

## SCHEDULE 7

### Modification of standard conditions of licences granted under the Gas Act 1986

## PART 4

### Standard conditions of gas interconnector licences

- 4.—(1) The standard conditions of a gas interconnector licence are amended as follows.
- (2) In condition 1 (definitions and interpretation)—
- (a) before the definition of the “Act” insert—
- ““Access Rules” means methodologies used to establish terms and conditions for access to (including use of) the licensee’s interconnector but not including those related to charges;”;
- (b) after the definition of the “Act” insert—
- “the “Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009;
- “ancillary service” means a service necessary for the operation of the licensee’s interconnector or an interconnected system;”;
- (c) after the definition of the “Authority” insert—
- “the “Directive” means Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC\(1\)](#);”;
- (d) after the definition of “integrated transmission system” insert—
- ““interconnected system” means a system of a relevant system operator with which the licensee’s interconnector is connected or with which the licensee interfaces;
- “interconnector capacity” means all interconnector capacity, including new interconnector capacity, which is available over the licensee’s interconnector;”;
- (e) after the definition of “licensee’s interconnector” insert—
- ““new interconnector capacity” means physical capacity, or a new capacity product (including virtual capacity for a counter flow of gas on the interconnector) which is made available over the licensee’s interconnector on or after 3 March 2011;
- the “Regulation” means Regulation 2009/715/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation 2005/1775/EC, as amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks(2);”;
- (f) after the definition of “regulatory authority” insert—
- ““related undertaking” has the meaning given to it in Article 2 of the Directive;”;
- (g) for the definition of “relevant system operator”, substitute—

(1) OJ No L 211, 14.08.2009, p. 94.

(2) OJ No L 293, 11.11.2010, p. 67.

““relevant system operator” means a transmission system operator, distribution system operator, storage system operator or LNG system operator (where such phrases shall have the meaning given to them in Article 2 of the Directive);”;

(h) in paragraph 11, for “A, B, C or D” (in each place) substitute “A, B, C, D or E”.

(3) In condition 3 (compliance with bilateral agreements), after paragraph 2, insert—

“**3.** The licensee shall take all steps within its power to make such changes to agreements which fall within the scope of paragraph 1 as may be necessary from time to time to comply with the Regulation and to give full and timely effect to any relevant legally binding decision of the Agency or the European Commission.”.

(4) In condition 4 (provision of information to the Authority), in paragraph 1—

(a) in sub-paragraph (b), at the end, omit “and”;

(b) in sub-paragraph (c), for the full stop at the end substitute “; and”;

(c) after sub-paragraph (c), insert—

“(d) any functions conferred on the Authority by or under the Regulation.”.

(5) In condition 5 (provision of information to a relevant gas transporter)—

(a) for the heading, substitute “Information regarding technical rules and operation”;

(b) re-number paragraph 4 as paragraph 5;

(c) re-number paragraph 3 as paragraph 4;

(d) re-number paragraph 2 as paragraph 3;

(e) re-number paragraph 1 as paragraph 2;

(f) before paragraph 2, insert—

“**1.** In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority, the licensee shall:

(a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and

(b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.”;

(g) in paragraph 2—

(i) for “The licensee shall furnish to any relevant gas transporter” substitute “To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant gas transporter or any operator of an interconnected system,”;

(ii) in sub-paragraph (a), for “for that” substitute “by a”;

(iii) in sub-paragraph (b), after “in such directions”, for the full stop at the end substitute “; or”;

(iv) after sub-paragraph (b), insert—

“(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system.”;

(h) in paragraph 3—

- (i) for “refuse to provide an item of information” substitute “refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c) above”;
- (ii) for “sub-paragraph 1(a)” substitute “paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).”;
- (i) in paragraph 5—
  - (i) for “Sub-paragraph 1(a)” substitute “Sub-paragraphs 2(a) and 2(c)”;
  - (ii) after “relevant gas transporter” insert “or operator of an interconnected system”.
- (6) In condition 6 (separation of accounts), in paragraph 1, for “cross-subsidisation” substitute “discrimination, cross-subsidisation and the distortion of competition”.
- (7) In condition 10 (charging methodology to apply to third party access to the licensee’s interconnector)—
  - (a) in paragraph 1, omit “either before the licensee enters into the agreement or before the tariffs under the agreement fall due”;
  - (b) after paragraph 1, in the sub-heading omit “and review”;
  - (c) for paragraph 2, substitute—

“2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee’s interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.”;
  - (d) re-number paragraph 21 as paragraph 25;
  - (e) re-number paragraph 20 as paragraph 24;
  - (f) re-number paragraph 19 as paragraph 23;
  - (g) re-number paragraph 18 as paragraph 22;
  - (h) re-number paragraph 17 as paragraph 21;
  - (i) re-number paragraph 16 as paragraph 20;
  - (j) re-number paragraph 15 as paragraph 19;
  - (k) re-number paragraph 14 as paragraph 18;
  - (l) re-number paragraph 13 as paragraph 17;
  - (m) re-number paragraph 12 as paragraph 16;
  - (n) re-number paragraph 11 as paragraph 15;
  - (o) omit paragraph 10;
  - (p) re-number paragraph 9 as paragraph 12;
  - (q) re-number paragraph 8 as paragraph 11;
  - (r) omit paragraph 7;
  - (s) re-number paragraph 6 as paragraph 10;
  - (t) re-number paragraph 5 as paragraph 9;
  - (u) re-number paragraph 4 as paragraph 5;
  - (v) re-number paragraph 3 as paragraph 4;
  - (w) after paragraph 2, insert—

“3. The charging methodology shall set out the methodologies for the calculation of any charges imposed upon users for access to (including use of) the interconnector and/or the provision of ancillary services, and any payments made to users for access to (including use of), the interconnector, including:

- (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
  - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
  - (ii) any charges for the provision (including the provision to any relevant system operator), of ancillary services, including but not limited to balancing services;
- (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and
- (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.”;

(x) in paragraph 4—

- (i) after “transparent”, for “and” substitute “, ”;
- (ii) after “non-discriminatory”, insert “and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency”;

(y) in paragraph 5, in sub-paragraph (a) after “that all persons”, insert “, including those in other Member States.”;

(z) after paragraph 5, insert—

“6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

### **Provisional Charging Methodology**

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

(aa) in each of the following paragraphs, for “8, 9 and 10” substitute “11 to 14”—

- (i) paragraph 9;
- (ii) paragraph 10;
- (bb) after paragraph 10, omit “Resubmission of charging methodology to the Authority for approval”;
- (cc) in paragraph 11—
  - (i) for “paragraph 10” substitute “paragraphs 13 and 14”;
  - (ii) in sub-paragraph (a), after “that all persons”, insert “, including those in other Member States,”;
  - (iii) in sub-paragraph (b)(v), for “10” substitute “14”;
- (dd) after paragraph 12, insert—

“13. The licensee shall comply with any direction from the Authority to amend its proposed modified charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall resubmit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.”;
- (ee) in paragraph 16, for “8” substitute “11”;
- (ff) in each of the following paragraphs, for “13” substitute “17”—
  - (i) paragraph 18;
  - (ii) paragraph 19;
  - (iii) paragraph 20;
- (gg) in each of the following paragraphs, for “4 to 11” substitute “5 to 15”—
  - (i) paragraph 20;
  - (ii) paragraph 21 (in both places);
- (hh) in each of the following paragraphs, for “17(b)” substitute “21(b)”—
  - (i) paragraph 22;
  - (ii) paragraph 23;
  - (iii) paragraph 24;
- (ii) in paragraph 21 for “20” substitute “24”.
- (8) In condition 11 (requirement to offer terms for access to the licensee’s interconnector)—
  - (a) omit paragraph 2;
  - (b) re-number paragraph 3 as paragraph 2;

- (c) re-number paragraph 4 as paragraph 3;
  - (d) re-number paragraph 5 as paragraph 4;
  - (e) re-number paragraph 6 as paragraph 5;
  - (f) in that paragraph, for “4 or 5” substitute “3 or 4”;
  - (g) re-number paragraph 7 as paragraph 6;
  - (h) re-number paragraph 8 as paragraph 7.
- (9) After condition 11 (requirement to offer terms for access to the licensee’s interconnector), insert—

**“Condition 11A. Approval of terms for access to the licensee’s interconnector**

**Existing Exemptions**

1. For the duration of the exemption, the licensee is not required to comply with this licence condition 11A in respect of its capacity which is exempt if, in respect of that particular capacity, prior to 3 March 2011 it was granted an exemption pursuant to licence condition 12 from complying with any requirement of the licence relating to the use by other persons of the gas interconnector to which its licence relates.

**Initial approval of access rules**

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

3. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in the Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.

4. The Access Rules shall comply with the Regulation and must include, in particular but not be limited to:

- (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the provision of virtual capacity for a counter-flow of gas on the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise cross-border trade;
- (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating gas flows against the capacity;
- (c) arrangements for the management of congestion, including procedures for licensees to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
- (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
- (e) arrangements for any ancillary services, such as balancing arrangements, including where these are offered by third parties, including agents; and
- (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.

5. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively ‘the relevant access rules objectives’).

6. Prior to submitting the Access Rules to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow them a period of not less than 28 days within which to make written representations; and
- (b) furnish to the Authority a report setting out:
  - (i) the terms originally proposed in the Access Rules;
  - (ii) the representations, if any, made by interested persons; and
  - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.

7. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 8 shall apply.

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

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

9. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.

10. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee’s Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority’s request. The licensee shall then, subject to paragraphs 11 to 14, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

#### **Modification of Access Rules**

11. Subject to paragraphs 13 and 14, the licensee shall not make a modification to the Access Rules unless the licensee has:

- (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
- (b) furnished the Authority with a report setting out:

- (i) the terms originally proposed for the modification;
- (ii) the representations, if any, made by interested persons to the licensee;
- (iii) any change in the terms of the modification intended in consequence of such representations;
- (iv) how the intended modification better achieves the relevant access rules objectives; and
- (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 14 expires.

**12.** The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.

**13.** The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 14 shall apply.

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

#### **Publication of Access Rules**

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

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

**16.** The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 11, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.”.

- (10) In condition 12 (application of licence conditions 10 and 11: exemption orders)—
- (a) in paragraph 1, for “10 and 11” substitute “10, 11 and 11A”;
  - (b) in the heading, for “10 and 11” substitute “10, 11 and 11A”;
  - (c) in paragraph 2—
    - (i) after “paragraph 3, the Authority”, for “may” substitute “must”;



- (ii) at the end, for “where the Authority is satisfied that the requirements of paragraph 6 are met.” substitute—
  - “where the Authority is satisfied that:
    - (a) the requirements of paragraphs 7 and 10 are met; or
    - (b) it is required to do so by the Agency under Article 36(5) of the Directive.”;
- (d) in paragraph 3—
  - (i) after “set out in paragraph”, for “6” substitute “7”; and
  - (ii) at the end, insert—

“The request shall include the Access Rules for approval by the Authority in accordance with paragraph 13 below, which Access Rules shall:

    - (a) comply with paragraph 4 of licence condition 11A; and
    - (b) comply with paragraph 5 of licence condition 11A save for the requirement for the Access Rules to comply with the Regulation,

and prior to submitting the Access Rules for approval, the licensee shall comply with the requirements of licence condition 11A paragraph 6.”;
- (e) in paragraph 4—
  - (i) in sub-paragraph (a), omit “for an indefinite period or”;
  - (ii) in sub-paragraph (b), omit “unconditionally or” and after “considers appropriate” insert “including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates”;
- (f) re-number paragraph 8 as paragraph 15;
- (g) re-number paragraph 7 as paragraph 9;
- (h) re-number paragraph 6 as paragraph 7;
- (i) re-number paragraph 5 as paragraph 6;
- (j) after paragraph 4, insert—

“5. When considering the terms on which any exemption is to be given in respect of the interconnector, the Authority must take into account:

  - (a) the size of the interconnector or, if it is being modified, any increase in capacity of the interconnector;
  - (b) the length of time required to recover the investment in the interconnector;
  - (c) the implications of the exemption for the operation of the gas market in Great Britain.”;
- (k) in paragraph 6, after “with its provisions”, insert—

“and must be revoked if:

  - (a) construction of the interconnector or the increase in, or modification to, its capacity to which the exemption relates has not started within two years of the relevant date; or
  - (b) the interconnector or the increase in, or modification to, its capacity to which the exemption relates is not operational within five years of the relevant date.”;
- (l) after paragraph 7, insert—

“8. When deciding whether the requirements of paragraph 7 are met, the following shall be taken into account—

- (a) when considering the criteria in paragraph 7(a), (b) and (e), the way in which capacity is to be allocated under the Access Rules approved by the Authority in accordance with paragraph 13 below; and
  - (b) any opinion which it has received from the Agency in respect of the application pursuant to Article 36(4) of the Directive.”;
- (m) after paragraph 9, insert—
- “**10.** The requirements of this paragraph are that:
- (a) the Authority has sent notification of the application to:
    - (i) the relevant regulatory authority if part of the interconnector is located in another Member State; and
    - (ii) the designated regulatory authority for Northern Ireland if part of the interconnector is located in Northern Ireland;
  - (b) the Authority has sent to the European Commission:
    - (i) a copy of the application as soon as reasonably practicable following its receipt;
    - (ii) the Authority’s decision to give an exemption including the terms on which that exemption has been given;
    - (iii) any other information it considers relevant to the exemption or the terms on which the exemption was given, including the information mentioned in Article 36(8) of the Directive;
    - (iv) any other information requested by the European Commission;
  - (c) if part of the interconnector is located in another Member State, the Authority has sent a copy of the application and the Authority’s decision as to whether the exemption order should be granted if approved by the European Commission to the Agency;
  - (d) save where the Agency takes a decision pursuant to Article 36(5) of the Directive, the Authority has the agreement of any relevant national regulatory authority to the exemption, which agreement has been reached within 6 months of the date on which the application was received by the last of the relevant national regulatory authorities and they have informed the Agency of their decision;
  - (e) the Authority has not been required to refuse the application for an exemption by the Agency under Article 36(5) of the Directive;
  - (f) the European Commission:
    - (i) has approved the Authority’s decision;
    - (ii) in accordance with Article 36(9) of the Directive has required the Authority to modify or revoke the exemption decision and the Authority has complied with that request within one month of the date on which it received the request and informed the European Commission of doing so; or
    - (iii) has not required the Authority to withdraw the decision under Article 36(9) of the Directive and 4 months have passed since the Commission was notified of the Authority’s decision.

**11.** An exemption order will not be made until the Authority has approved the Access Rules.

**12.** The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

**13.** The Access Rules shall not be approved for the purposes of paragraph 11, unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives (save for the requirement for the Access Rules to comply with the Regulation) and the requirements of paragraph 14 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

**14.** The requirements of this paragraph are that the Authority considers that the Access Rules:

- (a) will ensure that all potential users of the exempt infrastructure will be invited to register an interest in using that infrastructure before rights to use that infrastructure are allocated to the applicant or any other person;
  - (b) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;
  - (c) will not restrict reselling of rights to have gas conveyed through the exempt infrastructure.”;
- (n) in paragraph 15, after the definition of “new interconnector” insert—
- ““relevant date” means:
    - (a) the date on which the European Commission confirmed that it is content for the exemption to be given in accordance with the Authority’s decision as notified in accordance with paragraph 10(b)(ii), or given subject to specified modifications to the exemption; or
    - (b) if the Authority did not receive such approval, the date four months after the Commission was sent a copy of the Authority’s decision in accordance with paragraph 10(b)(ii).”.
- (11) In condition 13 (capacity utilisation)—
- (a) in the heading, for “utilisation” substitute “availability”;
  - (b) re-number paragraph 9 as paragraph 10;
  - (c) re-number paragraph 8 as paragraph 9;
  - (d) re-number paragraph 7 as paragraph 8;
  - (e) re-number paragraph 6 as paragraph 7;
  - (f) re-number paragraph 5 as paragraph 6;
  - (g) re-number paragraph 4 as paragraph 5;
  - (h) re-number paragraph 3 as paragraph 4;
  - (i) re-number paragraph 2 as paragraph 3;

- (j) re-number paragraph 1 as paragraph 2;
- (k) before paragraph 2, insert—

**“PART A: Purpose**

1. The purpose of this condition is to ensure that basic capacity availability requirements apply to all gas interconnector licensees, including those exempt from the requirements of the Regulation.

*PART B: Capacity availability”;*

- (l) in paragraph 3, at the end, insert “Such capacity allocation mechanisms shall be developed in accordance with Article 16 and Part 2 of Annex 1 of the Regulation.”;
- (m) after paragraph 6, insert—

*“PART C: Publication of Information”;*

- (n) in paragraph 10—
  - (i) in the definition of “capacity”, after “means the flow” insert “in each direction” and at the end insert “(including virtual capacity for a counter flow of gas on the interconnector)”;
  - (ii) in the definition of “contractual congestion”, for “equals or” substitute “demand” and after “licensee’s interconnector” omit “that is, where all technical capacity of the licensee’s interconnector is contracted as firm”;
  - (iii) after the definition of “firm capacity” insert—

““interruptible capacity” means that portion of technical capacity of the licensee’s interconnector which may be interrupted by the licensee in accordance with a binding contract.”.
- (12) In condition 14 (dispute resolution), in paragraph 1, for “non-price terms and conditions of access” substitute “Access Rules”.
- (13) After condition 14 (dispute resolution), insert—

**“Part II**  
**SECTION E**

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**Condition 15. Not Used**

**Condition 16. Not Used**

**Condition 17. Not Used**

**Condition 18. Not Used**

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## PART II

### SECTION F: OTHER PROVISIONS

#### **Condition 19. Operation and development of the interconnector**

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

- (a) to properly and efficiently participate in the operation of the interconnector; and
- (b) to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition.

2. The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector.

3. The licensee shall promote security of supply by taking into account all economically reasonable and technically feasible demands for capacity on the licensee's interconnector.

4. The licensee shall procure the energy used for participating in the operation of the interconnector according to transparent, non-discriminatory and market based procedures.

#### **Condition 20. Prohibition of discrimination and cross-subsidies**

1. The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee.

2. The licensee shall not give any cross-subsidy to, or receive any cross-subsidy from, any entity which is a related undertaking of the licensee and which carries out one or more of the following gas activities: supply, distribution, storage and LNG.

#### **Condition 21. General provisions on disclosure of information**

1. Save to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.

2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner save where this is necessary for carrying out a business transaction.

3. Paragraph 1 above shall not prohibit disclosure by the licensee to any related undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system.

4. Without limiting the generality of paragraphs 1 to 3 of this licence condition, the licensee shall not, in the context of sales or purchases of gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the licensee's interconnector.

#### **Condition 22. Notification of changes that may affect eligibility for certification**

1. Where the licensee has made or makes an application for certification under section 8D of the Act, if at any time prior to the Authority notifying the licensee of its final certification

decision under section 8F(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 8O of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 8O of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 8G(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 8Q of the Act

“control” has the same meaning as in section 8Q of the Act

“person from a third country” has the same meaning as in section 8Q of the Act

“relevant date” has the same meaning as in section 8O of the Act

“shareholder right” has the same meaning as in section 8Q of the Act.

### **Condition 23. Regional Cooperation**

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 12 of the Regulation.

2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.

3. In this condition:

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