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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 Single Electricity Market.

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

- (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 referred to 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, abbreviations and variables 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 Unit or Capacity Market Unit;
- (n) a reference to a Participant's Unit or Capacity Market Unit, means a Unit or Capacity Market Unit registered in respect of that Participant under this Code;
- (o) a reference to a "**Prescribed Deadline**" or a "**Prescribed Timeframe**" for the taking of some action in relation to a Reviewable Decision or a Qualification Dispute means the deadline or timeframe specified for the taking of that action in the applicable Capacity Auction Timetable;
- (p) 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;
- (q) 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;
- (r) 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;

- (s) 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
- (t) 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;
- (u) a reference to a specific provision of the Trading and Settlement Code, is to be construed as a reference to that provision in Part B of the Trading and Settlement Code; and
- (v) where a word, phrase, acronym, abbreviation or variable is referred to in this Code as having the meaning given in the Trading and Settlement Code, that word, phrase, acronym, abbreviation or variable shall have the meaning given in the Glossary of Part B of the Trading and Settlement Code.

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;
- (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) the value zero shall be treated as a positive whole number; and
- (h) 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 Implementation 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.4.1.5, 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(e), 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 section B.16 and with the procedural and substantive requirements of this Code in relation to any resulting Modification Proposal or Dispute.

- 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(e) 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 and the Glossary;
 - (c) the Appendices; and
 - (d) 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 who is not an Original Party 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 an Accession Deed 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 Deed. The Applicant shall submit to the System Operators an executed Accession Deed within 20 Working Days of receipt. An Applicant may request additional time to submit an executed Accession Deed and the System Operators shall not unreasonably withhold consent to any such request, provided that the date of receipt of the executed Accession Deed shall be earlier than the effective date specified in the Accession Deed.

B.5.1.8 Following receipt by the System Operators of an executed Accession Deed in accordance with paragraph B.5.1.7, the Applicant shall become a Party on the date specified in the Accession Deed 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 deemed 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 deemed 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 deemed 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 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 Where a Generator Unit, Interconnector or Supplier Unit is deemed to have been registered under this Code, the System Operators may request that the Participant in respect of that Unit provides them with additional information concerning the Unit or Interconnector which the System Operators consider is required for the effective operation of the Capacity Market and this Code, and the Participant shall comply with that request within 10 Working Days of receiving it. A Participant may request additional time to comply with a request under this paragraph and the System Operators shall not unreasonably withhold their consent to any such request.

B.5.2.6 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.5.2.7 A Participation Notice shall include the following information:
- (a) the name, address and contact details (including email and facsimile) 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.5.2.8 Where the System Operators receive a Participation Notice from a Party (or an Applicant, as applicable) they shall where applicable 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.5.2.9 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.5.2.10 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.5.2.9 (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.5.2.11 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.5.2.12 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. However, the de-registration of a Candidate Unit forming all or part of a Capacity Market Unit under this paragraph does not affect the registration of the Capacity Market Unit unless that Capacity Market Unit has itself been Deregistered in accordance with this Code.
- B.5.2.13 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.5.2.11 or the Participant notifies the System Operators that it wishes to cancel the Candidate Unit's provisional registration. However, the cancellation of the provisional registration of a Candidate Unit under this paragraph does not affect the registration of the Capacity Market Unit unless that Capacity Market Unit has itself been Deregistered in accordance with this Code

- B.5.2.14 A Party becomes a Participant in respect of a Candidate Unit when the Candidate Unit has been registered, or is deemed to be registered, or has been provisionally registered, under this Code.
- B.5.2.15 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; and
 - (b) the relevant Party becomes a Participant in respect of that Capacity Market Unit.
- B.5.2.16 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.5.2.9), 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 in accordance with Agreed Procedure 1 "Registration".
- 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 which is a Party:
- (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; and
 - (c) the Form of Authority authorises the Intermediary to register the Generator Unit for the purposes of this Code and to participate in respect of the Generator Unit in the Capacity Market,

then, it shall provide a copy of the Form of Authority to the System Operators and, 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.

B.5.5.2 Where in respect of a Generator Unit:

- (a) the Intermediary's authority under the applicable Form of Authority in respect of the Capacity Market as contemplated under paragraph B.5.5.1(c) 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 in respect of the Capacity Market as contemplated under paragraph B.5.5.1(c),

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 in respect of the Capacity Market as contemplated under paragraph B.5.5.1(c) 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.5.6 Deregistration of Capacity Market Units

B.5.6.1 A Participant (in this section B.5.6 called the "**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 period following the date the Deregistration is to take effect; or

- (ii) If there is Awarded Capacity in respect of the Capacity Market Unit in respect of any period following the date the Deregistration is to take effect, the System Operators are satisfied as to all of the following matters:
 - (A) another Party (in this section B.5.6 called the “**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 their rights, obligations and functions under this Code to the extent required under, and in accordance with, this Code.
- B.6.1.4 For the avoidance of doubt, the System Operators shall have no liability to any person under this Code or otherwise if there is not sufficient generation adequacy and capacity to meet the demands of consumers across the island of Ireland or any part thereof.
- B.6.1.5 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 deemed to have discharged the obligation or liability to the System Operators.
- B.6.1.6 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, except where required by any Applicable Law.
- 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;
 - (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 fee 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 to the extent not otherwise recovered.
- 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 otherwise recovered.
- B.7.1.7 The System Operators shall report to the Regulatory Authorities from time to time, proposing rates and basis of charging 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 and basis of charging for the Accession Fee, Participation Fee, Qualification Charge, Fixed System Operator Charge and Variable System Operator Charge within two 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 and basis of charging 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 Charges, 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 five 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.7.1.11 In relation to the conversion between Euro and Sterling for any fees or charges payable under this Code, the System Operators shall apply the prevailing Annual Capacity Charge Exchange Rate.

B.7.2 System Operator Bank Account

- B.7.2.1 The System Operators shall establish and maintain 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 the United Kingdom 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 five 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 Auction 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 Auction 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 Auction 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 Auction 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 Auction Monitor and Capacity Market Auditor on

request for the purposes of the System Operators, Capacity Auction Monitor or Capacity Market Auditor (as applicable) performing their functions and obligations under this Code or a Regulatory Reporting Requirement; and

- (g) acknowledges that, in carrying out their respective functions and obligations under, or contemplated by, this Code:
 - (i) the System Operators may disclose to the Regulatory Authorities information provided to the System Operators by Participants; and
 - (ii) the Regulatory Authorities may disclose to the System Operators information provided to the Regulatory Authorities by Participants.

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 such information, data and reports is or are 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 so 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 any Capacity Auction or Secondary Trade Auction; or
 - (e) any other act 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. The Capacity Auction Monitor shall be and continue to be 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 or 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;
 - (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; and
 - (h) co-operate with the Capacity Market Auditor.
- 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, subject to paragraph B.10.2.8, 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 health, safety and welfare, data protection, confidentiality and security.

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

B.10.2.10 Each Party shall provide without charge to the Capacity Auction Monitor in a timely manner such information or assistance as is reasonably required by the Capacity Auction Monitor to enable the Capacity Auction Monitor 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 Auction Monitor.

B.10.3 Report on Qualification Process

B.10.3.1 Within two Working Days after the System Operators have notified the Provisional SO Qualification Decisions in relation to a Qualification Process to Participants 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 Capacity 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 Regulatory Authorities shall prepare 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 and provide it to the System Operators. The System Operators shall publish this version of the report as soon as reasonably practicable (and in any event within two Working Days) after receiving it.

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 Capacity 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 deemed 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 Capacity Market 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 a date (“**Modification Finalisation Date**”) to provide a guide as to the date by which Modifications Proposals should generally be made for them to have effect in respect of a Capacity Auction.
- B.12.3.2 If the System Operators receive notice of a determination by Regulatory Authorities under paragraph B.12.3.1, the System Operators shall publish the determination within two Working Days of receiving it, indicating the date from which it takes effect.

B.12.4 Proposal of Modifications to this Code

- B.12.4.1 A proposal to Modify this Code (including, without limitation, an Agreed Procedure) (“**Modification Proposal**”) may be put forward by any person.
- 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 reasonably 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, and implementation timetable, 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 Operators shall consult with the Market Operator when preparing the impact assessment and implementation timetable.
- B.12.5.11 The Regulatory Authorities shall conduct a public consultation process 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 deemed 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.12.9.5, 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, the Proposer (if not a Party) 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 a Workshop under paragraph B.12.9.5(b);
- (e) there is no quorum requirement for a Workshop;
- (f) the System Operators shall circulate an agenda to Workshop participants at least 10 Working Days in advance of the Workshop, except in the case of a Workshop under paragraph B.12.9.5(b);
- (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, provide it to the Regulatory Authorities and publish it on the Modifications Website.

B.12.7.2 Substantial compliance with the provisions in paragraph B.12.7.1 is sufficient.

B.12.8 Consultation Process

B.12.8.1 Subject to paragraph B.12.9.5, 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 subparagraph (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 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
 - (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 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.12.9.5 If the Regulatory Authorities determine that a Modification Proposal is Urgent, then:

- (a) the Regulatory Authorities shall determine the procedure and timetable to be followed in assessing the Modification Proposal which may vary the normal processes provided for in this Code so as to fast-track the Modification Proposal; and
- (b) subject to sub-paragraph (a), the System Operators shall convene a Workshop.

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 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 (or, in relation to a Modification Proposal that the Regulatory Authorities determine is Urgent, any alternative process determined by the Regulatory Authorities under paragraph B.12.9.5), 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 notice 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 (or, in relation to a Modification Proposal that the Regulatory Authorities determine is Urgent, any alternative process determined by the Regulatory Authorities under paragraph B.12.9.5).

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 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 implementation timetable 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.12.9.5, B.12.10.1, B.12.11.2 to B.12.11.6, B.12.11.9, B.12.7.1(i), B.12.13.5 and B.12.15.1 shall be read as references to the System Operators; and
 - (b) section B.12.2 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.12.11.1, B.12.11.7, B.12.11.8 and B.12.13.5 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 Modification 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 Workshop on the AP Modification Proposal in writing,

then the System Operators shall convene a 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 ten 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 If the Regulatory Authorities do not veto a Modification to an Agreed Procedure under paragraph B.12.12.9, then the System Operators shall publish the Modification on the Modifications Website.

B.12.12.11 A Modification to an Agreed Procedure made under paragraph B.12.12.6(a) takes effect on the later of:

- (a) the date the Modification is published on the Modifications Website; and
- (b) the date specified by the System Operators.

B.12.12.12 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 **Publication**

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 reasonably practicable after receiving the notice and in any event within two 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 on the Modifications Website 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, Modifications shall not 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 in the circumstances set out in the definition of that term, including 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 is required to be licensed in respect of any or all of its roles under this Code and 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 any 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 For the avoidance of doubt, the System Operators may issue a Suspension Order in any of the circumstances contemplated under paragraph B.13.3.1(a) to B.13.3.1(f), B.13.3.1(h) or B.13.3.2 that also constitutes a Default without issuing a Default Notice or waiting for the applicable period under paragraph B.13.3.1(g) to expire.
- 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 no other Suspension Order has been issued to the Party in respect of the relevant Capacity Market Units. The System Operators shall notify the Party of the date and time from which the Suspension Order is lifted.
 - 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 under the order will take effect and the terms of the suspension.
 - B.13.5.2 When a Suspension Order is in 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:
 - (a) the Suspension Order has been lifted; 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 is 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 a Suspension Order;
 - (c) has not taken such action as required by the System Operators within the timeframe specified in a Suspension Order;
 - (d) has been issued a corresponding order or notice under any 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 The Regulatory Authorities may instruct the System Operators to issue a Termination Order to a Party where the Regulatory Authorities consider that the Party is in Default and that the Default arises from a material breach of section B.9.
- B.13.6.3 The System Operators shall comply with an instruction under paragraph B.13.6.2 as soon as reasonably practicable (and in any event within two Working Days) after receiving it.
- B.13.6.4 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 has ceased to be a party to the Capacity Market Framework Agreement or will cease to be a party to that agreement by the time the Voluntary Termination Consent Order takes effect;
- (d) the written consent of the Regulatory Authorities has been obtained; and
- (e) 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 except where so required by the Regulatory Authorities (including as contemplated under paragraph B.6.1.6).

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 Capacity Market 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 under this Code, a Party or Applicant 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 new registration 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 or determination of the Regulatory Authorities (including a decision to approve or reject any matter or thing, including Final Qualification Decisions or Capacity Auction Results) made under this Code, deemed to have been made 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 or arising out of the Qualification Process; and
 - (b) a **“General Dispute”**: being a Dispute which is not a Qualification Dispute.
- B.14.1.4 Disputes in relation to settlement of Capacity Payments and Capacity Charges, and Difference Payments and Difference Charges, other amounts 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 or any other provision of this Code (except for this paragraph B.14.1.4).

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 within 20 Working Days of the notifying Party having become aware of the Disputed Event and within two years of the Disputed Event having occurred (or, in the case of a Qualification 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 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 A Party shall not give a Notice of Dispute in relation to a Qualification Dispute unless it has first lodged an Application for Review in relation to the subject matter of the Qualification Dispute and the System Operators have either informed the Party of the outcome of their reconsideration of the relevant Reviewable Decision or have failed to do so within the Prescribed Timeframe.
- B.14.2.5 In the case of a General Dispute, where a Notice of Dispute has been served, each Disputing Party must procure that a nominated representative of the Disputing Party, with authority to resolve the Dispute, meets within 10 Working Days of the date of the Notice of Dispute being issued to seek 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. This paragraph is not intended to preclude the Disputing Parties meeting to seek to resolve a Dispute at any time whether under the provisions of this Code or otherwise.

- B.14.2.6 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.14.2.7 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.14.2.8 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 the relationship between the Disputing Parties;
 - (c) preserve and allow for the continuing and proper operation of this Code and the Capacity Market 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 (other than as set out in this section B.14).

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 technical competence 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 a brief curriculum vitae for each Panel member.
- B.14.4.4 A person may be appointed as a member of the Panel and the equivalent panel established and maintained under the corresponding dispute resolution provision in the Trading and Settlement Code.
- 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 reasonably 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, from time to time nominate a vice-chairperson from the members of the Panel, 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 vacant. A reference in this section B.14 to the Panel Chairperson includes the vice-chairperson while the vice-chairperson is performing the Panel Chairperson's functions as contemplated by this paragraph.
- 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 and vouched expenses incurred by that person in connection with carrying out his or her duties under this Code. The System Operators shall reimburse 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 CMDRB: Qualification Disputes**
- B.14.5.1 The Panel Chairperson shall appoint a three member CMDRB from the Panel to hear and determine Qualification Disputes arising out of the Qualification Process in respect of a Capacity Auction prior to the Provisional Qualifications Result Date specified in the applicable Capacity Auction Timetable and shall notify the System Operators of the appointment and the members appointed.

- B.14.5.2 Where the Panel Chairperson considers that the number or complexity of the Qualifications Disputes arising out of the Qualification Process in respect of a Capacity Auction, or the potential for conflicts to arise, means that the CMDRB appointed under paragraph B.14.5.1 will not be able to determine all of those Qualifications Disputes in accordance with the timetable specified in paragraph B.14.8.5(a), the Panel Chairperson may appoint one or more additional three member CMDRBs from the Panel to hear and determine Qualification Disputes and shall notify the System Operators of the appointment and the members appointed.
- B.14.5.3 The System Operators shall publish any notices received from the Panel Chairperson under paragraphs B.14.5.1 or B.14.5.2 as soon as reasonably practicable after receiving them.
- B.14.5.4 The System Operators shall forward a Notice of Dispute in relation to a Qualification Dispute to the Panel Chairperson.
- B.14.5.5 A Qualification Dispute is automatically referred:
- (a) to the CMDRB appointed by the Panel Chairperson under paragraph B.14.5.1; or
 - (b) where the Panel Chairperson has appointed more than one CMDRB under paragraph B.14.5.2 in relation to a Qualification Process, to the CMDRB to which the Panel Chairperson allocates the Qualification Dispute.
- B.14.5.6 Where the Panel Chairperson allocates a Qualification Dispute to a CMDRB under paragraph B.14.5.5(b), he or she shall notify the Disputing Parties.
- B.14.6 CMDRB: General Disputes**
- B.14.6.1 In the case of a General Dispute, if, having met in accordance with paragraph B.14.2.5, the Disputing Parties are unable to reach agreement within a period of 10 Working Days of first meeting, the General Dispute may within a further period of 20 Working Days be referred by any Disputing Party to a CMDRB by way of notice in writing to the other Disputing Party or Parties ("**Referral Notice**"), otherwise the Notice of Dispute in relation to the General Dispute will be deemed to be withdrawn.
- B.14.6.2 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.14.6.3 Except in the case of a Qualification Dispute, 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.14.6.4 In the case of a General Dispute, the CMDRB shall be comprised of either a sole member or three members and shall be appointed from the Panel in accordance with the following process:
- (a) where there are no more than two Disputing Parties, the Disputing Parties may agree within 10 Working Days 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 from the Panel within a further five Working Days. If the Disputing Parties agree on a three member CMDRB, then each Disputing Party shall within a further period of five Working Days nominate one member from the Panel to the CMDRB and the two members so nominated shall appoint the third member from the Panel within a further period of five Working Days. 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) in the event the Disputing Parties do not within the relevant period notify the Panel Chairperson of their agreement on:
 - (i) the number of members of the CMDRB; or
 - (ii) having agreed a sole member CMDRB, the identity of the sole member,

then, the Panel Chairperson shall within a further period of 10 Working Days 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 General Dispute as set out in the Notice of Dispute and the range of issues which may be relevant;

- (c) 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 10 Working Days of the end of the relevant period;
- (d) 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 10 Working Days 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:
 - (i) determine whether a sole member or three member CMDRB is appropriate; and
 - (ii) 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 General Dispute as set out in the Notice of Dispute and the range of issues which may be relevant; and

- (e) if the Panel Chairperson (or, where applicable, the vice-chairperson of the Panel) makes a determination or appointment under paragraph (b), (c), (d) or B.14.7.4 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.14.7 CMDRB: General Provisions

- B.14.7.1 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.14.9 is a pre-condition to the entitlement to refer a Dispute to Court.

- B.14.7.2 The Disputing Parties and the member or members of the CMDRB shall enter into an agreement for the member or members of the CMDRB to hear and determine the relevant 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.14.7.3 The member or members of the CMDRB shall be independent of any Disputing Party to any dispute on which they are called to deliberate.
- B.14.7.4 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 five Working Days of first being notified of the event. Such appointment shall be final and binding.
- B.14.7.5 In the case of General Disputes, 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.14.7.4 shall apply.
- B.14.7.6 Subject to paragraph B.14.7.7, 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.14.7.7 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 Code:
- (a) a Qualification Dispute is deemed to be referred to the CMDRB as of the date the System Operators forward the Notice of Dispute in relation to the Dispute to the Panel Chairperson; and
 - (b) a General 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 Where a Dispute relates to a matter that has been the subject of a report by the Capacity Auction Monitor under this Code, the CMDRB shall have regard to the report and the conclusions of the Capacity Auction Monitor when considering issues raised in the Dispute.
- B.14.8.5 The CMDRB shall give its decision:
- (a) in the case of a Qualification Dispute, not later than the Prescribed Deadline; and

- (b) in the case of a General Dispute, within:
 - (i) 30 Working Days after the appointment of the CMDRB where there are no more than two Disputing Parties;
 - (ii) 40 Working Days after the appointment of the CMDRB where there are more than two Disputing Parties; or
 - (iii) such other period as may be proposed by the CMDRB and approved by the Disputing Parties.
- B.14.8.6 The CMDRB's decision shall be in writing providing reasons. Subject to paragraphs B.14.8.8 to B.14.10.1 below, the decision shall be binding on all Disputing Parties, who shall promptly give effect to it.
- B.14.8.7 The Parties shall continue to comply with this Code in all respects during any CMDRB process under this section B.14.
- B.14.8.8 If any Disputing Party is dissatisfied with the CMDRB's decision, then that Party may, within 2 Working Days in the case of a Qualification Dispute or 15 Working Days in the case of a General Dispute 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 2 Working Days in the case of a Qualification Dispute or 15 Working Days in the case of a General Dispute after such period has expired, give notice to the other Disputing Party or Parties and the CMDRB in writing of its dissatisfaction.
- B.14.8.9 A notice of dissatisfaction referred to in paragraph B.14.8.8 shall state that it is given under that paragraph, shall set out the Dispute and the reason(s) for dissatisfaction. Except as stated in paragraph B.14.2.7 and section B.14.10, 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.14.8.8.
- B.14.8.10 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 the applicable period under paragraph B.14.8.8 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 Subject to paragraph B.14.9.2, the CMDRB in its decision 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 (subject to any applicable exclusions or limitations of liability under this Code, including section B.15);
 - (d) recommend that the Regulatory Authorities reject Final Qualification Decisions or Capacity Auction Results;
 - (e) recommend that the Regulatory Authorities cancel, postpone, delay, suspend, re-run or annul a Capacity Auction or give a direction under paragraph B.14.9.4; or

- (f) recommend that a Disputing Party take a specified action within a specified timeframe.
- B.14.9.2 A CMDRB may not make a decision or order:
- (a) that varies Qualification Decisions or Capacity Auction Results after they have been approved by the Regulatory Authorities;
 - (b) that an Auction be cancelled, postponed, delayed, suspended, re-run or annulled, although it may recommend that the Regulatory Authorities do so;
 - (c) that affects the validity of the results of a Capacity Auction, including the quantity of Awarded Capacity for any Participant or the price, after they have been approved by the Regulatory Authorities; or
 - (d) concerning the legality, validity or enforceability of a decision or determination of the Regulatory Authorities made under this Code, deemed to have been made under this Code or contemplated by this Code.
- B.14.9.3 The System Operators shall give effect to a CMDRB decision in relation to a Qualification Dispute in making Final Qualification Decisions under paragraph E.9.4.1 in respect of the relevant Qualification Process.
- B.14.9.4 If a CMDRB finds that:
- (a) a material error has been made in the conduct of an Auction; and
 - (b) as a result, a Participant was not allocated a Primary Trade or a Secondary Trade in respect of a Capacity Market Unit and should have been,
- then the Regulatory Authorities may direct the System Operators to offer to the Participant to enter a correcting trade in the Capacity and Trade Register in respect of the relevant Capacity Market Unit (at the price, and with a duration, that would have applied had the Participant been successful in the relevant Auction in respect of the relevant Capacity Market Unit).
- B.14.9.5 If a Participant accepts an offer from the System Operators contemplated by paragraph B.14.9.4, then the System Operators shall adjust the Capacity and Trade Register to reflect the offer.
- B.14.9.6 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 of a Court having competent jurisdiction or a direction of the Regulatory Authorities under paragraph B.14.9.4.
- B.14.10 Court Proceedings**
- B.14.10.1 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.14.10.2 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.14.10.3 Should the Disputing Parties (or any of them) take any steps to commence proceedings or proceedings are issued in a Court prior to attempting to resolve the dispute in accordance with sections B.14.1 to B.14.9 or during that process, the Disputing Parties agree that such proceedings shall be deemed premature and

shall agree to a stay of the proceedings to seek to resolve the dispute in accordance with sections B.14.1 to B.14.9 prior to taking any steps to lift the stay of proceedings.

B.14.11 Failure to Comply with CMDRB Decision

B.14.11.1 In the event that:

- (a) no Disputing Party has given a notice of dissatisfaction within the applicable period under paragraph B.14.8.8; 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 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.15.1.5.

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 or the Trading and Settlement Code.

B.15.1.4 Without limiting the foregoing, the System Operators shall have no liability to any other Party in respect of, or arising out of, or in connection with, any decision, approval, rejection, determination, direction, instruction or act or omission of the Regulatory Authorities (in this paragraph called a "**Regulators' Decision**") under or contemplated by this Code (including as to a parameter to be included in an Initial Auction Information Pack or a Final Auction Information Pack, a decision in relation to an Exception Application or an instruction or order to cancel, postpone,

- delay, bring forward, annul or re-run a Capacity Auction or issue a Termination Order), and each such other Party irrevocably and unconditionally waives any and all rights to make any claim against the System Operators in respect of any Regulators' Decision under or contemplated by this Code and releases the System Operators from any liability in respect thereof, except to the extent that the System Operators' negligent act or omission resulted in the Regulators' Decision.
- B.15.1.5 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.15.1.6 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.15.1.7 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.15.1.8 Without prejudice to the preceding paragraph B.15.1.7, 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.15.1.9 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.15.1.10 Save as expressly provided otherwise in this Code or the Capacity Market Framework Agreement, nothing in paragraphs B.15.1.1 to B.15.1.9 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.15.1.11 For the purposes of paragraphs B.15.1.1, B.15.1.2 and B.15.1.4, references to a "Party" or the System Operators 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.15.1.12 Each of paragraphs B.15.1.1 to B.15.1.11 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.15.1.13 Any specific exclusion or 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.15.1.14 A Participant Director shall not have any personal liability in respect of the provision of a certificate under this Code, unless it is provided fraudulently, negligently or with intent to mislead by such Participant Director.

B.16 FORCE MAJEURE

B.16.1 Concepts

B.16.1.1 For the purposes of this Code, and subject to paragraphs B.16.1.2 and B.16.1.3, **“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.

B.16.1.2 **“Force Majeure”** includes, without limitation:

- (a) acts of terrorism;
- (b) war (declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) sabotage or acts of vandalism or criminal damage;
- (d) 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;
- (e) compliance with relevant Legal Requirements as contemplated in paragraph B.4.1.2; or
- (f) 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.

B.16.1.3 **“Force Majeure”** shall not include:

- (a) any inability (however caused) of a Party to pay any amounts owing under this Code and/or a lack of funds or Performance Security;
- (b) mechanical or electrical breakdown or failure of machinery, plant or systems owned or operated by the Party; or

- (c) 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 subparagraphs B.16.1.2(a) – (f).

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 subparagraph (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 subparagraph (a);
- (d) the System Operators shall inform all Parties and the Regulatory Authorities, as soon as reasonably practicable, of the details provided in reports provided by the Affected Party under subparagraph (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 Operators 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 when they do so; 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 suspension and relief 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 anything else in this section B.16, 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 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 Capacity Market 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 Capacity Market 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 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 Capacity Market 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 Capacity Market 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 (including any mortgage, pledge, lien, charge, assignment, hypothecation or any other security interest or encumbrance or any other agreement or arrangement having a similar effect) 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 practicable. 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 information which is 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 applicable to the Recipient Party;
- (d) contemplated by a Market Code;
- (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;
- (e) notices of dissatisfaction under paragraph B.14.8.8;
- (f) Referral Notices;
- (g) notification of Force Majeure;
- (h) Notice of revocation of an Intermediary's authority under paragraph B.5.5.2(c);
- (i) other Notices required for the purposes of section B.14; and
- (j) a notice by the Regulatory Authorities under section E.5 in respect of an Exception Application.

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 Notices in writing shall be addressed and sent to the receiving Party at the address, facsimile or email address specified by the receiving Party for the purposes of the receipt of Notices under this Code or such other address, facsimile or email address as the receiving Party may from time to time specify by notice given in writing in accordance with this section B.26 to the Party giving the notice.
- B.26.2.3 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 section B.26.
- B.26.2.4 Any Notice of a kind listed in any of paragraphs B.26.1.1(a) to B.26.1.1(h) given by facsimile 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.26.2.5.
- B.26.2.5 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;
 - (c) in the case of facsimile, at 5pm on the Working Day on which the Notice was sent as evidenced by a transmission report of the sending Party showing that the Notice has been transmitted; or
 - (d) in the case of email ,when the email enters the receiving Party's IT system.
- B.26.2.6 Each Party shall, on registration, specify at least one postal address, facsimile 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.26.2.7 A Party may specify different addresses (including facsimile or email addresses) and representatives for the purposes of Notices of different kinds or relating to different matters.
- B.26.2.8 For the purposes of this Code, "facsimile" includes e-fax.
- 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, Capacity Market 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

B.26.4.1 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, Generator Unit or Interconnector (or a Capacity Market Unit that comprises those units) that has been commissioned;
- (b) *new capacity*, which is the potential increase in capacity of a Generator, Generator Unit or Interconnector (or a Capacity Market Unit that comprises those units) where that capacity is yet to be commissioned;
- (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, Generator 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.3;
- (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 zero and one, 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 quantity 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 LOCATIONAL CAPACITY CONSTRAINTS

C.2.1 Concepts

C.2.1.1 The System Operators may determine one or more Locational 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 The System Operators shall determine Locational Capacity Constraints using the methodology determined from time to time by the Regulatory Authorities.
- C.2.1.3 As Locational Capacity Constraints are determined 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 Locational Capacity Constraints**
- C.2.2.1 There is no requirement that any given area of the SEM must necessarily be subject to a Locational Capacity Constraint.
- C.2.2.2 If they determine a Locational Capacity Constraint, the System Operators shall also determine the following features of the Locational Capacity Constraint:
- (a) a name of the Locational Capacity Constraint;
 - (b) the area to which the Locational Capacity Constraint applies, defined by reference to nodes on the Transmission System (and Distribution System, as applicable) (called the "**Locational Capacity Constraint Area**");
 - (c) a minimum de-rated capacity quantity that is required to satisfy the Locational Capacity Constraint; and
 - (d) the nesting level of the Locational Capacity Constraint determined in accordance with paragraph C.2.2.3 and, in the case of a Level 2 Locational Capacity Constraint, the Level 1 Locational Capacity Constraint that the Level 2 Locational Capacity Constraint falls within.
- C.2.2.3 The System Operators shall determine the nesting level of a Locational Capacity Constraint (which shall be either Level 1 or Level 2) applying the following rules:
- (a) the Locational Capacity Constraint Area of a Level 1 Locational Capacity Constraint shall not overlap the Locational Capacity Constraint Area of any other Level 1 Locational Capacity Constraint;
 - (b) the Locational Capacity Constraint Area of a Level 2 Locational Capacity Constraint shall be entirely within the Locational Capacity Constraint Area of a single Level 1 Locational Capacity Constraint; and
 - (c) the Locational Capacity Constraint Area of a Level 2 Locational Capacity Constraint shall not overlap the Locational Capacity Constraint Area of any other Level 2 Locational Capacity Constraint.
- C.2.2.4 A reference to a "node" on the Transmission System or Distribution System in this section C.2.2.4 includes a node that does not yet exist but which the System Operators anticipate will exist by the relevant Capacity Year.
- C.2.3 Timing of Determination of Locational Capacity Constraints for a Capacity Year**
- C.2.3.1 The System Operators shall determine the Locational Capacity Constraints (if any) 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 Locational Capacity Constraints applicable to a Capacity Year not less than annually, and shall submit any updated Locational Capacity Constraints to the Regulatory Authorities for approval.
- C.2.3.3 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 Locational Capacity Constraint or update submitted by the System Operators and the System Operators shall use reasonable endeavours to comply with the request.
- C.2.3.4 The Regulatory Authorities may by written notice to the System Operators approve or reject one or more proposed Locational Capacity Constraints (or updated Locational 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 (other than an Autoproducer Unit or a Demand Side Unit) 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 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, and, where applicable, shall be consistent with the relevant Generator Aggregator System Operator Agreement.
- 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 (other than an Autoproducer Unit or a Demand Side Unit) that is:
 - (i) the only Generator Unit Connected at a single Connection Point, a value that is 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, and, where applicable, shall be consistent with the relevant Generator Aggregator System Operator Agreement.
- 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 any Generator Unit (that is not a Demand Side 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 Operators 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, Generator Unit or Interconnector for the Capacity Year, otherwise Initial Capacity (Total) shall be equal to Initial Capacity (Existing) plus 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, 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 additional capacity to that previously secured in a Capacity Auction for that Capacity Year by means of a T-1 Auction only.
- 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 containing the proposed dates (and, if applicable, times) for each of the events identified in Appendix C "Capacity Auction Timetable" no later than ten months prior to the proposed Capacity Auction Run Start.
- D.2.1.5 Subject to paragraph D.2.1.17, the Capacity Auction Run Start 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 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 indicative timeframes identified in Appendix C “Capacity Auction Timetable” and the time that it will take the Regulatory Authorities, System Operators and Participants to complete activities required under this Code.
- 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. The Regulatory Authorities may amend the Capacity Auction Timetable for a Capacity Auction by written notice to the System Operators.
- 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, determined or amended by the Regulatory Authorities under this section D.2.
- D.2.1.12 No later than five Working Days prior to the 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; or
 - (b) cancel the Capacity Auction.
- D.2.1.13 No later than ten Working Days prior to the 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 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.2.1.14 If the Regulatory Authorities give the System Operators an instruction under paragraph D.2.1.12 or D.2.1.13, then the System Operators shall notify the Participants promptly.
- D.2.1.15 If the Regulatory Authorities instruct the System Operators to delay or postpone a Capacity Auction under paragraph D.2.1.12(a) or re-run a Capacity Auction under paragraph F.9.3.4, then they may also specify that the Qualification Process for the Capacity Auction or any of the other steps already taken by the Parties in preparation for the Capacity Auction should be repeated (or not repeated) before that Capacity Auction takes place.
- D.2.1.16 If the Regulatory Authorities instruct the System Operators to delay, postpone or cancel a Capacity Auction under paragraph D.2.1.12, or bring forward a Capacity Auction under paragraph D.2.1.13, then the System Operators shall update and re-publish (or, in the case of the cancellation of a Capacity Auction, revoke) the Capacity Auction Timetable, as necessary to reflect the decision of the Regulatory Authorities.
- D.2.1.17 If the Regulatory Authorities instruct the System Operators to re-run a Capacity Auction under paragraph F.9.3.4, then the System Operators shall submit a proposed new Capacity Auction Timetable for the Capacity Auction to the

Regulatory Authorities for approval in accordance with paragraph D.2.1.4 reflecting the decision of the Regulatory Authorities.

D.3 INITIAL AUCTION INFORMATION PACK

D.3.1.1 The System Operators shall publish the Initial Auction Information Pack for a Capacity Auction by the later of:

- (a) the Initial 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 the parameters required to be included in the Initial Auction Information Pack under paragraph D.3.1.3.

D.3.1.2 The Initial Auction Information Pack for a Capacity Auction shall set out:

- (a) the final De-Rating Curves, defining De-Rating Factors by unit Initial Capacity and by Technology Class (including for Interconnectors) to be used in the Capacity Auction;
- (b) the final Capacity Requirement for the Capacity Year to be used in the Capacity Auction;
- (c) an indicative Demand Curve to be used in the Capacity Auction;
- (d) for each Locational Capacity Constraint for the relevant Capacity Year to be used in the Capacity Auction, the final nodes on the Transmission System (and the Distribution System, as applicable) to which the Locational Capacity Constraint applies;
- (e) at the date of the Initial Auction Information Pack, how much Awarded Capacity has already been procured for the relevant Capacity Year;
- (f) the final Auction Price Cap to be used in the Capacity Auction (in Euro and Sterling);
- (g) the final Existing Capacity Price Cap to be used in the Capacity Auction (in Euro and Sterling);
- (h) the final €/MW rate of the New Capacity Investment Rate Threshold to be used in the Capacity Auction;
- (i) the final Annual Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
- (j) the final Billing Period Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
- (k) the indicative Annual Capacity Payment Exchange Rate applicable to Awarded Capacity allocated in the Capacity Auction;
- (l) the final allowed Increase Tolerance and Decrease Tolerance by Technology Class 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 final Performance Security Posting Dates/ Events applicable to Awarded New Capacity allocated in the Capacity Auction; and
 - (ii) for each Performance Security Posting Date/ Event, the final €/MW rate to be applied in setting Performance Securities applicable to Awarded New Capacity allocated in the Capacity Auction;

- (n) the final €/MW fee rates for calculating Termination Charges applicable to Awarded New Capacity allocated in the Capacity Auction;
- (o) anticipated values for the Full Administered Scarcity Price and the Reserve Scarcity Price Curve applicable to the Capacity Year;
- (p) anticipated values for the parameters listed in paragraph F.16.1.1 and F.16.1.5 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 final Capacity Auction Timetable as it relates to events after the publication of the Initial Auction Information Pack (subject to section D.2).

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 Initial Auction Information Pack:

- (a) the final De-Rating Curves, defining De-Rating Factors by unit Initial Capacity and by Technology Class (including for Interconnectors) to be used in the Capacity Auction;
- (b) the final Capacity Requirement for the Capacity Year to be used in the Capacity Auction;
- (c) an indicative Demand Curve to be used in the Capacity Auction;
- (d) the final Auction Price Cap to be used in the Capacity Auction (in Euro and Sterling);
- (e) the final Existing Capacity Price Cap to be used in the Capacity Auction (in Euro and Sterling);
- (f) the final €/MW rate of the New Capacity Investment Rate Threshold to be used in the Capacity Auction;
- (g) the final Annual Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
- (h) the final Billing Period Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
- (i) the indicative Annual Capacity Payment Exchange Rate applicable to Awarded Capacity allocated in the Capacity Auction;
- (j) the final allowed Increase Tolerance and Decrease Tolerance by Technology Class that may be applied by a Participant in its Application for Qualification to Capacity Market Unit de-ratings;
- (k) in respect of Performance Securities:
 - (i) the final Performance Security Posting Dates/ Events applicable to Awarded Capacity allocated in the Capacity Auction; and
 - (ii) for each Performance Security Posting Date/ Event, the final €/MW rate to be applied in setting Performance Securities applicable to Awarded Capacity allocated in the Capacity Auction;
- (l) the final €/MW fee rates for calculating Termination Charges applicable to Awarded Capacity allocated in the Capacity Auction;
- (m) anticipated values for the Full Administered Scarcity Price and the Reserve Scarcity Price Curve applicable to the Capacity Year; and

- (n) anticipated values for the parameters listed in paragraph F.16.1.1 and F.16.1.5 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.
- D.3.1.4 Where a curve, value or item included in an Initial Auction Information Pack is:
- (a) referred to as “indicative” in paragraph D.3.1.2 or D.3.1.3, it may be updated in the Final Auction Information Pack published by the System Operators under paragraph F.5.1.1 in relation to the Capacity Auction; and
 - (b) referred to as “anticipated” in paragraph D.3.1.2 or D.3.1.3, it is included in the Initial Auction Information Pack for information only, and may change or vary from time to time in accordance with the provisions of the Trading and Settlement Code.
- D.3.1.5 Before acting in reliance on any curve, value or item in an Initial Auction Information Pack:
- (a) referred to as “indicative” in paragraph D.3.1.2, a Participant is responsible for confirming that it has not been updated in the Final Auction Information Pack published by the System Operators under paragraph F.5.1.1 in relation to the Capacity Auction; and
 - (b) referred to as “anticipated” in paragraph D.3.1.2, a Participant is responsible for conducting its own analysis and forming its 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 is therefore Qualified as a Capacity Market Unit to participate in Capacity Auctions and Secondary Trade Auctions; and
 - (b) for each Capacity Market Unit that is Qualified:
 - (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 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; and
 - (vi) the Implementation Plan for developing any New Capacity of the Capacity Market Unit.
- E.1.1.2 The Qualification Process in this Chapter E also sets out the process for determining the Maximum Capacity Duration and caps on Auction offer prices applicable to Capacity Market Units.
- E.1.1.3 The System Operators shall undertake a Qualification Process in respect of each Capacity Auction for a Capacity Year.
- E.1.1.4 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 paragraphs E.2.1.3 and E.2.1.4, a Participant with a Candidate Unit that satisfies any of the following criteria shall apply for the Candidate Unit to be Qualified in a Qualification Process:
- (a) the Candidate Unit is 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 at the time of the Qualification Process;
 - (b) the Candidate Unit is:
 - (i) a proposed Dispatchable Generator or an existing Dispatchable Generator Unit in respect of which the Participant intends to

commission an increase in capacity, such that in either case the Participant expects the Generator or Generator Unit to have a Registered Capacity greater than or equal to the De Minimis Threshold prior to the start of the Capacity Year to which the Qualification Process relates; and

- (ii) not a Demand Side Unit;
 - (c) the Candidate Unit is an existing Interconnector at the time of the Qualification Process;
 - (d) the Candidate Unit is a proposed Interconnector which the Participant intends to commission prior to the start of the Capacity Year to which the Qualification Process relates; or
 - (e) the Candidate Unit is, or is part of, a Capacity Market Unit that has already been allocated Awarded Capacity for the Capacity Year to which the Qualification Process relates in a previous Capacity Auction.
- E.2.1.2 Without limiting paragraph E.2.1.1, a Participant with a Candidate Unit that satisfies any of the following criteria may apply for the Candidate Unit to be Qualified in a Qualification Process:
- (a) the Candidate Unit is a proposed Demand Side Unit which the Participant intends to commission prior to the start of the Capacity Year to which the Qualification Process relates;
 - (b) the Candidate Unit is a Variable Generator Unit or a proposed Variable Generator Unit which the Participant intends to commission prior to the start of the Capacity Year to which the Qualification Process relates;
 - (c) the Candidate Unit is a Generator Unit, or a proposed Generator Unit which the Participant intends to commission prior to the start of the Capacity Year to which the Qualification Process relates, and which is not Dispatchable; or
 - (d) the Candidate Unit is a Dispatchable Generator Unit or proposed Generator Unit having, or expected to have prior to the start of the Capacity Year to which the Qualification Process relates, a Registered Capacity less than the De Minimis Threshold.
- E.2.1.3 A Participant is not required to apply for a Candidate Unit to be Qualified in a Qualification Process if the Candidate Unit is to Close prior to the end of the Capacity Year to which the Qualification Process relates 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 shall submit to the System Operators an Opt-out Notification in respect of that Candidate Unit in accordance with section E.3.
- E.2.1.4 Where a Participant is an Intermediary for a Generator Unit, and its Form of Authority does not authorise the Participant to participate in respect of the Generator Unit in the Capacity Market, the Participant shall not submit an Application for Qualification in relation to the Generator Unit.
- E.2.1.5 For the avoidance of doubt, where:
- (a) a Generator is or would be required to be registered under the Trading and Settlement Code because of section B.6 of that Code; and
 - (b) the Generator is, or is part of, a Dispatchable Generator Unit,

then, for the purposes of this Code, that Dispatchable Generator Unit is regarded as having a Registered Capacity greater than or equal to the De Minimis Threshold.

E.3 OPT-OUT NOTIFICATIONS

E.3.1 Circumstances in which an Opt-out Notification may be Submitted

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 notify the Participant and the System Operators prior to the Opt-out Notification Date that they have determined 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 three months; or
 - (ii) will be Mothballed,during the Capacity Year to which the Capacity Auction relates.

E.3.1.2 A Participant shall not submit an Opt-out Notification in respect of a Candidate Unit for which an Application for Qualification is voluntary as provided in paragraph E.2.1.2.

E.3.1.3 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) details of any Awarded Capacity which has previously been allocated in respect of the Candidate Unit, or which the Participant expects will be allocated in respect of the Candidate Unit, for 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 Participant Director that, having made due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director:
 - (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.3.1.4 The System Operators shall reject an Opt-out Notification if:

- (a) the Participant is prohibited from submitting it by virtue of paragraph E.3.1.2;
- (b) it is incomplete or is submitted after the Opt-out Notification Date specified in the applicable Capacity Auction Timetable;
- (c) the System Operators consider that the Candidate Unit will have, or will be required to contribute to, any Net Capacity Quantity in respect of the Capacity Year to which the Opt-out Notification relates; or
- (d) 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, satisfactory evidence as required under paragraph E.3.1.3(e) has not been provided of the notification of such Closure; 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.3.1.5 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.3.1.6 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 six years from the Qualification Application Date.

E.3.2 **Regulatory Authorities' Determination**

E.3.2.1 A Participant seeking a determination of the Regulatory Authorities for the purposes of paragraph E.3.1.1(b) shall submit an application to the Regulatory Authorities not later than four weeks prior to the Opt-out Notification Date specified in the Capacity Auction Timetable.

E.3.2.2 An application under paragraph E.3.2.1 shall:

- (a) contain the information required by the Regulatory Authorities;
- (b) contain a certificate signed on behalf of the Participant by a Participant Director that, having made due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director:

- (i) all information in the application and any other information provided to the Regulatory Authorities and the System Operators in relation to it is true and correct; and
- (ii) the application is not for the purposes of, or connected with, Market Manipulation by the Participant or any of its Associates;
- (c) be in the form prescribed by the Regulatory Authorities; and
- (d) be made in the manner prescribed by the Regulatory Authorities.

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) and has not submitted a valid Opt-out Notification in respect of that Candidate Unit, 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 Unit or Units is or are Qualified) does not create any obligation or liability on the part of the System Operators or the Market Operator to accept any Capacity Auction

Offer, allocate any Awarded Capacity, make any payment or pay any compensation to the Participant.

- E.4.1.8 A Participant may request in writing that the System Operators provide a copy of the Qualification Data which the System Operators hold in relation to one or more of its Candidate Units. If a Participant does so, then the System Operators shall within five Working Days of receiving the request provide the Qualification Data, or access to the Qualification Data, so far as it relates to the last time the Candidate Unit was Qualified to the Participant.

E.5 EXCEPTION APPLICATIONS

- E.5.1.1 A Participant may seek the approval of the Regulatory Authorities for:
- (a) proposed New Capacity to have a Maximum Capacity Duration of more than one and up to 10 Capacity Years; or
 - (b) all or a specified part of Existing Capacity to be subject to a Unit Specific Price Cap in a Capacity Auction.
- E.5.1.2 A Participant seeking approval of the Regulatory Authorities under paragraph E.5.1.1 in relation to a Capacity Auction shall submit an application (called an **“Exception Application”**) to the Regulatory Authorities prior to the Exception Application Date specified in the Capacity Auction Timetable.
- E.5.1.3 An Exception Application shall:
- (a) contain the information required by the Regulatory Authorities;
 - (b) contain a certificate signed on behalf of the Participant by a Participant Director that, having made due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director:
 - (i) all information in the application and any other information provided to the Regulatory Authorities and the System Operators in relation to it is true and correct; and
 - (ii) the application is not for the purposes of, or connected with, Market Manipulation by the Participant or any of its Associates;
 - (c) be in the form prescribed by the Regulatory Authorities; and
 - (d) be made in the manner prescribed by the Regulatory Authorities.
- E.5.1.4 For the purposes of this section:
- (a) a proposed Unit Specific Price Cap in an Exception Application, and a Unit Specific Price Cap approved by the Regulatory Authorities, shall be specified in the currency of the Currency Zone of the relevant Capacity Market Unit or proposed Capacity Market Unit; and
 - (b) the applicable exchange rate shall be the indicative Annual Capacity Payment Exchange Rate specified in the most recent Initial Auction Information Pack for the Capacity Year.
- E.5.1.5 If a Participant makes an Exception Application under paragraph E.5.1.2, then the Regulatory Authorities shall notify the System Operators, giving details as to the nature of the Exception Application.
- E.5.1.6 Where a Participant makes an Exception Application under paragraph E.5.1.2, the Regulatory Authorities may request further information or clarification by written notice to the Participant identifying the further information or clarification required and specifying a timeframe for providing it.

- E.5.1.7 If the Regulatory Authorities do not receive the clarification or the further information requested from a Participant under paragraph E.5.1.6 within the specified timeframe, the Participant shall be deemed to have withdrawn the Exception Application.
- E.5.1.8 If a Participant makes an Exception Application, then the Regulatory Authorities shall notify the Participant and the System Operators whether or not they approve the Exception Application and, if they do approve it:
- (a) if the Exception Application is seeking a Maximum Capacity Duration for New Capacity of longer than one year, the Maximum Capacity Duration approved by the Regulatory Authorities for the New Capacity (which must be 10 Capacity Years); or
 - (b) if the Exception Application is seeking a Unit Specific Price Cap for all or part of the Existing Capacity associated with a Capacity Market Unit or proposed Capacity Market Unit:
 - (i) the Unit Specific Price Cap approved by the Regulatory Authorities and the capacity to which it relates; and
 - (ii) if the Unit Specific Price Cap approved by the Regulatory Authorities applies to only part of the Existing Capacity associated with a Capacity Market Unit or proposed Capacity Market Unit, the quantity (called the “**Unit Specific Offer Price Cap Breakpoint**”) beyond which the Unit Specific Price Cap applies. For the avoidance of doubt, a Unit Specific Offer Price Cap Breakpoint may be zero.
- E.5.1.9 If:
- (a) the Regulatory Authorities notify the System Operators that a Participant has made an Exception Application under paragraph E.5.1.2; but
 - (b) the Regulatory Authorities have not notified the System Operators whether or not they approve the Exception Application two full Working Days before the Provisional Qualification Results Date,
- then, for the purposes of applying sections E.6, E.7 and E.8 so as to make the Provisional SO Qualification Decisions in respect of the relevant Capacity Market Unit, the System Operators shall assume that the Exception Application has been approved. If this paragraph applies, the relevant SO Qualification Decisions shall be subject to the condition that the Regulatory Authorities approve the Exception Application. For the avoidance of doubt, this paragraph does not limit the Regulatory Authorities’ ability to reject the Exception Application or make any of the decisions contemplated by paragraph E.5.1.8 in respect of the Exception Application.
- E.5.1.10 If the Regulatory Authorities do not notify the System Operators that they approve an Exception Application in respect of a Capacity Auction before the Final Qualification Results Date, then the Regulatory Authorities shall be deemed not to have approved it.
- E.5.1.11 For the avoidance of doubt, the rejection or deemed rejection by the Regulatory Authorities of an Exception Application is not grounds for a Participant giving an Opt-out Notification and does not affect any Qualification Decisions.

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:
 - (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; and
 - (iv) where the Capacity Market Unit is an Autoproducer Unit, the Autoproducer Offer Price Cap Breakpoint for Existing 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 this section E.7.
- E.7.1.2 In applying the following provisions of this section E.7 and section E.8, 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) subject to paragraph B.13.5.3, a Suspension Order is in effect in relation to the relevant Participant;
 - (d) 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” has the meaning given to it in the Trading and Settlement Code);

- (e) 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;
- (f) 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 applicable time frame); or
- (g) 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 and Demand Side Units

E.7.4.1 The System Operators shall reject an Application for Qualification for a Capacity Year for an Aggregated Generator Unit unless:

- (a) in respect of Existing Capacity, there is a Generator Aggregator System Operator Agreement that applies to the Aggregated Generator Unit and each of the Generators comprising it and that agreement will continue to apply for the whole of that Capacity Year; or
- (b) otherwise, the relevant Participant has provided evidence that the person who owns or controls each Generator comprising the Aggregated Generator Unit has authorised the Participant to include the Generator as part of the Aggregated Generator Unit in the Application for Qualification.

E.7.4.2 The System Operators shall reject an Application for Qualification for a Capacity Year for a Generator Unit which is a Demand Side Unit and which relates to New Capacity unless the relevant Participant has provided the plan contemplated by clause 5(d), and the declaration contemplated by clause 5(e), of Appendix D “Qualification Data”.

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 Qualification Data required to be provided in the Application for Qualification is provided and is 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 under paragraph E.7.5.1 in respect of any additional de-rated capacity beyond that Awarded New Capacity.
- E.7.6 Requirements for Combining Candidate Units into a Capacity Market Unit**
- E.7.6.1 Subject to paragraph E.7.6.3, 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 Connected 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 combined into the Capacity Market Unit is a Demand Side Unit, then all the Candidate Units proposed to be combined are Demand Side Units;
- (k) if any of the Candidate Units proposed to be combined 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 combined; and
- (l) if any of the Candidate Units is an Autoproducer Unit, then all the Candidates Units are Autoproducer Units at the same Autoproducer Site.

E.7.6.2 Where:

- (a) a proposed Capacity Market Unit comprises a combination of individual Candidate Units; and
- (b) the Application for Qualification indicates that one or more of the Candidate Units has been or will be the subject to an Exception Application,

then the System Operators shall consult with the Regulatory Authorities concerning the outcome of the Exception Application so that they are in a position to make a decision under paragraph E.7.6.1 by the Provisional Qualification Results Date specified in the applicable Capacity Auction Timetable.

E.7.6.3 Where:

- (a) a proposed Capacity Market Unit comprises a combination of individual Candidate Units; and
- (b) one or more of the Candidate Units does not satisfy the requirements set out in paragraph E.7.6.1, 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.7.7 Requirements for Autoproducer Units

E.7.7.1 In an Application for Qualification that relates to an Autoproducer Unit, the Participant shall propose an Autoproducer Demand Reduction Volume for the Autoproducer Site of the Autoproducer Unit, which shall be not less than zero and not more than the lesser of:

- (a) the Maximum Import Capacity of the Autoproducer Site; and
- (b) the Gross De-Rated Capacity (Existing) of the Autoproducer Site.

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.3.1.4;
- (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 combine the Candidate Unit with any other unit;
- (c) if the Candidate Unit is an Autoproducer Unit, then the value of the Autoproducer Demand Reduction Volume for the Autoproducer Site of the Autoproducer Unit shall be zero;
- (d) the Capacity Market Unit shall be Qualified only 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;
- (e) in determining the Gross De-Rated Capacity (Existing) of the Capacity Market Unit in the case of Candidate Units (other than Demand Side Units and Generator Units referred to in paragraph E.2.1.1(e) that are Variable Generator Units), 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, subject to paragraph E.8.3.2, the product of:
 - (i) the applicable Initial Capacity (Existing) as determined under section E.8.1; and
 - (ii) the De-Rating Factor applicable to that Initial Capacity (Existing) (without applying any tolerance);
- (f) the Gross De-Rated Capacity (Existing) of the Capacity Market Unit in the case of a Demand Side Unit or a Generator Unit referred to in paragraph E.2.1.1(e) that is a Variable Generator Unit, shall be the volume of any Awarded Capacity associated with that unit for the Capacity Year in respect of Existing Capacity (which may be zero);
- (g) in determining the Gross De-Rated Capacity (New) of the Capacity Market Unit in the case of Candidate Units (other than Demand Side Units and Generator Units referred to in paragraph E.2.1.1(e) that are Variable Generator Units), 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 (e) and in substitution for the value of Gross De-Rated Capacity (New) nominated in the Application for Qualification they shall use the product of:
 - (i) the applicable Initial Capacity (Total) as determined under section E.8.1; and

- (ii) the De-Rating Factor applicable to that Initial Capacity (Total) (without applying any tolerance),
less the Gross De-Rated Capacity (Existing) determined under subparagraph (e);
- (h) the Gross De-Rated Capacity (New) of the Capacity Market Unit in the case of a Demand Side Unit or a Generator Unit referred to in paragraph E.2.1.1(e) that is a Variable Generator Unit, shall be the volume of any Awarded New Capacity associated with that unit for the Capacity Year (which may be zero);
- (i) the Maximum Capacity Duration shall be 1 year;
- (j) the Offer Price Cap to apply for Existing Capacity shall be the Existing Capacity Price Cap; and
- (k) in determining the Firm Offer Requirement, the System Operators shall use the methodology set out in section E.8.5, except that they shall use their own assessment of the unit's Firm Network Access Capacity or Net De-Rated Capacity (Existing) and Net De-Rated Capacity (New) (as applicable).

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) (or, in the case of a Demand Side Unit, the unit's DSU MW Capacity or expected DSU MW Capacity);
- (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 Technology Class the System Operators consider appropriate 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 System Operators shall determine the Gross De-Rated Capacity (Existing) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is not a Variable Generator Unit 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 System Operators shall determine the Gross De-Rated Capacity (Existing) of a Generator Unit (other than an Aggregated Generator Unit) which is a Variable Generator Unit 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 Initial 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 Initial 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 Initial 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 System Operators shall determine the Gross De-Rated Capacity (New) of a Generator Unit or Interconnector (other than an Aggregated Generator Unit) which is not a Variable Generator Unit 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 System Operators shall determine the Gross De-Rated Capacity (New) of a Generator Unit (other than an Aggregated Generator Unit) which is a Variable Generator Unit 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 Initial 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 Initial 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 Initial 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 System Operators shall determine the Gross De-Rated Capacity (Existing) of an Aggregated Generator Unit 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) 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) i denotes a Generator contributing to the Aggregated Generator Unit;
- (e) i=VU denotes those Generators that are Variable Generator Units;
- (f) i≠VU denotes those Generators that are not Variable Generator 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 Initial 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 Initial Auction Information Pack;
- (j) DECTOL_i is the percentage Decrease Tolerance applicable to the Technology Class of Generator i as specified in the relevant Initial 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 System Operators shall determine the Gross De-Rated Capacity (New) of an Aggregated Generator Unit is determined in accordance with the following formula:

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

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 Generator Units;
- (g) $i \neq VU$ denotes those Generators that are not Variable Generator 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 Initial 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 Initial Auction Information Pack;
- (k) DECTOL_i is the percentage Decrease Tolerance applicable to the Technology Class of Generator i as specified in the relevant Initial 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 Initial 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 in respect of Existing 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 in respect of Existing Capacity and New Capacity.

E.8.4 Autoproducer Offer Price Cap Breakpoint

E.8.4.1 Where:

- (a) a Capacity Market Unit is an Autoproducer Unit;
- (b) the relevant Autoproducer Site has an Autoproducer Demand Reduction Volume of greater than zero; and
- (c) the sum over all Capacity Market Units within the Autoproducer Site of their Net De-Rated Capacity (Existing) is greater than zero,

then for each Capacity Market Unit i at the Autoproducer Site, the System Operators must determine the Capacity Market Unit's Offer Price Cap Breakpoint using the following formula:

$$\text{OPCBPQ}(i) = \text{NDRCE}(i) - (\text{MAX}(0, \text{MIN}(\text{TNDRCE}, \text{TGDCE} - \text{MEC} + \text{ADRV}) \times \text{NDRCE}(i) / \text{TNDRCE})$$

where:

- (d) OPCBPQ(i) is the Autoproducer Offer Price Cap Breakpoint, where the cumulative offered quantity in excess of this amount may be offered at the Auction Price Cap;
- (e) NDRCE(i) is the Net De-Rated Capacity (Existing) of Capacity Market Unit i ;

- (f) TGDCE is the sum of the Gross De-Rated Capacity (Existing) over all the Capacity Market Units within the Autoproducer Site;
- (g) MEC is the Maximum Export Capacity of the Autoproducer Site;
- (h) ADRV is that Autoproducer Demand Reduction Volume for the Autoproducer Site;
- (i) TNRCE is the sum over all Capacity Market Units *i* within the Autoproducer Site of their NDRCE(*i*) values;
- (j) MIN[X,Y] is the lesser of the values X and Y; and
- (k) MAX[X,Y] is the greater of the values X and Y.

E.8.5 Firm Offer Requirement

E.8.5.1 For each Capacity Market Unit that is not a Demand Side 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.8.5.3 less the quantity of Awarded Capacity for that Capacity Market Unit for the Capacity Year allocated in previous Capacity Auctions.

E.8.5.2 For a Capacity Market Unit that is a Demand Side Unit or which is an aggregation of candidate units that are Demand Side Units, the System Operators shall determine the Firm Offer Requirement as 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.

E.8.5.3 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.8.6 Maximum Capacity Duration

E.8.6.1 Subject to paragraph E.8.6.2, the Maximum Capacity Duration in respect of:

- (a) New Capacity for which the Regulatory Authorities have approved a Maximum Capacity Duration as a result of an Exception Qualification, shall be the approved Maximum Capacity Duration; and
- (b) otherwise, shall be one Capacity Year.

E.8.6.2 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.8.7 Offer Price Caps and Curves

E.8.7.1 Offer Price Caps shall be determined as follows:

- (a) the Offer Price Cap for New Capacity shall be the Auction Price Cap;
- (b) the Offer Price Cap for Existing Capacity associated with Demand Side Units (including within a combination of Candidate Units) shall be the Auction Price Cap;
- (c) the Offer Price Cap for other Existing Capacity shall be:
 - (i) if the Regulatory Authorities have approved a Unit Specific Price Cap for all of the Existing Capacity associated with the Capacity Market Unit, the approved Unit Specific Price Cap;
 - (ii) if the Regulatory Authorities have approved a Unit Specific Price Cap for Existing Capacity associated with the Capacity Market Unit beyond a specified Unit Specific Offer Price Cap Breakpoint, the Existing Capacity Price Cap for such capacity offered up to (and including) that Unit Specific Offer Price Cap Breakpoint and the approved Unit Specific Price Cap for such capacity offered beyond that Unit Specific Offer Price Cap Breakpoint; or
 - (iii) otherwise, the Existing Capacity Price Cap,

provided that, in the case of Existing Capacity associated with an Autoproducer Unit where the Autoproducer Demand Reduction Volume for the relevant Autoproducer Site is not zero, the Offer Price Cap for capacity offered beyond the Autoproducer Offer Price Cap Breakpoint shall be the Auction Price Cap.

E.8.7.2 Where a Capacity Market Unit provides Existing Capacity, the System Operators shall determine an Existing Capacity Offer Price Cap Curve for that Existing Capacity, which shall:

- (a) comprise one price cap for the entire Net De-Rated Capacity (Existing) or multiple price caps applicable over different cumulative ranges of capacity which in total equal the Net De-Rated Capacity (Existing); and
- (b) conform with the requirements of paragraph E.8.7.1.

E.8.7.3 For the purposes of this section, an Offer Price Cap and Existing Capacity Offer Price Cap Curve shall be specified in the currency of the Currency Zone in which the Capacity Market Unit is Connected.

E.8.8 Capacity Market Unit Capacity and De-Rating

E.8.8.1 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.8.8.2 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.8.8.3 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.8.8.4 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.8.8 shall be recalculated accordingly.
- E.8.9 Capacity Market Units and Locational Capacity Constraints**
- E.8.9.1 For each Locational Capacity Constraint, the System Operators shall determine the Capacity Market Units that they consider could contribute to satisfying the constraint.
- E.8.9.2 In making a determination under paragraph E.8.9.1, the System Operators shall apply the following rules:
- (a) for a Capacity Market Unit to contribute to satisfying a Locational Capacity Constraint, all of the Generators, Generator Units and Interconnectors (as applicable) comprising it shall be normally Connected to the Transmission System or Distribution System at Connection Points falling within the Locational Capacity Constraint Area of the Locational Capacity Constraint (or in the case of a Demand Side Unit, the demand response shall, based

on Grid Code required data, be provided from such Connection Points); and

- (b) a specific Capacity Market Unit shall be regarded as contributing to satisfying no more than one Level 1 Locational Capacity Constraint or no more than one Level 2 Locational Capacity Constraint (and, in the latter case it shall also be regarded as contributing to the Level 1 Locational Capacity Constraint containing that Level 2 Locational Capacity Constraint).

E.9 NOTIFICATION OF QUALIFICATION DECISIONS

E.9.1 Qualification Decisions

E.9.1.1 The following are “**SO 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) whether the Capacity Market Unit provides Existing Capacity 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; and
 - (iv) the Awarded Capacity for the Capacity Year for that Capacity Market Unit allocated as a result of prior Capacity Auctions;
- (e) 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; and
 - (iv) 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 could contribute to satisfying a Locational Capacity Constraint and, if so, the name of the Locational Capacity Constraint;
- (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;
 - (i) where the Candidate Unit is an Autoproducer Unit, the Autoproducer Offer Price Cap Breakpoint;
 - (j) where the Capacity Market Unit provides Existing Capacity, the Existing Capacity Offer Price Cap Curve for the Existing Capacity (but not the Unit Specific Price Caps or Unit Specific Offer Price Cap Breakpoints which are Other Qualification Decisions); and
 - (k) where the Alternative Qualification Process was applied, the reason or reasons why.
- E.9.1.2 The following are “**Other Qualification Decisions**” in respect of Existing Capacity and New Capacity provided by a Capacity Market Unit:
- (a) the applicable Maximum Capacity Duration;
 - (b) the applicable Offer Price Cap(s); and
 - (c) any Unit Specific Offer Price Cap Breakpoint(s).

E.9.2 **Provisional SO Qualification Decisions**

- E.9.2.1 Where the System Operators propose to Qualify a Capacity Market Unit, they shall notify the relevant Participant of their Provisional SO Qualification Decisions in respect of the Capacity Market Unit. The System Operators shall indicate whether any of their Provisional SO Qualification Decisions are conditional under paragraph E.5.1.9.
- E.9.2.2 Where the System Operators propose to reject an Application for Qualification submitted by a Participant, they shall notify the Participant of the requirements under section E.7 that the Application for Qualification failed to satisfy.
- E.9.2.3 The System Operators shall use reasonable endeavours to give a notification under paragraph E.9.2.1 or E.9.2.2 by the Provisional Qualification Results Date specified in the applicable Capacity Auction Timetable.
- E.9.2.4 The System Operators shall use reasonable endeavours to submit to the Regulatory Authorities all the Provisional SO Qualification Decisions in relation to the Qualification Process in respect of a Capacity Auction by the Provisional Qualification Results Date specified in the applicable Capacity Auction Timetable.

E.9.3 **Reconsideration of Provisional SO Qualification Decisions**

- E.9.3.1 A Participant:

- (a) that has had an Application for Qualification rejected by the System Operators and has not subsequently been notified of SO Qualification Decisions in respect of the relevant Candidate Unit determined by the System Operators using the Alternative Qualification Process; or
- (b) who disagrees with a provisional SO 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.9.2.1,

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

E.9.3.2 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 making the Reviewable Decision; and
- (c) a copy of any relevant documents which the Participant believes support its position.

E.9.3.3 The System Operators shall, within the Prescribed Timeframe after receiving an Application for Review which does not comply with paragraph E.9.3.2, 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.9.3.4 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 the Prescribed Timeframe of the request.

E.9.3.5 The System Operators shall reconsider the Reviewable Decision the subject of an Application for Review and shall within the Prescribed Timeframe of receiving the Application for Review notify the Participant lodging the application of the outcome of the reconsideration.

E.9.3.6 The System Operators shall:

- (a) include in their response under paragraph E.9.3.5 their reasons for the outcome of the reconsideration; and
- (b) make any amendment to the Qualification Capacity Register required by, or as a consequence of, the reconsideration.

E.9.3.7 If the System Operators reject an Application for Review in whole or in part, then the applicant may give notice of a Qualification Dispute under paragraph B.14.2.1 in relation to the Reviewable Decision.

E.9.4 **Final Qualification Decisions**

E.9.4.1 The System Operators shall prepare a set of Final Qualification Decisions in relation to a Qualification Process specifying:

- (a) for each Capacity Market Unit:
 - (i) its final SO Qualification Decisions; and
 - (ii) the Other Qualification Decisions; and

- (b) where the System Operators propose to reject an Application for Qualification, the requirements under section E.7 that the Application for Qualification failed to satisfy.
- E.9.4.2 The Final Qualification Decisions in respect of a Capacity Market Unit shall:
 - (a) reflect the Regulatory Authorities' decisions in respect of any relevant Exception Application;
 - (b) reflect the outcome of any relevant reconsideration of a Reviewable Decision under section E.9.3 or decision of a CMDRB in relation to a Dispute under section B.14 concerning one or more Provisional SO Qualification Decisions in respect of the Capacity Market Unit;
 - (c) correct any error or omission in the Provisional SO Qualification Decisions in respect of the Capacity Market Unit which the System Operators become aware of; and
 - (d) reflect any updated information or change in circumstances affecting the Participant which the System Operators become aware of.
- E.9.4.3 The System Operators shall submit the Final Qualification Decisions to the Regulatory Authorities for approval.
- E.9.4.4 The System Operators shall use reasonable endeavours to submit the Final Qualification Decisions in accordance with paragraph E.9.4.3 on or before the Final Qualification Submission Date specified in the applicable Capacity Auction Timetable.
- E.9.4.5 The Regulatory Authorities may approve or reject one or more Final Qualification Decisions submitted by the System Operators under paragraph E.9.4.3 by written notice to the System Operators (giving reasons in the case of rejection).
- E.9.4.6 If the Regulatory Authorities reject a Final Qualification Decision submitted by the System Operators under paragraph E.9.4.3, 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.9.4.7 If the Regulatory Authorities do not notify the System Operators that they reject a Final Qualification Decision on or before the date that is two Working Days before the Final Qualification Results Date specified in the applicable Capacity Auction Timetable, then they will be deemed to have approved the decision submitted by the System Operators.
- E.9.4.8 The Final Qualification Decisions approved, or deemed to have been approved, by the Regulatory Authorities (and as substituted by the Regulatory Authorities) under this section E.9.4 are final and binding on the Parties.
- E.9.4.9 The System Operators shall notify Participants of the approved Final Qualification Decisions in respect of each of their Capacity Market Units.
- E.9.4.10 The System Operators shall give a notification under paragraph E.9.4.9 by the later of the Final Qualification Results Date specified in the applicable Capacity Auction Timetable and a date being two Working Days after the Regulatory Authorities have approved (or are deemed to have approved pursuant to paragraph E.9.4.7) the Final Qualification Decisions in respect of the relevant Capacity Auction.
- E.9.4.11 Where a Final Qualification Decision has changed relative to the relevant provisional SO Qualification Decision (if applicable), the System Operators shall include in the notification under paragraph E.9.4.9 both the provisional and final decision or value, so as to identify to the Participant what has changed.

E.9.4.12 For the avoidance of doubt, the System Operators (or the Regulatory Authorities under paragraph E.9.4.6) may reject an Application for Qualification for any of the reasons contemplated in section E.7 in light of any updated information or change in circumstances affecting the Participant which they become aware of, notwithstanding that they may not have done so at a previous stage in the Qualification Process.

E.9.5 **Publication of Qualification Results**

E.9.5.1 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; and
 - (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.10 **EXTENDED QUALIFICATION FOR SECONDARY TRADE**

E.10.1 **Early Start**

E.10.1.1 Where Existing Capacity has been Qualified in respect of a Capacity Year (in this section E.10.1 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 section called the “**Prior Year**”).

E.10.1.2 If a Participant makes an application under paragraph E.10.1 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, in accordance with the timeframe provided for in section E.10.3:

- (d) approve the application; and
- (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.

E.10.2 **Extended Duration**

E.10.2.1 Where Existing Capacity has been Qualified in respect of a Capacity Year (in this section E.10.2 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.10.2.2 If a Participant makes an application under paragraph E.10.2.1 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, in accordance with the timeframe provided for in section E.10.3:

- (c) approve the application; and
- (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.10.3 **Processing Applications**

E.10.3.1 Where the System Operators receive an application under paragraph E.10.1.1 or E.10.2.1 from a Participant they shall where applicable within five Working Days of receiving the application, if they consider that further information or clarification is required in order to consider the application, send a notice to the Participant identifying the further information or clarification required.

E.10.3.2 Within five Working Days after the later of:

- (a) receiving an application under paragraph E.10.1.1 or E.10.2.1; and
- (b) receiving any further information or clarification requested by the System Operators under paragraph E.10.3.1 in relation to that application,

the System Operators shall send a notice to the Participant advising the Participant as to whether the application has been approved.

E.10.3.3 Where the System Operators approve an application under paragraph E.10.1.1 or E.10.2.1, they shall publish a notice identifying the Capacity Market Unit and specifying the new Start Date from which it is Qualified or the Closing Date (as applicable).

E.10.4 **Consequences of Extension**

E.10.4.1 For the purpose of Secondary Trade Auctions, an extension under this section E.10 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.10.4.2 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.10 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

F.1.1.1 This section describes the operation and conduct of each Capacity Auction for a Capacity Year to be conducted in accordance with 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 minimum price they are willing to accept 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 in the Capacity Auction based on Qualification Decisions;
- (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 auction 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 in respect of Existing Capacity is not less than its Firm Offer Requirement.

F.3 DEMAND CURVE

- F.3.1.1 The System Operators shall, when requested to do so, advise the Regulatory Authorities as to the following for a Capacity Year:
- (a) the existing Awarded Capacity in respect of the Capacity Year;
 - (b) their forecast of the capacity requirements for the Capacity Year; and
 - (c) the de-rated value of capacity that is not existing Awarded Capacity for the Capacity Year but which the System Operators forecast will be operational during the Capacity Year and will not participate in the Capacity Auction (over the island of Ireland and for each Locational Capacity Constraint Area).
- F.3.1.2 When forecasting the capacity which is available to meet a capacity requirement over the island of Ireland or a Locational Capacity Constraint (for example, under paragraph F.3.1.1(c) or F.4.1.1(a)(ii)), the System Operators shall do so on a basis which is consistent with the basis on which the relevant capacity requirement was prepared.
- F.3.1.3 The Regulatory Authorities shall determine the Demand Curve to be employed in a Capacity Auction, and shall provide it to the System Operators.
- F.3.1.4 The Demand Curve for a Capacity Auction shall include a point at 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 forecast to be operational during the Capacity Year but which will not be participating 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 10 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 $i=A$ where A is greater than or equal to 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 If the Regulatory Authorities have not provided the Demand Curve to be used in a Capacity Auction to the System Operators ten Working Days prior to the date of the Capacity Auction Submission Commencement specified in the applicable Capacity Auction Timetable, then the System Operators shall propose the postponement of the Capacity Auction by written notice to the Regulatory Authorities.

F.3.1.7 If the System Operators give a notice under paragraph F.3.1.6, and the Regulatory Authorities do not provide the Demand Curve for the Capacity Auction, or postpone or delay the Capacity Auction under paragraph D.2.1.12, at least five Working Days prior to the Capacity Auction Submission Commencement date specified in the applicable Capacity Auction Timetable, then the System Operators shall cancel the Capacity Auction, revoke the Capacity Auction Timetable and publish a notice to that effect.

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

- F.4.1.1 For each Locational Capacity Constraint, the System Operators shall determine:
- (a) the Locational Capacity Constraint Required Quantity, being:
 - (i) the minimum de-rated capacity quantity that is required to satisfy the Locational Capacity Constraint determined under paragraph C.2.2.2(c); less
 - (ii) the de-rated value of capacity that is not existing Awarded Capacity for the relevant Capacity Year but which the System Operators forecast to be operational during the relevant Capacity Year and will not participate in the Capacity Auction;
 - (b) the total quantity of Gross De-Rated Capacity (Total) in respect of Capacity Market Units that are Qualified as contributing to satisfying the Locational Capacity Constraint;
 - (c) the absolute value of the amount (if any) by which the total quantity determined under sub-paragraph (b) falls short of the Locational Capacity Constraint Required Quantity for the Locational Capacity Constraint;
 - (d) the total quantity of Gross De-Rated Capacity (Existing) in respect of Capacity Market Units that are Qualified as contributing to satisfying the Locational Capacity Constraint; and

- (e) the absolute value of the amount (if any) by which the total quantity determined under sub-paragraph (d) falls short of the Locational Capacity Constraint Required Quantity for the Locational Capacity Constraint.
- F.4.1.2 A Capacity Market Unit that has been Qualified only for the purposes of Secondary Trade Auctions under section E.10 shall not be taken into account in the determination and assessment under paragraph F.4.1.1.
- F.4.1.3 In making a determination under paragraph F.4.1.1 prior to the conclusion of the Qualification Process in respect of a Capacity Auction, the System Operators shall treat a reference to Capacity Market Units in this section F.4 as including Capacity Market Units that are in their reasonable opinion likely to be Qualified as a result of the Qualification Process.
- F.4.1.4 The System Operators shall make a determination under paragraph F.4.1.1 based on the Provisional SO Qualification Decisions and submit the values to the Regulatory Authorities no later than two Working Days after the Provisional Qualification Results Date.
- F.4.1.5 The System Operators shall make a determination under paragraph F.4.1.1 based on the Final Qualification Decisions and submit the values to the Regulatory Authorities at the same time as submitting the Final Qualification Decisions under paragraph E.9.4.3.
- F.4.1.6 If the System Operators, based on the Final Qualification Decisions, determine that the value for the purposes of paragraph F.4.1.1(c) is greater than zero, then the System Operators shall reduce the Locational Capacity Constraint Required Quantity for the Locational Capacity Constraint to the total quantity determined under paragraph F.4.1.1(b).
- F.4.1.7 If the System Operators reduce the Locational Capacity Constraint Required Quantity for a Locational Capacity Constraint under paragraph F.4.1.6, then they shall notify the Regulatory Authorities.
- F.4.1.8 The Regulatory Authorities may by written notice to the System Operators set the Locational Capacity Constraint Required Quantity for all or specified Locational Capacity Constraints in one or more Capacity Auctions to zero and shall in the notice give reasons. If the Regulatory Authorities set the Locational Capacity Constraint Required Quantity for a Level 1 Locational Capacity Constraint to zero for a Capacity Auction under this paragraph, then all the Level 2 Locational Capacity Constraints within the Locational Capacity Constraint Area of that Level 1 Locational Capacity Constraint shall also be set to zero for that Capacity Auction.
- F.4.1.9 If the System Operators, based on the Provisional SO Qualification Decisions or the Final Qualification Decisions, determine that the value for the purposes of paragraph F.4.1.1(e) is greater than zero, then 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 Locational Capacity Constraint in the Capacity Auction.

F.5 PUBLICATION OF FINAL AUCTION INFORMATION PACK

- F.5.1.1 The System Operators shall calculate the final Annual Capacity Payment Exchange Rate to be used in conducting the Capacity Auction and applicable to Awarded Capacity in the Capacity Auction in accordance with the methodology approved under Chapter K to be included in the Final Auction Information Pack.

- F.5.1.2 The System Operators shall use reasonable endeavours to publish the Final Auction Information Pack for a Capacity Auction by the later of:
- (a) the Final Auction Information Pack Date specified in the applicable Capacity Auction Timetable; and
 - (b) two Working Days after the last of the date the Regulatory Authorities provide the Demand Curve and the final Annual Capacity Payment Exchange Rate for the Capacity Auction to the System Operators.
- F.5.1.3 The Final Auction Information Pack for a Capacity Auction shall comprise:
- (a) the final Demand Curve for the Capacity Auction provided by the Regulatory Authorities under section F.3;
 - (b) the final Auction Price Cap for the Capacity Auction (in Euro and Sterling);
 - (c) the final Existing Capacity Price Cap for the Capacity Auction (in Euro and Sterling);
 - (d) for each Locational Capacity Constraint applicable to the Capacity Auction:
 - (i) the final Locational Capacity Constraint Information; and
 - (ii) the final Capacity Market Units that have Qualified for the Capacity Auction and that are in the System Operators' reasonable opinion capable of contributing to satisfying the constraint;
 - (e) the final Capacity Auction Timetable as it relates to events after the publication of the Final Auction Information Pack (subject to section D.2);
 - (f) details of what is required of Participants participating in the Capacity Auction in order to submit Capacity Auction Offers;
 - (g) the final Allowed Timeframe;
 - (h) the final Annual Capacity Payment Exchange Rate to be used by the System Operators in conducting the Capacity Auction and applicable to Awarded Capacity in the Capacity Auction;
 - (i) the final Capacity Requirement to be used in the Capacity Auction;
 - (j) at the date of the Final Auction Information Pack, how much Awarded Capacity has already been procured for the relevant Capacity Year
 - (k) the final Annual Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
 - (l) the final Billing Period Stop-Loss Limit Factor applicable to Awarded Capacity allocated in the Capacity Auction;
 - (m) in respect of Performance Securities:
 - (i) the final Performance Security Posting Dates/ Events applicable to Awarded New Capacity allocated in the Capacity Auction; and
 - (ii) for each Performance Security Posting Date/ Event, the final €/MW rate to be applied in setting Performance Securities applicable to Awarded New Capacity allocated in the Capacity Auction;
 - (n) the final €/MW fee rates for calculating Termination Charges applicable to Awarded New Capacity allocated in the Capacity Auction;
 - (o) anticipated values for the Full Administered Scarcity Price and the Reserve Scarcity Price Curve applicable to the Capacity Year; and

- (p) anticipated values for the parameters listed in paragraph F.16.1.1 and F.16.1.5 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.
- F.5.1.4 Where a curve, value or item included in a Final Auction Information Pack is referred to as “**anticipated**” in paragraph F.5.1.3, it is included in the Final Auction Information Pack for information only, and may change or vary from time to time in accordance with the provisions of the Trading and Settlement Code.
- F.5.1.5 Before acting in reliance on any curve, value or item in a Final Auction Information Pack referred to as “anticipated” in paragraph F.5.1.3, a Participant is responsible for conducting its own analysis and forming its own views as to the matter.

F.6 CAPACITY AUCTION SUBMISSIONS

F.6.1 Access

- F.6.1.1 The System Operators shall give Participants with Capacity Market Units Qualified for a Capacity Auction access to the Capacity Market Platform to allow them to submit Capacity Auction Offers.

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 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.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 one and five 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:
 - (i) in the currency of the Currency Zone in which the Capacity Market Unit is Connected;

- (ii) expressed in £/MW per year or €/MW per year; and
 - (iii) applicable from the commencement of the Capacity Year for the entirety of the offered capacity duration under sub-paragraph (j) (without indexation);
- (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 one-year Maximum Capacity Duration; or
 - (iii) New Capacity with a 10-year Maximum Capacity Duration;
- (f) the maximum price in any price-quantity pair associated with Existing Capacity shall be such that when all the price-quantity pairs relating to Existing Capacity are ranked in order of increasing price, so as to form a price curve that increases with cumulative offered quantity, no offered price for a given cumulative offer quantity exceeds the price associated with the corresponding cumulative quantity specified in the Existing Capacity Offer Price Cap Curve for the Existing Capacity provided by that Capacity Market Unit;
- (g) the maximum price in any price-quantity pair associated with New Capacity shall be the Offer Price Cap for the New Capacity associated with that price-quantity pair;
- (h) 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;
- (i) the cumulative quantity offered in respect of New Capacity must be no greater than the Net De-Rated Capacity (New) of that Capacity Market Unit;
- (j) the offered capacity duration in any price-quantity pair shall be a whole number of Capacity Years between one and the Maximum Capacity Duration for the capacity associated with that price-quantity pair;
- (k) the minimum price in any price-quantity pair shall be zero;
- (l) the minimum quantity in a price-quantity pair shall be zero MW;
- (m) the quantity in a price-quantity pair shall be expressed to an accuracy of 0.001 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 conducting the Capacity Auction, convert the value to Euro in accordance with the Annual Capacity Payment Exchange Rate specified in the applicable Final Auction Information Pack.
- 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 shall 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 Curve applicable to that quantity of Existing Capacity;
 - (iii) a flag indicating that the step is Flexible; and
 - (iv) a duration of one Capacity 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.7.1.4 A Capacity Auction Offer is firm, unconditional and irrevocable.

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 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 Locational 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 Locational Capacity Constraint Required Quantity required to satisfy the Locational Capacity Constraint; less
 - (B) the existing Awarded Capacity for the Capacity Year in respect of Capacity Market Units that contribute to satisfying that Locational Capacity Constraint;
 - (ii) the Locational 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 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.8.2.3 In the software program used to conduct Capacity Auctions, the System Operators may include a feature that allows Locational Capacity Constraints to be violated subject to a high cost being charged, with this cost added to the costs in the calculation in paragraph F.8.4.2(b), provided that the level of this cost is set so that no such violations will occur unless no solution that satisfies the Locational 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 only. The methodology for determining the price-quantity pairs which are cleared in the Capacity Auction is set out in section F.8.4.
- 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, 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, the System Operators shall for the purposes of paragraph F.8.3.3 schedule those price-quantity pairs in any order.
- F.8.3.5 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

Preamble

- 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 with:
- (a) paragraphs F.8.4.2 to F.8.4.5 describing the process of finding the initial single solution, which may be one of many possible solutions with the same Net Social Welfare (that is, the value referred to in paragraph F.8.4.2); and
 - (b) paragraphs F.8.4.6 and F.8.4.7 describing a post processing step to adjust the initial solution to maintain the same Net Social Welfare while better satisfying the tie-breaking considerations specified in those provisions.

The methodology for determining the Auction Clearing Price for the Capacity Auction is set out in section F.8.3.

Finding the initial single solution

- 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 Net Social Welfare which is the value of:
- (a) the area under the Demand Curve between a demand of zero MW and the cumulative quantity cleared from price-quantity pairs; less
 - (b) the sum over all price-quantity pairs of the price of the price-quantity pair multiplied by the quantity cleared,

subject to the restrictions set out in paragraphs F.8.4.3 and F.8.4.4.

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

- (a) 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 zero 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.4.1.9.

- F.8.4.4 Subject to paragraphs F.8.4.6 and 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 zero MW and the maximum quantity offered in that price-quantity pair;
 - (b) a price-quantity pair that is Inflexible may be cleared at either zero 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 quantity determined under paragraph F.8.2.1(b)(i) in respect of a Locational Capacity Constraint, either:
 - (i) the cumulative quantity cleared equals or exceeds that quantity; or
 - (ii) if sub-paragraph (i) does not apply, all of those price-quantity pairs shall be cleared; and
- (f) 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.4.1.9 are not to be cleared to satisfy a Locational Capacity Constraint until all Capacity Market Units with an offered capacity duration of one Capacity Year that contribute to satisfying that Locational 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.

Post processing step

F.8.4.6 The System Operators shall identify whether there is a tie between price-quantity pairs, as follows:

- (a) where two or more price-quantity pairs that are Flexible have the same price, then:
 - (i) there is a tie between all of the applicable price-quantity pairs that contribute to satisfying the same Level 2 Locational Capacity Constraint;
 - (ii) there is a tie between all of the applicable price-quantity pairs that contribute to satisfying the same Level 1 Locational Capacity Constraint; and
 - (iii) there is a tie between all of the applicable price-quantity pairs; and
- (b) where two or more price-quantity pairs that are Inflexible have the same price and quantity, then:
 - (i) there is a tie between all the applicable price-quantity pairs that contribute to satisfying the same Level 2 Locational Capacity Constraint;
 - (ii) there is a tie between all the applicable price-quantity pairs that contribute to satisfying the same Level 1 Locational Capacity Constraint; and
 - (iii) there is a tie between all the applicable price-quantity pairs.

F.8.4.7 If, in the solution that maximizes the Net Social Welfare, a quantity would be cleared from tied price-quantity pairs as identified by the System Operators under paragraph F.8.4.6, but not all such tied quantities would be cleared, then the System Operators shall adjust 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(b)(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.8.5 Capacity Auction Software

F.8.5.1 The System Operators shall determine the price-quantity pairs 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.8.5.2 The “**Allowed Timeframe**” 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.8.6 **Outputs**
- F.8.6.1 At the conclusion of a Capacity Auction, the System Operators will have determined the following outputs:
- (a) the Auction Clearing Price;
 - (b) the quantity cleared from each price-quantity pair as determined in accordance with section F.8.4;
 - (c) the Capacity Payment Price for each price-quantity pair that is cleared in the Capacity Auction; and
 - (d) any unserved quantity required to satisfy the Locational Capacity Constraint Required Quantity of any Locational Capacity Constraints.

F.9 CAPACITY AUCTION RESULTS

F.9.1 Form of Capacity Auction Results

- F.9.1.1 The Capacity 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, the Implementation Plan proposed in the Application for Qualification updated, as required, to reflect the quantity of Awarded Capacity in respect of each Interconnector or Generator Unit contributing to the New Capacity provided by the Capacity Market Unit; and
 - (c) in respect of each Locational Capacity Constraint, the MW quantity by which the Locational Capacity Constraint Required Quantity was not satisfied (if applicable).
- F.9.1.2 Except to the extent provided for in the Trading and Settlement Code, the Capacity Payment Price shall not be subject to 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 Capacity Auction Results to the applicable Participant by the Capacity Auction Provisional Results Date specified in the applicable Capacity Auction Timetable.

F.9.3 Approval of Final Capacity Auction Results by Regulatory Authorities

F.9.3.1 The System Operators shall submit provisional Capacity 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 Capacity 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.10).

F.9.3.3 If it appears to the Regulatory Authorities that there are grounds to suspect that:

- (a) there was an irregularity in relation to the Capacity Auction; and
- (b) the irregularity affected the Capacity Auction Results described in paragraph F.9.1.1(a) in respect of one or more Capacity Market Units,

then the Regulatory Authorities may annul the relevant Capacity Auction, by written notice to the System Operators, at any time before the Regulatory Authorities approve provisional Capacity Auction Result for the Capacity Auction under paragraph F.9.3.2.

F.9.3.4 If the Regulatory Authorities give a notice under paragraph F.9.3.3, then they may also instruct the System Operators to re-run the relevant Capacity Auction.

F.9.3.5 If the Regulatory Authorities give a notice under paragraph F.9.3.3, then the System Operators shall notify the Participants as soon as reasonably practicable after receiving the notice.

F.9.3.6 If the Regulatory Authorities annul a Capacity Auction under paragraph F.9.3.3, then they shall publish the reasons for doing so.

F.9.4 Release and Effect of Final Capacity Auction Results

F.9.4.1 The System Operators shall release the final Capacity Auction Results for a Capacity Market Unit to the Participant for that unit 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 the Capacity Auction Results.

F.9.4.2 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 separate Contract Register Entries for Awarded Capacity in respect of each price-quantity pair cleared.

F.9.4.3 Capacity allocated to a Capacity Market Unit as a result of a Capacity Auction becomes Awarded Capacity when it is entered in the Capacity and Trade Register, with the Status Flag set to "Active" in the case of Existing Capacity and "Pending" in the case of New Capacity. All Contract Register Entries in the Capacity and Trade Register in respect of a Capacity Auction shall be identified by a primary trade flag.

F.9.4.4 The final Capacity Auction Results relating to a Participant are final and binding on that Participant.

- F.9.4.5 A Participant which has been allocated New Capacity in a Capacity Auction shall:
- (a) confirm in writing to the System Operators that it agrees to the Implementation Plan for the New Capacity provided in the Capacity Auction Results; and
 - (b) provide to the System Operators a Performance Security for not less than the Required Level in accordance with section J.3,
- on or before the Performance Security Date.
- F.9.4.6 Each Participant which submits a Capacity Auction Offer acknowledges and agrees that, if allocated Awarded New Capacity under this Code:
- (a) it has been allocated the Awarded New Capacity 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 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.9.4.7 A Participant is deemed to have agreed to the Implementation Plan set out in the final Capacity Auction Results in respect of any New Capacity allocated to it if the Participant has not notified the System Operators that it does not agree to that plan within 10 Working Days of being notified of the Capacity Auction Results under paragraph F.9.4.1.
- F.9.4.8 Once a Participant has agreed (or is deemed to have agreed) to the Implementation Plan set out in the final Capacity Auction Results in respect of any New Capacity allocated to it and has provided a Performance Security for not less than the Required Level in accordance with section J.3, the System Operators shall update the Capacity and Trade Register in respect of the Awarded Capacity to set the Status Flag to "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 the provisional Capacity 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 Capacity 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 Locational Capacity Constraint that was not satisfied and the amount by which the Locational Capacity Constraint Required 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 SO Qualification Decisions and Other 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 be used for 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 in the Status Flag whether the entry is “Pending” or “Active”, as contemplated by paragraphs F.9.4.3 and F.9.4.8.
- G.2.1.5 The following persons shall have access to the Capacity and Trade Register:
- (a) the System Operators;
 - (b) the Market Operator for the purpose described in paragraph G.2.1.2;
 - (c) the Capacity Auction Monitor; and
 - (d) each Participant, but only in respect of Contract Register Entries for its Capacity Market Units,
- but only the System Operators shall have the ability to edit the Capacity and Trade Register.
- 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 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 Status 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 _{0y})	Capacity Quantity Commissioning Date	Commissioning Status Flag	Termination
Existing	N/A	Initial Capacity (Existing)	Date in past when commissioned	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

Status of Capacity	Proportion of Delivered Capacity	Commissioned Capacity (qCCOMMISS _{Ω_v})	Capacity Quantity Commissioning Date	Commissioning Status Flag	Termination
New Capacity, operating but has only achieved Minimum Completion by Long Stop date.	$\geq 50\%$ $\leq 90\%$	Initial Capacity (Existing) + Proportion of Delivered Capacity times [Initial Capacity (Total) -Initial Capacity (Existing)]	Long Stop Date	Actual	Awarded Capacity \times (1 -Proportion of Delivered Capacity)
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 types of Product ("**Product Type**") for the purposes of secondary trading in accordance with this Chapter H.

H.3.1.2 Each Product Type shall have 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 First Secondary Trading 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 and the Regulatory Authorities, setting out the conclusions of the System Operators.
- H.3.1.6 As a result of a review, the System Operators may introduce a new type of Product Type, or vary or suspend or cease offering an existing Product Type.
- H.3.1.7 All Product Types shall be submitted to the Regulatory Authorities for approval. When the System Operators complete their first design of the Product Types, and if the System Operators propose to introduce a new Product Type, or vary or suspend or cease offering an existing Product Type, they shall seek the approval of the Regulatory Authorities.
- H.3.1.8 The Regulatory Authorities may approve or reject a proposal made by the System Operators under paragraph H.3.1.7 by written notice to the System Operators.
- H.3.1.9 If the Regulatory Authorities do not notify the System Operators that they reject a proposal made by the System Operators under paragraph H.3.1.7 within 20 Working Days after the System Operators have submitted the proposal, then they will be deemed to have approved the proposal submitted by the System Operators.
- 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. All price caps shall be expressed in Euro.
- H.3.2.2 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 Operators 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 Load Following Factor**
- H.3.3.1 The Product Load Following Factor for a Product is a value that allows for the impact of the Capacity Quantity Scaling Factor (as calculated in accordance with paragraph F.18.2.1 of the Trading and Settlement Code).
- H.3.3.2 The Product Load Following Factor for the specific time interval covered by a Product shall be determined in accordance with a methodology determined by the Regulatory Authorities from time to time.

H.3.4 Product Design

H.3.4.1 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 and other relevant information.

H.3.4.2 If there is any change to the Product Types following a review of Product Types under section H.3.1, then the System Operators shall publish a replacement Product Design.

H.4 SECONDARY TRADE AUCTION CALENDAR

H.4.1.1 Each year, the System Operators shall publish a calendar as to when they 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 Secondary Auction Bids and Secondary Auction Offers may be submitted;
- (c) the deadline for Secondary Auction Bid and Secondary Auction 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; and
- (f) for each Product to be auctioned:
 - (i) the applicable exchange rate; and
 - (ii) the Product Load Following Factor.

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 Load Following Factor for a Product for a Secondary Trade Auction applying the methodology for the relevant Product Type contemplated by section H.3.3 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:

- (a) where the Capacity Market Unit is currently Qualified for the Capacity Year, or under section E.10 is to be treated as if it had been Qualified, for the entire forward period over which the Product Type will apply; and
- (b) to the extent the Capacity Market Unit is providing 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 five price-quantity pairs with each price-quantity pair describing:
 - (i) an incremental MW quantity bid; and
 - (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, depending on the Currency Zone of the Capacity Market Unit.

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 deemed to be indicating that it is willing to purchase the sum of MW quantities bid at that or a lesser 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; and
- (c) a set of up to five price-quantity pairs with each price-quantity pair describing:
 - (i) an incremental MW quantity offered; and
 - (ii) the minimum £/MW per year or €/MW per year price it is willing to be paid in respect of that incremental MW quantity, depending on the Currency Zone of the Capacity Market Unit.

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 deemed 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 shall 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 Net 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.7.4.6, 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 in respect of 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 in respect of 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 the Product Load Following Factor for the applicable Product.
- 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 in respect of 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 Variable Generator Units comprising the Capacity Market Unit is or are adversely affected by:
 - (i) fluctuations in the availability of its primary energy source; or
 - (ii) if the primary energy source for the Variable Generator Unit is wave, tidal or run-of-river hydro energy, a restriction or limitation affecting its capacity to generate arising under a Legal Requirement;
 - (e) 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

- (f) in the case of paragraph H.7.1.3, if as a result of one or more prior Secondary Trades a Participant's Net 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 Status 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 Net 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(e) 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 set out in sub-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 Net 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 Net Capacity Quantity of the Capacity Market Unit exceeding its Available De-Rated Capacity. The System Operators shall deduct from that total any such days during the remainder of the Capacity Year 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 Net 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.7.5 **General**
- H.7.5.1 Secondary Auction Bids and Secondary Auction Offers are firm, unconditional and irrevocable.

- H.7.5.2 A Participant is responsible for ensuring that each Secondary Auction Bid and Secondary 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.
- H.7.5.3 The System Operators have no obligation to follow up any Participant that has not submitted a valid Secondary Auction Bid or Secondary Auction Offer and shall have no liability in respect of any Secondary Auction Bid or Secondary Auction Offer they have not received or that contains information that is incorrect or incomplete or does not reflect the Participant's intentions.

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 subparagraphs (c)(i) and (ii) equals the total quantity cleared from Secondary Auction Bids under subparagraphs (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, where:
- (a) Awarded Capacity arising from a Secondary Auction Bid shall be entered as negative value;
 - (b) Awarded Capacity arising from a Secondary Auction Offer shall be entered as a positive value; and
 - (c) all Contract Register Entries in the Capacity and Trade Register in respect of a Secondary Trade Auction shall be identified by a Secondary Trade Flag.

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.1.1 Obligated Capacity Quantity

I.1.1.1 At any time, the “**Net Capacity Quantity**” in respect of a Capacity Market Unit for a period is the sum of the following:

- (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 Status Flag of “Actual”); and
- (b) any Awarded Capacity in respect of the Capacity Market Unit the subject of any Product acquired or sold in a Secondary Trade Auction that covers that period (and as recorded in the Capacity and Trade Register).

I.1.1.2 At any time, the “**Obligated Capacity Quantity**” in respect of a Capacity Market Unit for a period is the Net Capacity Quantity scaled for demand, losses and otherwise modified for settlement purposes in accordance with section F.18.2 of the Trading and Settlement Code.

I.1.2 Obligations Associated With Awarded Capacity

I.1.2.1 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 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 each 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 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 and be subject to Difference Charges in accordance with the Trading and Settlement Code.

I.1.3 Variation in Mix

I.1.3.1 The Participant in respect of an Aggregated Generator Unit may vary the mix of Generators that give rise to the Awarded Capacity provided by that Unit 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;
- (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 provided by that Aggregated Generator Unit applicable to that Capacity Year (except to the extent the System Operators agree otherwise in writing);
- (c) where the Awarded Capacity provided by that Aggregated Generator Unit contributes to satisfying a Locational Capacity Constraint, it continues to do so to the same extent after the variation (except to the extent the System Operators agree otherwise in writing); and
- (d) where the Aggregated Generator Unit is or forms part of a Capacity Market Unit that is Clean, the Capacity Market Unit continues to be Clean after the variation.

I.1.3.2 The Participant in respect of a Demand Side Unit may vary the mix of Demand Sites providing the load reduction capability that gives rise to the Awarded Capacity provided by that Unit provided that:

- (a) each individual Demand Site comprising the load reduction capability meets all requirements of this Code to be included as part of the Demand Side Unit;
- (b) at all times during the Capacity Year the cumulative de-rated capacity provided by the Demand Site or Demand Sites providing the load reduction capability equals or exceeds the Awarded Capacity provided by that Demand Side Unit applicable to that Capacity Year (except to the extent the System Operators agree otherwise in writing);
- (c) where the Awarded Capacity provided by that Demand Side Unit contributes to satisfying a Locational Capacity Constraint, it continues to do so to the same extent after the variation (except to the extent the System Operators agree otherwise in writing); and
- (d) where the Demand Side Unit is or forms part of a Capacity Market Unit that is Clean, the Capacity Market Unit continues to be Clean after the variation.

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 sub-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;
 - (iv) the directors of the Participant (or equivalent body, entity or person in the case of a Participant not being a company) have resolved, agreed or given approval (as the case may be) 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; and
 - (v) all necessary consents, licences, authorisations and permits in respect of the construction, commissioning, repowering or refurbishment works for each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity (including any necessary planning consents, licences, authorisations and permits) have been obtained.
- (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 full force and effect 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 has commenced which, for the avoidance of doubt, does not include design work, minor civil works or works to prepare the site for construction work.
- (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 or taking over the works 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:
 - (i) in respect of a new or refurbished Generator Unit, 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) is installed on-site; and
 - (ii) in respect of a new or refurbished Interconnector, when the necessary cabling is installed;
- (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 when 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 full force and effect 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 on the applicable Participant to satisfy or issue reports in respect of 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 issue reports in respect of 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 may be operated;
 - (f) the First Energy to Network Milestone shall not apply and there shall be no obligation to satisfy or issue reports in respect of this milestone;
 - (g) the Start of Performance/ Acceptance Testing Milestone shall not apply and there shall be no obligation to satisfy or issue reports in respect of this milestone; and
 - (h) the Provisional Acceptance/ Completion of Performance Testing Milestone shall not apply and there shall be no obligation to satisfy or issue reports in respect of this milestone.
- J.2.1.4 The System Operators may waive the requirement for a Participant to satisfy or issue reports in respect of 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, 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 any material respect; 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 first notifying the System Operators. Without limiting section B.21, the Participant shall have due regard to any comments or suggestions that the System Operators make concerning the proposed amendment, variation, termination or Transfer.
- J.2.1.7 A Participant shall:

- (a) notify the System Operators if it proposes to change its EPC Contractor or the supplier of a major component of the new or refurbished Generator Unit or Interconnector before appointing the new EPC Contractor or supplier; and
 - (b) have due regard to any comments or suggestions that the System Operators make concerning the proposal.
- 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 authorised 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 authorised 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 Value of not less than €1,000 million.
- J.3.1.2 A Bank which is a subsidiary that is not independently rated, is deemed to satisfy the requirements of paragraph J.3.1.1(c) if its parent company guarantees the obligations of the subsidiary and the parent 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 sufficient time for the System Operators to include it in the Initial Auction Information Pack:
 - (a) the Performance Security Posting Dates/ Events; and
 - (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 specified in the applicable Final Auction Information Pack.
- 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.3.2.7 For the purposes of this Chapter J, a Participant's designated currency is the currency of the Currency Zone in which the Capacity Market Unit providing the relevant Awarded New Capacity is Connected.
- 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;
- (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 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 paragraph 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 five 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 (to the extent required by the System Operators) 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 five 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 System Operators 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 the expiry of any prevailing Letter of Credit, the Participant shall procure that a replacement Letter of Credit is put in place in favour of the System Operators to secure the relevant Participant's payment obligations under the Code, 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, and shall not take any action, or fail to take any action, which would have the effect of allowing, 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:

- (a) the reporting schedule for Awarded New Capacity initially in the applicable Capacity Auction Timetable; and
- (b) 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 so that it can be included in the Capacity Auction Timetable for that Capacity 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 a 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 a Participant gives a notice under paragraph J.2.1.6 or J.2.1.7, or makes an application under section J.5, then the relevant Participant shall at the same time 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 in respect of:

- (a) achieving the Substantial Financial Completion Milestone, any other Major Milestone or Minimum Completion in relation to Awarded New Capacity; and
- (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 Participant Director certifying that, having made all due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director, 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)(v) is true and correct in relation to the Milestone; and
 - (ii) a copy of the resolution, agreement or approval 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 Participant Director certifying that, having made all due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director, 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 all 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)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 shall certify 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 **Extensions**

J.5.1.1 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 (on behalf of a Participant) may apply for approval from the System Operators for 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.5.1.2 An application under paragraph J.5.1.1J.5.1.1 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.5.1.3 The System Operators shall approve a request under paragraph J.5.1.1J.5.1.1, 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 (on behalf of a Participant) 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 in the Capacity Auction Timetable for the Capacity Auction in which the capacity was allocated.

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 to consider the request, together with sufficiently detailed 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 (on behalf of a Participant) 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 or taking over 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 Awarded New Capacity is to be provided.

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 in which the capacity was allocated (or such later date as allowed by the Regulatory Authorities under section 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, in an Implementation Progress Report, in a notice under paragraph J.2.1.6 or J.2.1.7 or in an application under section J.5 that is false or misleading in any material respect;
- (e) the Participant fails to post a Performance Security which satisfies the requirements of section J.3 by the Performance Security Date specified in the applicable 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 paragraph 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:
- (a) 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; and
 - (b) the Participant in respect of the Awarded New Capacity shall have no entitlement under this Code or the Trading and Settlement Code, and shall have no claim against the System Operators, in respect of any such quantity which has not been so delivered by the Long Stop Date.
- 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 independently verified report) prior to the T-1 Capacity Auction for the 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:
- (a) the Capacity Market Unit;
 - (b) the Generator Unit(s) or Interconnector comprising the Capacity Market Unit;
 - (c) the Capacity and Trade Register ID of the Awarded New Capacity;
 - (d) the 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) the quantity of Existing Capacity and Awarded Capacity (if any) remaining in respect of the Capacity Market Unit;

- (f) the Capacity Year(s) to which the Capacity Termination Notice relates;
 - (g) the effective date of the termination; and
 - (h) the Termination Charge(s) 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, by setting the Status Flag to "Terminated".
- 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's Party is Terminated under this Code prior to the earlier of:
 - (i) Awarded New Capacity associated with one or more of its Capacity Market Units achieving Substantial Completion; and
 - (ii) the Long Stop Date in respect of that Awarded New Capacity.
- 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 or the Defaulting Participant is Terminated:
- (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 in respect of each Capacity Market Unit; 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.7 in respect of each Capacity Market Unit 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 for calculating Termination Charges per MW applicable at the time the Awarded New Capacity is terminated or adjusted or the Defaulting Participant is Terminated, as determined by the Regulatory Authorities and specified in the Initial Auction Information Pack for the relevant Capacity Auction in which the relevant Awarded New Capacity was allocated (and, for this purpose, where the Defaulting Participant's designated currency is Sterling, that termination fee rate shall be converted to Sterling based on the Annual Capacity Payment Exchange Rate specified in the applicable Final Auction Information Pack); and
 - (c) ACO (expressed in MW) is the amount of the relevant Awarded New Capacity, or, if the relevant 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(s) 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 noon on that day. Payment made after noon 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 the System Operators shall add the amount paid or recovered to the Socialisation Balance for the following Settlement Day in accordance with paragraph F.21.1.3 of the Trading and Settlement Code.

K. EXCHANGE RATES

K.1 CONCEPTS

- K.1.1.1 The Annual Capacity Payment Exchange Rate is an exchange rate applicable to Capacity Year which converts the Capacity Payment Price for a primary or secondary trade from Euros to Sterling.
- K.1.1.2 The Annual Capacity Charge Exchange Rate is an exchange rate between Euros and Sterling applicable to a Capacity Year approved by the Regulatory Authorities under section F.19.1 of the Trading and Settlement Code.
- K.1.1.3 The Monthly Capacity Payment Exchange Rate is an exchange rate applicable to Capacity Period which converts the Capacity Payment Price for a secondary trade from Euros to Sterling.
- K.1.1.4 An Annual Capacity Payment Exchange Rate is applicable to the entirety of a Capacity Year.
- K.1.1.5 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 Initial 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 Information Pack 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:
 - (a) review the then published values of the Annual Capacity Payment Exchange Rates and Monthly Capacity Payment Exchange Rates relating

to future periods (in this paragraph called the “**future set**”) on a regular basis and may update any value in accordance with the methodology (but subject to paragraph K.2.1.6); and

- (b) if they update any value under sub-paragraph (a), re-publish the updated future set.

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 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 deemed 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 facsimile 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.2.4.5 Parties shall ensure that they comply with any IT security requirements reasonably specified by the System Operators from time to time.

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 practicable. 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 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 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.

L.3 **SUBMISSION, VALIDATION AND REJECTION OF DATA TRANSACTIONS**

- L.3.1.1 Subject to section L.4, and except where otherwise provided:
 - (a) a Participant shall submit an Application for Qualification using the Type 1 Channel;
 - (b) the System Operators shall provide Participants with Provisional SO Qualification Decisions under section E.9.2 and approved Final Qualification Decisions under paragraph E.9.4.9 using the Type 2 Channel;
 - (c) a Participant shall submit Capacity Auction Offers, Secondary Auction Bids or Secondary Auction Offers using the Type 2 Channel;

- (d) the System Operators shall release final Capacity Auction Results to Participants under paragraph F.9.4.1 using the Type 2 Channel;
 - (e) the System Operators shall release Secondary Trade Auction Results to Participants under paragraph H.9.1.1 using the Type 2 Channel; and
 - (f) the Sending Party shall send any other Data Transaction using the Type 1 Channel.
- L.3.1.2 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, at the time that it is deemed to be received in accordance with paragraph B.26.2.5 and has successfully completed initial validation checks to ensure that the Capacity Market Platform can receive the data as specified in the Technical Specification.
- L.3.1.3 If they receive a Data Transaction prior to the applicable deadline, then the System Operators shall:
- (a) assess the Data Transaction to determine whether it is valid in accordance with the Technical Specification;
 - (b) determine a Data Transaction to be valid if the conditions set out in the Technical Specification are satisfied in respect of that Data Transaction and shall reject the Data Transaction if such conditions are not satisfied;
 - (c) if they determine the Data Transaction to be valid, 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; and
 - (d) if they reject the Data Transaction, 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 Technical Specification. The System Operators shall specify in any Rejection Notice the conditions set out in the Technical Specification that were not satisfied.
- L.3.1.4 If the Sending Party does not receive a Confirmation Notice or a Rejection Notice by the time it is due then the Sending Party shall contact the System Operators in order to establish whether or not its Data Transaction has been received.
- L.3.1.5 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.3.1.2, 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.3.1.6 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.3.1.7 The System Operators shall use the Data Transaction as required by paragraph L.3.1.6 regardless of whether or not it has issued a Confirmation Notice to the Sending Party in respect of that Data Transaction.

- L.3.1.8 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(q).

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 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 and for so long as 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 being appointed 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 being appointed 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 Implementation Date, in some cases for a transitional period which is specified herein.

M.1.2 Chapter M Prevails

M.1.2.1 Subject to paragraph M.1.2.2, this Chapter M 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 M prevails to the extent of the inconsistency or conflict.

M.1.2.2 This Chapter M may be Modified in accordance with section B.12.

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 the Cutover Time and terminates at the end of the Trading Day ending on 30 September 2019.

M.2.1.2 In relation to the Capacity Auction for the first Capacity Year:

- (a) notwithstanding paragraph D.2.1.4, the System Operators shall prepare a proposed Capacity Auction Timetable for the first Capacity Auction containing the proposed dates (and, if applicable, times) for each of the events identified in Appendix C "Capacity Auction Timetable" as soon as practicable after the commencement of this Code;
- (b) the scheduled Capacity Auction Run Start shall be a time on the date specified in the Capacity Auction Timetable for the first Capacity Auction prepared by the System Operators under paragraph (a) and approved, substituted or amended under section D.2 (or such later date agreed by the System Operators and the Regulatory Authorities); and
- (c) for the avoidance of doubt, Capacity Auction Offers for the first Capacity Auction are to reflect the revenue a Participant is seeking to recover in respect of a Capacity Market Unit through the Capacity Market for a period of 12 months.

M.3 TRANSITIONAL CAPACITY AUCTIONS

M.3.1 Transitional Period

M.3.1.1 The Transitional Period commences at the Cutover Time and ends at the end of the Capacity Year ending on 30 September 2022.

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 not conduct T-4 Auctions for Capacity Years that fall within the Transitional Period.

M.3.2.2 The System Operators shall conduct T-1 Auctions for Capacity Years that fall within the Transitional Period.

M.3.2.3 For the avoidance of doubt, during the Transitional Period:

- (a) the Regulatory Authorities may instruct the System Operators to conduct a T-2 Auction or a T-3 Auction for Capacity Years during the Transitional Period in accordance with paragraphs D.2.1.2 and D.2.1.3 where practicable to do so; and
- (b) the System Operators shall also conduct T-4 Auctions (and the Regulatory Authorities may instruct the System Operators to 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 Other

The System Operators may, during the Transitional Period, waive the requirement for a Participant to achieve a Major Milestone if they are satisfied that the Participant has achieved a later Major Milestone or an Additional Milestone for which achieving the Major Milestone was a pre-requisite.

M.4 INTERIM SOLUTION FOR CONDUCTING CAPACITY AUCTIONS

M.4.1.1 The interim auction solution (called the "**Interim Auction Solution**") set out in this section M.4 shall apply in the case of a Capacity Auction unless:

- (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 the interim auction solution 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 Information Pack Date for that Capacity Auction being published.

M.4.1.2 Where the Interim Auction Solution applies in the case of a Capacity Auction:

- (a) paragraphs M.4.1.3 to M.4.1.5 have effect in relation to that Capacity Auction in place of paragraph F.8.3.4; and
- (b) paragraph M.4.1.6 has effect in relation to that Capacity Auction in place of paragraph F.8.4.4(c).

M.4.1.3 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 Incremental Net Social Welfare determined under paragraph M.4.1.4. 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 Incremental Net Social Welfare determined with the accepted offer treated

as being already scheduled to the level determined under paragraph F.8.3.3;

- (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 Incremental Net Social Welfare under paragraph M.4.1.4, 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.

M.4.1.4 The Incremental Net Social Welfare of a price-quantity pair is the maximum value determined by the System Operators, by varying q , of:

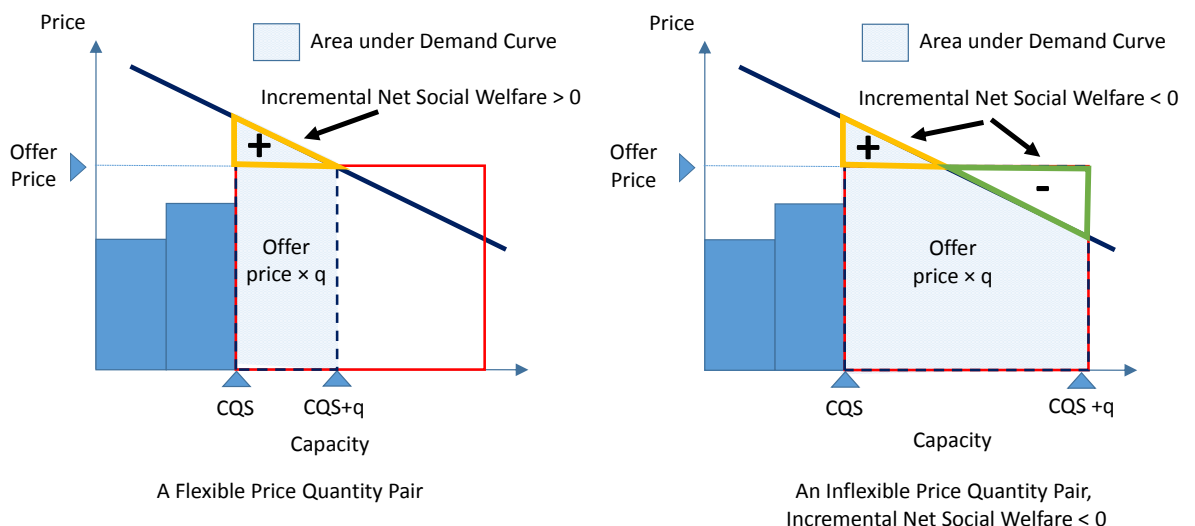
- (a) the area under the Demand Curve between CQS and CQS + q , in each case as set out in the x axis in the diagrams in paragraph M.4.1.5; and
- (b) less the price of the price-quantity pair multiplied by the value of q ,

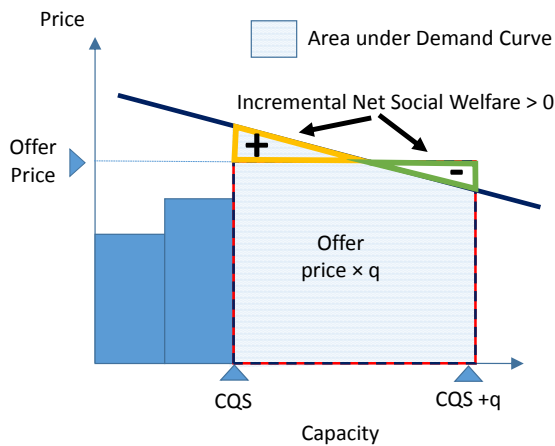
where:

- (c) for an Inflexible price-quantity pair, “ q ” is fixed and equals the maximum quantity offered;
- (d) for a Flexible 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,

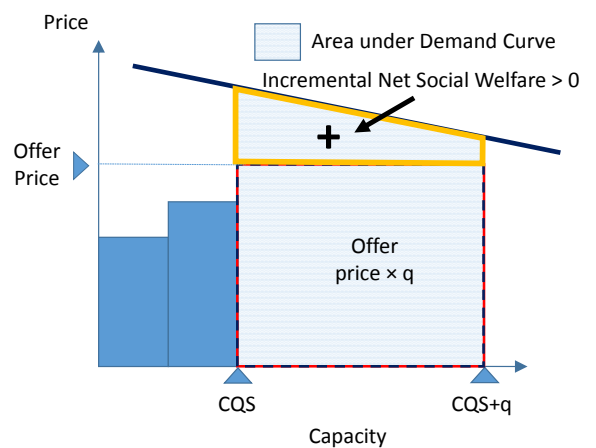
in each case as further described in the diagrams in paragraph M.4.1.5.

M.4.1.5 The process in paragraph M.4.1.4 is illustrated in the following diagrams:





An Inflexible Price Quantity Pair,
Incremental Net Social Welfare > 0



The determination of Incremental Net Social Welfare
for 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

M.4.1.6 Where the Interim Auction Solution applies in the case of a Capacity Auction, paragraph F.8.4.4(c) shall be replaced with the following:

“(c) The set of price-quantity pairs 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; and
- (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.4.1.7 Where the Interim Auction Solution applies in the case of a Capacity Auction, for the purposes of applying paragraphs F.8.4.6 and F.8.4.7, any quantity in a price-quantity pair that has been cleared under paragraph F.8.4.4(c) (as replaced in accordance with paragraph M.4.1.6) is not subject to a tie, although any remaining uncleared quantity in the price-quantity pair may be.

M.5 LOCATIONAL CAPACITY CONSTRAINTS

M.5.1.1 Notwithstanding sections C.2 and F.4, the System Operators shall not determine or apply Locational 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.5.1.2 Where the System Operators are required by paragraph M.5.1.1 not to determine or apply Locational Capacity Constraints in respect of a Capacity Auction, then they are also not required to perform, comply with or observe any other obligation under this Code that is dependent on the determination or application of Locational Capacity Constraints in relation to that Capacity Auction and no other Party shall have any claim against the System Operators in respect of any such non-performance, non-compliance or non-observance.

M.6 ALTERNATIVE AUCTION SOLUTION METHODOLOGY

M.6.1.1 This section M.6 shall apply in the case of a Capacity Auction unless:

- (a) prior to the Final Auction Information Pack Date for that Capacity Auction being published, the Regulatory Authorities notify the System Operators in writing that this section 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 notification was given to the System Operators prior to the Final Auction Information Pack Date for that Capacity Auction being published.
- M.6.1.2 If this section M.6 applies in the case of a Capacity Auction, then the System Operators:
- (a) may conduct the Capacity Auction applying an alternative Auction Solution Methodology; and
 - (b) if they choose to do so, shall submit to the Regulatory Authorities for approval an Alternative Auction Solution Methodology that reflects the principles set out in M.6.1.7.
- M.6.1.3 The System Operators may submit to the Regulatory Authorities for approval amendments to an Alternative Auction Solution Methodology that the Regulatory Authorities have previously approved.
- M.6.1.4 The Regulatory Authorities may by written notice to the System Operators approve or reject an Alternative Auction Solution Methodology or an amendment to an Alternative Auction Solution Methodology submitted by the System Operators under paragraph M.6.1.2(b) or M.6.1.3 and shall in the notice give reasons in the case of rejection.
- M.6.1.5 The System Operators shall specify in the Final 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.6.1.6 When the System Operators conduct a Capacity Auction applying the Alternative Auction Solution Methodology, the following paragraph shall replace paragraph F.8.5.1 for the purposes of that Capacity Auction:
- “The System Operators 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.6.1.7 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.4.1.6 (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 Locational Capacity Constraint is satisfied, or if this is not possible, that the shortfall is minimised;

(c) if the Price Setting Offer:

- (i) was Inflexible;
- (ii) was scheduled because of paragraph F.8.3.3 at a level greater than zero MW and less than its maximum quantity; and
- (iii) was not required to be cleared to a quantity above zero 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 Net Social Welfare under paragraph F.8.4.2;

- (d) the methodology shall provide for 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 Net Social Welfare under paragraph F.8.4.2 applies; 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.7 INTERIM SECONDARY TRADING ARRANGEMENTS

M.7.1 Commencement

M.7.1.1 The **First Secondary Trading Day** is the date and time specified by the Regulatory Authorities as the time the Secondary Trading arrangements under Chapter H commence, which time will coincide with the start of a Trading Day.

M.7.1.2 In deciding on the First Secondary Trading Day to be specified under paragraph M.7.1.1, the Regulatory Authorities shall have regard to the time that it will take the System Operators to put in place the necessary systems and processes, design Product Types and complete activities required under this Code before the Secondary Trading arrangements under Chapter H commence.

M.7.1.3 If the Regulatory Authorities notify the System Operators of the First Secondary Trading Day, then the System Operators shall publish those details.

M.7.2 Impact on Capacity and Trade Register

M.7.2.1 For any date after the finalisation of the first Capacity Auction Results under section F.9.4 and prior to the First Secondary Trading Day, this section M.7.2 shall apply.

M.7.2.2 A Participant may submit to the System Operators a written notice (called an "**Interim Secondary Trade Notification**") specifying:

- (a) a Capacity Market Unit to which the Interim Secondary Trade Notification relates;

- (b) whether the Interim Secondary Trade Notification is to commence (make “Active”) or cease (make “Inactive”) the interim secondary trading arrangements under paragraph M.7.2.6 (called “**Interim Secondary Trading Arrangements**”) in respect of the Capacity Market Unit;
 - (c) the Month from which the Interim Secondary Trade Notification becomes effective; and
 - (d) the change in Net Capacity Quantity from Existing Capacity sought for any Planned Outage commencing during any Month to which the Interim Secondary Trade Notification is in effect, which must be a negative quantity or zero.
- M.7.2.3 At any time, Interim Secondary Trade Arrangements in respect of a Capacity Market Unit are Inactive if no valid Interim Secondary Trade Notification is currently in effect in respect of the Capacity Market Unit and, otherwise, have the status specified in the last valid Interim Secondary Trade Notification submitted that is currently in effect.
- M.7.2.4 A Participant shall submit an Interim Secondary Trade Notification to the System Operators no later than ten Working Days prior to the beginning of the Month specified in the Interim Secondary Trade Notification under paragraph M.7.2.2(c). Any Interim Secondary Trade Notification submitted after this date shall not become effective until the Month after the Month specified in the Interim Secondary Trade Notification under paragraph M.7.2.2(c).
- M.7.2.5 For Months in which the Interim Secondary Trade Arrangements are Inactive in respect of a Capacity Market Unit, the System Operators shall make no change to the Capacity and Trade Register if a Generator Unit or Interconnector comprising that Capacity Market Unit is undergoing a Planned Outage.
- M.7.2.6 For Months in which Interim Secondary Trade Arrangements are Active in respect of a Capacity Market Unit, the System Operators shall, for periods in which one or more of the Generator Units or the Interconnector comprising the Capacity Market Unit has commenced a Planned Outage, record one or more notional Secondary Trades in the Capacity and Trade Register with a Selling Trade ID assigned and a status of “Accepted” (in accordance with Appendix F), as follows:
- (a) the notional Secondary Trade starts at the beginning of the first Imbalance Settlement Period on the first Trading Day of the Planned Outage;
 - (b) the notional Secondary Trade ends at the earlier of:
 - (i) the last Imbalance Settlement Period on the last Trading Day of the Planned Outage;
 - (ii) the end of the Capacity Year;
 - (iii) the end of the hour immediately preceding the First Secondary Trading Day; and
 - (iv) the date that the maximum Planned Outage duration (as determined and published from time to time for these purposes by the Regulatory Authorities) after the first day of the Planned Outage expires;
 - (c) the Selling Capacity Market Unit Identifier is set so as to identify the Capacity Market Unit to which the Planned Outage relates;
 - (d) the quantity of the notional Secondary Trade (Capacity Quantity) is the greater of:

- (i) the change in the Net Capacity Quantity sought (being the value specified under paragraph M.7.2.2(d) in the applicable Interim Secondary Trade Notification); and
 - (ii) the negative of the maximum Net Capacity Quantity from Existing Capacity associated with the Capacity Market Unit over the duration of that notional Secondary Trade;
- (e) the price of the notional Secondary Trade is the volume weighted average Capacity Payment Price in respect of all the Awarded Capacity in respect of Existing Capacity that was awarded in a Capacity Auction in respect of that Capacity Market Unit which applies over the duration of the notional Secondary Trade; and
- (f) the Capacity Duration Exchange Rate value is the Annual Capacity Payment Exchange Rate specified in the Final Auction Information Pack for the most recent Capacity Auction in respect of the Capacity Year to which the notional Secondary Trade relates.

M.7.2.7 The System Operators shall ensure that no more than one notional Secondary Trade applies to a Capacity Market Unit at any time and shall amend and add further notional Secondary Trades to the Capacity and Trade Register to account for changes in duration of the Planned Outage and for changes in the Net Capacity Quantity from Existing Capacity associated with a Capacity Market Unit arising from the commissioning of Awarded New Capacity associated with that Capacity Market Unit.

M.7.2.8 At any time during a notional Secondary Trade, the Net Capacity Quantity calculated under paragraph I.1.1.1 is reduced by the absolute value of the quantity of the notional Secondary Trade.

M.7.2.9 The System Operators shall store at least one copy of all Interim Secondary Trade Notifications and notional Secondary Trades in a safe and secure environment for six years from the date of such notifications or trades.

M.8 PARAMETERS AND PRIOR ACTS

M.8.1.1 Where a provision of this Code contemplates that a parameter, price, multiplier, factor, tolerance, tariff, proportion, rate, amount or other variable ("**Relevant Parameter**") which applies for a period will be determined or approved by the Regulatory Authorities or the System Operators, then the Regulatory Authorities or the System Operators (as applicable) may determine or approve the value of that Relevant Parameter before the provision takes effect (until varied, amended, redetermined or redecided in accordance with the Code).

M.8.1.2 For the avoidance of doubt, the System Operators may perform a function or take action contemplated by the Code before the date the Capacity Market Framework Agreement takes effect (in this section M.8 called the "**Contract Date**").

M.8.1.3 Without limiting paragraph M.8.1.1 or M.8.1.2, where the Regulatory Authorities or the System Operators make a decision in contemplation of the coming into effect of a provision of this Code or the System Operators perform a function or take an action before the Contract Date:

- (a) the decision will, from the time the provision takes effect, be deemed to have been validly made under the relevant provision of this Code;
- (b) the function will be deemed to have been performed, and the action will be deemed to have been taken, validly under this Code;

- (c) if, under this Code, the Regulatory Authorities or the System Operators can only make the decision, perform a function or take action after a preparatory step has been undertaken, that preparatory step:
 - (i) can be undertaken before the time the provision takes effect and the Contract Date (as applicable); and
 - (ii) will be deemed to have been satisfied or completed for the purposes of this Code.

M.8.1.4 For the purposes of this section M.8, a decision includes:

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

M.8.1.5 For the purposes of this section M.8, a preparatory step includes:

- (a) a condition that must be satisfied before a decision can be made, a function exercised or an action taken;
- (b) a requirement that a report be prepared or submitted before a decision can be made, a function exercised or an action taken; 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 Implementation Date does not coincide with the start of the audit period, then the first audit under section B.11 shall be from the Implementation 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 Deed	means the 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	means, in relation to any Reserve Account: (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.8.5.2.
Alternative Auction Solution Methodology	means an alternative methodology for clearing price-quantity pairs in accordance with section M.6 approved by the Regulatory Authorities.
Alternative Qualification Process	means the process for qualification contemplated by paragraph E.7.7.
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 Charge Exchange Rate	means an exchange rate between Euros and Sterling applicable to a Capacity Year approved by the Regulatory Authorities under section F.19.1 of the Trading and Settlement Code.

Annual Capacity Payment Exchange Rate	means an exchange rate applicable to a Capacity Year 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. The Annual Stop-Loss Limit Factor applicable to Awarded Capacity allocated in a Capacity Auction is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.
AP Modification Proposal	means any proposal to Modify 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 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 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	means a Capacity Auction or a Secondary Trade Auction.
Auction Clearing Price	means the price at which the Capacity Auction clears, and is determined in accordance with paragraph F.8.3.5.
Auction Information Pack Date	means the scheduled publication date for the Initial 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.
Audit Report	means a report by the Capacity Market Auditor, as contemplated by paragraph B.11.1.6(d).
Autoproducer Demand Reduction Volume	in respect of an Autoproducer Site, means that portion of the sum of the Gross De-Rated Capacity (Existing) over all of the Autoproducer Units within the Autoproducer Site that can only be delivered by reducing demand at the Autoproducer Site.
Autoproducer Offer Price Cap Breakpoint	the value determined in accordance with paragraph E.8.4.1.
Autoproducer Site	has the meaning given in the Trading and Settlement Code.
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. The Billing Period Stop-Loss Limit Factor applicable to Awarded Capacity allocated in a Capacity Auction is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.

Buyer Limit	has the meaning given in section H.7.3.2
Candidate Unit	means a Generator Unit or Interconnector which is deemed 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.5.2.10. 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 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	in respect of a Capacity Auction, has the meaning given in paragraph F.9.1.1.
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 Run Start	in respect of a Capacity Auction, means the day and time that the System Operators initiate the run of the software program referred to in paragraph F.8.5.1 for that Capacity Auction.
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.
Capacity Charges	means the charges calculated in accordance with section F.19 of the Trading and Settlement Code.
Capacity Duration Exchange Rate	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 (whether through the provision of generation, electricity supplied via interconnectors, reduction in demand or otherwise) across the Island of Ireland; 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 Communication Outage	means a period during which the normal communication interfaces between each other Party and the System Operators are unavailable, leading to a failure of all such Parties to comply with the data submission requirements under this Code.
Capacity Market Dispute Resolution Board or CMDRB	means a capacity market dispute resolution board established pursuant to section B.14.5 or B.14.6.
Capacity Market Framework Agreement	means the agreement (including any Accession Deed) 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 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 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 section F.17 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 to be used in a Capacity Auction, and is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.
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	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: (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 or off-setting load through the generation of electricity using only renewable energy sources.
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_{QV})	is determined in accordance with section G.3.
Commissioning Status Flag	a flag in the Capacity and Trade Register indicating whether the Capacity Quantity Commissioning Date for Awarded Capacity is “Forecast” or “Actual”.
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”.
Communication Channel Qualification	means the requirements for qualification of a Communication Channel provided for pursuant to paragraph L.2.4.2 and as 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, Energy and Industrial Strategy, the Department of the Economy in Northern Ireland, the Commission, the 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 supra-national 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.
Cutover Time	has the meaning given in Part C of the Trading and Settlement Code.
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: (a) the Party has failed to observe or perform any obligation under this Code or its Capacity Market Framework Agreement where that failure has 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) – (h) 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.
Defaulting Party	means a Party that is in Default.
Demand Curve	means in respect to a Capacity Auction a curve determined 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.
Demand Site	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.8.5.2.
De-Rating Curve	means a curve for a Technology Class that represents the De-Rating Factor applicable by unit Initial Capacity to be used in a Capacity Auction and is determined by the Regulatory Authorities and provided to the System Operators under paragraph D.3.1.3.
De-Rating Factor	means a factor between zero and one describing the proportion of Initial Capacity of a Generator Unit or Interconnector that can contribute to the satisfying the Capacity Requirement to be used in a Capacity Auction.
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 in respect of Supplier Units 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.
Disputed Event	in respect of a Dispute, means the event, circumstance, claim, difference, Default, assertion of right or entitlement, or denial of right or entitlement, in relation to which a Party seeks to raise the Dispute and in the case of a Dispute relating to a series of such events, shall mean the earliest disputed event.
Dispute Resolution Process	means the process for resolving Disputes as set out in section B.14.
Disputing Party	means any Party to a Dispute.
Distribution Code	means: <ul style="list-style-type: none"> (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 (or any of its other assets) 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	has the meaning given in paragraph E.5.1.2.
Exception Application Date	means the last day a Participant can make an Exception Application in respect of a Capacity Auction, as specified in the applicable Capacity Auction Timetable.

Existing Capacity	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, Generator Unit or Interconnector forming the whole or part of a Capacity Market Unit or proposed Capacity Market Unit, as determined when the Generator, Generator 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.
Existing Capacity Offer Price Cap Curve	in respect of Existing Capacity associated with a Capacity Market Unit, is the curve determined by the System Operators under paragraph E.8.7.2 for that Existing Capacity.
Existing Capacity Price Cap	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.
FDERATE_Ω	has the meaning given in Appendix F.
Final Auction Information Pack	means an information pack prepared by the System Operators for the purpose of informing potential participants in a Capacity Auction of the timing, requirements and conduct of the Capacity Auction, including the Final Auction Parameters.
Final Auction Information Pack Date	means the date by which the System Operators are expected to publish the Final Auction Information Pack in respect of a Capacity Auction, as specified in the applicable Capacity Auction Timetable.
Final Compliance Certificate	means a final compliance certificate issued by SONI in accordance with the Northern Ireland Grid Code for a wind farm power station connected to the Transmission System or the Distribution System and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by SONI instead of a final compliance certificate.
Final Operational Notification or FON	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 who complies with the relevant specifications and requirements, allowing them to operate respectively a power-generating module, demand facility, distribution system or HVDC system by using the grid connection..
Final Qualification Submission Date	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.

Final Qualification Decisions	means the final set of Qualification Decisions in respect of each Capacity Market Unit from the Qualification Process identified in paragraph E.9.4.1, as approved (or deemed to have been approved) or substituted by the Regulatory Authorities in accordance with section E.9.4.
Final Qualification Results Date	means the date by which the System Operators are expected to inform 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 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).
First Secondary Trading Day	has the meaning given in paragraph M.7.1.1.
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 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 section B.16.1.
Forced Outage	in respect of a Generator Unit or an Interconnector, has the meaning given in the applicable Grid Code.

Form of Authority	has the meaning given in the Trading and Settlement 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.
General Dispute	has the meaning given in paragraph B.14.1.3(b).
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. Its 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 Date	means the date specified by the Regulatory Authorities as the commencement date of this Code.
Implementation Plan	means in respect of Awarded New Capacity the milestones 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 Increase Tolerances for different Technology Classes.
Incremental Net Social Welfare	is described in paragraphs M.4.1.4 and M.4.1.5.
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) or maximum quantity in the range of the quantity offered at that price may be cleared in the Capacity 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.
Initial Auction Information Pack	means an initial information pack prepared by the System Operators for the purpose of informing potential participants in a Capacity Auction of the timing, requirements and conduct of the Capacity Auction.
Initial Auction Information Pack Date	means the last publication date for an Initial Auction Information Pack, as specified in the relevant Capacity Auction Timetable.
Initial Capacity	has the meaning given in section C.3.
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	<p>means, in respect of a person, that any of the following events has occurred:</p> <ul style="list-style-type: none"> (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; or (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 to it 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: <ul style="list-style-type: none"> (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 Auction Solution	has the meaning given in paragraph M.4.1.1.
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.
Interim Secondary Trade Notification	has the meaning given in paragraph M.7.2.2.
Interim Secondary Trading Arrangements	has the meaning given in paragraph M.7.2.2(b).
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 Locational Capacity Constraint	means a Locational 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 Locational Capacity Constraint	means a Locational 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.
Locational Capacity Constraint Area	in respect of a Locational Capacity Constraint, has the meaning given in paragraph C.2.2.2(b).
Locational Capacity Constraint	means a constraint determined by the System Operators in accordance with section C.2 (as adjusted under section F.4).
Locational Capacity Constraint Information	in respect of a Locational Capacity Constraint, means the following information: <ul style="list-style-type: none"> (a) the name; (b) the Locational Capacity Constraint Required Quantity; (c) whether the Locational Capacity Constraint is a Level 1 Locational Capacity Constraint or a Level 2 Locational Capacity Constraint; and (d) for a Level 2 Locational Capacity Constraint, the Level 1 Locational Capacity Constraint it falls within.

Locational Capacity Constraint Required Quantity	in respect of a Locational Capacity Constraint, means the quantity (in MW) determined by the System Operators under paragraph F.4.1.1, as reduced under paragraph F.4.1.6 or adjusted under paragraph F.4.1.8.
Long Stop Date	has the meaning given in paragraph J.6.1.1(b).
Loss Adjusted	has the meaning given in the Trading and Settlement Code.
Major Contracts	means, for a new or refurbished Generator Unit or Interconnector: <ul style="list-style-type: none"> (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 (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.
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 their respective 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.
Market Operator Licence	means a licence to act as the Single Electricity Market operator under the Electricity Regulation Act 1999 in Ireland or as the SEM operator under the Electricity (Northern Ireland) Order 1992 in Northern Ireland.
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.8.6.
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).
Metered Quantity	has the meaning given in the Trading and Settlement Code.
Metering Code	means, for Ireland, the code of that name prepared by the Distribution System Operator(s) and approved by the Commission; and means, for Northern Ireland, the subset of the Northern Ireland Grid Code pertaining to meter reading, Meter Data processing and Meter Data communications; or for Ireland the “Retail Market Design” and for Northern Ireland the “Market Registration Code” as appropriate.
Milestones	means: (a) the Major Milestones specified in paragraph J.2.1.1; and (b) the Additional Milestones specified in paragraph J.2.1.2.
Minimum Completion	has the meaning given in paragraph J.6.1.1(a).
Modification	means a modification, revision, amendment, variation, supplementation, extension, consolidation or replacement to the provisions of this Code (including, for the avoidance of doubt, to the Agreed Procedures). The term “ Modify ” shall be interpreted accordingly.
Modification Finalisation Date	has the meaning given in paragraph B.12.3.1.
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	means an exchange rate applicable to a Capacity Period 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.
Mothballed	in relation to a Generator Unit or Interconnector, means that the Generator Unit or Interconnector has been placed on 'care and maintenance' so that, while it has not been permanently Closed, it is not available to generate, consume or transmit electricity and the plant is being managed to ensure that it remains in a safe and stable condition.
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 Capacity Quantity	at any time in respect of a Capacity Market Unit, is calculated in accordance with section I.1.1.
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 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 Social Welfare	is described in paragraph F.8.4.2.
New Capacity	means, in respect of the Qualification Process and its associated Capacity Auction, the planned capacity of a new Generator, Generator 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, Generator 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 year and is provided to the System Operators under paragraph D.3.1.3.

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 by 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.1.1.
Offer Price Cap	has the meaning given in paragraph E.8.7.1.
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 and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by the relevant System Operator instead of an operational certificate.
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.
Original Party	has the meaning given in the Capacity Market Framework Agreement.
Other Qualification Decisions	means the decisions in respect of a Capacity Market Unit following a Qualification Process described in paragraph E.9.1.2.
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 deemed 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 Director	<p>in respect of a Participant:</p> <ul style="list-style-type: none"> (a) which is a corporation (excluding, for the avoidance of doubt, a partnership under limb (b) of this definition), means a director or member of the governing body of the corporation or the company secretary of the corporation; (b) which is a partnership, means (as applicable) a person duly authorised on behalf of the general partner of the partnership to bind the partnership, a person who has been duly authorised to bind the partners of the partnership or a person who has been duly authorised to bind the partnership on behalf of all of the partners, in each case in accordance with Applicable Law and/ or any applicable partnership agreement; and (c) which is not a corporation, means a person (as applicable) controlling the Participant or holding a senior office or position within the Participant, which may include, but is not limited to, an owner of the Participant, a sole trader or a senior manager within the Participant, <p>or another senior officer of the Participant acceptable to the System Operators.</p>
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 Operators 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 submit 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/ Events. The Performance Security Posting Dates/ Events applicable to Awarded Capacity allocated in a Capacity Auction are determined by the Regulatory Authorities and provided to the System Operators.
Performance Security Provider	in respect of a Participant, means the Relevant Bank which has issued a Letter of Credit posted by the Participant under section J.3, or the SEM Bank if the Participant has a Reserve Account as contemplated by section J.3, or each or both of them as appropriate.
Personal Data	has the meaning set out in the Data Protection Legislation.
Planned Outage	in respect of a Generator Unit or an Interconnector, means a total or partial reduction in Outturn Availability (as defined in the Trading and Settlement Code) of the Generator Unit or Interconnector due to an outage which is included in the Committed Outage Programme (Ireland) or the Final Outage Programme (Northern Ireland), or a planned outage on a component of the Transmission System, 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 A.3.1.1(o).
Prescribed Timeframe	has the meaning given in paragraph A.3.1.1(o).
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.
Primary Trade Flag	a flag in the Capacity and Trade Register indicating that Awarded Capacity is a Primary Trade.
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.3.4 specifying the design features and price cap applicable to each Product Type and includes a replacement document published under that paragraph.
Product Load Following Factor	has the meaning given in paragraph H.3.3.1.
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.
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 SO Qualification Decisions	means a provisional set of SO Qualification Decisions in respect of a Capacity Market Unit resulting from the Qualification Process for a Capacity Auction, which are provided to the relevant Participant in accordance with section E.9.2.
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 Results Date	means the date by which the System Operators are expected to inform Participants of the Provisional SO 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 Operators 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 SO Qualification Decisions and the Other Qualification Decisions.
Qualification Dispute	has the meaning given in paragraph B.14.1.3(a).
Qualification Process	has the meaning given in paragraphs E.1.1.1 and E.1.1.2.
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	in respect of: <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 and/ or Secondary Trade 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.
Relevant Parameter	has the meaning given in paragraph M.8.1.1.
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 under this Code by the System Operators 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 Operators in the name of the System Operators under paragraph 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.9.3.1.
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.

Secondary Trade Auction	means an auction of a specific type of Product conducted under Chapter H.
Secondary Trade Flag	a flag in the Capacity and Trade Register indicating that Awarded Capacity is a Secondary Trade.
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.
Settlement Day	has the meaning given in the Trading and Settlement Code.
Socialisation Balance	has the meaning given in paragraph F.21.1.3 of the Trading and Settlement Code.
SONI	SONI Limited incorporated in Northern Ireland (Registered Number NI038715) whose registered office is situated at Castlereagh House, 12 Manse Road, Belfast.
SO Qualification Decisions	means the decisions by the System Operators in respect of a Capacity Market Unit following a Qualification Process as described in paragraph E.9.1.1.

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).
Status Flag	a flag in the Capacity and Trade Register indicating whether Awarded Capacity is “Pending”, “Active” or “Terminated”.
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-1 Implementation Progress Report	has the meaning given in paragraph J.4.3.1(b)

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.
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).
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 issued by SONI in accordance with the Northern Ireland Grid Code for a wind farm power station connected to the Transmission System or the Distribution System and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by SONI instead of a temporary compliance certificate.
Termination	means the termination of a person 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 or B.13.6.3 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 Single Electricity Market Trading and Settlement Code contemplated by the Market Operator Licences issued to EirGrid and SONI.
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 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)I 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 Offer Price Cap Breakpoint	has the meaning given in paragraph E.5.1.8(b)(ii).

Unit Specific Price Cap	means a cap on prices in price-quantity pairs submitted as part of a Capacity Market Offer associated with specific Existing Capacity that has been approved by the Regulatory Authorities in place of the Existing Capacity Price Cap.
Unit Type	each of the following types of Unit: Variable Generator Units, Demand Side Units, Interconnectors, Autoproducer Units, Aggregated Generator Units, other Dispatchable Generator Units and other Generator Units which are not Dispatchable.
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 Generator Unit whose primary energy source is wind, solar, wave, tidal or run-of-river hydro energy, where the short-term availability of the Generator Unit fluctuates based on the availability of its primary energy 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 paragraph B.13.8.3 in relation to the Voluntary Termination of a Party.

Working Day or WD means a week day 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”

Appendix D: “Qualification Data”

Appendix E: “Qualification Capacity Register Data”

Appendix F: “Capacity and Trade Register Data”

Appendix G: “Data Publication”

Appendix H: “Template for Standard Letter of Credit”

Appendix J: “Template for Deed of Charge and Account Security”

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 an Accession Deed, 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 60 Working 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 that are 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.14.2.8 thereof, preserve and allow for the continuing and proper operation of the Code and the Capacity Market having regard to the Capacity Market Code Objectives;
 4. resolve disputes on an equitable basis in accordance with the provisions of the Code having regard to the Capacity Market Code Objectives; 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. where the Dispute is not a Qualification Dispute, 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

jurisdiction of any of the Courts of Ireland and the Courts of Northern Ireland (and no other court) 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 a 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 dates 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 information to be included in the Capacity Auction Timetable is:
 - (a) the start and end date of the Capacity Year to which the Capacity Auction Timetable relates;
 - (b) in the case of the first Capacity Auction for the Capacity Year, the date by which the System Operators shall determine the Locational Capacity Constraints applicable to Capacity Auctions for that Capacity Year;
 - (c) the specific timing of the events related to the Capacity Auction listed in Table A, where Table A includes indicative timings only;
 - (d) the specific timings of the events related to Qualification Disputes listed in Table B, where Table B includes indicative timings only; and
 - (e) the specific dates by which Participants shall submit Implementation Progress Reports in respect of Awarded New Capacity resulting from the Capacity Auction.
- 6 In Tables A and Table B the final column gives an indication of the likely timing of the various steps. In the final column:
 - (a) the expression "A" refers to the Capacity Auction Run Start;
 - (b) the expression "A - x weeks" refers to the event occurring during the week which is x weeks before the Capacity Auction Run Start;
 - (c) the expression "A - x Working Days" refers to the event occurring during the Working Day which ends x Working Days before the Capacity Auction Run Start;
 - (d) the expression "A + x Working Days" refers to the event occurring during the Working Day which ends x Working Days after the Capacity Auction Run Start; and

- (e) the expression “A + x weeks” refers to the event occurring during the week which is x weeks after the Capacity Auction Run Start.

TABLE A: CAPACITY AUCTION TIMETABLE INDICATIVE TIMEFRAME

	Event	Indicative timeframe
1	Initial Auction Information Pack Date: the last publication date for the Initial Auction Information Pack	A-24 weeks
2	Opt-out Notification Date: the last date a Participant can submit an Opt-out Notification	A-22 weeks
3	Exception Application Date: the last time a Participant can make an Exception Application to the Regulatory Authorities	A-20 weeks
4	Qualification Application Date: the last date a Participant can submit an Application for Qualification in respect of the Capacity Auction	A-20 weeks
5	Provisional Qualification Results Date: the date by which the System Operators are expected to inform persons who submit Applications for Qualification of Provisional SO Qualification Decisions in respect of the Capacity Auction	A-10 weeks
6	Final Qualification Submission Date: the date by which the System Operators are expected to provide Final Qualification Results in respect of the Capacity Auction to the Regulatory Authorities for approval	A-4 weeks
7	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 the Capacity Auction	A-2 weeks
8	Qualification Results Publication Date: the date by which the System Operators are expected to publish the total Qualified capacity in respect of the Capacity Auction	A-2 weeks
9	Date for finalising the Locational Capacity Constraint Limits for the Capacity Auction	A-2 weeks
10	Final Auction Information Pack Date: the date by which the System Operators are expected to publish the Final Auction Information Pack for	A-2 weeks

	the Capacity Auction	
11	Capacity Auction Submission Commencement: the earliest date and time that Participants may submit Capacity Auction Offers in respect of Capacity Market Units Qualified to participate in the Capacity Auction	A-1 week
12	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	10 AM on A
13	Capacity Auction Run Start: the day and time that the System Operators initiate the run of the software program referred to in paragraph F.8.5.1 in respect of the Capacity Auction	A
14	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)	A+3 Working Days
15	Capacity Auction Provisional Results Date: the date by which the System Operators are expected to provide provisional Capacity Auction Results to Participants	A+3 Working Days
16	Capacity Auction Approval Date: the date by which the Regulatory Authorities are expected to approve the Capacity Auction Results	A+4 weeks
17	Capacity Auction Results Date: the date the System Operators are expected to publish the Capacity Auction Results	A+5 weeks
18	Performance Security Date: the last date for Participants to provide Performance Securities to the System Operators for Awarded New Capacity allocated in the Capacity Auction	A+5 weeks

TABLE B: INDICATIVE TIMEFRAME FOR REVIEWABLE DECISIONS AND QUALIFICATION DISPUTES

	Event	Paragraph	Indicative timeframe
19	Timeframe within which Applications for Review must be lodged	E.9.3.1	End of second full Working Day after the relevant decision is notified to the Participant

	Event	Paragraph	Indicative timeframe
20	Timeframe within which System Operators may reject a non-complying Application for Review	E.9.3.3	End of second full Working Day after the Application for Review is received by the System Operators
21	Timeframe within which Participant must comply with a request for further information	E.9.3.4	End of second full Working Day after the request
22	Timeframe within which System Operators must notify Participant of outcome of their reconsideration	E.9.3.5	End of fifth full Working Day after an Application for Review is received by the System Operators or, if the System Operators request further information, end of fifth full Working Day after the further information is received in full by the System Operators
24	Latest date for giving a Dispute Notice in relation to a Qualification Dispute	B.14.2.1	End of third full Working Day after Participant notified by System Operators of outcome of their reconsideration
25	Latest date by which the CMDRB shall give its decision in relation to a Qualification Dispute	B.14.8.5(a)	A – 4 weeks

APPENDIX D: QUALIFICATION DATA

The Information required in an Application for Qualification is:

- 1 The identity of the Participant submitting the Application for Qualification;
- 2 The proposed Capacity Market Unit which the Participant submitting the Application for Qualification 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) a mapping between the proposed Capacity Market Unit and each Generator Unit to which the application relates;
 - (b) an indication as to whether each Generator Unit to be included is below the De Minimis Threshold;
 - (c) an indication as to whether each Generator Unit to be included is a Variable Generator Unit;
- 4 In respect of each Candidate Unit to which the Application for Qualification relates and which is, or is intended to be, registered under the Trading and Settlement Code:
 - (a) the identity of the Candidate Unit (being the Generator Unit or Interconnector) to which the application relates;
 - (b) the Unit Type;
 - (c) whether the Candidate Unit comprises Existing Capacity, New Capacity or a combination of both;
 - (d) the Technology Class of the Candidate Unit (except for Aggregated Generator Units);
 - (e) the Capacity Zone of the Candidate Unit;
 - (f) the quantity proposed 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, and 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 Candidate Unit, and (as applicable);
 - (ii) Initial Capacity (Total) of the Candidate Unit;

- (h) in the case of a Generator Unit (including a Demand Side Unit), whether it is Clean;
- (i) in respect of Generator Units (other than Demand Side Units) and Interconnectors:
 - (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) in respect of Generator Units (including Demand Side Units) and Interconnectors, the Firm Offer Requirement;
- (k) for each Generator within a Candidate Unit that is an Aggregated Generator Unit:
 - (i) the identity 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 the Generator;
 - (v) the Gross De-Rated Capacity (New) proposed in respect of the Generator (such that the sum of (iv) and (v) reflects the Gross De-Rated Capacity (Total) sought for the Generator);
 - (vi) where the Aggregated Generator Unit will be providing New Capacity, 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 in the Application for Qualification;
 - (vii) whether the Generator is Clean;
 - (viii) the Firm Network Access Capacity of the Generator (including an offer of capacity) applicable to the Capacity Year;
 - (ix) the de-rated Firm Network Access Capacity to be applied to that Generator based on the de-rating factor applicable to that quantity;
- (l) where the Candidate Unit is an Autoproducer Unit:
 - (i) the Autoproducer Demand Reduction Volume; and
 - (ii) evidence to support any non-zero volume identified in sub-paragraph (i).

- 5 In respect of each Candidate Unit to which the Application for Qualification relates that includes New Capacity, excepting the quantum of New Capacity which is already Awarded Capacity in respect of the Capacity Year, a proposed Implementation Plan which includes:
- (a) 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;
 - (b) a schedule identifying the earliest and latest dates for achieving the following Milestones (except to the extent not required under this Code):
 - (i) Substantial Financial Completion;
 - (ii) Commencement of Construction Works;
 - (iii) Mechanical Completion;
 - (iv) Completion of Network Connection;
 - (v) First Energy to Network;
 - (vi) Start of Performance/ Acceptance Testing;
 - (vii) Provisional acceptance or Completion of Performance Testing; and
 - (viii) Substantial Completion;
 - (c) whether the Participant submitting the Application for Qualification has submitted or intends to submit an Exception Application to the Regulatory Authorities in respect of the Candidate Unit, and the nature of the Exception Application;
 - (d) where the Candidate Unit is a Demand Side Unit an overview of the Demand Side Unit proposal, including a plan setting out the following:
 - (i) the Locational Capacity Constraint Area in which the load reduction capability will be located, where all the load reduction capability must be in the same Locational Capacity Constraint Area;
 - (ii) details of how the Participant submitting the Application for Qualification proposes to procure the load reduction capability;
 - (iii) details of how the Participant submitting the Application for Qualification proposes to ensure that the 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
 - (iv) details of how the load reduction capability has, or will be, secured by the Participant submitting the Application for Qualification;
 - (e) in the case of:

- (i) a Demand Side Unit, a declaration that the plan required under paragraph (d) is, to the best of the knowledge and belief of the Participant submitting the Application for Qualification:
 - 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 or deceptive;
 - (ii) otherwise, a statement that the Implementation Plan is, to the best of the knowledge and belief of the Participant submitting the Application for Qualification:
 - a. accurate and based on reasonable assumptions;
 - b. accurately summarises the planned works; and
 - c. is not misleading or deceptive;
 - (f) a statement that the Substantial Completion Milestone enables capacity to be delivered for the start of the Capacity Year;
 - (g) 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.
- 6 A certificate signed on behalf of the Participant submitting the Application for Qualification by a Participant Director that, having made all due and careful enquiry and to the best of the knowledge, information and belief of the Participant Director:
- (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 is not subject to an Insolvency Event;
 - (c) the Participant has a good-faith intention to offer the capacity to be Qualified into the relevant Capacity Auction, that none of the capacity proposed to be offered relates to, by way of a prior Capacity Auction or Secondary Trading Auction, existing 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 has not, and none of its Associates have, engaged or will engage in bribery or has offered or will offer any inducement in regard to the process; and

- (f) the Participant has taken appropriate steps to ensure appropriate management of Confidential Information;
- 7 Where the Candidate Unit is a Generator Unit and the Participant submitting the Application for Qualification is an Intermediary in respect of the Generator Unit, confirmation from the Participant that it is authorised under the applicable Form of Authority to participate in the Capacity Auction in respect of the Generator Unit; and
- 8 Such other information as the System Operators reasonably require.

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 Auction in respect of which the Participant submitted the Application for Qualification;
- (d) the Capacity Year to which the Opt-out Notification relates;
- (e) the reason for opting out; and
- (f) 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;
- (d) the Capacity Auction in respect of which the Participant submitted the Application for Qualification;
- (e) the Unit Type used by the System Operators in the Qualification Process;
- (f) for the Generator Unit or Interconnector (and, where the Generator Unit is an Aggregated Generator Unit, for each Generator comprising the Aggregated Generator Unit):
 - (i) the full set of the data provided by the Participant in the Application for Qualification;
 - (ii) any alternative values to those provided by the Participant in the Application for Qualification that the System Operators used in the Qualification Process; and
 - (iii) any other inputs into the Qualification Process used by the System Operators.

3 Qualification Decisions

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

- (a) For each Generator Unit or Interconnector for which an Application for Qualification was made or which were subject to the Alternative Qualification Process:
 - (i) the Qualified Capacity Market Unit (if any) it is associated with;
 - (ii) its Initial Capacity (Existing) and Initial Capacity (Total);
 - (iii) its Gross De-Rated Capacity (Existing) and Gross De-Rated Capacity (Total);
 - (iv) its Firm Offer Requirement;
 - (v) in the case of a Generator which is part of an Aggregated Generator Unit:
 - a. its Initial Capacity (Existing) and Initial Capacity (Total);
 - b. its Gross De-Rated Capacity (Existing) and Gross De-Rated Capacity (Total); and
 - c. its Firm Offer Requirement.
- (b) for each Capacity Market Unit:
 - (i) the Firm Offer Requirement;
 - (ii) the Gross De-Rating Factor for each Capacity Market Unit ($FDERATE_{\Omega}$) where this is the value determined in accordance with paragraph E.8.8.1E.8.8.1(c), E.8.8.2(e) or E.8.8.3(d) as applicable (and allowing for paragraph E.8.8.4), with the exception that this is to be replaced by the value determined in accordance with paragraph E.8.8.1(b), E.8.8.2(d) or E.8.8.3(c) as applicable in the event that New Capacity is not Awarded Capacity in the Capacity 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) separately for each of Existing Capacity and New Capacity (as applicable) for each Capacity Market Unit:
 - (i) nature: i.e. Existing Capacity or New Capacity;
 - (ii) the Gross De-Rated Capacity (Existing);
 - (iii) the Gross De-Rated Capacity (New);
 - (iv) the Net De-Rated Capacity (Existing) determined in the Qualification Process;

- (v) the Net De-Rated Capacity (Total) determined in the Qualification Process;
- (vi) the Maximum Capacity Duration allowed for Awarded Capacity; and
- (vii) the applicable Offer Price Caps and any associated breakpoint quantities.

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, Active, Terminated.
- 3 Primary Trade or Secondary Trade Flag: a flag to show whether this record refers to a Primary Trade arising from a Capacity Auction in accordance with paragraph F.9.4.2 or a Secondary Trade arising from a Secondary Trade Auction in accordance with paragraph H.8.1.5.
- 4 Capacity Market Unit Identifier (Ω): the unique identifier for the Capacity Market Unit with which the trade is associated (where this may be the Capacity Market Unit of the buyer or seller) in accordance with paragraph F.9.4.2 or H.8.1.5.
- 5 Capacity Quantity ($qC_{\Omega n}$): the MW Awarded Capacity, which has a positive value for sales (eg Awarded Capacity allocated as a result of a Capacity Auction) and a negative value for purchases in accordance with paragraph F.9.4.2 or H.8.1.5.
- 6 Capacity Quantity Start Date and Time, which is the beginning of the Capacity Year in respect of Primary Trades and the beginning of the period over which the relevant Product applies in respect of Secondary Trades.
- 7 Capacity Quantity End Date and Time, which is the end of the Capacity Year in respect of Primary Trades and the end of the period over which the relevant Product applies in respect of Secondary Trades.
- 8 Capacity Quantity Commissioning Date, which is set in accordance with paragraph G.3.1.8.
- 9 Commissioning Status Flag: where the Capacity Quantity Commissioning Date is set, this flag will identify whether the date is a forecast or actual, and is set in accordance with paragraph G.3.1.8.
- 10 The Commissioned Capacity ($qCCOMMISS_{\Omega y}$) in respect of Primary Trade which is set in accordance with paragraph G.3.1.8.
- 11 Long Stop Date:
 - (a) for Primary Trades for New Capacity this value shall be set to the Long Stop Date; and
 - (b) for all other trades, this field shall be left blank.
- 12 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 the Capacity Auction Results; and
 - (b) for a Secondary Trade it will be the Secondary Trade Auction Clearing Price.
- 13 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 that were published in the Final Auction Information Pack for the relevant Capacity Auction; and

- (b) for a Secondary Trade this will be the stop loss limits applicable that were published in the Final Auction Information Pack for the most recent Capacity Auction for the Capacity Year in which the relevant Product applies.
- 14 Capacity Duration Exchange Rate: 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 in respect of a Capacity Market Unit in a Currency Zone priced in Euro this will be 1;
 - (b) for a Primary Trade in respect of a Capacity Market Unit in a Currency Zone priced in Sterling this will be the Annual Capacity Payment Exchange Rate applicable to the Capacity Year that was published in the Final Auction Information Pack for the relevant Capacity Auction; and
 - (c) for a Secondary Trade in respect of a Capacity Market Unit in a Currency Zone priced in Sterling this will be the exchange rate that was published for the relevant Product in the Secondary Trade Auction Information Pack for the relevant Secondary Trade Auction.

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. 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 two Working Day of receiving notice of determination by the Regulatory Authorities	Modification Finalisation Date for a Capacity Auction	Public Data
As soon as reasonably practicable but no later than five Working Days after receipt of Modification Proposal	Modification Proposal	Public Data
As required	Modification Proposal put forward by System Operators	Public Data
As required	Status of Modification Proposals	Public Data
As soon as reasonably practicable, 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
Within 10 Working Days of receiving or putting forward.	Timetable for consideration of an AP Modification Proposal	Public Data
As required	Report on a Workshop provided to the Regulatory Authorities under paragraph B.12.7.1(j)	
As required	Update to timetable for consideration of an AP Modification Proposal	Public Data
As required	Modification to Agreed Procedure with report setting out reasons for modification.	Public Data
As required	Report setting out reasons not to modify Agreed Procedures	Public Data

Time	Item / Data Record	Confidentiality
As required	Modified Agreed Procedure (where not vetoed by Regulatory Authorities)	Public Data
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 reasonably practicable after being issued and at least within two Working Days of issue	Making or lifting of a Suspension Order	Public Data
As soon as reasonably practicable after being issued and at least within two Working Days of issue	Termination Order	Public Data
As updated and at least within two Working Days of update	Details of the Accession Fees and Participation Fees	Public Data
As updated and at least within two Working Days of update	Details of the approved rate and basis for Accession Fee, Participation Fee, 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 to the extent directed by the Regulatory Authorities	Terms of reference for Capacity Auction Monitor	Public Data
As soon as reasonably practicable and in any event within two Working Days after receiving it from the Regulatory Authorities	Non-confidential version of Capacity Auction Monitor's report	Public Data
Within one Working Day of its receipt from the Regulatory Authorities to the extent directed by the Regulatory Authorities	Terms of reference for Capacity Market Audit	Public Data
As required	Non-confidential version of Audit Report	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 soon as reasonably practicable	Notices received from the Panel Chairperson under paragraphs B.14.5.1 or B.14.5.2.	Public Data
As required	Referral Notice form	Public Data
Within 2 Working Days of it being approved, determined, amended or revoked	Capacity Auction Timetable (including updates, revocation)	Public Data
The later of the Initial 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 Initial Auction Information Pack	Initial Auction Information Pack	Public Data
As required	Notify Participant of assignment of a Capacity Market Unit identifier	Participant Private

Time	Item / Data Record	Confidentiality
The Provisional Qualification Results Date	Provisional SO Qualification Decisions	Participant Private
Within the Prescribed Timeframe after receiving an Application for Review	Notify that an Application for Review is rejected as not complying with paragraph E.9.3.2	Participant Private
Within the Prescribed Timeframe after receiving an Application for Review	Provide outcome of reconsideration in respect of Application for Review	Participant Private
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	Information specified in paragraph E.9.5.1	Public Data
As required	Extension of Qualification	Participant Private and Public Data
Five Working Days Prior to a Capacity Auction Submission Commencement date 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 Information Pack Date or a date being two Working Days after the Regulatory Authorities have provided the Demand Curve to System Operators	Final Auction Information Pack	Public Data
On receipt	Notification of receiving valid Capacity Auction Offer submission	Participant Private
By the Capacity Auction Provisional Results Date	provisional Capacity 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 Capacity Auction Results	final Capacity 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 Capacity Auction Results	Information described in paragraph F.9.5.1	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 Auction.	Secondary Trade Information Pack	Public Data
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

Time	Item / Data Record	Confidentiality
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 H 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 SYSTEM OPERATORS.

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 week day 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 week day 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 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 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 SO'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 made on [] 20[] between:

- (1) [] **LIMITED [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 Interpretation

In this Deed, unless the context requires otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) 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;
- (c) 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;

- (d) 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);
- (e) any reference to a party includes its permitted successors, transferees and assignees;
- (f) 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
- (g) "**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.

1.2 **Headings**

The table of contents and the headings in this Deed are included for convenience only and shall be ignored in construing this Deed.

1.3 **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.

1.4 **Intended to be a Deed**

It is intended that this Deed takes effect as a deed even though the System Operators may only execute it under hand or may not execute it at all.

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 and with full title guarantee 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 including the Code and the Trading and Settlement Code; 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 the Irish Act (as applicable).

4 POWER OF ATTORNEY

4.1 Appointment

The Participant by way of security hereby irrevocably and severally appoints the System Operators and the System Operators' delegates and sub-delegates as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney 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]*:

[*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 or Wales, 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, the 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 or Wales, 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 or Wales) 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 or Wales), 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) ~~to~~ 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 or Wales, the laws of England; insofar as the Security Assets are located in Northern Ireland, the laws of Northern Ireland; and (ii) 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 or Wales, 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.

IN WITNESS whereof this Deed has been duly executed and delivered as a deed on the date appearing at the beginning of this Deed.

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 (1) us and (2) EirGrid p.l.c. and SONI Limited (the "**System Operators**") dated [] 20[] (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 [] 20[] 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