8.2.1 Subject to the following paragraphs of this section F.8.2, the System Operators shall use the following information when conducting a Capacity Auction:

- (a) the Demand Curve determined by the Regulatory Authorities and provided to the System Operators in accordance with section F.3;
- (b) for each Local Capacity Constraint applicable to the Capacity Auction:
 - (i) the level of the constraint that will apply in the Capacity Auction, being the greater of zero and:
 - (A) the MW minimum de-rated capacity quantity required to satisfy the Local Capacity Constraint; less
 - (B) the Awarded Capacity already held for the Capacity Year by Capacity Market Units that contribute to satisfying that Local Capacity Constraint;
 - (ii) the Local Capacity Constraint Information referred to in paragraphs (a), (d) and (e) of the definition of that term in the Glossary; and
 - (iii) the Capacity Market Units that have Qualified for the Capacity Auction; and
- (c) the Validated Capacity Auction Offers for each Capacity Market Unit Qualified to participate in that Capacity Auction as determined under section F.7 and Chapter L.

F.8.2.2 The Local Capacity Constraints to be used when conducting a Capacity Auction are those last approved by the Regulatory Authorities under section C.2.3, as adjusted by:

- (a) any reduction approved (or taken to be approved) by the Regulatory Authorities under section F.4; or
- (b) a notice from the Regulatory Authorities under paragraph F.4.1.11.

F.8.2.3 When conducting a Capacity Auction, the System Operators may approximate the Demand Curve provided by the Regulatory Authorities, provided that for any price specified in the approximated Demand Curve the associated demand may differ

by no more than 0.1 MW from the demand corresponding to that price in the Demand Curve provided by the Regulatory Authorities.

- F.8.2.4 In the software program used to conduct Capacity Auctions, the System Operators may include a feature that allows Local Capacity Constraints to be violated subject to a high cost being charged, with these costs added to the costs in the calculation in paragraph F.8.4.2(b), provided that the level of these costs is set so that no such violations will occur unless no solution that satisfies the Local Capacity Constraints would exist that could be found by the software program.

F.8.3 Determination of the Auction Clearing Price

- F.8.3.1 The System Operators shall follow the methodology set out in this section F.8.3 to determine the Auction Clearing Price for a Capacity Auction.

- F.8.3.2 For the purposes of scheduling price-quantity pairs under paragraph F.8.3.3, but not for the purposes of paragraphs F.8.3.4 or F.8.3.4, all price-quantity pairs are to be treated as Flexible.

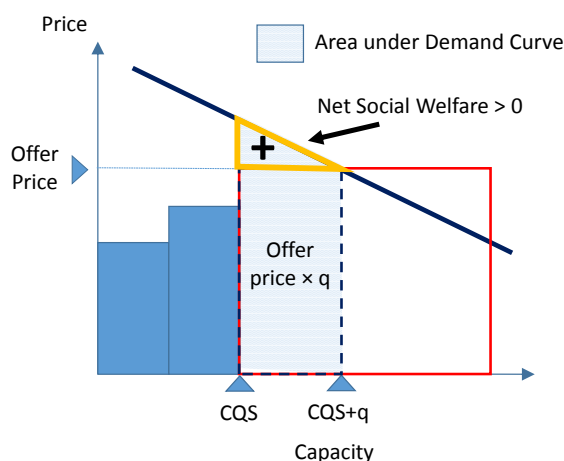
- F.8.3.3 Subject to paragraph F.8.3.4, the System Operators shall schedule price-quantity pairs contained in Capacity Auction Offers in order of increasing price. The last price-quantity pair scheduled (the **"Price Setting Offer"**) shall be:

- (a) the price-quantity pair:
 - (i) whose quantity, in whole or in part, together with the cumulative quantity of all previously scheduled price-quantity pairs, is equal to the quantity on the Demand Curve; and
 - (ii) whose price is equal to or lower than the price corresponding to that quantity on the Demand Curve; or
- (b) if no price-quantity pair satisfies the criteria in sub-paragraph (a), the last price-quantity pair scheduled once all price-quantity pairs contained in Capacity Auction Offers have been scheduled to their respective maximum quantities.

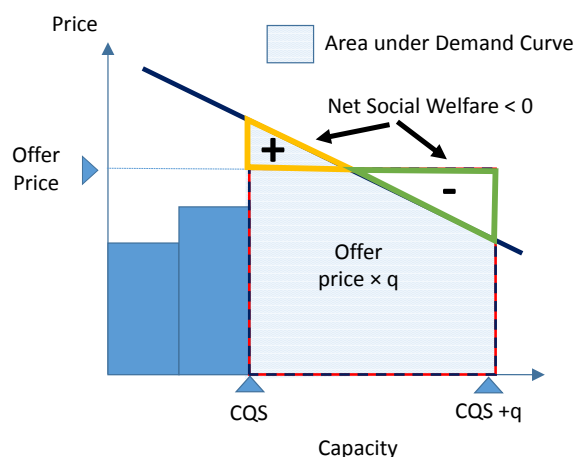
- F.8.3.4 In the event of two or more price-quantity pairs the subject of Capacity Auction Offers having the same price (in this paragraph, the **"affected price-quantity pairs"**), the System Operators shall for the purposes of paragraph F.8.3.3 schedule the affected price-quantity pairs in order by applying sequentially the following steps:

- (a) the System Operators shall schedule affected price-quantity pairs relating to Capacity Market Units that are Clean ahead of affected price-quantity pairs relating to other Capacity Market Units that are not Clean;
- (b) if applying sub-paragraph (a) does not result in an order of priority for scheduling the affected price-quantity pairs, then in respect of the remaining unscheduled affected price-quantity pairs, the System Operators shall first schedule the remaining unscheduled affected price-quantity pair with the highest Net Social Welfare determined under paragraph F.8.3.5. Once applying this sub-paragraph (b) results in an affected price-quantity pair being scheduled (in this sub-paragraph, **"the accepted offer"**), the sub-paragraph is to be reapplied to the remaining affected price-quantity pairs (if any) to determine the order of priority for the scheduling of any such remaining affected price-quantity pairs and with Net Social Welfare determined with the accepted offer treated as being already scheduled to the level determined under paragraph F.8.3.2;

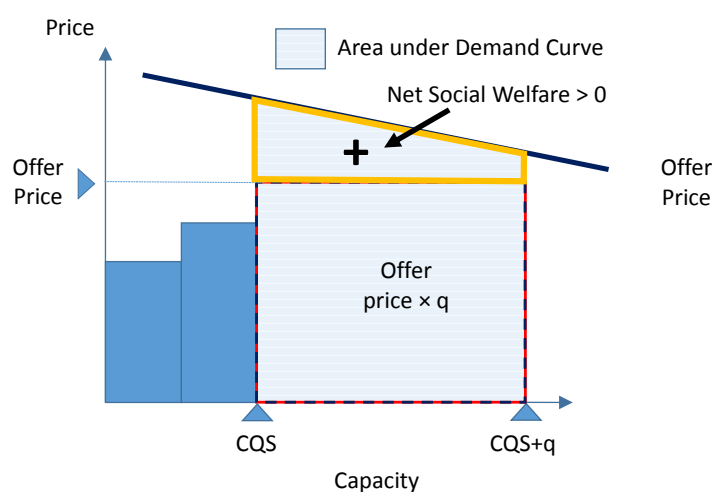
- (c) if applying the preceding sub-paragraphs does not result in an order of priority for scheduling any remaining affected price-quantity pairs or it is not possible to determine Net Social Welfare under paragraph F.8.3.5, then in respect of the remaining unscheduled affected price-quantity pairs, the System Operators shall schedule affected price-quantity pairs with shorter offered capacity durations ahead of affected price-quantity pairs with a longer offered capacity duration; and
 - (d) if applying the preceding sub-paragraphs does not result in an order of priority for scheduling any remaining affected price-quantity pairs, then the System Operators shall schedule the remaining affected price-quantity pairs in a random order.
- F.8.3.5 The Net Social Welfare of a price-quantity pair is the maximum value determined by the System Operators of:
- (a) the area under the Demand Curve between CQS and CQS + q, in each case as set out in the x axis in the diagram in paragraph F.8.3.6; and
 - (b) less the price of the price-quantity pair multiplied by the value of q,
- where:
- (c) for an Inflexible price-quantity pair, “q” is fixed and equals the maximum quantity offered;
 - (d) for a Flexible offer price-quantity pair, “q” can vary to have any value between zero and the maximum quantity offered; and
 - (e) “CQS” is the cumulative quantity (expressed in MWs) scheduled from all price-quantity pairs already scheduled under paragraph F.8.3.3,
- in each case as further described in the diagram in paragraph F.8.3.6.
- F.8.3.6 The process in paragraph F.8.3.5 is illustrated in the following diagrams:



A Flexible Price Quantity Pair



An Inflexible Price Quantity Pair



The application of Net Social Welfare to a Price Quantity Pair at a point in the process before $CQS+q$ intersects the demand curve. As the full offer is taken this illustration applies for both an Inflexible and a Flexible Price Quantity Pair

F.8.3.7 For each price-quantity pair, its unconstrained market schedule is the quantity to which it was scheduled under paragraph F.8.3.3.

F.8.3.8 The Auction Clearing Price is the price of the Price Setting Offer specified in the relevant Capacity Auction Offer.

F.8.4 Capacity Auction Clearing

F.8.4.1 The System Operators shall follow the methodology set out in this section F.8.4 to determine the price-quantity pairs which are cleared in a Capacity Auction.

F.8.4.2 The objective of the System Operators in applying the methodology set out in this section F.8.4 is to seek to maximise the value of:

- the area under the Demand Curve between a demand of 0 MW and the cumulative price-quantity cleared; less
- the sum over all price-quantities cleared of the price multiplied by the quantity cleared.

F.8.4.3 Any price-quantity pair associated with New Capacity with both:

- a price greater than the Auction Clearing Price; and

- (b) an offered capacity duration greater than one Capacity Year,

shall be cleared to a level of 0 MW and shall not otherwise be considered in the process described in this section F.8.4, except where the relevant Capacity Market Unit has been exempted from the application of this paragraph by the Regulatory Authorities under paragraph F.4.1.13.
- F.8.4.4 Subject to paragraph F.8.4.7, the System Operators shall determine the remaining price-quantity pairs contained in Capacity Auction Offers cleared in a Capacity Auction by applying the following rules:
 - (a) a price-quantity pair that is Flexible may be cleared to any point between 0 MW and the maximum quantity offered in that price-quantity pair;
 - (b) a price-quantity pair that is Inflexible may be cleared at either 0 MW or the maximum quantity offered in that price-quantity pair;
 - (c) [a price-quantity pair with a price less than the Offer Price Clearance Ratio of the Auction Clearing Price shall be cleared to its scheduled quantity as determined in accordance with paragraph F.8.3.2];
 - (d) price-quantity pairs relating to the same Capacity Market Unit shall be cleared in order of increasing price, with nothing cleared from a price-quantity pair unless all lower priced price-quantity pairs relating to that Capacity Market Unit have fully cleared to their maximum quantity;
 - (e) from the set of price-quantity pairs relating to Capacity Market Units that contribute to satisfying the MW minimum de-rated capacity quantity of a Local Capacity Constraint, either:
 - (i) the cumulative quantity cleared equals or exceeds the MW minimum de-rated capacity required to satisfy that Local Capacity Constraint; or
 - (ii) if sub-paragraph (i) does not apply, all of those price-quantity pairs shall be cleared;
 - (f) in the event of a tie as described in paragraph F.8.4.6, the provisions of that paragraph apply; and
 - (g) price-quantity pairs relating to a Capacity Market Unit to which paragraph F.8.4.3 applies and which has been exempted under paragraph F.4.1.13 are not to be cleared to satisfy a Local Capacity Constraint until all Capacity Market Units with an offered capacity duration of one year that contribute to satisfying that Local Capacity Constraint have been cleared.
- F.8.4.5 [The “Offer Price Clearance Ratio” for the purposes of paragraph F.8.4.4(c) shall be 0% or such higher percentage (but less than 100%) as is determined from time to time by the Regulatory Authorities and notified to the System Operators. A notification under this paragraph shall be in writing and specify the Capacity Auction from which the new value is to take effect.]
- F.8.4.6 Where:
 - (a) two or more price-quantity pairs that are Flexible have the same price, then:
 - (i) there is a tie between all those price-quantity pairs that contribute to satisfying the same Level 2 Local Capacity Constraint;
 - (ii) there is a tie between all those price-quantity pairs that contribute to satisfying the same Level 1 Local Capacity Constraint; and

- (iii) there is a tie between all those price-quantity pairs; ;
 - (b) two or more price-quantity pairs that are Inflexible have the same price, then:
 - (i) there is a tie between all those price-quantity pairs that contribute to satisfying the same Level 2 Local Capacity Constraint;
 - (ii) there is a tie between all those price-quantity pairs that contribute to satisfying the same Level 1 Local Capacity Constraint; and
 - (iii) there is a tie between all those price-quantity pairs.
- F.8.4.7 If, in the solution that maximizes the value in paragraph F.8.4.2, a quantity would be cleared from tied price-quantity pairs as identified under paragraph F.8.4.6, but not all tied quantities would be cleared, then the System Operators shall alter the quantity cleared from those price-quantity pairs to preserve the same total quantity cleared while satisfying the requirements of paragraph F.8.4.4 as follows:
- (a) for Flexible price-quantity pairs:
 - (i) identified under paragraph F.8.4.6(a)(i), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c);
 - (ii) identified under paragraph F.8.4.6(a)(ii), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c), given the quantities cleared under sub-paragraph (a)(i); and
 - (iii) identified under paragraph F.8.4.6(a)(iii), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c), given the quantities cleared under sub-paragraphs (a)(i) and (a)(ii);
 - (b) for Inflexible price-quantity pairs:
 - (i) identified under paragraph F.8.4.6(b)(i), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c);
 - (ii) identified under paragraph F.8.4.6(a)(ii), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c), given the quantities cleared under sub-paragraph (b)(i); and
 - (iii) identified under paragraph F.8.4.6(b)(iii), determine the quantity (if any) cleared from each tied price-quantity pair by applying sequentially the steps set out in sub-paragraph (c), given the quantities cleared under sub-paragraphs (b)(i) and (b)(ii);
 - (c) for the purposes of sub-paragraphs (a) and (b), the sequential steps to be followed are:
 - (i) clear tied price-quantity pairs relating to Capacity Market Units that are Clean ahead of tied price-quantity pairs relating to other Capacity Market Units that are not Clean;
 - (ii) if applying the step in sub-paragraph (i) does not result in an order of priority for clearing the tied price-quantity pairs, then, in respect of the remaining uncleared tied price-quantity pairs, clear the price-quantity pairs with shorter offered capacity durations ahead of price-quantity pairs with longer offered capacity durations; and

- (iii) if applying the preceding sub-paragraphs does not result in an order of priority for clearing any remaining tied price-quantity pairs, clear the remaining uncleared tied price-quantity pairs in a random order.
- F.8.4.8 The System Operator shall determine the price-quantities cleared using a software program which applies a mixed-integer programming mathematical optimisation with the solution being either:
 - (a) the mathematical optimal solution if determined within the Allowed Timeframe of the program run being initiated; or otherwise
 - (b) the solution that produces the highest value calculated in accordance with paragraph F.8.4.2 which is determined within the Allowed Timeframe of the program run being initiated.
- F.8.4.9 The “**Allowed Timeframe**” for the purposes of paragraph F.8.4.8 shall be 24 hours from the program run being initiated or such shorter period as is determined from time to time by the System Operators.
- F.8.5 **Outputs**
- F.8.5.1 At the conclusion of a Capacity Auction, the System Operators will have determined the following outputs:
 - (a) the quantity cleared from each price-quantity pair as determined in accordance with section F.8.4;
 - (b) the Auction Clearing Price; and
 - (c) any unserved quantity required to satisfy the MW minimum de-rated capacity quantity of any Local Capacity Constraints.

F.9 CAPACITY AUCTION RESULTS

F.9.1 Form of Capacity Auction Results

- F.9.1.1 The Auction Results shall comprise the following:
 - (a) in respect of a Capacity Market Unit, for each price-quantity pair that is cleared in the Capacity Auction:
 - (i) the Awarded Capacity associated with the price-quantity pair, which is the quantity cleared from the price-quantity pair;
 - (ii) the Capacity Payment Price, which shall be equal to:
 - (A) if the price of the price-quantity pair is less than or equal to the Auction Clearing Price, then the Auction Clearing Price; or
 - (B) otherwise, the price of the price-quantity pair; and
 - (iii) the capacity duration specified in the relevant Capacity Auction Offer in respect of the price-quantity pair;
 - (b) in respect of the New Capacity of each Capacity Market Unit, an Implementation Plan updated, as required, to reflect the quantity of Awarded Capacity in respect of each Interconnector or Generator Unit contributing to New Capacity provided by the Capacity Market Unit; and
 - (c) in respect of each Local Capacity Constraint, the MW quantity by which the MW minimum de-rated capacity quantity was not satisfied (if applicable).
- F.9.1.2 The Capacity Payment Price shall be the price paid in the Capacity Year without any adjustment or indexation.

F.9.2 Release of Provisional Capacity Auction Results

- F.9.2.1 The System Operators shall use reasonable endeavours to provide provisional Auction Results to the applicable Participant by the Capacity Auction Provisional Results Date specified in the applicable Capacity Auction Timetable.

F.9.3 Release of Final Capacity Auction Results

- F.9.3.1 The System Operators shall submit provisional Auction Results for all Capacity Market Units in respect of a Capacity Auction to the Regulatory Authorities for approval.
- F.9.3.2 The Regulatory Authorities may approve or reject one or more provisional Auction Results provided by the System Operators under paragraph F.9.3.1 by written notice to the System Operators (based on the Capacity Auction Monitor's report in relation to the Capacity Auction provided to the Regulatory Authorities in accordance with section B.11).
- F.9.3.3 If the Regulatory Authorities do not notify the System Operators that they reject the provisional Auction Results for a Capacity Market Unit within five Working Days after the System Operators have submitted those results under paragraph F.9.3.1, then they will be taken to have approved the results submitted by the System Operators.
- F.9.3.4 The System Operators shall use reasonable endeavours to release final Auction Results for a Capacity Market Unit to the applicable Participant by the later of the Capacity Auction Results Date specified in the applicable Capacity Auction Timetable and a date being two Working Days after the Regulatory Authorities have approved (or are taken to have approved) the Auction Results.
- F.9.3.5 The System Operators shall record the Awarded Capacity and associated information required under sections G.2 and G.3 in respect of a Capacity Market Unit in the Capacity and Trade Register, with:
- (a) separate Contract Register Entries for Awarded Capacity in respect of each price-quantity pair cleared; and
 - (b) subject to paragraph G.2.1.4, the status of "pending".

F.9.4 Conditions for Award of Capacity

- F.9.4.1 Capacity allocated to a Capacity Market Unit as a result of a Capacity Auction becomes Awarded Capacity when:
- (a) in the case of Existing Capacity, the relevant Participant accepts the final Auction Results applicable to the Existing Capacity by written notice to the System Operators, or is taken to have accepted those results in accordance with paragraph F.9.4.3; or
 - (b) in the case of New Capacity, the relevant Participant:
 - (i) notifies the System Operators (in the form specified for this purpose by the System Operators) that it:
 - (A) accepts the final Auction Results applicable to the New Capacity;
 - (B) agrees with the Implementation Plan applicable to the New Capacity; and
 - (C) confirms the acknowledgment and agreement in paragraph F.9.4.2; and

- (ii) provides to the System Operators a Performance Security for not less than the Required Level in accordance with section J.3.
- F.9.4.2 A Participant which is allocated Awarded New Capacity acknowledges and agrees that:
 - (a) It has been allocated the Awarded New Capacity under this Code on the basis that it will pay a Termination Charge in the circumstances contemplated in section J.7;
 - (b) the System Operators, Suppliers and others will suffer loss in the circumstances contemplated in section J.7 and the liquidated damages represented by the Termination Charge payable under section J.7 is to compensate them for that loss;
 - (c) the liquidated damages represented by the Termination Charge payable under section J.7 are intended to and do represent a reasonable, genuine and good faith pre-estimate of the anticipated or actual loss and damage that the System Operators, Suppliers and others will or may suffer as a result of the Awarded New Capacity not being delivered as contemplated under this Code and are not a penalty;
 - (d) it expressly waives the right to the extent permissible to claim or argue, and warrants to the System Operators that it will not claim or argue, that the Termination Charge payable under section J.7 is not a genuine pre-estimate of loss or damage; and
 - (e) if it is determined by a court of competent jurisdiction or in accordance with paragraph B.14 that the Participant's liability for to pay the Termination Charge under section J.7 is, is deemed to be or becomes void, voidable or unenforceable in any way so as to disentitle the System Operators from claiming the Termination Charge under section J.7 or any part of it when due, then the System Operators are entitled to claim against the Participant, and the Participant agrees to pay to the System Operators, damages at law as an alternative to the Termination Charge, which damages are not limited by paragraph B.15 but which are limited to the amount of the Termination Charge calculated under paragraph J.7.1.3.
- F.9.4.3 A Participant is taken to have accepted the final Auction Results applicable to the Existing Capacity of its Capacity Market Unit if the Participant has not notified the System Operators that it does not accept those results within 20 Working Days of being notified of them under paragraph F.9.3.4.
- F.9.4.4 Once a Participant has accepted the final Auction Results in respect of Existing Capacity, or is taken to have accepted those results in accordance with paragraph F.9.4.3, the System Operators shall update the status of the Awarded Capacity in the Capacity and Trade Register to "active".
- F.9.4.5 Once a Participant has accepted the final Auction Results in respect of New Capacity (including agreeing to the Implementation Plan) and has provided the Performance Security, the System Operators shall update the Awarded Capacity status as "active".
- F.9.5 **Information Published Following a Capacity Auction**
 - F.9.5.1 The System Operators shall use reasonable endeavours to publish the following information in relation to a Capacity Auction by the later of the Capacity Auction Results Date specified in the applicable Capacity Auction Timetable and a date

being two Working Days after the Regulatory Authorities have approved (or are taken to have approved) the provisional Auction Results:

- (a) the Auction Clearing Price in Euro and Sterling;
- (b) the average price of Awarded Capacity in Euro and Sterling;
- (c) the Final Qualification Decisions for each Capacity Market Unit that was Qualified in respect of the Capacity Auction;
- (d) a list of Candidate Units in respect of which an Opt-out Notification was submitted and not rejected by the System Operators;
- (e) the number of Capacity Market Units for which Capacity Auction Offers were submitted;
- (f) the number of Capacity Market Units which were allocated Awarded Capacity in the Capacity Auction;
- (g) the Auction Results for each Capacity Market Unit that participated in the Capacity Auction;
- (h) the total Awarded Capacity for each Capacity Market Unit resulting from the Capacity Auction; and
- (i) details of any Local Capacity Constraint that was not satisfied and the amount by which the MW minimum de-rated capacity quantity was not satisfied.

G. REGISTRIES AND SETTLEMENT DATA

G.1 QUALIFICATION CAPACITY REGISTER

- G.1.1.1 The System Operators shall maintain a Qualification Capacity Register in which they shall record details of all Generator Units and Interconnectors that are subject to an Opt-Out Notification or an Application for Qualification.
- G.1.1.2 The System Operators shall maintain in the Qualification Capacity Register:
- (a) a record of Opt-Out Notifications, including the information specified in item 1 of Appendix E “Qualification Capacity Register Data”;
 - (b) a record of Applications for Qualification, including the information specified in item 2 of Appendix E “Qualification Capacity Register Data”; and
 - (c) all Qualification Decisions, including the information specified in item 3 of Appendix E “Qualification Capacity Register Data”.

G.2 CAPACITY AND TRADE REGISTER

- G.2.1.1 The System Operators shall maintain a Capacity and Trade Register in which they shall record register entries (“**Contract Register Entry**”) relating to each quantity of Awarded Capacity allocated to each Capacity Market Unit as a result of a Capacity Auction or the subject of a Product acquired or sold in a Secondary Trade Auction.
- G.2.1.2 The Contract Register Entries in the Capacity and Trade Register shall form the basis of the settlement of the Capacity Market under the Trading and Settlement Code and shall be provided by the System Operators to the Market Operator for that purpose.
- G.2.1.3 The System Operators shall maintain in the Capacity and Trade Register the information listed in Appendix F “Capacity and Trade Register Data” in respect of each Contract Register Entry.
- G.2.1.4 A Contract Register Entry shall indicate whether the entry is “pending” or “active. A Capacity Register Entry relating to Awarded Capacity provisionally allocated in a Capacity Auction is “pending” until the applicable conditions set out in paragraph F.9.4 have all been satisfied in full, at which point it becomes “active”.
- G.2.1.5 The following persons shall have direct access to the Capacity and Trade Register:
- (a) the System Operators;
 - (b) the Market Operator;
 - (c) the Capacity Auction Monitor; and
 - (d) each Participant, but only in respect of Contract Register Entries for its Capacity Market Units.
- G.2.1.6 The System Operators shall ensure that they have the capability to add entries to the Capacity and Trade Register for a Capacity Market Unit for the purposes of adjusting the Awarded Capacity allocated to that Capacity Market Unit where permitted under this Code.

G.3 COMMISSIONED CAPACITY

- G.3.1.1 In the Capacity and Trade Register, Commissioned Capacity ($qCCOMMISS_{QY}$) represents the level of Initial Capacity (Total) determined in the Qualification

Process, that is subsequently achieved. It is a modified version of the Grid Code Commissioned Capacity.

- G.3.1.2 The value of Grid Code Commissioned Capacity in respect of a Generator Unit or Interconnector at a given time is the Registered Capacity based on the Final Compliance Certificate, Operational Certification or Final Operational Notification for that Generator Unit or Interconnector under the applicable Grid Code. For the avoidance of doubt Commissioned Capacity is not de-rated capacity.
- G.3.1.3 The Grid Code Commissioned Capacity of a Capacity Market Unit is the sum of the Grid Code Commissioned Capacity of the Generator Units or the Interconnector comprising the Capacity Market Unit.
- G.3.1.4 The Proportion of Delivered Capacity in respect of Awarded New Capacity at a given time is a percentage value being:
- (a) the greater of:
 - (i) zero; and
 - (ii) the lesser of:
 - (A) the Grid Code Commissioned Capacity; and
 - (B) the Initial Capacity (Total);less the Initial Capacity (Existing);
 - (b) divided by:
 - (i) the Initial Capacity (Total); less
 - (ii) the Initial Capacity (Existing),
- where “Initial Capacity (Existing)” and “Initial Capacity (Total)” shall have the values determined when the Awarded New Capacity Qualified.
- G.3.1.5 Where at a given time there is more than one Tranche of Awarded New Capacity in respect of a Capacity Market Unit (whether for the same Capacity Year or different Capacity Years), the System Operators shall calculate the Proportion of Delivered Capacity in respect of each Tranche by applying the methodology under paragraph G.3.1.4 but with such modifications to the values of Initial Capacity (Existing) and Initial Capacity (Total) as are necessary to account for the multiple Tranches. The required modifications shall include (as applicable):
- (a) increasing Initial Capacity (Existing) of the relevant Tranche to account for the contribution of other Tranches commissioned since the relevant Tranche Qualified;
 - (b) decreasing increasing Initial Capacity (Total) of the relevant Tranche to account for other Tranches that Qualified but were not allocated the full amount in the relevant Capacity Auction or that have been terminated or reduced under section J.6 after the relevant Tranche Qualified; and
 - (c) reducing the Grid Code Commissioned Capacity in respect of any increased capacity of the Capacity Market Unit that was not Qualified as New Capacity and that was not otherwise accounted for in the Initial Capacity (Total).
- G.3.1.6 Awarded Capacity may be settled or included in Secondary Trade only once the Commissioning Flag in the Capacity and Trade Register is set to “Actual”.
- G.3.1.7 If the System Operators receive an Implementation Progress Report in respect of Awarded New Capacity indicating that the date for achieving the Substantial

Completion Milestone has changed, then the System Operators shall update the Capacity Quantity Commissioning Date for the relevant trade in the Capacity and Trade Register to be the earlier of that date and the Long Stop Date.

G.3.1.8 The Capacity and Trade Register shall contain the following information:

Status of Capacity	Proportion of Delivered Capacity	Commissioned Capacity (qCCOMMISS _{QV})	Capacity Quantity Commissioning Date	Commissioning Status Flag	Termination
Existing	N/A	Initial Capacity (Existing)	In past	Actual	N/A
New Capacity, not Commissioned	0	Initial Capacity (Existing)	Substantial Completion date as per (modified) Implementation Plan	Forecast	N/A
New Capacity, operating prior to Long Stop Date but Substantial Completion not achieved.	≤ 90%	Initial Capacity (Existing)	Substantial Completion date as per (modified) Implementation Plan	Forecast	N/A
New Capacity, not expected to be operating for Capacity Year.	0	Initial Capacity (Existing)	Substantial Completion date as per (modified) Implementation Plan	Forecast	One year termination of Awarded Capacity for first Capacity Year only.
New Capacity, - Substantial Completion prior to Long Stop Date	≥ 90%	Initial Capacity (Existing) + Proportion of Delivered Capacity times [Initial Capacity (Total) - Initial Capacity (Existing)]	Date of Substantial Completion	Actual	N/A
New Capacity, operating but has only achieved Minimum Completion by Long Stop date.	≥ 50% ≤ 90%	Initial Capacity (Existing) + Proportion of Delivered Capacity times [Initial Capacity (Total) - Initial Capacity (Existing)]	Long Stop Date	Actual	Awarded Capacity × (1 Proportion of Delivered Capacity)

Status of Capacity	Proportion of Delivered Capacity	Commissioned Capacity ($qCCOMMISS_{\Omega_V}$)	Capacity Quantity Commissioning Date	Commissioning Status Flag	Termination
New Capacity, operating but has not achieved Minimum Completion by Long Stop Date.	0	Initial Capacity (Existing)	N/A	N/A	All Awarded Capacity

H. SECONDARY TRADING

H.1 GENERAL

H.1.1 Purpose

H.1.1.1 Secondary trading allows a Participant to purchase a Product through a Secondary Trade Auction that will allow it to offset Awarded Capacity in respect of a Capacity Market Unit for a Legitimate Reason affecting the unit, with another Capacity Market Unit providing replacement capacity in its place. The buyer of a Secondary Trade is effectively offsetting the capacity it has "sold" previously, and the seller of a Secondary Trade takes on the obligation to provide the capacity traded.

H.1.2 Role of System Operators

H.1.2.1 The System Operators must do all things necessary to operate and administer Secondary Trade Auctions in accordance with this Chapter including:

- (a) designing types of Products;
- (b) providing facilities for the receipt and processing of Secondary Auction Bids and Secondary Auction Offers;
- (c) validating Secondary Auction Bids and Secondary Auction Offers;
- (d) providing and managing the Capacity Market Platform for the purpose of conducting Secondary Trade Auctions; and
- (e) determining and publishing Secondary Trade Auction outcomes, including Awarded Capacity and prices.

H.2 SETTLEMENT OF SECONDARY TRADES

H.2.1.1 Trades in accordance with this Chapter H shall be the only secondary trades recognised for the purposes of settlement under the Trading and Settlement Code.

H.3 PRODUCT TYPE DESCRIPTION

H.3.1 Design of Products

H.3.1.1 The System Operators shall design one or more type of Product ("**Product Type**") for the purposes of secondary trading in accordance with this Chapter H.

H.3.1.2 Each Product Type shall include the following design features:

- (a) the duration (for example, weekly, daily, etc) of the Product;
- (b) the time interval covered by the type of Product (for example, for hours 10 PM to 7 AM, or for all hours);
- (c) the forward period over which the type of Product will apply (for example, all weeks in the Capacity Year, the next month, etc); and
- (d) such other features as the System Operators consider appropriate.

H.3.1.3 The time periods covered by a Product Type shall fall entirely within a single Capacity Year.

H.3.1.4 The System Operators shall review the Product Types:

- (a) within 12 months after the Capacity Market Commencement Date;

- (b) every three years after the previous review; and
 - (c) at such other times as they consider appropriate.
- H.3.1.5 In designing and reviewing Product Types, the System Operators shall consult Participants in accordance with the following provisions:
 - (a) the System Operators shall publish a consultation paper;
 - (b) the consultation paper shall invite interested Parties to make written submissions concerning the matters under consideration; and
 - (c) following their consideration of a matter under consultation, the System Operators shall publish a report, available to interested Parties, setting out the conclusions of the System Operators.
- H.3.1.6 In designing and reviewing Product Types, the System Operators shall consult with the Regulatory Authorities.
- H.3.1.7 As a result of a review, the System Operators may implement a new type of Product Type, or vary or suspend or cease offering an existing Product Type.

H.3.2 Price Caps

- H.3.2.1 The price cap for a Product shall be the value determined by the Regulatory Authorities from time to time for that Product Type.
- H.3.2.2 The System Operators shall seek approval from the Regulatory Authorities for the price cap applicable to each Product Type.
- H.3.2.3 If requested by the Regulatory Authorities, the System Operators shall prepare a report on the appropriate price cap to apply to a Product Type. The System Operator's report must set out any relevant research or analysis carried out by the System Operator and the justification for the specific value proposed. The report may, and shall if so requested by the Regulatory Authorities, include alternative values to those proposed and must set out the arguments for and against such alternatives.

H.3.3 Product Design

- H.3.3.1 The System Operators shall publish a Product Design in respect of the Product Types, specifying the design features and the price cap applicable to each Product Type.
- H.3.3.2 Following any review of Product Types under paragraph H.3.1, the System Operators shall publish a replacement Product Design.

H.4 SECONDARY TRADE AUCTION CALENDAR

- H.4.1.1 The System Operators shall publish a calendar as to when it will conduct Secondary Trade Auctions under this Chapter H. The calendar shall be published not less than 20 Working Days prior to the first auction in the calendar.
- H.4.1.2 The System Operators may update the calendar at any time, and, if so, shall republish it.

H.5 SECONDARY TRADE INFORMATION PACK

- H.5.1.1 The System Operators shall publish a Secondary Trade Information Pack in respect of each Secondary Trade Auction not less than 20 Working Days prior to the scheduled date of the Secondary Trade Auction, detailing:
 - (a) the time and date on which the auction will be run;

- (b) the earliest time on which bids and offers may be submitted;
 - (c) the deadline for bid and offer submission;
 - (d) the time and date on which auction results will be published;
 - (e) the Product Type to be traded in that Secondary Auction;
 - (f) for each Product to be auctioned:
 - (i) the applicable exchange rate; and
 - (ii) the Product Forecast Capacity Quantity Scaling Factor (FPFCQSF).
- H.5.1.2 The exchange rate applicable to a Product is:
- (a) if the forward period over which the Product applies will commence more than a year after the date of the Secondary Trade Auction, the Annual Capacity Payment Exchange Rate for the relevant Capacity Year (as last calculated under section K.2 prior to the release of the Secondary Trade Information Pack for the relevant Secondary Trade Auction); and
 - (b) otherwise, the Monthly Capacity Payment Exchange Rate for the Month in which the forward period over which the Product applies commences (as last calculated under section K.2 prior to the release of the Secondary Trade Information Pack for the relevant Secondary Trade Auction).
- H.5.1.3 The System Operators shall determine the Product Forecast Capacity Quantity Scaling Factor for a Product for a Secondary Trade Auction, being the value that is expected to offset the impact of the Capacity Quantity Scaling Factor (as calculated in accordance with paragraph F.18.2.1 of the Trading and Settlement Code) for the specific time interval covered by the relevant Product.
- H.5.1.4 A Secondary Trade Information Pack published under this section H.5 may deal with more than one Secondary Trade Auction.

H.6 ELIGIBILITY TO PARTICIPATE IN SECONDARY TRADE AUCTIONS

- H.6.1.1 A Participant may participate in a Secondary Trade Auction for a Product Type in respect of a Capacity Market Unit only where:
- (a) the Capacity Market Unit is currently Qualified for the Capacity Year, or under section E.11 is to be treated as if it had been Qualified, for the entire forward period over which the Product Type will apply; and
 - (b) the Capacity Market Unit is Existing Capacity.

H.7 SECONDARY AUCTION BIDS AND OFFERS

H.7.1 Secondary Auction Bids

- H.7.1.1 A Participant may submit a bid ("**Secondary Auction Bid**") for a specific Product specifying:
- (a) the Capacity Market Unit to which the Secondary Auction Bid relates;
 - (b) the Secondary Auction to which the Secondary Auction Bid relates; and
 - (c) a set of up to 5 price-quantity pairs with each price-quantity pair describing:
 - (i) an incremental MW quantity bid;
 - (ii) the maximum £/MW per year or €/MW per year price that the Participant is willing to pay in respect of that incremental MW quantity.

- H.7.1.2 In a Secondary Auction Bid submitted under paragraph H.7.1.1:
- (a) no price-quantity pair shall have a bid price in excess of the applicable price cap set out in the Secondary Trade Information Pack (when converted to €/MW at the applicable exchange rate set out in the Secondary Trade Information Pack);
 - (b) no two price-quantity pairs shall have the same bid price;
 - (c) for a given price the Participant shall be taken to be indicating that it is willing to purchase the sum of MW quantities bid at that or a greater price; and
 - (d) if a Secondary Auction Offer is also submitted in respect of the Capacity Market Unit for the same time interval, then the highest bid price shall be less than the lowest offer price.
- H.7.1.3 A Participant submitting a Secondary Auction Bid under paragraph H.7.1.1 must confirm in the bid that it is seeking to acquire the specific Product in the Secondary Trade Auction for a Legitimate Reason affecting a specified Capacity Market Unit of the Participant during the forward period over which the Product will apply, and reflects the impact of the Legitimate Reason on the capacity of that Capacity Market Unit.
- H.7.1.4 If the cumulative MW quantity in a Secondary Auction Bid exceeds the Buyer Limit, then the System Operators shall reduce the quantities offered in each price-quantity pair in increasing order of bid price until the cumulative quantity bid equals the Buyer Limit.
- H.7.2 Secondary Auction Offers**
- H.7.2.1 A Participant may submit an offer (“**Secondary Auction Offer**”) for a specific Product specifying:
- (a) the Capacity Market Unit to which the Secondary Auction Offer relates;
 - (b) the Secondary Auction to which the Secondary Auction Offer relates;
 - (c) a set of up to [n=5] price-quantity pairs with each price-quantity pair describing:
 - (i) an incremental MW quantity offered;
 - (ii) the minimum £/MW per year or €/MW per year price it is willing to be paid in respect of that incremental MW quantity.
- H.7.2.2 In a Secondary Auction Offer submitted under paragraph H.7.2.1:
- (a) no price-quantity pair shall have an offer price in excess of the applicable price cap (when converted to €/MW at the applicable exchange rate set out in the Secondary Trade Information Pack);
 - (b) no two price-quantity pairs shall have the same offer price;
 - (c) for a given price the Participant shall be taken to be indicating that it is willing to sell the sum of MW quantities offered at that or a greater price; and
 - (d) if a Secondary Auction Bid is also submitted in respect of the Capacity Market Unit for the same time interval then the highest bid price must be less than the lowest offer price.
- H.7.2.3 If the cumulative MW quantity offered in a Secondary Auction Offer exceeds the Seller Limit, then the System Operators shall reduce the quantities offered in each

price-quantity pair in decreasing order of offer price until the cumulative quantity offered equals the Seller Limit.

H.7.3 **Buyer Limits and Seller Limits**

H.7.3.1 The “**Initial Position**” of a Capacity Market Unit in respect of the period of time to which a Product relates is the Obligated Capacity Quantity of that Capacity Market Unit in respect of that period of time immediately prior to the Secondary Trade Auction for that Product.

H.7.3.2 The Buyer Limit for a Capacity Market Unit is the Initial Position of the Capacity Market Unit.

H.7.3.3 Subject to paragraph H.7.4.4, the Seller Limit for a Capacity Market Unit is:

- (a) the value calculated as follows:
 - (i) subject to paragraph H.7.4, if the Participant is seeking to trade above its Gross De-Rated Capacity:
 - (A) the lesser of:
 - i. the Gross De-Rated Capacity (Total) of the Capacity Market Unit (when the Capacity Market Unit was last Qualified for the Capacity Year) multiplied by one plus the Secondary Trade De-Rated Capacity Tolerance applicable to that unit;
 - ii. the Commissioned Capacity of the Capacity Market Unit; and
 - iii. the Initial Capacity (Total) of the Capacity Market Unit (as determined when the Capacity Market Unit was last Qualified for the Capacity Year); less
 - (B) the Initial Position of the Capacity Market Unit.
 - (ii) otherwise:
 - (A) the Available De-Rated Capacity; less
 - (B) the Initial Position of the Capacity Market Unit,
- (b) divided by FPFCQSF.

H.7.3.4 For the purposes of paragraph H.7.3.3:

- (a) the level at which a Participant is seeking to trade in a Secondary Auction Offer is the Initial Position of the relevant Capacity Market Unit plus the incremental MW quantity offered in that Secondary Auction Offer; and
- (b) “**Available De-Rated Capacity**” is the lesser of the Commissioned Capacity and the Gross De-Rated Capacity (Total) of the Capacity Market Unit (when the Capacity Market Unit was last Qualified for the Capacity Year).

H.7.3.5 The Regulatory Authorities may, from time to time, determine the value of the Secondary Trade De-Rated Capacity Tolerance.

H.7.3.6 If, at any time, the Regulatory Authorities have not determined a specific value for the Secondary Trade De-Rated Capacity Tolerance, then its value shall be zero.

H.7.4 **Restrictions on Secondary Trade**

H.7.4.1 For the purposes of this Code, each of the following is a “**Legitimate Reason**”:

- (a) one or more of the Generator Units or the Interconnector comprising the Capacity Market Unit is or are undertaking a Planned Outage;
 - (b) one or more of the Generator Units or the Interconnector comprising the Capacity Market Unit is or are adversely affected by a Forced Outage;
 - (c) one or more of the Generator Units comprising the Capacity Market Unit is or are adversely affected by an Ambient Outage;
 - (d) one or more of the Wind Power Units comprising the Capacity Market Unit is or are adversely affected by a lack of wind or too much wind (as the case may be);
 - (e) one or more of the Run-of-River Hydro Units comprising the Capacity Market Unit is or are adversely affected by a lack of water or a restriction or limitation affecting its capacity to generate using water arising under a Legal Requirement;
 - (f) one or more of the Generator Units or the Interconnector comprising the Capacity Market Unit are adversely affected by a condition that the Regulatory Authorities notify the System Operators that they consider to be a Legitimate Reason in respect of the Generator Unit or Interconnector, following an application under paragraph H.7.4.2, during the period the Regulatory Authorities specify in their notice; or
 - (g) in the case of paragraph H.7.1.3, if as a result of one or more prior Secondary Trades a Participant's Obligated Capacity Quantity in respect of the Capacity Market Unit exceeds its total Awarded Capacity allocated in respect of that Capacity Market Unit as a result of a Capacity Auction for the relevant Capacity Year (and as recorded in the Capacity and Trade Register with a Commissioning Flag of "Actual"), and the effect of the proposed Secondary Trade is to cancel the effect of one or more of those prior Secondary Trades on the Obligated Capacity Quantity, provided that the relevant Secondary Trade Auction is not less than two Working Days prior to the commencement of the forward period over which the relevant Product will apply.
- H.7.4.2 A Participant may apply to the Regulatory Authorities for a determination for the purposes of paragraph H.7.4.1(f) in relation to a Generator Unit or Interconnector where the Participant considers that any of the following conditions applies:
- (a) there has been a material long-term unplanned reduction in the reliability of the plant associated with the Generator Unit or Interconnector since it Qualified;
 - (b) the Generator Unit or Interconnector is no longer economic and the Participant wishes to close the Generator Unit or Interconnector before the end of its existing capacity obligation; or
 - (c) an equivalent or similar condition to those in paragraph (a) or (b).
- H.7.4.3 A Participant seeking approval of the Regulatory Authorities under paragraph H.7.4.2 shall provide supporting evidence.
- H.7.4.4 A Participant may only enter into a Secondary Trade that results in the Obligated Capacity Quantity of the relevant Capacity Market Unit exceeding its Available De-Rated Capacity, up to a maximum of the Initial Capacity (Total) of the Capacity Market Unit, for no more than 70 days each Capacity Year.
- H.7.4.5 The System Operators shall keep a record for each Capacity Market Unit of the total number of days within a Capacity Year for which the relevant Participant has

entered into Secondary Trades in respect of its Capacity Market Unit that result in the Obligated Capacity Quantity of the Capacity Market Unit exceeding its Available De-Rated Capacity. The System Operators shall deduct from that total any such days when the Participant subsequently trades out of such positions in respect of the Capacity Market Unit.

- H.7.4.6 Where the number of days recorded under paragraph H.7.4.5 in respect of a Capacity Market Unit exceeds 70 days, the System Operators shall set the Seller Limit of the Capacity Market Unit to zero for the remainder of the Capacity Year.
- H.7.4.7 A Participant shall use reasonable endeavours to ensure that, at all times during a Capacity Year, the Obligated Capacity Quantity in respect of each of its Capacity Market Units is not less than the Awarded Capacity allocated in respect of that Capacity Market Unit as a result of a Capacity Auction for the relevant Capacity Year (and as recorded in the Capacity and Trade Register with a Commissioning Flag of "Actual"), except to the extent the shortfall is due to Legitimate Reasons.

H.8 SECONDARY TRADE AUCTION CLEARING

- H.8.1.1 The System Operators shall clear a Secondary Trade Auction in respect of a Product by:
 - (a) ranking price-quantity pairs for Secondary Auction Offers in order of increasing price;
 - (b) ranking price-quantity pairs for Secondary Auction Bids in order of decreasing price;
 - (c) determining a clearing price where:
 - (i) all price-quantity pairs for Secondary Auction Offers with a price lower than the clearing price are cleared to their maximum quantity;
 - (ii) a quantity is cleared from each price-quantity pair for Secondary Auction Offers with a price equal to the clearing price, where the quantity is for all such price-quantity pairs the same proportion of their maximum quantity;
 - (iii) all price-quantity pairs for Secondary Auction Bids with a price higher than the clearing price are cleared to their maximum quantity; and
 - (iv) a quantity is cleared from each price-quantity pair for Secondary Auction Bids with a price equal to the clearing price, where the quantity is for all such price-quantity pairs the same proportion of their maximum quantity; and
 - (d) where:
 - (i) the total quantity cleared from Secondary Auction Offers under sub-paragraphs (c)(i) and (ii) equals the total quantity cleared from Secondary Auction Bids under sub-paragraphs (c)(iii) and (iv);
 - (ii) if there is no price-quantity pair cleared with a price equal to the clearing price, then the clearing price shall equal the price of the lowest price of any price-quantity pair for Secondary Auction Offers that is cleared; and
 - (iii) if there is no price-quantity pair cleared then there is no trade resulting from the auction.

- H.8.1.2 The total Awarded Capacity acquired in respect of a Capacity Market Unit in a Secondary Trade Auction shall be the total of all cleared quantities from price-quantity pairs that are Secondary Auction Bids.
- H.8.1.3 The total Awarded Capacity sold in respect of a Capacity Market Unit in a Secondary Trade Auction shall be the total of all cleared quantities from price-quantity pairs that are Secondary Auction Offers.
- H.8.1.4 The price of the Awarded Capacity shall be the clearing price of the Secondary Trade Auction.
- H.8.1.5 The System Operators shall record details of all Secondary Trades in the Capacity and Trade Register.

H.9 SECONDARY TRADE AUCTION RESULTS

- H.9.1.1 The System Operators shall release Secondary Trade Auction results in accordance with the timetable specified in the applicable Secondary Trade Information Pack.
- H.9.1.2 The System Operators shall notify Participants submitting a Secondary Auction Bid or a Secondary Auction Offer of the clearing price and their accepted bid and offer quantities (if any).
- H.9.1.3 The System Operators shall publish the clearing price in Euro and Sterling.

I. OBLIGATIONS ASSOCIATED WITH AWARDED CAPACITY

I.1 OBLIGATED CAPACITY QUANTITY

- I.1.1.1 At any time, the “**Obligated Capacity Quantity**” in respect of a Capacity Market Unit for a period is calculated as follows:
- (a) the Awarded Capacity allocated in respect of that Capacity Market Unit as a result of a Capacity Auction applying for the relevant Capacity Year (and as recorded in the Capacity and Trade Register with a Commissioning Flag of “Actual”); plus
 - (b) any Awarded Capacity in respect of the Capacity Market Unit the subject of any Product acquired in a Secondary Trade Auction that covers that period (and as recorded in the Capacity and Trade Register); less
 - (c) any Awarded Capacity in respect of the Capacity Market Unit the subject of any Product sold in a Secondary Trade Auction that covers that period (and as recorded in the Capacity and Trade Register).

I.2 OBLIGATIONS ASSOCIATED WITH AWARDED CAPACITY

- I.2.1.1 In addition to its other obligations under this Code, a Participant shall, with respect to each of its Capacity Market Units:
- (a) in respect of Awarded New Capacity:
 - (i) use reasonable endeavours to achieve each Milestone by the date indicated in respect of that Milestone in the relevant Implementation Plan for delivery of the Awarded New Capacity;
 - (ii) provide Implementation Progress Reports to the System Operators in accordance with section J.4;
 - (iii) maintain an adequate Performance Security in accordance with section J.3;
 - (b) dedicate and use its reasonable endeavours to make available the Awarded Capacity;
 - (c) for each Imbalance Settlement Period within the Capacity Year:
 - (i) for a Capacity Market Unit that is an Interconnector, maintain a level of availability for imports into the SEM for each Imbalance Settlement Period not less than the Obligated Capacity Quantity and shall otherwise be subject to Difference Charges, in accordance with the Trading and Settlement Code;
 - (ii) for each Capacity Market Unit comprising one or more Generator Units, through its participation in the day-ahead market, intraday trade, and/or Balancing Market, schedule or provide sufficient energy for each Imbalance Settlement Period to satisfy its Obligated Capacity Quantity (as may be modified for settlement purposes under the Trading and Settlement Code), and shall otherwise be subject to Difference Charges, in accordance with the Trading and Settlement Code.
- I.2.1.2 An Aggregated Generator Unit shall be permitted to vary the mix of Generators that give rise its Awarded Capacity provided that:

- (a) each individual Generator comprising the Aggregated Generator Unit meets all requirements of this Code to be included as part of the Aggregated Generator Unit; and
- (b) at all times during the Capacity Year the cumulative de-rated capacity provided by the mix of Generators (based on each Generator's individual Initial Capacity and the De-Rating Factor applicable to its Technology Class at the time the Aggregated Generator Unit last Qualified) equals or exceeds the Awarded Capacity of that Aggregated Generator Unit applicable to that Capacity Year.

J. DELIVERY OF AWARDED NEW CAPACITY

J.1 PURPOSE

- J.1.1.1 This Chapter sets out the implementation arrangements for Awarded New Capacity, to ensure that it is delivered in time for the relevant Capacity Years.

J.2 CONTENT OF IMPLEMENTATION PLANS

- J.2.1.1 Subject to paragraphs J.2.1.3 and J.2.1.4, the Implementation Plan in respect of Awarded New Capacity shall include the following Major Milestones (and dates by which they must be achieved):

- (a) **Substantial Financial Completion:** this milestone is achieved when:
 - (i) all the Major Contracts and Finance Documents in respect of the construction, commissioning, repowering or refurbishment works for each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity are in full force and effect;
 - (ii) every Condition Precedent under each of the documents referred to in paragraph (i) has either been satisfied or waived in accordance with the terms of the relevant document;
 - (iii) the Participant in respect of the Awarded New Capacity has, or will have, sufficient financial resources available to it or committed financing under the Finance Documents to meet the Total Project Spend; and
 - (iv) the directors of the Participant (or equivalent body in the case of a Participant other than a company) have resolved to complete (or procure the completion of) the relevant construction, commissioning, repowering or refurbishment works such that the Awarded New Capacity will have reached Substantial Completion on or prior to the start of the first Capacity Year in which the Awarded New Capacity is due to be provided.
- (b) **Commencement of Construction Works:** this milestone is achieved when:
 - (i) an engineering, procurement and construction (EPC) contract (or any contract or suite of contracts having the same effect) is in place in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity; and
 - (ii) work specific to on-site construction of each actual new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity (as opposed to site preparation) has commenced.
- (c) **Substantial Completion:** this milestone is achieved when:
 - (i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion taking place under the applicable Major Contracts);
 - (ii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid

Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;

- (iii) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 90%; and
- (iv) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market.

J.2.1.2 Subject to paragraphs J.2.1.3 and J.2.1.4, the Implementation Plan in respect of Awarded New Capacity shall also include the following Additional Milestones in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity (and dates by which they must be achieved):

- (a) **Mechanical Completion:** this milestone is achieved when the primary mechanism to generate electricity (whether this is via a turbine, any mechanical or electrical device or installation of any other technology, e.g. photo voltaic) in respect of the new or refurbished Generator Unit or Interconnector s installed on-site;
- (b) **Completion of Network Connection:** this milestone is achieved when the new or refurbished Generator Unit or Interconnector can be electrically connected to the power system via activation of one or more switches and that all requirements for completion of network Connection under the applicable Grid Code and the applicable Connection Agreement are in place;
- (c) **First Energy to Network:** this milestone is achieved when an Interim Operational Notification or a Temporary Compliance Certificate has been issued in respect of the new or refurbished Generator Unit or Interconnector under the applicable Grid Code;
- (d) **Start of Performance/ Acceptance Testing:** this milestone is achieved testing of the completed new or refurbished Generator Unit or Interconnector by the Participant has commenced; and
- (e) **Provisional Acceptance/ Completion of Performance Testing:** this milestone is achieved when testing of the completed new or refurbished Generator Unit or Interconnector by the Participant is successfully completed.

J.2.1.3 Where the Awarded New Capacity is an Aggregated Generator Unit or Demand Side Unit, the Major Milestones set out in paragraph J.2.1.1 and the Additional Milestones set out in paragraph J.2.1.2 are modified as follows:

- (a) the Awarded New Capacity achieves Substantial Financial Completion when a contract is in place between the Participant and the provider of the physical capacity and evidence of this is provided to the System Operators;
- (b) the Commencement of Construction Works Milestone shall not apply and there shall be no obligation to satisfy or report against this milestone;
- (c) the Substantial Completion Milestone is the same as set out in paragraph J.2.1.1(c);
- (d) the Mechanical Completion Milestone shall not apply and there shall be no obligation to satisfy or report against this milestone;
- (e) the Awarded New Capacity achieves the Completion of Network Connection Milestone when the physical systems (e.g. SCADA and

metering) required for operation as an Aggregated Generator Unit or Demand Side Unit under the applicable Grid Code are in place and effective;

- (f) the First Energy to Network Milestone shall not apply and there shall be no obligation to satisfy or report against this milestone;
- (g) the Start of Performance/ Acceptance Testing Milestone shall not apply and there shall be no obligation to satisfy or report against this milestone; and
- (h) the Provisional Acceptance/ Completion of Performance Testing Milestone shall not apply and there shall be no obligation to satisfy or report against this milestone.

J.2.1.4 The System Operators may:

- (a) for the purposes of Capacity Auctions during the Transitional Period, waive the requirement for a Participant to achieve a Major Milestone if it is satisfied that the Participant has achieved a later Major Milestone or an Additional Milestone for which achieving the Major Milestone was a pre-requisite; and
- (b) waive the requirement for a Participant to satisfy or report against any of the Additional Milestones, if in the opinion of the System Operators the relevant Additional Milestone is not applicable to the technology of the new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity or is otherwise not appropriate in the circumstances.

J.2.1.5 The System Operators may request additional information or an inspection to assess progress, if a Participant fails to meet any of the Milestones, and the Participant shall comply with the request. The System Operators may appoint an appropriately qualified person to undertake an inspection under this paragraph on their behalf.

J.2.1.6 A Participant shall not:

- (a) amend, vary or terminate a Major Contract or other document referred to in paragraph J.2.1.1(a)(i) if to do so would:
 - (i) mean that any information provided to the System Operators in the relevant Application for Qualification or in the Qualification Process or in a certificate under paragraph J.4.3.2(a) or J.4.3.2(b) is no longer accurate in a material particular; or
 - (ii) delay achievement of any Major Milestone, or
- (b) Transfer its interest in a Major Contract or any other such document referred to in paragraph J.2.1.1(a)(i),

without the prior written approval of the System Operators.

J.2.1.7 Subject to section B.21, if a Participant requests the approval of the System Operators under paragraph J.2.1.6, the System Operators may not unreasonably delay or withhold their approval.

J.2.1.8 Where completion of a Milestone requires a Participant to provide evidence about a matter to the System Operators (for example, a Final Compliance Certificate, Operational Certificate or Final Operational Notification) and either of the System Operators was responsible for issuing that evidence in its capacity as the transmission system operator under a Grid Code, then the Participant is not required to submit that evidence again under this Code.

J.3 PERFORMANCE SECURITY

J.3.1 Relevant Bank

J.3.1.1 For the purposes of this section, a “**Relevant Bank**” is a Bank which:

- (a) holds a Banking Licence in Ireland under Section 9 of the Central Bank Act 1971 (Ireland) or is authorized by the Financial Conduct Authority to engage in “regulated activities”, as defined in Part 2 and Schedule 2 of the Financial Services and Markets Act 2000 (Northern Ireland and United Kingdom), or is otherwise authorised to provide banking services in Ireland or the United Kingdom; and
- (b) is either:
 - (i) a clearing bank in either Ireland or the United Kingdom; or
 - (ii) an international bank that is authorized or approved by the relevant regulatory authority or is otherwise eligible to provide banking services in Ireland or the United Kingdom; and
- (c) has either:
 - (i) a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or
 - (ii) a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and has a Balance Sheet Net Asset of not less than €1,000 million.

J.3.1.2 A Bank which is a subsidiary that is not independently rated, is taken to satisfy the requirements of paragraph J.3.1.1(c) if its parent company guarantees the obligations of the subsidiary and either:

- (a) has a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or
- (b) has a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and has a Balance Sheet Net Asset Value of not less than €10,000 million.

J.3.2 Obligation to Provide

J.3.2.1 If a Participant has been awarded New Capacity in a Capacity Auction, then the Participant shall:

- (a) post a Performance Security in the Participant’s designated currency with the System Operators; and
- (b) at all times ensure that the aggregate amount of the Performance Security is equal to or exceeds the Required Level calculated in accordance with paragraph J.3.2.4.

J.3.2.2 The purpose of the Performance Security is to provide credit support for any Termination Charges which may become payable by the Participant in respect of Awarded New Capacity.

J.3.2.3 The Regulatory Authorities shall determine and publish the following information in time for the System Operators to include it in the Capacity Auction Information Pack:

- (a) the Performance Security Posting Dates/ Events;

- (b) for each Performance Security Posting Date/ Event, the €/MW rate to be applied to Awarded Capacity in setting Performance Securities.
- J.3.2.4 At any time, the Required Level for a Participant's Performance Security is equal to the MW quantity of the Awarded New Capacity in respect of the Participant's Capacity Market Units multiplied by:
 - (a) where the Participant's designated currency is Euro, the Performance Security rate for the last Performance Security Posting Date/ Event prior to that time; or
 - (b) where the Participant's designated currency is Sterling, the Performance Security rate for the last Performance Security Posting Date/ Event prior to that time converted to Sterling based on the Annual Capacity Payment Exchange Rate for the Capacity Year specified in the applicable Final Auction Parameters.
- J.3.2.5 If at any time the aggregate amount of a Participant's Performance Security is less than the Required Level, then the System Operators shall notify the Participant and the Participant shall:
 - (a) immediately take steps to ensure that the Participant's Performance Security is equal to or exceeds the Required Level, whether by posting or putting in place additional Performance Security or otherwise; and
 - (b) ensure that the aggregate amount of its Performance Security is equal to or exceeds the Required Level by 17:00 on the second Working Day thereafter.
- J.3.2.6 A Performance Security in respect of Awarded New Capacity shall be maintained until the Substantial Completion Milestone has been achieved in accordance with paragraph J.2.1.1(c) to the satisfaction of the System Operators.
- J.3.3 **Acceptable Forms of Performance Security**
- J.3.3.1 The acceptable forms of Performance Securities that Participants may post are:
 - (a) an irrevocable standby Letter of Credit which satisfies all of the following criteria:
 - (i) the Letter of Credit is issued by a Relevant Bank;
 - (ii) the Letter of Credit is in the form attached in Appendix H "Template for Standard Letter of Credit";
 - (iii) the Letter of Credit shall be for a minimum duration of 12 months; and
 - (iv) the Letter of Credit is capable of being paid out for "Same Day Value" upon being called on or a demand being made thereunder; and
 - (v) the Letter of Credit is capable of being validated by the System Operators under paragraph J.3.3.3,

and/or:

 - (b) a cash held deposit in a Reserve Account with the SEM Bank as provided for in the following paragraphs of this section J.3.
- J.3.3.2 If a Participant elects to provide a cash deposit as, or as part of, its Performance Security, then the Participant shall:

- (a) instruct the System Operators to establish and maintain a Reserve Account with the SEM Bank in either Ireland or the United Kingdom according to where the relevant Capacity Market Unit is located;
- (b) the Reserve Account shall be in the sole name of the System Operators with the designation "Reserve Account relating to [Insert Participant Details]";
- (c) the Participant and the System Operators shall irrevocably instruct the SEM Bank to make payment against the sole instruction of the System Operators in accordance with this Code and the Bank Mandate. This Code shall take precedence over the Bank Mandate;
- (d) a Reserve Account shall be an interest-bearing account, and any interest shall be paid into the account;
- (e) with effect from the time of payment into the relevant Reserve Account, the relevant Participant thereby charges all sums paid into and accruing on that account by way of first fixed charge over cash at the SEM Bank in favour of the System Operators as for it to secure the relevant Participant's payment obligations under this Code;
- (f) the Participant shall fully comply with any applicable Account Security Requirements (including, for the avoidance of doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as set out in this paragraphs J.3.3.2 and in accordance with any applicable Agreed Procedures;
- (g) on the same day on which its Performance Security is posted and the cash collateral is paid into the relevant Reserve Account(s), complete and enter into a Deed of Charge and Account Security (in the form set out in Appendix I "Template for Deed of Charge and Account Security"), including the Notice of Assignment and Acknowledgment attached thereto, in respect of the Reserve Account and Reserve Assets;
- (h) within 5 Working Days from the date on which its Performance Security is posted, furnish to the System Operators the original executed Deed of Charge and Account Security for the purposes of the registration of such Deed of Charge and Account Security pursuant to section 860 of the Companies Act 2006 (UK) and/or section 409 of the Companies Act 2014 (Ireland), as appropriate, and/or at such other registry or registries as may be appropriate from time to time;
- (i) within 5 Working Days from the date on which its Performance Security is posted and the Deed of Charge and Account Security is dated, furnish to the Market Operator the original executed Notice of Assignment and Acknowledgment for the purposes of enabling the System Operators to give notice to the SEM Bank and procure the SEM Bank's acknowledgment pursuant to clause 2.4 of the Deed of Charge and Account Security; and
- (j) do all such things and execute all such documents and provide any further information that the System Operators may reasonably require in order to carry out such registrations within such timelines as may be specified by the System Operators, having regard to any applicable time limit for the registration of such a charge.

J.3.3.3 The System Operators shall, before accepting a Letter of Credit tendered by a Participant as a part of that Participant's Performance Security, validate that Letter

of Credit to ensure compliance with the requirements of this section J.3.3. At least 60 calendar days before expiry of any prevailing Letter of Credit, the Participant shall put a replacement Letter of Credit in place, with an effective date starting immediately from the time and date of expiry of the current Letter of Credit.

- J.3.3.4 If the person issuing a Letter of Credit forming all or part of a Participant's Performance Security is no longer a Relevant Bank, the Participant shall immediately take steps to ensure that the aggregate amount of its Performance Security provided by a Relevant Bank is equal to or exceeds the Required Level.
- J.3.3.5 Without prejudice to a Participant's obligation to maintain its Performance Security under this section J.3.3, where the System Operators become aware that a Participant's Letter of Credit or the Bank which has issued it fails or ceases to comply with the requirements in this section J.3.3, the System Operators shall inform the relevant Participant as soon as reasonably practicable.
- J.3.3.6 Performance Securities are subject to the following conditions:
 - (a) a Participant's Performance Security shall be available for draw down by the System Operators making a call or a demand as provided for in this Code and shall continue to remain in place until such time as all amounts due in respect of the Participant concerned under this Code have been paid in full;
 - (b) the System Operators, but not any other Party or any Participant, have the right to deduct from or set off against a Participant any outstanding claims and liabilities of that Participant against any amounts owing pursuant under this Code relating to that Participant without the prior consent of any such Participant concerned; and
 - (c) the Participant shall not allow or not take any action, or fail to take any action, to allow the amount of the Performance Security to reduce below the Required Level.

J.4 IMPLEMENTATION PLAN AND PROGRESS REPORTING

J.4.1 Achievement of Milestones

- J.4.1.1 A Participant with Awarded New Capacity shall use reasonable endeavours to achieve each Milestone by the date indicated in respect of that Milestone in the Implementation Plan applicable to that Awarded New Capacity.

J.4.2 Implementation Progress Reports

- J.4.2.1 A Participant with Awarded New Capacity shall submit an Implementation Progress Report to the System Operators at each of the times specified in the applicable reporting schedule.
- J.4.2.2 The reporting schedule for Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector shall be determined by the Regulatory Authorities and may be amended from time to time.
- J.4.2.3 The System Operators shall publish the reporting schedule for Awarded New Capacity and any amended reporting schedule within two Working Days of receiving the schedule or amended schedule from the Regulatory Authorities.
- J.4.2.4 The Regulatory Authorities shall determine the initial reporting schedule for capacity to be awarded in a Capacity Auction in the Capacity Auction Timetable for that Auction, so that:

- (a) for a T-4 auction, reporting shall occur at intervals of approximately every six months;
- (b) a report shall be scheduled prior to the last T-1 Auction in respect of a Capacity Year with sufficient time to factor any expected non-delivery of capacity into that T-1 Auction;
- (c) there is an additional requirement on the Participant with Awarded Capacity to report upon achieving the following Milestones:
 - (i) Substantial Financial Completion;
 - (ii) Commencement of Construction Works; and
 - (iii) Substantial Completion,

though the Regulatory Authorities may set alternative schedules.

J.4.2.5 If Awarded New Capacity has not achieved the Substantial Completion Milestone by the Long Stop Date, then the relevant Participant shall submit an Implementation Progress Report to the System Operators.

J.4.2.6 Each Implementation Progress Report shall include:

- (a) details of any Milestones achieved;
- (b) details of progress against outstanding Milestones;
- (c) identified or potential delays in achieving outstanding Milestones; and
- (d) actions being taken to mitigate any delays.

J.4.2.7 The System Operators shall publish a standard template for the contents of Implementation Progress Reports, including information expected in respect of each Milestone. Participants shall use the template when making Implementation Progress Reports.

J.4.3 **Verification**

J.4.3.1 A Participant shall provide verification in accordance with this section J.4.3.2 in respect of:

- (a) achieving the Substantial Financial Completion Milestone, any other Major Milestone or Minimum Completion in relation to Awarded New Capacity;
- (b) the "T-1 Implementation Progress Report", being the last Implementation Progress Report scheduled for delivery prior to the date 13 Months prior to the start of the first Capacity Year in which the Awarded New Capacity is scheduled to be provided under the Implementation Plan.

J.4.3.2 For the purposes of paragraph J.4.3, verification comprises:

- (a) in respect of the Substantial Financial Completion Milestone:
 - (i) a certificate addressed to the System Operators and signed on behalf of the Participant by a director or the company secretary of the Participant (or another senior officer of the Participant acceptable to the System Operators) certifying that, having made all due and careful enquiry and to the best of their knowledge, information and belief, the Substantial Financial Completion Milestone has been achieved, and in particular that each of the statements in paragraphs J.2.1.1(a)(i) to J.2.1.1(a)(iv) is true and correct in relation to the Milestone; and
 - (ii) a copy of the resolution referred to in paragraph J.2.1.1(a)(iv);

- (b) in respect of the Commencement of Construction Works Milestone, a certificate addressed to the System Operators and signed on behalf of the Participant by a director or the company secretary of the Participant (or another senior officer of the Participant acceptable to the System Operators) certifying that, having made all due and careful enquiry and to the best of their knowledge, information and belief, the Commencement of Construction Works Milestone has been achieved, and in particular that each of the statements in paragraphs J.2.1.1(b)(i) and J.2.1.1(b)(ii) is true and correct in relation to the Milestone; and
 - (c) in respect of all other Milestones or Minimum Completion, a certificate addressed to the System Operators from an independent Certified Engineer, with experience and expertise in the construction and operation of the relevant type of equipment or technology, approved by the System Operators (such approval not to be unreasonably delayed or withheld) certifying that, having made due and careful enquiry and to the best of their knowledge, information and belief, the relevant Milestone or Minimum Completion (as applicable) has been achieved.
- J.4.3.3 For the purposes of paragraph J.4.3.2(c), a person is regarded as independent if:
 - (a) the person is not an Affiliate of the relevant Participant;
 - (b) the person is not a current employee of the relevant Participant or an Affiliate of the relevant Participant;
 - (c) the person has not been an employee of the relevant Participant or an Affiliate of the relevant Participant with the previous two years; and
 - (d) the person is not engaged on terms, nor party to any other arrangements, which could allow the Participant or any Affiliate of the Participant to exercise undue influence on any report, assessment, certificate or commentary prepared by that person or otherwise compromise the objectivity of such report, assessment, certificate or commentary.
- J.4.3.4 A certificate under this section J.4.3 shall be in the form published from time to time by the System Operators.
- J.4.3.5 In a certificate given under paragraph J.4.3.2(c), the Certified Engineer giving the certificate shall confirm that they are independent within the meaning of paragraph J.4.3.3 and confirming each of the matters referred to in paragraph J.4.3.3.
- J.4.3.6 The System Operators may request that a Participant provide additional information or evidence in relation to the achievement of any Milestone or Minimum Completion, and the Participant shall comply with the request.

J.4.4 Costs

- J.4.4.1 The costs of providing reports under this section J.4, including of verification, shall be borne by the relevant Participant.

J.5 REMEDIAL ACTIONS

J.5.1 EPC Contractor and suppliers

- J.5.1.1 A Participant shall not change its EPC Contractor or the supplier of a major component of the new or refurbished Generator Unit or Interconnector, without the prior written consent of the System Operators (such consent not to be unreasonably withheld or delayed).

- J.5.1.2 Where required to avoid or minimise delays in the completion of Awarded New Capacity or due to an Insolvency Event or material breach by the EPC Contractor which would entitle the Participant to terminate or replace the appointment of the EPC Contractor, a Participant or an Enforcing Party may apply for approval from the System Operators for any of the following actions:
- (a) a change to the EPC Contractor;
 - (b) a change to the supplier of a major component of the new or refurbished Generator Unit or Interconnector; or
 - (c) an extension to the date by which a Milestone (other than the scheduled date for Substantial Financial Completion) shall be achieved under the relevant Implementation Plan.
- J.5.1.3 The application under paragraph J.5.1.2 shall include:
- (a) reasons for the request in reasonably sufficient detail to enable the System Operators in considering the request;
 - (b) supporting evidence; and
 - (c) details of any impact on other Implementation Plan dates, with detailed reasoning.
- J.5.1.4 The System Operators shall approve a request under paragraph J.5.1.2, if they consider that the changed arrangements will not decrease the likelihood of delivery of the Awarded New Capacity prior to the Long Stop Date. The System Operators shall not unreasonably withhold or delay their approval under this paragraph.
- J.5.2 Extension of Date for Substantial Financial Completion**
- J.5.2.1 A Participant or an Enforcing Party may, prior to the scheduled date for achieving Substantial Financial Completion in the relevant Implementation Plan, apply to the Regulatory Authorities to extend that date to a new date later than 18 months after the Capacity Auction Results Date for the Capacity Auction Timetable for the Capacity Auction which awarded the capacity.
- J.5.2.2 The application under paragraph J.5.2.1 shall include:
- (a) reasons for the request in reasonably sufficient detail to enable the Regulatory Authorities in considering the request and supporting evidence;
 - (b) details of the actions being taken to rectify the issues causing the delay;
 - (c) a plan to rectify those issues, the tasks that need to be undertaken to achieve Substantial Financial Completion; and
 - (d) details of any impact on other Implementation Plan dates, with detailed reasoning.
- J.5.2.3 The Regulatory Authorities shall consult with the System Operators in assessing a request under paragraph J.5.2.1.
- J.5.2.4 Where the Regulatory Authority accepts a request under paragraph J.5.2.1, they shall advise the System Operators of the new scheduled date for Substantial Financial Completion, and any other changed Implementation Plan dates and the System Operators shall record those changes in the Capacity and Trade Register.

J.5.3 **Change to Participant**

- J.5.3.1 Where required to avoid or minimise delays in the completion of Awarded New Capacity, and in accordance with the contractual arrangements between the Participant and its financiers, an Enforcing Party may seek approval in accordance with section B.21 to a Transfer of the Participant's interest in this Code, the Capacity Market Framework Agreement, Awarded Capacity and/ or a Generator Unit or Interconnector. The System Operators and the Regulatory Authorities shall promptly notify each other if they receive such a request and consult with each other on the request.

J.6 **TERMINATION OF AWARDED NEW CAPACITY**

- J.6.1.1 For the purposes of this section:

- (a) **Minimum Completion:** Awarded New Capacity achieves Minimum Completion when:
- (i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion taking place under the applicable Major Contracts);
 - (ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;
 - (iii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;
 - (iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and
 - (v) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and
- (b) **Long Stop Date:** the Long Stop Date in respect of Awarded New Capacity means the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Implementation Plan for a Participant's Awarded New Capacity contemplates it achieving Substantial Completion.

- J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:

- (a) Substantial Financial Completion has not been achieved within 18 months of the Capacity Auction Results Date in the Capacity Auction Timetable for the Capacity Auction which allocated the capacity (or such later date as allowed by the Regulatory Authorities under paragraph J.5.2); or
- (b) Minimum Completion has not been achieved by the applicable Long Stop Date.

- J.6.1.3 The System Operators may, subject to paragraph J.6.1.5, terminate all Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector if:

- (a) any Connection Agreement covering the Awarded New Capacity expires, is terminated or lapses;
- (b) the relevant Participant's participation under the Trading and Settlement Code is suspended or terminated;
- (c) the Participant Transfers any of the Generator Units or Interconnectors providing the Awarded New Capacity without the prior written consent of the System Operators or otherwise in breach of this Code;
- (d) the Participant submits information in the Qualification Process or in an Implementation Progress Report that is materially false or misleading;
- (e) the Participant fails to maintain a Performance Security which satisfies the requirements of section J.3 by the Performance Security Date specified in the Capacity Auction Timetable or to maintain the Performance Security at the Required Level, or put in place supplementary Performance Security, when required to do so under section J.3;
- (f) the Participant acknowledges in an Implementation Progress Report that it does not expect to achieve Minimum Completion by the Long Stop Date;
- (g) an Insolvency Event affecting the Participant occurs;
- (h) an Insolvency Event occurs in relation to the Participant's Performance Security Provider and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- (i) it becomes unlawful for the Participant's Performance Security Provider to comply with any of its obligations under the Performance Security and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- (j) the Participant's Performance Security Provider suspends or ceases to carry on its business, or any part of its business which is relevant to its activities under this Code, and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- (k) a Legal Requirement necessary to enable the Participant's Performance Security Provider to fulfil its obligations contemplated by this Code is amended or revoked in whole or in part so as to prevent the Performance Security Provider from fulfilling those obligations and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter;
- (l) the Participant's Performance Security Provider ceases to be eligible for the purposes of this Code to be able to provide the Performance Security and the Participant has not posted a replacement Performance Security that meets the requirements of paragraph J.3.3 for an amount not less than the Required Level by 17:00 on the second Working Day thereafter; or
- (m) the Participant has failed to comply with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of

Charge and Account Security) in relation to the provision of cash collateral as required under paragraphs J.3.3.2 and any applicable Agreed Procedures

- J.6.1.4 Where, by the Long Stop Date, Awarded New Capacity has achieved Minimum Completion but has not achieved Substantial Completion, then the System Operators shall, subject to paragraph J.6.1.5, reduce the quantity of Awarded Capacity to the quantity delivered by the Long Stop Date as determined in accordance with the table in paragraph G.3.1.8 and terminate the remainder.
- J.6.1.5 The System Operators shall consult with the Regulatory Authorities prior to taking any action under paragraph J.6.1.3 or J.6.1.4.
- J.6.1.6 The System Operators shall terminate all or part of the Awarded New Capacity in respect of New Capacity only for the first Capacity Year for which that capacity was awarded if requested to do so by the Regulatory Authorities if it is determined by the Regulatory Authorities (based on an Independent Verification report) prior to the T-1 Capacity Auction for a Capacity Year that all or part of the Awarded Capacity is not likely to be delivered by the start of the Capacity Year.
- J.6.1.7 When terminating Awarded New Capacity, including when required by the Regulatory Authorities pursuant to this Code, the System Operators shall issue a notice ("**Capacity Termination Notice**") to the Participant identifying the:
- (a) Capacity Market Unit;
 - (b) Generator Unit(s) or Interconnector comprising the Capacity Market Unit;
 - (c) Capacity and Trade Register ID of the Awarded New Capacity;
 - (d) quantity of Awarded New Capacity to be terminated, which in the case of paragraph J.6.1.4, is the amount by which the Awarded New Capacity has been reduced;
 - (e) quantity of Existing Capacity and Awarded Capacity (if any) remaining in respect of the Capacity Market Unit;
 - (f) Capacity Year(s) to which the Capacity Termination Notice relates;
 - (g) effective date of the termination;
 - (h) Termination Charge that applies under section J.7.
- J.6.1.8 Where the System Operators issue a Capacity Termination Notice, the System Operators shall:
- (a) at the same time, send a copy of the Capacity Termination Notice to the Regulatory Authorities;
 - (b) publish a notice that it has terminated Awarded Capacity, identifying the Capacity Market Unit and the effective date of termination; and
 - (c) update the Capacity and Trade Register to terminate Awarded Capacity reflecting the Capacity Termination Notice.
- J.6.1.9 The System Operators may amend a Termination Notice by written notice to the Participant.
- J.6.1.10 Where Awarded Capacity is terminated then that shall not preclude a Participant submitting an Application for Qualification for the same capacity for a Capacity Year after the Capacity Year to which the terminated Awarded Capacity first applied.

- J.6.1.11 The System Operators shall have no liability in respect of any action they take in accordance with this section J.6 except to the extent caused by reckless or wilful misconduct by the System Operators.

J.7 TERMINATION CHARGES

- J.7.1.1 A Participant ("**Defaulting Participant**") shall pay to the System Operators a Termination Charge if:

- (a) Awarded New Capacity in respect of one of its Capacity Market Units is terminated or reduced under section J.6; or
- (b) the Participant is Terminated under this Code prior to the earlier of Awarded New Capacity in respect of its Capacity Market Units achieving Substantial Completion and the Long Stop Date.

- J.7.1.2 The System Operators shall, as soon as reasonably practicable after the termination or reduction of Awarded Capacity under section J.6:

- (a) determine the amount in Euros or Sterling (as applicable) of the Termination Charge that is payable in accordance with paragraph J.7.1.3; and
- (b) issue to the Defaulting Participant an invoice for that amount.

- J.7.1.3 The amount of the Termination Charge payable under this section J.6 shall be determined in accordance with the formula:

$$TC = TFR \times ACO$$

where:

- (a) TC is the Termination Charge payable;
- (b) TFR is the termination fee rate (expressed in Euros or Sterling (as applicable)) per MW applicable at the time the Awarded New Capacity is terminated or adjusted, as determined by the Regulatory Authorities and published in the Capacity Auction Information Pack for the relevant Capacity Auction in which the Awarded New Capacity was allocated; and
- (c) ACO (expressed in MW) is the amount of the Awarded New Capacity, or, if the Awarded New Capacity has been reduced, the amount by which it has reduced.

- J.7.1.4 An invoice issued by the System Operators shall:

- (a) set out the calculation of the Termination Charge which the Defaulting Participant is liable to pay, in such detail as will readily show the Defaulting Participant how the calculation has been made; and
- (b) specify the date by which it is to be paid, which shall be not less than two Working Days after the date on which the invoice is issued; and
- (c) specify the account into which the payment shall be made, which, to avoid doubt, may be an account in the name of the Market Operator at the SEM Bank.

- J.7.1.5 The Defaulting Participant shall pay the amount invoiced under paragraph J.7.1.4 to the System Operators in full without deduction, set-off or counterclaim by depositing the amount into the specified account no later than the payment due date.

- J.7.1.6 Where this Chapter requires a Defaulting Participant to make a payment by no later than a stated day, the payment shall be made by no later than 12:00 on that

day. Payment made after 12:00 is to be treated as having been made on the following day.

- J.7.1.7 Where the Defaulting Participant does not pay in full the amount invoiced under paragraph J.7.1.4 to the System Operators as required by paragraph J.7.1.6, then:
- (a) the System Operators shall forthwith make a call or serve a demand on the Defaulting Participant's Performance Security for the full amount invoiced under paragraph J.7.1.4; and
 - (b) the Defaulting Participant shall pay the System Operators Default Interest on the outstanding balance of the invoiced amount from and including the payment due date until the date of payment in accordance with section B.7.3.
- J.7.1.8 Where a Defaulting Participant pays the System Operators a Termination Charge, or the System Operators calls or makes a demand on a Participant's Performance Security, under this section J.7, then **[Note: the fees recovered will be returned to suppliers via one of the existing settlement mechanisms in a manner to be determined, but the intention is that it will be applied in the Capacity Year to which the Performance Security related]**.

K. EXCHANGE RATES

K.1 CONCEPTS

- K.1.1.1 The Annual Capacity Payment Exchange Rate (XRCPAy) is an exchange rate applicable to Capacity Year y which converts the Capacity Payment Price for a primary or secondary trade from Euros to Sterling.
- K.1.1.2 The Monthly Capacity Payment Exchange Rate (XRCPM_c) is an exchange rate applicable to Capacity Period c which converts the Capacity Payment Price for a secondary trade from Euros to Sterling.
- K.1.1.3 An Annual Capacity Payment Exchange Rate is applicable to the entirety of a Capacity Year.
- K.1.1.4 A Monthly Capacity Payment Exchange Rate is applicable to the entirety of all trading days which fall during a Month.

K.2 METHODOLOGY

- K.2.1.1 The Annual Capacity Payment Exchange Rate and the Monthly Capacity Payment Exchange Rate shall be determined by the System Operators using a methodology approved by the Regulatory Authorities, and shall reflect expectations of the average exchange rate over the period to which the exchange rate applies.
- K.2.1.2 From time to time and when requested by the Regulatory Authorities, the System Operators shall report to the Regulatory Authorities proposing a methodology for setting and updating the values for Annual Capacity Payment Exchange Rate and the Monthly Capacity Payment Exchange Rate, including the initial values to be applied.
- K.2.1.3 The System Operators' report shall set out any relevant research or analysis carried out by the System Operators and the justification for the specific methodology proposed. The report may, and shall, if so requested by the Regulatory Authorities, include alternative methodologies from those proposed and shall set out the arguments for and against such alternatives.
- K.2.1.4 The System Operators shall publish the approved methodology within two Working Days of receipt of the Regulatory Authorities' approval.
- K.2.1.5 The System Operators shall first determine and publish an indicative Annual Capacity Payment Exchange Rate for a Capacity Year in the Capacity Auction Information Pack for the first Capacity Auction in respect of that Capacity Year.
- K.2.1.6 The Annual Capacity Payment Exchange Rate applicable to Awarded Capacity allocated in a Capacity Auction shall be the rate published in the Final Auction Parameters for the Capacity Auction.
- K.2.1.7 Not later than five Working Days prior to the end of each Month, the System Operators shall determine and publish a Monthly Capacity Payment Exchange Rate for each of the following 12 Months.
- K.2.1.8 The System Operators shall monitor the appropriateness of current values of then Annual Capacity Payment Exchange Rates and Monthly Capacity Payment Exchange Rates and may update any value at any time in accordance with the methodology.
- K.2.1.9 The System Operators shall publish the current set of Annual Capacity Payment Exchange Rates and the Monthly Capacity Payment Exchange Rates for all

current and future periods and shall re-publish them whenever they change a value.

L. DATA AND INFORMATION SYSTEMS

L.1 PURPOSE

L.1.1.1 This Chapter L sets out rules relating to:

- (a) the systems and procedures for the communication of Data Transaction and REMIT Data Transactions by each Party to the System Operators, and by the System Operators to one or more Parties; and
- (b) the publication by the System Operators of data and information relating to the arrangements under this Code.

L.1.1.2 A Participant submitting a Capacity Auction Offer, Secondary Auction Bid or Secondary Auction Offer shall use the Capacity Market Platform and comply with all procedures issued from time to time by the System Operators for using the Capacity Market Platform, including the Interface Technical Specification.

L.2 GENERAL

L.2.1 Data Processing Entities

L.2.1.1 A Party (other than the System Operators) may appoint a Data Processing Entity, in accordance with Agreed Procedure 1 “Registration”, to submit applicable Data Transactions for and on behalf of the Party or any of its Participants.

L.2.1.2 The system used by any Data Processing Entity shall comply with the requirements set out in this Code and must pass Communication Channel Qualification. A Party shall at all times remain liable for the performance of, and compliance with this Code by, its Data Processing Entity.

L.2.1.3 Where a Party or Participant (except the System Operators) has an obligation in relation to the submission of Data Transactions and that Party or Participant has appointed a Data Processing Entity, then:

- (a) that Party or Participant shall procure that the obligation is performed or observed by the relevant Data Processing Entity; and
- (b) the acts and omissions of the relevant Data Processing Entity in that capacity are taken to be those of that Party or Participant.

L.2.2 Submission of Data

L.2.2.1 Where this Code requires data forming part of a Data Transaction to be “submitted”, it shall be submitted in accordance with the applicable rules for submission of Data Transactions as set out in this Chapter L.

L.2.2.2 Where the System Operators are required to “issue”, “submit” or “send” data to a Party, unless otherwise specified, the System Operators may meet this requirement in respect of users of Type 2 Channels by making the data available for retrieval by the relevant Party in accordance with timescales specified under this Code. In the event that:

- (a) no timescale is specified for the issue, submission or sending of data; or
- (b) the event or circumstance giving rise to the issue, submission or sending of data is not timetabled; or
- (c) the System Operators have failed to “issue”, “submit” or “send” the data, as appropriate, in accordance with the specified timescale,

the System Operators shall meet the requirement in respect of users of Type 2 Channel by making the data available for retrieval by the relevant Party and by notifying the Party that the data is available.

L.2.3 Communication Channel Types

L.2.3.1 The System Operators shall establish and maintain two distinct Communication Channels, as more particularly described in Agreed Procedure 4 “Communication Channel Qualification”:

- (a) Type 1 Channel, meaning manual communication including paper based communications and e-fax communications; and
- (b) Type 2 Channel meaning assisted communication (human to computer).

L.2.4 Obligation of Parties to Maintain a Functional Interface to the Communication Channels

L.2.4.1 A Party or Participant must meet any requirements as specified pursuant to this Code to use a Communication Channel.

L.2.4.2 A Participant shall remain Qualified for each Communication Channel which it designates in accordance with Agreed Procedure 4 “Communication Channel Qualification” for the duration of its participation in the Capacity Market.

L.2.4.3 The System Operators may suspend a Participant’s use of a Type 2 Channel where the System Operators reasonably determine, as provided for in Agreed Procedure 4 “Communication Channel Qualification”, that the Participant’s communications over that Communication Channel materially fail to meet the standards in Agreed Procedure 4 “Communication Channel Qualification”. In such an event, the System Operators shall immediately contact the affected Participant to explain the reason for the suspension which shall last until all issues are resolved, and shall take steps with that Participant to resolve the issue.

L.2.4.4 The System Operators shall provide technical and operational advice to Parties in relation to the Communication Channels and the interfaces to those Communication Channels. This is set out in Agreed Procedure 5 “System Operation, Testing, Upgrading and Support”.

L.2.5 Obligation on Parties during Testing and Upgrading of Systems and Communication Channels

L.2.5.1 The System Operators shall co-ordinate and facilitate testing of the Capacity Market Platform and the interfaces to Communication Channels as described under Agreed Procedure 5 “System Operation, Testing, Upgrading and Support”.

L.2.5.2 The System Operators shall provide reasonable prior notice to all affected Parties of any proposed testing, upgrading or down-time of the Capacity Market Platform or the Communication Channels.

L.2.5.3 The System Operators shall, where practicable, schedule testing, upgrading, or down-time of the Capacity Market Platform or the Communication Channels in consultation with Parties under Agreed Procedure 5 “System Operation, Testing, Upgrading and Support”. The System Operators shall use reasonable endeavours to minimise the impact of the testing or down-time of the Capacity Market Platform on Parties.

L.2.5.4 The System Operators shall ensure that the scheduled testing or down-time will, where practicable, be scheduled in a manner which does not preclude Capacity Auction Offers, Secondary Auction Bids and Secondary Auction Offers Data being

submitted in the timescales provided for in the relevant Capacity Auction Timetable or Secondary Trade Information Pack (as applicable).

L.2.5.5 Scheduled Capacity Market Platform down-time will not constitute failure by the System Operators to fulfil its obligations under this Code where:

- (a) the down-time is of reasonable duration; and
- (b) the procedure of notification under paragraph L.2.5.2 was followed by the System Operators.

L.2.5.6 All Parties shall facilitate the co-ordination of testing and upgrading of the Communication Channels and the Capacity Market Platform as and when requested by the System Operators in connection with a proposed event of which notice has been given pursuant to paragraph L.2.5.2

L.2.5.7 Any Party proposing to undertake any testing or upgrading work which may impact on the interfaces of the System Operators or another Party's system shall inform the System Operators as soon as reasonably practical. The System Operators shall be entitled to issue instructions in relation to the undertaking of any such work for the purposes of the proper operation of this Code, and the Party concerned shall comply with such instructions. Each Party shall ensure that any testing or upgrading of its own system is undertaken at a time and in a manner so as to minimise any adverse effect for any other Party's system or the use by any other Party of any Communication Channel.

L.2.6 Data Categories and Data Transactions

L.2.6.1 For each Data Transaction, the Sending Party may assign it an identifier in accordance with the Interface Technical Specification that shall be stored by the Receiving Party to assist the Sending Party in identifying the Data Transaction.

L.2.6.2 For each Data Transaction or group of Data Transactions in a single communication for which the System Operators are the Receiving Party, the System Operators shall assign it a unique identifier in accordance with the Interface Technical Specification and shall store such identifier to enable it to uniquely identify the Data Transaction.

L.2.6.3 In the event that a Data Transaction is wrong or defective, the Sending Party shall, after becoming aware of the error or defect, re-submit that Data Transaction within any applicable timelines.

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L.3 SUBMISSION, VALIDATION AND REJECTION OF DATA TRANSACTIONS

L.3.1.1 Parties and Participants shall, where applicable, submit Data Transactions in accordance with this Code.

L.3.1.2 Subject to section L.4, the Sending Party shall send a Data Transaction using the Type 2 Channel.

L.3.1.3 A Data Transaction shall be deemed to be received by the System Operators at the time that the Capacity Market Platform records it as entering via a valid, functioning Type 2 Channel, or if sent by another means as permitted under section L.4, at the time that it is deemed to be received in accordance with paragraph B.26.2.6 and has successfully completed initial validation checks to ensure that the Capacity Market Platform can receive the data as specified in the Interface Technical Specification.

- L.3.1.4 On receipt of a Data Transaction, the System Operators shall send a Confirmation Notice to the Sending Party using the same Communication Channel as used by the Sending Party. The Confirmation Notice shall contain a time stamp and sufficient information to enable the Sending Party to identify the Data Transaction to which it relates.
- L.3.1.5 If the Sending Party does not receive a Confirmation Notice by the time it is due, as set out in the Interface Technical Specification, then the Sending Party shall inform the System Operators in order to establish whether or not its Data Transaction has been received.
- L.3.1.6 The System Operators shall:
- (a) be under no obligation to follow up any Party that has not submitted any particular Data Transaction; and
 - (b) shall have no liability in respect of any Data Transaction which it has not received under paragraph L.3.1.3, or any Data Transaction which contains defective or incorrect data, or for using any data contained in any Validated Data Transaction as contemplated by this Code.
- L.3.1.7 The System Operators shall, in respect of each Data Transaction received by it prior to the applicable deadlines, process the Data Transaction to determine whether it is valid in accordance with the Interface Technical Specification. The System Operators shall determine a Data Transaction to be valid if the conditions set out in the Interface Technical Specification are satisfied in respect of that Data Transaction and shall reject the Data Transaction if such conditions are not so satisfied
- L.3.1.8 Following the processing of a Data Transaction under paragraph L.3.1.7, if the System Operators do not determine that a Data Transaction is valid, they shall send a Rejection Notice to the Sending Party using the same Communication Channel as that used by the Sending Party to send the Data Transaction and in accordance with the Interface Technical Specification. The System Operators shall specify in any Rejection Notice the conditions set out in the Interface Technical Specification that were not satisfied.
- L.3.1.9 The System Operators may send both a Confirmation Notice and a Rejection Notice in respect of a Data Transaction in a single communication provided that it satisfies the timelines provided for pursuant to the Interface Technical Specification.
- L.3.1.10 Save as expressly provided otherwise, the System Operators shall be obliged to use, for all purposes set out in this Code, only the most recently received Data Transaction of that category that has been Validated.
- L.3.1.11 The System Operators shall use the Data Transaction as required by paragraph L.3.1.10 regardless of whether or not it has issued a Confirmation Notice to the Sending Party in respect of that Data Transaction, or whether that Data Transaction was Validated prior to or following the time for submitting that Data Transaction under this Code.
- L.3.1.12 Where two or more Data Transactions are received contemporaneously, the System Operators shall determine the deemed order of receipt of the Data Transactions (acting reasonably).

L.4 COMMUNICATIONS FAILURES

L.4.1 Limited Communication Failure

- L.4.1.1 As soon as a Participant becomes aware, or should have become, aware of the commencement of a Limited Communication Failure, that Participant shall notify the System Operators of the Limited Communication Failure.
- L.4.1.2 During a Limited Communication Failure, the affected Participant shall use the methods of communication, other than the failed Communication Channel(s), as provided for pursuant to Agreed Procedure 6 “System and Communication Failures”.
- L.4.1.3 A Limited Communications Failure shall not affect the obligations of any Party to submit Capacity Auction Offers.
- L.4.1.4 No Participant shall be entitled to reimbursement of costs or expenses incurred in connection with using alternative communication methods during a Limited Communication Failure.

L.4.2 Capacity Market Communication Outage

- L.4.2.1 When the System Operators become aware of a Capacity Market Communication Outage, the System Operators shall inform affected Participants of the Capacity Market Communication Outage in accordance with Agreed Procedure 6 “System and Communication Failures”.
- L.4.2.2 During a Capacity Market Communication Outage, Participants shall use the methods of communication provided for pursuant to Agreed Procedure 6 “System and Communication Failures”.
- L.4.2.3 Following the restoration of the Capacity Market Platform, the System Operators shall recommence processing and restore its operation to normal timelines as soon as reasonably possible in the circumstances.
- L.4.2.4 No Party or Participant shall be entitled to reimbursement of costs or expenses incurred in connection with using alternative communication methods in the case of a Capacity Market Communication Outage.

L.4.3 Capacity Market System Outage

- L.4.3.1 When the System Operators become aware of a Capacity Market System Outage, the System Operators shall inform affected Participants and the Regulatory Authorities of the Capacity Market System Outage in accordance with Agreed Procedure 6 “System and Communication Failures”.
- L.4.3.2 During a Capacity Market System Outage, Participants shall use the methods of communication provided for pursuant to Agreed Procedure 6 “System and Communication Failures”.
- L.4.3.3 During a Capacity Market System Outage, the System Operators may defer a Capacity Auction or Secondary Trade Auction until after the Capacity Market System Outage ceases, and, if they do so, shall notify the Participants and the Regulatory Authorities. If the System Operators defer a Capacity Auction or Secondary Trade Auction under this paragraph, then it may adjust the timelines in the relevant Capacity Auction Timetable or Secondary Trade Information Pack (as applicable) to reflect the deferral and publish a replacement Capacity Auction Timetable or Secondary Trade Information Pack (as applicable).

L.4.3.4 Following the restoration of the Capacity Market Platform, the System Operators shall recommence processing and restore its operation to normal timescales as soon as reasonably possible in the circumstances.

L.4.3.5 No Party or Participant shall be entitled to reimbursement of costs or expenses incurred in connection with using alternative communication methods in the case of a Capacity Market System Outage.

L.4.4 Modification of Timelines under the Code

L.4.4.1 The System Operators may modify any of the timelines under this Code, a Capacity Auction Timetable or a Secondary Trade Information Pack for doing any act or thing during a Limited Communication Failure, Capacity Market Communication Outage or a Capacity Market System Outage. The modified timeline shall apply during the period of that failure or outage.

L.4.4.2 In exercising its powers under paragraph L.4.4.1, the System Operators must act reasonably having regard to the Capacity Market Code Objectives and seek to minimize the disruption to normal operations under this Code and the impact on Participants.

L.4.4.3 If the System Operators modify any of the timelines under a Capacity Auction Timetable or a Secondary Trade Information Pack under paragraph L.4.4.1, then they must notify the Regulatory Authorities and publish a revised Capacity Auction Timetable or a Secondary Trade Information Pack (as applicable).

L.4.5 Disaster recovery plan

L.4.5.1 The System Operators shall make available to the Regulatory Authorities details of their disaster recovery plan to the extent that it relates to their functions and obligations under this Code and they shall, to that extent, maintain and develop such disaster recovery plan.

L.5 DATA PUBLICATION

L.5.1 General

L.5.1.1 Where the System Operators are required to publish information under this Code, the System Operators shall publish the information in accordance with paragraphs A.3.1.1(o) and A.3.1.1(p).

L.5.2 Data Record Publication

L.5.2.1 The System Operators shall publish any Data Records required to be published pursuant to Appendix G “Data Publication” in accordance with the timelines set out in Appendix G “Data Publication”.

L.5.2.2 The System Operators shall not publish any Confidential Information except as otherwise expressly provided for or permitted in this Code.

L.5.3 Updating Publications

L.5.3.1 Where the System Operators have published data and such data is updated prior to its use in any calculation performed by the System Operators, then, subject to any contrary provision of this Code, the System Operators shall publish the updated data in accordance with Appendix G “Data Publication”.

L.5.4 Numerical Rounding of Calculations and Publications

L.5.4.1 The System Operators shall use consistent numerical rounding of all published quantities in accordance with the following:

- (a) all energy variables shall be expressed in MWh to three decimal places;
- (b) all power variables shall be expressed in MW to three decimal places;
- (c) all Currency variables (excluding exchange rates) shall be expressed in Euro or in Sterling as appropriate, and to two decimal places;
- (d) all parameters, ratios, factors, discounts, premiums, currency exchange rates, rates, and proportions used in calculations shall be published to the same number of decimal places as that used in calculations; and
- (e) time shall be expressed to the nearest second.

L.5.4.2 Any price, variable, quantity, parameter, volume, ratio, factor, discount, premium, rate or proportion determined under this Code and to be used in settlements under the Trading and Settlement Code shall be calculated to the level of computational precision required to carry out those settlements in accordance with the requirements of the Trading and Settlement Code.

L.5.4.3 Without prejudice to paragraphs L.5.4.1 and L.5.4.2, the System Operators shall not round any price, variable, quantity, parameter, volume, ratio, factor, discount, premium, rate or proportion during calculation other than that automatically arising from the limitations of its IT systems, unless specifically required under this Code.

L.5.5 Obligation on the System Operators to Retain Data Transactions

L.5.5.1 The System Operators shall, in relation to each Capacity Auction or Secondary Trade Auction, store, for the period of six years, at least one copy of all Data Transactions and Accepted data in a safe and secure environment.

L.6 USE OF INFORMATION

L.6.1.1 Subject to any confidentiality provisions under section B.23, where information is provided by any Party to the System Operators pursuant to this Code, the System Operators shall have the right, without charge, to use, make available, copy, adapt and deal with such data or other information for the purposes of exercising their rights and performing their powers, functions and obligations under this Code, but for no other reason.

L.7 REMIT DATA

L.7.1.1 A Participant may appoint the System Operators to report REMIT Data to the European Agency for the Cooperation of Energy Regulators on its behalf by completing the 'Request to Report' section in the REMIT Notification Form. The Participant may choose to revoke such appointment at any time by completing the 'Notice to Cease Reporting' section in the REMIT Notification Form. The following liability provisions only apply in the event that the System Operators have been appointed to report REMIT Data in accordance with this paragraph and such appointment has not been revoked.

L.7.1.2 The System Operators shall only process and transmit the REMIT Data to the European Agency for the Cooperation of Energy Regulators on behalf of a Participant for the purposes of compliance with REMIT requirements.

- L.7.1.3 The System Operators shall have no liability in respect of the completeness, accuracy and timely submission by the Participant of any Data Transaction required for REMIT Data Transactions.
- L.7.1.4 Without prejudice to paragraph L.7.1.3, and subject to appointment under paragraph L.7.1.1, the System Operators shall be responsible for failures in the completeness, accuracy or timely submission of the REMIT Data to the European Agency for the Cooperation of Energy Regulators as required under REMIT.
- L.7.1.5 Subject to appointment under paragraph L.7.1.1, the System Operators will provide access to REMIT Data Transactions to relevant Participants in accordance with Appendix G "Data Publication".

M. INTERIM ARRANGEMENTS

M.1 INTRODUCTION

M.1.1 Purpose

M.1.1.1 This Chapter M specifies certain interim arrangements that will apply in respect of the Capacity Market following the Capacity Market Commencement Date, in some cases for a transitional period which is specified herein.

M.1.2 Chapter M Prevails

M.1.2.1 This Chapter has priority over the other Chapters of this Code, and, in the event of any inconsistency or conflict between a provision of this Chapter M and any other provision of this Code, the provision of Chapter prevails to the extent of the inconsistency or conflict.

M.2 FIRST CAPACITY YEAR

M.2.1.1 Notwithstanding paragraph D.1.1.1, the First Capacity Year for the purposes of this Code commences at [to be inserted] and terminates at the end of the Trading Day ending on [to be inserted].

M.3 TRANSITIONAL CAPACITY AUCTIONS

M.3.1 Transitional Period

M.3.1.1 The Transitional Period is [to be inserted].

M.3.2 Occurrence and Timing of Capacity Auctions during the Transitional Period

M.3.2.1 Notwithstanding paragraph D.2.1.1, the System Operators shall only conduct T-1 Auctions (“**Transitional Capacity Auctions**”) for Capacity Years that fall within the Transitional Period.

M.3.2.2 For the avoidance of doubt, during the Transitional Period, the System Operators shall also conduct T-4 Auctions (and may conduct T-3 Auctions, T-2 Auctions and/or T-1 Auctions) for Capacity Years after the Transitional Period in accordance with section D.2.

M.3.3 Conduct of Capacity Auctions during the Transitional Period

M.3.3.1 Subject to paragraph M.3.3.2, for the purposes of Capacity Auctions held during the Transitional Period, paragraph F.8.4.4(c) shall be replaced with the following:

“(c) The set of price-quantities cleared shall comply with the following conditions:

- (i) a price-quantity pair that is Flexible shall be cleared to a level not less than it is scheduled as determined under paragraph F.8.3.3;
- (ii) a price-quantity pair that is Inflexible and was scheduled under paragraph F.8.3.3 to the maximum quantity offered in the price-quantity pair, shall be cleared to the maximum quantity offered;”.

M.3.3.2 Paragraph M.3.3.1 does not apply in the case of a Capacity Auction where:

- (a) the Capacity Auction is conducted after the date notified by the Regulatory Authorities in writing to the System Operators as the last date on which that paragraph shall apply to any Capacity Auction; and
- (b) the notification from the Regulatory Authorities was given to the System Operators prior to the Final Auction Parameter Date for that Capacity Auction.

M.4 LOCAL CAPACITY CONSTRAINTS

- M.4.1.1 Notwithstanding section F.4, the System Operators shall not determine Local Capacity Constraints in respect of any Capacity Auction other than a T-1 Auction until such times as the Regulatory Authorities require the System Operators by written notice to commence doing so.
- M.4.1.2 Where the System Operators are required by paragraph M.4.1.1 not to determine Local Capacity Constraints in respect of a Capacity Auction, then they are also not required to perform or observe any other obligation under this Code that is consequential upon the determination of Local Capacity Constraints in relation to that Capacity Auction.

M.5 ALTERNATIVE AUCTION SOLUTION METHODOLOGY

- M.5.1.1 This section M.5 shall apply in the case of a Capacity Auction unless:
 - (a) prior to the Final Auction Parameter Date for that Capacity Auction, the Regulatory Authorities notify the System Operators in writing that it does not apply to that Capacity Auction; or
 - (b) the Capacity Auction is conducted after the date notified by the Regulatory Authorities in writing to the System Operators as the last date on which this section shall apply to any Capacity Auction and the notice was given by the Regulatory Authorities to the System Operators prior to the Final Auction Parameter Date for that Capacity Auction.
- M.5.1.2 The System Operators may submit to the Regulatory Authorities for approval an Alternative Auction Solution Methodology that reflects the principles set out in M.5.1.6. The System Operators may also submit to the Regulatory Authorities for approval amendments to the approved Alternative Auction Solution Methodology.
- M.5.1.3 If this section M.5 applies in the case of a Capacity Auction, then the System Operators may conduct the Capacity Auction applying the Alternative Auction Solution Methodology.
- M.5.1.4 The System Operators shall specify in the Capacity Auction Information Pack for a Capacity Auction whether they will be applying the Alternative Auction Solution Methodology, and, if they are, shall include a description of the Alternative Auction Solution Methodology.
- M.5.1.5 When the System Operators conduct a Capacity Auction applying the Alternative Auction Solution Methodology, the following paragraph shall replace paragraph F.8.4.8 for the purposes of that Capacity Auction:

“The System Operator shall determine the price-quantity pairs cleared using the Alternative Auction Solution Methodology with the solution being either:

 - (a) the mathematical optimal solution determined by the System Operators if determined within the Allowed Timeframe of the methodology being initiated; or otherwise

- (b) the solution that produces the highest value calculated in accordance with paragraph F.8.4.2 which is determined by the System Operators within the Allowed Timeframe of the methodology being initiated.”

M.5.1.6 The Alternative Auction Solution Methodology must reflect the following principles:

- (a) the starting cleared quantity for each priced-quantity pair the subject of a Capacity Auction Offer shall be the minimum value required to be cleared under paragraph F.8.4.4(c) or M.3.3.1 (as applicable);
- (b) the methodology shall, as required, determine additional quantities to clear from price-quantity pairs the subject of Capacity Auction Offers so as to ensure that each Local Capacity Constraint is satisfied, or if this is not possible, that the shortfall shall be minimised;
- (c) if the Price Setting Offer:
 - (i) was Inflexible;
 - (ii) was scheduled under paragraph F.8.3.2 at a level greater than 0 MW and less than its maximum quantity; and
 - (iii) was not required to be cleared to a quantity above 0 MW to satisfy sub-paragraph (b),

the methodology shall determine additional quantities to clear from price-quantity pairs (including the Price Setting Offer's price-quantity pair) the subject of Capacity Auction Offers in place of the quantity scheduled from the Price Setting Offer if this will result in a higher value under paragraph F.8.4.2;
- (d) the methodology may include limits, specified by the System Operators, on the number of combinations of solutions for Inflexible price-quantity pairs the subject of Capacity Auction Offers considered under sub-paragraphs (b) and (c) so as to allow the methodology to reach a solution within the Allowed Timeframe;
- (e) if a solution can be found within the Allowed Timeframe without imposing the limits described in sub-paragraph (d), then the solution that maximizes the value under paragraph F.8.4.2; and
- (f) to reduce solution time, the methodology may exclude exploring combinations of solutions that are likely to be inferior to other combinations of solutions and the exclusion of which will not conflict with the principle in sub-paragraph (e).

M.6 SECONDARY TRADING

M.6.1 Commencement

M.6.1.1 The Regulatory Authorities shall determine and publish the date for the commencement of the Secondary Trading arrangements, indicating the first Trading Day for which it will be possible to undertake Secondary Trade in accordance with Chapter H.

M.6.2 Impact on Capacity and Trade Register

M.6.2.1 If the date published under paragraph M.6.1 is after the first Capacity Auction under this Code, then prior to that date the System Operator shall record notional Secondary Trades in the Capacity and Trade Register for periods in which one or

more of the Generator Units or the Interconnector comprising a Capacity Market Unit is undertaking a Planned Outage, as follows:

- (a) the relevant period is the period during which one or more of the Generator Units or the Interconnector comprising the Capacity Market Unit is or are undertaking a Planned Outage;
- (b) the start date and time of the notional Secondary Trade is the first Trading Period which occurs in the relevant period under sub-paragraph (a);
- (c) the end date and time of the notional Secondary Trade is the earlier of:
 - (i) the end of the relevant period under sub-paragraph (a);
 - (ii) the end of the Capacity Year;
 - (iii) the start of the Trading Day at which the Secondary Trading arrangements commence, as published by the Regulatory Authorities under paragraph M.6.1; and
 - (iv) the period of the maximum Planned Outage duration (as determined and published from time to time for these purposes by the Regulatory Authorities) after the start of the relevant period under sub-paragraph (a);
- (d) the Participant for the Capacity Market Unit is to be the buyer under the notional Secondary Trade;
- (e) the quantity of the notional Secondary Trade is the amount required to reduce the Awarded Capacity of the Capacity Market Unit to a level it can deliver over the duration of the Planned Outage.

M.7 START OF NEW TRADING ARRANGEMENTS: MODIFICATIONS

M.7.1.1 Notwithstanding paragraph B.12, on application of the System Operators, the Regulatory Authorities may direct a Modification to this Code or an Agreed Procedure if they consider that the Modification is required to:

- (a) correct:
 - (i) a material error or inconsistency in this Code; or
 - (ii) a material inconsistency between this Code and one or more of the NEMO Rules, the Trading and Settlement Code, the Grid Codes or the Metering Codes,

that becomes apparent before or in the six months following the Capacity Market Commencement Date; and

- (b) ensure the orderly, effective or sustainable operation of the SEM.

M.7.1.2 If the Regulatory Authorities direct a Modification under paragraph M.7.1.1, the Modification shall take effect when the direction is made or such other date as may be specified by the Regulatory Authorities in the direction.

M.7.1.3 The System Operators shall promptly notify the Participants by email of a Modification under this section M.7.

M.8 PARAMETERS AND PRIOR DECISIONS

M.8.1.1 Where this Code contemplates that a parameter which applies for a period will be determined or approved by the Regulatory Authorities or the System Operators, then the value of that parameter from the Capacity Market Commencement Date will be the value determined for that period by the Regulatory Authorities or the

System Operators before the Capacity Market Commencement Date (until varied, amended, redetermined or redecided in accordance with this Code).

M.8.1.2 Where the Regulatory Authorities or the System Operators make a decision in contemplation of the coming into effect of this Code on the Capacity Market Commencement Date:

- (a) the decision will, from the Capacity Market Commencement Date, be taken to have been validly made under the relevant provision of this Code;
- (b) if, under this Code, the Regulatory Authorities or the System Operators can only make the decision after a preparatory step has been undertaken, that preparatory step:
 - (i) can be undertaken before the Capacity Market Commencement Date; and
 - (ii) from the Capacity Market Commencement Date, will be taken to have been satisfied or completed for the purposes of this Code.

M.8.1.3 For the purposes of this section, a decision includes:

- (a) making a determination, including determining a parameter;
- (b) giving approval, including approving a proposed parameter;
- (c) making an instrument, including a procedure or guideline; or
- (d) making an appointment.

M.8.1.4 For the purposes of this section, a preparatory step includes:

- (a) a condition that must be satisfied before a decision can be made;
- (b) a requirement that a report be prepared or submitted before a decision can be made; or
- (c) a consultation or publication requirement.

M.9 OTHER

M.9.1 Period of First Capacity Market Audit

M.9.1.1 In paragraph M.9.1.2, the 'audit period' means the period specified for the annual audit under paragraph B.11.2.2.

M.9.1.2 Where the Capacity Market Commencement Date does not coincide with the start of the audit period, then the first audit under section B.11 shall be from the Capacity Market Commencement Date until the end of the audit period next occurring (or if that period is less than 6 months, then until the end of the following audit period).

GLOSSARY

Accepted	means, in relation to data submitted by a Participant, that data which the System Operators are required to use under Chapter L (Data and Information Services) because it is the most recently received Validated Data Transaction at the time it is to be used under this Code.
Accession Agreement	means the agreement or deed (in the form published by the System Operators) pursuant to which an Applicant becomes a party to the Capacity Market Framework Agreement and, consequently, becomes bound by this Code.
Accession Fee	means a fee to be paid to the System Operators by each Applicant for Accession to this Code proposed by the System Operators, and approved by the Regulatory Authorities, under section B.7.1.
Accession Process	means the process set out in section B.5.1.
Account Security Requirement	<p>means, in relation to any Reserve Account:</p> <ul style="list-style-type: none">(a) any requirement in relation to the execution and registration of the Deed of Charge and Account Security under paragraph J.3.3.2;(b) any requirement in relation to the Notice of Assignment and Acknowledgment pursuant to the terms and conditions of this Code (including, without limitation, as detailed in paragraph J.3.3.2) and to the provisions of Clause 2.3 of the Deed of Charge and Account Security; and(c) any obligation and/ or requirement for the Participant to provide any other information or to enter into any document and/or to do any such things as the System Operators may require in order to perfect the security granted under the Deed of Charge and Account Security and to register the same within the prescribed statutory time limit.
Additional Milestones	means the milestones specified in paragraph J.2.1.2.
Affected Party	means a Party, other than the System Operators, affected by Force Majeure.

Affiliate	<p>means:</p> <p>(a) in relation to any Party that is incorporated in Northern Ireland or in England and Wales, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of section 1159 of the Companies Act 2006 (and disregarding whether the Party, subsidiary or holding company concerned is physically located in Northern Ireland, England or Wales); and</p> <p>(b) in relation to any Party that is incorporated in Ireland or any other jurisdiction (excluding Northern Ireland, England or Wales), any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning given to those terms in sections 7 and 8 of the Companies Act 2014 in Ireland (and disregarding whether the Party, subsidiary or holding company concerned is physically located in Ireland).</p>
Agreed Procedure(s)	means the detailed procedures to be followed by Parties in performing their obligations and functions under this Code as listed in Appendix A “List of Agreed Procedures”.
Aggregate Import Capacity	has the meaning given in the Trading and Settlement Code.
Aggregated Generator	has the meaning given in the Trading and Settlement Code.
Aggregated Generator Unit	has the meaning given in the Trading and Settlement Code.
Allowed Timeframe	has the meaning given in paragraph F.8.4.9.
Alternative Auction Solution Methodology	means an alternative methodology for clearing price-quantity pairs in accordance with section M.5 approved by the Regulatory Authorities.
Alternative Qualification Process	means the process for qualification contemplated by paragraph E.7.8.
Ambient Outage	in respect of a Generator Unit, means that the availability of the Generator Unit is decreased, because of the ambient temperature, to a level below its nominal level.
Annual Capacity Payment Exchange Rate or XRCPAy	means an exchange rate applicable to Capacity Year y which converts the Capacity Payment Price for a Primary Trade or a Secondary Trade from Euros to Sterling and is determined in accordance with section K.2.

Annual Stop-Loss Limit Factor	has the meaning given in the Trading and Settlement Code.
AP Modification Proposal	means any proposal to modify, vary or amend one or more Agreed Procedures (but no other part of this Code) which is submitted to, or put forward by, the System Operators in accordance with section B.12.
Appendix	means an Appendix to this Code and the term “Appendices” shall be interpreted accordingly.
Applicable Laws	means any legislation, statutory instrument or regulation as is applicable to a Party.
Applicant	means a person whose application to accede to this Code has been submitted and is being processed by the System Operators as provided for and set out in section B.5.1.
Application for Qualification	means an application by a Participant for a Candidate Unit to be qualified to participate in a Capacity Auction in accordance with the procedure set out in section E.4.
Application for Review	means an application by a Participant requesting the System Operators to review the rejection of an Application for Qualification submitted by that Participant or to review a Qualification Decision in respect of a Capacity Market Unit that was the subject of that Application for Qualification
Associate	in respect of a Participant, includes the Party of that Participant, an Affiliate of that Party or an associate or agent of that Party or an Affiliate of the Party or an employee of any of those persons.
Auction Clearing Price	means the price at which the Capacity Auction clears, and is determined in accordance with paragraph F.8.3.8.
Auction Date	means the date on which a Capacity Auction is scheduled to be held.
Auction Information Pack Date	means the scheduled publication date for the Auction Information Pack.
Auction Price Cap	means the maximum price allowed in a Capacity Auction and is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.
Auction Results	in respect of a Capacity Auction, has the meaning given in paragraph F.9.1.1.
Autoproducer Unit	has the meaning given in the Trading and Settlement Code.

Available De-Rated Capacity	has the meaning given in paragraph H.7.3.4(b).
Awarded Capacity	in respect of a Capacity Market Unit, means a specified amount of de-rated capacity which under this Code must be dedicated and made available using the Generator Unit(s) or Interconnector comprising the Capacity Market Unit. Awarded Capacity may be allocated pursuant to a Capacity Auction or may be the subject of a Product acquired in a Secondary Trade Auction.
Awarded New Capacity	in respect of a Capacity Market Unit, means Awarded Capacity which is New Capacity at the time of the relevant Capacity Auction.
Balancing Market	means the arrangements under the Trading and Settlement Code that provide for the market-based management of System Operator actions and processes to balance continuously generation and demand and to maintain the stable and secure operation of the electricity transmission systems on the island of Ireland.
Balance Sheet Net Asset Value	in respect of an entity means the sum of the entity's assets net of all its liabilities as set out in the published accounts of the entity.
Bank Mandate	means the instructions form relating to the terms on which the cash in a Reserve Account will be held.
Billing Period Stop-Loss Limit Factor	has the meaning given in the Trading and Settlement Code.
Buyer Limit	has the meaning given in section H.7.3.2
Candidate Unit	means a Generator Unit or Interconnector which is taken to be registered under this Code in accordance with paragraph B.5.2.2, or a proposed Generator Unit or proposed Interconnector which has been provisionally registered under this Code in accordance with paragraph B.5.2.9. For the purposes of the registration processes in section B.5.2, 'Candidate Unit' also includes a proposed Generator Unit or proposed Interconnector which is the subject of a Participation Notice, to the extent necessary to give effect to the registration provisions.
Capacity and Trade Register	means the register maintained by the System Operators under section G.2.

Capacity Auction	means a capacity auction conducted under Chapter F for allocating Awarded Capacity to Capacity Market Units and includes T-1 Auctions, T-2 Auctions, T-3 Auctions and T-4 Auctions.
Capacity Auction Approval Date	means the date by which the Regulatory Authorities are expected to approve the Capacity Auction results.
Capacity Auction Completion Date	means the date by which the System Operators are to complete the Capacity Auction.
Capacity Auction Information Pack	means a document prepared by System Operators for the purpose of informing potential Capacity Auction Participants on the timing, requirements and conduct of a Capacity Auction.
Capacity Auction Information Pack Date	means the last publication date for a Capacity Auction Information Pack, as specified in the relevant Capacity Auction Timetable.
Capacity Auction Monitor	means the independent monitor of the processes and procedures followed by the System Operators in carrying out the Qualification Process and conducting Capacity Auctions appointed under paragraph B.10.1.
Capacity Auction Offer	has the meaning given in paragraph F.7.1.1.
Capacity Auction Provisional Results Date	means the date by which the System Operators are expected to provide preliminary Capacity Auction results to Participants, as specified in the relevant Capacity Auction Timetable
Capacity Auction Results Date	means the date the System Operators are expected to publish the Capacity Auction results, as specified in the relevant Capacity Auction Timetable.
Capacity Auction Submission Commencement	means the date and time from which Participants will be able to submit Capacity Auction Offers in respect of Capacity Market Units Qualified to participate in the Capacity Auction.
Capacity Auction Submission End	means the date and time until which Participants will be able to submit Capacity Auction Offers in respect of Capacity Market Units Qualified to participate in the Capacity Auction.
Capacity Auction Timetable	means the schedule of events leading up to and following a Capacity Auction approved or determined by the Regulatory Authorities under section D.2, as amended or updated by the System Operators under that section.
Capacity Charges	means the charges calculated in accordance with sections F.19 and F.20 of the Trading and Settlement Code.

Capacity Duration Exchange Rate (XRCD_n)	in respect of Awarded Capacity, means the exchange rate to apply over the duration of the Awarded Capacity as specified in the Capacity and Trade Register.
Capacity Market	means the following arrangements: <ul style="list-style-type: none"> (a) the arrangements under this Code to secure generation adequacy and capacity to meet the demands of consumers across the Island of Ireland (whether through the provision of generation, electricity supplied via interconnectors, reduction in demand or otherwise); and (b) the arrangements under the Trading and Settlement Code for the calculation and settlement of payments and charges for the arrangements described in paragraph (a) of this definition.
Capacity Market Auditor	means the independent auditor of the Capacity Market appointed under section B.11.1.
Capacity Market Code and Code	means this Capacity Market Code, including the Appendices and Agreed Procedures, as amended from time to time or otherwise modified in accordance with this Code.
Capacity Market Code Objectives	the objectives specified in section A.1.2.
Capacity Market Commencement Date	means the commencement date of this Code as determined by the Regulatory Authorities.
Capacity Market Communication Outage	means a period during which the normal communication interfaces between each other Party and the System Operator are unavailable, leading to a failure of all such Parties to comply with the data submission requirements under this Code.
Capacity Market System Outage	means a period during which the Capacity Market Platform is unable to receive, transmit or process data as required under this Code.
Capacity Market Dispute Resolution Board or CMDRB	means a capacity market dispute resolution board established pursuant to section B.14.5.
Capacity Market Framework Agreement	means the agreement (including any Accession Agreement) under which a person becomes bound by this Code.

Capacity Market Platform	means the set of information systems within the control of the System Operators used to perform their functions under the Code including conducting Capacity Auctions and Secondary Trade Auctions in accordance with this Code.
Capacity Market Unit	means a Candidate Unit (or a combination of Candidate Units which are Generator Units) that is Qualified by the System Operators to participate in a Capacity Auction under this Code.
Capacity Market Unit Identifier	in respect of a Capacity Market Unit, means the unique number that is used by the System Operators in their systems to identify the Capacity Market Unit.
Capacity Payments	means the payments calculated in accordance with sections F.17 and F.18 of the Trading and Settlement Code.
Capacity Payment Price (PCP_{Qn})	in respect of Awarded Capacity, is determined in accordance with section F.9.1.
Capacity Period	has the meaning given in the Trading and Settlement Code.
Capacity Requirement	means the de-rated capacity required to satisfy the SEM Security Standard for a specific Capacity Year, determined by the Regulatory Authorities.
Capacity Termination Notice	a notice given under paragraph J.6.1.7.
Capacity Year	has the meaning given in paragraph D.1.1.1
Capacity Zone	means a region of the SEM for which a Capacity Auction is held.
Certified Engineer	means a qualified and reputable engineer or engineering consultancy firm with experience and expertise in the construction and operation of the relevant type of equipment or technology.
Clean	<p>in respect of a Capacity Market Unit comprised only of one or more Generator Units, means each of those Generator Units satisfies one of the following criteria:</p> <ul style="list-style-type: none"> (a) if the unit is a Generator, it generates electricity using only renewable energy sources; and (b) if the unit is a Demand Side Unit, the demand response is provided by means of changes of electricity load by final customers.
Closed	has the meaning given in paragraph E.3.1.1(a) and “ Close ” and “ Closure ” shall be interpreted accordingly.

CMDRB	means a Capacity Market Dispute Resolution Board.
Commencement of Construction Works	has the meaning given in paragraph J.2.1.1(b)
Commission or CER	means the Commission for Energy Regulation as established pursuant to the Electricity Regulation Act, 1999 or any successor body.
Commissioned Capacity (qCCOMMISS_{QY})	is determined in accordance with section G.3.
Communication Channel	means one of three methods of transferring data contained in Data Transactions as set out in section L.2.
Communication Channel Type	means a specific Communication Channel as detailed in section L.2.3.1 and as more specifically set out in Agreed Procedure 4 “Communication Channel Qualification”.
Competent Authority	means the Irish Government and Her Majesty’s Government, the Cabinet of the Northern Ireland Assembly (where not prorogued), the Department for Communications, Climate Change and Environment, Her Majesty’s Department for Business, Innovation and Skills, the Department of the Economy in Northern Ireland, the Commission, Northern Ireland Authority for Utility Regulation, the Irish Competition and Consumer Protection Commission, the Competition and Markets Authority of the United Kingdom, the Competition Appeals Tribunal of the United Kingdom or any national or supra-national authority, department, minister, court, tribunal or public or statutory person being of a public nature of Ireland, the United Kingdom or of the European Union (including the European Commission, the European Parliament and the European Courts of First Instance and of Justice) and any international or supranational body, with power and competence to make binding decisions, awards, rulings, judgments or decisions.
Completion of Network Connection	has the meaning given in paragraph J.2.1.2(b).
Condition Precedent	in relation to a Major Contract or Finance Document, means any condition (whether or not described as such in the Major Contract or Finance Document), where such condition, taken together with all other such conditions under the applicable Major Contract or Finance Document, must be either satisfied or waived in order for the Major Contract or Finance Document to enter into full force and effect.
Confidential Information	has the meaning given in paragraph B.23.1.1.

Connected	means where a Generator, Generator Unit [or Interconnector] is connected to a Transmission System or Distribution System respectively and “ Connection ” shall be construed accordingly.
Connection Agreement	means an agreement between a Party and the relevant System Operator or Distribution System Operator (as appropriate) specifying terms and conditions for Connection to the Transmission System or Distribution System and physical and technical parameters for that Connection.
Connection Offer	means an offer from the relevant System Operator or Distribution System Operator (as appropriate) to a Party to enter into a Connection Agreement.
Connection Point	means the physical point where a Party’s Generator Unit or a constituent of a Supplier Unit as applicable is joined to the Transmission System or the Distribution System as appropriate.
Contract Register Entry	in respect of a Capacity Market Unit, means the information in the Capacity and Trade Register in relation to a quantity of Awarded Capacity allocated to the Capacity Market Unit in a Capacity Auction or the subject of a Product acquired in a Secondary Trade Auction.
Currency	means Euro in Ireland and Sterling in Northern Ireland and “ Currencies ” shall be construed accordingly.
Currency Zone	means the Jurisdiction in which a Unit is Connected.
Data Processing Entity	means a person that submits Data Transactions or REMIT Data Transactions on a Participant’s behalf as provided for in Chapter L of this Code.
Data Protection Legislation	means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (on the protection of natural persons with regard to the processing of personal data and on the free movement of such data), the Data Protection Acts 1988 and 2003 (Ireland) and the Data Protection Act 1998 (United Kingdom) and, in each case, all regulations, statutes and instruments made thereunder as may be amended from time to time and any other applicable legislation which implements Directive 95/46/EC and any amendment or replacement thereto.
Data Record	means a set of data fields containing the field-level information within a Data Transaction complying with the field-level rules.
Data Transaction	means a set of data included in a communication by another Party to the System Operators, or by the System Operators to another Party under this Code.

Decrease Tolerance	means a percentage downwards tolerance that a Participant is permitted to apply to Capacity Market Unit de-ratings in an Application for Qualification that is provided from time to time by the Regulatory Authorities under paragraph D.3.1.3. There may be different Decrease Tolerances for different Technology Classes.
Deed of Charge and Account Security	means the deed of charge and account security to be entered into between a Participant and the System Operators in relation to Reserve Account(s) in accordance with the terms and conditions of this Code in the form set out in Appendix J “Template for Deed of Charge and Account Security”.
Default	by a Party, means: <ul style="list-style-type: none"> (a) the Party has failed to observe or perform any obligation under this Code or its Capacity Market Framework Agreement that would have a material adverse effect on another Party or the SEM and includes without limitation a failure to pay or cause to be paid an amount of money; or (b) the occurrence of an event described in any of paragraphs B.13.3.1(a) – (i) or B.13.3.2 in respect of the Party.
Default Interest	means a rate of interest being two percent (2%) above LIBOR.
Default Notice	means a notice given under paragraph B.13.2.3.
Defaulting Participant	has the meaning given in paragraph J.7.1.1.
Demand Curve	means in respect to a Capacity Auction a curve defined by the Regulatory Authorities representing the deemed per MW value of each level of capacity that could be awarded in the Capacity Auction.
Demand Side Unit	has the meaning given in the Trading and Settlement Code.
De Minimis Threshold	means the MW capacity threshold under the Trading and Settlement Code beyond which a Generator Unit is required to participate in the Balancing Market. As at the Commencement Date, the De Minimis Threshold is a Maximum Export Capacity of 10MW.
De-Rated Firm Network Access Capacity	in respect of a Capacity Market Unit is determined in accordance with paragraph E.8.4.2.
De-Rating Curve	means a curve determined by the Regulatory Authorities for a Technology Class that represents the De-Rating Factor applicable by unit Initial Capacity.

De-Rating Factor	means a factor between 0 and 1 describing the proportion of Initial Capacity of a Generator Unit or Interconnector that can contribute to the satisfying the Capacity Requirement.
Deregistration	means the process whereby a Capacity Market Unit ceases to be registered for the purposes of this Code, and “ Deregistered ” and “ Deregister ” shall be construed accordingly.
Deregistration Consent Order	means an order issued by the System Operators to a Party under paragraph B.5.6.3.
Difference Charge	means a charge in respect of Capacity Market Units where the market reference price exceeds the strike price, to act as a financial incentive to ensure that the unit is reliable. It is calculated in accordance with section F.18 of the Trading and Settlement Code.
Difference Payment	means a payment to suppliers where the market reference price exceeds the strike price. It is calculated in accordance with section F.20 of the Trading and Settlement Code.
Disclosing Party	has the meaning given in paragraph B.23.1.2.
Dispatchable	means, in relation to a Generator Unit, the ability of the Generator Unit to receive and act upon an instruction given by the relevant System Operator to the Participant’s approved contact person or location to change the Output or manner of operation of the Generator Unit in accordance with the relevant Grid Code. The terms “ not Dispatchable ”, “ Dispatch ”, “ Dispatched ” and “ non-Dispatched ” shall be interpreted accordingly.
Dispute	has the meaning given in paragraph B.14.1.1. The categories of Dispute under this Code are set out in paragraph B.14.1.3.
Dispute Process Timetable	in relation to each category of Dispute, is the process and timetable determined time by the Regulatory Authorities and notified to the System Operators under section B.14.1, which, amongst other things, will specify deadlines and timeframes for the taking of action under this section B.14 in relation to Dispute in that category.
Dispute Resolution Process	means the process of resolving Disputes as set out in section B.14.
Disputing Party	means any Party to a Dispute.

Distribution Code	means: (a) in respect of Ireland, the distribution code as defined in Section 2(1) of the Electricity Regulation Act 1999 (Ireland); and (b) in respect of Northern Ireland, the code of that title required to be prepared by the Transmission Owner, in its capacity as the owner or operator of the Distribution System, in accordance with its Transmission Owner Licence.
Distribution System	has the meaning given in the Trading and Settlement Code.
Distribution System Operator or DSO	has the meaning given in the Trading and Settlement Code.
DSU MW Capacity	in respect of a Demand Side Unit, means the maximum change in active power that can be achieved by the Demand Side Unit on a sustained basis and is the “ Demand Side Unit MW Capacity ” under the applicable Grid Code.
e-fax	means a software based solution which converts inbound faxes into e-mails and allows outbound e-mails to be received by traditional fax machines.
EirGrid	EirGrid plc. Incorporated in Ireland (Registered Number 338522) whose registered office is situated at Block 2, The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4.
Enforcing Party	in relation to a Participant, means any receiver, manager, receiver and manager, administrative receiver, examiner, administrator, liquidator, trustee in bankruptcy or other similar person appointed in respect of a Participant or any of its Generator Units or Interconnectors under a Finance Document, and includes a mortgagee in possession.
EPC Contractor	in relation to a new or refurbished Generator Unit or Interconnector, means the engineering, procurement and construction contractor (or the contractors, where the Participant adopts a multi-contractor works package) appointed by the Participant to design, construct and commission the new or refurbished Generator Unit or Interconnector.
Euro	means the currency in Ireland.
European Agency for the Cooperation of Energy Regulators	means the European Agency for the Cooperation of Energy Regulators established under Regulation EC No 713/2009 of the European Parliament and of the Council of 13 July 2009 (where it is also referred to as ACER) or any successor body.

Exception Application Date	<p>means the last day a Participant can apply to Regulatory Authorities for either:</p> <p>(a) a Unit Specific Price Cap in respect of a Capacity Market Unit; or</p> <p>(b) for cost recovery beyond the New Capacity Investment Threshold for New Capacity,</p> <p>in respect of the Capacity Year.</p>
Existing Capacity	<p>means, in respect of the Qualification Process and its associated Capacity Auction and for the purposes of Secondary Trade Auctions, the capacity of a Generator, Generating Unit or Interconnector forming the whole or part of a Capacity Market Unit or proposed Capacity Market Unit, as determined when the Generator, Generating Unit or Interconnector was last commissioned under the relevant Grid Code, and the capacity of the Capacity Market Unit or proposed Capacity Market Unit comprising them.</p>
Existing Capacity Price Cap	<p>means the price cap applicable to Existing Capacity in a Capacity Auction and is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.</p>
FDERATE₀	<p>has the meaning given in Appendix F.</p>
Final Auction Parameters	<p>means the set of parameters to be used in the conduct of a Capacity Auction as described in paragraph F.5.1.2.</p>
Final Auction Parameter Date	<p>means the date by which the System Operators are expected to publish the Final Auction Parameters in respect of a Capacity Auction.</p>
Final Compliance Certificate	<p>means a temporary compliance certificate as may be issued by SONI in accordance with the Northern Ireland Grid Code for a wind farm power station connected to the Transmission System or for a wind farm power station connected to the Distribution System.</p>
Final Operational Notification or FON	<p>has the meaning given in the applicable Grid Code.</p>
Final Qualification Submission Date	<p>means the date by which the System Operators are to provide Final Qualification Decisions in respect of a Capacity Auction to the Regulatory Authorities for approval, as specified in the applicable Capacity Auction Timetable.</p>

Final Qualification Decisions	means the final set of decisions in respect of a Qualification Process for a Capacity Auction, which are either consistent with the Provisional Qualification Decisions approved (or taken to have been approved) by the Regulatory Authorities in accordance with section E.9.2 or have been updated by the System Operators as a consequence of information becoming available to the System Operators after the Provisional Qualification Decisions are approved (or taken to have been approved), and include the Qualification Decisions in relation to each Capacity Market Unit.
Final Qualification Results Date	means the date by which the System Operators are expected to inform persons Participants of the approved Final Qualification Decisions in respect of their Applications for Qualification in respect of a Qualification Process, as specified in the applicable Capacity Auction Timetable
Finance Documents	means any finance, facility, credit agreement or similar agreement entered into by a Participant or an Affiliate of the relevant Participant with a financier or financiers to provide financial accommodation (whether in whole or in part) in relation to or in connection with a new or refurbished Generator Unit or Interconnector.
Firm Network Access Capacity	in relation to a Generator, Generator Unit or Interconnector or proposed Generator, Generator Unit or Interconnector for a Capacity Year, means the minimum firm Transmission System or Distribution System export capacity dedicated to the relevant unit under the applicable Connection Agreement or Connection Offer for that Capacity Year.
Firm Offer Requirement	means the minimum quantity that must be offered into a Capacity Market Auction in respect of a Capacity Market Unit and is determined as part of the Qualification Process.
First Energy to Network	has the meaning given in paragraph J.2.1.2(c)
Fixed System Operator Charge	means the charge proposed by the System Operators to be applied in respect of each Capacity Market Unit, and approved by the Regulatory Authorities, under section B.7.1.
Flexible	in respect of a price-quantity pair, means that any value within the range of the quantity offered at that price may be cleared in the Capacity Market Auction when compensated at the price specified in the price-quantity pair. The full quantity will be scheduled if compensated at a price exceeding, and nothing will be scheduled if compensated at a price less than, the price specified in the price-quantity pair.
Force Majeure	has the meaning given in paragraph B.16.1.1.

Forced Outage	in respect of a Generator Unit or an Interconnector, has the meaning given in the applicable Grid Code
Freedom of Information Acts	means the Freedom of Information Act 2014 (Ireland) and the Freedom of Information Act 2000 (United Kingdom).
Full Administered Scarcity Price	has the meaning giving in the Trading and Settlement Code.
Generator Aggregator System Operator Agreement	has the meaning given in the Trading and Settlement Code.
Generator	means a power plant or any similar apparatus that generates electricity (including all related equipment essential to its functioning as a single entity) with capabilities for delivering energy to the Transmission System or Distribution System and which is Connected to the Transmission System or Distribution System.
Generator Unit	has the meaning given in the Trading and Settlement Code, but does not include a Generator Unit within the meaning of that Code which is of a type listed in paragraph B.5.2.3.
Glossary	means this Glossary.
Grid Code	means the Ireland Grid Code, the Northern Ireland Grid Code or both, as the context requires.
Grid Code Commissioned Capacity	in respect of a Capacity Market Unit, Generator Unit or Interconnector is determined in accordance with paragraphs G.3.1.2 or G.3.1.3 (as applicable).
Gross De-Rated Capacity	means the MW quantity of Existing Capacity or New Capacity from a Generator Unit, Interconnector or a Capacity Market Unit that is Qualified without taking into account previously allocated Awarded Capacity. It's value for Generator Units and Interconnectors are intermediate values in determining values for Capacity Market Units. For a Capacity Market Unit, this is used as a parameter used to place limits on how a Capacity Market Unit can participate in a Secondary Trade.
Gross De-Rated Capacity (Existing)	means the value of Gross De-Rated Capacity in respect of Existing Capacity.
Gross De-Rated Capacity (New)	means the value of Gross De-Rated Capacity in respect of New Capacity.
Gross De-Rated Capacity (Total)	means the value of Gross De-Rated Capacity in respect of the sum of Existing Capacity and New Capacity.

Imbalance Settlement Period	has the meaning given in the Trading and Settlement Code.
Implementation Plan	means in respect of Awarded New Capacity the milestones specified by the Participant in the Qualification Process for that Awarded New Capacity for delivering that capacity to a commissioned state.
Implementation Progress Report	means a report provided by a Participant in respect of Awarded New Capacity under section J.4.
Increase Tolerance	means a percentage upwards tolerance that a Participant is permitted to apply to Capacity Market Unit de-ratings in an Application for Qualification that is provided from time to time by the Regulatory Authorities under paragraph D.3.1.3. There may be different Decrease Tolerances for different Technology Classes.
Indemnifying Party	has the meaning given in paragraph B.25.1.2.
Inflexible	in respect of a price-quantity pair, means that only the minimum (i.e. zero) and maximum quantity in the range of the quantity offered at that price may be cleared in the Capacity Market Auction when compensated at the price specified in the price-quantity pair. The full quantity will be scheduled if compensated at a price exceeding, and nothing will be scheduled if compensated at a price less than, than price specified in the price-quantity pair.
Initial Capacity	has the meaning given in section C.2.
Initial Capacity (Existing)	means Initial Capacity associated with Existing Capacity.
Initial Capacity (Total)	means Initial Capacity associated with the sum of Existing Capacity and New Capacity.
Initial Position	has the meaning given in paragraph H.7.3.1.

Insolvency Event

means, in respect of a person, that any of the following events has occurred:

- (a) the person enters into or takes any action to enter into an arrangement or composition with its creditors (except in the case of a solvent and bona fide reconstruction or amalgamation);
- (b) a receiver, manager, receiver and manager, administrative receiver, examiner or administrator is appointed in respect of the person or any of its assets, or a petition is presented for the appointment of an examiner or administrator, or a petition is presented or an order is made or a resolution is passed for the dissolution of, winding up of or appointment of a liquidator to the person, or a liquidator, trustee in bankruptcy or other similar person is appointed in respect of the person, or any steps are taken to do any of the foregoing or any event analogous to any of the foregoing happens in any jurisdiction;
- (c) the person is dissolved or struck off;
- (d) the person is unable to pay its debts for the purposes of section 570 of the Companies Act, 2014 (Ireland), Article 103 (1) or (2) of the Insolvency Order (Northern Ireland) 1989, or Section 123 (1) or (2) of the Insolvency Act 1986 (Great Britain) (as applicable) or if any voluntary arrangement is proposed in relation under Article 14 of the Insolvency Order (Northern Ireland) 1989, or section 1 of the Insolvency Act 1986 (Great Britain)(as applicable), or for the purpose of any similar or analogous legislation under the laws of any jurisdiction. For the purposes of this sub-paragraph:
 - (i) section 570 of the Companies Act, 2014 shall have effect as if “€100,000” (or such higher figure as the System Operators may specify from time to time) was substituted for the monetary amounts currently specified in or for the purposes of that section; and
 - (ii) article 103 of the Insolvency Order (Northern Ireland) and section 123 of the Insolvency Act, 1986 (Great Britain) shall have effect as if “£60,000” (or such higher figure as the System Operators may specify from time to time) was substituted for the monetary amount currently specified in or for the purposes of that Article or section.

Intellectual Property Rights	means copyright (present and future), patents, inventions, design rights, database rights, trade secrets, know-how, any applications for registration of any of the foregoing, and any other intellectual or industrial property rights of whatsoever nature, whether similar to those described above or otherwise, whether registerable or not, existing now or in the future created throughout the world.
Interconnector	means electric lines and electric plant used solely for conveying electricity from outside both Jurisdictions directly to or from a substation in either Jurisdiction registered as an “Interconnector” under the Trading and Settlement Code.
Interconnector Owner	has the meaning given in the Trading and Settlement Code.
Interim Operational Notification or ION	means a notification issued by the relevant System Operator to a power-generating facility owner, demand facility owner, distribution system operator or HVDC system owner which allows them to operate respectively a power-generating module, demand facility, distribution system or HVDC system by using the grid connection for a limited period of time and to initiate compliance tests to ensure compliance with the relevant specifications and requirements;
Interface Technical Specification	means the documentation prepared by the System Operators which describes the Participant interfaces to the Capacity Market Platform (as amended from time to time).
Intermediary	means the person appointed by a Unit Owner with the approval of the Regulatory Authorities for the purposes of registration of, and participation in the SEM in respect of, any of the Unit Owner’s units.
Ireland Grid Code	means the Grid Code as defined in section 2(1) of the Electricity Regulation Act 1999 as amended, that applies to the Transmission System for Ireland.
Jurisdiction	means Ireland or Northern Ireland or both as appropriate.
Legal Requirements	means any requirement under Applicable Laws, any applicable Licence, any applicable Distribution Code, Grid Code or Metering Code or any requirement, direction, determination, decision, instruction or rule of any Competent Authority.
Legitimate Reason	has the meaning given in paragraph H.7.4.1.
Level 1 Local Capacity Constraint	means a Local Capacity Constraint which has been determined by the System Operators to have a nesting level of Level 1 under paragraph C.2.2.3.

Level 2 Local Capacity Constraint	means a Local Capacity Constraint which has been determined by the System Operators to have a nesting level of Level 2 under paragraph C.2.2.3.
LIBOR	means the rate published in the London Financial Times as the London Interbank Offered Rate (for the previous banking day) on the banking day immediately following the due date for the payment of a sum due under this Code for overnight deposits in the Currency of such sum.
Licence	means an electricity generation licence or an electricity supply licence, transmission system operation licence, distribution system operator licence, transmission system owner licence, market operator licence or any other relevant licence as the context may require, granted by the Regulatory Authorities pursuant to Section 14 of the Electricity Regulation Act 1999 (Ireland) or Section 10 of the Electricity (Northern Ireland) Order 1992 and “Licensee” shall be construed accordingly.
Limited Communication Failure	means a period during which one or more Parties or Participants, but not all Parties or Participants and not the System Operators, fail to comply with the data submission requirements under this Code because of a technical, communication or IT systems error outside the Capacity Market Platform.
Limited Operational Notification or LON	means Limited Operational Notification, as described in the applicable Grid Code.
Local Capacity Constraint	means a constraint determined by the System Operators in accordance with section C.2 (as adjusted under section F.4).
Local Capacity Constraint Information	<p>in respect of a Local Capacity Constraint, means the following information:</p> <ul style="list-style-type: none"> (a) the identifier; (b) the MW minimum de-rated capacity quantity required to satisfy the Local Capacity Constraint; (c) the net MW minimum de-rated capacity required to be acquired in the Capacity Auction to satisfy the Local Capacity Constraint after allowing for any existing Awarded Capacity for the Capacity Year; (d) whether the Local Capacity Constraint is a Level 1 Local Capacity Constraint or a Level 2 Local Capacity Constraint; and (e) for a Level 2 Local Capacity Constraint, the Level 1 Local Capacity Constraint it falls within.
Long Stop Date	has the meaning given in paragraph J.6.1.1(b).

Major Contracts	<p>means, for a new or refurbished Generator Unit or Interconnector:</p> <p>(a) the agreement or agreements under which the EPC Contractor (if any) is appointed to construct, commission, repower or refurbish the Generator Unit or Interconnector; and</p> <p>(b) any other agreement or agreements for a major component of the construction, repowering or refurbishment works. For these purposes, a major component is one that represents at least 20 per cent of the Total Project Spend.</p>
Major Milestone	means a milestone in respect of the delivery of Awarded New Capacity specified in paragraph J.2.1.1.
Market Codes	means this Code, the Trading and Settlement Code, the Grid Codes and the Metering Codes.
Market Manipulation	has the meaning given in paragraph B.9.1.2.
Market Operator	means EirGrid and SONI solely in their respective roles as the undertakings authorised by the Regulatory Authorities to operate the Balancing Market under the Trading and Settlement Code pursuant to the Market Operator Licences and any relevant exemption, with their rights, powers, functions, obligations and liabilities under this Code in that role alone being joint and several.
Maximum Capacity Duration	in respect of Awarded Capacity allocated in a Capacity Auction, means the maximum duration of Awarded Capacity and is determined in accordance with section E.8.5.
Maximum Export Capacity	means the maximum export capacity of a site in MW as defined under the site's Connection Agreement or equivalent, or in the case of an Aggregated Generator, the Aggregated Maximum Export Capacity of all sites containing Generators that form part of the Aggregated Generator
Maximum Import Capacity	means the maximum import capacity of a site in MW as defined under the site's Connection Agreement or equivalent.
Mechanical Completion	has the meaning given in paragraph J.2.1.2(a).

Metering Code	<p>means, for Ireland, the code of that name prepared by the Distribution System Operator(s) and approved by the Commission; and</p> <p>means, for Northern Ireland, the subset of the Northern Ireland Grid Code pertaining to meter reading, Meter Data processing and Meter Data communications;</p> <p>or for Ireland the “Retail Market Design” and for Northern Ireland the “Market Registration Code” as appropriate.</p>
Milestones	<p>means:</p> <p>(a) the Major Milestones specified in paragraph J.2.1.1; and</p> <p>(b) the Additional Milestones specified in paragraph J.2.1.2.</p>
Minimum Completion	has the meaning given in paragraph J.6.1.1(a).
Modification	means a modification, revision, amendment, supplementation, extension, consolidation or replacement to the provisions of this Code which made in accordance with section B.12.11 and which shall, for the avoidance of doubt, include a modification of or addition to the Agreed Procedures.
Modification Finalisation Date	means the date (if any) determined by the Regulatory Authorities under paragraph B.12.3.1 as the date by which Modifications are able to be made for them to have effect in respect of a Capacity Auction.
Modification Process	means the process of submitting and assessing Modification Proposals, and making Modifications, in accordance with section B.12.
Modification Proposal	means any proposal to modify, vary or amend this Code which is submitted to, or put forward by, the System Operators in accordance with section B.12.4.
Modifications Website	has the meaning given in paragraph B.12.13.2.
Month	means one calendar month, starting at midnight on the first calendar day of such month.
Monthly Capacity Payment Exchange Rate (XRCPM_c)	means an exchange rate applicable to Capacity Period c which converts the Capacity Payment Price for a Secondary Trade from Euros to Sterling and is determined in accordance with section K.2.
Moody’s Investor Services Inc.	means the credit rating agency of that name.

NEMO Rules	in respect of a SEM NEMO, means the rules governing the terms and conditions on which the NEMO provides day-ahead and intraday trading services in Ireland and Northern Ireland.
Net De-Rated Capacity	means the MW quantity of Existing Capacity or New Capacity from a Capacity Market Unit that is Qualified taking into account previously allocated Awarded Capacity to be offered into a Capacity Market Auction.
Net De-Rated Capacity (Existing)	means the value of Net De-Rated Capacity in respect of Existing Capacity.
Net De-Rated Capacity (New)	means the value of Net De-Rated Capacity in respect of New Capacity
Net Going Forward Cost	means the avoidable costs that a Participant needs to recover in respect of a proposed Capacity Market Unit needs to recover from the Capacity Market in order to justify the plant's continuing operation, and are net of infra-marginal rent from the energy market and from providing ancillary services. Net Going Forward cost does not include sunk costs, for example the cost of investments made in the past.
New Capacity	means, in respect of the Qualification Process and its associated Capacity Auction, the planned capacity of a new Generator, Generating Unit or Interconnector forming the whole or part of a Capacity Market Unit or proposed Capacity Market Unit, or the incremental increase in the capacity of an existing Generator, Generating Unit or Interconnector forming the whole or part of a Capacity Market Unit or proposed Capacity Market Unit (which has yet to complete Commissioning under the relevant Grid Code), and the planned capacity or incremental increase in capacity of the Capacity Market Unit that comprises them.
New Capacity Investment Rate Threshold	means a €/MW or £/MW amount determined by the Regulatory Authorities that must be exceeded by the cost per MW of constructing New Capacity for that capacity to be eligible to be allocated Awarded Capacity with a duration of more than one and up to 10 years.
Northern Ireland Authority for Utility Regulation or UREGNI	means the Northern Ireland Authority for Utility Regulation or more commonly known as the Office for the Regulation of Electricity and Gas of Northern Ireland established under Article 3 Part II of the Energy (Northern Ireland) Order 2003 as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006 or any successor body.

Notice	means any communication required to be given by a Party or to the Regulatory Authorities under this Code or the Capacity Market Framework Agreement but shall not include Data Transactions to the extent that specific rules for communication of Data Transactions are set out in Chapter L or Appendix G. Any reference to a “notification” to be given under this Code shall be deemed to be a “Notice”.
Notice of Assignment and Acknowledgment	<p>means:</p> <p>(a) the notice of charge and assignment to be provided by a Participant to the SEM Bank in the form set out in Schedule 2, Part 1 (<i>Notice of charge to Account Bank</i>) of the Deed of Charge and Account Security; and</p> <p>(b) the acknowledgment of receipt of such notice of assignment to be obtained from the SEM Bank in the form set out in Schedule 2, Part 2 (<i>Acknowledgment from Account Bank</i>) of the Deed of Charge and Account Security,</p> <p>in both cases pursuant to clause 2.4 (<i>Notices</i>) of the Deed of Charge and Account Security.</p>
Notice of Dispute	means a Notice specifying what is disputed, when the Dispute commences, and the Parties of the Dispute.
Obligated Capacity Quantity	at any time in respect of a Capacity Market Unit, is calculated in accordance with section I.1.
Offer Price Cap	has the meaning given in paragraph E.8.6.1.
Offer Price Clearance Ratio	has the meaning given in paragraph F.8.4.5.
Operational Certificate	in relation to a new or refurbished Generator Unit or Interconnector, means a certificate issued by the relevant System Operator under the applicable Grid Code confirming that the new or refurbished Generator Unit or Interconnector has successfully completed compliance testing under the Grid Code.
Opt-out Notification	means a notification provide by a Participant to the System Operators under section E.3.
Opt-out Notification Date	means the last date a Participant can submit an Opt-out Notification in respect of a Capacity Year.
Panel	means the panel established under section B.14.4.
Panel Chairperson	means the chairperson of the Panel nominated from time to time by the Regulatory Authorities under paragraph B.14.4.6.

Participant	means a Party or business division of a Party which at the relevant time has been designated as, or deemed to be, the “Participant” in relation to any Candidate Unit that has been registered, has been taken to be registered or has been provisionally registered in accordance with the Code or any Capacity Market Unit that has been Qualified to participate in a Capacity Auction.
Participant Private	means information and data relating to a Capacity Market Unit identified as “Participant Private” in Appendix G “Data Publication” which will be and made available by the System Operator to the Participant in respect of that Capacity Market Unit.
Participation Fee	means a fee to be paid to the System Operators in respect of a Participation Notice proposed by the System Operators, and approved by the Regulatory Authorities, under section B.7.1.
Participation Notice	means the notice referred to in paragraph B.5.2 and in the form prescribed by the System Operators which a Party or Applicant must issue to apply to provisionally register a Candidate Unit in the name of a Participant.
Party	means any person who is a party to the Capacity Market Framework Agreement and is thereby bound by this Code, and shall include its successors and permitted assigns.
Performance Security	means a security required as a condition of capacity award for Awarded New Capacity that has not reached Substantial Completion.
Performance Security Date	means the final date for Participants to provide for submission of Performance Securities to the System Operators for Awarded New Capacity in respect of a Capacity Year.
Performance Security Posting Date/ Event	means a date or event from which a specified €/MW rate shall be applied to Awarded Capacity in setting Performance Securities. There may be multiple different Performance Security Posting Dates/ Event.
Personal Data	has the meaning set out in the Data Protection Legislation.
Planned Outage	in respect of a Generator Unit or an Interconnector, means that the Generator Unit or Interconnector is undertaking an outage which is included in the Committed Outage Programme (Ireland) or the Final Outage Programme (Northern Ireland) under the applicable Grid Code. In the case of a Generator Unit, it includes such an outage that results from an outage of the plant that is the sole source of the fuel that drives the Generator Unit’s turbine(s).

prescribed deadline	has the meaning given in paragraph B.14.1.8.
prescribed timeframe	has the meaning given in paragraph B.14.1.8.
Price Setting Offer	has the meaning given in paragraph F.8.3.3.
Primary Trade	in respect of a Capacity Market Unit, means Awarded Capacity allocated in respect of that Capacity Market Unit as a result of a Capacity Auction.
Priority Dispatch	has the meaning given in the Trading and Settlement Code.
Processing	means as defined in applicable Data Protection Legislation and “ Processes ” shall be construed accordingly.
Product	means a standard contract for the physical delivery of electricity within either Jurisdiction for a particular time interval.
Product Design	means the document published under paragraph H.3.3 specifying the design features and price cap applicable to each Product Type and includes a replacement document published under that paragraph.
Product Type	means a type of Product with the design features specified by the System Operators under paragraph H.3.1, as varied from time to time in accordance with that paragraph.
Product Forecast Capacity Quantity Scaling Factor (FPFCQSF)	has the meaning given in paragraph H.5.1.3.
Proportion of Delivered Capacity	in respect of Awarded New Capacity at a given time is a percentage value determined in accordance with paragraph G.3.1.4 (as modified, where appropriate, under paragraph G.3.1.5).
Proposer	in respect of a Modification Proposal, means the person putting forward the Modification Proposal.
Provisional Qualification Submission Date	means the date by which the System Operators are expected to provide Provisional results of the Qualification Process in respect of a Capacity Auction to the Regulatory Authorities for approval, as specified in the applicable Capacity Auction Timetable.
Provisional Qualification Decisions	means a provisional set of decisions in respect of the Qualification Process for a Capacity Auction, as defined in paragraph E.9.2.1.

Provisional Qualification Results Date	means the date by which the System Operators are expected to inform Participants of the approved Provisional Qualification Decisions in respect of their Applications for Qualification in respect of a Qualification Process, as specified in the applicable Capacity Auction Timetable.
Prudent Electric Utility Practice	means those standards, practices, methods and procedures conforming to safety standards and Legal Requirements which are attained by exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator in Europe engaged in the same type of undertaking under the same or similar circumstances.
Prudent Industry Operator	means an operator engaged in the electric utility industry which performs in accordance with Prudent Electric Utility Practice.
Public Data	means information, prices and volumes, forecasted data, and system data identified as "Public Data" in Appendix G "Data Publication" which will be published by the System Operator and made available to the general public.
Qualification Application Date	means the last date a Participant can submit an Application for Qualification in respect of a Capacity Year.
Qualification Capacity Register	means the register maintained by the System Operators under section G.1.
Qualification Data	means the information specified in Appendix D "Qualification Data"
Qualification Charge	means the charge applicable to Participants who submit an Application for Qualification proposed by the System Operators, and approved by the Regulatory Authorities, under section B.7.1.
Qualification Decisions	means the decisions by the System Operators in respect of a Capacity Market Unit following a Qualification Process as in paragraph E.9.1.1.
Qualification Process	has the meaning given in paragraph E.1.1.1.
Qualification Results Publication Deadline	means the date by which the System Operators are expected to publish the total qualified capacity in respect of a Capacity Year.

Qualified	<p>in respect of:</p> <ul style="list-style-type: none"> (a) a Capacity Market Unit, means that the relevant Participant has been determined to be eligible to participate in a Capacity Auction in respect of the Capacity Market Unit in the relevant Qualification Process; (b) Existing Capacity, means that the Capacity Market Unit has been assessed as being able to provide that quantity of Existing Capacity in the relevant Qualification Process; and (c) New Capacity, means that the Capacity Market Unit has been assessed as being able to provide that quantity of New Capacity in the relevant Qualification Process.
Receiving Party	means the initial intended recipient of a Data Transaction from another Party.
Recipient Party	has the meaning given in paragraph B.23.1.2.
Referral Notice	in relation to a Dispute, means a notice in writing from a Disputing Party to the other Disputing Parties identifying the Dispute and referring it to a Dispute Resolution Board under paragraph B.14.5.1.
Registered Capacity	means the maximum Active Power in MW that a Generator Unit can deliver on a sustained basis at the Export Point submitted for the Generator Unit in accordance with Appendix H: "Data Requirements for Registration" of the Trading and Settlement Code.
Regulatory Authorities	means the Northern Ireland Authority for Utility Regulation and the Commission and the term "Regulatory Authority" shall be construed accordingly to mean any one of them as the context admits or requires.
Regulatory Reporting Requirement	has the meaning given in paragraph B.8.2.1.
Rejection Notice	means a Notice sent by the System Operators to a Sending Party specifying that the Data Transaction concerned is invalid and has been rejected by the System Operators.
Relevant Bank	has the meaning given in paragraph J.3.1.1.
REMIT	means Regulation (EU) No 1227/2011 of 25 October 2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

REMIT Data	means any data mapped to the relevant ID for REMIT reporting, which is processed by the Market Operator for the purpose of REMIT and required to be provided to European Agency for the Cooperation of Energy Regulators to ensure compliance by a Participant with the Commission Implementing Regulation (EU) No 1348/2014.
REMIT Data Transaction	means a set of REMIT Data submitted to the European Agency for the Cooperation of Energy Regulators in accordance with section L.7.
REMIT Notification Form	means the form published by the System Operators to be completed by a Participant in the event that the Participant wishes to appoint the System Operators to report REMIT Data to the European Agency for the Cooperation of Energy Regulators on its behalf.
Required Level	for the Performance Security is determined in accordance with paragraph J.3.2.4.
Reserve Account	means an account established with the SEM Bank by a Participant and the System Operator in the name of the System Operators under section J.3.3.2 for the purpose of comprising part or all of the Participant's Performance Security.
Reserve Assets	means the aggregate of: <ul style="list-style-type: none"> (a) amounts from time to time credited to the Reserve Account; (b) amounts which any Participant, where applicable, is from time to time obliged to pay to the credit of their respective Reserve Account; and (c) interest receivable on the Reserve Account(s).
Reserve Scarcity Price Curve	has the meaning given in the Trading and Settlement Code.
Reviewable Decision	has the meaning given in paragraph E.10.2.1.
Run-of-River Hydro Unit	means a Generator Unit that uses the flow of the river to drive its hydro turbine and produce electricity.
Scheduled Release	means a planned update to the release of the Capacity Market Platform.
Secondary Auction Bid	has the meaning given in paragraph H.7.1.1.
Secondary Auction Offer	has the meaning given in paragraph H.7.2.1.

Secondary Trade	in respect of a Capacity Market Unit, means Awarded Capacity the subject of a Product acquired in a Secondary Trade Auction (and recorded in the Capacity and Trade Register).
Secondary Trade Auction	means an auction of a specific type of Product conducted under Chapter H.
Secondary Trade De-Rated Capacity Tolerance	means the percentage value that sets the limit on the amount which can be offered into a Secondary Auction in respect of a Capacity Market Unit above the Capacity Market Unit's Gross De-rated Capacity, and is determined in accordance with paragraph H.7.3.5 or H.7.3.6 (as applicable).
Secondary Trade Information Pack	has the meaning give in section H.5.
Seller Limit	has the meaning give in paragraph H.7.3.3.
SEM or Single Electricity Market	for the purposes of Northern Ireland has the meaning given to the term "SEM" in section 2(2) of The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and, for the purposes of Ireland, has during the interim period (as defined in section 7 of the Energy Act 2016), the meaning given to the term "revised arrangements in the State and Northern Ireland" in section 7 of the Energy Act 2016 and, thereafter, to the term "Single Electricity Market" in section 2 of the Electricity Regulation Act 1999.
SEM Bank	means the bank appointed as the SEM Bank by the Market Operator under the Trading and Settlement Code.
SEM NEMO	has the meaning given in the Trading and Settlement Code.
SEM Security Standard	means the standard specified from time to time by the Regulatory Authorities for the annual loss of load expectation to be maintained in the SEM, that is the expected number of hours per year for which load curtailment may occur due to demand exceeding available capacity.
Sending Party	means the Party that initially sends a Data Transaction.
SONI	SONI Limited incorporated in Northern Ireland (Registered Number NI038715) whose registered office is situated at Castlereagh House, 12 Manse Road, Belfast.
Standard & Poors	means the credit rating agency of that name, a division of McGraw-Hill Companies Inc.
Start of Performance/ Acceptance Testing	has the meaning given in paragraph J.2.1.2(d).

Sterling	means the currency in Northern Ireland.
Substantial Completion	has the meaning given in paragraph J.2.1.1(c)
Substantial Financial Completion	has the meaning given in paragraph J.2.1.1(a)
Supplier Unit	has the meaning given in the Trading and Settlement Code
Suspension	means the process whereby the System Operators suspends a Party from participation in Capacity Auctions and Secondary Trade Auctions in respect of some or all of its Capacity Market Units in accordance with a Suspension Order. “ Suspend ” and “ Suspended ” shall be construed accordingly.
Suspension Order	means an order from the System Operators to a Party in accordance with section B.13.3 stating that its participation in Capacity Auctions and Secondary Trade Auctions in respect of any or all of its Capacity Market Units will be suspended in accordance with the terms of the Suspension.
System Operators	means EirGrid and SONI solely in their respective roles as the undertakings authorised by the Regulatory Authorities to administer this Code and the Capacity Market, with their rights, powers, functions, obligations and liabilities under this Code in that role alone being joint and several
System Operator Charges	means the Fixed System Operator Charge, the Variable System Operator Charge and the Qualification Charge.
T-1 Auction	means a Capacity Auction held for the purposes of awarding Awarded Capacity for a Capacity Year not more than 13 months and not less than 2 months before the start of the Capacity Year.
T-2 Auction	means a Capacity Auction held for the purposes of awarding Awarded Capacity for a Capacity Year not less than 14 months and not more than 28 months before the start of the Capacity Year.
T-3 Auction	means a Capacity Auction held for the purposes of awarding Awarded Capacity for a Capacity Year not less than 29 months and not more than 41 months before the start of the Capacity Year.
T-4 Auction	means a Capacity Auction held for the purposes of awarding Awarded Capacity for a Capacity Year not less than 42 months and not more than 54 months before the start of the Capacity Year.

Technology Class	means a class, based on technology, used for determining the De-Rating Curve applicable to a Generator, Generator Unit or Interconnectors. Technology Classes will be determined by the Regulatory Authorities.
Temporary Compliance Certificate	means a temporary compliance certificate as may be issued by SONI in accordance with the Northern Ireland Grid Code for a Transmission System connected wind farm power station or for a Distribution System connected wind farm power station.
Termination	means the termination of a person's status as a Party in accordance with section B.13.6, B.13.7, B.13.8 or B.13.9, and " Terminate " and " Terminated Party " shall be construed accordingly.
Termination Charge	means a fee payable by a Participant under section J.7 where Awarded New Capacity is terminated under section J.6.
Termination Order	means an order from the System Operators to a Party pursuant to paragraph B.13.6.1 stating that the Party will be Terminated, or that any or all of its Capacity Market Units will be Deregistered.
Total Project Spend	in respect of a new or refurbished Generator Unit or Interconnector, means the total amount of Capital Expenditure (excluding contingency) incurred, or expected in the reasonable opinion of the Participant to be incurred, either by the Participant or another person, in undertaking the relevant construction, repowering or refurbishment works and commissioning the new or refurbished Generator Unit or Interconnector so that it is in a position to provide the relevant Awarded New Capacity by the commencement of the first Capacity Year to which the Awarded New Capacity relates. For the purposes of this definition, Capital Expenditure shall be determined in accordance with International Accounting Standard 16.
Trading Day	means the period commencing at 23:00 each day and ending at 23:00 the next day.
Trading and Settlement Code	means the code of that name established under the Licences issued to the Market Operator in that capacity.
Tranche	in relation to Awarded New Capacity, means the Awarded New Capacity in relation to a Capacity Market Unit allocated in a Capacity Auction. At any time, there may be more than one Tranche of Awarded New Capacity in relation to a Capacity Market Unit arising out of different Capacity Auctions.

Transfer	means assign, transfer or otherwise dispose of any estate in law or in equity, whether by sale, lease, declaration or creation of trust or otherwise
Transitional Capacity Auction	has the meaning given in paragraph M.3.3.1.
Transitional Period	has the meaning given in paragraph M.3.1.1.
Transmission System	has the meaning given in the Trading and Settlement Code.
Transmission System Operator Licences	means: <ul style="list-style-type: none"> (a) in respect of Northern Ireland, a licence to participate in transmission granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 and which requires the licensee to co-ordinate, and direct, the flow of electricity onto and over the Transmission System for Northern Ireland; and (b) in respect of Ireland, a licence granted under Section 14(1) of the Electricity Regulation Act 1999 (Ireland).
Type 1 Channel	means the type of Communication Channel defined in paragraph L.2.3.1 as a Type 1 Channel.
Type 2 Channel	means the type of Communication Channel defined in paragraph L.2.3.1 as a Type 2 Channel.
Unit	means any Generator Unit or Interconnector or proposed Generator Unit or Interconnector which is registered, or is deemed to be registered, or is provisionally registered in accordance with this Code.
Unit Owner	means, in respect of any Generator or Generator Unit (as the context permits), the person who owns or legally controls that Generator or Generator Unit.
Unit Specific Price Cap	means a cap on offers into the Capacity Market in respect of Existing Capacity that is applied to offers from the capacity instead of the Existing Capacity Price Cap.
Unit Type (UT_u):	means an indicator of whether a Generator Unit or Interconnector denoted by u is a Dispatchable Generator Unit, Interconnector, Demand Side Unit, Aggregated Generator Unit, Autoproducer Unit, or Variable Generator Unit.
Urgent	has the meaning set out in paragraph B.12.9.3 in relation to a Modification Proposal.

Utilities Directive	means Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, as may be amended or replaced from time to time.
Validated	means, in relation to a Data Transaction, that the Data Transaction has been determined by the System Operators to be valid, in accordance with section L.3.
Value Added Tax or VAT	means the value added tax chargeable under the provisions of: <ul style="list-style-type: none"> (a) in respect of Ireland, the Irish Value Added Tax Consolidation Act, 2010 (as amended); or (b) in respect of Northern Ireland, the Value Added Tax Act 1994 (as amended), and includes any substitute or replacement tax on the supply of goods or services.
Variable Generator Unit	means a Wind Power Unit or a Run-of-River Hydro Unit, where the short-term availability of the Generator Unit is unpredictable as a result of its fuel source.
Variable System Operator Charge	means the charge proposed by the System Operators to be applied in respect of each Supplier Unit, and approved by the Regulatory Authorities, under section B.7.1.
Voluntary Termination	means the voluntary Termination of a Party at its own request and in accordance with section B.13.8.
Voluntary Termination Consent Order	means an order issued by the System Operators to a Party under section B.13.8 in relation to the Voluntary Termination of a Party.
Wind Power Unit	means a Generator Unit generating electricity from wind energy.
Working Day or WD	means a weekday which is not a public holiday, bank holiday or non-processing day as advised by the SEM Bank in Ireland or Northern Ireland. The term "Non-Working Day" shall be construed accordingly.
Workshop	means an industry workshop to consider a Modification Proposal organised by the System Operators under paragraph B.12.5.4 or B.12.5.9.

LIST OF APPENDICES

Appendix A: “List of Agreed Procedures”

Appendix B: “Template For Dispute Resolution Agreement”

Appendix C: “Capacity Auction Timetable”

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APPENDIX A: LIST OF AGREED PROCEDURES

Agreed Procedure 1 “Registration”

Agreed Procedure 2 “Default and Suspension”

Agreed Procedure 3 “Qualification and Auction Process”

Agreed Procedure 4 “Communication Channel Qualification”

Agreed Procedure 5 “System Operation, Testing, Upgrading and Support”

Agreed Procedure 6 “System and Communication Failures”.

APPENDIX B: TEMPLATE FOR DISPUTE RESOLUTION AGREEMENT

Words in square brackets should be deleted as appropriate depending on whether there is a one member DRB or a three member DRB.

GENERAL CONDITIONS OF DISPUTE RESOLUTION AGREEMENT FOR A CAPACITY MARKET DISPUTE RESOLUTION BOARD

BETWEEN:-

1 THE DISPUTING PARTIES, REFERRED TO IN ANNEX 1

AND

2 EACH MEMBER OF THE CAPACITY MARKET DISPUTE RESOLUTION BOARD, REFERRED TO IN ANNEX 2 ("MEMBER" OR "THE MEMBERS" AS APPLICABLE)

RECITALS

- A. The Disputing Parties are, directly or via the Accession Agreement, adhering parties to the Capacity Market Framework Agreement dated xxx, by which they agree to be bound by the terms of the Capacity Market Code ("Code", as further defined below).
- B. The Disputing Parties are parties to a Dispute within the meaning of the Code.
- C. The Dispute has, in accordance with section B.14 of the Code, been referred to a [single member / three member] Capacity Market Dispute Resolution Board ("CMDRB") for resolution.
- D. In order to facilitate the resolution of the Dispute by the CMDRB, the Disputing Parties wish to enter into this Agreement with each of the Members, setting out the terms and conditions upon which each Member is engaged to hear and determine the Dispute.

1. Definitions and Interpretation

- 1.1 Unless the context requires otherwise, words and expressions which are not otherwise defined in this Agreement (including the Recitals) shall have the meanings assigned to them in the Code.
- 1.2 Where the CMDRB is comprised of a single member, references to "the Members" shall be construed as references to "the Member" and references to "each Member" shall be construed as references to "the Member".

2. General Provisions

- 2.1 Each Disputing Party engages each Member to constitute a Capacity Market Dispute Resolution Board to hear and determine the Dispute.

- 2.2 Each Member accepts that engagement.
- 2.3 Each Member agrees to hear and determine the Dispute:
1. in accordance with the Code, the Capacity Market Framework Agreement and Applicable Laws; and
 2. on the terms and conditions set out in this Agreement.
- 2.4 This Agreement shall take effect when signed by all parties to this Agreement, on the last date of signature by a party.
- 2.5 The appointment of the Members pursuant to this Agreement is a personal appointment. At any time, the Members may give not less than 14 days' notice of resignation to the Disputing Parties and to the System Operators, and, where the System Operators are a Disputing Party, to the Regulatory Authorities, and this Agreement shall terminate upon the expiry of this period.
- 2.6 No assignment or subcontracting of this Agreement is permitted without the prior written agreement of all the Disputing Parties to it and of the Members.
- 2.7 When appointing each Member, the Disputing Parties shall request of the relevant Member and shall be entitled to rely upon the Member's representations that he/she:
1. is experienced in and familiar with alternative dispute resolution procedures; or
 2. has appropriate experience of the electricity industry, or the particular matters the subject of the dispute,
- and that he/she is familiar with, or shall, prior to the commencement of the hearing of the Dispute, be familiar with, the provisions of the Code.
- 3. Warranties**
- 3.1 The Members warrant and agree that they are and shall be impartial and independent of the System Operators and the Disputing Parties. Each Member shall promptly disclose, to each Disputing Party and to the other Members, any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
- 4. Objectives of the Dispute Resolution Procedure**
- 4.1 It is intended that procedures effected under this Agreement should to the extent possible:
1. be simple, quick and inexpensive;
 2. preserve or enhance the relationship between the Disputing Parties;
 3. without prejudice to the obligations of each of the Disputing Parties pursuant to the Code and in particular paragraph B.14.2.7 thereof, preserve and allow for the continuing and proper operation of the Code and the Capacity Market;
 4. resolve disputes on an equitable basis in accordance with the provisions of the Code; and
 5. encourage resolution of disputes without formal legal representation or reliance on legal procedures.
- 5. General Obligations of the Members**
- 5.1 Each Member shall:

1. have no interest financial or otherwise in the Disputing Parties, nor any financial interest in the Code except for payment under this Agreement;
2. not previously have been employed as a consultant or otherwise by any of the Disputing Parties, except in such circumstances as were disclosed in writing to all of the Disputing Parties before they signed this Agreement;
3. have disclosed in writing to the Disputing Parties and the other Members, before entering into this Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Disputing Parties, and any previous involvement in the SEM;
4. not, for the duration of this Agreement, be employed as a consultant or otherwise by any of the Disputing Parties, except as may be agreed in advance in writing by the Disputing Parties and the other Members;
5. comply with the applicable provisions of section B.14 of the Code;
6. not, while a Member, enter into discussions or make any agreement with any of the Disputing Parties regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under this Agreement;
7. ensure his/her availability for all site visits and hearings as are necessary;
8. be knowledgeable of the Code and all elements of the Dispute by studying all documents received prior to commencement of the hearing of the Dispute; and
9. treat the details of the DRB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Disputing Parties and the other Members.

6. General Obligations of the Disputing Parties

- 6.1 The Disputing Parties and the Disputing Parties' employees, officers, servants or agents shall not request advice from or consult with the Members regarding the Code, otherwise than in accordance with the procedures determined by the DRB under the Code and this Agreement, and except to the extent that prior agreement is given by all other Disputing Parties and the other Members. The Disputing Parties shall be responsible for compliance with this provision by the Disputing Parties' employees, officers, servants or agents.
- 6.2 The Disputing Parties undertake to each other and to the Members that the Members shall not, except as otherwise agreed in writing by the Disputing Parties and the Members, be liable for any claims for anything done or omitted in the discharge or purported discharge of the Members' functions, unless the act or omission is shown to be in bad faith.
- 6.3 The Disputing Parties hereby jointly and severally indemnify and hold each Member harmless from and against claims from which he/she is relieved from liability under the preceding clause 6.2.

7. Breach of this Agreement

- 7.1 The parties acknowledge that the failure by a Disputing Party to comply with a requirement or determination of the Dispute Resolution Board:
 1. does not constitute a breach of this Agreement; but
 2. is a breach of the Code that may be referred to the System Operators as an alleged breach of the Code, to be dealt with in accordance with the terms of the Code.

8. Payment

- 8.1 The Members' basis for charging shall be [insert basis for charging].
- 8.2 The Disputing Parties hereby agree to share equally the costs of the Members amongst them, subject to the terms of the Code and, in particular, any decision of the Dispute Resolution Board including as to costs.

9. Termination

- 9.1 At any time:
1. the Disputing Parties may jointly terminate this Agreement by giving 21 days' notice to the Members; or
 2. the Members may resign as provided for in clause 2.
- 9.2 If any of the Members fails to comply with this Agreement, the Disputing Parties may, without prejudice to their other rights, jointly terminate it by notice to the Members. The notice shall take effect when received by the Members.
- 9.3 Any such notice, resignation and termination shall be final and binding on the Disputing Parties and the Members. However, a notice for the purposes of clause 9.1(1) or 9.2 by a Disputing Party, but not by all, shall be of no effect.
- 9.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties having accrued prior to the date of termination.

10. Default of the Members

- 10.1 If a Member fails to comply with any obligation under clause 5, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Disputing Parties for any fees and expenses received by the Member and the other Members, for proceedings or decisions (if any) of the CMDRB which are rendered void or ineffective.

11. Severability

- 11.1 If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in this Agreement. Failure to agree on such a provision within one month of commencement of those negotiations shall result in automatic termination of this Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such a negotiation.

12. Waiver

- 12.1 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

13. Entire Agreement

- 13.1 This Agreement and the Code, constitute the entire, complete and exclusive agreement between the parties in relation to the subject matter hereof, being the terms of engagement of the Members by the Disputing Parties.

14. Governing Law and Jurisdiction

- 14.1 Any dispute or claim arising out of or in connection with this Agreement shall be governed by the laws of Northern Ireland and the parties hereby submit to the

exclusive jurisdiction of any of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising out of, under or in relation to this Agreement, in accordance with the terms of the Code.

EXECUTED THIS DAY OF

BY

.....

DISPUTING PARTY

.....

DISPUTING PARTY

...

.....

CMDRB MEMBER

.....

CMDRB MEMBER

.....

CMDRB MEMBER

APPENDIX C: CAPACITY AUCTION TIMETABLE

Conventions

- 1 All dates specified in the Capacity Auction Timetable shall be calendar dates and will be Working Days.
- 2 All times specified in the Capacity Auction Timetable shall be within normal working hours.
- 3 The Capacity Auction Timetable shall specify at minimum the date for each event identified in the Capacity Auction Timetable. Where no time is specified, the applicable time will be at 5 PM.
- 4 All deadlines relate to activities with respect to a specific Capacity Year and a specific Capacity Auction. A separate Capacity Auction Timetable shall apply for other Capacity Auctions for the same Capacity Year and different deadlines shall apply.

Information to be included in Capacity Auction Timetable

- 5 The start and end date of the Capacity Year to which the Capacity Auction Timetable relates.
- 6 Exception Application Date: The last time a Participant can apply to the Regulatory Authorities for either:
 - (a) a Unit Specific Price Cap in respect of a Capacity Market Unit; or
 - (b) cost recovery in excess of the New Capacity Investment Rate Threshold for New Capacity.
- 7 Capacity Auction Information Pack Date: The last publication date for the Auction Information Pack.
- 8 Opt-out Notification Date: The last date a Participant can submit an Opt-out Notification.
- 9 Qualification Application Date: The last date a Participant can submit an Application for Qualification in respect of a Capacity Year.
- 10 Provisional Qualification Submission Date: The date by which the System Operators are expected to provide provisional results from the Qualification Process in respect of a Capacity Year to the Regulatory Authorities for approval.
- 11 Provisional Qualification Results Date: The date by which the System Operators are expected to inform persons who submit Applications for Qualification of Provisional Qualification Decisions in respect of a Capacity Year.
- 12 Provisional Qualification Review Date: The last date a person who submits an Application for Qualification can apply to the System Operators for a review in respect of Provisional Qualification Decisions for a Capacity Year;
- 13 Final Qualification Submission Date: The date by which the System Operators are expected to provide Final Qualification Results in respect of a Capacity Year to the Regulatory Authorities for approval;
- 14 Final Qualification Results Date: The date by which the System Operators are expected to inform persons who submit Applications for Qualification of Final Qualification Decisions in respect of a Capacity Year.
- 15 Qualification Results Publication Date: The date by which the System Operators are expected to publish the total Qualified capacity in respect of a Capacity Year.

- 16 Final Auction Parameter Date: The date by which the System Operators are expected to publish the Final Auction Parameters in respect of a Capacity Auction.
- 17 Capacity Auction Submission Commencement: The earliest date and time from which Participants may submit Capacity Auction Offers in respect of Capacity Market Units Qualified to participate in the Capacity Auction;
- 18 Capacity Auction Submission End: The last date and time until Participants may submit Capacity Auction Offers in respect of Capacity Market Units Qualified to participate in the Capacity Auction;
- 19 Capacity Auction Completion Date: The date by which the System Operators are expected to complete the Capacity Auction (including the Capacity Auction Monitor's review);
- 20 Capacity Auction Provisional Results Date: The date by which the System Operators are expected to provide preliminary Capacity Auction results to Participants;
- 21 Capacity Auction Approval Date: The date by which the Regulatory Authorities are expected to approve the Capacity Auction results;
- 22 Capacity Auction Results Date: The date the System Operators are expected to publish the Capacity Auction results.
- 23 The Performance Security Date: The last date for Participants to provide Performance Securities to the System Operators for Awarded New Capacity in respect of a Capacity Year;
- 24 The milestone dates by which Participants shall submit Implementation Progress Reports in respect of Awarded New Capacity resulting from the Capacity Auction.

APPENDIX D: QUALIFICATION DATA

Information required in an Application for Qualification is:

- 1 The identity of the Participant;
- 2 The proposed Capacity Market Unit which the Participant is seeking to be Qualified. If the unit has already been assigned a Capacity Market Unit Identifier, then this is done by referring to the Capacity Market Unit Identifier;
- 3 Where the Application for Qualification relates to a proposed Capacity Market Unit which will comprise a group of Generator Units, a mapping between the proposed Capacity Market Unit and each Generator Unit to which the application relates;
- 4 In respect of each Generator Unit or Interconnector to which the application relates and which is, or is intended to be, registered in the Balancing Market under the Trading and Settlement Code:
 - (a) the identity of the Generator Unit or Interconnector to which the application relates;
 - (b) the type of unit [ie, Variable Generator Units, Demand Side Unit, Interconnector, Autoproducer Unit, Aggregated Generator Unit, other Dispatchable Generator Units, other Generator Units which are not Dispatchable];
 - (c) whether the unit comprises Existing Capacity, New Capacity or a combination of both;
 - (d) the Technology Class of the unit (except for Aggregated Generator Units);
 - (e) the Capacity Zone in which the Generator Unit or Interconnector is located.
 - (f) the quantity in respect of each of:
 - (i) Gross De-Rated Capacity (Existing);
 - (ii) Gross De-Rated Capacity (New) (such that the sum of (i) and (ii) reflects the Gross De-Rated Capacity (Total) sought for the Generator Unit or Interconnector);where each value shall include capacity already awarded for the Capacity Year;
 - (g) the quantity proposed in respect of each of:
 - (i) Initial Capacity (Existing) of the unit, and (as applicable);
 - (ii) Initial Capacity (Total) of the unit;
 - (h) the MW capacity of each Generator that generates electricity using only renewable energy sources and each Demand Side Unit that satisfies the requirements of paragraph (b) of the definition of “Clean” in the Glossary comprising the Capacity Market Unit contributing to each of the sought quantities of:

- (iii) the Gross De-Rated Capacity (Existing);
- (iv) The Gross De-Rated Capacity (New) (such that the sum of (a) and (b) reflects the Gross De-Rated Capacity (Total) sought for the Generator Unit or Interconnector);
- (i) in respect of Generator Units with Firm Network Access Capacity:
 - (i) the Firm Network Access Capacity in respect of the unit (under a Connection Agreement or Connection Offer) applicable to the Capacity Year;
 - (ii) the de-rated Firm Network Access Capacity to be applied to that unit based on the de-rating factor applicable to that quantity;
- (j) for each Generator within the Aggregated Generator Unit:
 - (i) identification of the Generator;
 - (ii) the Technology Class of the Generator;
 - (iii) the quantity proposed in respect of each of:
 - a. Initial Capacity (Existing) of the Generator, and (as applicable);
 - b. Initial Capacity (Total) of the Generator;
 - (iv) the Gross De-Rated Capacity (Existing) in respect of that Generator;
 - (v) the Gross De-Rated Capacity (New) sought in respect of that Generator (such that the sum of (iv) and (v) reflects the Gross De-Rated Capacity (Total) sought for the Generator);
 - (vi) evidence that the person who owns or controls the unit has authorised the person submitting the Application for Qualification to include the Generator as part of the Aggregated Generator Unit.
- (k) the Firm Network Access Capacity of the Generator (including an offer of capacity) applicable to the Capacity Year;
- (l) the de-rated Firm Network Access Capacity to be applied to that Generator based on the de-rating factor applicable to that quantity;
- (m) for New Capacity (where associated with an existing Generator Unit or Interconnector) excepting the quantum of New Capacity for which capacity has already been awarded in respect of the Capacity Year, an Implementation Plan which includes:
 - (i) a brief description of the nature of the construction, repowering or refurbishment works to be undertaken, the expected Total Project Spend; and who it is proposed will be undertaking those works;

(ii) a schedule identifying the earliest and latest dates for achieving the following Milestones (except to the extent not required under this Code):

- a. Substantial Financial Completion;
- b. Commencement of Construction Works;
- c. Mechanical Completion;
- d. Completion of Network Connection;
- e. First Energy to Network;
- f. Start of Performance/ Acceptance Testing;
- g. Provisional acceptance or Completion of Performance Testing; and
- h. Substantial Completion;

(iii) a statement that the Implementation Plan:

- a. is, to the best of its knowledge and belief, accurate and based on reasonable assumptions;
- b. accurately summarises the planned works; and
- c. is not misleading or deceptive;

(iv) a statement that the Substantial Completion Milestone enables capacity to be delivered for the start of the Capacity Year;

(v) a copy of either the Connection Agreement(s) or a Connection Offer(s) from the relevant Transmission System Operator or Distribution System Operator (sufficient to accommodate the increased capacity). Such Connection Agreement(s) or a Connection Offer(s) should confirm either the Registered Capacity (or inverter rating, if applicable) of that New Capacity or the capacity that such New Capacity is permitted to export.

5 Where the Participant Application for Qualification relates to a proposed Capacity Market Unit which will comprise a group of Generator Units then in respect of each such Capacity Market Unit it must:

- (a) indicate whether each Generator Unit to be included is below the De Minimis Threshold;
- (b) indicate whether each Generator Unit has a Priority Dispatch that is a Solar, Wave, Wind Power Unit or Run-of-River Hydro Unit.

6 If seeking cost recovery in excess of the New Capacity Investment Rate Threshold in respect of New Capacity from a Capacity Market Unit, evidence of Regulatory Authority approval of cost recovery beyond the New Capacity Investment Threshold;

7 If seeking a Unit Specific Price Cap in respect of Existing Capacity from a Capacity Market Unit, evidence of Regulatory Authority approval for a Unit Specific Price Cap.

8 A Participant submitting an Application for Qualification must provide a certificate signed by a director or officer of the Participant on behalf of the Participant certifying that, having made due and careful enquiry and to the best of their knowledge, information and belief:

- (a) the Application for Qualification is not for the purposes of, or in any way connected with, Market Manipulation by the Participant or any of its Associates;
 - (b) the Participant submitting the Application for Qualification is not subject to an Insolvency Event;
 - (c) the Participant submitting the Application for Qualification has a good-faith intention to offer the capacity to be Qualified into the relevant Capacity Auction, that none of the capacity has, via a Secondary Trading Auction, been awarded capacity (and that the Participant will not seek awarded capacity for that capacity prior to accepting results of the Capacity Auction) for any period during the Capacity Year;
 - (d) all information in the Application for Qualification and any other information provided to the Regulatory Authorities and the System Operators in relation to it is true and correct;
 - (e) the Participant submitting the Application for Qualification has not, and none of its Associates have, engaged or will engage in any Market Manipulation or bribery or offer any inducement in regard to the process; and
 - (f) the Participant submitting the Application for Qualification has taken appropriate steps to ensure management of Confidential Information.
- 9 An Application for Qualification for a Capacity Year in respect of New Capacity for a Demand Side Unit must include in the Application:
- (a) a business plan setting out the following:
 - (i) an overview of the Demand Side Unit proposal;
 - (ii) details of the programme or strategy for procuring load reduction capability;
 - (iii) details of the programme or strategy for ensuring that load reduction capability is available, including:
 - a. method(s) of achieving load reduction;
 - b. equipment controlled or installed, or to be controlled or installed; and
 - c. details of how the load reduction capability has, or will be, secured to the person submitting the Application for Qualification.
 - (iv) a declaration that the business plan is, to the best of its knowledge and belief:
 - a. based on reasonable assumptions;
 - b. accurately describes the manner in which any load reduction capacity has been or will be secured; and
 - c. is not misleading.

APPENDIX E: QUALIFICATION CAPACITY REGISTER DATA

1 Opt-Out Notifications

The following data will be recorded in the Qualification Capacity Register in respect of each Generator Unit or Interconnector in respect of which an Opt-Out Notification has been submitted:

- (a) the name of the Participant;
- (b) details of the Generator Unit or Interconnector the Opt-Out Notification relates to;
- (c) the Capacity Year to which the Opt-out Notification relates;
- (d) the reason for opting out; and
- (e) if the System Operators rejected the Opt-Out Notification, the reason for the rejection and the date that the relevant Participant was notified of the rejection.

2 Applications for Qualification

The following data will be recorded in the Qualification Capacity Register in respect of each Generator Unit or Interconnector in respect of which an Application for Qualification has been submitted:

- (a) the name of the Participant;
- (b) the identification of the Generator Unit or Interconnector;
- (c) the Capacity Market Unit Identifier (Ω) for the Capacity Market Unit associated with the Generator Unit or Interconnector (or a group of units);
- (d) Qualification Status: i.e. Qualified, Not Qualified;
- (e) the Technology Class: used to determine applicable De-Rating Curve;
- (f) the Unit Type (UT_u): e.g. Dispatchable Generator Unit, Interconnector, DSU, Aggregated Generator Unit, Autoproducer Unit, Variable Generator Units;
- (g) Capacity Auction: the Capacity Auction in respect of which the Generator Unit or Interconnector is Qualified;
- (h) for New Capacity, the Implementation Plan and supporting data;
- (i) the Initial Capacity (Existing) and Initial Capacity (Total) that was used in the Qualification Process;
- (j) the De-Rating Factor specified in the Application for Qualification in respect of each of Initial Capacity (Existing) and Initial Capacity (Total) (as applicable);
- (k) the positive de-rating tolerance used in the Qualification Process;

- (l) the negative de-rating tolerance used in Qualification;

3 **Qualification Decisions**

The following data will be recorded in the Qualification Capacity Register:

- (a) For each Generator Unit or Interconnector:
 - (i) whether it Qualified;
 - (ii) the Capacity Market Unit it is associated with;
 - (iii) its Initial Capacity (Existing) and Initial Capacity (Total); and
 - (iv) its Gross De-Rated Capacity (Existing) and Gross De-Rated Capacity (Total);
- (b) the Gross De-Rating Factor for each Capacity Market Unit ($FDERATE_{\Omega}$) where this is the value determined in accordance with paragraph E.8.7.1E.8.7.1(c), E.8.7.2(e) or E.8.7.3(d) as applicable (and allowing for paragraph E.8.7.4), with the exception that this is to be replaced by the value determined in accordance with paragraph E.8.7.1(b), E.8.7.2(d) or E.8.7.3(c) as applicable in the event that New Capacity is not Awarded Capacity in the Capacity Market Auction or if all the Awarded Capacity in respect of New Capacity is terminated. For the avoidance of doubt, the Gross De-Rating Factor for a Capacity Market Unit which has Qualified in respect of New Capacity does not change solely as a result of it being allocated an amount of Awarded New Capacity in the Capacity Market Unit but the amount allocated is less than the amount of New Capacity Qualified in respect of that Capacity Market Unit; and
- (c) for each Capacity Market Unit and separately for each of Existing Capacity and New Capacity (as applicable):
 - (i) nature: i.e. Existing Capacity or New Capacity;
 - (ii) the Gross De-Rated Capacity (Existing) specified in the Application for Qualification;
 - (iii) the Gross De-Rated Capacity (New) specified in the Application for Qualification;
 - (iv) Gross De-Rated Capacity (Existing) determined in the Qualification Process;
 - (v) Gross De-Rated Capacity (Total) determined in the Qualification Process;
 - (vi) maximum duration allowed for Awarded Capacity; and
 - (vii) the applicable Offer Price Cap.

APPENDIX F: CAPACITY AND TRADE REGISTER DATA

Each Contract Register Entry shall contain the following information:

- 1 Unique Entry Identifier (n);
- 2 Status flag: Pending, Approved, Terminated.
- 3 Selling Trade ID;
- 4 Primary or Secondary Trade: a flag to show whether this record refers to a primary trade arising from a Capacity Auction or a Secondary Trade arising from a Secondary Trade Auction;
- 5 Buying Trade ID:
 - (a) for Primary Trades this field is not used, and should be left blank; and
 - (b) for Secondary Trades this field holds the Selling Trade ID for capacity that has been traded (in whole or part);
- 6 Selling Capacity Market Unit Identifier (Ω): the unique identifier for the Capacity Market Unit physically backing the traded capacity;
- 7 Buying Capacity Market Unit Identifier (Ω):
 - (a) for Primary Trades this field is not used, and should be left blank;
 - (b) for Secondary Trades this field holds the Buying Capacity Market Unit Identifier (Ω) for the capacity that has been traded on (in whole or part);
- 8 Capacity Quantity ($qC_{\Omega n}$): the MW capacity of the trade;
- 9 The Capacity Quantity Start Date and Time;
- 10 The Capacity Quantity End Date and Time;
- 11 The Capacity Quantity Commissioning Date:
 - (a) for Primary Trades by New Capacity this value shall be set to the later of the Capacity Quantity Start Date and Time and the Substantial Completion date under the Implementation Plan; and
 - (b) for all other trades this field shall be left blank;
- 12 Commissioning Status Flag: where the Commissioning Date is set, this flag will identify whether the date is a forecast or actual;
- 13 In respect of Primary Trade, the Commissioned Capacity ($qCCOMMISS_{\Omega Y}$);
- 14 Long Stop Date:
 - (a) for Primary Trades by New Capacity this value shall be set to the Long Stop Date; and
 - (b) for all other trades, this field shall be left blank;
- 15 The Capacity Payment Price ($PCP_{\Omega n}$) the €/MW per year fee paid for the capacity:
 - (a) for a Primary Trade this will be based on auction results; and

- (b) for a Secondary Trade it will be the Secondary Trade auction price;
- 16 Annual Stop-Loss Limit Factor and Billing Period Stop Loss Limit Factors:
 - (a) for a Primary Trade these will be the limits associated with that capacity when awarded based on the applicable stop loss limits for that Capacity Year; and
 - (b) for a Secondary Trade this will be the limits applicable under the Trading and Settlement Code when the trade is made;
- 17 Capacity Duration Exchange Rate ($XRCD_n$): the fixed exchange rate to be applied to the Capacity Payment Price to convert it from Euros to Sterling:
 - (a) for a Primary Trade or Secondary Trade for a Participant in a Jurisdiction priced in Euro this will be 1;
 - (b) for a Primary Trade for a Participant in a Jurisdiction priced in Sterling this will be then Annual Capacity Payment Exchange Rate ($XRCPA_y$) applicable to the Capacity Year that was published in the Final Auction Parameters for the relevant Capacity Auction; and
 - (c) for a Secondary Trade for a Participant in a Jurisdiction priced in Sterling this will be the exchange rate that was published in the Product Design for that Secondary Trade in the Secondary Trade Auction Information Pack;

APPENDIX G: DATA PUBLICATION

1. A list of data items that the System Operators shall be required to publish, and the timing with which the System Operators shall be required to publish them, is contained in the following table.
2. All data received by the System Operators over a Type 2 Communication Channel, or calculated by the System Operators, shall be published according to the timelines specified in this Appendix.
3. Where a provision of the body of this Code deals with the publication of a data item and is inconsistent with the following table, the provision of the body of the Code prevails.

Table 1 – Data publication list: updated periodically as required

Time	Item / Data Record	Confidentiality
Periodically as required		
No less frequently than twice yearly in line with the Scheduled Release	The Capacity Market Code (including Agreed Procedures)	Public Data
No less frequently than twice yearly in line with the Scheduled Release	List of effective Modifications not yet incorporated in the Capacity Market Code.	Public Data
Within one Working Day of its receipt from the Regulatory Authorities	Modification Finalisation Date for a Capacity Auction	Public Data
As soon as practical but no later than two Working Days after receipt of Modification Proposal	Modification Proposal	Public Data
As soon as practical but no later than two Working Days after System Operators put forward Modification Proposal	Modification Proposal	Public Data
As required	Status of Modification Proposals	Public Data
As soon as practical, but not later than five Working Days of its receipt from the Regulatory Authorities.	Notices provided by Regulatory Authorities	Public Data
Quarterly with a report not less than one month prior to the Modification Finalisation Date if such a date has been set by the Regulatory Authorities	Report on status of Modification Proposals	Public Data
Within two working Days of the Regulatory Authorities providing a Modification Proposal decision to the System Operators	Publication of Regulatory Authorities' decision on a Modification Proposal	Public Data
As required	System Operators publish updated Modifications Proposal form on Modifications Website	Public Data

Time	Item / Data Record	Confidentiality
As updated and at least within five Working Days of a successful application for Registration or Deregistration	List of Capacity Market Code Parties and Participants	Public Data
As soon as practical after being issued and at least within two Working Days of issue	Making or lifting of a Suspension Order	Public Data
As soon as practical after being issued and at least within two Working Days of issue	Termination Order	Public Data
As updated and at least within five Working Days of update	Details of the Accession Fees and Participation Fees	Public Data
As updated and at least within five Working Days of update	Details of the Qualification Charge, Fixed System Operator Charge and Variable System Operator Charge.	Public Data
As required	Reports to Regulatory Authorities	Public Data
Within one Working Day of its receipt from the Regulatory Authorities	Terms of reference for Capacity Auction Monitor	Public Data
As required	Non-confidential version of Capacity Auction Monitor's report	Public Data
Within one Working Day of its receipt from the Regulatory Authorities	Terms of reference for Capacity Market Audit	Public Data
As required	Non-confidential version of Audit Report	Public Data
As soon as practical but not later than five Working Days of its receipt from the Regulatory Authorities.	Dispute Process Timetable	Public Data
As required	System Operators publish updated form of Notice of Dispute	Public Data
As updated and at least within two Working Days of update	Name and curriculum vitae of Panel Members	Public Data
As updated and at least within two Working Days of update	Members and chairperson of the Panel	Public Data
As required	Capacity Auction Timetable (including updates, revocation)	Public Data
The later of the Capacity Auction Information Pack Date or a date being two Working Days after the Regulatory Authorities have provided the required parameters to be included in the Capacity Auction Information Pack	Capacity Auction Information Pack	Public Data
As required	Notify Participant of assignment of a Capacity Market Unit identifier	Participant Private
The later of the Provisional Qualification Results Date or a	Provisional Qualification Decisions	Participant Private

Time	Item / Data Record	Confidentiality
date being two Working Days after the Regulatory Authorities have approved (or are deemed to have approved) the Provisional Qualification Decisions.		
The later of the Final Qualification Results Date or a date being two Working Days after the Regulatory Authorities have approved (or are deemed to have approved) the Final Qualification Decisions.	Final Qualification Decisions	Participant Private
By the Qualification Results Publication Date	Qualification Results	Public Data
As required	Extension of Qualification	Participant Private and Public Data
Five Working Days Prior to a Capacity Auction if the Regulatory Authorities have not provided a Demand Curve to the System Operators	Cancellation of Capacity Auction	Public Data
The later of the Final Auction Parameters Date or a date being two Working Days after the Regulatory Authorities have provided the Demand Curve to System Operators and have approved Local Capacity Constraints.	Final Auction Parameters	Public Data
On receipt	Notification of receiving valid Capacity Auction Offer submission	Participant Private
By the Capacity Auction Provisional Results Date	Provisional Auction Results	Participant Private
The later of the Capacity Auction Results Date or a date being two Working Days after the Regulatory Authorities have approved the Auction Results	Final Auction Results	Participant Private
The later of the Capacity Auction Results Date or a date being two Working Days after the Regulatory Authorities have approved the Auction Results	Capacity Auction Results	Public Data
As required	Consultation paper (and subsequent report) on Secondary Trade Auction Product Types	Public Data
As updated and at least within five Working Days of update	Product Designs for Secondary Trade	Public Data
Not less than 20 Working Days prior to the first Secondary Trade Auction covered by the calendar	Secondary Trade Auction calendar	Public Data
As required	Updates to Secondary Trade Auction calendar	Public Data
Not less than 20 Working Days prior to the date of the	Secondary Trade Information Pack	Public Data

Time	Item / Data Record	Confidentiality
Secondary Trade Auction.		
In accordance with the timeline in the Secondary Trade Information Pack	Secondary Trade Auction results	Participant Private
In accordance with the timeline in the Secondary Trade Information Pack	Secondary Trade Auction clearing price	Public Data
As required	Reporting schedule for Awarded New Capacity	Public Data
As required	System Operators publish form of Implementation Progress Reports	Public Data
As required	System Operators publish form of certificates under section J.4.3	Public Data
As required	Notice of termination of Awarded Capacity	Public Data
Within two Working Days of approval of methodology by Regulatory Authorities	Methodology for setting Annual Capacity Payment Exchange Rates and Monthly Capacity Payment Exchange Rates	Public Data
Not later than five Working Days prior to the end of each Month	Monthly Capacity Payment Exchange Rates for next 12 months.	Public Data
As required	Updated Annual Capacity Payment Exchange Rate and Monthly Capacity Payment Exchange Rate	Public Data
As required	Changed Capacity Auction Timetable or Secondary Trade Information Pack following a General System Failure	Public Data
As required	REMIT Data Transaction	Participant Private

APPENDIX H: TEMPLATE FOR LETTER OF CREDIT

This Appendix J contains a standard template for a Letter of Credit

Form of Doc Credit: IRREVOCABLE STANDBY LETTER OF CREDIT

Documentary Credit Number:

Date of Issue:

Applicable Rules: UCP [LATEST VERSION NO]

Date and Place of Expiry:

Applicant ([insert Participant's name] or [insert company name] on behalf of [insert Participant's name])

Beneficiary: EirGrid plc and SONI Limited", being the System Operators under the Capacity Market Code. [address]

Currency Code, Amount (Maximum total amount):

Available With (ADVISING BANK IE SO'S BANK BY PAYMENT)

Partial Shipments/Drawings: Allowed

Documents required:

Beneficiary Statement, as detailed below, must be on [System Operators letterhead]

QUOTE:

"We, the System Operators under the Capacity Market Code (the "Beneficiary") hereby state that [insert Participant's name] is in default of its obligation to pay pursuant to the Capacity Market Code (to which the Participant is a party) under paragraph [insert details] and as a result we hereby demand[insert amount being claimed] under Standby Letter of Credit number..... issued by[insert name of Issuing Bank]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We

confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Standby Letter of Credit referred to above have the same meaning when used in this Beneficiary Statement."

SIGNED FOR AND ON BEHALF OF THE MARKET OPERATOR.

NAME..... TITLE.....

UNQUOTE

Additional Conditions:

1. Not Used.
2. This irrevocable Standby Letter of Credit is available by payment at sight against presentation to the Advising Bank of a Beneficiary Statement as detailed in Documents required.
3. The Beneficiary Statement must be made on original letterhead paper of the Beneficiary and signed on its behalf, and must be presented to the Advising Bank on or before the Expiry Date.
4. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions the Advising Bank is required promptly to notify us by SWIFT of receipt of such Beneficiary Statement and inform us of the relevant details of such Beneficiary Statement. Provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast, we shall make payment under this Standby Letter of Credit for Same Day Value on that day or if received after 14.00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the Advising Bank by SWIFT.
5. Where we, the Issuing Bank are also the Advising Bank, we may revise the above notification requirements as appropriate provided that this shall in no way affect the obligation on us to make payment under this Standby Letter of Credit.
6. We the Issuing Bank hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Standby Letter of Credit in respect of any claims we may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever.
7. Effective From:
8. This Standby Letter of Credit is personal to you and your rights hereunder including the right to receive proceeds to this Standby Letter of Credit, are not assignable.
9. This Letter of Credit shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of, or in relation to this Letter of Credit.

Charges:

All Issuing Bank charges are for the account of the Applicant.

All Advising Bank charges are for the account of the Beneficiary.

Confirmation:

CONFIRMATION WITH OR WITHOUT? (THIS INSTRUCTION IS TO SEMO'S BANK TO
ADD CONFIRMATION OR NOT)

Instruction to Pay:

PLEASE REFER TO ADDITIONAL CONDITIONS.

ADVISING BANK TO CLAIM REIMBURSEMENT BY SWIFT AND RETAIN BENEFICIARY
STATEMENT ON FILE.

APPENDIX

[System Operators letterhead]

We, the System Operators under the Capacity Market Code (the "Beneficiary") hereby state that [insert Participant's name] is in default of its obligation to pay pursuant to the Capacity Market Code (to which the Participant is a party) under paragraph [insert details]

and as a result we hereby demand[insert amount being claimed] under Standby Letter of Credit number..... issued by[insert name of Issuing Bank]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Standby Letter of Credit referred to above have the same meaning when used in this Beneficiary Statement.

APPENDIX I: TEMPLATE FOR DEED OF CHARGE AND ACCOUNT SECURITY

DEED of CHARGE and ACCOUNT SECURITY

between

[the Participant]

and

EirGrid p.l.c. and SONI Limited

Dated [] 20[●]

DEED of CHARGE and ACCOUNT SECURITY dated the [] day of [] 20[]
between:

- (1) [] **LIMITED [DAC/PLC]** incorporated in [England] [Scotland] [Northern Ireland] [Ireland] (registered number []) whose registered office is at [] (the "**Participant**"); and
- (2) **EIRGRID PLC** incorporated in Ireland (registered number 338522) whose registered office is situated at Block 2, The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 and **SONI LIMITED** incorporated in Northern Ireland (registered number NI038715) whose registered office is situated at Castlereagh House, 12 Manse Road, Belfast (together the "**System Operators**").

RECITALS

- (A) The System Operators and the Participant are parties to the Capacity Market Code (the "**Code**").

- (B) Pursuant to the Code, the Participant is obliged to put in place a Performance Security (within the meaning of the Code), and as permitted by the Code, has elected to meet such obligation by:
- opening one or more Reserve Accounts (within the meaning of the Code, being the Account[s] referred to in this Deed;
 - from time to time depositing the required amount of cash in such Account[s]; and
 - entering into this Deed to create in favour of the System Operators a first fixed charge over its equitable and beneficial interest arising in the credit balances held in the Account[s] and all funds held to the credit thereof from time to time.
- (C) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms or expressions defined in the Code shall, except where the context otherwise requires and save where otherwise defined herein, have the same meanings in this Deed.

In addition, in this Deed:

"Account[s]" means the reserve bank account[s] specified in Schedule 1 (as [that account][any such account] may from time to time be re-designated or re-numbered or replaced), including any successor or replacement account of [that account][any such account];

"Account Bank[s]" means the bank[s] with which the Account[s] [is] [are] held being, as at the date of this Deed, as specified in Schedule 1, which shall include reference to any successor [of any] thereof;

"Deed" means these presents (including the Schedules) as amended, amended and restated, varied, supplemented, novated, extended or restated from time to time;

"Event of Default" has the meaning given to this term in Clause 7.1 of this Deed;

"Irish Act" means the Land and Conveyancing Law Reform Act 2009 of Ireland;

"Law of Property Act" means the Law of Property Act 1925;

"parties" means the parties to this Deed and "party" means either of them;

"Regulatory Authorities" has the meaning given to this term under the Code;

"Performance Security" means the Performance Security calculated by the System Operators in accordance with the Code;

"Rights" means all present and future right, equitable title and beneficial interest of the Participant in respect of the Account[s], including (without limitation):

- (i) the benefit of all covenants, undertakings, representations, warranties and indemnities;
- (ii) all powers and remedies of enforcement and/or protection;

- (iii) all rights to receive payment of all amounts assured or payable (or to become payable), all rights to serve notices and/or to make demands and all rights to take such steps as are required to cause payment to become due and payable; and
- (iv) all causes and rights of action in respect of any breach and all rights to receive damages or obtain other relief in respect thereof;

"Schedule[s]" means any one or more of the Schedules to this Deed;

"Secured Obligations" means all or any monies, liabilities and payment obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Participant to the System Operators under the Code including interest which the System Operators may in the course of its business charge or incur in respect of any of those matters in accordance with the Code as well as after as before any demand made or decree or judgement obtained under this Deed or the Security, and all or any monies, liabilities and payment obligations due under the Code or under this Deed;

"Security" means all or any of the Security Interests now or at any time hereafter created by or pursuant to this Deed;

"Security Assets" means the Account[s] and the debt[s] thereby represented and all sums, whether principal or interest, accrued or accruing, which are now or may at any time hereafter be deposited in or otherwise standing to the credit of the Account[s], together with all the Rights in connection therewith;

"Security Interest" means any mortgage, charge, pledge, lien, retention of title arrangement (other than in respect of goods purchased in the ordinary course of business), hypothecation, encumbrance or security interest of any kind, or any agreement or arrangement having substantially the same economic or financial effect as any of the foregoing (including any "*hold back*" or "*flawed asset*" arrangement);

"Working Day" means a day (other than a Saturday or Sunday) on which commercial banks are open for business in:

- (a) for the purpose of clause 11.1, the place specified in the address for notice provided by the recipient; and
- (b) for all other purposes:
 - (i) insofar as the Security Assets are located in England or Northern Ireland, London and Belfast; or
 - (ii) insofar as the Security Assets are located in Ireland, Dublin.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- 1.2.1 words importing the singular shall include the plural and vice versa;
- 1.2.2 references to this Deed or any other document shall be construed as references to this Deed or such other document as amended, supplemented, novated, extended or restated from time to time;
- 1.2.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;

- 1.2.4 references to a "**person**" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.2.5 any reference to a party includes its permitted successors, transferees and assignees;
- 1.2.6 references to a document "**in the agreed form**" means a document in a form agreed by the Participant and the System Operators and initialled by, or on behalf of, each of them for the purpose of identification as such; and
- 1.2.7 "**tax**" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "**taxes**" and "**taxation**" shall be construed accordingly.

1.3 **Headings**

The table of contents and the headings in this Deed are included for convenience only and shall be ignored in construing this Deed.

1.4 **Construction**

The parties hereby acknowledge and agree that this Deed is entered into pursuant to the Code. In the event that any of the defined terms used in this Deed are ambiguous, they must be construed in accordance with the Code.

2 **CREATION OF SECURITY**

2.1 **Payment**

The Participant undertakes to the System Operators that it will pay and discharge the Secured Obligations on the due date therefor.

2.2 **General**

All the Security:

- (a) is created in favour of the System Operators for themselves as the System Operators under the Code to secure the Participants' compliance and performance of their payment obligations under the Code;
- (b) is created over all the Participant's Security Assets; and
- (c) is security for the payment or discharge of the Secured Obligations.

2.3 **Security**

As continuing security for the payment and discharge of the Secured Obligations, the Participant as beneficial owner hereby charges by way of first fixed charge to the System Operators the Security Assets (including, for the avoidance of doubt, all the Rights in connection therewith).

2.4. **Notices**

Immediately after delivery of this Deed, the Participant shall give notice to the Account Bank in the form set out in Part 1 of Schedule 2. The System Operators shall procure the Account Bank's acknowledgement and agreement in the form set out in Part 2 of Schedule 2.

3 **PROTECTION OF SECURITY**

3.1 **Continuing security**

The Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and/or discharged (as appropriate) under the Code.

3.2 **No prejudice**

The Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other Security Interest, right or remedy which the System Operators may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 **No waiver**

Failure or delay on the part of the System Operators in exercising any right, power or discretion under or pursuant to this Deed shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Deed are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 **Severability**

The provisions of this Deed shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.

3.5 **Non impairment**

The Participant agrees that none of its obligations or the System Operators' rights, powers and discretions under this Deed shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any Security Interest or any right or remedy which the System Operators or any other person may have now or in the future from or against the Participant or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the System Operators or any other person in taking up, perfecting or enforcing any Security Interest or guarantee from or against the Participant or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of any of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of any deed, document or agreement relating thereto; or
- (d) any grant of time, indulgence, waiver or concession to the Participant or any other person; or
- (e) any of the administration, receivership, examinership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Participant or any other person; or

- (f) any invalidity, illegality, unenforceability, irregularity or frustration of any of the Secured Obligations; or
- (g) any renumbering, redesignation or replacement of the Account[s] or its [their] being transferred to another branch or department of the Account Bank[s]; or
- (h) anything done or omitted to be done by the System Operators or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Participant under this Deed or the Security.

3.6 Further assurance

Without prejudice to the provisions of Clause 2 (*Creation of Security*), the Participant shall promptly after being requested to do so by the System Operators, do all such acts and things, give such instructions (in material or dematerialised form) and sign, seal and execute and deliver all such deeds and other documents as the System Operators may require for perfecting or protecting the Security in respect of the Security Assets or its priority or for facilitating the operation of the Account[s] and the realisation or application of the Security Assets and the exercise of the rights, powers and discretions conferred on the System Operators under this Deed. The obligations of the Participant under this Deed shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of the Law of Property (Miscellaneous Provisions) Act 1994, the Conveyancing Acts 1881 to 1911 and/ or the Irish Act.

4 POWER OF ATTORNEY

4.1 Appointment

The Participant by way of security hereby irrevocably appoints the System Operators as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the System Operators may think fit to do anything which the Participant is obliged to do (but has not done) under this Deed and/or the Code including, without limitation, to sign, seal, execute and deliver all deeds, documents, notices, further securities, transfers or assignments of and other instruments relating to, and give instructions (in material or dematerialised form) in respect of, the Security Assets.

4.2 Ratification

The Participant hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Participant under this Clause.

4.3 Exercise of power

The appointment effected under Clause 4.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the Security becoming enforceable or if the Participant does not fulfil any of its obligations under Clause 3.6 (*Further assurance*) within two Working Days of notice from the System Operators to do so.

5 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Representations and warranties

The Participant represents and warrants to the System Operators that:

- (a) it is duly incorporated and validly existing under the law of [England] [Scotland] [Northern Ireland] [Ireland] [other]⁴;

[*Please delete as appropriate](#)

- (b) it has the capacity and power to enter into this Deed and perform its obligations hereunder and to create the Security;
- (c) it has taken all necessary corporate action to authorise the execution and delivery of the Deed and the performance of its obligations hereunder and the creation of this Security;
- (d) its entering into this Deed and the performance of its obligations hereunder and the creation of the Security will not contravene any law, regulation, agreement or judicial or official order to which it is a party or by which it is bound, or cause any limitation on any of its powers however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;
- (e) all actions, authorisations and consents required or advisable in connection with the creation, performance, validity and enforceability of this Deed and the Security and the transactions hereby contemplated and to ensure that (subject to all necessary registrations being made) the Security constitutes a valid, legal, binding and enforceable first fixed Security Interest over the Security Assets ranking in priority to the interests of any liquidator, administrator or creditor of the Participant have been obtained or effected and are and shall remain in full force and effect;
- (f) it is and will be the sole absolute unencumbered beneficial owner of the Security Assets free of any other Security Interest or third party claims or interests, other than any such Security Interest, claim or interest that has been or may from time to time be created in favour of the System Operators and/or any other person pursuant to the Code;
- (g) it has not (otherwise than pursuant to this Deed or otherwise in favour of the System Operators and/or any other person pursuant to the Code) granted or created any Security Interest over or sold, transferred, lent, assigned, parted with its interest in, disposed of, or granted or created any option or other right to purchase or otherwise acquire the Security Assets or any interest therein, or agreed, conditionally or unconditionally, to do so;
- (h) the Participant's obligations under this Deed and (subject to all necessary registrations being made) the Security are and until fully and unconditionally discharged will be valid, legal, binding and enforceable and the Security constitutes and will remain a valid, legal, binding and enforceable first fixed Security Interest over the Security Assets ranking in priority to the interests of any liquidator, administrator or creditor of the Participant; and
- (i) each of the above representations and warranties will be correct and complied with in all respects at all times during the continuance of the Security as if repeated by reference to the circumstances existing at such times.

5.2 Undertakings

The Participant undertakes to the System Operators that it shall:

- (a) Not, save as permitted by the Code, make or attempt to make any withdrawal from the Account[s] or create, attempt to create or permit any Security Interest (other than the Security or any Security Interest in favour of the System Operators and/or any other person created pursuant to the Code) to subsist over or in respect of any of the Security Assets;
- (b) not sell, transfer, lend or otherwise dispose of, or grant or create any other Security Interest over, or any option or other right to purchase or otherwise

acquire, the Security Assets or any interest therein (other than any Security Interest in favour of the System Operators and/or any other person created pursuant to the Code) or agree, conditionally or unconditionally, to do so;

- (c) not take or omit to take any action which would prejudice the Security or impair the Security Assets and shall, at its own cost, promptly take all action which is at any time necessary or which the System Operators may request, to protect the interests of the Participant and the System Operators in the Security Assets;
- (d) not vary or abrogate any of the rights attached to the Security Assets or take or omit to take any action which would have that result;
- (e) ensure that no monies or liabilities are outstanding in respect of any of the Security Assets;
- (f) take all action within its power to procure, maintain in effect and comply with all the terms and conditions of all approvals, authorisations, consents and registrations necessary or advisable under or in connection with this Deed and the Security; or
- (g) procure that the Security shall at all times be a valid, legal, binding and enforceable first fixed security interest over the Security Assets ranking in priority to the interests of any liquidator, administrator, examiner or creditor of the Participant.

6 WITHDRAWALS

The Participant shall only be entitled to seek any withdrawals from the Account[s] provided that:

- (a) the Participant is not in default in respect of any amount owed under the Code;
- (b) the other conditions as set out in the Code apply; and
- (c) the Security under this Deed has not been enforced.

7 ENFORCEMENT

7.1 Event of Default

An "**Event of Default**" shall occur in the event that the Participant does not pay or discharge any of the Secured Obligations (including any Default Interest) when they ought to be paid or discharged in accordance with the terms of the Code and/ or this Deed.

7.2 Security enforceable

7.2.1 Upon or at any time after the occurrence of an Event of Default:

- (a) the Security shall become enforceable; and
- (b) the following power of sale and other powers, in each case as varied and extended by this Deed, shall be exercisable:
 - (i) in respect of Security Assets which are located in England, the power of sale and other powers conferred by Section 101 of the Law of Property Act;
 - (ii) in respect of Security Assets which are located in Northern Ireland, the power of sale and other powers conferred by Section 19 of the Conveyancing Act 1881 and Section 4 of the Conveyancing Act 1911;

- (iii) in respect of Security Assets which are located in Ireland, power of sale and other powers conferred by the Irish Act.

7.3 Law of Property Act, Conveyancing and Law of Property Acts and Irish Act

Insofar as the Security Assets are located in:

- (a) England, Clause 7.3.2 below in relation to the Law of Property Act shall apply;
- (b) Northern Ireland, Clause 7.3.3 below in relation to the Conveyancing and Law of Property Acts shall apply; and
- (c) Ireland, Clause 7.3.4 below in relation to the Irish Act shall apply.

7.3.2 Law of Property Act

The powers conferred by Section 101 of the Law of Property Act as varied and extended by this Deed, shall be deemed to have arisen immediately upon execution of this Deed, and Sections 93, 103 and 109 of the Law of Property Act shall not apply to this Deed.

7.3.3 Conveyancing and Law of Property Acts

The powers conferred by Section 19 of the Conveyancing Act 1881 and Section 4 of the Conveyancing Act 1911, as varied and extended by this Deed, shall be deemed to have arisen immediately upon execution of this Deed, and Sections 17, 20 and 24 of the Conveyancing Act 1881 shall not apply to this Deed.

7.3.4 Irish Act

7.3.4.1 In the event that:

- (a) the laws of Ireland apply to:
 - (i) the Security Assets or any of them; or
 - (ii) the Security or any of it; or
- (b) in the event of the appointment in Ireland of a liquidator, examiner or similar officer to the Participant or over any or all of its assets,

the provisions of Chapter 3 (Obligations, powers and rights of mortgagee) of Part 10 (Mortgages) of the Irish Act, save as specified in Clauses 7.3.4.2 to 7.3.4.4, inclusive, below, shall apply to this Deed notwithstanding anything to the contrary contained in this Deed.

7.3.4.2 The provisions of sections 96(1)(c) (Powers and rights generally), 97 (Taking possession), 99(1) (Mortgagee in possession), 101 (Applications under sections 97 and 100), 103(2) (Obligations on selling), 106(3) (Application of mortgagee's receipts), 107 (Application of proceeds of sale), 108(1) (Appointment of receiver), 108(7) (Remuneration of receiver), 109 (Application of money received by a receiver) and 110(2) (Insurance) of the Irish Act shall not apply to this Deed.

7.3.4.3 The restrictions and any requirements to give notice to the Participant contained in section 108(1) (Appointment of Receiver) of the Irish Act shall not apply to this Deed.

7.3.4.4 The Participant shall not be entitled to take any action in respect of the Security Assets pursuant to section 94 (Court order for sale) of the Irish Act.

7.3.4.5 The restrictions and any requirements to give notice to the Participant contained in section 100 (Power of sale) of the Irish Act shall not apply to this Deed.

7.4 **Rights upon enforcement**

7.4.1 **Powers of System Operators**

At any time after the Security has become enforceable, the System Operators shall be entitled, without any notice to, demand on or consent of the Participant, either in its own name or in name of the Participant or otherwise, and in such manner and on such terms and conditions as it thinks fit, to take possession of and realise the Security Assets and apply the proceeds of realisation in or towards payment or satisfaction of the Secured Obligations in accordance with Clause 7.5 (*Application of proceeds*), and in particular, without limiting the generality:

- (a) to call in and/or uplift or withdraw the sums standing to the credit of the Account[s] in whole or part (and whether or not any deposit period may be broken by so doing);
- (b) to do all things it may consider necessary or expedient for the realisation of the Security Assets or incidental to the exercise of any of the rights conferred on it under or in connection with this Deed, the Law of Property Act, the Conveyancing and Law of Property Acts or the Irish Act; and
- (c) generally to exercise all the rights powers and discretions in respect of the Security Assets it would be entitled to exercise if it were the absolute owner of the Security Assets, provided that any monies recovered under this Deed shall be applied in accordance with Clause 7.5.

7.5 **Application of proceeds**

All monies realised or otherwise arising from the enforcement of the Security shall be applied by the System Operators in or towards payment of any Secured Obligations in accordance with the terms of the Code, and in particular Termination Charges under the Code.

This Clause is subject to the settlement of any claims which have priority over the Security.

7.6 **Balance**

The rights powers and discretions conferred on the System Operators (subject to the terms of the Code) under this Deed are subject only to its obligation to account to the Participant for any balance of the Security Assets or their proceeds remaining in its hands after the Secured Obligations have been fully and unconditionally paid and discharged.

7.7 Third parties

- 7.7.1 No person dealing with the System Operators in relation to the Security Assets shall be concerned to enquire whether any event has occurred upon which any of the rights, powers and discretions conferred under or in connection with this Deed or (in the case of Security Assets located in England) the Law of Property Act or (in the case of Security Assets located in Northern Ireland) the Conveyancing and Law of Property Acts or (in the case of Security Assets located in Ireland) the Irish Act is or may be exercisable, or whether any of the rights, powers and discretions exercised or purported to be exercised by it hereunder has otherwise become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any right, power or discretion hereunder. All the protection to purchasers and other persons contained in Sections 104 and 107 of the Law of Property Act (in respect of Security Assets located in England), Sections 21 and 22 of the Conveyancing and Law of Property Act 1881 (in respect of Security Assets located in Northern Ireland) and sections 104, 105 and 106(1) of the Irish Act (in respect of Security Assets located in Ireland) shall apply to any person purchasing from or dealing with the System Operators as if the Secured Obligations had become due and the statutory powers of sale in relation to the Security Assets had arisen on the date of this Deed.
- 7.7.2 The receipt or discharge of the System Operators shall be an absolute discharge to any purchaser or other person dealing with the System Operators in relation to the Security Assets and any such purchaser or other person shall not have any obligation to enquire after or see to the application of any payments made by it to the System Operators or at their direction.

7.8 Redemption of prior securities

- 7.8.1 The System Operators shall be entitled at any time:
- (a) to redeem any prior Security Interest over the Security Assets; and/or
 - (b) to procure the transfer of such Security Interest to itself or its nominee; and/or
 - (c) to settle and pass the accounts of the person or persons entitled to any such prior Security Interest and any accounts so settled and passed shall, save for manifest error, be conclusive and binding on the Participant.
- 7.8.2 The Participant shall pay the System Operators, immediately on demand, the costs and expenses incurred by the System Operators in connection with any such redemption and/or transfer, including the payment of any principal or interest, and these shall be subject to the terms of Clause 10 (*Miscellaneous*) and shall be Secured Obligations.

8 RELEASE

8.1 Release

When the System Operators confirm in writing to the Participant that the Secured Obligations have been fully and unconditionally paid or discharged the System Operators shall at the Participant's request, and at its expense, discharge the Security and retransfer to the Participant so much of the Security Assets as has not been realised or applied in or towards satisfaction of the Secured Obligations. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the System Operators is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of

law relating to insolvency, shall not be regarded as having been irrevocably effected until the expiry of the period during which it may be challenged on any such ground.

8.2 Avoidance of payments

The System Operators' right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the System Operators on the faith of any such payment or realisation.

8.3 Retention of Security

If any payment or realisation in respect of the Secured Obligations is, in the System Operators' reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the System Operators shall be entitled to retain this Deed and the Security undischarged and shall not be obliged to retransfer the Security Assets until the expiry of the period during which it may be challenged on any such ground.

9 LIABILITY OF SYSTEM OPERATORS

The System Operators shall not in any circumstances be liable to the Participant or any other person as mortgagee in possession or otherwise for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of the Security or any realisation, appropriation or application of the Security Assets or from any act, default or omission of the System Operators in relation to the Security Assets or otherwise in connection with this Deed and the Security except to the extent caused by reckless or wilful misconduct.

10 MISCELLANEOUS

10.1 Assignment

10.1.1 The System Operators may at any time, with the prior written consent of the Regulatory Authorities (but without notice to or consent of the Participant), ~~re-~~ assign or transfer the benefit of this Deed and the Security or any of its rights or obligations thereunder, provided that such assignment and transfer is in compliance with any applicable requirements of the Code. The System Operators shall, with the prior written consent of the Regulatory Authorities, be entitled to impart any information concerning the Participant to any assignee, transferee or proposed assignee or transferee or to any person who may otherwise enter into contractual relations with the System Operators in relation to this Deed, the Secured Assets or the Secured Obligations.

10.1.2 The Participant may not assign, transfer or otherwise deal with the benefit or burden of this Deed or the Security or any of its rights or obligations thereunder.

10.1.3 This Deed shall be binding upon and inure to the benefit of each of the parties hereto and the System Operators' respective permitted successors, transferees and assignees and references in this Deed to any of them shall be construed accordingly.

10.2 Entire agreement

This Deed constitutes the entire agreement and understanding of the parties in relation to the security interests created herein in furtherance of the provisions in the Code and supersedes any previous agreement between the parties relating to the subject matter of this Deed.

10.3 **Non-reliance**

Each of the parties acknowledges and agrees that in entering into this Deed it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party or not) other than as expressly set out in this Deed.

10.4 **Amendments**

No amendment or variation of this Deed shall be effective unless it is in writing and executed by or on behalf of each of the parties.

10.5 **Third party rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and only the parties hereto may enjoy its benefit or enforce its terms.

10.6 **Counterparts**

This Deed may be executed in any number of counterparts, and by one or more parties hereto in separate counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

10.7 **Expenses**

10.7.1 Each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Deed.

10.7.2 The Participant shall pay any costs incurred in connection with the registration of this Deed.

11 **NOTICES**

11.1 **Notices and deemed receipt**

11.1.1 Any demand or notice to be given under this Deed shall be in writing signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or by facsimile to the address and for the attention of the relevant party set out in Clause 11.2 (or as otherwise notified by that party thereunder). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery or attempted delivery;
- (b) in the case of pre-paid recorded delivery or registered post, at the time of delivery or attempted delivery; and
- (c) in the case of facsimile, at the time of transmission, where in order to prove transmission it shall be sufficient to produce confirmation of uninterrupted transmission by a transmission report,

provided that if deemed receipt occurs before 9am on a Working Day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9am on the next Working Day.

11.2 **Addresses for notices**

The addresses and facsimile numbers of the parties for the purposes of this Clause 11.2 are:

The System Operators

Address: []

For the attention of: []

Fax number: []

The Participant

Address: []

For the attention of: []

Fax number: []

or such other address or facsimile number as may be notified in writing from time to time by the relevant party to the other.

11.3 No electronic service

For the avoidance of doubt no demand or notice given under this Deed shall be validly given if sent by e-mail.

12 GOVERNING LAW AND JURISDICTION

12.1 This Deed (including any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with: (i) insofar as the Security Assets are located in England, the laws of England; insofar as the Security Assets are located in Northern Ireland, the laws of Northern Ireland; and (iii) insofar as the Security Assets are located in Ireland, the laws of Ireland.

12.2 The parties irrevocably submit: (i) insofar as the Security Assets are located in England, to the non-exclusive jurisdiction of the English Courts; (ii) insofar as the Security Assets are located in Northern Ireland, to the non-exclusive jurisdiction of the Northern Irish Courts; and (iii) insofar as the Security Assets are located in Ireland, to the non-exclusive jurisdiction of the Irish Courts.

EXECUTED AND DELIVERED as a deed on the date first above stated.

SCHEDULES**SCHEDULE 1****The Account[s] and Account Bank[s]**

Name of Account	Number of Account	Bank, Branch and sort
-----------------	-------------------	-----------------------

		code where Account held
[]	[]	[]

SCHEDULE 2

Part 1: Notice of charge to Account Bank(s)

[On letterhead of Participant]

To: Name of Account Bank (the "**Account Bank**")

Branch: []

Address: []

Attention: []

Date: []

Dear Sirs

Account number[s]: [specify] (the "Account[s]")

We ([*insert name*] (the "**Participant**") hereby give notice that by a Deed of Charge and Account Security between us and EirGrid p.l.c. and SONI Limited (the "**System Operators**") dated the [] day of [] 200[] (the "**Account Security**") we have charged by way of first fixed charge to the System Operators our whole right, equitable title and beneficial interest present and future in the Account[s], the debt(s) thereby represented, and all sums, whether principal or interest, now or hereafter deposited in or otherwise standing to the credit of the Account[s]. A copy of the Account Security is annexed.

We irrevocably instruct and authorise you, without further reference to, or enquiry or permission from, us:

- a. to disclose to the System Operators any information about the Account[s] which it may request;
- b. to comply with the terms of any written notice or instruction relating to the Account[s] which you may receive from the System Operators;
- c. to hold all sums standing at credit of the Account[s] to the order of the System Operators;

- d. to pay or release any sum standing at credit of the Account[s] only in accordance with the written instructions or with the written consent of the System Operators.

For the avoidance of doubt, any notice, instruction or authorisation from the System Operators may validly be given by fax or email.

The instructions and authorisations in this letter may not be revoked or amended without the prior written consent of the System Operators.

Please confirm that you have not received notice or are otherwise aware of any other assignment, charge, encumbrance or third party interest in respect of the Account[s] or the sums standing at credit of or any rights or benefits relating to the Account[s] and that you have not claimed or exercised, and will not claim or exercise any right of set-off, counterclaim, deduction, lien or combination of accounts or security interest in respect thereof.

In the absence of gross negligence or wilful misconduct on its part, the Account Bank shall not be liable to the Participant, the System Operators or any other person with respect to any act or omission in connection with the services provided. Provided that it has complied with the terms of the written acknowledgement by it of this notice and, to the extent not inconsistent with such acknowledgment, with the mandate relating to, and terms and conditions applicable to the Account[s], under no circumstances shall the Account Bank be liable to the Participant, the System Operators or any other person for indirect or consequential damages and the Account Bank shall not in any event be liable for the following direct losses: loss of profits, loss of contracts, loss of goodwill, whether or not foreseeable, even if the Account Bank has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.

This letter is governed by [Northern Irish/Irish/English] law^{*}.

Please acknowledge receipt and confirm your agreement to the terms hereof by sending the attached acknowledgement to the System Operators with a copy to us.

Yours faithfully

For and on behalf of [Participant]

.....

Authorised Signatory

[*Please delete as appropriate](#)

SCHEDULE 2
Part 2: Acknowledgement from Account Bank(s)
[On letterhead of [each] Account Bank]

To: EirGrid p.l.c.

and SONI Limited

Address: []

Attention: []

Date: []

Dear Sirs

Account number[s]: [specify] (the "Account[s])"

We hereby acknowledge receipt from [Participant] of a notice of charge dated [] (the "**Notice**") of its whole right, equitable title and beneficial interest, present and future, in and to the Account[s], the debt(s) thereby represented, and all sums, whether principal or interest, now or hereafter deposited in or otherwise standing to the credit of the Account[s]. We also acknowledge receipt of a copy of the Deed of Charge and Account Security dated [] 200[] between you and the Participant (the "**Account Security**").

We confirm that:

- a we accept the instructions contained in the Notice and undertake to comply with its terms;
- b we have not received nor are we aware of any other assignment, charge, encumbrance or third party interest in the Account[s] or the sums standing at credit of or, any rights and benefits relating to the Account[s];
- c we have not claimed or exercised, nor will we claim or exercise, any right of set-off, counterclaim, deduction, lien, combination of accounts or security interest in respect of the Account[s]; and
- d we will not permit any amount to be withdrawn from the Account[s] except on your written instructions or with your prior written consent in accordance with the provisions of Clause 6 (Withdrawals) of the Account Security (which instructions or consent appear on their face to be validly given and Danske Bank A/S has not nor is

it required to verify or confirm with any person whether such notice or consent was actually given by any person authorised to do so or the circumstances which would entitle such notice to be given had actually occurred) or otherwise (to the extent not inconsistent with the foregoing) in accordance with any bank mandate in relation to the Accounts.

We are aware that you will rely on this letter in respect of your rights under the Account Security.

This letter is governed by [Northern Irish/Irish/English] Law^{*}.

Yours faithfully

For and on behalf of [Account Bank]

.....
Authorised Signatory

Copied to: [Participant]

Address:

Attention:

[*Please delete as appropriate](#)

[Appropriate execution blocks for Participant to execute as a deed to be included]

THE COMMON SEAL of

EIRGRID P.L.C.

was affixed hereto

and this Deed was delivered:

Director

Director/Secretary

EXECUTED and DELIVERED as a

DEED by SONI LIMITED

acting by:

.....	Director
.....	Full Name
.....	Director
.....	Full Name